

# Synthesis Report



AFRICAN FORUM AND NETWORK  
ON DEBT AND DEVELOPMENT

The extent to which the Economic Community of West African States (ECOWAS) have domesticated the Africa Mining Vision and ECOWAS Protocol on Mining

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## EXECUTIVE SUMMARY

This synthesis report is intended to showcase the extent to which the eight countries in West Africa (Benin, Côte D'Ivoire, Guinea, Liberia, Mali, Niger, Sierra Leone and Togo) have domesticated the AMV provisions with respect to the mining revenues and mineral rents management cluster of the AMV, based on separate eight country reports. As outlined in the AMV Action Plan, the mining revenues and mineral rents management cluster of the AMV can be broken down into 10 areas. The main findings with respect to the 10 areas are as follows:

**Improving national capacity to physically audit mineral production and exports:** - Five of the eight countries can generally be considered fully compliant with the AMV requirement of improving their national capacity to physically audit mineral production and exports, namely Sierra Leone, Liberia, Côte d'Ivoire and Mali and Niger. Challenges remain mainly with two countries, namely Togo and Benin, hence efforts need to be enhanced to comply. While not fully compliant, Guinea has notable progress.

**Reviewing mineral regimes in terms of optimising revenues:** - There are notable efforts in the eight West African countries to conduct regular reviews of mineral regimes. However, there is still room for improvement in two of the eight countries namely Togo and Liberia. In the remaining six countries, the efforts that have been undertaken in mineral reviews can be regarded favourably in terms of optimising revenues.

**Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws:** - All the eight countries have generally done well in enhancing the skills of their officials in fiscal and taxation issues, especially given that there are regional programmes that were rolled out to accommodate everyone. The support from development partners and efforts done at the regional level were instrumental in enhancing knowledge on negotiating fiscal issues and effectively monitoring compliance with taxation laws. However, skill enhancement should be a continuous process and while skills have been enhanced, some capacity challenges still remain across the eight countries, as new tax evasion methods continue to emerge.

**Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls:** - Three countries have done well (Liberia, Guinea, Sierra Leone) in domesticating this requirement of the AMV while challenges also remain with respect to Mali. The status with the remaining four countries on this AMV requirement could not be ascertained in the country reports.

**Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing):** - Four of the eight countries (Benin, Côte D'Ivoire, Guinea and Niger) have put pronounced efforts to reduce leakages in mining sector revenues in line with the expectations from the AMV. However, challenges still remain in the other four countries.

**Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction:** - Although the country reviews could not put specific details about what each of the signed BITs provide for, especially concerning the issue of taxation at the point of extraction, all the eight countries generally have some form of signed double taxation agreements.

**Build capacity & systems to auction mineral rights where applicable:** - Only Liberia has perfected provisions for auctioning mineral rights. Although Guinea and Sierra Leone have not yet perfected their systems, the ongoing efforts are commendable. Niger, Mali, Togo and Côte D'Ivoire still have a long way to go in having systems that auction mineral rights.

**Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds (SWFs) including stabilization funds and infrastructure funds:** - None of the eight countries has managed to establish a SWF. However, unlike the other seven countries, Guinea, has managed to put in place some mechanisms for investing some windfalls so as to smoothen expenditures in the face of fluctuations in mineral prices, which is in line with the aspirations of the AMV.

Develop rent distribution systems for development of communities near mining areas, to facilitate local communities' access to jobs, education, transport, infrastructure, health services, water and sanitation and enhance their capacity to negotiate partnership agreements. In conclusion, all the eight countries have generally made some efforts at ensuring that the local communities benefit from the mining activities taking place within their communities. However, these efforts are more pronounced in Liberia, Guinea, Sierra Leone and Côte d'Ivoire.

Develop systems for strengthening capacities for national and sub-national bodies for revenue management, especially local authorities, is an activity that is needed across all the countries. None of the countries have such systems in place.



The country specific recommendations for enhancing the countries' scope to domesticate the AMV are given in this report. Such activities that could enhance the scope for the countries to domesticate the AMV include the following:

The governments should continue to invest in building strong institutions where loopholes such as taxpayer registration; lack of risk-based compliance management across registration, filing and audit challenges, are addressed. While current efforts are commendable, ensuring that these are done on a consistent basis is the best way of ensuring that there is optimisation of revenue from the mining sector;

Investment in geo-data is a must, especially with the objective of ensuring that there is increased knowledge about mineral sector occurrences. This would be instrumental in attracting more large-scale mining firms into the sector, while mineral rights can be transferred in a more open and transparent public tender system as envisaged under the law.

There is need to ensure that all legislative provisions, which were enacted to improve mining sector benefits, are enforced. This also includes enforcement of the provisions which were designed to ensure that local communities, as well as future generations benefit from the current mining activities. The community development agreements, which are legislated for in some countries, need to be prioritised as there is a lot of merit in having these legislative provisions in place.

There is need to review all tax exemptions to ensure that only in cases where the economic and social advantages justify the exemption and concessions would this remains, as this is one of the weaknesses in the tax management systems. Such a review ensures that tax revenues are optimised.

There is need to pay more attention towards leakages. While the capacity of officials to monitor and detect leakages has been enhanced, it is important to ensure that they have the necessary support, including legislation and administrative, to ensure that the system would descend heavily on non-compliance;

The necessary steps towards the development of a SWF should be initiated across all countries. There is a risk that the next generation will not benefit from anything when the mineral resources get depleted, at a time when the mining firms have been benefiting;

Countries in West Africa that are already members of the INTOSAI Working Group on the Audit of Extractive Industries have benefited a lot. It is recommended that all ECOWAS countries become members to enhance their audit capacity.

The countries should strengthen their tax regimes with the objective of dealing with illicit dealings which may lead to tax avoidance. It is recommended that strong transfer pricing policies be in place to curb tax evasion and avoidance plus illicit financial flows from the mineral sector.

Audits should be done periodically and government should ensure the timely conduct and publication of its audits of government extractive revenues collection to improve fiscal transparency needs and ensure public sector accountability.

Capacitating human resources in key agencies (tax and customs administrations, and the Ministry of Mines), to effectively enforce the anti-avoidance schemes in the extractive sector should be an ongoing process that is done continuously to ensure that the countries remain abreast of new trends and vices in tax avoidance and illicit financial flows.

## 1. INTRODUCTION

### 1.1 Background

In 2020, AFRODAD commissioned a project whose overall purpose was to provide a regional perspective on the extent to which selected eight countries in ECOWAS have fared in terms of implementing policy changes that are in line with aspirations of the first cluster of the Africa Mining Vision (AMV). The AMV was adopted by the African Union (AU) Assembly of Heads of State and Government in February 2009. It is a continental framework which is intended to guide and promote the manner in which mineral resources would be exploited for development and structural transformation in Africa.<sup>1</sup> The AMV has nine clusters, of which the first cluster; the mining revenues and mineral rents management cluster, was the focus of the project. Eight research studies were undertaken under the project, resulting in the publication of eight separate papers focusing on eight ECOWAS countries.<sup>2</sup>



This study serves as a synthesis report, which is intended to showcase the extent to which the eight countries have domesticated the AMV provisions with respect to the mining revenues and mineral rents management cluster. All information in this report is based on the eight country reports and no attempts were made to update any data in fear that this could potentially affect the relevance of the conclusions in the eight reports, which were based on data which was relatively current at the time of publication.

In this respect, the objectives of this report include the following:

- To determine the extent to which the legal and regulatory frameworks of selected countries compare to the aspirations of the Mining Revenues and rents Management Cluster and the ECOWAS Protocol on mining.
- To establish the link (similarities) between the aspirations of the AMV and the ECOWAS Protocol on Mining;
- To determine the extent to which the selected countries have implemented policy changes that are in line with the aspirations of the Mineral Rents and Revenue Management cluster;
- To identify the factors that impinges on the domestication of the AMV cluster number one; and
- To make recommendations on how countries may improve on getting rents and manage them for national development.

<sup>1</sup> African Union. (2009). Africa Mining Vision. Addis Ababa: African Union

<sup>2</sup> Benin, Côte D'Ivoire, Guinea, Liberia, Mali, Niger, Sierra Leone and Togo

## 1.2 The importance of the mining sector in the selected countries

The need to domesticate the AMV in the West African countries arises mainly from the important role that the mining sector plays in the economies. This importance can be summarised as follows (Table 1).

Table 1: Importance of the mining sector in the eight countries

Country	Mining sector importance
Sierra Leone	The main minerals in Sierra Leone include diamond, rutile (Titanium Oxide), bauxite, gold and iron ore, even though the country also has oil and gas deposits on the shores of the country. Iron ore, however, has been the most important mining product in Sierra Leone over recent years and account for 86% of the mining sector's contribution to GDP, 67% of mineral exports and 55% of government revenues from mining. <sup>3</sup>
Liberia	The mining and minerals sector contributes around 10% of real GDP, 73% of total export values, and approximately 15% of domestic revenues in Liberia. Iron ore, gold, and diamond are the main contributors that drive the mining sector in Liberia. In addition to iron ore, gold and diamonds, there are also a vast of other minerals which are yet to be fully explored which are characteristically associated with Precambrian/ Proterozoic rocks found in most parts of the country. <sup>4</sup> The mining sector's contribution to Government revenues in the financial years 2015/16, 2016/17, and 2017/18 has been approximately 53%, 59%, and 55% respectively. In 2019 just the economic growth of Liberia was mainly driven by the mining sector. <sup>5</sup>
Côte d'Ivoire	Côte d'Ivoire is a leading producer of mineral commodities such as gold and manganese. The country is currently exploiting nickel, bauxite, manganese, diamonds and gold, but also has considerable reserves in steel, iron ore and coltan. The country is also a significant producer of oil and gas. In 2019 the mining sector annual turnover was approximately 761.9 billion CFA francs, compared to 582.3 billion CFA francs in 2018. Tax revenues generated by mining companies totaled 94.6 billion CFA francs in 2019, up 43.62 percent compared to 2018. <sup>6</sup>
Benin	The mineral industry of Benin does not play a significant role in the country's economy and at present, is limited to the production of cement, clay, gold, limestone, marble, iron ore, sand and gravel. The country appears to have significant unexplored or under-explored mineral deposits. Mining contribution to GDP has always been less than 1% from 2009 to 2016. <sup>7</sup>
Guinea	Guinea is endowed with vast natural resources, especially mining and hydropower resources. Guinea ranks among countries with the largest known reserves of bauxite estimated at 40 billion tonnes. It also has more than 25 billion tons of iron ore deposits, gold deposit estimated to be over 10,000 tonnes and significant diamond deposits estimated at more than 10 million carats. Guinea's economy is based on the mining sector which contributes an estimated 35% of GDP, although activities in the mining sector are dominated by the mining and processing of bauxite into alumina. The mining sector is responsible for around 80% of exports, around 20% of government revenues, and the employment of around 10,000 people. <sup>8</sup>

3 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

4 AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

5 Ibid

6 AFRODAD (2020). Assessment of Côte D'Ivoire's Domestication of The African Mining Vision (AMV). Harare

7 AFRODAD (2020). Assessment of Benin's Domestication of The African Mining Vision (AMV). Harare

8 AFRODAD (2020). Assessment of Guinea's Domestication of The African Mining Vision (AMV). Harare

Table 1 continued: Importance of the mining sector in the eight countries

Country	Mining sector importance
Mali	Basic geological work undertaken in Mali, confirmed that the country has promising mineral potential. Regional surveys identified a diversified resource base which includes gold, lithium, kaolin, bauxite, silver, Zinc, Manganese, Uranium, precious stones, copper, marble, Kaolin, diatomite, and bitumen schist which have the potential to boost revenues from the mining sector. Mali's mining sector is anchored on the extraction of gold, which represents over 90% of its mineral wealth-producing 50 tonnes per year. Its extractive industries contribute 61% of the exports, 5% of GDP. The mining sector contributes 16% of the government revenue. In terms of employment, more than two million people, representing more than 10% of the population, depend on the mining sector for income. <sup>9</sup>
Togo	Phosphates occupy 51% of all minerals produced in Togo while clinker occupies 44%, marble 3% and iron 2%. However, there is also the existence of other minerals such as diamonds, limestone and cement. Some minerals such as zinc, rutile, marble, magnesium and iron ore have remained undeveloped. Mining sector contributes 3.8 % of the GDP and 18. 5% of exports, and employs 4,385 individuals, 91.17% of which are Togolese citizens. <sup>10</sup>
Niger	Niger is blessed with precious minerals like uranium, gold, coal, iron, limestone and phosphates. The extractive sector in Niger is dominated by oil production and uranium mining. Niger is the fourth-largest uranium producer in the world. Niger's total natural resources rents (% of GDP) was 6.06 in 2018, which dropped from 11.96% in 2013, while mineral rents were 0.23% of GDP in 2018. <sup>11</sup>

### 1.3 Domestication of the mining revenues and mineral rents management cluster of the AMV

Before an assessment of the country performance in terms of domesticating the AMV, it is also critical to define the parameters that would be used as the basis for reflecting 'domestication'. In February 2009, the AU Ministers in charge of mineral resources development were requested by the African Union (AU) Heads of State and government to develop a concrete action plan which would be instrumental in the attainment of AMV objectives and targets. The 'Action Plan for Implementing the AMV' was eventually produced, dated December 2011.<sup>12</sup> The Action Plan is decomposed into nine programme clusters, namely:

- i. Programme cluster 1: Mineral rents and management;
- ii. Programme cluster 2: Geological and mining formation systems;
- iii. Programme cluster 3: Building human and institutional capacities;
- iv. Programme cluster 4: Artisanal and small scale mining;
- v. Programme cluster 5: Mineral sector governance;
- vi. Programme cluster 6: Research and development;
- vii. Programme cluster 7: Environment and social issues;
- viii. Programme cluster 8: Linkages and diversification; and
- ix. Programme cluster 9: Mobilizing mining and infrastructure investment.

9 AFRODAD (2020). Assessment of Mali's Domestication of The African Mining Vision (AMV). Harare

10 AFRODAD (2020). An assessment of ECOWAS Countries National Mining Legal Frameworks and Policies against the African Mining Vision (Cluster 1: Mining revenues and mineral rents management). Harare

11 AFRODAD (2020). Assessment of Niger's Domestication of The African Mining Vision (AMV). Harare

12 African Union Commission. (2011). Action Plan for Implementing the AMV. Addis Ababa: African Union

The Action Plan is an important tool which can be used as a yardstick in assessing the extent to which countries have mapped the AMV strategies in their mining sector policies, given that it also outlines the specific activities, time frames and indicators that can be used in the assessment. With respect to Programme Cluster 1 on mineral rents and management, the following are the concrete plans that were agreed upon in the short term (ST), medium term (MT) and long term (LT) at the national level (Table 2).

Table 2: Mineral rents and management strategies under the AMV at National Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Improve national capacity to physically audit mineral production and exports	ST	Improve national capacity to physically audit mineral production and exports
	Review mineral regimes in terms of optimising revenues	ST	Reviews of mineral regimes undertaken and Level of improvement in fiscal revenue collected by African mining countries
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws	ST-MT-LT	Increase in numbers of policy makers and other stakeholders participating in capacity building initiatives
	Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls	ST-MT	Degree of improvement in the design of fiscal terms
	Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing)	ST-MT	Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance
	Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction	ST-MT	Number of double taxation agreements signed and implemented by member States
	Build capacity & systems to auction mineral rights where applicable	ST	Extent to which competitive and transparent mineral concession systems are implemented



Table 2 continued: Mineral rents and management strategies under the AMV at National Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds	ST	Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance
	Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	ST	Degree to which local authorities and communities benefit from mining projects
	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	ST-MT	Degree to which local authorities and communities benefit from mining projects
	Develop the capacity of local communities to negotiate partnership agreements	MT	Degree to which local authorities and communities improve their management of mineral revenues
	Develop systems for strengthening capacities for national and sub-national bodies for revenue management	MT	Extent to which guidelines are used by RECs and member States

Source: AMV Action Plan, 2011

This basically serves as the template for assessing domestication progress by the West African countries.



## 2. LEGISLATION GOVERNING MINING IN THE EIGHT COUNTRIES

The aspirations of the AMV are not expected to be met through one piece of legislation in the countries. The provisions of the various legislations would collectively determine whether the resultant environment is in line with the mineral rents and management cluster of the AMV. This assessment of whether the mining and fiscal legislations have succeeded in meeting the requirements of the AMV are discussed in detail in section 3. However, the various pieces of legislations that shape up the mining environment in the countries are as follows:



Table 3: The legislative environment affecting mining across the eight countries

Country	Main Legislation	Key provisions	Other legislations
Benin	Mining Code 2006 (Loi no. 2006-17 relating to the mining code and mining taxation in the Republic of Benin)	<ul style="list-style-type: none"> <li>It is the main instrument governing prospecting, exploration and exploitation of useful minerals (with the exception of liquid and gaseous hydrocarbons and groundwater).</li> <li>All the resources contained in the soil and subsoil are owned by the State.</li> <li>Provides for the authorization to prospect, an exploration permit; and an exploitation permit valid for 20 years and twice renewable for a period of ten years; and a small-scale or semi-industrial mining authorization.</li> </ul>	<ul style="list-style-type: none"> <li>Décret no. 2008-804 (December 31, 2008) on implementing regulations for the mining code and mining taxation in the Republic of Benin (Decree 804).</li> <li>Order 2014 n° 108 / MERPMEDER / DC / SGM / CTJ / CTRPM / SA of November 13, 2014 established the fixed rights relating to the issue, renewal and transfer of the various titles mining companies in the Republic of Benin</li> </ul>

Table 3 continued: The legislative environment affecting mining across the eight countries

Country	Main Legislation	Key provisions	Other legislations
Côte D'Ivoire	Mining Code (Law no. 2014-138 of March 24, 2014)	<ul style="list-style-type: none"> <li>• Ensure adequate revenue for the state, profitability for private operators, socio-economic benefits for local communities, and enhanced environmental protection</li> <li>• Mining permit holders must create a corporation organised under Ivorian law whose exclusive purpose is to mine the deposit for which the permit was granted for which the state retains 10% of the capital of the corporation for the duration of the life of the mine</li> <li>• All mining title applicants (excluding artisanal miners) to submit a feasibility study, adherence to good governance principles, including the Principes de l'Equateur and the Conseil National ITIE (Extractive Industries Transparency Initiative) principles</li> </ul>	<ul style="list-style-type: none"> <li>• The Environment Code which enforces environment protection laws</li> <li>• The Labour Code on labour conditions</li> <li>• Order on Surface Royalty and proportional taxes dated 26 March 2014, which requires holders of mining titles to pay annual surface royalties, which vary depending on the phase of the project (pro-spection, exploration, or exploitation)</li> </ul>
Guinea	2011 Mining Code (Law No. L/2011/006/CNT of 9 September 2011)	<ul style="list-style-type: none"> <li>• Encourages the exploration for and development of mineral resources so as to promote Guinea's economic and social development.</li> <li>• Promotes a systematic and transparent management of the mining sector which guarantees sustainable economic and social benefits for the Guinean people, within the framework of a mutually beneficial partnership with investors</li> <li>• Also provides for social, environmental and accountability mechanisms</li> <li>• The State is entitled to a 15% free carried interest in exploitation projects</li> <li>• Mining firms should enter into 'development agreements' with local communities</li> </ul>	Law L/2019/N°0069 of January 2019 on transfer pricing provides that where there is evidence of non-compliance with the arm's length price, there should be an increase in the taxable base in instances where profits indirectly shifted to related parties
Liberia	Mining and Minerals Law 2000  The Minerals Policy of Liberia of March 2010	<ul style="list-style-type: none"> <li>• Provides for sustainable development of the mineral sector to ensure wealth creation and peace for the country whilst minimizing any environmental, social, political, and economic adverse impacts.</li> <li>• Stipulates the procedures for licensing the exploration and exploitation of minerals, as well as mineral trading, mine inspection and safety, environment protection, public use of infrastructure provided by license holders, dispute resolution, regulatory powers, and some fiscal provisions</li> <li>• Provides for Mineral Development Agreements which generally provide that the firms must give opportunities to Liberian firms to bid for contracts and give preferences to Liberian firms in purchasing goods and services</li> </ul>	The 2010 Regulations Governing Exploration Under a Mineral Exploration License



Table 3 continued: The legislative environment affecting mining across the eight countries

Country	Main Legislation	Key provisions	Other legislations
Mali	<p>The Mining Code (Law No. 2012-015 of February 27, 2012)</p> <p>The Mining Decree (Decree No. 2012-311 / P-RM of June 21, 2012, laying down the terms and conditions application of the mining code)</p>	<ul style="list-style-type: none"> <li>Set out principles for the repartition of profits between the government and mining companies; the protection of the environment.</li> <li>Prospecting and exploration activities are subject to an exploration authorisation; and/or a research permit assigned on a 'first come, first-served basis.</li> <li>The ownership of mining rights is determined by the type of permit held (the artisanal exploitation permit; the semi-mechanized exploitation permit; the small-scale exploitation permit; and the large-scale exploitation permit)</li> </ul>	<ul style="list-style-type: none"> <li>Law 01-020 dated 30 May 2001 governing pollution and environmental damages (the Environmental Code)</li> </ul>
Niger	<ul style="list-style-type: none"> <li>The Mining Law (Act) of 1993</li> <li>Application Decree (Decree no. 2006-265 / PRN / MM / E of August 18, 2006 (fixing the modalities of application of the mining law)</li> </ul>	<ul style="list-style-type: none"> <li>Provides details regarding the application process and requirements for each mining title</li> <li>All mining title applicants to elect domicile in Niger</li> <li>The exploration and exploitation permit are subject to a Mining Convention (convention minière), negotiated between the applicant and the Minister in charge of mines, which specifies the rights and obligations of the parties regarding the legal, financial, tax, business, administrative, customs and social aspects of the mining operations</li> <li>The Environmental impact analysis (EIA) must also, be presented in public consultation and corporations must submit regular reports on environmental impacts and radioactive exposure</li> </ul>	<ul style="list-style-type: none"> <li>Order no. 00041 / MME / DM of May 2, 2007 implementing Article 58 of Ordinance 93-16 of March 2, 1993, on the Mining Law, which provides additional details regarding the transfer of mining titles</li> <li>Large Mining Investment Act Law number 2008-30 of July 3, 2008 grant advantages derogations for investments in major mining projects</li> <li>The Large Mining Investment Regulations Decree number 2009-006 / PRN / MME of January 5, 2009, granting derogatory advantages for the investments of major mining projects</li> <li>2017 Artisanal Mining Act introduced new mining rights relating to artisanal and semi mechanised mining and the processing of tailings and spoil</li> </ul>

Table 3 continued: The legislative environment affecting mining across the eight countries

Country	Main Legislation	Key provisions	Other legislations
Sierra Leone	Mines and Minerals Act (2009) The Sierra Leone Minerals Policy of November 2018	<ul style="list-style-type: none"> <li>Provides for a modern Cadastral system, which ensures that there is transparency in issuing, registering and surveying mining operations in the country.</li> <li>Outlines the procedure and processes for the acquisition of mineral rights, including the specific mineral rights that can be acquired by investors</li> <li>Provides for how conflict between mineral rights and other rights by users of land can be settled.</li> </ul>	<ul style="list-style-type: none"> <li>The National Minerals Agency Act, 2012 provides the legal basis for the National Minerals Agency to be established</li> <li>The Extractive Industry Revenue Act, 2018 ensures that various taxes and charges on extractive industries are coordinated, while also ensuring that the regulation of the fiscal issues in the extractive industry agreements are transparent</li> </ul>
Togo	Law No. 96-004 of 26 February 1996 as amended by Law No.2003-012 of 4 October 2003	<ul style="list-style-type: none"> <li>Offers customs and tax benefits for enterprises operating in the mining sector which includes temporary admission for machinery and equipment, exemption from value added tax (VAT), payroll tax, business tax, property tax and cooperation.</li> <li>Tax benefits only apply until the first year of commercial production, thereafter, enterprise operating in the sector are obliged to pay all the necessary taxes imposed</li> </ul>	<ul style="list-style-type: none"> <li>The General Tax Code, the customs Code (promulgated by law No. 2014-003 of April 2014) and the Investment Code (promulgated by Law No. 2012-001) are other laws that govern the mining sector of Togo</li> </ul>

Sources: The respective country reports

### 3. ASSESSMENT OF THE DOMESTICATION OF THE MINERAL RENTS AND MANAGEMENT REQUIREMENTS OF THE AMV

#### 3.1 Enhanced share of mineral revenue accruing to African mining countries

##### 3.1.1 Improve national capacity to physically audit mineral production and exports

The expectation under AMV was that within a time span of five years since the production of the Action Plan (effectively from 2012), African countries should have physical audit systems in place to monitor mineral production and exports, while also ensuring that they are being implemented by trained inspectors. However, a look at the eight countries shows that as of 2020, which is about eight years after the adoption of the Action Plan (Table 4), there were some countries that still had issues as far as ensuring that such a system is in place.



Table 4: Country status with respect to improving national capacity to physically audit mineral production and exports

Country	Country	Explanation
Sierra Leone	Fully domesticated	<p>The Extractive Industries Revenue Unit, which operate under the National Revenue Authority, can be regarded as the first mineral sector audit unit of the country. Some functions related to audit of the mineral sector are also handled by the National Minerals Agency, although there is the ‘Extractive Industries Revenue Taskforce’, which coordinates activities in the sector. However, to ensure that the audit institutions are strong, a number of training programmes were designed to ensure that these institutions acquire the necessary capacity to ensure that the mineral sector is adequately audited. These include:</p> <ul style="list-style-type: none"> <li>• A three-year programme of support to the government of Sierra Leone was introduced in 2015, implemented by Adam Smith International in partnership with Ecorys, the Revenue Development Foundation, the Centre for Customs and Excise Studies and the International Centre for Tax and Development.</li> <li>• The development of a cadastral system for the National Minerals Agency to monitor royalties and licence fees paid by mining companies.</li> <li>• A training programme for the Extractive Industries Revenue Unit, which covered tax audits of extractive industry companies, focusing initially on the Large Taxpayer Office (LTO) at the National Revenue Authority, before being extended to other institutions.<sup>13</sup></li> </ul>

<sup>13</sup> AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

Table 4 continued: Country status with respect to improving national capacity to physically audit mineral production and exports

Country	Status	Explanation
Liberia	Largely domesticated	When the Liberia Revenue Authority (LRA) was created as a separate institution from the Ministry of Finance in 2014, there were a lot of restructuring activities until the auditing functions became the responsibility of the Natural Resource Tax Section (NRTS), a unit in the Domestic Taxes Department (DTD) of the Ministry of Finance. NRTS faced a lot of capacity challenges, given that it was mainly staffed with inexperienced staff, making it essential for capacity generation to ensure that NRTS staff would become knowledgeable as well as proficient tax auditors. Liberia, through GIZ, requested for assistance from the Overseas Development Institute (ODI) for technical assistance in strengthening the capacity of NRTS mining taxation issues, which eventually saw several training programmes being rolled out for the staff at NRTS. In addition to the theoretical focus, the training programme also included on-the-job training, which initially focused on handling less complex audit cases, before being extended to complex issues on transfer pricing audits of multinational corporations. The training also saw the LRA enrolling in the OECD's Tax Inspectors Without Borders programme to get training on transfer pricing and other methods through which illicit transfer of proceeds from the mining sector could take place. The Liberia Revenue Authority also implemented a number of measures aimed at improving tax compliance and reducing leakages, which include introducing a desk audit system for large taxpayers, accompanied with educating the taxpayers through workshops with development partners support. <sup>14</sup>
Côte d'Ivoire	Domesticated	In December 2019, Côte D'Ivoire launched an audit of all local mining development committees, intended to identify and resolve the possible risks and threats to which the local mining development committees (CDLM) are exposed. This shows that Côte d'Ivoire has a physical audit system in place which is being implemented with trained inspectors since it is carrying out audits. <sup>15</sup>
Benin	Not domesticated	The country still has a weak audit capacity, and the strengthening of internal and external audit institutions and the follow-up of their findings and recommendations is still an outstanding issue. <sup>16</sup>
Guinea	Partially domesticated	The Ministry of Mines and Geology has responsibilities which include verifying the quantity and quality of mineral exports to levy royalties and taxes, which are collected by the Customs Directorate of the Ministry of Budget and the National Directorate of Taxes, respectively. This would reflect that there are some systems in place for auditing mineral production and exports. However, the ministry of mines does not undertake any independent monitoring of the quality of mineral exports. Instead, it bases its assessment of royalties on the companies' self-declarations. <sup>17</sup>

14 AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

15 AFRODAD (2020). Assessment of Côte D'Ivoire's Domestication of The African Mining Vision (AMV). Harare

16 AFRODAD (2020). Assessment of Benin's Domestication of The African Mining Vision (AMV). Harare

17 AFRODAD (2020). Assessment of Guinea's Domestication of The African Mining Vision (AMV). Harare

Table 4 continued: Country status with respect to improving national capacity to physically audit mineral production and exports

Country	Status	Explanation
Mali	Domesticated	Mali is a member of the International Organization of Supreme Audit Institutions (INTOSAI) Working Group on the Audit of Extractive Industries (WGEI), hence also benefits from the promotion of the audit of extractive industries. However, in 2020 Mali was still working on enhancing its physical auditing system, although the capacity to physically audit mineral production was improving. <sup>18</sup>
Togo	Not domesticated	Togo did not have official comprehensive statistics on production, with the General Directorate of Mines and Geology without any monitoring to assess whether the valuation of mining production and the quantities carried forward corresponded to the declarations made by the companies when paying the mining royalties. Failure to monitor the quantity of mineral production was being identified as a breeding ground for mineral smuggling. <sup>19</sup>
Niger	Domesticated	Niger’s Directorate of the Tax Audit and Reviews (DCFE) and Tax Audit Revenue Collection, which are responsible for auditing, reviewing and collecting revenue from the extractive industry, had some capacity to perform the tasks in 2020. Being a member of the INTOSAI Working Group on the Audit of Extractive Industries (WGEI) created several advantages to Niger. <sup>20</sup>

*In conclusion, five of the eight countries can generally be considered fully compliant with the AMV requirement of improving their national capacity to physically audit mineral production and exports. These include Sierra Leone, Liberia, Côte d’Ivoire and Mali and Niger. Challenges remain mainly with two countries, namely Togo and Benin, hence efforts need to be enhanced to comply. While not fully compliant, Guinea has notable progress.*

18 AFRODAD (2020). Assessment of Mali’s Domestication of The African Mining Vision (AMV). Harare

19 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

20 AFRODAD (2020). Assessment of Niger’s Domestication of The African Mining Vision (AMV). Harare



### 3.1.2 Review mineral regimes in terms of optimising revenues

To comply with this AMV requirement, countries are expected to have regular reviews of mineral regimes together with an improvement in fiscal revenue collected. Generally, there are pronounced efforts in the countries that signal efforts towards improving fiscal revenues (Table 5).

Table 5: Country status with respect to Review mineral regimes in terms of optimising revenues

Country	Status	Explanation
Sierra Leone	Domesticated	<p>A number of non-tax revenue measures applicable to the mining sector have ensured that the government gets revenues beyond corporate income tax, value added tax, personal income taxes and mineral royalties. In addition to common non-tax revenue measures such as exploration licences, mining licences and environmental impact assessment fees, Sierra Leone has also included surface rental, environmental impact monitoring fees, agricultural development funds and community development funds.</p> <p>A positive development also happened in 2018 when the government introduced the Extractive Industries Revenue Act 2018, as the main aim was to consolidate fiscal regimes for the mining and petroleum sectors, all designed to minimise loss of revenue. This generally reflects that government has been trying to constantly improve its revenue collection capacity from the mining industry.</p>
Liberia	Not Domesticated	<p>Liberia has not been giving the required attention to the enforcement of the tax legislations that are applicable, while the level of tax exemption is also high, with a lot of discretionary and non-transparency in the manner in which they are being given. Licences and administrative fees constitute the main revenue source, constituting 27.1% of the total natural resource revenues. Payroll taxes, including personal income tax and social contributions by natural resources sector workers constitute the second at 26.8% of natural resource revenue. Corporate income tax, excise taxes and resource specific taxes are third at only about 21.3% of the total natural resources tax proceeds. Royalties are very low at only 11.6% of the natural resource tax proceeds envelope. This distribution of shares in total natural resource extraction is not consistent with an economy that has been improving its taxation regime to optimise revenues</p>
Côte d'Ivoire	Domesticated	<p>In 2014, a new Mining Code was introduced whose provisions sought to establish a balance between the interests of investors and the state, while complying with international, local content requirements and factoring in social and environmental parameters. Total exemptions from corporate income tax and from the minimum flat tax for the holder of an exploitation permit for the first five years after the beginning of commercial production were also abolished by Ordinance No. 2018-144.</p>
Benin	Domesticated	<p>Benin has been revising its mining laws in order to maximise returns. Several reforms have improved tax collection and tax compliance in recent years. These reforms include: (i) the continuation of the binarization of tax payments; (ii) the rollout of the tax management system (SIGTAS) to improve operational transparency and contribute to the reduction of tax fraud; and (iii) the launch of electronic procedures to enable the electronic filling and payment of taxes.</p>



Table 5 continued: Country status with respect to Review mineral regimes in terms of optimising revenues

Country	Status	Explanation
Guinea	Domesticated	Between the years 2010 and 2015, Guinea entered a phase of structural reforms to remove constraints on the realisation of the country's significant potential for growth. For example, Article 163 of the Mines Act (Mining Code of 2011) requires export taxes (royalties) for bauxite to be calculated based on the three-month London Metals Exchange selling price for aluminium, which reduces the risk of under-pricing of bauxite exports. The 2011 Mining Code provides for the full publication of mining contracts and strengthens transparency. The revision of the mining cadastre allowed for the cancellation of more than 800 inactive licences. Between 2016 and 2017, revenues from the extractive sector grew by 46% and their contribution to the national budget grew from 25% to 32%. Tax collection in the mining sector also increased by 46% between 2016 and 2017, representing a third of total government revenue. This generally reflects that Guinea has been reviewing its mining regime with the aim being to optimise on its mineral revenues.
Mali	Domesticated	Mali has generally done well in reviewing mineral regimes in terms of optimising revenues. Mali has had three mining codes from 1995 to 2015, which has seen changes in the tax rates applicable to mining companies, including the payment of a progressive royalty.
Togo	Not domesticated	Togo's Revenue Office was in the process of amending its mining tax regime, following the observation that fluctuations in prices of mining products coupled with non-reliability of data provided by mining industries was impeding tax collection from the mining the sector
Niger	Domesticated	Niger has been regularly revising its mining laws to ensure that they optimise on revenues. Niger's Mining Code was once revised in August 2006, and in 2014, Niger's parliament adopted two draft laws amending it. The 2006 revisions were mainly on the observation that the holders of exploitation permits were benefiting from numerous tax and customs concessions, which considerably reduced the related tax receipts.

Sources: The respective country reports

*In conclusion, while there are notable efforts in the West African countries to conduct regular reviews of mineral regimes, there is still room for improvement in Togo and Liberia.*

### 3.1.3 Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws

Over the short, medium and long term, the AMV also expects to see an increase in the number of policy makers and other stakeholders participating in capacity building initiatives aimed at enhancing their negotiating skills in fiscal issues and taxation laws. Generally, while all the countries have made efforts at ensuring that they have adequate skills, a number of issues could be worth pointing out.

The government officials also benefited from regional capacity building programmes that were intended to ensure that officials have knowledge on fiscal and taxation issues. Since 2014, the African Minerals Development Centre (AMDC) has been helping in building human and institutional capacities. A good example is Africa Mining Vision and ECOWAS Minerals Development Policy workshop in Accra, Ghana, from 6-7 November 2014 where government officials attended. The African Tax Administration Forum (ATAF) has also been capacitating their member states through workshops and training programmes that are intended to build their tax management capacity.

In addition, donors, civil society organisations, international organisations and initiatives such as the Extractive Industry Transparency Initiative (EITI) were also instrumental in building the capacity of government officials. The Africa Development Bank also recently unveiled the Financial Modelling for the Extractive Industries Facility (FIMES) will see €1.2 million being channelled to building capacity in mineral-rich countries from 2020 to 2022. Specifically, Guinea, Liberia, Niger, Mali, and Sierra Leone are all beneficiary countries.

However, there are also notable individual country activities and initiatives that were put in place to enhance their knowledge and skills in handling taxation in the extractive industries (Table 6).



Table 6: Improving capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws

Country	Status	Explanation
Sierra Leone	Domesticated	Support from GIZ saw a resident advisor being placed in the Extractive Industries Revenue Unit in 2017 to strengthen the capacity of the Unit in administering taxation of extractive industries. Specifically, the advisor provided technical advice on mining sector taxation, while specialised in-house training and development of the staff were conducted to ensure that they were familiar with the requirements of the 2018 Extractive Industries Revenue Act. <sup>21</sup>
Liberia	Domesticated	Liberia also decided on a resident advisor route, where an experienced international expert was seconded as a resident advisor. In addition to auditing, the advisor supported the LRA since 2015, while since 2018 the advisor’s role was also extended to ensuring that NRTS is adequately capacitated through advice on mining tax issues, the commercial, technical and operational aspects of mining, the fiscal regime that is applicable to mining activities in Liberia based on the existing legislation; risk assessment; as well as successful subscription to the Platts database, where access to mineral price data to track iron ore prices, validate mining company self-declarations becomes possible. <sup>22</sup>
Guinea	Domesticated	In Guinea, the Customs Directorate, the General Inspectorate, the National Laboratory of Geology and Mines and the National Mines Department rolled out training programmes for staff to conduct independent draft surveys. Two trainings were conducted in June and October 2017 with the assistance of the German Society for International Cooperation (GIZ). In December 2019 the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) provided technical assistance to the Government of Guinea through the Ministry of Mines and Ministry of Budget to address risks in the mining sector as well as training to develop a long-term approach to bauxite pricing and trainings on transfer pricing. <sup>23</sup>

Sources: The respective country reports

*In conclusion, all the countries have generally done well in enhancing the skills of their officials in fiscal and taxation issues, especially given that there are regional programmes that were rolled out to accommodate everyone.*

### 3.1.4 Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls

Compliance with this AMV requirement involves having a noticeable degree of improvement in the design of fiscal terms for the extractive industry. The country reports could not reveal much information on whether there have been significant improvements in the design of fiscal terms in Togo, Côte d'Ivoire Niger and Benin. However, assessment of the efforts in the remaining four countries can be discussed as follows (Table 7):

<sup>21</sup>AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

<sup>22</sup> AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

<sup>23</sup> AFRODAD (2020). Assessment of Guinea’s Domestication of The African Mining Vision (AMV). Harare

Table 7: Capacity to negotiate or renegotiate contracts to optimize revenues

Country	Status	Explanation
Mali	Not Domesticated	In their quest to incentivise investment and employment, the Mining Codes have created opportunities for tax avoidance strategies that shift profits outside Mali or from taxable to lightly taxed companies within Mali. Incentives also exist for companies to manipulate the transfer price within Mali between a profitable mine reaching the end of its life and a new mine (organised as different but related subsidiaries). <sup>24</sup>
Liberia	Domesticated	The Liberian mining legislation gives power to the government of Liberia to renegotiate previously signed contracts, especially Mineral Development Agreement (MDAs) when they are deemed to favour the mining firm more compared to the government. In exercising this power, the Government has renegotiated a number of contracts, for which two of these have become internationally famous given that there were multinational firms involved. The two contract renegotiation examples generally reflected that the legislative ammunition for contract re-negotiation exists in Liberia as required by the AMV. <sup>25</sup>
Guinea	Domesticated	In January 2012 the government of Guinea announced a review of all existing mining contracts. Thus, a multi-stakeholder committee was established and 18 contracts were identified for evaluation and review, and each contract was published online. With support from international expertise, legal and fiscal evaluations were conducted on each of the projects in 2013 and 2014 and the committee has progressively been negotiating amendments to the agreements and making recommendations to the responsible ministers on final decisions to be taken by the government. <sup>26</sup>
Sierra Leone	Domesticated	The Government of Sierra Leone has become very firm with mining firms that are holding on to licences but are not meaningfully investing them. For example, in 2019, there were only three out of the 107 exploration licence holders registered on the Mining Cadastre Administration System who were engaged in meaningful exploration activities. This saw the National Minerals Agency initiating plans to cancel the mineral rights for non-performing and non-compliant exploration companies, resulting in more than 40 exploration rights being cancelled since April 2018. This shows that Sierra Leone still has the capacity to renegotiate contracts, even for licences that are operational as long as they are deemed not to be in line with the government's resolve to increase revenues from mining. <sup>27</sup>

Thus, to conclude, three countries have done well (Liberia, Guinea, Sierra Leone) in domesticating this requirement of the AMV while challenges also remain with respect to Mali.

24 AFRODAD (2020). Assessment of Mali's Domestication of The African Mining Vision (AMV). Harare

25 AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

26 AFRODAD (2020). Assessment of Guinea's Domestication of The African Mining Vision (AMV). Harare

27 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

### 3.1.5 Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing)

Within the short to medium term, the AMV also expects to see countries reducing tax leakages by evaluation systems as determined by independent audits of tax compliance. The Togo country report did not reveal much basis for assessment on the domestication of this AMV requirement. However, the status of domestication in the remaining countries can be discussed as follows:

Table 8: Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion

Country	Status	Explanation
Mali	Not Domesticated	There is an indication that profit shifting by MNEs in Mali erodes their revenue base due to insufficient guidance on transfer pricing and absence of effective thin capitalization rules, and the fragmentation of Mali’s tax policy framework in various legislations—which increases the risk of incoherent policymaking and tax enforcement.
Liberia	Not Domesticated	The mining industry of Liberia is highly susceptible to transfer pricing, given the dominance of multinational corporations in the sector. In 2016, Liberia ensured that it incorporated transfer pricing into the tax legislation. The Income Tax Transfer Pricing Regulations were gazetted on 11 November 2016 and effectively took effect over the 2017/18 fiscal year. The Regulations, which introduced Arm Length Principle, also had some new obligations to the taxpayers to limit tax avoidance. In addition, Liberia also signed the Amended OECD Convention on Mutual Administrative Assistance in Tax Matters, a multilateral framework which provides for the exchange of information as well as assistance in tax collection. This generally implies that Liberia has gone a long way in developing systems to evaluate components of tax regimes for leakages. This is within the same lines as the AMV requirements.
Guinea	Domesticated	The 2011 Mining Code of Guinea seeks to fight transfer pricing by basing the tax obligations of businesses under charges on international targets price indices and requires arm’s length pricing. In 2019 the Government of Guinea passed tax measures that include new transfer pricing rules. Law L/2019/N°0069 was enacted in January 2019 and provides that where there is evidence of non-compliance with the arm’s length price, there should be an increase in the taxable base in instances where profits indirectly shifted to related parties. These measures are more likely to reduce chances of mining firms practicing transfer pricing.
Sierra Leone	Domesticated	There are widespread illicit mining operations that are taking place in Sierra Leone across the country, for which current efforts to curb them have not really succeeded. The smuggling of minerals, including diamonds and gold is a serious challenge which is undermining domestic revenue collection. It is also alleged that some large-scale mining firms, especially those in bauxite and iron ore mining, sell their output directly to their parent companies, which increases possibilities of transfer pricing. However, despite these possibilities, Sierra Leone does not yet have transfer pricing rules in its legislation. Thus, while there are noticeable efforts, there are still some challenges in ensuring that systems are in place to ensure that leakages are detected in Sierra Leone, as required by the AMV.

Table 8 continued: Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion

Country	Status	Explanation
Niger	Domesticated	Niger has put a number of fiscal terms to reduce leakages. To begin with, an independent evaluation of the Niger tax system was done by IMF using Tax Administration Diagnostic Assessment Tool (TADAT), which evaluates the performance by mapping the tax administration, highlighting its strengths and weaknesses. The European Commission sponsored assessment was completed in October 2017, with some of the assessed areas including tax compliance, auditing capacity, accountability and transparency.
Côte D'Ivoire	Domesticated	Côte D'Ivoire has made commendable progress in improving the design of fiscal terms, and tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance. The tax system of Côte D'Ivoire was also independently audited by IMF using the TADAT. The assessment was completed in June 2015 but the results were not published for public consumption but were used by the responsible authorities to implement recommendations. Some of the assessed areas include tax compliance, auditing capacity, accountability and transparency.
Benin	Domesticated	Just as the case in Niger and Côte D'Ivoire, an independent evaluation of the Benin tax system was done by IMF using TADAT, with the assessment completed in October 2019. Some of the assessed areas include tax compliance, auditing capacity, accountability and transparency.

Sources: The respective country reports

*Thus, the conclusion is such that four of the eight countries (Benin, Côte D'Ivoire, Guinea and Niger) have put pronounced efforts to reduce leakages in mining sector revenues in line with the expectations from the AMV.*



### 3.1.6 Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction

The AMV also requires that countries sign double taxation agreements and implement them. A look at the country situation reveals the following:

Table 9: Capacity to review terms of double taxation agreements and BITs

Country	Status	Explanation
Mali	Domesticated	As of May 1, 2019, Mali had entered into 22 bilateral investment treaties (BITs) but only 8 were in force. Among the 22 BITS signed by Mali, 10 were reviewed (and are available on UNCTAD's database). Examples include the BIT with Algeria, which authorizes fiscal incentives to boost national and local societies within the clause of national treatment and most-favoured-nation. The BIT with Canada limits the types of performance requirements Mali may impose on investors and includes an article on Senior Management, Board of Directors and Entry of Personnel.
Liberia	Domesticated	Liberia at the moment has double taxation treaties with Germany and Sweden. However, there are no provisions for the reduction in withholding taxes in the treaties, as they only provide for relief against foreign tax credits. Other treaties that have been signed are not yet in effect, including Canada and the one relating to shipping and aircraft income with New Zealand and United States. In 2019, Liberia also signed a taxation treaty with the United Arab Emirates, which is not yet in force. However, the general principle of Liberian tax laws is such that taxes are charged at source, giving little room for total tax avoidance by the mining firms by taking advantage of the double tax agreements.
Guinea	Domesticated	Guinea has signed double taxation treaties with countries such as France, Morocco, Serbia and Montenegro. The double taxation treaty between Guinea and France was signed in 1999 and only came into effect in 2004 whilst the double taxation avoidance agreement preventing tax evasion was signed in 2015 between Guinea and Morocco.
Sierra Leone	Domesticated	There are only three active double taxation agreements which Sierra Leone has in place. The country has double taxation treaties with South Africa, Norway, and UK, for which the UK one is very old one. However, despite these treaties, the domestic rate of withholding tax still applies to non-residents even if they come from these countries. In 2019, a double taxation agreement with the United Arab Emirate was announced, which also has provisions for the avoidance of double taxation and the prevention of fiscal evasion, but it has not yet been ratified.
Niger	Domesticated	Niger currently has active Bilateral Investment Treaties (BITs) with Germany and Switzerland. BITs with Algeria, Tunisia and Egypt have been signed but are not in force.
Côte D'Ivoire	Domesticated	Côte D'Ivoire has signed Bilateral Investment Treaties (BITs) with the following countries and multilateral organizations: Belgium, Canada, China, the EU, Germany, Ghana, Italy, Luxembourg, Netherlands, Singapore, Sweden, Switzerland, Tunisia, and the United Kingdom.
Benin	Domesticated	Benin has bilateral investment treaties signed and in force with Belgium-Luxembourg Economic Union, Burkina Faso, Canada, Germany, Kuwait, Netherlands, Switzerland, and United Kingdom.

*In conclusion, while specific details about what the BITs entail, all the countries generally have some form of signed double taxation*

*Sources: The respective country reports*



### 3.1.7 Build capacity & systems to auction mineral rights where applicable

The AMV also expects competitive and transparent mineral concession systems to be implemented in the African countries. A look at the country situations reveals the following:

Table 10: Capacity to review terms of double taxation agreements and BITs

Country	Status	Explanation
Mali	Not Domesticated	There is need for strengthening institutions' capacity to auction mineral rights.
Liberia	Domesticated	Liberia has significant experience in auctioning off mineral rights to ensure that the rights are transferred in a transparent and fair manner. For example, with Paul Jourdan as Governance and Economic Management Assistance Programme adviser to the Ministry of Lands, Mines and Energy, Liberia auctioned off iron-ore rights to the Chinese for \$2,7-billion, and other rights for \$15-billion, in line with the Mineral Policy of Liberia. The Minerals Policy provides for an open, transparent and competitive auction procedure for known mineral deposits.
Guinea	Domesticated	In Guinea, mining titles include research permits, operating licenses and concessions. They are granted to companies by the Ministry on a first-come-first-served basis, after observation and recommendation of the Mining Promotion and Development Centre (CPDM), which is responsible for the mining cadastre. There is no provision for the auctioning of mineral rights, which could affect the total collected revenue. However, when the available geological information is sufficient to generate interest in several companies, licenses are awarded through a competitive tendering process organized by the National Mining Commission (NMC).
Sierra Leone	Domesticated	As specified under section 25 of the Mines and Minerals Act, where an area is designated as an exploration or mining area, the Minister shall not award any mineral rights to any person in respect of such area except by way of public tender. Despite this provision, mineral rights in Sierra Leone are awarded on a first in line basis, which does not always produce a fair deal for Government and mining communities. The ongoing efforts are, however, commendable.
Niger	Not Domesticated	The institutions exist but they need improvement in their capacity to auction mineral rights.
Côte D'Ivoire	Not Domesticated	The institutions need improvement in their capacity to auction mineral rights.
Benin	Not Domesticated	
Togo	Not Domesticated	The institutions responsible for negotiating with third party investors both appeared to have minimum capacity in negotiating for mining contracts.

Sources: The respective country reports

*In conclusion, only Liberia has perfected provisions for auctioning mineral rights. Although Guinea and Sierra Leone have not yet perfected their systems, the ongoing efforts are commendable. Niger, Mali, Togo and Côte D'Ivoire still have a long way to go in having systems that auction mineral rights.*



### 3.2 Improved management and use of mineral revenue

a) Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds (SWFs) including stabilization funds and infrastructure funds

The AMV also uses the number of SWFs established by African mining countries as a yardstick for their compliance with this provision. All the eight countries under review do not have a Sovereign Wealth Fund in place (Table 11).

Table 11: Strategies for investing in SWFs

Country	Status	Explanation
Mali	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds
Liberia	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds
Guinea	Partly Domesticated	Guinea has two funds that manage revenues from the mining sector. There is a Fund for Mining Promotion and Development (FDP), which was created in 1992 to finance promotional activities in the mining sector. The FDP received the revenues from mineral licencing since 1992. However, the management of the FDP under the Ministry of Mines and Geology lacked transparency and audits of its operations have never been made public. With the coming of the new Mining Code in 2011, the FDP was reconfigured into the Mining Investment Fund (FIM) and meant to receive 5% of all mineral royalties disbursed through a joint order by the Ministers responsible for Finance and Mines. The Special Investment Fund (FSI) has the objective of funding large public or public-private sector investments. It is financed by any exceptional income from the mining sector. The Finance Act of 2012 established the FSI after Rio Tinto settled its mining rights with a payment of US\$700 million which was partly used to finance the Fund. <sup>28</sup>
Sierra Leone	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds.
Niger	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds.
Côte D'Ivoire	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds.
Benin	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds.
Togo	Not Domesticated	No SWF or any other stabilization funds and infrastructure funds.

Sources: The respective country reports

*It is, therefore, notable that unlike the other seven countries, Guinea, has managed to put in place some mechanisms for investing some windfalls so as to smoothen expenditures in the face of fluctuations in mineral prices, which is in line with the aspirations of the AMV.*

<sup>28</sup> No SWF or any other stabilization funds and infrastructure funds

- b) Develop rent distribution systems for development of communities near mining areas, to facilitate local communities' access to jobs, education, transport, infrastructure, health services, water and sanitation and enhance their capacity to negotiate partnership agreements

Within the short term, the AMV also assesses the degree to which local authorities and communities benefit from mining projects as a measure of compliance. In the medium term, the degree to which local authorities and communities improve their management of mineral revenues is also important. It is within this context that the situation across the eight countries is assessed (Table 12).

Table 12: Facilitating investment in communities near mining areas

Country	Status	Explanation
Mali	Not Domesticated	In Mali, regional tax offices levy the 'patent fee' (1.1% of government revenue) directly from companies. There is nothing in the code that obligates companies to focus on local communities. Similarly, when it comes to mine closure, the law was totally silent about the obligations of both companies and the government. <sup>29</sup>
Liberia	Domesticated	Section 20 of the MML provides that all mining sector operators or contractors should not hire foreign unskilled labour, while ensuring that Liberians get preferences in skilled, technical, administrative, financial or managerial positions. <sup>30</sup> In addition, continuous training is provided for to ensure that Liberian employees qualify for such positions. In addition, the Liberian Government has also been careful to ensure that in MDAs signed with individual mining companies, clauses are put which are aimed at attaining the local content objectives. The MDAs, which are legally binding agreements between mining firms and the Government, are enshrined in the Amended Mineral Law of Liberia. The MDAs establish local content requirements and provides for employment, training and procurement requirements that are conditional upon the issuance of licences. Although the MDAs are negotiated on a case by case basis, they generally provide that the firms must give opportunities to Liberian firms to bid for contracts and give preferences to Liberian firms in purchasing goods and services, with firms being required to submit an annual report on compliance. In terms of employment, the individual exploration and development agreements also have employment provisions. Generally, firms are required to give preferences to Liberians for specific job families, with the firms now also required to ensure that their contractors and sub-contractors also comply with the employment requirements.

The Mining Policy has also provided for ensuring that local communities derive some benefits from the mining areas. In Section 11 of the Policy, the Government makes a commitment to ensure that communities derive regular and significant benefits from mining operations, where a predictable formula would need to be put in place to determine the benefits. Benefits would arise from revenue allocation, access to employment, the provision of infrastructure for local use and resources for local education and skills formation. In addition, the mining companies are encouraged to develop local supply chains for their purchases, thereby integrating themselves into the local economy.<sup>31</sup>

<sup>29</sup> AFRODAD (2020). Assessment of Mali's Domestication of The African Mining Vision (AMV). Harare

<sup>30</sup> Section 20(2) of the Act

<sup>31</sup> AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare



Table 12 continued: Facilitating investment in communities near mining areas

Country	Status	Explanation
Guinea	Domesticated	<p>Guinea has a natural resource-specific intergovernmental transfer system which is derivation-based, whereby a share of the natural resource revenues is allocated to its area of origin (i.e. the area where the natural resource is located or derived). In its system, some of the revenues are collected directly by local authorities from the mining companies while others are collected at national level and then distributed equitably to all the local authorities.</p> <p>The Mining Code of Guinea makes provision for mining companies to develop a local development plan with the communities in which they undertake their mining operations. The implementation of the plan is then financed by 0.5% of mineral turnover from bauxite and iron ore and 1% turnover from other minerals. Further, the Mining Code, in Article 165 also provides for statutory subnational transfers from national government. There are six types of mining tax revenues for statutory subnational transfers. About 15% of all the six tax revenues is distributed to subnational governments equitably, despite the location of the mining activities. The formula for the distribution of revenues is in place.</p> <p>One way through which Guinea facilitates communities' access to benefits from mining companies is through mandatory social expenditures. There are two types of mandatory social expenditures in Guinea. There are contributions made by mining companies in relation to mandatory Community Development Agreements (CDAs) and Community Development Projects (CDPs) which are applicable to certain mining contracts. In the case of CDAs, there is a statutory minimum requirement for social expenditure that a mining company has to incur under the CDA. For the CDP, the mining companies under certain contracts are obligated to fund community development projects in consultation with local authorities. There are concerns in Guinea that there is a lack of mechanisms to monitor compliance with mandatory social expenditure requirements at national and subnational levels. For instance, some companies in 2016 failed to provide full disclosure of information on their mandatory expenditures, raising concerns over the sincerity of such expenditures.</p> <p>The Mining Code of Guinea, in Section 130, requires that the mining companies and the local authorities enter into local development agreements, whereby the later receives a regular contribution to the local development fund of between 0.55% and 1% of the turnover of the mining company. To implement this, in October 2017, the Head of State of Guinea issued a decree which established the Local Economic Development Fund (FODEL). FODEL falls under the aegis of the Ministry of Mines and Geology. It channels funds contributed by mining companies into communities for local development. In 2018 the Ministry of Mines and Geology and the Ministry of Administration of Territory and Decentralisation issued a joint order which defined the terms of use, management and supervision of the FODEL. On 10 December 2018 the FODEL started operating (EITI-GUINEA Steering Committee, 2018).</p> <p>Another way that Guinea has used to promote benefits accruing to the local communities hosting mining activities is through subcontracting of local companies by the mining companies. Article 107 of the Mining Code requires that mining companies prioritize Guinean companies over foreign companies, if the former provide quality, quantity and prices comparable to those offered by other companies. This helps to support the creation and advancement of local small and medium enterprises (SMEs) in the country.</p>

Table 12 continued: Facilitating investment in communities near mining areas

Country	Status	Explanation
Sierra Leone	Domesticated	<p>Employment is another way that the local communities are made to benefit from local mining activities. Article 108 of the Mining Code obligates mining companies to give precedence to Guinean workers and to have an increasing quota of national workers. Accompanying this requirement is the obligation to mining companies to implement management training plans to ensure that Guineans can take management positions in the mining companies. However, in its 2016 Report the Natural Resource Governance Institute noted that there is a gap between the training provided and the skillset of Guinean citizens seeking work in the mining sector. The low levels of education in Guinea hampers these efforts in promoting local employment.<sup>32</sup></p> <p>First, the Mines and Minerals Act, 2009 as well as the Environmental Protection Agency Act 2008 make the acquisition as well as the retention of mineral licences conditional on companies adhering to performance requirements on health, safety, environmental protection, and community development. The Diamond Area Community Development Fund (DACDF) was also developed in Sierra Leone in 2001 with the aim being to return a portion of the government-mandated 3% tax on diamond exports so as to encourage diamond miners and chiefs to participate in the legal diamond mining processes. Also inbuilt within the legislation is the requirements for large scale mining firms to pay surface rentals to district councils, Paramount Chiefs/ Chieftom Administration, Constituency Development Fund and individuals with surface rights within their areas of operation. Under section 34A of the Mines and Minerals Act, surface rent that is paid by the mining firms has to be distributed in a predetermined formula, where the owners of the land where the mining activity is taking place take 50%; the District Council takes 15%; the Paramount Chiefs take 15%; the Chieftom Administration takes 10%, while the remaining 10% is deposited into the Constituency Development Fund.</p> <p>Under section 139 of the Mines and Mineral Development Act, holders of mining licences are required to have and implement community development agreements with the primary host community in the area in which they conduct their mining operations. The primary host is defined to include both the local council as well as the single community of persons within thirty kilometres of any boundary defining the large-scale mining licence area. Each year that the community development agreement is in force, at least 1% of 1% of the gross revenue amount earned by the mining operations in the previous year (0.01%) should be released by the mining firms to implement the agreement. In terms of section 140 of the Mines and Mineral development Act, the obligations which the community development agreement would fund include undertakings with respect to the social and economic contributions to the sustainability of the community; giving assistance in creating self-sustaining, income-generating activities, including production of goods and services needed by the mine and the community; while the firm would be required to consult with the community in the development of mine closure measures to prepare the community for the eventual closure of the mining operations. In addition, community development agreements can be centred on ensuring that there are educational scholarship, apprenticeship, technical training and employment opportunities for the people of the community. Under section 53 of the Act, the Minister may cancel a mineral right if the holder fails to substantially comply with the terms of a community development agreement.</p>

32 AFRODAD (2020). Assessment of Guinea's Domestication of The African Mining Vision (AMV). Harare



Table 12 continued: Facilitating investment in communities near mining areas

Country	Status	Explanation
		In terms of section 164 of the Act, citizens of Sierra Leone possessing the necessary qualifications and experience shall be given preference for employment in all phases of operations under a mineral right. Holders of mineral rights are not allowed to import unskilled labour for the carrying out of any operations in exploiting mineral rights. Mineral rights holders are also required to roll out schemes for training of local employees in to ensure that they meet the acceptable standards of efficiency in the conduct of the operations. Such training programmes would be expected to provide appropriate instruction and training to ensure that the advancement of Sierra Leonean employees in the skilled technical, supervisory, administrative and managerial categories is achieved. <sup>33</sup>
Niger	Partly Domesticated	In Niger, the law states that 15 percent of revenues derived from extractive industries must be returned to the municipality affected by the project. <sup>34</sup>
Côte D'Ivoire	Domesticated	<p>The Mining Code of Cote d'Ivoire provides for community development, including an obligation for mining titleholders to respect, protect and promote human rights, and respect local populations and communities. Titleholders must have a community development plan in consultation with local communities and local and regional authorities, including precise objectives and an investment plan. The holder must establish a fund that is increased annually in order to fund socio-economic development projects for local communities; these figures are deductible from the tax on industrial and commercial profits. The mining authority organises a Local Mining Development Committee that is in charge of socio-economic development projects for the local communities. In Côte d'Ivoire, the expenses of CDLMs include the contribution to the improvement of basic social services and the living environment, the creation of infrastructure and actions to promote employment, development of the local economy and human capital.</p> <p>Authorisation to operate a mining company may require Ivorian nationals to have a participation in the company (conditions detailed in a decree), providing compliance with quality, price and quantity requirements, and preference should be given to: local businesses when subcontracting mining operations, local businesses for construction, supply and services contracts, local preference when recruiting employees. Furthermore, obligation to implement or at least partially fund the training of local businesses selected as contractors to increase their capacity as providers, local staff, administration and geologists are also given preference.<sup>35</sup></p>
Benin	Partly Domesticated	Benin's use of the equalization framework includes a basic amount distributed equitably between the municipalities, an amount distributed by population, poverty and geography and an amount based on performance (good governance and recovery capacity). <sup>36</sup>

33 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

34 AFRODAD (2020). Assessment of Niger's Domestication of The African Mining Vision (AMV). Harare

35 AFRODAD (2020). Assessment of Côte D'Ivoire's Domestication of The African Mining Vision (AMV). Harare

36 AFRODAD (2020). Assessment of Côte D'Ivoire's Domestication of The African Mining Vision (AMV). Harare

Table 12 continued: Facilitating investment in communities near mining areas

Country	Status	Explanation
Togo	Not Domesticated	Law No. 2011- 008 of Togo’s mining Code sets the foundation for rent distribution system, which was previously neglected in Togo’s old mining code, with the aim of allocating part of mineral revenue to mining communities and local authorities. The law stipulates that holders of exploitation permits (large or small scale) artisanal exploitation authorizations are expected to contribute to the communities affected by the mining exploitation and regional development as a standard of business ethics. It states that such contribution can be in the form of financial contributions to be paid per annum and the realisation of socio- economic and community works .

Sources: The respective country reports

*In conclusion, all the eight countries have generally made some efforts at ensuring that the local communities benefit from the mining activities taking place within their communities. However, these efforts are more pronounced in Liberia, Guinea, Sierra Leone and Côte d’Ivoire.*

c) Develop systems for strengthening capacities for national and sub-national bodies for revenue management

Generally, the responsibility of revenue management is largely bestowed on central government in all the countries. Local authorities and communities improve their management of mineral revenues if there is fiscal transparency and civil engagement allowing local communities to participate, contribute, conduct follow up reviews and assess their activities and efforts. The domestication of the AMV requirement across the countries is therefore not yet done. However, Sierra Leone has legislated the training of local communities by mining firms to ensure that they possess the necessary capacities to manage the community development agreements.<sup>38</sup> This would complement the initiative at the national level, where officials in the key government institutions have been subjected to a number of training programmes on revenue management. Thus, there is some noticeable efforts to domesticate the AMV requirements for national and sub-national bodies to have the capacities to manage mining sector revenues in Sierra Leone.

In conclusion, strengthening capacities for sub-national bodies for revenue management, especially local authorities, is an activity that is needed across all the countries.

<sup>37</sup> AFRODAD (2020). Assessment of Guinea’s Domestication of The African Mining Vision (AMV). Harare

<sup>38</sup> AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

#### 4. SIMILARITIES BETWEEN THE ASPIRATIONS OF THE AMV AND THE ECOWAS PROTOCOL ON MINING

The Action Plan also identifies strategies and monitoring indicators at the regional level (Table 13) which also have clearly defined time frames. These can also be used as the basis for assessing whether the ECOWAS Protocol on Mining follows the aspirations of the AMV.

Table 13: Mining sector fiscal regime and revenue management strategies under the AMV at Regional Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (eg.tax & dividends) packages in a manner that does not discourage mining investment	ST	Guidelines, standards and toolkits completed and distributed to RECs & member states
	Develop mineral taxation guidelines for implementation at the REC & national levels	ST	Guidelines, standards and toolkits completed and distributed to RECs and member states
	Develop typical financial models for mineral projects for member states and run training workshops at REC level	ST	Number of financing models that are developed and used by member States
Improved management and use of mineral revenue	Compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels		Best practise guidelines on mineral revenue management compiled

Source: AMV Action Plan, 2011

This basically serves as the template for assessing domestication progress by the West African countries.

There are two main policy tools that were introduced at the ECOWAS level that generally shape the region's mining policy. The first is the ECOWAS Directive on the Harmonisation of Guiding Principles and Policies in the Mining Sector, which can be regarded as the first specific relevant legislation on mining by the regional body. It was issued in May 2009 during the 62nd Ordinary Session of the Council of Ministers.





The second is the ECOWAS Mineral Development Policy (EMDP) of 2011, which is also a key strategic document guiding mining operations in the region. The Vision of the EMDP is to harness mineral resource capital to facilitate sustainable economic growth and integrated socio-economic development in the region. The main objective of the EMDP is to promote the development of an efficient Mineral Sector in the region. The extent to which these two follow the AMV principles can be the basis of assessing the similarities (Table 14).

Table 14: Domestication of AMV at ECOWAS level

Activities	Status	Explanation
Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (eg.tax & dividends) packages in a manner that does not discourage mining investment	Domesticated	By providing for harmonisation of all the guiding principles and policies in the mining country Member States, the ECOWAS Directive on mining is the first guideline that can be argued to be in line with the AMV. <sup>39</sup>  The Directive also directed Member States to enact an appropriate legislation, which optimises and protects revenues due to the State from the mining activities. Specifically, the Directive also required the Member States to ensure that there are guidelines or legislations which require a portion of mining incomes to benefit the local communities. <sup>40</sup> This is well in line with the aspirations of the AMV.
Develop mineral taxation guidelines for implementation at the REC & national levels	Domesticated	The EMDP guides countries to improve fiscal systems, especially with the objective of having an effective mineral revenue collection and equitable distribution of revenues. The EMDP also emphasises on need to optimize the mineral value chain to derive the maximum benefit within the context of local benefits of the mining activities. The EMDP also provides for the improvement in management of mineral resources to promote the diversification of the mineral exploitation to create sustainable linkages with other sectors of the economy. This is also within the context of the AMV aspirations. <sup>41</sup>
Develop typical financial models for mineral projects for member states and run training workshops at REC level	Not domesticated	ECOWAS is yet to come up with financial models to be used by member states
Compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels	Partly domesticated	The Directive requires Member States to ensure that there are guidelines or legislations which require a portion of mining incomes to benefit the local communities affected by the mining activities and encourage the strengthening of their capacities. In addition to guidelines on revenue management, this is basically in line with the AMV. <sup>42</sup>

This generally shows that there are similarities in the AMV provisions as well as the various protocols that exist at the regional level. Thus, complying with the ECOWAS requirements would also go a long way in ensuring that there is an effective mineral revenue management regime in Member States that is expected by the AMV. Thus, complying with the ECOWAS guidelines is one of the critical steps towards the domestication of the AMV.

39 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

40 AFRODAD (2020). Assessing national mining legal frameworks and policies in Liberia against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

41 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare

42 AFRODAD (2020). Assessing national mining legal frameworks and policies in Sierra Leone against the Africa Mining Vision and ECOWAS Protocol on Mining. Harare



## 5. FACTORS THAT IMPINGES ON THE DOMESTICATION OF THE AMV CLUSTER NUMBER ONE

The country studies reveal a number of factors that impinge on the ability of the eight ECOWAS countries to domesticate the mining revenue and minerals rents management cluster of the AMV. While there are several country specific issues, the following are some of the issues that cut across a number of the countries under review:

### **Lack of capacity on revenue management and mineral taxation issues**

The challenges with respect to the extent to which mineral revenues can be extracted can be explained to a great extent by lack of capacity. Although well-constructed policy and legislative frameworks have been enacted with the assistance of development partners, it has taken a long time for the provisions of the policy to be fully implemented due to capacity limitations. Capacity challenges are also reflected in failure to optimise revenue collection due to a weak governance system, lack of transparency as well as the lack of data disclosure rules which would have been necessary to enhance more transparency.

### **Limited knowledge on endowments**

The levels of mineral exploration in the ECOWAS countries is currently too low, as they are characterised by poor geological information. The most known mineral occurrences are based on investigations done in the 1960s and 1970s, hence here is still need for detailed multi-disciplinary field surveys using modern techniques. Upgrading of geo-data information management system by developing a geological database, building a network infrastructure and a website portal where pertinent information about the extractive industry can be easily accessed are some of the outstanding issues. Most of the countries lack a comprehensive geological map, at least at a scale that is sufficiently detailed for information that could easily lead to investment decisions.

### **Weaknesses in the tax administration systems**

More resources could be easily obtained from mining if the tax administration systems were stronger. There are weaknesses in taxpayer registration; lack of risk-based compliance management across registration, filing, payment and audit, which ultimately limit revenue flows to government. There is continuous need to improve taxpayer registration, strengthen compliance management and tax enforcement activities. This is mainly from the fact that there still exist high levels of leakages and illicit financial flows from the mining sector activities.

### **Community involvement and ownership**

While some countries do not have community involvement and engagement fully legislated in their mining policies and legislations, those countries that have managed to have them legislated are also weak in terms of enforcement. The involvement and participation of residents of communities affected by mineral developments is generally limited as community members are not adequately informed about minerals sector development activities, mineral rights' status or more specifically, invited to participate in practical development issues in their communities. This presents challenges in domesticating the AMV, which requires active community involvement.

### **Lack of awareness about the AMV and its benefits**

Despite the important role envisaged by the AMV in African countries, there has been little or no effort on creating awareness of the potential benefits and opportunities of implementing it. There is low awareness of the potential gains and opportunities of implementing the AMV across all the key stakeholders (civil society, trade unions, communities, academia, and the media), which also create less incentives for government to push through implementation under conditions of limited lobbying and advocacy.

### **Lack of political will**

There is general lack of political will to prioritize mineral revenue governance, management and use. Political will is the pre-requisite for any drastic changes mining legislations, especially given that in most African countries, political elites are involved in mining activities and they seem to have vested interests which they protect. Thus, politicians can be argued to be benefiting from mismanagement

of revenues from the mining sector and poor and outdated legal & regulatory framework, hence the lackadaisical approach in undertaking comprehensive changes in pursuit of the AMV aspirations.

**Political instability and fragility**

Some countries in West Africa (including Côte D'Ivoire, Mali and Niger) are ranked among the World's most fragile states. Political instability threatens the inflows of Foreign Direct Investment (FDI) into mining and the threat also limits expansion of existing activities. The key drivers of fragility are economic uncertainty, poor governance, security and crime. This also limits the ability of the countries to attract investments to levels that allow them to fully enjoy the envisaged benefits under the AMV.

**Limited value addition of minerals**

The countries mainly export their minerals in raw or semi processed form. The limited value addition also occurs at a time when most of the economies are less diversified, implying that mining revenues should be the key in sustaining high revenues. The limited value addition of minerals implies that secondary or value chain industries that would be expected to emerge remain absent, while the economies also suffer revenue fluctuations due to price changes in the global mineral markets. This makes it difficult to domesticate the AMV fully due to limited revenues from mining.



## 6. RECOMMENDATIONS TO IMPROVE RENTS AND MANAGEMENT OF THEM FOR NATIONAL DEVELOPMENT

### 6.1 Recommendations for Benin



**Benin**

#### 1. Investment in geological survey, local and transborder data policy

Benin must find innovative ways of finding and quantifying the mineral resources they have. This can be done by investing in geological surveys which are the custodians of geological and mineral data and information. They also need adequate local and transborder data policy regarding, among others, data standardization and harmonization of nomenclature, resource classifications and reporting systems to promote broad and sustainable development processes in Benin. This information assists in contract negotiation, reviewing of policy, regulations and fiscal regimes including establishing fair tax systems for both the government and investors.

#### 2. Creating a conducive environment to attract Foreign and local Investment into the Mining sector

Benin needs regulatory reforms that simplify business procedures to attract local and international investment to the Mining sector. This will then be considered as one of the opportunities Benin has to turn the potential of the mining sector into reality.

#### 3. Joining INTOSAI (International Organization of Supreme Audit Institutions) Working Group on the Audit of Extractive Industries (WGEI)

Benin must set physical audit systems and join the INTOSAI WGEI. As it becomes a member of this group (INTOSAI), Benin will benefit from knowledge, experience sharing, networking and capacity building.

#### 4. Conducting Mineral fiscal reforms and strengthen extractive fiscal institutions

The perception on the ground is that governance needs to be strengthened further and the judiciary made more independent to effectively fight corruption. Further efforts to reform audit institutions, improve transparency, and foster accountability is needed. Among the needed reforms, the strengthening of internal and external audit institutions and the follow-up of their findings and recommendations could foster transparency in the public sector and decrease the risk of low appropriability of returns.

#### 5. A progressive fiscal regime, and strong transfer pricing policy

There is a need to develop a progressive fiscal regime so that when those few mining companies in Benin begin to gain more profits their taxes will rise with profits. There is also need for a strong transfer pricing policy to curb the marauding of Benin's resources through tax evasion and avoidance plus illicit financial flows from the mineral sector.

#### 6. Rethinking the use of tax incentives, streamlining and removing toxic/harmful tax incentives

Benin should use tax incentives with caution and ensure that they are well designed, bearing in mind their potentially large budgetary constraints while the tax incentives may be a breeding ground for corruption.

#### 7. Developing a Sovereign Wealth Fund Bill

Benin should draft a Sovereign Wealth Fund Bill which aims at establishing a sovereign wealth fund to manage mineral revenues.

## 6.2 Recommendations for Côte D'Ivoire



### 1. Competitive bidding of mineral rights

It is recommended that Côte D'Ivoire should introduce systems for competitive bidding of mineral rights, as the government has awarded a number of sole-source contracts without competition and at times disregarding objective evaluations on competitive tenders.

### 2. Increased information disclosure

The establishment of mandatory disclosure of information on tax payments, licenses, contracts, and production statistics should be considered, thereby informing the general public and enhancing transparency. Transparency will help by exposing all breeding grounds of corruption. These will reduce leakages from the extractive sector.

### 3. Dealing with illicit financial flows

There is a need to update the current transfer and other anti-tax avoidance policies. Of particular interest is the inclusion of Controlled Foreign Companies (CFCs) rules, which are lacking in Côte D'Ivoire. There is a need for the definition of beneficial ownership in the country's constitution or taxing acts and a register with this information especially beneficiaries.

### 4. Ensuring that the tax system is progressive

The study recommends a combination of production-based taxes and profit-based taxes, for example, production-based royalties and profit-based royalties. Specifically, it is recommended that when a company is not making a profit, that is, in the initial stage,

government should charge production-based royalty and once it starts making profit, this should shift to profit-based royalty.

### 5. Evaluating tax incentives

There is a need to evaluate the current tax incentives and see if they are still serving the purpose, remove all toxic exemptions as they are breeding grounds for corruption and reducing revenue that can be collected from the extractive sector.

### 6. Introducing a Sovereign Wealth Fund (e.g., including stabilization funds and infrastructure funds)

It is recommended that Côte d'Ivoire should draft and finalise the Sovereign Wealth Fund Bill, which aims at establishing a sovereign wealth fund to manage mineral revenues affected by ever-changing commodity prices.

### 7. Revenue Sharing Formula between different government levels

There is need for Côte d'Ivoire to develop a framework for revenue sharing between different government levels that is traceable and enforceable, to replace the current system where all tax revenues are collected and deposited in the Consolidated Fund.

### 6.3 Recommendations for Guinea



Guinea

#### 1. Providing for the establishment of sovereign wealth fund

A sovereign wealth fund must be designed in such a way that it incorporates different windows that cater for purposes of stabilization of the economy, diversification of the economy through investments in other sectors and wealth creation for the future generations.

#### 2. Amending the Petroleum Code

This should be amended to take into account the mandatory social expenditures just as the case in the Mining Code. This will oblige the mining companies to make social investments in the communities instead of relying on the benevolence of the miners.

#### 3. Developing the enabling pieces of legislations

The government should expedite the development of the enabling pieces of legislation which will enable the implementation full tax measures.

#### 4. Strengthening of institutions

Mining institutions responsible for the management of mineral resources need to be strengthened. SOGUIPAMI needs to be capacitated by ensuring that it is adequately capacitated by providing it with adequate dedicated human resources and sufficient operational budget as well as the equipping it with the relevant updated software and training in the use of the software. This will enable the institution to discharge its functions effectively. Also, the Ministry of Mines and

Geology needs handover the functions that are supposed to be a responsibility of SOGUIPAMI's. The institution also needs to be given its full functions by the Ministry of Mining and Geology. The Customs Directorate which is responsible tax administration also needs to be capacitated to effectively undertake tax inspections and audits of mining companies by equipping it with modern tools and equipment and training in the use of the tools and equipment. SIGM also needs capacitation through software, equipment and training.

#### 5. Establishing the National Mining Commission

The Commission should be established to be responsible for spearheading the competitive awarding of mineral licenses and overseeing the compliance of mineral license holders to all the provisions required for licensing.

#### 6. Downstream mineral processing industry

Guinea should promote downstream mineral processing particularly bauxite so as to create more economic value through forward linkages with downstream industries and minimize the impact of global market price volatility. There is need for government to take deliberate steps in promoting value addition and linkages with other industries in the economy. A detailed feasibility study would be required to understand the drawbacks, costs and benefits of downstream mineral processing so as to determine appropriate policy measures for promoting downstream processing.

## 6.4 Recommendations for Liberia



### 1. Reviewing tax exemptions

Liberia should review all tax exemptions to ensure that only in cases where the economic and social advantages justify the exemption and concessions would this remain. This is to ensure that tax revenues are optimised in Liberia.

### 2. Evaluating tax incentives

Liberia should eliminate all the economically unjustifiable tax incentives, as these undermine the capacity of government to maximise on revenues.

### 3. Paying more attention towards leakages

While the capacity of officials to monitor and detect leakages has been enhanced, it is important to ensure that they have the necessary support, including legislation and administrative, to ensure that the system would descend heavily on non-compliance.

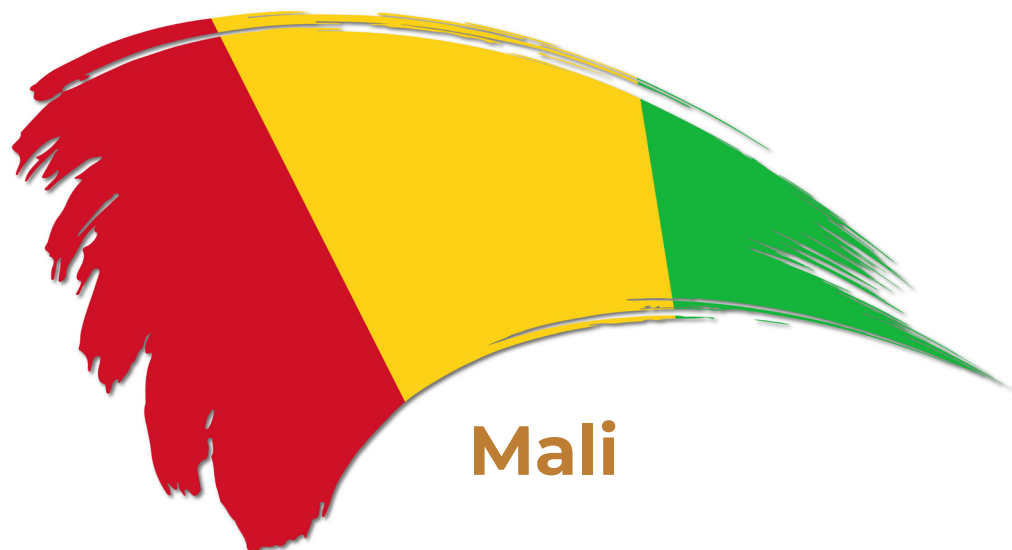
### 4. Ensuring that the necessary steps towards the development of a SWF is in place

There is a risk that the next generation will not benefit from anything when the mineral resources get depleted, at a time when the mining firms have been benefiting. Thus, a SWF should be introduced urgently.

### 5. Enhancing community benefits from mining

While the legislation is in place, the mechanisms that ensure that communities in the localities that the mining activities are taking place derive measurable benefits from the mining activities are yet to be tightened. While the treatment of Liberians in general is commendable, there is need for a further distinction between local community residents subjected to the undesirable effects from mining and those in locations far away from the mining areas.

## 6.5 Recommendations for Liberia



### 1. Updating transfer pricing policy & revisiting double taxation agreements

Mali's transfer pricing policy must be updated as there are many loopholes with the current policy. Double taxation agreements that have been signed should be revisited to prevent further revenue leakages through the practice while ensuring retention of revenue in the country.

### 2. Evaluating, revising and removing harmful tax incentives

While Mali's Mining Codes were designed to provide incentives for investment and employment, they have created opportunities for tax avoidance strategies that shift profits outside Mali or from taxable to lightly taxed companies within Mali. The study recommends the evaluation of all tax incentives so that those not serving the purpose must be scrapped.

### 3. Development of a formula for revenue sharing between different government levels that is published, traceable and enforceable

It is recommended that a framework for revenue sharing between different government levels that is traceable and enforceable should be developed. The current system where all revenues flow to the central government, with little fiscal devolution is not in line with the AMV aspirations.

### 4. Capacitating tax auditors and other public officers in the extractive sector

Mali needs to develop its human resources in key agencies (tax and customs administrations, and the Ministry of Mines) to effectively enforce the anti-avoidance schemes in the extractive sector. Key competencies to acquire are knowledge of multinational enterprise business models and structures, transfer pricing comparability analysis, management accounting, and transfer pricing audit management.



## 6.6 Recommendations for Liberia



### 1. Using competitive bidding when issuing mineral rights

There is need to switch from a first come first served approach to competitive bidding which is regarded as more transparent and allows the authorities to choose investors offering the best investment deals.

### 2. Improving the governance of Niger's oil and mineral wealth

It is recommended that Niger should improve in the governance of its mineral resources as the country continues to grapple with major corruption-related challenges. Niger's re-joining EITI in 2020 is an opportunity which the country needs to seriously utilise and follow EITI recommendations fully.

### 3. Advocating for a progressive fiscal regime, strong transfer pricing policy & revisiting DTAs

There is need for a progressive fiscal regime and strong transfer pricing policy to curb the marauding of the Niger's resources through tax evasion and avoidance plus illicit financial flows from the mineral sector thereby promoting

transparency in the management of mineral resource revenues and the accountability of states and corporate actors in their relations with mining-affected communities and citizens. Double taxation agreements that have been signed should be revisited to prevent further revenue leakages through the practice while ensuring retention of revenue in the country.

### 4. Rethinking the use of tax incentives and streamlining them

It is recommended that Niger should evaluate the current tax incentives and see if they are still saving the purpose and where possible remove all toxic exemptions as they are breeding grounds for corruption.

### 5. Strengthening extractive fiscal institutions

It is recommended that Niger should make the most of ICT in fast-tracking reforms to modernize revenue administration institutions and enhance spending quality.

### 6. Developing a Sovereign Wealth Fund Bill (including stabilization funds and infrastructure funds)

It is recommended that a Sovereign Wealth Fund be introduced to manage mineral revenues in line with the AMV expectations

### 7. Developing a formula for revenue sharing between different government levels that is traceable and enforceable.

The study recommends the development of a framework for revenue sharing between different government levels that is traceable and enforceable away from the current system where all revenues are collected and deposited in the Consolidated Fund.

## 6.5 Recommendations for Liberia



### 1. Building strong tax management institutions

The government of Sierra Leone should continue to invest in building strong institutions where loopholes such as taxpayer registration; lack of risk-based compliance management across registration, filing and audit challenges, are addressed. While current efforts are commendable, ensuring that these are done on a consistent basis is the best way of ensuring that there is optimisation of revenue from the mining sector.

### 2. Reducing leakages from artisanal and small-scale mining

Given the high level of informality, government should also continue to explore ways and mechanisms of reducing leakages from artisanal and small-scale mining. This can also be done by ensuring that small scale mining is done in a very formal way, with assistance being availed to ensure that they graduate into larger scale mining operations.

### 3. Investment in geo-data

Investment in geo-data is a must, especially with the objective of ensuring that there is increased knowledge about mineral sector occurrences. This would be instrumental in attracting more large-scale mining firms into the sector, while mineral rights can be transferred in a more open and transparent public tender system as envisaged under the law.

### 4. Enforcement of legislation

The new government should also try to make itself distinct from the previous regime by ensuring that all legislative provisions, which were enacted to improve mining sector benefits, are enforced. This also includes enforcement of the provisions which were designed to ensure that local communities, as well as future generations benefit from the current mining activities. The community development agreements need to be prioritised, while the Inter-Generational Savings Fund needs to be operationalised, as there is a lot of merit in having these legislative provisions in place.

### 4. Curbing corruption

Government should also prioritise the curbing of corruption as the corruption tendencies are also affecting revenue flows from the sector. Curbing corruption also include stemming the factors that promote it, which include minimising institutional mandate overlaps, closing capacity limitation gaps, and reducing discretionary powers which facilitate corruption.

## 6.6 Recommendations for Liberia



### 1. Bridge the gap between policy and practice

There is need for more stringent policies to force mining companies to pay their environmental damage and a more binding policy on ensuring that mining companies engage in more participatory and vibrant community development / benefit sharing / social responsibility agreements.

### 2. Improve transparency

There is need for better transparency through the adoption of modern audit systems and financial models to account for all mineral revenues obtained. Limited transparency due to lack of financial models to effectively account for mineral revenue and lack of audit systems to determine mineral production and exports, which can fuel corruption and illicit financial flows, is a hindrance which needs to be addressed.

### 3. Engage in mining sector research

The Department of the Mining Cadastre and Geology should invest in research to conduct studies and statistical updates, a dependable means of observing Togo's achievements in terms of meeting their policy obligations and adherence to national, regional and international minerals management standards.

### 4. Policy and legislative review

The free zone policy should be accompanied by strict measures on environmental and social protection. Law No. 2011-008, which demands mining companies to allocate part of revenue to the communities in which they operate in should specify how much should be contributed and at what ratio of total revenue accumulated.

## 7. CONCLUSION

The country reviews generally show that the domestication of the AMV is still a requirement across a number of areas, as no country was found to have domesticated all the aspects of the AMV. While the economies are deriving some benefits from the mining sector across the eight countries, the fact that their regimes are not yet as strong as they were envisaged to be at the AU level implies that these benefits are not optimal. Thus, there are opportunities to unlock enhanced revenues by simply paying attention to the gaps as far as domesticating the AMV provisions are concerned. There is also a significant opportunity arising from the similarities between the provisions of the AMV and the ECOWAS protocols on mining, which can be leveraged upon further with regional support.



