Policy Brief

State of Mineral Resource Governance in East Africa

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Weak Governance Framework Limiting Mineral Resource gains for East Africa - Proposals for Policy Action

POLICY RECOMMENDATIONS

- Encourage EAC States to fast track domestication and implementation of the Africa Mining Vision
- Broker regional multi-stakeholder policy processes to review and harmonise international instruments aimed at Mineral Resource Governance in the region
- Advocate for East African Legislative Assembly (EALA) to enact East Africa Community Mining Bill (2017)
- Promote regional cooperation in extractives governance; pursue coherent regional legal and policy frameworks for trade and investment.
- Promote inclusivity in governance of the sector – increasing political will and buy-in from policymakers and opening up of policy spaces to non-state actors especially Civil Society.
- Enhance frameworks for transparency and openness in the extractives sector.
- Encourage regional institutions like AMDC, ATAF, EI-TAF and ALSF to support national-level institutional capacity development on mineral resource governance.
- Encourage States Promote local content participation in the mineral resources sector for instance through Local Content policies (LCPs).
- Encourage States to strengthen national level policy frameworks governing Artisanal and Small-Scale Mining (ASM).

Africa holds 30% of all the mineral reserves globally and 50% of the world's rarest minerals . The East African Community is endowed with rich mineral resources ranging from gemstones, precious metals, base metals and industrial & construction minerals amongst others. Despite vast mineral resource wealth, the mining sector is one of the most underdeveloped sectors in the continent. Mineral exploitation in the region is yet to spur necessary economic development, industrialization and overall prosperity for local communities. It has instead spurred conflict, instabilities and economic inequity due to poor governance, weak policies and legal frameworks, and significant institutional capacity gaps. Considering that for nearly a decade, revenue authorities in East Africa have been failing to meet revenue targets, governments have had to scout for alternative sources of funding, including borrowing, to offset revenue shortfalls and finance development projects. Prudent, accountable and inclusive governance of the region's mineral resources could bolster economic muscle and macroeconomic options that governments in the EAC have to work with to accelerate economic development and respond to pressing public welfare needs more effectively. This however requires a fundamental shift in the framework for governance of the sector. There is scope for major players in government, civil society, corporates and EAC to act.

Purpose of this Policy Brief

- The brief obtains from background research work carried on the State of Mineral Resource Governable in Eastern Africa – part of a larger research project targeting Sub-Sahara Africa commissioned by AFRODAD.
- The brief unpacks trends in mineral resource governance in the region, looking into how existing policy and institutional frameworks, the political economy context, and various actors/stakeholders are shaping the governance of mineral resources in the region.
- It provides policy recommendations that stakeholders in the extractives sector, especially policymakers can pursue towards a more prudent, inclusive and accountable framework for governing the region's mineral resources.

Methodology

- The brief covers policy, institutions and political economy context impacting mineral resource governance in five countries in East Africa; Kenya, Tanzania, Uganda, Rwanda and Burundi.
- The study upon which this policy brief is based adopted an exploratory approach relying mainly on existing literature – in the form of sector reports, academic papers, media reports, and policy proposals/statements on mineral resource governance to identify key issues.

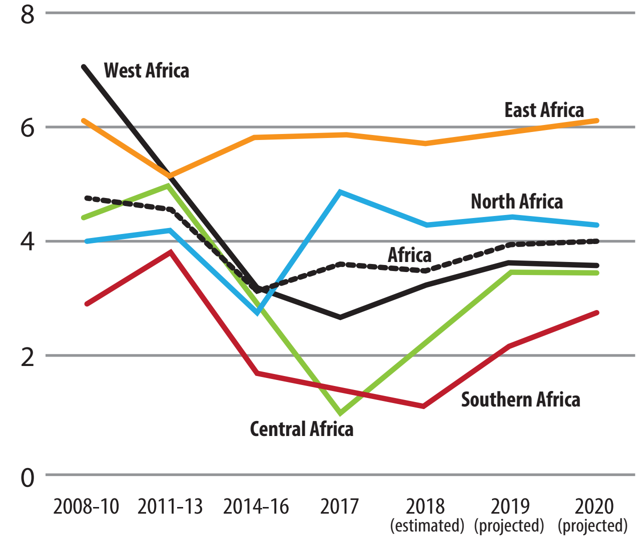
Unrealised Mineral Resources Potential for Domestic Resource Mobilisation

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

Mineral Resource Endowments

The region (East Africa and the great lakes) is endowed with a vast variety of mineral resources including highly valued minerals such as Tin, Tantalum and Tungsten and Gold. Despite the mining sector portending significant gains in terms of government revenues, it is one of the most underdeveloped sectors - largely underexplored and underexploited resulting in low revenue generation. Recently, there has been an increased focus on revenue generation from natural resources amongst most of the states in the region, especially the resource-rich ones. For instance, Kenya exported its first crude oil in August 2019 and the oil production is expected to rise to 100,000 barrels per day in 2022. Tanzania has been negotiating new terms with international oil companies to develop, construct and operate a USD 30 billion liquefied natural gas project, which will commence in 2022. Uganda is also in the process of finalizing negotiations for the construction of the USD 3.5 billion oil pipeline which will run through the United Republic of Tanzania.

Figure 1: GDP Growth by Region 2008 - 2019

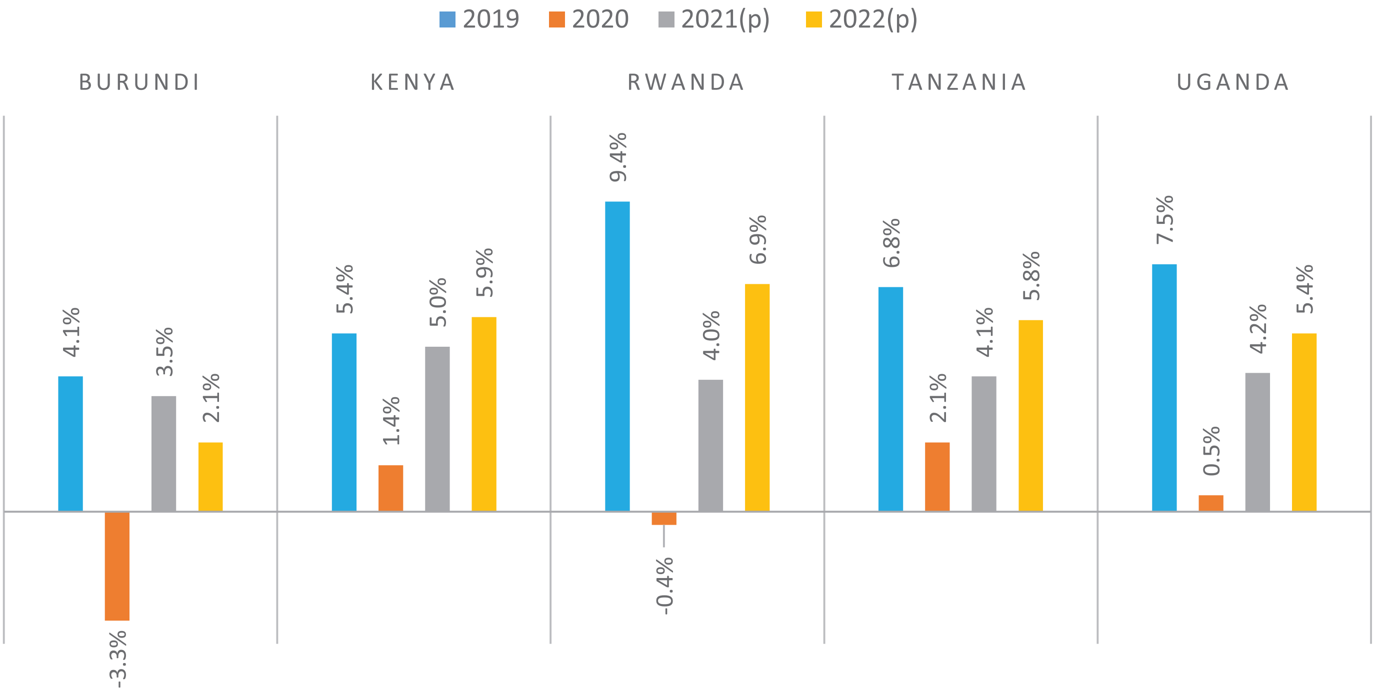


Source: African Development Bank statistics

Fore-gone Opportunities

Despite the domestic resource mobilisation potential that the extractives sector (particularly mining) portends, it is considered globally as one of the major emitters of illicit financial flows (IFFs). It estimated that nearly 50% of illicit outflows from Africa are generated via trade mispricing and more than half of trade-related IFFs stem from the extractive sector.[iv] The Economic Development in Africa Report 2020 indicates that trade mispricing (IFFs) in Africa based on a range of estimates varies from $30 billion to $52 billion per annum.[v] Burundi and Rwanda top the list of East African emitters of illicit flows (1980-2018); emitting USD 3,796 million (26.7% of total trade) and USD 7,546 million (21.5% of total trade) respectively.[vi]

Figure 2: GDP growth in selected countries in the East Africa region



Source: African Development Bank statistics

Box 1: EAC Natural Resource Endowments (A snapshot of some countries)

The East African Community partner states are endowed with rich mineral resources ranging from gemstones, precious metals, base metals and industrial & construction minerals amongst others. Kenya is the third-largest producer of Soda Ash, while Rwanda is one of the world's largest producers of Tin, Tantalum and Tungsten (3Ts) which are highly valued minerals. Main minerals produced in the region include Limestone and Gold in Uganda, Diamonds in Tanzania and the 3Ts in Burundi.

Table 1: Kenya's main mineral production

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

Table 2: Tanzania's main mineral production

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

Table 3: Uganda's main mineral production

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

Box 2: Existing Policy and Institutional Framework for Mineral Governance in EAC States

Country	Institutional Framework	Policy and Legal Framework
Kenya	• Ministry of Petroleum and Mining • Directorate of Mines • Mineral Audit Agency	• The Constitution of Kenya (2010) • Mining Act, 2016 • Mining (Royalties) Regulations, 2017 • Petroleum Act, 2019
Tanzania	• Ministry of Minerals • Tanzania Mining Commission • Tanzania Chamber of Mines • Tanzania Investment Centre	• Mineral Policy, 2009 • Mining Act, 2010 • Tanzania Extractive Industries (Transparency and Accountability) Act 2015 • The Written Laws (Miscellaneous Amendments) Act, 2017
Uganda	• Ministry of Energy and Mineral Development	• The 1995 Constitution of Uganda • Mining and Mineral Policy for Uganda, 2018 • Mining and Minerals Bill, 2019 • Mining Regulations, 2004 • National Environment Act (NEA Act), 2019
Rwanda	• Rwanda Mines, Petroleum and Gas Board • Ministry of Forest and Mines • Ministry of Environment	• Rwanda Policy of Mines and Geology • New Mining and Quarry Operations Law, 2018 • Rwanda Mining Code, 2018
Burundi	• Ministry of Hydraulics, Energy and Mines • Burundian Mining and Carry Authority	• Law 1/21 of 15 October 2013 on the Mining Code of Burundi • Decree 100/193 of 16 June 2015 on Mining Rules • Decree 100/095 of 8 August 2018 on the Mission and Organisation of the Ministry of Hydraulics, Energy and Mines • Decree 100/184 of 7 December 2018 revising Decree 100/112 on the Creation, Mission, Organisation and Functioning of the Burundian Mining and Carry Authority

Trends in Mineral resource governance in EAC - Perhaps too little?

There has been some progress, over the past decade, in terms of development of appropriate institutional and policy frameworks for governing the sector. This is evidenced by the enactment of new laws (in the minerals, oil and gas sects), establishment and reconstruction of relevant institutions, and formulation of policies that seek to improve the sector. These include legislation (targeting regulation of petroleum and minerals extraction), Local Content policies, and tax and revenue generation regimes that aim to maximise benefits from the sector. This progress appears to be substantively influenced and shaped by international or regional governance institutions, instruments and initiatives like the Africa Mining Vision (AMV), EITI, PWYP, Dodd-Frank Legislation, international organisations like OECD and AU. . Nonetheless, little progress has been made towards development of effective rent distribution systems, strengthening linkages between the mining sector and local economy, improving business environment and review of DTAs (Policy Reform, 2020).[vii]

AMV Implementation - Limited Progress

Being members of the African Union, EAC member states are required to domesticate the AMV by aligning laws, policies and regulations to reflect its principles and objectives. However, more than a decade since its inception, the EAC has still not agreed on a contextualised regional protocol on mining aligned with the Africa Mining Vision. None of the EAC member States have a consolidated and operational Country Mining Vision (CMV). However, some States are pursuing reforms aimed at aligning their policy frameworks with the AMV. The EAC has ongoing policy processes that target to improve cooperative regional natural resource governance. The East African Legislative Assembly (EALA) is also processing a bill (EAC Mining Bill, 2017) that seeks to operationalise Article 114(2) (c) of the EAC Treaty on harmonisation of mining regulations and promotion of environmentally friendly mining practices. The bill aims to provide a pathway to adoption of a common mining regime, outlines mechanisms for transparency and accountability, and nurturing a harmonised operating environment by removal of competitive behaviours and encouraging incentives. The domestication process continues to face substantive challenges that are yet to be addressed. Most notable is the limited sense of ownership of foundational concepts enshrined within the AMV by key stakeholders.

Dividends of Existing Mineral Resource Governance Framework

The frameworks established by the different countries vary over composition and time of formulation but generally guide operations in the mining sector. Existing effort (in terms of policy and institutional frameworks) at national, regional, continental and global levels have proffered benefits for mineral resource governance in the region. These include: addressing IFFs; increasing access to information in the sector; promoting sustainable extraction and environmental protection; and promoting value addition and proffering benefits to local communities.

- Tanzania has made the most progress in the region towards compliance and realisation of objectives envisioned within the AMV. Mining Act 2018 section 28(3) & 106(1) and the Mining (Integrity Pledge) Regulations prohibit companies from engaging in malpractices such as tax evasion, under or overpricing, abuse of treaties on double tax, or corruption. Transfer Pricing Regulations 2018 have also been critical to ensuring fiscal compliance within the mining sector and there is ongoing review and renegotiation of mining contracts is ongoing. According to Tax Justice Network-Africa and Policy Reform, Tanzania has made sufficient progress in auditing mineral production, strengthening the sector's fiscal regime, and review and renegotiation of mining contracts (Policy Reform, 2020). Tanzania's interest in the AMV reflects the country's appreciation of the strategic role that the mining sector can play in achieving the country's development vision and a desire to put in place appropriate policies, strategies and practices to optimise benefits from exploitation of its mineral endowment. Also Tanzania's involvement in the EITI has been cited as an example where EITI compliance has improved information on revenue receipts.

- Countries like Kenya, Tanzania, and Uganda now have transfer pricing regimes, provisions in their tax codes, and/or special tax rules and considerations for mining, oil and gas industries that are gaining traction in dealing with IFFs from the extractives sector).

- Rwanda and Burundi are among the three countries in the Africa Great Lakes Region to implement the tin supply chain initiative by the International Tin Association. Also, through the International Accounting Standards Board (IASB), extractive companies have been compelled to disclose public accounts on a country-by-country basis, including payments to governments, production volumes, production revenues, costs, turnover and profits, the names of key subsidiaries and properties, and reserves. This provides useful information national authorities in the region are utilising for tracking IFFs (especially through such malpractices as transfer mispricing and trade mis-invoicing).

What limits prudent, inclusive and accountable Mineral Resource Governance in East Africa?

There remain reports about mismanagement, IFFs, leakages and pilferage of mineral resources in East Africa. This is despite existence of State institutions, policies and laws, and international initiatives and instruments established to foster better governance in the extractives sector. There are perceived weaknesses in existing framework for mineral governance and challenges emerging from the regional and international political economy context that limit prudent and effective governance of mineral resources in East Africa for the benefit of its citizens. These include:

1. Foremost, **inadequate compliance, harmonisation and coordination of existing instruments** on mineral resource governance limits effectiveness.[vii]

2. At State level, **inadequacies in terms of effectiveness of government and institutional capacity** have led to poor implementation of policy frameworks hence further limiting their ability to assure effective governance of the sector. This is evident especially in mismanagement State-Owned Mining Enterprises characterised by high costs; low revenues; excessive liabilities; and absence of robust accountability systems.

3. **Limited inclusion and engagement of important stakeholders in decisions on mineral resource governance** remains a weakness. Stakeholder engagement has been largely undermined by unwillingness of governments to accept scrutiny, mixed priorities of international development partners and CSOs, and selective engagement by extractive sector corporates.[Viii]

4. A more lethal problem relates to access to information. **There is lack of transparency in the licensing processes and declaration of ownership, contracts negotiated in secrecy and difficulty in accessing information.**

5. Due to its **limited contribution to GDP and growth in East Africa, the minerals sub-sector has received inadequate attention from policymakers.** This has manifested in weak institutions and outdated/irrelevant policies that do not effectively address governance issues in the sector

6. **Corrosive regional politics within the EAC especially concerning trade relations has created a non-conducive environment for cooperation and joint efforts towards improving resource governance in the region.** This is further complicated by nationalistic tendencies by States on matters related to revenue administration, natural resource exploitation. These prevent collective regional efforts aimed at reducing corruption capital flight in the sector.

7. **Increased demand for some minerals, like 3TGs has contributed to resource based conflicts and macroeconomic imbalances.**[ix]

8. The mining sector constitutes a broad range of issues from environmental impact to revenue generation, IFFs, livelihoods and rights of communities among others. **There is skewed focus on revenue transparency, which limits progress on other aspects of mineral resource governance.** EITI focuses exclusively on revenue flows and pays little attention to expenditures. In terms of sustainability, more emphasis appears to be on regulation of exploration and extraction and less focus on mine closure and site rehabilitation.

9. Weak Mining Fiscal Regimes: **EAC States have weak mining fiscal regimes that are ineffective in taxing multinational corporations especially in ensuring equitable sharing of rents,** particularly windfall rents. These weak fiscal regimes highly favour investors instead at the expense of local populations and maximizing revenue generation.

Policy Recommendations - Points for Action

The brief has explored the policy, institutional and contextual landscape and highlighted weaknesses and challenges that continue to limit the realisation of a robust governance framework for the mineral resource sector in the region. It emerges that among the most significant obstacles to more prudent, accountable and inclusive mineral resource governance are: information asymmetries, institutional capacity gaps, limited political will and regional cooperation, and lack slow progress in domestication and implementation of the AMV as a guiding framework for the sector. Below are some recommendations/avenues for change that stakeholders can pursue.

1. **Encourage EAC States to fast track domestication and implementation of the Africa Mining Vision:** Encourage and bring national governments to task on domestication and implementation of the AMV. Initiate multi-stakeholder forums at regional levels to pursue harmonisation of international instruments governing the sector and to increase knowledge of these instruments by national public sector players and strengthen linkages between the instruments and national policy and institutional contexts in partner states.

2. **Promote regional cooperation in extractives governance; pursue coherent regional legal and policy frameworks for trade and investment:** The existing policies among states in East Africa suffer from nationalism and discordance thus continuing to expose each state to volatility in commodity prices and external shocks. Cooperation can catalyse discourage harmful competition for extractive sector related FDI and promote cooperation on tackling IFFs.

3. **Promote inclusivity in governance of the sector – increasing political will and buy-in from policymakers and opening up of policy spaces to non-state actors especially Civil Society:** Broker more multi-stakeholder engagements to promote inclusion and meaningful participation of non-state actors like CSOs and local communities in sector related decision-making processes. This should aim to increase willingness of governments to accept scrutiny, reduce duplication and mixed priorities of international development partners and CSOs, and discourage selective engagement by corporations. This will be useful to fast-track the mineral resource governance reforms, strengthen linkages between the extractive sector and other economic sectors and address other enduring challenges that have characterised the sector. Inclusive decision-making will also be useful for fostering transparency and accountability in the sector.

4. **Enhance frameworks for transparency and openness in the extractives sector:** This can be actualised through implementation of laws and policies around access to information that are already gaining traction in several countries in the region. It can also be achieved through strengthening the role of oversight authorities like legislatures to exert more scrutiny in contracting, licensing and regulation. Some practical steps can include integrating mining in discourse on domestic resource mobilisation and reflecting proceeds from mining, oil and gas in relevant budget and planning frameworks (like MLTSFs, and Visions 2030).

5. **Enhance institutional capacity on mineral resource governance:** Capacity building targeting institutions overseeing the sector is critical for improving administration frameworks and better negotiation of mining contracts for increased benefits to the citizens of regional member states. This can include benchmarking with institutions in the developed world and with other countries in Southern and West Africa that have experienced institutional capacity for example targeting revenue authorities (on such issues as Transfer Pricing, DTAs), regulatory institutions (on such issues as negotiations and contracting, impact assessments), parliament and decentralised government units.

6. **Promote local content participation in the mineral resources sector:** There is need to pursue progressive policies that promote more beneficiation, value addition and local content participation in the sector. Most mining frameworks are designed to largely attract foreign investment, which translates to a significant proportion of revenues benefiting foreign entities than locals. As such, policies and frameworks that promote participation of local entities in the industry need to be established. This can be through innovative local content policies (LCPs), progressive tax regimes and effective regulatory frameworks.

7. **Encourage States to strengthen national level policy frameworks governing Artisanal and Small-Scale Mining (ASM):** Despite Artisanal and Small Scale Mining forming an integral part of the extractives sector, their operations remain largely informal with more attention paid to large scale mining and exporting. Reviewing the regulatory environment is necessary to promote growth, enhance skills and develop capacity of artisanal and small-scale miners.

8. **Pursue alliances and solidarity with other States globally:** Given Africa's structural and socio-cultural transformation is a shared responsibility, cultivating alliances and partnerships with other states and nations is critical for the transformation of mineral resource governance in the continent. Also, capitalise on improving civic space in the region to build a movement of CSOs advocating for improved mineral resource governance, working both regionally (targeting EAC institutions) and nationally (targeting national governments and subnational institutions).

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