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Country profiles on the regulatory framework and the artisanal mining sector

Authors : Selleen SEWPERSHAD (AHK), Rosanna TUFO (Levin Sources)

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Summary

Mapping and assessing responsible investment opportunities in ECRM value Chains. Therefore, the national regulatory framework as well as good governance will be evaluated and country profiles on the regulatory framework and the artisanal mining sector will be elaborated. Finally, investment opportunities will be identified and recommendations will be given.

Approval

Date	By
2024-07-01 14:11:31	Dr. Philip SCHUETTE (BGR)
2024-07-01 14:28:50	Mr. Jean-Claude GUILLANEAU (BRGM)



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Selleen Sewpershad¹, Rosanna Tufo²

¹AHK

²Levin Sources



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Abbreviations and Acronyms

Acronym	Description
3TGs	Tin, Tantalum, Tungsten and Gold
3Ts	Tin, Tantalum and Tungsten
AfCTA	African Continental Free Trade Agreement
AHK	Auslandshandelskammer
AMDC	African Minerals Development Centre
AML	Anti-Money Laundering
ANAM	Agence Nationale des Activités Minières
ANCFCC	Agence Nationale de la Conservation Foncière du Cadastre et de la Cartographie
ANOr	National Agency for the Gold Sector
ANOR	Agence Nationale de l'Or
ANPM	Agence Nationale du Patrimoine Minier
APP	Administrative Procedure Proclamation
ASMEs	Artisanal and Small-Scale Mining Enterprises
AWIMA	Association of Women in Mining in Africa
BBEE	Broad-Based Black Economic Empowerment
BCEA	Basic Conditions of Employment Act
BEEC	Bureau d'Expertise, d'Evaluation et and Certification des Substances Mineral Substances Precious
BGR	Bundesanstalt für Geowissenschaften und Rohstoffe
BLEU	Belgium-Luxembourg Economic Union
BMZ	German Federal Ministry for Economic Cooperation and Development
BNE	Bureau National d'Expertise des Diamants
BOOT	Build, Own, Operate and Transfer
BOT	Build, Operate and Transfer
BRGM	Bureau de Recherches Géologiques et Minières
BWP	Botswana Pula
CACM	Centre of Arbitration, Conciliation and Mediation
CAP	Cobalt Action Partnership
CDN	National Customs Code
CEEC	The Centre for Evaluation, Expertise and Certification of Precious Mineral Substances
CEMAC	Central African Economic and Monetary Community
CFR	Cost and Freight

CIEEMA	Centre of Integrated Artisanal Mining Management
CNM	National Mining Committee
CNRD	National Committee for Reconciliation and Development
CoC	Chain of Custody
COMIGEM	Le Comptoir des Minerais Gemmes et Métaux précieux
COP 27	United Nations Climate Change Conference
CTCPM	The Technical Unit for Mining Coordination and Planning
DSTM	Special Duty on Mining Transactions
EAC	East Africa Community
ECOWAS	Economic Community of West African States
EGC	Entreprise Générale du Cobalt
EIAAR	Environmental Impact Assessment and Audit Regulations
EITI	Extractive Industries Transparency Initiative
ENAMCO	Eritrean National Mining Corporation
EPZ	Export Processing Regime
ESG	Environmental, Social and Governance
FATF	Financial Action Task Force
FDA	Forestry Development Authority
FDI	Foreign Direct Investment
FIA	Foreign Investment Act
FIA Survey	Fraser Institute Annual Survey of Mining Companies
FOB	Free On Board
FOMIN	The Mining Fund for Future Generations
GBV	Gender-Based Violence
GDP	Gross Domestic Product
GEF	Global Environment Facility
GNU	Government of National Unity
ICC	International Chamber of Commerce
ICJ	International Commission of Jurists
ICSID	International Centre for the Settlement of Investment Disputes
ICT	Information and Communications Technology
IDC	Industrial Development Corporation
IDR	Issuer Default Rating
IFRS	International Financial Reporting Standards
IGF	Intergovernmental Forum on Mining, Metals and Sustainable Development
ILAC	International Legal Assistance Consortium

IMF	International Monetary Fund
IPIS	International Peace Information Service
IRP	Integrated Resource Plan
IRPP	Personal Income Tax
ITSCI	International Tin Supply Chain Initiative
JMEF	Junior Mining Exploration Fund
LME	London Metal Exchange
LPF	Book of Tax Procedures
LYD	Libyan Dinars
MAB	Minerals Advisory Board
MAF	Mining Administration Fees
MDA	Mineral Development Agreement
MDCB	Minerals Development Mining Company
MECIE	The Development Compatible with Environmental Investments
MGA	Malagasy Ariary
MIGA	Multilateral Investment Guarantee Agency
MOA	Memorandum of Agreement
MPDC	Mining Promotion and Development Centre
MRRT	Mineral Resource Rent Tax
NACSAP	National Anti-Corruption Strategy and Action Plan
NCS	National Conservation Strategy
NCSMT	National Coordination and Strategic Management Team
NGOs	Non-Governmental Organisations
NIB	National Investment Board
NOE	National Office for the Environment
NRC	National Registration Card
NRGI	Natural Resource Governance Institute
NWA	National Water Authority
OAU	Organisation of African Unity
OCP	Office Chérifien des Phosphates
OHADA	Organisation for the Harmonization of Business Law in Africa
OHCLA	Organisation for the Harmonization of Corporate Law in Africa
OPEC	Organisation of the Petroleum Exporting Countries
PCCB	Prevention and Combating of Corruption Bureau
PGM	Platinum Group Metals
PPE	Personal Protective Equipment
PPI	Producer Price Index

PPP	Public–Private Partnership
RCI	Responsible Cobalt Initiative
RCM	Regional Certification Mechanism
RWN	Rating Watch Negative
SACU	Southern African Customs Union
SADC	Southern African Development Community
SADR	Sahrawi Arab Democratic Republic
SAEMAPE	Service d'assistance et d'encadrement des mines artisanales et de petit échelle
SEIA	Social and Environmental Impact Assessments
SEZ	Special Economic Zone
SLP	Social and Labour Plan
SMEs	Small and Medium-Sized Enterprises
SMS	Strategic Mining Substances
SOE	State Owned Enterprise
SSM	Small-Scale Miners
STEI	Science, Technology, Engineering and Innovation
TMB	Trust Merchant Bank
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
USGS	United States Geological Survey
VAT	Value-Added Tax
VITR	Variable Income Tax Rate
WP	Work Package
WTO	World Trade Organisation

Executive Summary

The AfricaMaVal project aims to encourage EU-Africa value chain partnerships, that will require substantial investment. A country's regulatory framework (task 7.4) is of high importance to facilitate attracting investment. Similarly, it is essential to strengthen Africa's artisanal and small-scale mining (ASM) (task 7.5) sector to enhance its position as a key supplier of Extended Critical Raw Materials (ECRM) to Europe. This report is a joint deliverable consisting of country profiles on the national regulatory framework and the artisanal mining sector in Africa.

The first part of this report presents the outcomes of task 7.4, the national regulatory framework and good governance evaluation which is led by the Southern African–German Chamber of Commerce and Industry (AHK). It aims to assess practices that govern responsible mining investment in Africa, especially focusing on ECRM value chains. The results are documented in the form of 54 country profiles, which provide an overview of the policy and legal framework for the mining sector, focusing on the judicial system, foreign ownership, migrant & local labour law, ASM sector, licencing and permitting regime, taxation and royalties, mineral beneficiation, macroeconomics, investment climate and risk ratings. These country profiles are based on publicly available information and cover regulatory frameworks and governance based on the criteria deemed relevant for an investor.

The legislative review was complemented by an analysis of national frameworks for good governance, transparency, and accountability while taking note of risk ratings from Global Insurer Allianz, Moody's, Fitch, S&P Global Ratings, Extractive Industries Transparency Initiative (EITI), Organisation for Economic Co-operation and Development (OECD) and Transparency International. The assessment also notes findings of the Fraser Institute Annual (FIA) Survey of Mining Companies which provides key insights into policy perception and investment attractiveness in Africa's mining sector. Countries with stable and predictable policies, such as Botswana rank highly. Countries with high or unpredictable taxation rates, such as the Democratic Republic of Congo (DRC), tend to score lower. Despite policy and regulatory challenges, countries with significant mineral wealth, such as South Africa and Zambia, still attract considerable interest. Political instability and security concerns, prevalent in countries like Mali and Zimbabwe, weaken their appeal.

In many African countries, a considerable portion of mining activities particularly in the ASM sector are largely informal, leading to inconsistent law enforcement and opacity owing to corruption and bureaucratic hurdles. However, numerous countries have embarked on policy and regulatory reforms to foster private sector engagement, increase local value addition, improve geological and mineral information systems to underpin exploration and mine development (especially for ECRMs), attract new capital investments, and regulate the ASM sector. Regional efforts have also been initiated to amplify environmental aspects, benefits for mining communities, improve governance and transparency in licensing and management of mineral rights, and accountability in the management and use of mineral revenue, by joining initiatives like EITI. Furthermore, many countries have improved their investment climate by improving regulatory stability, ease of doing business, availability of financial incentives, and investor rights protection, consequently elevating their risk ratings, and making it attractive destinations for investment.



The second part of this report, the artisanal and small-scale (ASM) country profiles, presents the outcomes of task 7.5 which focused on identifying responsible investment opportunities to strengthen ASM value chain potential for ECRM, with particular emphasis on responsible investment opportunities that strengthen the ASM sector's supply potential and address ESG impacts while also contributing to higher value addition and economic development. The scope has been defined based on the outcomes of the AfricaMaVal deliverable 1.4 which identified the African countries where the ASM sector is already involved in the production of ECRM, or where there are ECRM deposits suitable for ASM production. As a result, task 7.5 focused on analysing the ASM sector in Burundi, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Ethiopia, Madagascar, Morocco, Mozambique, Nigeria, Republic of Congo, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe. Each profile aimed at characterising the ASM sector nationally and identifying major challenges inhibiting development and major investment needs. The focus on national context rather than at individual project levels was agreed based on task 7.5 scope, but also by recognising that many of the challenges and related investment needs of the ASM sector are systemic and can represent greater opportunities for sustainable development if tackled at sector level, while also taking into account the context of specific mineral value chains and mining communities.

Task 7.5 was led by the Levin Sources team through mostly desk-based methods, such as reviewing existing literature and publicly available information, and mostly phone interviews with stakeholders in the countries in scope, except for Cameroon and the Republic of Congo. The authors recognise the limitations of the desk-based methods in relation to the ambitions of task 7.5. In particular because this affected a more collaborative stakeholder engagement, the possibility to triangulate information collected or to address some of the data gaps encountered.

The analysis done to compile the 15 ASM country profiles provides an overview of the African ASM sector, showing both differences and commonalities. In particular, the research outlined how ECRM production is not yet happening to the same extent across the ASM sector in the 15 countries analysed. Instead, many, e.g., Cameroon, Côte d'Ivoire, Mozambique, Republic of Congo and Tanzania, remain more focused on commodities such as gold, coloured gemstones, and diamonds. In other countries with sufficient geological endowment in ECRM deposits that are suitable for ASM exploitation, increasing global demand and higher prices in certain periods for some of the ECRM, as in the case of lithium, have resulted in an increased involvement of the ASM sector, for example in Madagascar and Zimbabwe. Other countries, like Burundi, the DRC, Rwanda and Zambia, have a well-known geological ECRM endowment and a long history of ASM, contributing to the production of ECRM like tantalum-niobium, tin and tungsten (3T), copper-cobalt and manganese. Although specific to national context, a series of common challenges were identified by analysing the 15 countries. These include the structure and implementation of regulatory frameworks, availability of geological information, access to formal financing mechanisms, rudimentary mining practices (skills and tools) and evidence of adverse social and environmental impacts. Building on the challenges presented in each profile and based on inputs from stakeholders when applicable, investment needs and opportunities have been outlined. These include support to governance and technical assistance, programmes to facilitate access to finance and commercial partnerships through involvement of private sector (traders, commercial banks, etc.) and continued efforts to support responsible mining to mitigate and reduce adverse environmental and social impacts.



Keywords

Policy, legislation, licencing and permit regime, critical raw materials, mineral beneficiation, taxation, macroeconomics, investment climate, risk ratings, access to finance, artisanal and small-scale mining, environmental and social impacts, formalisation, governance, informal economy, supply chain

1 Introduction

The AfricaMaVal project aims to develop EU-Africa value chain partnerships that contribute to responsible sourcing of critical and strategic raw materials for the European industry while granting a sustainable local co-development in the best Environmental, Social and Governance (ESG) conditions which would lead to a long-term sustainable business environment for European and African companies. This report is part of AfricaMaVal Work Package (WP) 7, titled 'Responsible Investment Opportunities' led by BGR. It is a joint deliverable which consolidates findings from task 7.4 (National Regulatory Framework and Good Governance Evaluation) led by the Southern African - German Chamber of Commerce and Industry (AHK) and task 7.5 (Evaluation of responsible investment for artisanal and small-scale mining) led by Levin Sources.

1.1 National Regulatory Framework and Good Governance Evaluation

The mining sector in Africa holds significant potential for driving economic growth, fostering sustainable development, and alleviating poverty. Over the past decade, Africa's mining sector has demonstrated resilience to adverse conditions in the global economy. However, European investment in African mining remains very low. The significance of strong national regulatory frameworks and good governance practices for encouraging foreign direct investment, financing, or other forms of economic cooperation in mining and mineral value addition cannot be overstated.

Task 7.4 aims to assess the national regulatory frameworks and governance structures that govern responsible mining investment in Africa, from an investor's perspective. This is meant to support European investors and policy makers and encourage their engagement in African mineral value chains. The assessment was conducted through high-level desktop reviews on a per country basis with the following objectives:

- a) Provide a general overview of the national legislation and its main characteristics and content, specifically regarding aspects of regulation pertaining to mining law.
- b) Evaluate legislative impact on mining industry development with regards to value addition and investment.

1.1.1 Methodology

The legislative landscape governing the mining sector is typically a complex tapestry of mining, industrial, trade and fiscal laws, regulations and policies designed to manage and optimize the extraction and use of mineral resources. The ecosystem varies significantly from one country to another, influenced by various factors, particularly the abundance of mineral resources. Hence, the priorities derived from AfricaMaVal's WP 7, task 7.1 (Preliminary project and country screening) on the ECRM endowment was the basis for the extent of detail in each country profile. This legislative review is supplemented by an analysis of the national frameworks for good governance, transparency, and accountability.

The assessments focused on the following criteria:



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- **Policy and legal framework:** Foundational laws and policies guiding mining operations with specific focus on mining acts, regulations on foreign ownership, labour requirements, provisions for artisanal and small-scale mining, and relevant judicial, environmental, social, and labour laws to ensure alignment with national development goals and sustainable practices.
- **Licensing and permit regime:** This includes the procedures and requirements for obtaining necessary licenses and approvals, types of licenses, and applicable restrictions and authorisations.
- **Taxation:** Financial regulations determining the viability of mining projects, including royalty rates, corporate taxes, additional levies and duties. This includes taxation rates on specific ECRMs were available.
- **Mineral beneficiation:** Policies aimed at increasing value addition to raw minerals before export to boost local economies and create employment, including in-country processing and exportation requirements. This includes any applicable export bans in relation to ECRMs.
- **Macroeconomics:** Assesses the broader economic conditions affecting the mining sector, including factors such as economic stability, inflation rates, and gross domestic product (GDP) growth, which influence the overall attractiveness of the country for mining investments and the potential for sustainable industry development.
- **Investment climate:** Evaluates the specific conditions that affect the willingness and ability of investors to commit resources to the mining sector. This includes evaluating the ease of doing business, regulatory stability, availability of financial incentives, and protection of investor rights. A favourable investment climate is essential for attracting both domestic and foreign investment, which is crucial for the growth and modernization of the mining industry.
- **Governance and risk ratings:** This considers the political, economic, and operational risks that could impact investment returns which helps to identify potential barriers to investment and areas where legislative reforms could enhance industry attractiveness. The ratings are based on Global Insurer Allianz, Moody's, Fitch, S&P Global Ratings, Extractive Industries Transparency Initiative (EITI), Organisation for Economic Co-operation and Development (OECD), Fraser Institute Annual (FIA) Survey of Mining Companies, Transparency International etc.
- **Good governance evaluation:** Highlights key regulatory aspects influencing value addition and investment in the mining sector, an assessment of the country's governance, transparency, and accountability frameworks, identifies challenges, and offers insights into potential regulatory shifts or governance trends.

The results are documented in the form of 54 country profiles detailed in Chapter 2 of this report. The references for information on individual countries are cited in footnotes instead of being compiled into a single large reference list for the entire report. The authors believe this format better serves the readers.

1.1.2 Research Limitations

The evaluation of regulatory frameworks and governance under task 7.4 is based on publicly available data, which have brought about a few limitations.

Regulatory and governance data for some countries is not readily available or accessible due to a lack of transparency, restricted access to government databases, or incomplete and outdated public records. This also applies to countries with negligible or less developed mining sectors. Nevertheless, the structure of the country profiles has been maintained to ensure consistency and to highlight any informational gaps to the reader. This issue is particularly prevalent in areas such as the legal and institutional framework for enforcing contracts, resolving disputes, licensing procedure and requirements, regulations pertaining to mineral beneficiation and restrictions on exports, applicable taxes, and mining royalty rates. While efforts have been made to use reliable sources, regulatory frameworks and governance practices are subject to change, and readers are advised to consult recent updates and current data.

1.1.3 Authorship

Different authors, contributors and reviewers were involved in each country profile. It also incorporates information from other AfricaMaVal work packages, such as mining regimes with respect to ESG objectives from WP 4 and, Macroeconomics and Legal and Tax Regime from WP 3 in relation to specific case study countries. These are listed in **Annex 4.1 - Authorship of Task 7.4**.

1.2 Artisanal and Small-Scale Mining (ASM) Country Profiles

Identifying responsible investment opportunities in the ECRM mining industry across the African continent requires recognising the socio-economic contributions and needs of the artisanal and small-scale mining sector. It is estimated that in Sub-Saharan Africa the whole ASM sector involves about 10 million people and up to 60 million whose livelihood depends on the sector directly or from activities linked to it (World Bank, 2019). Although a global definition of the sector has not been defined, within the present report we will consider the OECD definition, based on which ASM refers to “formal or informal mining operations with predominantly simplified forms of exploration, extraction, processing, and transportation. ASM is normally low capital intensive and uses high labour-intensive technology” (OECD, 2016). Nevertheless, the ASM sector is characterised by a diversity of operating environments which are context and country specific. For writing practicalities, the authors will use ASM as a term throughout the report, but they invite readers to remain aware that the sector is made of a variety of individuals and organisations, having different roles in the mineral value chains. To the extent possible, these characteristics will be described in the report in the context of each specific country and raw material.

The AfricaMaVal project task 7.5 has focused on identifying potential responsible investment opportunities and on the associated national sector framework to strengthen ASM value chain potential for ECRM. Particular emphasis has been on responsible investment opportunities that strengthen the ASM sector’s supply potential and address ESG impacts while also contributing to higher value addition and economic development. To achieve this, the authors have prepared ASM country profiles, to outline the characteristics of the ASM sector in targeted African countries, with a particular attention to ECRM value



chains. The outcomes of task 7.5 will contribute to the development of responsible ECRM investment opportunities and recommendations under task 7.6 within AfricaMaVal WP 7.

The rationale to focus on country profiles rather than identifying individual ASM projects is twofold. On one hand, it was the most feasible approach based on task 7.5 scope and available resources. Usually, reliable project-specific information in the ASM sector, as a base to develop a solid investment case, is hard to come by and frequently does not exist at all. On the other hand, many of the challenges and needs of the ASM sector, both in terms of improving ESG performance and strengthening its contribution to total mineral production, are systemic and affecting the sector as a whole in the countries analysed. As a result, understanding some of the barriers inhibiting the development of the sector and investment needs at country-level, presents the biggest opportunity for scalable and sustainable impact. In this sense, some of the ASM-related ‘investment opportunities’ presented in this report are not necessarily recommendations for the European private sector to invest in individual projects – though this is possible and encouraged – but may refer to strategic ASM sector engagement and cooperation by European policy makers and donors specifically in the ECRM sectors.

The geographical focus has been guided by the outcomes of the AfricaMaVal deliverable 1.4 which provides information on countries where ECRM are already produced by the ASM sector or where significant potential exists based on available geological information. As a result, 15 countries were prioritised for the ASM country profiles of task 7.5, these being Burundi, Cameroon, Côte d’Ivoire, the Democratic Republic of Congo, Ethiopia, Madagascar, Morocco, Mozambique, Nigeria, Republic of Congo, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe. It is important to emphasise that not all these countries present the same level of ECRM geological endowment and production by ASM. This was taken into account during the methodology development, but it also presented some limitations as outlined below.

Each ASM country profile is organised in five sections:

- **Introduction and ASM sector overview:** to describe the main characteristics of the ASM sector in the country, its contribution to livelihoods, regulation and governance arrangements applicable to the ASM sector and data on which ECRM are produced by ASM. This initial section ultimately focuses on contextual information to analyse the ASM sector in each country.
- **ASM mineral value chains:** trying to understand how the ECRM ASM value chains are structured in each country, what are the different stages and who are the main actors involved.
- **ASM sector challenges** at country level and across several themes including governance, economic, technical, social and environmental. This section is particularly focused on understanding the most important limitations and barriers which inhibit ASM sector development and that might hinder investments.
- **Relevant initiatives and stakeholders:** recognising that in most of the countries analysed several relevant initiatives have already taken place, including some being implemented at the time of writing this report. While this section does not aim to present exhaustive lists of all the initiatives and stakeholders for each country, the authors tried to focus on those which are relevant to understand existing and past



efforts in the ASM sector, and that either represent opportunities to expand the scope of action through additional funding or provide learnings to consider for further investments and programmes.

- **Investment needs and opportunities:** representing a key section for all countries, where the authors have included reflections based on analysis of existing literature and inputs from stakeholders (see methodology below). The term investment has also been considered more broadly than how it is used in the financial and industrial mining sectors. Rather than considering investments in individual projects, this section looks at areas which require funding to unblock some of the identified systemic challenges to enable the development of the sector. For this reason, the authors have prioritised opportunities to strengthen governance, value chain investments, technical support (knowledge, equipment, services) and measures to reduce, manage or mitigate negative social and environmental impacts.

1.2.1 Methodology

The work under task 7.5 has been largely done through desk-based methods, in line with available scope and financial resources. For the DRC, Madagascar, Rwanda, Uganda and Mozambique, national ASM experts have been involved in the research. Specific methods have included:

- Literature review of available public sources and documentation on the ASM sector in the 15 countries in scope.
- Interviews with key stakeholders (except for Cameroon and Republic of Congo): 96 qualitative interviews have been conducted with stakeholders from different groups, between March 2023 and April 2024, including government representatives, civil society, ASM value chain actors (miners, traders) and ASM sector experts. The interviews were semi-structured, and researchers used predefined questions in line with the research scope.
- Consultative meetings with government representatives through side events during the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) Annual General Meeting in November 2023. 8 out of the 15 countries in scope were present during the meeting.

1.2.2 Research limitations

Research limitations should be noted to contextualise the results presented in the ASM country profiles under task 7.5. Despite the limitations listed in this section though, the outcomes of the report represent an important contribution to understand available information on ASM and ECRM in African countries and provide an overview of the sector in the countries in scope.

The desk-based nature of the work did not allow to close important gaps in terms of data availability and provided limited or no opportunity to triangulate information and ground truth outcomes. The authors managed to secure several phone interviews with stakeholders, and some in person meetings, although interactions and engagement have mainly focused on data collection, with limited opportunity to follow up discussions and test research outcomes. Taking forward the outcomes on investment needs will require more dynamic and collaborative engagements with stakeholders, which was not fully possible within the financial resources available for this task. Nevertheless, as described in the methodology,



researchers held several remote meetings with key stakeholders to collect their views and experiences, at least for the countries where the ECRM ASM sector has already significant attention from the government and other stakeholders.

Another limitation relates to the diversity of stakeholders engaged in each country. Although overall the authors managed to involve the key stakeholders' groups in the context of ASM supply chains, this was not possible for all countries, where only representatives from certain groups were available to speak or have been identified for remote interviews.

Finally, considering the limited information available on ECRM across the 15 countries, the authors tried to navigate the gaps, through available estimations and qualitative interviews. The main data limitations managed include:

- Different availability of information across the 15 countries in scope, which also impacted the level of detail included in the final profiles. As a result, although the authors tried to follow a defined structure and narrative, this was not always possible where information was scarce.
- With the exception of a few countries (e.g. the DRC, Rwanda, Zambia), literature on ECRM and the ASM sector remains limited with little or no official data available on the sector contributions. Most information on the ASM sector remains focused on commodities like gold, coloured gemstones and diamonds. When applicable, the authors tried to extract challenges and needs from information available about these commodities to build assumption on what is likely to or could apply to ECRM value chains.

Accurately describing ASM mineral value chains proved challenging in most countries. The authors identified three reasons. (1) ASM value chain information remains very dynamic and complex in terms of actors involved and trade relations. As a result, through desk-based methods, it was particularly difficult to identify reliable data and information. (2) Data on mineral production and trade of ASM commodities is mostly limited or inconsistent, making it difficult to extract precise information. (3) Even when researchers managed to speak with supply chain actors, many remained secretive about the actual dynamics of production and trade.

1.2.3 Authorship

Different researchers, authors and contributors were involved in each country profile. These are listed in **Annex 4.2 -Authorship of Task 7.5**.



2 National Regulatory Framework and Good Governance Evaluation

2.1 Algeria

2.1.1 Introduction

Algeria, situated in North Africa, is the largest country on the continent. It has a diverse landscape, with significant hydrocarbon resources.

The economy heavily relies on the oil and gas sector, but there is growing interest in developing other industries, including mining. Algeria is rich in mineral resources such as iron ore, phosphate, gold, copper, zinc, lead, marble, bentonite, barite, manganese, and wolframite¹.

2.1.2 Policy and Legal Framework

2.1.2.1. Institutional and Policy Overview

Algeria operates under a civil law legal system, which has developed since independence in 1962 and which has been primarily influenced by French legal traditions.

The Ministry of Energy and Mines in Algeria is tasked with developing policy and strategy for the exploration, production and beneficiation of petroleum, mining and energy resources, and their related industries in general. The ministry covers both liquid and gaseous hydrocarbons, as well as mined resources, all forms of electrical energy transmission, new and renewable forms of energy and nuclear energy².

The ministry is composed of a secretary general and seven directors general, each in charge of a specific type of energy or activity. Moreover, the respective provinces, which constitute administrative divisions in Algeria, each have their own Directorate for Energy and Mines which is responsible for the implementation of local policy and action programmes in the energy and mines sector³.

2.1.2.2. Relevant Legal Instruments

The mining sector in Algeria is governed by the Mining Law No. 14-05, of February 24, 2014, which replaced the previous mining code, by way of Executive Decree No. 18-202, effective as of August 5, 2018⁴.

The country's mining law provides regulations for the exploration, exploitation, and beneficiation of mineral substances. It outlines Licencing procedures, environmental protection measures, and

¹ Skillings, New Horizons for Mining in 2023. Available on <https://skillings.net/new-horizons-for-mining-in-2023/>, accessed on 28 February 2024.

² Sheraman & Sterling, A Practical Guide to the Law and Regulation. Available on https://www.shearman.com/en/newsinsights/publications/2015/08/~/_media/A829AB6490E9437FA18FAC91B403676F.ashx accessed on 28 April 2024.

³ *Ibid.*

⁴ Lupicinio, Mining Algeria: Guide for the granting of mining permits, July 2019. Available on <https://lupicinio.com/en/mining-algeria-guide-granting-mining-permits/>, Accessed on 28 February 2024.

community engagement requirements. The law reorganises the institutional framework for the mining sector and redefines mining contracts. It converts the mining body, the Agence Nationale du Patrimoine Minier (ANPM), into the Agence Nationale des Activités Minières (ANAM), which will have new powers including the policing of mines. It classifies resources into strategic and non-strategic⁵.

2.1.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Any local company with the requisite technical and financial capacity can carry out prospecting and development of non-strategic resources. Strategic resources can only be developed by state-owned companies or other state-owned entities⁶. Foreign companies incorporated after the entry into force of the 2009 Supplementary Finance Law must comply with the so-called “51/49 rule”. Under this rule, at least 51% of the share capital of companies incorporated in Algeria should be owned by national residents.

2.1.2.4. Artisanal Mining Sector

The Algerian mining legislation provides for artisanal mining. Exploitation permits in relation to artisanal mining exploitation are granted for a maximum of five years renewable several times for periods of up to two years⁷.

2.1.2.5. Judicial System

- **Judicial independence**

The judiciary comprises various courts, including the tribunals, as courts of first instance, courts (of which there are 58 - one per province) and the Supreme Court as the highest court of appeal. The Supreme Court consists of eight chambers⁸.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, Algeria in 2010 improved contract enforcement by introducing a new civil procedure code that reduces the steps and time required and by fully computerising the courts, including by setting up an electronic case management system⁹.

- **Protection of Minority Investors**

No information was found in this regard.

⁵ Investment Policy Hub, Algeria Mining Law, January 2014. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2543/algeria-mining-law-adopted#:~:text=The%20law%20reorganises%20the%20institutional,including%20the%20policing%20of%20mines>, accessed on 5 May 2024.

⁶ Investment Policy Hub, Algeria Mining Law, January 2014. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2543/algeria-mining-law-adopted#:~:text=The%20law%20reorganises%20the%20institutional,including%20the%20policing%20of%20mines>, accessed on 5 May 2024.

⁷ Lex Africa, Guide to Mining Regimes in Africa 2016/2017. Available on <https://www.werksmans.com/wp-content/uploads/2013/04/LEX-Africa-guided-to-mining-in-Africa.pdf>, accessed on 14 March 2024.

⁸ Algeria Invest, Law And Legal System. Available on https://algeriainvest.com/storage/uploads/discover_algeria/documents/1627339255Law%20and%20legal%20system.pdf. Accessed on 28 February 2024.

⁹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 14 March 2024.

2.1.2.6. Arbitration

Algeria is a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention) and the Convention on the International Centre for the Settlement of Investment Disputes (ICSID Convention)¹⁰.

The Algerian law permits private and public sector companies' full recourse to international arbitration. Algeria also permits the inclusion of international arbitration clauses in private contracts. Investment disputes can be settled through negotiations between the parties or via the domestic court system. For disputes involving foreign investors, such matters can also be decided through international arbitration¹¹.

Local courts recognise and have the authority to enforce foreign arbitral awards. The Ministry of Justice oversees the enforcement of arbitral awards against SOEs. Alternative dispute resolution mechanisms are however not widely used according to the US State Department's 2023 report on Algeria.

2.1.3 Licencing and Permit Regime

2.1.3.1. Types of Licences and Permits

- **Prospection permit**
 - Prospection permits are granted by the national agency for mining activities after consultation of the relevant governor of the relevant province for the search of mineral by geophysical, geological or topographic means. Prospection permits are granted for a maximum of one year renewable twice for a maximum period of six months each time.
 - The discovery of mineral or fossil resources during the validity of the prospection permit gives the holder of a prospection permit a priority right for the exploration of the site. Prospection permits in relation to strategic minerals may only be granted to State-owned companies. No list of strategic minerals has been adopted so far.
- **Exploration permit**
 - The activities of exploration include, among other things, geophysical and geological studies and the extraction of samples. Exploration permits may encompass several mineral or fossil deposits. The holder of an exploration permit is entitled to use the extracted minerals to perform mineralogical tests.
 - Exploration permits are granted by the national agency for mining activities after consultation of the relevant governor of the relevant province for a maximum of three years renewable two times for a period of two years each time. The discovery of a

¹⁰ U.S. Department of State, 2023 Investment Climate Statements: Algeria. Available on <https://www.state.gov/reports/2023-investment-climate-statements/algeria>. Accessed on 28 February 2024.

¹¹ Ibid.

commercially exploitable mineral deposit during the validity of the exploration permit gives the permit holder a right to obtain an exploitation permit on the site.

- **Exploitation permit**

- The exploitation permit is granted by the national agency for mining activities after consultation of the relevant governor of the relevant province in priority to the holder of the exploration permit who has discovered a commercially exploitable mineral deposit. If, for any reason, the exploitation permit is not granted to the holder of the exploration permit who has discovered a commercially exploitable mineral deposit, the exploitation permit is granted to a third party. Exploitation permits are generally granted for a maximum of twenty years renewable several times for periods of up to ten years¹².

2.1.3.2. Transferability of Mineral Rights

Exploitation permits can be sold or transferred, partially or fully. Such transfer is subject to the prior authorisation of the national agency for mining activities. Prospection permits are not transferrable. Exploration permits are not transferrable. Furthermore, exploitation permits, and exploration permits in relation to strategic minerals may only be granted to State-owned companies¹³.

2.1.4 Taxation

2.1.4.1. Mining Royalties and Taxes

Under the Mining Code, holders of exploration or exploitation permits are subject to (i) a duty payable when the permit is granted and (ii) a specific annual surface tax. The landowner may also require the payment of rent. An additional exploitation tax is applicable to the holder of a permit for (i) the exploitation of mines, (ii) the exploitation of quarries and (iii) the “artisanal” exploitation of mines. This additional exploitation tax is not applicable to the holder of a permit for (iv) the collection and disposal of minerals in quarries where no extraction is required¹⁴.

Royalties are charged for the exploitation of various kinds of minerals mined. The payment is due annually, for the previous tax year, and rates range from 1.5% of the value of solid combustibles and metallic minerals to 6% for precious and semi-precious metals and gems¹⁵.

2.1.5 Mineral Beneficiation

There are no specific requirements under the Mining Code with respect to beneficiation of mineral¹⁶.

¹² Lex Africa, Guide to Mining Regimes in Africa 2016/2017. Available on <https://www.werksmans.com/wp-content/uploads/2013/04/LEX-Africa-guided-to-mining-in-Africa.pdf> accessed on 14 March 2024

¹³ Lex Africa, Guide to Mining Regimes in Africa 2016/2017. Available on <https://www.werksmans.com/wp-content/uploads/2013/04/LEX-Africa-guided-to-mining-in-Africa.pdf> accessed on 14 March 2024.

¹⁴ Ibid.

¹⁵ Algeria: New Mining Law Adopted. Available on <https://www.loc.gov/item/global-legal-monitor/2014-05-30/algeria-new-mining-law-adopted/#:~:text=The%20payment%20is%20due%20annually,semi%2Dprecious%20metals%20and%20gems>. Accessed on 28 April 2024.

¹⁶ <https://www.werksmans.com/wp-content/uploads/2013/04/LEX-Africa-guided-to-mining-in-Africa.pdf> accessed on 14 March 2024

2.1.6 Macroeconomics

According to the African Development Bank, real GDP growth in Algeria climbed to 3.0% in 2022 from 3.4% in 2021, stimulated by the rebound in oil prices in 2022. Monetary authorities implemented a refinancing plan to grant new loans to the government and the rest of the economy. Inflation continued to rise, to 9.3% in 2022 from 7.2% in 2021, due to global inflation. The budget deficit fell from 6.9% of GDP in 2021 to 0.2% in 2022, while budgetary revenue rose, especially revenue related to the oil sector¹⁷.

Real GDP growth is projected to be 2.1% in 2024. While crude oil prices are expected to remain high, capacity to expand production could be limited in the short term. As a result, growth may decline due to the lack of an explicit economic diversification policy and constraints on the capacity to expand natural gas production in the short term. Inflation is projected to decline to 6.7% in 2024. Constraints on global grain supplies could maintain pressure on food prices, and due to the monetary financing of the budget deficit, monetary policy is expected to remain expansionist. The budget deficit is projected to widen to 5.0% in 2024 due to lower tax revenue and higher budgetary spending pressured by social spending¹⁸. According to the African Development Bank, the economy's strong dependence on the oil sector poses a risk for the medium-term economic outlook.

2.1.7 Governance and Risk Ratings

2.1.7.1. Ease of doing business

In terms of the World Bank Doing Business Index, which ranks the ease of doing business in 190 countries, covering factors such as business registration, contract enforcement, and regulatory transparency, Algeria ranked 157 in 2020¹⁹.

2.1.7.2. Investment Climate

Complicated customs procedures, cumbersome bureaucracy, and difficulties in monetary transfers, all make Algeria a challenging environment to operate and invest in. Opaque application of laws and regulations raises commercial risk for foreign investors. Limited regional integration and import restrictions, which hamper opportunities to rely on international supply chains also make the investment climate complicated²⁰.

2.1.7.3. Risk Ratings

The Basel AML Index measures the risk of money laundering and terrorist financing (ML / TF) in jurisdictions around the world. It is based on a composite methodology, with 18 indicators categorised

¹⁷ African Development Bank, Algeria Economic Outlook. Available on <https://www.afdb.org/en/countries-north-africa-algeria/algeria-economic-outlook> accessed on 1 March 2024.

¹⁸ Ibid.

¹⁹ <https://archive.doingbusiness.org/content/dam/doingBusiness/country/a/algeria/DZA.pdf> Accessed on 28 February 2024

²⁰ U.S. Department of State, 2023 Investment Climate Statements: Algeria. Available on <https://www.state.gov/reports/2023-investment-climate-statements/algeria#:~:text=Algerian%20government%20officials%20frequently%20encourage,%2C%20renewable%20energy%2C%20and%20healthcare>. Accessed on 14 March 2024.

into five domains in line with the five key factors considered to contribute to a high risk of ML/TF. The index covers the following topics (with associated weightings):

- Quality of AML/CFT Framework (65%)
- Corruption and Bribery Risk (10%)
- Transparency and Standards (10%)
- Public Transparency and Accountability (5%)
- Political and Legal Risk (10%).

Algeria scored poorly, at 7.22 and was ranked 12th out of 152, with 1 being the most high-risk and 152 being the least high risk²¹.

Global insurer Allianz attributes a poor rating to Algeria based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C2 - medium risk for enterprise²².

2.1.8 Good Governance Evaluation

The Algerian mining industry is small. Hydrocarbons are the leading sector in Algeria's mineral industry. Diverse but modest production of metals and industrial minerals exist. Algeria is a major producer of hydrocarbons in the world. Algeria held about 21% of the total world identified resources of helium, 2.5% of total world natural gas reserves, and about 1% of total world crude oil reserves. Consequently, as the world economy moves away from hydrocarbons to a greener economy, Algeria must consider the promotion of its mining industry to ensure a just transition away from hydrocarbons.

²¹ Public Edition Global ranking in 2023. Available on <https://index.baselgovernance.org/ranking>. Accessed on 28 February 2024.

²² Allianz, Economic Research. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/algeria.html. Accessed on 29 February 2024.

2.2 Angola

2.2.1 Introduction

The Republic of Angola is a country on the west-central coast of Southern Africa. It is the seventh-largest country in Africa and is bordered by Namibia, the Democratic Republic of Congo, Zambia, and the Atlantic Ocean. The capital and most populous city is Luanda.

As the third largest oil producer in Africa, Angola's economy relies heavily on oil and gas production, accounting for approximately one-third of the country's GDP. In 2021, oil accounted for about 84% of the country's total export earnings. Mining in Angola is seen as a growth industry. Angola is a significant producer of diamonds. Angola ranks as the world's third largest diamond exporter by value, with exports exceeding USD 1.6 billion in 2021²³.

Approximately 60% of its territory is unexplored and is believed to host significant reservoirs of critical minerals including rare earth elements, copper, cobalt, manganese, and lithium. These resources present Angola with a chance to reduce its dependence on oil and diamonds by diversifying its economy²⁴.

2.2.2 Policy and Legal Framework

2.2.2.1. Institutional and Policy Overview

Angola's legal system follows civil law tradition and is heavily influenced by Portuguese law (Portuguese law applied in the country until its independence in 1975). Legislation is the primary source of law and precedent is accepted but not binding as is the case in common-law jurisdictions²⁵.

From a mining perspective, the Ministry of Mineral Resources, Petroleum and Gas and the Angolan Institute of Geology regulate mining affairs in Angola. The National Geology Plan for geological mapping and surveying of national mineral resources was supposed to be completed by the end of 2021, which has not yet occurred²⁶.

2.2.2.2. Relevant Legal Instruments

Law No. 31/11 of 23 September 2011 (the Mining Code) specifically regulates mining in Angola. In terms of the Angolan constitution (Constitution), the state is the owner of all mineral resources, found in the soil, subsoil or water are the sole property of the state. It also provides that the state sets forth the terms and conditions for their concession, exploration and mining, which gives it effective control over the grant of mining rights²⁷.

²³ EITI – Angola. Available on <https://eiti.org/countries/angola>, accessed 30 April 2024.

²⁴ Untapped mineral riches: Angola looks beyond diamond mining, April 2024. Available on <https://www.mining-technology.com/features/angola-mining-resources-critical-minerals-rare-earths/?cf-view>, accessed on 30 April 2024.

²⁵ Chambers and Partners, ANGOLA: An Introduction to General Business Law: International Firms. Available on <https://chambers.com/content/item/4147>, accessed on 25 March 2024.

²⁶ Lexology, In brief: mining rights and title in Angola. Available on <https://www.lexology.com/library/detail.aspx?g=485e518d-d00e-4434-8829-726e2e8f60d0>, accessed on 25 March 2024.

²⁷ Ibid.



In addition to the Mining Code, there are other legal statutes and regulations governing the mining sector, these include:

- Angolan National Bank Order 2/23, of 9 February 2023, which approves the foreign exchange regime applicable to the mining sector;
- Joint Executive Decree 536/22, of 25 October 2022, which approves the fees and charges applicable to the Mining Sector;
- Presidential Decree 161/20 of 5 June 2020 (as amended by Presidential Decree 6/22, of 12 January 2022), which establishes the National Agency for Mineral Resources;
- Presidential Decree 143/20, of 26 May 2020, which approves the Governance Model for the Mining Sector;
- Presidential Decree 85/19 of 21 March 2019 (as amended by Rectification 18/19, of 28 June 2019), which approves the regulations for semi-industrial mining of diamonds;
- Presidential Decree 35/19 of 31 January 2019 (as amended by Rectification 11/19, of 8 May 2019), which approves the technical regulations for the marketing of rough diamonds;
- Presidential Decree 175/18 of 27 July 2018, which approves the new rough diamonds marketing policy;
- Executive Decree 346/17 of 14 July 2017, which sets forth the criteria for delimitation of concession areas for exploitation of construction materials;
- Joint Executive Decree 316/17 of 27 June 2017, which approves the list of equipment (for use in exploration and mining activities) exempted from customs duties and fees;
- Presidential Decree 231/16 of 8 December 2016, which classifies rare metals and rare earth elements as strategic minerals;
- Presidential Decree 158/16 of 10 August 2016, which sets forth administrative offences and relevant penalties; and
- Order 255/14 of 28 January 2014, of the Ministry of Geology and Mines, on monitoring of posting of bonds and payments of surface fees and royalties under the Mining Code²⁸.

2.2.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Generally, Angolan law does not require local partner participation in mineral rights. Both foreign and local mining companies (owned by Angolan nationals) may be awarded concessions and engage in the

²⁸ Chambers and Partners, Mining 2024 Angola – Law and Practice, January 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/angola>, accessed on 25 March 2024.

exploration and mining of minerals. The national concessionaires (where applicable) may partner with local or foreign entities in connection with mineral projects²⁹.

Notwithstanding the constitutional guarantee regarding independence of the judiciary, this is not the case in practice, and there is extensive influence by the executive over judicial functions. For example, the president of the country appoints 16 Supreme Court judges for life upon the recommendation of an association of magistrates. Furthermore, the president appoints the attorney general and independent confirmation by the General Assembly is not required under Angolan law³⁰.

2.2.2.4. Artisanal Mining Sector

The artisanal mining sector is a significant and prominent force in the Angolan mining industry, particularly in relation to diamonds. It is also a large source of diamond smuggling. It is estimated that the Angolan diamond sector produces just over one-third of Angola's official diamond output. There are no accurate figures, but estimates are that Angola has been producing in the region of US \$1 billion per year worth of diamonds every year for the past 20 years. This figure is likely declining because of the exhaustion of alluvial reserves due to years of uncontrolled digging. Smuggling will fall if the government is able to control this sector³¹.

2.2.2.5. Judicial System

- **Judicial independence**

All laws in Angola are subject to the Constitution. It establishes the general principle of separation of powers between the judicial, executive and legislative power. All judicial authority in Angola is vested in its courts, which are independent and subject to the Constitution and the rule of law. The main courts are the Constitutional Court, the Supreme Courts, and the Provincial Courts³².

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank research, in 2018 Angola made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism³³.

- **Protection of Minority Investors**

No information was found in this regard.

²⁹ Lexology, In brief: mining rights and title in Angola. Available on <https://www.lexology.com/library/detail.aspx?g=485e518d-d00e-4434-8829-726e2e8f60d0>, accessed on 25 March 2024.

³⁰ Nations Encyclopaedia, Angola - Judicial system. Available on <https://www.nationsencyclopedia.com/Africa/Angola-JUDICIAL-SYSTEM.html>, accessed on 25 March 2024.

³¹ Diamond Industry Annual Review, Angola 20024. Available on <https://impacttransform.org/wp-content/uploads/2017/09/Angola-2004-1.pdf>, accessed on 25 March 2024.

³² Chambers and Partners, ANGOLA: An Introduction to General Business Law: International Firms. Available on <https://chambers.com/content/item/4147>, accessed on 25 March 2025.

³³ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 25 March 2024.

2.2.2.6. Arbitration

Angola is a signatory to the 1958 New York Convention. In 2016 the Republic of Angola approved its accession to the New York Convention, the respective instrument of accession to the Convention was deposited and, therefore, the Convention entered into force for Angola on 4 June 2017³⁴.

2.2.3 Licencing and Permit Regime

2.2.3.1. Types of Licences and Permits

Under the Mining Code, exploration, evaluation and reconnaissance rights may be awarded, prior to mining rights being awarded. Exploration, evaluation and reconnaissance rights may be awarded for an initial period of up to five years extendable for successive one-year periods up to a maximum of seven years. If the seven-year period proves insufficient to prepare or complete the feasibility study, the holder of the mineral rights may apply for and be granted an exceptional one-year extension.

Mining and marketing rights are awarded for a period of up to 35 years (including the exploration and appraisal stage) extendable by one or more ten-year periods³⁵.

2.2.3.2. Transferability of Mineral Rights

The transfer of mineral rights is subject to government approval and shall only be granted if the assignee satisfies the technical and financial qualification requirements established by the government for the award of mineral rights³⁶.

2.2.4 Taxation

2.2.4.1. Mining Royalties and Taxes

The royalty tax rates in force in Angola are as follows:

- strategic minerals (including industrial diamonds) and precious metals and stones: 5%;
- semi-precious stones: 4%;
- metallic minerals, semi-industrial and artisanal diamonds: 3%; and
- construction materials of mining origin and other minerals: 2%³⁷.

Surface fee (fee levied on the concession area awarded payable during the exploration phase): The surface fee value varies according to the size of the concession area, the type of mineral explored and the

³⁴ Addleshaw Goddard, Civil Legal System Based On Portuguese Civil Law; No Judicial Review Of Legislation. Available on <https://www.addleshawgoddard.com/en/doing-business-in-africa/africa-countries-a-z-list/angola/>, accessed on 25 March 2024.

³⁵ Chambers and Partners, Mining 2024 Angola – Law and Practice, January 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/angola>, accessed on 25 March 2024.

³⁶ Ibid.

³⁷ Ibid.

exploration year in question and can range from US\$2 to US\$40 per km². These amounts are doubled in the event of extension of the exploration period³⁸.

2.2.5 Mineral Beneficiation

Enhancement of local processing and beneficiation is one of the expressed medium-term goals of the government for developing the mining industry. The Mining Code provides that the State has the right to purchase local mineral products at market prices to direct them to local industry. Whenever the relevant minerals have a strategic interest in national security, the state's right of requisition shall apply regardless of whether the production is used in the local mineral industry or not. Additionally, the government has the ability to introduce special tax and customs exemptions to Angolan companies exclusively engaged in the processing of minerals³⁹.

2.2.6 Macroeconomics

Real GDP growth in Angola reached 3.0% in 2022, up from 1.1% in 2021. Income per capita growth remained negative (0.2%) in 2022 due to high population growth (3%). GDP growth was spurred by sustained high oil prices in 2022 because of Russia's invasion of Ukraine. High oil revenue further widened the fiscal surplus to 3.0% of GDP in 2022 from 1.9% in 2021. However, moderated oil exports took the current account surplus down to 8.9% of GDP in 2022 from 11.2% in 2021, while the debt-to-GDP ratio declined further, to 56.1% from 82.9% over the same period.

Global inflation pressure from Russia's invasion of Ukraine was eased by improved terms of trade. The increased export revenue and agricultural production reduced food inflation and overall inflation from 25.8% in 2021 to an estimated 21.3% in 2022. The banking sector also improved, with more positive economic performance and lower private sector debt in 2022. Nevertheless, unemployment remains high, at 30%, and the country continues to face challenges in curbing the poverty rate. This was at 40.6% in 2019⁴⁰.

2.2.7 Governance and Risk Ratings

2.2.7.1. Ease of doing business

Angola ranks 177 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁴¹.

2.2.7.2. Investment Climate

According to the US State Department's investment climate report on Angola, the country is set to become one of sub-Saharan Africa's five largest economies, driven by higher oil prices and a growing non-oil sector. The International Monetary Fund's outlook on Angola is also positive. In 2022 the economy growing by

³⁸ Lexology, Mining 2021. Available on https://www.vda.pt/xms/files/05_Publicacoes/2021/2021_mining_Angola.pdf, accessed on 26 March 2024.

³⁹ Lexology, Overview and outlook: mining law in Angola. Available on <https://www.lexology.com/library/detail.aspx?g=589459c9-3d0c-4fb8-9a40-73dee3b78ed8>, accessed on 25 March 2024.

⁴⁰ African Development Bank, Angola Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/angola/angola-economic-outlook>, accessed on 25 March 2024.

⁴¹ Doing Business 2020, Economy Profile Angola. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/a/angola/AGO.pdf>, accessed on 25 March 2024.

2.6 percent after ending a five-year recession with 0.7 percent growth in 2021. The economy was expected to grow 3.2 percent in 2023, alongside annual population growth of 3.3 percent. Angola currently stands as the continent's fourth-largest producer of crude oil. Angola is also a significant producer of rough diamonds, and it is estimated that it has reserves of more than 50 critical minerals.

Corruption remains a strong impediment to doing business in Angola and has had a corrosive impact on international market investment opportunities and on the broader business climate. Notwithstanding significant challenges such as corruption, the government is seeking ways to attract foreign direct investment. Angola is seeking to improve its investment climate and improve in the areas of anti-corruption, democracy, governance, and human rights. By way of example, Angola improved 20 places in the 2022 Transparency International Corruption Perceptions Index, ranking 116 out of 180 countries⁴².

2.2.7.3. Risk ratings

Global insurer Allianz attributes a poor rating to Angola based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D3 - sensitive risk for enterprise⁴³. Angola joined the EITI in June 2022 to increase transparency in mineral resource sector. Angola is yet to undergo Validation⁴⁴.

2.2.8 Good Governance Evaluation

In 2022, Angola experienced a year-on-year increase in foreign direct investment inflows of \$3.8 billion, according to Angola's Private Investment and Export Promotion Agency, which attributed to efforts in improving regulations, broader economic reforms, improvements in information communication and technology, and infrastructure. Angola is also receiving a high level of interest as an investment destination from investors from across the globe. Angola was selected by the World Bank as one of the countries to have its business and investment climate assessed under its new flagship, Business Ready project. On issues of environmental sustainability, Angola has set ambitious targets to diversify energy production, including plans to generate 77% of Angola's installed power supply from clean sources by 2025. Because of substantial government investment, the country stands to become host to sub-Saharan Africa's largest solar power generation capacity as a result of solar investments⁴⁵.

Angola has significant mineral potential, including critical minerals needed for the green transition. Although Angola faces challenges such as poor regulatory frameworks, corruption, and executive interference in the judiciary, much is being done by the government to ensure that foreign direct investment flows into the country. Should these initiatives be successful, Angola will position itself to play an important role from a global mining perspective.

⁴² U.S. Department of State, 2023 Investment Climate Statements: Angola. Available on <https://www.state.gov/reports/2023-investment-climate-statements/angola/>, accessed on 25 March 2024.

⁴³ Allianz, Economic Research – Angola. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/angola.html#:~:text=Angola%20faced%20a%20trifecta%20of,an%20expected%202.6%25%20in%202023, accessed on 25 March 2024.

⁴⁴ EITI – Angola. Available on <https://eiti.org/countries/angola>, accessed 30 April 2024.

⁴⁵ U.S. Department of State, 2023 Investment Climate Statements: Angola. Available on <https://www.state.gov/reports/2023-investment-climate-statements/angola/>, accessed on 25 March 2024.

2.3 Benin

2.3.1 Introduction

Benin, located in West Africa, is known for its diverse culture and history. The country's economic pursuits span agriculture, textiles, and burgeoning industries.

Benin's political landscape has seen transitions towards democracy and stability. The nation's commitment to good governance positions it as a beacon of political progress within the region. Benin's diplomatic engagements and contributions to regional peacekeeping efforts showcase its commitment to fostering stability beyond its borders.

Mining in Benin does not play a significant role in the country's economy. Benin produces mostly industrial minerals, such as cement, clay, limestone, marble, and sand and gravel. Cassiterite, gemstones (tourmaline and aquamarine), gold, and tantalum ore have been produced in small quantities by artisanal miners. There are reported mineral occurrences of phosphate rock, rutile and silica⁴⁶.

2.3.2 Policy and Legal Framework

2.3.2.1. Institutional and Policy Overview

Benin's mining policies are overseen by designated institutions, ensuring regulatory compliance and sustainable resource management. Five departments regulate mining in Benin. The ministries are:

- The Ministry of Mines;
- Ministry of Transport;
- Ministry of Economy and Finances;
- Ministry of Justice; and
- Ministry of Environment⁴⁷.

2.3.2.2. Relevant Legal Instruments

Benin's mining sector operates under a legal framework that includes relevant legislation and regulations to govern the exploration, extraction, and export of minerals. Mining exploitation is regulated by the n°2006–17 Mining and Finance Mining Code of the Republic of Benin of October 17th, 2006. This new law replaces the n°83-003 of May 17th, 1983, previous Mining Code⁴⁸.

⁴⁶ USGS, Minerals Yearbook, The Mineral Industry of Benin, 2015. Available on <https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/mineral-pubs/country/2003/bncvcttomyb03.pdf>, accessed on 28 March 2024.

⁴⁷ Lex Africa, GUIDE TO MINING REGIMES IN AFRICA, Benin, 2018. Available on http://www.kats.co.ug/wp-content/uploads/2019/03/LEX_Africa_Guide_To_Mining_In_Africa_26June.pdf, accessed on 8 March 2024.

⁴⁸ Ibid.



2.3.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

There are no special rules applicable to foreign applicants⁴⁹.

2.3.2.4. Artisanal Mining Sector

The artisanal mining sector is an integral part of Benin's mineral industry, contributing to local economies and livelihoods. Artisanal miners produced small amounts of gold in Benin⁵⁰. The small-scale or semi-industrial mining population of Benin is estimated to be around 15,000 people. Female participation could potentially be as much as 30% but there is no certainty around this as all small-scale or semi-industrial mining data available is only in relation to gold⁵¹.

The Mining Code provides the legal framework for all mining activities in the country, including provisions related to artisanal and small-scale mining operations, ASM is formalised and an authorization under the Mining Code is necessary to undertake small-scale or semi-industrial mining. Artisanal mining activities in Benin are also subject to tax. A small-scale or semi-industrial mining project must register for VAT in Benin⁵².

2.3.2.5. Judicial System

Benin's legal system is based on French civil law and customary law. Benin has a judicial system that includes several levels of courts. The key components of the court structure in Benin typically include:

- Constitutional Court: Responsible for constitutional matters, ensuring the constitutionality of laws and decisions.
 - Supreme Court: Acts as the highest court of appeal, dealing with civil, criminal, and administrative cases.
 - Court of Appeal: Hears appeals from lower courts and handles cases at the appellate level.
 - High Court (Tribunal de Première Instance): Deals with civil, criminal, and administrative cases at the trial level.
 - Administrative Courts: Specialized courts handling cases related to administrative law.
- **Judicial Independence**

Judicial independence is generally respected by the executive branch, but the courts are inefficient and susceptible to corruption. The process of nominating and promoting judges lacks transparency⁵³.

⁴⁹ Ibid.

⁵⁰ USGS, Minerals Yearbook, The Mineral Industry of Benin, 2015. Available on <https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/mineral-pubs/country/2003/bncvcttomyb03.pdf>, accessed on 28 March 2024.

⁵¹ ASM Database, Benin. Available on <https://artisanalmining.org/InventoryData/doku.php/country:benin>, accessed on 28 March 2024.

⁵² Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/b/benin/BEN.pdf>, accessed on 28 March 2024

⁵³ Doing Business 2020, Economy Profile Benin. Available on <https://www.refworld.org/reference/annualreport/freehou/2018/en/121709>, accessed on 8 March 2024.

- **Enforcing Contracts and Efficiency in Settling Disputes**

According to the World Bank Ease of Doing Business Reports, Benin has shown progress in enhancing the enforcement of contracts over several years. In 2013, Benin introduced a new code of civil, administrative, and social procedures, aimed at simplifying the process of enforcing contracts. Subsequently, in 2015, Benin established a commercial section within its court of first instance, further facilitating contract enforcement. Finally, in 2019, Benin adopted a law regulating mediation as an alternative dispute resolution mechanism, thereby improving the ease of enforcing contracts⁵⁴.

- **Protection of Minority Investors**

Benin aims to safeguard the interests of minority investors, fostering confidence and stability in the mining industry. According to the World Bank, Benin strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions⁵⁵.

2.3.2.6. Arbitration

Benin is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

2.3.3 Licencing and Permit Regime

Benin has a structured Licencing and permit system governing mining activities, ensuring compliance with regulations.

2.3.3.1. Types of Licences and Permits

Common types of mineral licences in Benin may include:

- **Exploration License:** Allows holders to conduct exploration activities to assess the mineral potential of a designated area.
- **Exploitation License:** Granted to entities demonstrating the feasibility of commercially extracting minerals in a specific location.
- **Artisanal Mining Permit:** Issued for small-scale and artisanal mining activities, often involving local communities.
- **Small-Scale Mining License:** Designed for smaller mining operations, balancing environmental and social considerations.

⁵⁴ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 8 March 2024.

⁵⁵ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 8 March 2024.

- **Mining Permit:** Provides authorisation for specific mining activities, usually following approval of an environmental impact assessment.
- **Reconnaissance Authorization:** Allows preliminary assessment of mineral resources without extensive exploration.

2.3.3.2. Transferability of Mineral Rights

Mining licences (except for prospecting licences and artisanal or semi-industrial licences) are capable of being transmitted completely or in part. This is subject to the prior approval of the Mining Minister, which may object within a month if the proposed transaction is prejudicial to the State⁵⁶.

2.3.4 Taxation

Clear taxation policies contribute to the fiscal stability of the mining sector, supporting sustainable development.

2.3.4.1. Mining Royalties and Taxes

Benin imposes fixed taxes in relation to mining activity (i.e. duties and area taxes that mine and exploitation firms must pay) as well as variable ad valorem tax or proportional mines tax defined as a percentage of the mines' production by the firm. These vary between 2 and 7%. The rates are as follows:

- 2% for precious metals;
- 3% for basic metals and other mineral substances;
- And 5% for precious stones⁵⁷.

2.3.5 Mineral Beneficiation

There are no restrictions on the export of minerals.

2.3.6 Macroeconomics

Real GDP growth was steady at 6% in 2022 following a remarkable 7.2% in 2021, led by the primary, secondary, and tertiary sectors⁵⁸.

⁵⁶ Lex Africa, Guide to Mining Regimes In Africa, 2017. Available on <https://www.werksmans.com/wp-content/uploads/2013/04/LEX-Africa-guided-to-mining-in-Africa.pdf>, accessed on 8 March 2024.

⁵⁷ Ibid.

⁵⁸ African Development Bank, Benin Economic Outlook. Available on <https://www.afdb.org/en/countries-west-africa-benin/benin-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,%2C%20secondary%2C%20and%20tertiary%20sectors,> accessed on 8 March 2024.

2.3.7 Governance and Risk Ratings

2.3.7.1. Ease of Doing Business

Benin ranks 149 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁵⁹.

2.3.7.2. Investment Climate

Benin has been making efforts to improve its investment climate. The country has implemented various reforms to enhance the business environment, attract foreign investment, and promote economic development. Factors influencing the investment climate in Benin include:

- **Political Stability:** Benin has generally been known for its political stability, which is a crucial factor for attracting and retaining investments.
- **Economic Policies:** Government policies to promote economic growth, diversification, and private sector participation contribute to a positive investment climate.
- **Infrastructure Development:** Ongoing efforts to improve infrastructure, including transportation and energy, aim to support business activities and investment projects.
- **Regulatory Reforms:** Benin has undertaken regulatory reforms to streamline business processes and reduce bureaucratic hurdles, fostering a more investor-friendly environment.
- **Natural Resources:** The country's natural resources, including its mining sector, present opportunities for investors seeking to engage in resource exploration and extraction.
- **Regional Integration:** Benin's participation in regional economic communities and integration initiatives can enhance its attractiveness as an investment destination.

2.3.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Benin based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C3 - sensitive risk for enterprise⁶⁰.

2.3.8 Good Governance Evaluation

Benin has a well-developed legal framework. The existing laws, although focused on hydrocarbons, contain the elements that are generally contained in more advanced mining jurisdictions. Benin did not feature at all in the latest Fraser Institute global mining jurisdictions index, presumably because it did not respond to the request for information. Benin's commitment to good governance in the mining sector will be crucial for sustained development and investor confidence. Notwithstanding the legislative framework,

⁵⁹ Doing Business 2020, Economy Profile Benin. Available on <https://www.refworld.org/reference/annualreport/freehou/2018/en/121709>, accessed on 8 March 2024.

⁶⁰ Allianz, Economic Risk – Benin. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/benin.html, accessed on 8 March 2024.

the US State Department comments on Benin: “Poor health care, the low quality of public education, and endemic corruption, however, persist as obstacles to national development⁶¹.”

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 however appears to have significant unexplored or under-explored mineral deposits, and this could position Benin as an important country from a mining perspective in the future⁶².

⁶¹ U.S. Department of State, U.S.-Benin Relation. Available on <https://www.state.gov/countries-areas/benin/>, accessed on 8 March 2024.

⁶² Synthesis Report: The extent to which ECOWAS Countries have domesticated the Africa Mining Vision and ECOWAS Protocol on Mining. Available on <https://afrodad.org/wp-content/uploads/2023/03/Synthesis-Report-The-Extent-to-Which-the-Economic-Community-of-West-African-States-ECOWAS-have-Domesticated-the-Africa-Mining-Vision-and-ECOWAS-Protocol-on-Mining.pdf>, accessed on 28 March 2024.



2.4 Botswana

2.4.1 Introduction

The Republic of Botswana (Botswana) is bounded by Namibia to the west and north (the Caprivi Strip), Zambia, Zimbabwe and South Africa⁶³.

Botswana is one of the largest diamond-producing countries in the world by value and by volume. The government is very mindful of the heavy reliance that has almost singularly been placed on the diamond sector. Botswana is therefore actively seeking to diversify across minerals and metals and the Minerals Policy is the intended roadmap to achieve this. Other mined minerals include nickel, copper, coal, soda ash, gold, silver, semi-precious stones, and granite. Botswana also has untapped uranium, lead, and zinc reserves, that companies are seeking to exploit⁶⁴.

Botswana is a member of the Southern African Customs Union (SACU), which includes Lesotho, Namibia, Eswatini, and South Africa. SACU's main objective is to facilitate the cross-border movement of goods between the territories of its member states. More significantly, Botswana participates in the African Continental Free Trade Agreement (AfCTA), which went into force in January 2021. AfCTA will give Botswana greater access to markets across the continent, widening Botswana's potential market to nearly 1.3 billion people⁶⁵. Botswana is seen as a stable country with significant potential to diversify its well-developed diamond mining sector.

2.4.2 Policy and Legal Framework

2.4.2.1. Institutional and Policy Overview

The Ministry of Mineral Resources, Green Technology and Energy Security is the primary mining regulator in relation to the mining industry in Botswana.

In terms of section 3 of the Mines and Minerals Act, CAP 66:01 of the Laws of Botswana (Mines Act), ownership of minerals vests in Botswana and its entire people.

Subject to the provision of the Mineral Rights in Tribal Territories Act [Cap 66:02], all rights of ownership in minerals are vested in the country and its people. In other words, the mineral wealth of Botswana is owned by the people of Botswana. The Ministry, as the primary mining regulator, through the Minister of Mineral Resources, Green Technology and Energy Security (Minister) is tasked to ensure the optimal exploitation of the mineral wealth for the benefit of the people of Botswana. The Ministry is tasked with ensuring that the mineral resources of Botswana are investigated and exploited in the most efficient, beneficial, and timely manner and at all times in the public interest. The Ministry issues mineral permits, monitors compliance with regulatory requirements and enforces penalties for non-compliance.

In addition to the Ministry, there are several other structures and institutions that make up the institutional framework complex of mining regulation in Botswana. These include but are not limited to:

⁶³ Britannica, Botswana. Available on <https://www.britannica.com/place/Botswana>, accessed on 27 April 2024.

⁶⁴ International Trade Administration, U.S. Department of Commerce, Botswana - Country Commercial Guide, February 2024. Available on <https://www.trade.gov/country-commercial-guides/botswana-market-overview>.

⁶⁵ Ibid.



- **The Minerals Policy Committee**
 - The committee is made up of representatives from strategic institutions, namely the Ministry of Finance and Economic Development, the Bank of Botswana, the Attorney General's Chambers, the Ministry of Mineral Resources, Green Technology and Energy Security, and the Office of the President
- **The Minerals Affairs Division**
 - This is regarded as the main policy-making body in relation to the mining industry in Botswana. It is responsible for the formulation, implementation and monitoring of mining policy in Botswana.
- **Botswana Geoscience Institute**
 - The institute was established by an act of Parliament for the purpose of undertaking research in the field of geosciences and providing specialised geoscientific services, empowering the Institute to be the custodian of geoscience information; promoting the search for, and exploration of any mineral in Botswana, to act as an advisory body in respect of geohazards and for matters incidental thereto.
- **The Botswana Diamond Hub**
 - Specifically relevant to diamonds only, the hub aims to provide facilities and services in all aspects of the diamond industry, including trading of rough and polished diamonds as well as cutting and polishing.
- **Botswana Coal Development Unit**
 - The Coal Development Unit was established in 2012 to facilitate the development of the entire coal value chain which includes mining, beneficiation, energy generation, storage at ports, and transportation (including shipping).
- **Okavango Mining Company**
 - Okavango Diamond Company, or ODC, is a rough diamond marketing company that is wholly owned by the Botswana Government.
- **Minerals Development Mining Company (MDCB)**
 - The MDCB is an investment company that holds and manages mining & minerals assets for the Government of Botswana.
- **Botswana Energy Regulatory Authority (BERA)**
 - This is the energy regulator of the Government of Botswana. It was established after the Botswana Energy Regulatory Act was promulgated in 2016. The authority commenced its functions September 2017.

- **Botswana Unified Revenue Service (BURS)**

- The Botswana Unified Revenue Service is responsible for the administration and collection of taxes, including mining royalties and income tax on mining activities.

The main governmental policy regulating the mining sector in Botswana is the Minerals Policy. This is a policy that has been developed by the Ministry in a multi-disciplinary stakeholder process which process commenced in 2010. The contributors to the policy, under the stewardship of the Ministry, are the minerals industry and broader private sector interests, academics and non-governmental institutions. The Minerals Policy takes a holistic approach into account and aims to ensure that the mineral wealth that Botswana is bestowed with is truly distributed fairly and that it results in developmental opportunities for the entire population.

The stated intentions of the Minerals Policy are to make Botswana an attractive jurisdiction for the mining industry. Other countries are overhauling their mining laws and regulations and in light of this Botswana wishes to remain a relevant mining jurisdiction that is an attractive destination for mining capital. Furthermore, the Government is seeking to develop local upstream and downstream linkages to add value to minerals development in Botswana.

In addition, the Government wants to enhance the ESG regulation in the country. The Minerals Policy aims to create employment opportunities, diversify the minerals sector and ensure that the mining industry grows in a responsible and sustainable manner that benefits the country and its people as a whole⁶⁶. The Government describes itself (and consequently sees itself) in various different capacities, namely regulator, promoter and facilitator, service provider and investor.

The legal and regulatory framework of the Botswana mining industry is based on several statutory tools and powers housed under different institutions. The Minerals Policy is enshrined in the country's National Vision and the Botswana Excellence Strategy. According to the 2022 Minerals Policy, the principal relevant policy documents at the national level include the following strategic national policies: National Visions; Botswana Excellence Strategy; National Development Plans; National Water Policy; National Energy Policy; Land Policy; and Citizen Economic Empowerment Policy.

2.4.2.2. Relevant Legal Instruments

The relevant legislation regulating mining in Botswana consists of the following pieces of legislation:

- Mines and Minerals Act;
- Diamond Cutting Act;

⁶⁶ The key stated aims of the policy are to foster the following principles:

- a competitive investment environment;
- ensuring security of tenure;
- providing a stable, transparent progressive and predictable fiscal regime;
- ensuring protection of the environment and public safety;
- contributing to sustainable economic growth;
- supporting sustainable livelihoods;
- ensuring sustainable development of mineral resources; and
- commitment to anti-corruption practices.

- Precious and Semi-Precious Stones (Protection) Act;
- Mines, Quarries, Works and Machinery Act;
- Environmental Assessment Act;
- Unwrought Precious Metals Act;
- Explosives Act;
- Botswana Geoscience Institute Act; and
- Botswana Energy Regulatory Authority Act.

Petroleum is governed by a separate piece of legislation, namely the Petroleum (Exploration and Production) Act [Cap 67: 01] and will not be discussed in this chapter.

Other legislation that indirectly impacts the mining industry include, the Companies Act, CAP 42:01 of the Laws of Botswana, the Competition Act, CAP 46:09 of the Laws of Botswana, and the Employment Act, CAP 47:01 of the Laws of Botswana. Further to this specific legislation that regulates specific aspects of the mining industry, the common law that has developed over decades which addresses these topics, also applies.

2.4.2.3. Foreign Ownership, Migrant and Local Labour Requirements

- **Foreign Ownership**

According to UNCTAD's World Investment Report 2022, foreign direct investment inflows into Botswana increased from USD 32 million in 2020 to USD 55 million in 2021⁶⁷. The mining sector attracts most of the FDI in the country⁶⁸.

Very few restrictions are placed on foreign ownership within the Botswana minerals sector. Botswana does not have any exchange controls⁶⁹. In other words, there are no restrictions on the import and export of capital. In terms of the Mines Act, a person who is not a citizen of Botswana must have been ordinarily resident in Botswana for a period of four years prior to being issued with a mineral concession. A company that wishes to participate in the mining sector must be registered (domiciled) in Botswana in accordance with the terms of the Botswana Companies Act [Cap 42:01] in order to qualify for the issuance of a mineral licence. Companies that apply for mineral licenses in Botswana can have foreign shareholders, as long as the company that applies for the license is registered in Botswana and is subject to Botswana company law.

Notwithstanding the foregoing, the Mines Act however makes specific provision for localisation. Preference must be given to the procurement of local goods and services. The holder of a mineral concession, must, in the conduct of its operations under such concession, and in the purchase,

⁶⁷ World Investment Report 2023, Country Fact Sheet: Botswana. Available on https://unctad.org/system/files/non-official-document/wir_fs_bw_en.pdf.

⁶⁸ Lloyds Bank, Botswana: Investing in Botswana, Foreign direct investment (FDI) in Botswana. Available on <https://www.lloydsbanktrade.com/en/market-potential/botswana/investment>

⁶⁹ <https://www.gobotswana.com/investment-climate-ease-doing-business>

construction and installation of facilities, give preference, to the maximum extent possible consistent with safety, efficiency and economy, to materials, products, goods and services that are made in or offered in Botswana. Furthermore, the holder of a mineral concession is obligated in all phases of its operations to give preference in employment to citizens of Botswana to the maximum extent possible consistent with safety, efficiency and economy.

Also important to note in relation to foreign ownership restrictions generally, is the specific right that the government has in terms of the Mines Act, where the government has the option of acquiring up to 15% working interest participation in the proposed mine. This right comes into existence upon the date of issue of the mining right. That interest is acquired for a nominal amount of one single (P1.00) special share at par, which shall carry the right to appoint up to two directors, with alternates, and to receive all dividends or other distributions in respect of its working interest percentage. The government shall be obliged in the same manner as other shareholders to contribute its working interest percentage. The provisions do not apply to a licence to mine diamonds, where the extent and terms of Government participation shall be separately agreed⁷⁰.

● **Migrant Labour**

According to the Dicastery⁷¹, which undertakes significant research in the field of human migration, Botswana saw a high influx of immigrants entering between the 1970s and the mid-1990s⁷². According to their research, many people enter Botswana using irregular channels. There is no formal migration policy, although systematic involuntary repatriations of undocumented immigrants (in particular Zimbabweans) have been taking place.

From a legal framework perspective, according to the Dicastery, citizenship in Botswana is regulated by the 1982 Citizenship Act, amended in 1984, 1985 and 1995, and finally replaced in 1998. The Act was last amended in 2004 and deals with citizenship attribution based on descent, but it does not include provisions to protect persons born in Botswana from foreigners who would otherwise be stateless. Botswana's immigration policy was updated with the 2011 Immigration Act, providing norms for immigration procedures, the employment of non-citizens, and other related matters⁷³.

Persons from visa-exempt countries are entitled to travel to Botswana for a period of 90 days without any further formalities. In this period, individuals are able to undertake business opportunities, network and attend conferences and business meetings. Applications for long-term work permits are assessed on a series of different criteria, including fluency in English and Setswana, the applicant's professional qualifications, and the scarcity of the applicant's skills. A long-term work permit is valid for a period of up to five years, depending on the duration of the employment contract⁷⁴.

The Constitution of Botswana (1966) regulates citizenship in its articles 20-29. The 1968 Refugee (Recognition and Control) Act (the Refugee Act) is the primary domestic legislation regulating asylum in

⁷⁰ African Mining Legislation Atlas, Botswana - Mining Law 1999. Available on <https://a-mla.org/en/country/law/13>, accessed on 27 April 2024.

⁷¹ The Dicastery promotes its activities by means of a network of interactions that involve local Churches, Episcopal Conferences, the other organs of the Roman Curia, the international organizations (both Catholic and non-Catholic), the relations with governments and supranational organizations.

⁷² Migration Profile - Botswana. Available on <https://migrants-refugees.va/it/wp-content/uploads/sites/3/2023/03/2023-CP-Botswana.pdf>.

⁷³ Ibid.

⁷⁴ Labour Laws in Africa - Botswana. Available on https://www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/downloads/CDH-Labour-Laws-in-Africa_Digital_KENYA.pdf Africa Labour Laws Publication / Labour Lifecycle Across Africa (2019) at page 13.

Botswana. The Act handles procedures for the admission and assistance of refugees in the country. The Constitution of Botswana criminalises forced labour. Thus, the 2014 Anti-Human Trafficking Act No. 32 created a Human Trafficking (Prohibition) Committee to oversee the Act's implementation. The law prohibits human trafficking and establishes protective measures for its victims, including setting up specific centres and creating a special human trafficking victim fund⁷⁵.

Botswana acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol (from now on, the 1951 Convention) in 1969. It ratified the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (the 1969 OAU Convention) in 1995. It succeeded in the 1954 Convention relating to the Status of Stateless Persons (the 1954 Convention) in 1969, subject to certain reservations⁷⁶.

● **Local Labour Requirements**

Labour laws in Botswana are well-developed and extensive. The principal pieces of legislation that regulate the relationship between employers and employees are the following: the Employment Act, No., 29 of 1982 (as amended); the Employment (Amendment) Act, No. 6 of 2010; Employment (Amendment) Act, No 10 of 2010; the Workers Compensation Act, No 23 of 1998; the Trade Disputes Act, No 15 of 2004 and the Immigration Act, No 3 of 2011⁷⁷.

2.4.2.4. Artisanal Mining Sector

According to a UN report dated 2016 entitled Botswana Mining Investment and Governance Review, the Department does not formally recognize the presence of informal artisanal mining in Botswana and although the legal framework allows for artisanal mining and small-scale mining respectively, this is not widespread in Botswana⁷⁸. In terms of the regulatory framework for ASM, the Mines Act, does include provision for mineral permits (as distinguished from Mining Licenses for larger-scale mining).

Customary mining practices are protected under mining law in Botswana. In terms of the Mines Act, nothing shall prevent a member of any tribe from taking, subject to such conditions and restrictions as may be prescribed, minerals from any land from which it has been the custom of members of that tribe to take minerals and to the extent that this is permissible under the customary law of that tribe.

A person wishing to conduct small-scale mining operations may apply for a mineral permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km² per permit.

The Minister shall grant a mineral permit if satisfied that:

- the proposed programme of work will ensure the efficient and beneficial use of the mineral resource;
- consent has been obtained;

⁷⁵ Migration Profile - Botswana. Available on <https://migrants-refugees.va/it/wp-content/uploads/sites/3/2023/03/2023-CP-Botswana.pdf>.

⁷⁶ Ibid.

⁷⁷ Labour Laws in Africa - Botswana. Available on https://www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/downloads/CDH-Labour-Laws-in-Africa_Digital_KENYA.pdf Africa Labour Laws Publication / Labour Lifecycle Across Africa (2019) at page 13

⁷⁸ World Bank Group, Botswana Mining Investment and Governance Review. Available on <https://documents1.worldbank.org/curated/en/104891476786294215/pdf/109316-REVISED-PUBLIC-Botswana-MInGov-2017.pdf>

- under any written law where such consent is required in respect of the area applied for;
- from the owner of the area applied for; and
- from the holder of any existing mineral concession over the land applied for⁷⁹.

2.4.2.5. Judicial System

The Botswana legal system comprises a hybrid (or dual system) of Roman-Dutch law (also referred to as common law) and customary law. The judicial system is made up of a hierarchy of courts that are responsible for interpreting and enforcing the law. The Supreme Court of Appeal is the apex court. The High Court is below the appeal court and the labour/industrial court (also a High Court). Below the high court are the magistrate's courts which are courts of first instance in non-customary law matters.

From a customary law perspective, the apex court is the Customary Court of Appeal. Below that is the Paramount Chief's Court/Urban Customary Court and below that is the Senior Chief's Representative Court. The fora of the first instance are the Chief's Representative's Court and the Headman's Court respectively.

Botswana has a Constitution, which is the supreme law of the country, and all other laws and actions must be consistent with its provisions. Botswana is a parliamentary republic governed by the Constitution of Botswana. Fundamental human rights can only be limited to the extent that is allowed by the Constitution itself. *"This indicates that the Constitution is the supreme law and that, with regard to fundamental rights and freedoms, no other law can limit rights beyond the limitations set out in the constitutional rights themselves"*⁸⁰.

There are currently four locations of the High Court: Lobatse, Francistown, Maun and the headquarters in Gaborone. The High Court presides over matters beyond the jurisdiction of the lower courts, and appeals emanating from the lower courts. There are magistrates' courts in each district. Appeals from the high court are made to the Court of Appeal of Botswana. The chief justice and the president of the Court of Appeal are appointed by the president, while other judicial appointments, though made by the president, are on the recommendations of the Judicial Service Commission.

Customary law cases are heard by village assemblies or kgotla, which are open to all; the traditional chiefs act as court presidents. There is also a customary court of appeal.

The judiciary is independent and impartial and plays a critical role in upholding the rule of law and protecting the rights and freedoms of the country's citizens.

- **Judicial Independence**

Judicial independence is a well-enshrined (constitutional) legal principle. There is a separation of powers between legislature, executive and judiciary⁸¹. An independent committee exists that evaluates the

⁷⁹ Ibid.

⁸⁰ Media Law Handbook for Southern Africa – Volume 1, Chapter 4: Botswana.

https://www.kas.de/c/document_library/get_file?uuid=aeb143b3-2b78-5433-45bf-503b9a4b05f3&groupId=285576#:~:text=The%20Botswana%20Constitution%20sets%20out,which%20the%20entire%20country%20operates.&text=Constitutional%20supremacy%20means%20that%20the,example%2C%20legislation%20or%20case%20law

⁸¹ Government of Botswana, Background of the Judiciary. Available on <https://www.gov.bw/legal/background-judiciary>.

appointments of judges to the courts in Botswana. To further reinforce the independence of the Judiciary, the constitution envisages the existence of the Judicial Service Commission (JSC). The JSC's responsibility is the assessment and recommendation of officers to be appointed for Judicial posts. The appointment of judges is made by the President but can only be made on the recommendations by the JSC, with the exception of the appointment of the Chief Justice and the President of the Court of Appeal⁸².

Like any judicial system, however, the independence of the Botswana judiciary is not absolved to challenges. Despite these challenges, the consensus is that Botswana's judicial system is independent and functions effectively in upholding the rule of law.

- **Efficiency in settling disputes and Enforcing Contracts**

While enforcing contracts in Botswana is typically time-consuming and costly, the country's legal system provides the ability to enforce contractual obligations. Due to the country's generally independent and impartial judiciary it is ensured that contracts are enforced fairly and objectively.

The enforcement of foreign judgments in Botswana is regulated under the Judgments (International Enforcement) Act [SAP 11.04]. Botswana is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The convention was adopted without reservation and is given effect to by the Judgments (International Enforcement) Act. The requirements for the enforcement of a foreign arbitral award are the same as those required for the enforcement of foreign judgments. A foreign arbitral award takes approximately 18 months to enforce⁸³.

- **Protection of Minority Investors**

According to the World Bank's Doing Business 2022 report, Botswana scores relatively well in terms of protecting minority investors, ranking 72nd out of 190 economies assessed.⁸⁴ Botswana has, according to the World Bank report, over time strengthened investor protections by introducing requirements for shareholder approval of related-party transactions and by allowing shareholders to sue directors where such transactions harm the company, and obtain payment for damages if successful⁸⁵.

2.4.2.6. Arbitration

Botswana is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This convention only applies to the recognition of awards made in the territory of another contracting state. For a foreign arbitration award to be enforced, a party to the arbitration is required to bring an action on the award as is the requirement with foreign judgments. Statutory law in Botswana allows a person in whose favour an award has been made to enforce an award on an arbitration agreement in the same manner as a judgment with leave of court. The Recognition and Enforcement of Foreign Arbitral Awards Act governs arbitration in Botswana⁸⁶.

⁸² Ibid.

⁸³ Lex Africa, 2018: guide to the enforcement of foreign money judgments and arbitral awards in Africa <https://www.cga.co.mz/wp-content/uploads/2017/04/LEX-Africa-Arbitration-Guide-20171.pdf>.

⁸⁴ Doing Business 2020, Economy Profile Botswana. Available on <https://subnational.doingbusiness.org/content/dam/doingBusiness/country/b/botswana/BWA.pdf>

⁸⁵ Ibid.

⁸⁶ Global Arbitration Review – Botswana, July 2016. Available on <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2016/article/botswana>, accessed on 2 April 2024.

There are various matters that are not arbitrable in Botswana. Such matters are found in section 7 of the Act, and are listed below:

- criminal cases (so far as the prosecution or punishment is concerned);
- matters relating to status;
- matrimonial causes; and
- matters in which minors or other persons under legal disability may be interested⁸⁷.

2.4.3 Licencing and Permit Regime

2.4.3.1. Types of Licenses and Permits

Obtaining licenses and permits in the mining sector in Botswana is regulated by the Mines Act. Applicants must ensure that they comply with all relevant regulations and laws to avoid fines and other penalties.

Prospecting Right	Retention License	Mining License	Minerals Permit
A prospecting right is a permit which allows the holder (an individual or company) to survey or investigate an area of land for the purpose of identifying an actual or probable mineral deposit.	A retention license can be applied for by a prospecting right holder if the applicant has carried out a feasibility study in respect of the deposit to which the application relates in accordance with good industry practice and the study has established that the deposit cannot be mined on a profitable basis at the time of the application.	A mining license gives a company or an individual (who meets the requirements set out in the Mines Act) permission to mine for a specified period.	A person wishing to conduct small scale mining operations may apply for minerals permit to conduct such operations for any mineral other than diamonds over an area not exceeding 0.5 km ² per permit.

Table 1 Types of Licences and Permits in Botswana

⁸⁷ Global Arbitration Review – Botswana, July 2016. Available on <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2016/article/botswana> accessed on 2 April 2024.

2.4.3.2. The Application Process for Mining Licences and Permits in Botswana

Botswana has a digital Mining Cadastral system. This portal provides an electronic platform to enable stakeholders in the mineral sector to engage directly with the Ministry.

- Registered users of the portal are inter alia able to:
- View the details and obligations of their existing Mineral Tenure and Explosives Services;
- Submit applications for new licenses and permits;
- Submit applications for renewal of existing licenses and permits;
- Submit payments and reports, mineral discovery and mine closure notifications;
- Request for license ownership transfer, Relinquishment (Area), Extension (Area), Surrender and Work Program Amendments; and
- Request inspection services.

Application Requirement	Prospecting Right	Retention License	Mining License	Minerals Permit
Validity or Duration of Licence or Permit	A maximum of three years. An applicant shall be entitled to the grant of no more than two renewals thereof, each for the period applied for, which periods shall not in either case exceed two years.	A maximum of 3 years. A retention license may be renewed once only, for a period not exceeding 3 years.	A mining license shall be valid for such period, not exceeding 25 years, as is reasonably required to carry out the mining program. The holder of a mining license may apply to the Minister for the renewal of his license at any time not later than one year before the expiry of such license.	A minerals permit shall be valid for a period up to five years, and may be renewed for further periods not exceeding five years at a time.
Costs	For industrial minerals the fee is BWP 5.00 per square kilometer or part thereof,	An annual lease rental fee at rate of BWP 5,000.00 per square kilometer applied for or part thereof for the first year.	An annual lease rental fee charged at BWP 100.00 per square kilometer, the first annual lease is paid on receiving of the	An annual lease rental fee charged at BWP 100.00 per square kilometer.



	<p>subject to a minimum of BWP 500.00.</p> <p>The minimum fee associated with other commodities is BWP 1,000.00.</p>	<p>The fee increases by BWP 5,000.00 per square kilometer or part thereof for each subsequent year.</p>	<p>mining license and then paid annually on anniversary of the license.</p>	<p>The first annual lease is paid on receiving of the minerals permit and then paid annually on anniversary of the permit.</p>
<p>Application requirements or restrictions</p>	<p>Payment of application fee.</p> <p>Clearance from Department of Wildlife and National Parks if area is in a conservation area.</p> <p>One (1) copy of certified company registration.</p> <p>One (1) copy of certified shareholders certificate.</p> <p>One (1) copy of environmental management plan.</p> <p>Proof of adequate financial capability (latest three months banks statements or audited financial statements).</p> <p>Company profile showing the company origin, eligibility and history.</p>	<p>Download, complete the Retention Licence.</p> <p>Application Form and submit with supporting documents to the nearest office.</p> <p>Obtain a Prospecting License from Department of Mines.</p> <p>Conduct a Bankable Feasibility Study on the mining and processing the mineral deposit discovered.</p> <p>Obtain surface rights from the land authority or land owner with a stamped sketch plan showing coordinates.</p> <p>Obtain authorization for Environmental Impact Assessment from Department of Environmental Affairs (DEA).</p> <p>Obtain Archaeological Clearance with location coordinates from</p>	<p>Payment of application fee.</p> <p>Download, complete the Mining License Application Form V (a) or Mining License Application Form V (b) (renewal) and submit to the nearest office.</p> <p>Obtain a Prospecting License from Department of Mines.</p> <p>Conduct a Bankable Feasibility Study on the mining and processing the mineral deposit discovered.</p> <p>Obtain surface rights from the land authority or land owner with a stamped sketch plan showing coordinates.</p> <p>Obtain authorization for Environmental Impact Assessment from Department of Environmental Affairs (DEA).</p>	<p>Payment of application fee.</p> <p>Mining Area does not exceed 1,5 ha.</p> <p>Payment of fee.</p> <p>Submit an environmental management plan.</p> <p>Consultation with the landowner and legal occupier of the land as well as any other affected party</p> <p>Submit outcome of the consultation to regional manager within 30 days</p>

	<p>CV of geologist(s).</p> <p>Binding agreement for Joint Ventures.</p> <p>Binding agreement between applicant and financiers.</p> <p>Police clearance and affidavit for precious metals and precious stones.</p>	<p>Department of National Museum and Monuments (DNMM).</p> <p><u>What supporting documents are required?</u></p> <p>Parent company guarantee.</p> <p>Certificate of incorporation.</p> <p>Company documents and identity documents of directors and shareholding.</p> <p>Bankable Feasibility Study report.</p> <p>Proposed rehabilitation programme.</p> <p>Letter of surface rights.</p> <p>Letter of authorisation from DEA.</p> <p>Letter of authorisation from DNMM.</p> <p>If applying within a conservation area, clearance from the Department of Wildlife and National Parks.</p>	<p>Obtain Archaeological Clearance with location coordinates from Department of National Museum and Monuments (DNMM).</p> <p><u>Applications to include the following:</u></p> <p>Parent company guarantee.</p> <p>Certificate of incorporation.</p> <p>Company documents and identity documents of directors and shareholding.</p> <p>Bankable Feasibility Study report.</p> <p>Proposed rehabilitation program.</p> <p>Letter of surface rights.</p> <p>Letter of authorization from DEA.</p> <p>Letter of authorization from DNMM.</p> <p>If applying within a conservation area, clearance from the Department of Wildlife and National Parks.</p>	
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Table 2 Application Requirements for Licences and Permits in Botswana

2.4.3.3. Transferability of Mineral Rights

A prospecting license or any interest therein or any controlling interest in the holder thereof may be transferred to any other person provided that the Minister is notified not less than 30 days before the intended transfer. In such notification, the applicant shall give to the Minister such details of the transferee as would be required in the case of an application for a prospecting license. Where the Minister is satisfied that the transferee is not disqualified under any provision of this Act from holding a prospecting license, he shall notify the applicant of his approval of the transfer of the prospecting license or an interest therein. Upon the transfer of a prospecting license, the transferee shall assume and be responsible for all rights, liabilities and duties of the transferor under the prospecting license.

No mining licence or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister. In any application to the Minister for his approval, the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a mining licence. The Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any mining licence or interest therein provided the transferee is not disqualified under any provision of this Act from holding a mining licence and the Minister is satisfied in accordance with section 39.

No minerals permit or any interest therein shall be transferred, assigned, encumbered or dealt with in any other way without the approval of the Minister. In any application to the Minister for his approval, the applicant shall give such particulars concerning the proposed transferee, assignee, or other party concerned as would be required in an application for a minerals permit. The Minister shall grant his approval to the transfer, assignment, encumbrance or other dealing with any minerals permit or interest therein provided the transferee is not disqualified under any provision of this Act from holding a mineral permit and the Minister is satisfied in accordance with section 52(4). The term "interest" shall mean in the case of a holder who is a private company, a controlling interest in such holder.

2.4.4 Taxation

2.4.4.1. Mining Royalties and taxes

Royalties are levied as follows: 10% for precious stones; 5% for precious metals & 3% for other minerals, all calculated from the gross market value⁸⁸ of arm's length⁸⁹ mineral sales at the "Mine gate".

Some important tax-related items as they relate to mining:

- A variable Income Tax Rate (VITR) exists in Botswana. It is calculated as the higher of the standard company rate (22%) or the tax rate derived from the formula $70-1500/x$, where x (%) = taxable income/gross income. (VITR is for non-diamond minerals, diamond tax regime is negotiated and VITR can be applied if there is an agreement).

⁸⁸ The term "gross market value" shall for the purposes of calculation of royalties be defined as the sale value receivable at the mine gate in an arm's length transaction without discounts, commissions or deductions for the mineral or mineral product on disposal.

⁸⁹ An "arm's length transaction" shall mean a transaction between a willing buyer and willing seller in the open market where the purchase price for the sale is not influenced by any special relationship or other arrangement between the parties to the transaction and is not affected by any non-commercial considerations and specifically excludes any barter, swap, exchange, or transfer price arrangements, restricted or distress transaction which is associated with special financial, commercial or other considerations.



- Capital allowances - 100% depreciation of capital expenditures.
- Botswana tax laws allow for an unlimited assessed loss to be carried forward in a company.
- Withholding Tax is levied at 7.5% on distribution to residents and non-resident shareholders.
- Import Duty Mining equipment and spares are zero-rated, otherwise duties are payable
- Value Added Tax 12% applies to all but zero-rated items, which includes exports of minerals.
- VAT refunds are available upon re-export of items within six months of being brought into the country
- Taxation for Downstream procession (cutting, polishing and refining of minerals) 15% tax rate (basic rate of 5% and an additional company tax rate of 10%).

2.4.5 Mineral Beneficiation

The Botswana government has through its 2022 Minerals Policy identified the diversification of the mineral sector as a key driver of growth. The beneficiation of minerals within the borders of Botswana has furthermore been identified as a key sub-tenant of the strategy. Beneficiation, as a strategy can lead to the development of new sectors, the creation of higher-skilled jobs and be a key driver for economic growth. The International Trade Administration of the US department of Commerce in its 2022 assessment of the Botswana economy states: *“Although this [diamond] sector contributes about one third of total revenues and about 85 percent of foreign earnings, long term trends have shown a decline of mineral revenues, largely due to increased costs especially in the diamond industry. This decline fuels the need for accelerated transformation efforts to achieve a diversified and export led economy.”*⁹⁰

Specific examples of large-scale beneficiation projects include the following: *The private sector, in partnership with the Botswana Chamber of Mines, is conducting a pre-feasibility study on the processing of copper-to-copper metal. The study is supported by the Ministry of Minerals and Energy and if viable, it will result in the construction of a \$230 million refinery to be developed through a PPP model. Another feasibility study is being conducted on bitterns’ beneficiation with the aim to produce Sulphate of Potash (SOP), Sodium Sulphate, and vacuum salt from what is currently the bitterns waste stream*⁹¹.

Notwithstanding the government’s strategy, there is no requirement to beneficiate or process minerals in Botswana and furthermore there are no restrictions in relation to the export of minerals⁹².

2.4.6 Macroeconomics

Botswana’s macroeconomic policy framework is anchored in prudent macroeconomic policies and robust economic institutions, particularly around managing diamond revenue. It has contributed to a long period of positive economic growth⁹³. Botswana's reliance on diamonds and a public sector-driven model have

⁹⁰ International Trade Administration, U.S. Department of Commerce, Botswana - Country Commercial Guide, February 2024. Available on <https://www.trade.gov/country-commercial-guides/botswana-mining-minerals>

⁹¹ Ibid.

⁹² Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 27 April 2024.

⁹³ World Bank Overview: Botswana. Available on <https://www.worldbank.org/en/country/botswana/overview>

made the economy vulnerable to external shocks, as diamonds contribute over 90% of total exports and are a major source of fiscal revenues⁹⁴.

The World Bank projects economic growth of circa 4.0% in 2023, driven by the diamond sector and the non-mining sector largely through services as increments in public sector wages drive demand in the retail sector⁹⁵.

Fiscal pressures are expected to remain significant amid elevated capital and current spending. The overall fiscal deficit narrowed to an estimated 2% of GDP in 2022 and public debt reached an estimated 20.8% of GDP⁹⁶. The fiscal deficit is set to widen, with higher government spending to cushion households against higher inflation and protect the most vulnerable⁹⁷. According to the World Bank, the need to improve the efficiency of public spending and ensure an increase in productivity, the creation of jobs, and the diversification of the economy remains key. These aims are centred on the Mining Policy of 2022 as adopted by the government of Botswana.

At 12.2%, average inflation in 2022 remained above the Bank of Botswana's medium-term objective of 3%–6%, reflecting the domestic pass-through of high global commodity prices from Russia's invasion of Ukraine. The Bank of Botswana raised the policy rate to 2.65% in August 2022 from 1.65% in May 2022⁹⁸.

Botswana had a low poverty headcount ratio, of 20.8% in 2021, but high unemployment, of 25.4%, driven by youth unemployment of 39.9% in 2022. Notwithstanding this, there are certain headwinds facing the economy. These include higher global inflation from supply-chain disruptions linked to Russia's invasion of Ukraine, lower diamond earnings, persistent droughts, and lower exports and Southern African Customs Union revenue due to weak economic conditions persisting in South Africa. With the economy operating below full capacity, inflation is projected to fall to 5.8% in 2024, within the central bank's target range⁹⁹.

2.4.7 Governance and Risk Ratings

2.4.7.1. Ease of Doing Business

The ease of doing business in Botswana has diminished slightly over the years, but the country still enjoys a positive image in relation to the perception of doing business. According to the Trading Economics' 2019 report, Botswana is ranked 87 among 190 economies in the ease of doing business. The rank of Botswana deteriorated to 87 in 2019 from 86 in 2018.¹⁰⁰ The country ranks relatively lowly in relation to starting a business, protecting minority investors, and resolving insolvency.

Botswana ranks 87 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹⁰¹.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ African Development Bank, Botswana Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/botswana/botswana-economic-outlook> accessed on 27 April 2024.

⁹⁹ Ibid.

¹⁰⁰ Trading Economics, Ease of Doing Business in Botswana. Available on <https://tradingeconomics.com/botswana/ease-of-doing-business#:~:text=Ease%20of%20Doing%20Business%20in%20Botswana%20averaged%2064.83%20from%202008,of%20Doing%20Business%20in%20Botswana.>

¹⁰¹ Doing Business 2020, Economy Profile – Botswana. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/b/botswana/BWA.pdf> accessed on 2 April 2024.

2.4.7.2. Investment Climate

According to the US State Department's investment climate report on Botswana, it notes that Botswana has the best credit rating in mainland Sub-Saharan Africa. Botswana is a stable, democratic country with an independent judiciary system. It maintains a sound macroeconomic environment, fiscal discipline, a well-capitalized banking system, and a crawling peg exchange rate system. On September 16, 2022, Standard & Poor's (S&P) maintained Botswana's sovereign credit rating for long and short-term foreign and domestic currency bonds at "BBB+/A-2" with a stable outlook and projected that the demand for Botswana diamonds will remain strong despite weakening global activity¹⁰².

Botswana is seen as the leading mining jurisdiction in Africa. This is confirmed by the Fraser Institute findings. Botswana has applied its policies consistently and fairly and the Government has understood how important the mineral sector is for the development goals of the country. Generally, speaking, Botswana has a positive investment climate and more specifically this is underscored in relation to the mining sector.

2.4.7.3. Risk ratings

Global insurer Allianz attributes a poor rating to Botswana based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is one of the best ratings possible, namely BB1 - low risk for enterprise¹⁰³.

Botswana is not party to the EITI initiative. Botswana does participate in the Fraser Institute policy perception index and on policy, Botswana is the highest ranked jurisdiction in Africa and the second highest in the world, (2nd of 62) in 2022. Botswana is also the most attractive jurisdiction in Africa and top 10 in the world when considering both policy and mineral potential, ranking 10th out of 62 in overall investment attractiveness¹⁰⁴.

2.4.8 Good Governance Evaluation

Bureaucratic procedures necessary to start and maintain a business in Botswana are generally transparent, though slow, and with cumbersome regulatory procedures. In 2018, Botswana launched a Regulatory Impact Assessment Strategy to improve the regulatory environment, ensure legislation is necessary and cost effective, reduce administrative burdens imposed by the regulatory environment to businesses, and improve transparency, consultation, and government accountability. The government does not require companies to disclose their environmental, social, and governance (ESG) activities; ESG disclosures are not used to determine the quality of a project. However, Environmental Impact Assessments (EIA) are a requirement and are taken very seriously when undertaking infrastructure development projects and mining projects¹⁰⁵.

¹⁰² U.S. Department of State, 2023 Investment Climate Statements: Botswana. Available on <https://www.state.gov/reports/2023-investment-climate-statements/botswana/> accessed on 2 April 2024.

¹⁰³ Allianz, Economic Research – Botswana. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/botswana.html accessed on 2 April 2024.

¹⁰⁴ Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf>, accessed on 2 April 2024.

¹⁰⁵ U.S. Department of State, 2023 Investment Climate Statements: Botswana. Available on <https://www.state.gov/reports/2023-investment-climate-statements/botswana/> accessed on 2 April 2024.

Botswana's laws and procedures for awarding mining contracts are well-developed. According to the US State Department in its investment climate report of Botswana 2023, mining licenses are required to undergo a public comment period before they are awarded¹⁰⁶.

¹⁰⁶ U.S. Department of State, 2023 Investment Climate Statements: Botswana. Available on <https://www.state.gov/reports/2023-investment-climate-statements/botswana/> accessed on 2 April 2024.



2.5 Burkina Faso

2.5.1 Introduction

Burkina Faso is a landlocked country in West Africa. It is bordered by Mali, Niger, Benin, Togo, Ghana, and Ivory Coast. The country has an estimated population of 20 million inhabitants. Previously called the Republic of Upper Volta (1958–1984), it was renamed Burkina Faso by President Thomas Sankara. Its capital and largest city is Ouagadougou.

From a mining perspective, resources of copper, iron, manganese, gold, tin, zinc, lead, nickel and phosphates have been identified in the country. Gold however remains the largest contributor to the mining sector. According to estimates, Burkina Faso is the world's fourteenth-largest producer of gold¹⁰⁷. Mining is one of the country's largest industries, second only to agriculture. It contributes approximately 12% to the national gross domestic product and employs approximately 65,000 people. As of 2019, the industry was reportedly worth 2 billion USD¹⁰⁸.

2.5.2 Policy and Legal Framework

2.5.2.1. Institutional and Policy Overview

The following bodies are responsible for enforcing the applicable mining laws and regulations:

- **Ministry of Mines:** The Ministry of Mines, through its agents – ensures that the provisions of the Mining Code are complied with. These agents can intervene at any stage of a given mining activity (e.g., during the exploitation phase). Without being exhaustive, these agents have a remit that includes the power:
 - to ensure that safety measures taken at a given site are appropriate;
 - to access a given site in order to ensure that no violations of the provisions of the Mining Code are occurring; and
 - to obtain copies of documents at a given site.
- **Police officers:** The main tasks of police officers include investigating potential violations of the Mining Code and determining whether these violations have occurred.
- **Agents of the Ministry of Environment and of specific territorial subdivisions:** Like agents of the Ministry of Mines, these ensure compliance by operators with their environmental obligations¹⁰⁹.

¹⁰⁷ Gold production in Burkina Faso and major projects, June 2023. Available on <https://www.mining-technology.com/data-insights/gold-in-burkina-faso/>, accessed on 25 March 2024.

¹⁰⁸ Mining Outlook, Chambre des Mines du Burkina (CMB): Spotlight on Mining in Burkina Faso. Available on <https://www.mining-outlook.com/corporate-stories/chambre-des-mines-du-burkina-cmb-burkina-faso-mining-spotlight>, accessed on 25 March 2024.

¹⁰⁹ Mondaq, Burkina Faso: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/970474/mining-comparative-guide>, accessed on 9 April 2024.

2.5.2.2. Relevant Legal Instruments

The Mining Code, established by Law 036-2015/CNT dated 26 June 2015, is the main statute governing mining in Burkina Faso.

Law 028-2017/AN dated 18 May 2017 on gold marketing and other precious metals (the Law on Gold) is also applicable.

In addition, and without being exhaustive, numerous decrees and orders have been adopted to implement the Mining Code, including the following:

- Decree 2017-0068/PRES/PM/MEMC/MEEVCC/MINEFID/MATDSI dated 15 February 2017 relating to the rehabilitation fund and closure of mines;
- Decree 2017-0047 dated 1 February 2017 on the rehabilitation fund, artisanal mining sites and the fight against the use of prohibited chemicals;
- Decree 2017-0035/PRES/PM/MEMC/MINEFID/MCIA/MATDSI/MJFIP/MFPTPS/MEECVV dated 26 January 2017 pertaining to the mining agreement template;
- Decree 2017-0036/PRES/PM/MEMC/MATDSI/MINEFID/MEEVCC/MCIA dated 26 January 2017 on mining permits and authorisations;
- Decree 2017-034 dated 26 January 2017 on the fund for the financing of geological and mining research;
- Decree 2017-0023/PRES/PM/MEMC/MINEFID dated 23 January 2017 on taxes and royalties;
- Decree 2017-0024 dated 23 January 2017 on the mining fund for local development;
- Decree 2007-901/PRES/PM/MCE/MS/MTSS dated 31 December 2007 on health and safety in the mining sector;
- Order 2018-018 dated 20 June 2018 on standard models of specifications for holders of authorisations for artisanal and semi-mechanised mining of quarry substances; and
- Order 2018-019 dated 20 June 2018 on specifications for holders of semi-mechanised mining permits and authorisations for artisanal mining¹¹⁰.

2.5.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The Mining Code requires that holders of mining titles or authorizations as well as their subcontractors give preference to Burkinabè companies for any contract for the provision of services or supplies of goods

¹¹⁰ Mondaq, Burkina Faso: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/970474/mining-comparative-guide>, accessed on 9 April 2024.

under equivalent conditions of price, quality, and deadlines. A national policy is adopted and accompanied by a strategy for the development and promotion of local supply for the benefit of the mining sector.

A decree taken by the Council of Ministers sets the conditions for its implementation. A tripartite framework bringing together representatives of the State, mining companies and suppliers of mining goods and services is put in place for the development and monitoring of the growth of local supply for the benefit of the mining sector¹¹¹.

In terms of article 98 of the Mining Code, any holder of a mining title or beneficiary of an authorization under the code, who does not reside in Burkina Faso is required to elect domicile there and to have a representative there whose identity and qualifications at the Mining Administration. The agent thus designated provides the Administration with all the required information¹¹².

2.5.2.4. Artisanal Mining Sector

Artisanal and small-scale mining plays an important role in the Burkina Faso mining industry. Artisanal and small-scale mining provides a source of subsistence for many households in sub-Saharan Africa. Burkina Faso is currently the fastest-growing and fifth-largest gold producer in Africa, with artisanal and small-scale providing a livelihood for four to five million people. 75% of households in the country's Bam province report that ASM is their primary source of income¹¹³.

2.5.2.5. Judicial System

Burkina Faso's legal system is a civil law system based on the French model and customary law¹¹⁴. Burkina Faso is a constitutional system that allocates substantial powers to the President, who governs the country with a Prime Minister and a Council of Ministers, presided over by himself. There is a bicameral National Assembly and a judicial system.

- **Judicial independence**

The legislative and judicial powers are constitutionally independent but remain susceptible to interference from the executive. The judicial system in Burkina Faso is weak and remains under the control of the executive power, even though the Constitution guarantees its independence. Impunity in the country is still a widespread phenomenon¹¹⁵.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2008 Burkina Faso made enforcing contracts easier by increasing the efficiency of operations in the commercial court. In 2010 Burkina Faso improved its contract enforcement

¹¹¹ LOI N° 036-2015/CNT PORTANT CODE MINIER DU BURKINA FASO. JO N°44 DU 29 OCTOBRE 2015. Available on <https://faolex.fao.org/docs/pdf/bkf154955.pdf>, accessed on 25 March 2024.

¹¹² Ibid.

¹¹³ The European Space Agency, Space data unearths small-scale mining in Burkina Faso, February 2023. Available on <https://earth.esa.int/eogateway/news/space-data-unearths-small-scale-mining-in-burkina-faso>, accessed on 26 March 2024.

¹¹⁴ Dullah Omar Institute, Burkina Faso. Available on <https://dullahomarinate.org.za/acir/resource-centre/burkina-faso>, accessed on 26 March 2024.

¹¹⁵ Burkina Faso – Attacks on Justice 2000. Available on https://www.icj.org/wp-content/uploads/2001/08/burkinafaso_attacks_justice_2000.pdf, accessed on 24 March 2024.

system by reducing court fees and introducing alternative dispute mechanisms. In 2011, Burkina Faso made enforcing contracts easier by setting up a specialized commercial court and abolishing the fee to register judicial decisions. Finally, in 2019 Burkina Faso made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism¹¹⁶.

- **Protection of Minority Investors**

According to the World Bank, Burkina Faso in 2015 strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions¹¹⁷.

2.5.2.6. Arbitration

Burkina-Faso is a signatory to the OHADA Treaty. OHADA is the French acronym for the Treaty creating the Organization for the Harmonization of Business Law in Africa. The Treaty was signed by fourteen African Heads of State on October 17, 1993, in Port Louis (Mauritius) and is currently in force in seventeen African countries, including Burkina-Faso¹¹⁸.

2.5.3 Licencing and permit regime

2.5.3.1. Types of Licences and Permits

The research and exploitation of mineral substances in Burkina Faso shall be authorised under mining titles or authorisations:

- **Exploitation (Mining Permits)**

An exploitation permit imparts to its holder, within the limits of his area, in surface and in-depth:

- An exclusive right of research and exploitation of the deposits therein, under the conditions set by the mining law;
- A right to possess, hold, transport or have transported extracted mineral substances to storage, processing or loading places;
- The right to offer these products on internal and external markets at prices set by free markets and to export them;
- A right to establish facilities for the conditioning, processing, refining and transformation of mining substances in Burkina Faso.

¹¹⁶ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 25 March 2024.

¹¹⁷ Ibid.

¹¹⁸ Investment Climate Reform Facility, Arbitration Services in the OHADA Region and Beyond – Exchange among Peers for Enhancement. Available on <https://www.icr-facility.eu/arbitration-services-in-the-ohada-region-and-beyond-exchange-among-peers-for-enhancement/> accessed on 25 March 2024.

- **Large Scale Industrial Operating Permits**

- A large-scale industrial operating permit is valid for 20 years, starting from the date of signature of the decree of the Council of Ministers – that is, the decree through which the large-scale industrial operating permit is issued. A large-scale industrial operating permit can also be valid for a period similar to the life of the mine if this is less than 20 years¹¹⁹.
- A large-scale industrial operating permit can be renewed for consecutive periods of five years until the depletion of the mining deposit.

- **Small Scale Industrial Operating Permits**

- Small-scale industrial operating permit: A small-scale industrial operating permit is valid for 10 years, starting from the date of signature of the decree of the Council of Ministers by which the small-scale industrial operating permit is issued. A small-scale industrial operating permit can also be valid for a period similar to the life of the mine if this is less than 10 years¹²⁰.
- A small-scale industrial operating permit can be renewed for consecutive periods of five years until the depletion of the mining deposit.

- **Prospecting Rights**

- The prospecting authorisation confers on its holder the non-exclusive right of prospecting valid for all mineral substances over the entire extent of the granted perimeter. The prospecting authorisation does not confer on its holder any right to subsequently obtain a mining title or other authorisation¹²¹.
- In terms of the Mining Code, the prospecting authorisation is valid for one year from its date of issue. It is renewable once by decision of the authority which issued it and in the same manner, for an identical period, if the holder has respected the obligations incumbent on him and presented a request in accordance with mining regulations.
- The prospecting authorisation may be withdrawn by the authority which issued it, in the same manner, for failure to fulfil the obligations incumbent on its holder under this code.

- **Artisanal mining permit**

- Authorisation for artisanal exploitation of mining substances is granted, subject to previous rights, by decision of the Mining Administration, after advice from the Minister responsible for the environment, the competent administrative authorities and the local authorities

¹¹⁹ Mondaq, Burkina Faso: Mining Comparative Guide. Available on <https://www.mondaq.com/energy-and-natural-resources/970474/mining-comparative-guide>, accessed on 9 April 2024.

¹²⁰ Ibid.

¹²¹ Burkina Faso Mining Code 2015. Available on <https://bgid.fr/wp-content/uploads/sites/100/2021/06/Burkina-Faso-Mining-Code-2015-English-version.pdf>, accessed on 9 April 2024.

concerned, and such licences can only be issued to natural persons of Burkinabe nationality or nationals of countries granting reciprocity to Burkinabè people.

- The authorisation for artisanal exploitation of mining substances confers on its beneficiary the exclusive right of artisanal exploitation of the mineral substances found there, within the limits of the perimeter described therein, under the conditions defined therein. The authorization for artisanal exploitation of mining substances does not confer on its holder any particular right to subsequently obtain a mining title.
- The authorisation for artisanal mining of mining substances is valid for a period of two years. It is renewable for periods of two years, by decision of the authority which issued it and in the same manner, if the beneficiary has respected the obligations incumbent on him and presented a request in compliance with mining regulations, on the condition that the area concerned is not the subject of an application for an industrial operating permit¹²².

- **Mining Agreement**

- In terms of the Mining Code, the large or small mining permit is accompanied by a mining agreement concluded between the State and the permit holder. The mining agreement is valid for the period of validity of the permit without exceeding twenty years. It can be renewed for periods of five years. The minister responsible for mines has the authority to sign the mining agreement after consulting the technical commission and upon authorisation of the Council of Ministers¹²³.

2.5.3.2. Transferability of Mineral Rights

In terms of the Mining Code, the rights linked to mining titles are transferable under conditions¹²⁴. The holder of the mining title must transmit to the Minister responsible for mines any contract or agreement by which he entrusts, assigns or transmits partially or totally the rights and obligations resulting from the mining title. If the transferee offers at least the same guarantees of execution of the obligations provided for in this code as the transferor, the agreement of the Minister responsible for mines is legal when the transferor has satisfied the obligations incumbent upon him under the mining regulations and payment of tax on capital gains on sales¹²⁵.

In terms of the Mining Code, prospecting authorizations are personal and nominative. They are not transferable. In terms of the Mining Code, artisanal exploitation authorizations are not transferable. They are transferable in the event of death or personal incapacity of the operator, subject to the prior approval of the Mining Administration and payment of the duties and taxes provided for by the tax code in matters of inheritance.

¹²² Ibid.

¹²³ Burkina Faso Mining Code 2015. Available on <https://bgid.fr/wp-content/uploads/sites/100/2021/06/Burkina-Faso-Mining-Code-2015-English-version.pdf>, accessed on 9 April 2024.

¹²⁴ Ibid.

¹²⁵ LOI N° 036-2015/CNT PORTANT CODE MINIER DU BURKINA FASO. JO N°44 DU 29 OCTOBRE 2015. Available on <https://faolex.fao.org/docs/pdf/bkf154955.pdf>, accessed on 25 March 2024.

2.5.4 Taxation

2.5.4.1. Mining Royalties and Taxes

Mining operators are subject to certain taxes, royalties, and similar charges. Some of these include¹²⁶:

- **Fixed fees:** These are payable in specific circumstances (e.g., when applying for the renewal of a large-scale or small-scale industrial operating permit). Fixed fees vary depending on:
 - the type of minerals being mined; and
 - the scale of the activity (e.g. artisanal or industrial scale).

Fixed fees range from XOF 100,000 (approximately \$165) to XOF 75 million (\$124,000);

- **Proportional fees:** These are made up of surface taxes and royalties.
- **Surface taxes:** These are payable every year. The amount varies depending on the size of the mining area. Surface taxes range from XOF 2,000 (approximately \$3) per hectare, per year to XOF 25 million (approximately \$42,000) per square kilometre, per year.
- **Royalties:** These are calculated based on:
 - the volume of extracted minerals (e.g., XOF 1,000 (approximately \$16) per cubic metre); or
 - the proceeds from the sale of minerals (e.g., 4% of the proceeds for precious metals).

Capital gains tax of 20%: This equates to 20% of the amount equal to the transfer price minus the acquisition price when the capital gain can be ascertained or 20% of the price where the capital gain cannot be ascertained. This tax is not payable if the large-scale or small-scale industrial operating permit is transferred for free to a Burkinabe company.

2.5.5 Mineral Beneficiation

Operators must notify the Ministry of Mines on a biannual basis of all activities relating to the processing or refining of minerals¹²⁷.

An exploitation permit authorises the holder to establish installations for conditioning, processing, refining and transforming mining substances. There are furthermore no restrictions on the export of minerals in Burkina Faso¹²⁸.

¹²⁶ Mondaq, Burkina Faso: Mining Comparative Guide. Available on <https://www.mondaq.com/energy-and-natural-resources/970474/mining-comparative-guide>, accessed on 9 April 2024.

¹²⁷ Mondaq, Burkina Faso: Mining Comparative Guide. Available on <https://www.mondaq.com/energy-and-natural-resources/970474/mining-comparative-guide>, accessed on 9 April 2024.

¹²⁸ Lex Africa, Guide To Mining Regimes In Africa – Burkina Faso, 2023. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 9 April 2024.

2.5.6 Macroeconomics

Real GDP growth dropped to 3.2% in 2022 from 6.9% in 2021 because extractive activities fell 13.6% in 2022 despite growing 7.3% in 2021, following the closure of several mines for security reasons. Other factors in the economic slowdown were socio-political instability, military coups, a deteriorating security environment, and the effects of Russia's invasion of Ukraine. Contributors to growth included agriculture (up 10.3% in 2022 after declining 12.3% in 2021) and the tertiary sector (up 6.6% in 2022 compared with 13.5% in 2021). Inflation jumped to 14.4% in 2022 due to higher imports of food products and oil. The security context and resulting humanitarian crisis have exacerbated poverty in rural areas (estimated at 51.1% in 2019) as well as unemployment (57% of the population age 15 and older)¹²⁹.

2.5.7 Governance and Risk Ratings

2.5.7.1. Ease of Doing Business

Burkina-Faso ranks 151 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹³⁰.

2.5.7.2. Investment Climate

Overall, according to the US State Department's investment climate report, Burkina Faso welcomes foreign investment and actively seeks to attract foreign partners to aid in its development. It has partially put in place the legal and regulatory framework necessary to ensure that foreign investors are treated fairly, including setting up a venue for commercial disputes and streamlining the issuance of permits and company registration requirements. However, there is room for more progress to facilitate more competition, especially in sectors where State-owned enterprises are dominant, and to enforce intellectual property protections¹³¹.

2.5.7.3. Risk ratings

Global insurer Allianz attributes a poor rating to Burkina Faso based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise¹³².

Burkina Faso is a party to the EITI initiative. It joined in 2009. Any mining jurisdiction that wishes to attract foreign direct investment into that sector will participate in these initiatives.

¹²⁹ African Development Bank, Burkina Faso Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/burkina-faso/burkina-faso-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=Contributors%20to%20growth%20included%20agricu%20ture,with%2013.5%25%20in%202021>), accessed on 25 March 2024.

¹³⁰ Doing Business 2020, Economy Profile Burkina Faso. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/b/burkina-faso/BFA.pdf>, accessed on 25 March 2024.

¹³¹ U.S. Department of State, 2023 Investment Climate Statements: Burkina Faso. Available on <https://www.state.gov/reports/2023-investment-climate-statements/burkina-faso/>, accessed on 26 March 2024.

¹³² Allianz, Economic Research – Burkina Faso. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/burkina-faso.html, accessed on 25 March 2024.

2.5.8 Good Governance Evaluation

According to the US State Department, Burkina Faso's legal, regulatory, and accounting systems are transparent and consistent with international norms. Since January 2018, Burkina Faso, as a member state of the Organization for the Harmonization of Corporate Law in Africa (OHCLA), adopted the revised version of the OHCLA accounting system. It is composed of the Uniform Act on Accounting and Financial Law; the OHADA General Accounting Plan; the OHADA Accounting System application guide, and the International Financial Reporting Standards (IFRS) application guide. The OHCLA accounting system complies with the IFRS norms¹³³.

Burkina Faso is attempting to reform its government ministries, departments, and agencies to ensure greater transparency and accountability. Burkina Faso is endowed with several important and critical metals and minerals. Burkina Faso for example produces zinc, copper, manganese and phosphate in substantial quantities. It also has reserves of diamonds, bauxite, nickel and vanadium; however, these remain largely unexploited¹³⁴. It has the potential to play an important role in the mining industry, but its reform efforts must be carried through and sustainably implemented.

¹³³ U.S. Department of State, 2023 Investment Climate Statements: Burkina Faso. Available on <https://www.state.gov/reports/2023-investment-climate-statements/burkina-faso/#:~:text=Outside%20of%20these%20regional%20accords,.%2C%20between%20the%20two%20countries>. Accessed on 9 April 2024.

¹³⁴ EITI, Burkina Faso. Available on <https://eiti.org/countries/burkina-faso/#:~:text=Burkina%20Faso%20is%20rich%20in,however%20these%20remain%20largely%20unexploited>, accessed on 9 April 2024.

2.6 Burundi

2.6.1 Introduction

Burundi is located in East Africa and is a landlocked country bordered by Rwanda, Tanzania, and the Democratic Republic of Congo. It has a diverse population with Hutu, Tutsi, and Twa ethnic groups. Agriculture is a vital sector. Mining is also regarded as an important sector.

In 2019, Burundi produced about 2% of the world's production of tantalum and is one of the largest nickel reserves in the world. Other important minerals include aggregates, clay, vanadium, gold, limestone, niobium (columbium), peat, rare earths, tin, and tungsten¹³⁵.

2.6.2 Policy and Legal Framework

2.6.2.1. Institutional and Policy Review

Burundi is aiming to develop economic policy and build institutional depth, to assist economic growth. It has formulated the National Development Plan (NDP) 2018-2027, which provides an economic overview of the country. The NDP aims to structurally transform the Burundian economy, for robust, sustainable, resilient, and inclusive growth, creating decent jobs for all and leading to improved social welfare. Furthermore, the National Peacebuilding Program was developed in 2020 to operationalize the NDP. These interventional strategies and actions are aimed at promoting economic growth, community recovery, reintegration, and sustainable and inclusive resettlement for displaced persons in Burundi¹³⁶.

According to the NDP, the mining sector has achieved appreciable results, but it has also identified key challenges. These include:

- modernising and coordinating mining and quarrying operations;
- updating geological and mining database;
- control of artisanal mining production and exports;
- ensuring that the sector has sufficient energy and logistics capacity;
- ensuring adequate exploration, mining and analysis capacity.

Furthermore, the importance of establishing an improved legal and regulatory framework; the intensification of mining research, the support and support and guidance for artisanal miners, facilitating the formation of cooperatives, encouraging the local processing of minerals on site, as well as improving transparency have all been identified as key priorities in the NDP¹³⁷.

¹³⁵ USGS, Minerals Yearbook, The Mineral Industry of Burundi, 2023. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-burundi.pdf>, accessed on 3 April 2024.

¹³⁶ World Bank, Overview – Burundi. Available on <https://www.worldbank.org/en/country/burundi/overview>, accessed on 1 March 2024.

¹³⁷ PLAN NATIONAL DE DEVELOPPEMENT DU BURUNDI PND BURUNDI 2018-2027, June 2018. Available on <https://www.presidence.gov.bi/wp-content/uploads/2018/08/PND-Burundi-2018-2027-Version-Finale.pdf>, accessed on 3 April 2024.

The Ministry of Hydraulics, Energy, and Mines, operating through the Burundian Mining and Quarry Authority, is tasked with enforcing the relevant mining laws and regulations.

2.6.2.2. Relevant Legal Instruments

Mining in Burundi is governed by the Mining Code, enacted in 2013 (Law 1/21) (**Mining Code**). The law regulates the exploration, extraction, and commercialization of minerals. It outlines Licencing procedures, environmental protection measures, and community engagement requirements.

The principal laws and regulations that regulate the mining industry in Burundi, in addition to the Mining Code, are as follows:

- 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; and
- Decree 100/184 of 7 December 2018 revising Decree 100/112 on the Creation, Mission, Organisation and Functioning of the Burundian Mining and Quarry Authority¹³⁸.

In June 2021, the government suspended all mining activities of the main foreign companies operating in the country, pending revision of the mining code and renegotiations of mining contracts. A new draft code was approved by the Council of Ministers in February 2022 but has not yet been adopted by the legislature or signed into law and the mining sector remains closed to private companies¹³⁹.

2.6.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Foreign operators are subject to no requirements or limitations, except for the necessity of maintaining a registered office within Burundi. A mining exploitation company must allocate 10% of its shareholding to the state. Additionally, any mining agreement should include provisions allowing Burundians the opportunity to purchase shares¹⁴⁰.

2.6.2.4. Artisanal Mining Sector

According to the mining sector-focused non-governmental organisation IMPACT, political instability in Burundi results in significant challenges for the mining sector, including disrupting production and exports. It is estimated that as many as 160,000 Burundians rely on artisanal mining (ASM) as their main source of

¹³⁸ Mondaq, Burundi: Mining Comparative Guide, February 2022. Available on <https://www.mondaq.com/energy-and-natural-resources/989158/mining-comparative-guide>, accessed on 3 April 2024.

¹³⁹ U.S. Department of State, 2023 Investment Climate Statements: Burundi. Available on <https://www.state.gov/reports/2023-investment-climate-statements/burundi/#:~:text=Burundi%20does%20not%20have%20a,breach%20of%20contract%20and%20corruption>, accessed on 4 April 2024.

¹⁴⁰ Mondaq, Burundi: Mining Comparative Guide, February 2022. Available on <https://www.mondaq.com/energy-and-natural-resources/989158/mining-comparative-guide>, accessed on 3 April 2024.

income¹⁴¹. Artisanal mining predominates in Burundi's northern provinces, specifically in Kayanza, Cibitoke, Kirundo, and Muyinga.

According to a 2015 document entitled *“Review of the Burundian Artisanal Gold Mining Sector”* authored by the International Peace Information Service, a more comprehensive strategy needs to be developed that integrates artisanal mining into a wider development strategy. Such a strategy should take into account poverty reduction, environmental issues and vulnerable groups, such as children and women. The promotion of artisanal mining as an important driver of local development will require a wide range of efforts including technical support and training, facilitating access to the market, access to finances (e.g. micro finances), and protection of the environment, linking up with other development programs. These aspects of ASM formalisation are poorly covered (if at all) in the CSLP II document, and development partners should start reflecting on the need for more differentiated strategies in this regard¹⁴².

2.6.2.5. Judicial System

Burundi follows a civil law legal system. The judiciary comprises various courts, including the High Court of Justice, the Supreme Court as the highest judicial body in non-constitutional matters and the Constitutional Court. The legal system is influenced by the French and German legal traditions. Burundi is a constitutional supremacy. The constitution is the supreme law of the law and takes precedence over any other law, whether legislation, delegated legislation, or regulations.

Burundi's political system is that of a presidential representative democratic republic based upon a multi-party state. The president of Burundi is the head of state and head of government.

2.6.2.6. Arbitration

Burundi has been a member of the UN since 1962. It is also a party to the New York Convention. The National Arbitration Law of Burundi is Burundi Law No. 1/010 of 13 May 2004. Furthermore, Burundi has entered into bilateral investment treaties with BLEU (Belgium-Luxembourg Economic Union), Comoros, Egypt, Germany, Kenya, Mauritius, Netherlands, Turkey and the United Kingdom¹⁴³. Disputes typically arise from violations of obligations outlined in the Mining Code, the license, or the mining agreement, and they are typically settled through arbitration.

¹⁴¹ IMPACT in Burundi. Available on <https://impacttransform.org/en/countries/burundi/>, accessed on 1 March 2024.

¹⁴² International Peace Information Service, Review of the Burundian Artisanal Gold Mining Sector, April 2015. Available on https://www.bgr.bund.de/EN/Themen/Min_rohstoffe/CTC/Downloads/burundi_ASM_gold.pdf?__blob=publicationFile&v=2, accessed on 3 April 2024.

¹⁴³ Africa Arbitration, Burundi. Available on <https://africaarbitration.org/nproject/burundi/>, accessed on 1 March 2024.

2.6.3 Licencing and Permit Regime

2.6.3.1. Types of licences and permits

Type of Licence	Initial Term	Term of Renewal
Exploration / prospecting licence	Exploration / prospecting licences are granted for a period of three years from the date of issuance.	Twice for further two-year periods.
Mining (exploitation) licence	The maximum duration of a mining right is 25 years. If the life of the mine is less than 25 years, the term of the operating licence is that of the life of the mine.	For periods of 10 years thereafter.
Artisanal mining licence	The artisanal mining licence is valid for two years.	For periods of two years each.

Table 3 Types of Licences and Permits in Burundi.

License transfers are permissible upon approval by the Ministry of Hydraulics, Energy, and Mines, following deliberation by the Council of Ministers.

2.6.4 Taxation

2.6.4.1. Mining Royalties and Taxes

Burundi imposes various mining royalties and taxes on mineral extraction. These may include royalties based on production levels and specific taxes on profits. In terms of the mining code the State will no longer be a direct operator in the mining sector, although it will have the right to a 15 % stake in mining projects in the country. The mining code imposes an ad valorem tax of:

- 4% of output for base metals
- 5% for precious metals
- 7% for precious stones
- 2% for other minerals¹⁴⁴.

2.6.5 Mineral Beneficiation

No specific regulations apply to the beneficiation and processing of minerals in Burundi.

¹⁴⁴ UNCTAD, Burundi - Updates the Mining Code. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/2467/burundi-updates-the-mining-code>, accessed on 28 February 2024.

2.6.6 Macroeconomics

According to the World Bank, inflation in Burundi accelerated to 26% in July 2023. This was largely due to increases in food and fuel prices. The price of food increased, bringing food inflation to 35.8% in July 2023 compared to 24.5% in July 2022. Fuel shortages worsened in June 2023 due to supply disruptions caused by the war in Ukraine. The overall economic deficit is projected to decline to 6.7% of GDP in 2023 from 12.1% in 2022, due to cuts in current expenditure and small increases in revenues. Public debt is expected to reach 72.7% of GDP in 2023, from 68.4% of GDP in 2022¹⁴⁵.

2.6.7 Governance and Risk Ratings

2.6.7.1. Ease of Doing Business

Burundi ranks 166 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹⁴⁶. According to the World Bank, Burundi's economic activity remains fragile and vulnerable to shocks. Growth in the services sector will continue to be supported by transport, telecommunications, and the financial sector. Industry growth remains weak due to the disruption of mining activities and the energy deficit.

2.6.7.2. Investment Climate

President Ndayishimiye, in power since June 2020, has, according to the US State Department's research, taken some steps to promote good political and economic governance to improve the business environment, fight corruption, promote fiscal transparency and, most recently, enact needed banking and currency reforms. His administration seeks to increase existing value chains to find new sources of employment and revenue and to find new revenue streams. Despite these efforts, corruption, an ill-equipped bureaucracy, and rule-of-law deficiencies remain endemic.

The main challenges that constrain the inflow of foreign direct investment include according to the US State Department's research: poor governance and weak institutional capacity; pervasive corruption; a low-skilled workforce; only 12 percent electrification nationwide; poor internet connectivity; and limited availability of reliable economic statistics.

2.6.7.3. Risk Ratings

Burundi's governance and risk ratings may be influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to Burundi based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D4 - high risk for enterprise¹⁴⁷. The government does not participate in the EITI

¹⁴⁵ World Bank, Overview – Burundi. Available on <https://www.worldbank.org/en/country/burundi/overview>, accessed on 28 February 2024.

¹⁴⁶ Doing Business 2020, Economy Profile Burundi. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/b/burundi/BDI.pdf>, accessed on 4 April 2024.

¹⁴⁷ Allianz, Economic Research – Burundi. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Burundi.html, accessed on 29 February 2024.

yet. There are no domestic transparency measures/policies that require the disclosure of payments made to the government¹⁴⁸.

Burundi was not included in the latest version of the Fraser Institute Survey of Mining Companies, 2022 for global mining jurisdiction rankings due to a lack of participation.

2.6.8 Good Governance Evaluation

Burundi will need to focus on the mining industry and associated industries in order to grow its relevance to the economy. Reform of the mining industry regulatory framework is currently underway. According to the US State Department, a new draft code was approved by the Council of Ministers in February 2022 but has not yet been adopted by the legislature or signed into law and the mining sector remains closed to private companies. As at the time of writing, it is not clear whether the bill has in fact been assented to by parliament.

The new provisions seek to clarify the conditions for issuing and renewing the small-scale mining permit as well as the rights and obligations of the holder of the permit, the notion of a percentage of production between the State and the operator, the on-site processing of products to be exported up to a certain percentage and the presence of a Burundian shareholding of at least 25%. New provisions for health and safety and for social responsibility would be added, as well as the payment of the loss of revenue caused to the State by mining activities¹⁴⁹.

Burundi's geological endowment also includes nickel, rare earths, vanadium, and construction materials. Most of the mineral extraction is carried out by artisanal and small-scale mining (ASM) which is officially structured through cooperatives. Tin, tantalum, tungsten (from the minerals cassiterite, tantalite and wolframite often referred to as the '3Ts') and gold are the primary minerals mined and exported. Artisanal mining is an important rural livelihood for up to 34,000 people. Some 6,000–7,000 men and women are working in mines producing the 3Ts. Of these, around 75% are miners with the other quarter engaged in mineral¹⁵⁰. Due to the significant contribution that the ASM sector plays in the Burundian mining industry, it is important to ensure better regulation of this sector. Although it is understood that this is being addressed in the new mining law, actual regulation of this sector will need to occur to ensure stable and sustainable development of the sector. The Government of Burundi should showcase its efforts to improve transparency and traceability. The next step should be to use EITI standards to help to meet the basic needs of artisanal mining communities and to contribute to formalization. This will promote positive perceptions and acceptance of both systems to the benefit of Burundi's mineral sector and national revenues¹⁵¹.

¹⁴⁸ U.S. Department of State, 2019 Investment Climate Statements: Burundi. Available on <https://www.state.gov/reports/2019-investment-climate-statements/burundi/> accessed on 4 April 2024.

¹⁴⁹ Towards the establishment of a new mining code in Burundi, June 2023. Available on <https://english.abpinfo.bi/2023/06/29/towards-the-establishment-of-a-new-mining-code-in-burundi/>, accessed on 4 April 2024.

¹⁵⁰ World Bank, Transparency in Revenues from Artisanal and Small-Scale Mining of Tin, Tantalum, Tungsten and Gold in Burundi. Available on <https://documents1.worldbank.org/curated/en/563321468184727489/pdf/103086-WP-P145997-Box394854B-PUBLIC-Burundi-English-1607197-Web.pdf>, accessed on 4 April 2024.

¹⁵¹ Ibid.

2.7 Cabo Verde

2.7.1 Introduction

Cabo Verde comprises ten volcanic islands, located 500 kilometres off the west coast of Africa. The capital city, Praia, situated on Santiago Island, serves as the bustling heart of Cabo Verde. The country's official language is Portuguese, reflecting its colonial past, while Cape Verdean Creole is widely spoken, embodying the local culture's vibrant oral traditions and linguistic fusion.

Cabo Verde's economy is primarily driven by tourism, fisheries, and a growing services sector. Despite its economic and geographical challenges, Cabo Verde has forged a reputation for political stability and good governance. The nation has navigated its path with a commitment to democratic principles, earning it recognition as a beacon of stability within the West African region.

The key minerals mined are Pozzolana (a volcanic rock used in pulverized form in the manufacture of hydraulic cement) from four mines on Santo Antão and salt, also a leading industry. Deposits of kaolin, clay, gypsum, and basalt have also been reported¹⁵².

2.7.2 Policy and Legal Framework

2.7.2.1. Institutional and Policy Overview

Cabo Verde's mining industry is regulated by the Mines Ministry. Other national bodies, industry actors and stakeholders framing, implementing, and disseminating mining law include the Ministry of Agriculture and Environmental.

2.7.2.2. Relevant Legal Instruments

Cabo Verde's mining activities are governed by the Mining Code 2015, which serves as the primary legal framework regulating the exploration, exploitation, and trade of minerals in the country.

Key aspects of mining laws in Cabo Verde:

- **Mining Code:** The Mining Code outlines the legal provisions related to mineral resources, exploration licences, exploitation permits, and environmental regulations.
- **Regulations and Decrees:** Specific regulations and ministerial decrees may complement the Mining Code, providing detailed guidelines on various aspects of the mining sector.
- **Environmental Legislation:** Environmental considerations, such as impact assessments and rehabilitation requirements, are often addressed in conjunction with mining laws.

¹⁵² Nations Encyclopedia, Cape Verde-Mining. Available on <https://www.nationsencyclopedia.com/Africa/Cape-Verde-MINING.html>, accessed on 8 March 2024.

2.7.2.3. Foreign Ownership, Migrant & Local Labour Requirements

There are few regulatory barriers to foreign investment in Cabo Verde, and foreign investors receive the same treatment as Cabo Verdean nationals in the areas of taxes, licences and registration, and access to foreign exchange¹⁵³.

Cabo Verde offers benefits to attract private-sector investment. Although equality of treatment and non-discrimination are granted to all investors, certain investment projects, given their nature or size, may receive special treatment and support from the government¹⁵⁴

2.7.2.4. Artisanal Mining Sector

Specific regulations regarding artisanal mining in Cabo Verde are not as well-established as in some larger mining jurisdictions. The country has been developing its mining sector, and artisanal mining activities may be subject to the broader legal framework, including the Mining Code.

An example of artisanal mining is artisanal miners carrying out the dangerous task of extracting beach sand and selling it to the construction industry at knock-down prices¹⁵⁵.

2.7.2.5. Judicial System

Cabo Verde's court structure consists of several levels, each with specific jurisdictions. The judicial system in Cabo Verde includes:

- Local Courts (Tribunais Locais): These are lower-level courts that handle civil, criminal, and administrative cases at the municipal level.
- Regional Courts (Tribunais Regionais): These courts operate at the regional level, addressing cases that go beyond the jurisdiction of local courts.
- Court of Appeal (Tribunal da Relação): The Court of Appeal is responsible for hearing appeals from decisions made by the regional courts.
- Supreme Court of Justice (Supremo Tribunal de Justiça): As the highest court in Cabo Verde, the Supreme Court of Justice oversees constitutional matters and serves as the final court of appeal. It is divided into civil, criminal, and administrative chambers.
- Constitutional Court (Tribunal Constitucional): The Constitutional Court focuses on constitutional issues, ensuring the constitutionality of laws and protecting fundamental rights.

¹⁵³ U.S. Department of State, 2023 Investment Climate Statements: Cabo Verde. Available on <https://www.state.gov/reports/2023-investment-climate-statements/cabo-verde/>, accessed on 8 March 2024.

¹⁵⁴ U.S. Department of State, 2023 Investment Climate Statements: Cabo Verde. Available on <https://www.state.gov/reports/2023-investment-climate-statements/cabo-verde/#:~:text=Cabo%20Verde%20offers%20benefits%20to,and%20support%20from%20the%20government>, accessed on 8 March 2024.

¹⁵⁵ Le Monde, Cape Verde's illicit sand looters, September 2022. Available on https://www.lemonde.fr/en/environment/article/2022/09/16/cape-verde-s-illicit-sand-looters_5997173_114.html#, accessed on 8 March 2024.

- **Judicial Independence**

Judicial Independence radically improved after the ratification of the 1992 Constitution and continued to improve as the country pursued the Special Partnership with the EU. While Judicial Independence has declined somewhat of late, the powers and competencies of the judicial institutions have continued to grow. The constitutional amendment passed in 1999 created a Constitutional Court that would take over some functions from the Supreme Court¹⁵⁶

- **Enforcing Contracts and Efficiency in Settling Disputes**

There is no information available in this regard.

- **Protection of Minority Investors**

There is no information available in this regard.

2.7.2.6. Arbitration

Cabo Verde is a party to the New York Convention, facilitating international arbitration for dispute resolution in the mining sector.

2.7.3 Licencing and Permit Regime

There is no information available in this regard.

2.7.4 Taxation

There is no information available in this regard.

2.7.5 Mineral Beneficiation

There do not appear to be any restrictions on the export of minerals from Cabo Verde.

2.7.6 Macroeconomics

Real GDP grew by 7.0% in 2021 and 10.5% in 2022, supported by transport, the digital economy, construction, and tourism. Renewable energy (22% of total power supply) also stimulated growth through reduced energy import costs on the supply side, and private consumption and exports bolstered growth on the demand side¹⁵⁷.

¹⁵⁶ International Institute for Democracy and Electoral Assistance, Global State of Democracy 2023 Report Case Study – Cabo Verde, 2023. Available on <https://www.idea.int/sites/default/files/2023-11/case-study-cabo-verde-gsod-2023-report.pdf>, accessed on 8 March 2024.

¹⁵⁷ African Development Bank Group, Cabo Verde Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/cabo-verde/cabo-verde-economic-outlook>, accessed on 8 March 2024.

2.7.7 Governance and Risk Ratings

2.7.7.1. Ease of Doing Business

Cabo Verde ranks 137 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹⁵⁸.

2.7.7.2. Investment Climate

According to the US State Department's investment climate report on Cabo Verde, the government's Ambition 2030 strategy and its 2022 – 2026 development program emphasize development of sustainable tourism, transformation of the country into a transportation and logistics platform, growth of renewable energy, expansion of blue and digital economies, and promotion of export-oriented industries¹⁵⁹.

The government promotes a market-oriented economic model under which all investors, regardless of nationality, have the same rights and are subject to the same duties and obligations under the law. Improving the business climate to attract investment remains an economic priority, as does reducing the state's role in the economy¹⁶⁰.

2.7.7.3. Risk Ratings

Cabo Verde's governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a medium rating to Cabo Verde based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C2 - medium risk for enterprise¹⁶¹.

2.7.8 Good Governance Evaluation

Cabo Verde has consistently ranked in the top two or three African countries in the usual economic and social indicators, outperforming larger, resource-rich countries on the continent. Its Human Development Index is the fifth highest in Africa, nearly twenty points higher than the continental average, and it is classified as a "fast achiever" on the road to the Millennium Development Goals¹⁶²

Cabo Verde is a stable country with political stability, democratic institutions, and economic freedom, all of which lend predictability to its business environment. This bodes well for the country's nascent mining industry.

¹⁵⁸ Doing Business 2020, Cabo Verde. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/cabo-verde/CPV.pdf>, accessed on 8 March 2024.

¹⁵⁹ U.S. Department of State, 2023 Investment Climate Statements: Cape Verde. Available on <https://www.state.gov/reports/2023-investment-climate-statements/cabo-verde/#:~:text=Cabo%20Verde%20offers%20benefits%20to,and%20support%20from%20the%20government>, accessed on 8 March 2024.

¹⁶⁰ Ibid.

¹⁶¹ Allianz Trade, Economic Research – Cape Verde. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Cape-Verde.html, accessed on 8 March 2024.

¹⁶² African Development Bank, Cape Verde – The Road Head. Available on https://www.afdb.org/sites/default/files/documents/projects-and-operations/cape_verde_-_the_road_ahead.pdf, accessed on 8 March 2024.

2.8 Cameroon

2.8.1 Introduction

Cameroon is situated along the Atlantic Ocean and borders the Central African Republic, Chad, Equatorial Guinea, Gabon and Nigeria. Cameroon has a population of over 27 million people. Parts of Cameroon are Anglophone, while others are Francophone.

Cameroon is endowed with rich natural resources, including oil and gas, mineral ores and agricultural products, such as coffee, cotton, cocoa, maize, and cassava¹. Cameroon is a leading producer of crude oil and has rich deposits of natural gas, cobalt, bauxite, iron ore, gold and diamonds. Cameroon's extractive sector played a significant role in the country's economy, contributing 31,15% of exports by value and 16,34% of total government revenues in 2021². Currently, the contribution of the mining sector (excluding oil) to the GDP is still marginal (less than 1%)³. However, Cameroon has significant mineral resources which are largely under-exploited.

2.8.2 Policy and Legal Framework

2.8.2.1. Institutional and Policy Overview

Mining in Cameroon is primarily regulated by the Mining Code, being law No. 2016/017 of 14 December 2016 (Mining Code). This law repealed the provisions of law No. 001 of 16th April 2001 which established the mining code and was amended and supplemented by law No. 2010/11 of 29th July 2010. Mining licences in Cameroon are administered by the Ministry of Mines which oversees the implementation of the mining law in Cameroon⁴.

The Mining Code needs to be read with the 2020 decree that further amends and supplements the Mining Code. Decree No. 2020/749 of 14 December 2020 seeks to *“remedy the shortcomings”* of the previous law and *“incorporate the attractiveness, competitiveness and financial profitability concern that can help to fast-track the implementation of transformational mining projects and increase the solid minerals sector's contribution to the Gross Domestic Product in the short or medium term”*⁵.

The new decree also created a National Mining Corporation of Cameroon, SONAMINES. Some of the objectives of the state-owned mining company are as follows:

- conducting studies on the exploration and exploitation of mineral substances, in conjunction with other relevant government services and bodies;
- promoting the processing and packaging of mineral substances;
- ensuring the implementation of measures relating to the restoration, rehabilitation and closure of mining sites, in conjunction with other relevant government services;
- acquiring shares in companies involved in the exploration, exploitation, marketing, treatment and processing of mineral substances through contributions, sponsorship, subscriptions, purchase of corporate securities and/or rights, alliance and/or joint venture;

- participating in negotiations and monitoring the execution of contracts signed between the State and mining companies, in conjunction with the other relevant government services;
- collecting and preserving documentation on mineral substances and mining activities, in conjunction with the ministry in charge of mines;
- contributing to the promotion of transparency in the mining sector; and
- carrying out all commercial, industrial, capital, real estate and financial transactions directly or indirectly linked to its corporate purpose or that can foster its development⁶.

2.8.2.2. Relevant Legal Instruments

Mining rights holders in Cameroon also need to comply with environmental management undertakings, which are contained within the Mining Code. Chapter V of the Mining Code deals with the protection of the environment (article 135 to Article 140). Furthermore, LawN°96/12 of August 5, 1996, which is the framework law relating to the management of the environment, also needs to be adhered to. A legal framework in relation to health, safety and hygiene is also contained within the Mining Code⁷.

2.8.2.3. Foreign Ownership, Migrant and Local Labour Requirements

According to section 15(5) of the Mining Code, only local companies operating in the mining sector shall be granted a mining title. In other words, only Cameroonian-registered companies can hold mining titles. Equally, non-industrial mining (small-scale and artisanal) shall only be carried out by natural persons of Cameroonian nationality. The Gas and Petroleum Codes by contrast do not expressly provide for nationality as a requirement to grant a licence, permit or authorisation⁸.

2.8.2.4. Artisanal Mining Sector

The Cameroonian government estimates that the majority of the gold currently being mined by artisanal miners is being smuggled out of the country by traffickers who sell it in other countries to avoid paying taxes. The country is also struggling to manage its growing mining industry and find a way to ensure that commercial mining operations also pay their share of revenue to the government⁹.

Artisanal mining is largely uncontrolled in Cameroon. Mercury use in artisanal mining has been widespread historically but has been banned by the Cameroonian government since 2019. This is due to the fact that a significant number of mining fatalities are recorded every year. There are regular conflicts between companies and communities and laws are generally not adhered to and not enforced¹⁰. The focus of the artisanal mining sector operates.

2.8.2.5. Judicial System

- **Judicial independence**

Cameroon's legal system is a mixture of civil law, common law, and customary law. Although the Constitution enshrines the principle of an independent judiciary, the fact that the president appoints judges at all levels goes contrary to this separation of powers principle.

Article 37(2) of the Cameroonian Constitution states that judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The Judicial Power shall be independent of the Executive and Legislative Powers. Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience¹¹.

Article 37(3) of the Cameroonian Constitution provides that the President of the Republic shall guarantee the independence of the Judicial Power. He shall appoint members of the bench and of the legal department¹².

Given the evident conflict of interest that is inherent in the Cameroonian Constitution, the judiciary is not seen as being independent of political influence.

The judiciary is officially divided into tribunals, the court of appeal, and the supreme court. The National Assembly elects the members of a nine-member High Court of Justice. The High Court of Justice has jurisdiction to try high-ranking members of government in the event they are charged with high treason or harming national security¹³.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank noted that in 2013 Cameroon made enforcing contracts easier by creating specialized commercial divisions within its courts of first instance. In 2019, Cameroon furthermore made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism¹⁴.

- **Protection of Minority Investors**

The World Bank notes that in 2015 Cameroon strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors. Laws were introduced to also make it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions¹⁵.

2.8.2.6. Arbitration

National courts are still the primary forum for dispute resolution in Cameroon, even though efforts have been made to promote arbitration, particularly by local associations and universities¹⁶. Cameroon is a member of the Organization for the Harmonization of Business Law in Africa (OHADA). The OHADA Arbitration Act is in force in Cameroon.

The Association for the Promotion of Arbitration in Africa has recently organized several trainings in Cameroon. Local law firms work alongside the Cameroon Bar Association and other institutions to promote arbitration, while universities are increasingly teaching arbitration courses¹⁷.

2.8.3 Licencing and Permit Regime

2.8.3.1. Types of Licences and Permits

The Cameroonian Mining Code provides for five types of mineral licences¹⁸. These are:

- **Non-industrial licence and non-industrial miner's card**
 - Certain types of mineral substances can only be handled by Cameroonian nationals. It is subject to the prior issuance of an individual non-industrial miner's card by the Mining Ministry. This permit is renewable, for periods of two years at a time.
 - The non-industrial mining licence is granted by the Mining Ministry for a renewable period of two years at a time and may be granted within the perimeters of an exploration permit.
 - The licence for semi-mechanised non-industrial mining of precious and semi-precious substances is granted within an exploration permit by the Mining Minister after the prior approval of the President of the Republic of Cameroon. These licences are granted for a period of two years and are renewable for two years. The licences can only be issued to Cameroonian nationals or companies where the share of Cameroonians makes at least 51% of the shareholding.
 - The licence for semi-mechanised, non-industrial mining of precious and semi-precious minerals is granted over a total surface of land that shall not exceed twenty-one hectares and shall be a single block within one or several cadastral units. The Cameroonian State deducts a combined flat-rate mining tax of 25% of the gross production of every semi-mechanised non-industrial mining site.
- **Reconnaissance Permit**
 - Reconnaissance permits are issued to Cameroonian companies, to conduct systematic and mobile surface surveys using geological, geophysical, or other methods covering vast areas, for the purpose of detecting traces or concentrations of useful mineral substances. A reconnaissance permit is granted for a period of one year. The total surface area for which a reconnaissance permit is granted shall not exceed 1000 km² (one thousand square kilometres). The reconnaissance permit is non-exclusive and non-transferable.
- **Exploration Permit**
 - An exploration permit is granted to Cameroonian companies by the Mining Minister for the purpose of conducting exploration works to locate and evaluate mineral deposits and to determine conditions for commercial mining. It is issued for an initial maximum period of three years and may be renewed no more than three times, each renewal not exceeding two years.

- There is a limitation to a maximum of five licences per applicant. The area of land over which an exploration permit is issued cannot exceed five hundred square kilometres. The Mining Minister approves the works schedule and the budget proposed by applicants for an exploration permit.
- **Mining Agreement**
 - A mining agreement is signed between the State (Mining Minister) and an exploration permit holder (by their legal representatives) with a view to developing, mining, or financing a new mineral deposit. The mining agreement is based on an exploration permit and shall be signed before the granting of a small-scale or industrial mining permit and shall take effect from the date of notification of the permit.
- **Mining Permit**
 - A non-industrial or industrial mining permit is granted to any holder of an exploration permit who has provided evidence of the existence of a deposit. Holders may request, from the Mining Minister an amendment in the originally approved work programme and may benefit from special incentives when he undertakes to build a processing plant for all or part of the mining production.

2.8.3.2. Transferability of Mineral Rights

Any transfer of a mineral title shall be subject to the prior approval of the minister in charge of mines who shall decide in forty-five days. Any cessions, transfers, farm-out, pledges, or mortgage instruments must be noted and registered. At the time of such registration, a new permit is issued, and the rights and obligations attached to the initial permit shall be transferred to the new holder.

Permits issued for non-industrial mineral substance and reconnaissance activities are personal only and not open to cession, conveyance, farm-out or pledge in accordance with Articles 98 and 99 of the Mining Code¹⁹.

2.8.4 Taxation

2.8.4.1. Mining Royalties and Taxes

In accordance with the Mining Code, individuals or entities holding different permits are required to pay royalties at the commencement of each fiscal year, as stipulated either by area royalties or state land concession rights. Royalties for each permit are determined based on basic cadastral units, as outlined below²⁰.

Non-industrial mining licence	XAF 10/m ² /year
Semi-mechanised non-industrial mining licence	XAF 50/m ² /year
Exploration permit	
First year	XAF 5,000 /km ² /year
Second year	XAF 6,000 /km ² /year
Third year	XAF 7,000 /km ² /year
Fourth year	XAF 14,000 /km ² /year
Fifth year	XAF 15,000 /km ² /year
Sixth year	XAF 30,000 /km ² /year
Seventh year	XAF 31,000 /km ² /year
Eighth year	XAF 62,000 /km ² /year
Ninth year	XAF 63,000 /km ² /year

Table 4 Royalties Rates in Cameroon

As per the Mining Code, tax benefits or incentives may be provided to any exploration or mining entity or corporation that conducts operations in compliance with the prevailing laws. Prior to commencing operations, holders of mining licences must submit a detailed list outlining each phase of activity, strictly adhering to various categories. The available tax incentives are delineated as follows²¹:

During the exploration phase:

- Exemption from business Licencing tax.
- Waiver of incorporation fees during registration.
- Exemption from Value Added Tax (VAT) on imports.

During the exploitation phase:

- Accelerated depreciation, set at 1.25% of the standard rate, is applicable to specific fixed assets.
- Extension of the loss carry-forward period from four to five years.
- For products intended for export subject to VAT, a VAT rate of 0%.
- Exemption from certain registration fees and stamp duties.

2.8.5 Mineral Beneficiation

Minerals obtained from the Cameroon subsoil will be processed by the competent state bodies, such as the Ministry of Mines. In accordance with the Mining Code, any export endeavours must adhere to the

current legal regulations. Minerals extracted from beneath Cameroon's soil intended for exportation must undergo evaluation for compliance. This evaluation is to be conducted by the expert laboratory of the Ministry of Mines or any laboratory authorized by the Minister of Mines, in line with prevailing laws and regulations²³.

2.8.6 Macroeconomics

According to the African Development Bank, real GDP growth in Cameroon slipped to 3.4% in 2022 from 3.6% in 2021 due mostly to continued investment and higher non-oil activity. Inflation rose to 6.2% in 2022 from 2.3% in 2021, above the Central African Economic and Monetary Community target of 3%. The increase can be attributed largely to higher import costs.

The risk of over-indebtedness in Cameroon is high. The banking and financial system is weakening due primarily to the nonperforming loans ratio (nearly 15%), as well as strong exposure to the outstanding debts of public enterprises. Poverty levels remain high and are estimated to be over 30%²².

2.8.7 Governance and Risk Ratings

2.8.7.1. Ease of Doing Business

Cameroon ranks 167 out of 190 countries in the 2020 World Bank Ease of Doing Business Report²⁴.

2.8.7.2. Investment Climate

According to the US State Department's assessment of the Cameroonian investment climate, corruption and administrative mismanagement continue to hamper the business climate in Cameroon. Cameroon consistently ranks in the bottom half of the Transparency International's Corruption Perceptions Index (144 of 180 in 2021).

2.8.7.3. Risk Ratings

Global insurer Allianz attributes a rather poor rating to Cameroon based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C3 - sensitive risk for enterprise²⁵.

Cameroon joined the EITI initiative in 2007. Cameroon achieved a fairly low score (53 points) in implementing the 2019 EITI Standard in February 2024. However, EITI in Cameroon has helped to strengthen the country's Mining Code, to mandate that mining companies comply with the disclosure requirements of the EITI Standard²⁶.

2.8.8 Good Governance Evaluation

Cameroon is an important country from a mining perspective. It has vast mineral wealth and with known sources of cobalt and nickel, Cameroon is likely to play a more important role in the future from a mining perspective. As the largest economy in the Central African Economic and Monetary Union, Cameroon has a diversified economy, and its location is a gateway to landlocked countries in the Central African region.

The US State Department has flagged governance challenges and administrative bottlenecks as major setbacks to Cameroon's investment climate. Notwithstanding this, Cameroon has a modern mining legal system. It has also adopted a National Development Strategy (NDS30) which sets out to create an enabling environment for public-private partnerships which can spur job growth. The strategy also focuses on boosting local production, developing infrastructure and leveraging technology for growth and employment²⁷.

Cameroon will require a focus to formalise its small-scale and artisanal mining sector to ensure global best practices from an environmental and human rights perspective. These important issues remain a concern currently.



2.9 Central African Republic

2.9.1 Introduction

The Central African Republic is bordered by Chad, Sudan and South Sudan, the Democratic Republic of the Congo (Kinshasa) and the Republic of the Congo (Brazzaville), and Cameroon. The capital, Bangui, is situated on the southern boundary, formed by the Ubangi River, a tributary of the Congo River¹⁶³.

CAR's political history is marked by periods of unrest, coups, and internal strife. This turbulence has impeded the country's progress, contributing to economic setbacks and hindering the implementation of sustainable development initiatives. Ongoing civil war and political instability contribute to what the World Bank describes as one of the poorest and most fragile countries in the world despite its abundant natural resources (470 mineral occurrences, with oil, gold and diamonds having the greatest potential)¹⁶⁴.

The drivers of fragility include a lack of social cohesion, the concentration of political power, social and regional disparities, the capture and mismanagement of natural resources by the elite and persistent insecurity fuelled by a regional system of conflicts¹⁶⁵.

The economic landscape of CAR is shaped by agriculture, mining, and forestry. Rich in minerals such as diamonds, gold, and uranium, the mining sector holds significant potential for economic growth. However, the exploitation of these resources is hampered by security concerns, informal mining practices, and the need for infrastructure development. According to the 2021 EITI country report, the Central African Republic has significant mineral resource potential, with approximately 34 mineral substances spread over more than 470 mineral showings. From a critical minerals' perspective, these include copper, cobalt, chromium, nickel, columbite-tantalite, cassiterite, manganese and zirconium¹⁶⁶.

2.9.2 Policy and Legal Framework

2.9.2.1. Institutional and Policy Overview

The Ministry of Mines and Geology has four sub-regulatory structures with management autonomy, in particular:

- **ORGEM: Geological Research and Mining Office**

The Office of Geological Research and Mining (ORGEM) is a public office with management autonomy. It was created in 2009 by law 09.005 of April 29 on the Mining Code of CAR and placed under the supervision of the Ministry in charge of Mines. This Office oversees Institutional and Legal Frameworks applicable to

¹⁶³ Britannica, Overview – Central African Republic. Available on <https://www.britannica.com/place/Central-African-Republic>, accessed on 27 April 2024.

¹⁶⁴ World Bank, Overview – Central African Republic. Available on <https://www.worldbank.org/en/country/centralafricanrepublic/overview>, accessed on 27 April 2024.

¹⁶⁵ Ibid.

¹⁶⁶ Initiative pour la Transparence dans les Industries Extractives en République Centrafricaine, EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-01/Rapport%20ITIE%20RCA%202021.pdf>, accessed on 27 April 2024.

Companies and Public Offices. Its stated aim is to improve geological knowledge and promote the development of geological and mineral resources of the CAR.

- **COMIGEM: Gem and Precious Metals Authority**

The Comptoir des Minéraux et Gemmes (COMIGEM) is placed under the supervision of the Ministry in charge of Mines and was created by Law N ° 09.005 of April 29, 2009 in the Mining Code of the CAR. Its stated mission is to generate substantial income for the benefit of the State, in compensation for the fiscal deficit due to the contraband and large-scale fraud on diamonds and gold in mining regions.

- **The National Radiation Protection Agency**

The National Radiation Protection Agency which is mandated to provide services for the protection of the public and environment from hazards arising from the use of devices or materials capable of producing ionising radiation.

- **CNDB: BANGUI National Data Centre**

The National Data Centre of Bangui is a public scientific and technical office. It has specialized expertise in techniques for verifying the application of the Comprehensive Nuclear Test Ban Treaty¹⁶⁷.

2.9.2.2. Relevant Legal Instruments

Mining is regulated by Law No. 9.005 of April 29, 2009, which establishes the Mining Code, along with its implementing decree n°9.126. A key reform in the extractive industries is anticipated through the introduction of a new Mining Code¹⁶⁸. Key aspects of mining laws in CAR include:

- **Mining Code:** The Mining Code outlines the legal provisions related to mineral resources, exploration licenses, exploitation permits, and environmental regulations.
- **Regulations and Decrees:** Specific regulations and ministerial decrees may complement the Mining Code, providing detailed guidelines on various aspects within the mining sector.
- **Environmental Legislation:** Environmental considerations, such as impact assessments and rehabilitation requirements, are often addressed in conjunction with mining laws.

2.9.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

Prospecting licences and Special mining permits (Permis spéciaux d'exploitation) must both be applied for by CAR nationals¹⁶⁹.

¹⁶⁷ Ministry of Mines and Geology. Available on <https://www.devex.com/organizations/ministry-of-mines-and-geology-ministere-des-mines-et-de-la-geologie-central-african-republic-149168>, accessed on 8 March 2024.

¹⁶⁸ EITI, Central African Republic – Tax and Legal Framework. Available on <https://eiti.org/countries/central-african-republic#:~:text=The%20mining%20sector%20in%20the,of%20a%20new%20Mining%20Code>. Accessed on 8 March 2024.

¹⁶⁹ Policy Review: The Mining Sector in Central African Republic, 2007. Available on https://www.land-links.org/wp-content/uploads/2016/09/USAID_Land_Tenure_PRADD_CAR_Policy_Review.pdf, accessed on 8 March 2024.

2.9.2.4. Artisanal Mining Sector

According to USAid who have undertaken extensive work in relation to documenting the artisanal and small-scale mining sectors of CAR, in 2020 only diamonds and gold projects were being developed, the vast majority of these are artisanal and small-scale in nature¹⁷⁰. CAR has known deposits of copper, graphite, uranium, iron ore, tin, and quartz, in addition to gold and diamonds.

2.9.2.5. Judicial System

The court structure in CAR includes various levels with distinct jurisdictions. The key components of CAR's court system include:

- Local Courts (Tribunaux de Première Instance): These are lower-level courts located at the sub-prefecture and prefecture levels, dealing with civil and criminal cases;
- Courts of Appeal (Cours d'Appel): These appellate courts hear appeals from decisions made by local courts and cover larger geographical areas;
- Supreme Court (Cour Suprême): As the highest court in CAR, the Supreme Court handles appeals on points of law and constitutional matters;
- Administrative Courts (Tribunaux Administratifs): These courts specialize in administrative law matters and handle cases involving the government and public administration; and
- Constitutional Court (Cour Constitutionnelle): Responsible for constitutional matters, ensuring the constitutionality of laws and protecting fundamental rights.

● **Judicial Independence**

Justice is carried out on the territory of the Central African Republic in the name of the Central African people by the Court of Cassation, the Court of Accounts, the Council of State and the Courts and Tribunals. Judges are independent. They are subject only to the authority of the law in the performance of their duties. The presiding magistrates are irremovable¹⁷¹.

● **Enforcing Contracts and Efficiency in Settling Disputes**

According to the World Bank, CAR in 2019 made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism¹⁷².

● **Protection of Minority Investors**

In 2015, according to the World Bank, CAR strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making

¹⁷⁰ USAID, Central African Republic. Available on <https://www.land-links.org/country-profile/central-african-republic/>, accessed on 14 March 2024.

¹⁷¹ Central African Republic Constitution of 2016. Available on <https://faolex.fao.org/docs/pdf/Caf183136.pdf>, accessed on 7 May 2024.

¹⁷² World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 8 March 2024.

it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions¹⁷³.

2.9.2.6. Arbitration

CAR is not party to the New York Convention, facilitating international arbitration for dispute resolution in the mining sector.

2.9.3 Licencing and Permit Regime

2.9.3.1. Types of Licences and Permits

The specific types of permits and authorisations (licenses) allowed by the mining code are as follows:

- **Prospecting Licence (Autorisation de prospection)**

This license is specifically designed for artisanal miners and is valid throughout the national territory of CAR. Applicants must be nationals of the CAR. This type of license is valid for one year with possibility of being renewed one time.

- **Prospecting permit (Permis de reconnaissance)**

This permit allows industrial miners to conduct surface prospecting not to exceed a depth of 30 cm. The maximum surface area that can be authorized is 10,000 km². The permit is valid for one year, renewable one time.

- **Exploration permit (Permis de recherche)**

The exploration permit is for more intensive below surface research within a designated area not to exceed 1,000 km². The permit is granted for 3 years, renewable twice. Exploration operations must be conducted continuously throughout the period of validity of the permit.

- **Artisanal mining license (Autorisation d'exploitation artisanale)**

This license allows artisanal miner to claim exclusive mining rights within a defined area measuring 500m by 500m. The license is valid for a period of 3 years, renewable twice for 2 years each.

- **Special mining permit (Permis spéciaux d'exploitation)**

This is a special permit for registered mining cooperatives. It is approved by the regional administration of mines. The special mining permit is granted for 2 years, renewable in 2-year increments.

- **Mining permit (Permis d'exploitation)**

¹⁷³ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 8 March 2024.

This permit is for industrial companies that have progressed to active mining operations. No limits are imposed on depth of mining operations. A public inquiry is held prior to granting this type of permit. The permit is valid for 25 years and is renewable.

2.9.3.2. Transferability of Mineral Rights

There is no information available in this regard.

2.9.4 Taxation

2.9.4.1. Mining Royalties and Taxes

CAR has a source-based tax system. Both residents and non-residents are subject to tax on income earned from a source in CAR. Foreign-sourced dividends, royalties, interest and capital gains earned by resident companies are subject to tax to the extent that they are not attributed to a foreign permanent establishment of a CAR company. Resident companies and permanent establishments of foreign companies, including companies conducting mining operations, are subject to corporate income tax at the rate of 30%¹⁷⁴.

2.9.5 Mineral Beneficiation

There is no information available in this regard.

2.9.6 Macroeconomics

Real GDP grew 0.5% in 2022, down from 1% in 2021 and 2020, due to the prolonged shortage of oil products and the effects of Russia's invasion of Ukraine. Inflation rose to 7.9% in 2022 from 4.3% in 2021, driven by higher oil and food prices. Monetary policy was accommodative in 2022, with a 4.5% prime rate, facilitating a 29.7% increase in domestic credit¹⁷⁵.

2.9.7 Governance and Risk Ratings

2.9.7.1. Ease of Doing Business

CAR ranks 184 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹⁷⁶.

2.9.7.2. Investment Climate

The investment climate in CAR can generally be characterised as poor. According to the World Bank, CAR is one of the poorest and most fragile countries in the world despite its abundant natural resources (470 mineral occurrences, with oil, gold and diamonds having the greatest potential). For over two decades

¹⁷⁴ ENS Africa, doing business in the Central African Republic. Available on <https://www.ensafrica.com/doing-business/download?termId=19>, accessed on 27 April 2024.

¹⁷⁵ African Development Bank, Central African Republic Economic Outlook. Available on <https://www.afdb.org/en/countries/central-africa/central-african-republic/central-african-republic-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=External%20assets%20contracted%20102%25%20from,tax%20base%20and%20undiversified%20revenue>, accessed on 8 March 2024.

¹⁷⁶ Doing Business 2020, Economy Profile - Central African Republic. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/central-african-republic/CAF.pdf> accessed on 8 March 2024.

now, the CAR has been mired in crises, the most serious of which was the seizure of power by Seleka in 2013. The latest crisis was triggered by a coalition of rebels in December 2020.

With a population of about 6,100,000, the CAR ranks at the bottom of the human capital and development indices (188th out of 191 countries in 2022). Its institutions are weak, its citizens have limited access to basic services, its infrastructure is woefully inadequate, gender-based violence (GBV) is widespread and the social fabric has been eroded. Despite its significant agricultural potential and vast forests, the population is yet to share in the associated benefits.

2.9.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to CAR based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise¹⁷⁷.

CAR was suspended from the EITI in 2013 when the EITI Board concluded that the EITI could not be effectively implemented due to political instability. The country was suspended from the Kimberley Process in the same year, but some regions were since deemed compliant as of 2015.

In October 2021, the EITI Board agreed to lift CAR's suspension. The country is undertaking an adapted approach to EITI implementation, adopting flexible reporting and limiting implementation to geographical areas compliant with the Kimberley Process. The country aims to use the EITI to support the government's plans to formalise the mining sector, attract investment and strengthen governance.

2.9.8 Good Governance Evaluation

CAR is not featured in the Fraser Institute index that measures the attractiveness of jurisdictions based primarily on the policy environment. CAR did not respond to the request for information from the institute.

Although CAR has significant resources, corruption, poor policy, and law enforcement make CAR an opaque and risky jurisdiction for investors.

CAR has had a long history of political and social turmoil that have left the country with fragile institutions. However, according to the World Bank, over the last few years the security situation has improved, and the state institutions have started to stabilize. In order to improve on these achievements, must strengthen state and community-based institutions. The legal system and state institutional systems are weak and therefore make investing in CAR challenging. Given the high-risk political and economic climate, this in turn makes the business operating environment equally challenging.

¹⁷⁷ Allianz, Economic Research – Central African Republic. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Central-African-Republic.html accessed on 8 March 2024.

2.10 Chad

2.10.1 Introduction

Chad, located in Central Africa, is known for its diverse ethnic groups and geographical features. The country has faced challenges related to political instability and economic development. Most of the activity in the extractive industry in Chad relates to oil and gas. There is however some mining activity involving inter alia gold, aggregate and salt.

Chad is landlocked. It is bordered by Libya, Sudan, the Central African Republic, Cameroon, Nigeria and Niger to the west. Chad has a population of 17.7 million people (2022)¹⁷⁸. The country's capital and largest city is N'Djamena. Chad is the fifth-largest country in Africa and the twentieth-largest nation by area in the world.

According to the annual United Nations Human Development Report, Chad is ranked as one of the five poorest countries in the world. Only about 6 % of the population has access to electricity, and only 8 % has access to basic sanitation. Adult literacy is extremely low, at only 22 percent. Life expectancy is also low and averages at only 53 years¹⁷⁹.

2.10.2 Policy and legal framework

2.10.2.1. Institutional and Policy Review

Chad's legal system is influenced by civil law traditions. The judiciary comprises various courts, with the Supreme Court serving as the highest court. The legal system reflects both French and customary law elements. The country is a constitutional democracy with the separation of powers principle applying. In other words, the judiciary is independent of the Executive and the Legislature.

2.10.2.2. Relevant Legal Instruments

Chad has enacted mining legislation to regulate the exploration and extraction of minerals. The Mining Code (Law 010/PR/2018 of 20 June 2018 ratifying Ordinance No. 004/PR/2018 of 21 February 2018) outlines the legal framework, including Licencing procedures, environmental protection measures, and community engagement requirements.

This Mining Code makes investment by foreigners easier. It provides for a fair sharing of mining rents and revenues between the State and operators with mining activities being carried out within the general legal framework including but not limited to the Investment Code, General Tax Code, Customs Code, Labour Code, and Environmental Code¹⁸⁰.

¹⁷⁸ Allianz Trade, Economic Research – Chad. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Chad.html, accessed on 29 February 2024.

¹⁷⁹ USAID, Chad. Available on <https://www.usaid.gov/chad>, accessed on 29 February 2024.

¹⁸⁰ Mines and Money, THE REPUBLIC OF CHAD - MINISTRY OF MINES AND GEOLOGY. <https://minesandmoney.com/london/company/the-republic-of-chad-ministry-of-mines-and-geology#:~:text=Law%20010%2FPR%2F2018%20of,fossils%20on%20the%20national%20territory>, accessed on 29 February 2024.

2.10.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The National Investment Charter of 2008 permits full foreign ownership of companies in Chad. The only limit on foreign control is on ownership of companies deemed related to national security. The National Investment Charter guarantees both foreign companies and individuals equal standing with Chadian companies and individuals in the privatization process¹⁸¹.

2.10.2.4. Artisanal Mining Sector

The artisanal mining population in Chad is estimated to be more than 300,000, mostly located in the Tibesti region in the Northern part of the country. Chad's gold deposits are spread over 1 200km from the South to the Western part of the country. Artisanal operations are located around 40 sites dominated by informality and alluvial operations. The Tibesti region has attracted many miners since the 2013 gold rush, where recent clashes have been recorded between the local community and artisanal miners - mostly of foreign origin¹⁸².

2.10.2.5. Judicial System

• Judicial independence

The judiciary comprises the Supreme Court, Courts of Appeal, Tribunals, and the Justices of the Peace. The administration of the judiciary (including the appointment, promotion, discipline, and responsibility of judges, etc.) is the responsibility of the High Council of the Judiciary. The Council is chaired by the President of the Republic, with the Minister of Justice and the Chairperson of the Supreme Court respectively as first and second Vice-Chairs¹⁸³.

The membership of the High Court of Justice includes 10 Members of Parliament, 2 Members of the Constitutional Council, and 3 Judges of the Supreme Court¹⁸⁴.

The Supreme Court is the highest in the country. It also is tasked inter alia with monitoring local elections. The structure of the Supreme Court is as follows: three chambers of justice, with each responsible for (i) the judiciary, (ii) administrative matters and (iii) auditing matters respectively.

The Supreme Court is established in accordance with Article 153 of the Constitution. It is made up of 16 members. The Chief Justice is selected by the president and is one of the highest-ranking judges in the country. The balance of the judges are called Councillors are appointed for life under the constitution. Their selection takes place among both the country's chief judges (eight) and experts in public accountancy and administrative and financial law.

• Enforcing Contracts and Efficiency in settling disputes

¹⁸¹ U.S. Department of State, 2022 Investment Climate Statements: Chad. Available on <https://www.state.gov/reports/2022-investment-climate-statements/chad/>, accessed on 14 March 2024.

¹⁸² Knowledge UNECA, Chad ASM Profile. Available on <https://knowledge.uneca.org/asm/chad>, accessed on 14 March 2024.

¹⁸³ An Introduction to the Legal System and Legal Research in Chad, December 2007. Available on <https://www.nyulawglobal.org/globalex/Chad.html>, accessed on 29 February 2024.

¹⁸⁴ Ibid.

The World Bank noted that in 2019 Chad made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism¹⁸⁵.

• **Protection of Minority Investors**

The World Bank noted that in 2015 Chad strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions¹⁸⁶.

2.10.2.6. Arbitration

Chad is not a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to facilitate the enforcement of international arbitral awards in Chad and to promote Chad as a seat of arbitration in Africa¹⁸⁷.

2.10.3 Licencing and Permit Regime

2.10.3.1. Types of Licences and Permits

- Artisanal Mining permit: is granted for alluvial gold mining. The permit is valid for 2 years and is renewable. These permits are reserved for citizens only.
- Prospecting permit: is granted based on non-exclusive prospecting for surface workings. The licence is valid for a year and renewable.
- Small Mine Exploration permit: is an artisanal mining permit for the mining of all types of deposits. It is valid for 2 years and renewable.
- Mining permit for the open pit mining of Various Materials which licence is renewable for 5 years.
- There are two types of exploration licences, one which is valid for 5 years and renewable twice which is applicable for smaller exploration targets and another which is for larger target areas and which is valid for 25 years and renewable¹⁸⁸.

2.10.3.2. Transferability of Mineral Rights

No information was found in this regard.

¹⁸⁵ World Bank Group, Enforcing Contracts – Chad. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 14 March 2024.

¹⁸⁶ World Bank Group, Protecting Minority Investors – Chad. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 14 March 2024.

¹⁸⁷ Act No. 028/PR/2020 on the Code of Civil, Commercial and Social Proceedings and arbitration law in Chad: the chronicle of an ineffective legal reform, November 2021. Available on <https://www.ibanet.org/code-of-civil-and-and-arb-Chad>, accessed on 14 March 2024.

¹⁸⁸ Mbendi, Chad: Mining. Available on <https://mbendi.co.za/indy/ming/mingch.htm>, accessed on 14 March 2024.

2.10.4 Taxation

2.10.4.1. Mining Royalties and Taxes

Chad imposes mining royalties and taxes to ensure the government benefits from mineral extraction. The specific rates and mechanisms are defined in the Mining Code, aiming to strike a balance between encouraging investment and securing state revenue.

Article 59 of the Mining Code of Chad (2015) and Article 336 of the Mining Code of 2018 stipulate that companies operating in the mining sector are subject to the taxes and levies provided for in the General Tax Code, except for advantages provided for in the Mining Code and mining agreements or by investment charter under the conditions of ordinary law. However, they may not combine the advantages provided for in the Mining Code with those granted by the investment charter. The main common law taxes and duties paid by companies operating in the mining sector are:

- Direct tax on profits ;
- Personal income tax (IRPP);
- The flat-rate tax payable by employers;
- The apprenticeship and vocational training tax ;
- Statistical import duty;
- Customs import duty;
- The levy on capital gains from the sale of mining titles; and
- The final withholding tax on subcontractors¹⁸⁹.

2.10.5 Mineral Beneficiation

No information was found in this regard.

2.10.6 Macroeconomics

Chad's economy has traditionally relied on oil exports. The mining sector, including exploration for gold and other minerals, contributes to diversification efforts. Economic stability is a priority, and developments in the mining industry can influence overall macroeconomic conditions.

According to the African Development Bank, Chad's real gross GDP grew 2.4% in 2022, up from 1.1% growth in 2021. This is largely due to the resumption of oil production driven by higher global prices and Russia's invasion of Ukraine. Exports contributed to growth. Inflation rose to 5.3% in 2022 after deflation of 0.8% in 2021 due to global inflation, particularly for food prices (including 18.4% for cereals at the end of December 2022). Notably, the budget balance turned to a surplus of 0.5% of GDP in 2022 from a deficit of 2.4% in 2021 due in the main to substantial oil revenue. Public debt was 55.9% of GDP in 2021, with

¹⁸⁹ EITI Report – Chad, 2021. Available on https://eiti.org/sites/default/files/2024-02/Rapport-ITIE-Tchad-2021_Version-Finale-23-02-2024.pdf, accessed on 29 February 2024.

external debt of 25.5% of GDP and internal debt of 30.4%, resulting in a high risk of debt distress. Global inflation has led to deteriorating living standards for poor households, aggravated by the 2022 floods, which affected more than 340,000 people¹⁹⁰.

2.10.7 Governance and Risk Ratings

2.10.7.1. Ease of Doing Business

In terms of the World Bank Doing Business Index, which ranks the ease of doing business in 190 countries, covering factors such as business registration, contract enforcement, and regulatory transparency, Chad ranked 182 out of 190 in 2020¹⁹¹.

2.10.7.2. Investment Climate

According to the US State Department's report on the Investment Climate of Chad, Chad's business and investment climate remains challenging. Private sector development is hindered by poor transport infrastructure, lack of skilled labour, minimal and unreliable electricity supply, weak contract enforcement, corruption, and high tax burdens on private enterprises¹⁹².

2.10.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Chad based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D4 - high risk for enterprise¹⁹³.

2.10.8 Good Governance Evaluation

According to the US State Department, Chad is a country that is subject to poor governance, corruption and general mismanagement. Serious restrictions on freedom of expression and media, including violence or threats of violence against journalists, unjustified arrests or prosecutions of journalists, and censorship; serious restrictions on internet freedom; substantial interference with the freedom of peaceful assembly and freedom of association, including overly restrictive laws on the organization, funding, or operation of nongovernmental and civil society organizations; inability of citizens to change their government peacefully through free and fair elections; serious and unreasonable restrictions on political participation; serious government corruption and lack of investigation of and accountability have all been reported¹⁹⁴.

¹⁹⁰ African Development Bank Group, Chad Economic Outlook. Available on <https://www.afdb.org/en/countries/central-africa/chad/chad-economic-outlook>, accessed on 29 February 2024.

¹⁹¹ Doing Business 2020, Chad. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/chad/TCD.pdf>, accessed on 29 February 2024.

¹⁹² U.S. Department of State, 2022 Investment Climate Statements: Chad. Available on <https://www.state.gov/reports/2021-investment-climate-statements/chad/>, accessed on 14 March 2024.

¹⁹³ Allianz Trade, Economic Research – Chad. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/chad.html, accessed on 29 February 2024.

¹⁹⁴ U.S. Department of State, 2022 Country Reports on Human Rights Practices: Chad. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/chad/>, accessed on 1 March 2024.

Chad's economy is largely dependent on the oil sector, which began production in 2003. The mining sector is small in relation to the oil and gas sector. In 2020, the oil sector contributed 14,5 % of the country's GDP.



2.11 Comoros

2.11.1 Introduction

The Comoros are a group of islands at the northern end of the Mozambique Channel of the Indian Ocean, between Madagascar and the southeast African mainland¹⁹⁵. The capital, Moroni, is located on Grande Comore. The nation is known for its volcanic landscapes, coral reefs, and a blend of African, Arab, and French cultural influences. Comoros faces economic challenges, including high unemployment, and is working towards sustainable development and economic diversification. Comoros is poor, witnessing an ongoing exodus of educated and skilled workers to France and a steady decline in gross domestic product¹⁹⁶.

The mining industry in Comoros is small and largely limited to the production of construction materials such as clay, sand and gravel, and crushed stone for local consumption. The Comoros does not play a significant role in the world's production or consumption of minerals.

2.11.2 Policy and Legal Framework

2.11.2.1. Institutional and Policy Overview

The Geological Bureau of Comoros (GBC) regulates all geological information and research relating to the mining sector in Comoros, The BGC was created in 2010 by Decree N°10-030 /PR. It is under the supervision of the Ministry of Energy¹⁹⁷. and is tasked with the following:

- Contribute to the implementation of the mining policy through the elaboration and application of the legislative and regulatory framework of the mining sector;
- Ensure the control and monitoring of the execution of research and exploitation activities as well as the collection of related data;
- Identify promotional areas to be made available to potential investors¹⁹⁸.

2.11.2.2. Relevant Legal Instruments

All mining and quarrying activities (except for research and exploitation of geological resources) are regulated by the Ministry of Economy and Investments, through Law No. 89-020 of 22 February 1989 under Decree No. 06-019/PR. The law regulates the exploitation of quarries. Mining of sand from beaches and mining coral is strictly prohibited¹⁹⁹.

¹⁹⁵ Britannica, Comoros. Available on <https://www.britannica.com/place/Comoros> accessed on 27 April 2024.

¹⁹⁶ Ibid.

¹⁹⁷ The Comoros Geological Survey. Available on <https://bgc.km/en/> accessed on 15 March 2024.

¹⁹⁸ The Comoros Geological Survey, Geology and Mines. Available on <https://bgc.km/en/geology-mine/> accessed on 8 March 2024.

¹⁹⁹ Union of the Comoros. Available on <https://www.dbsa.org/sites/default/files/media/documents/2021-05/Chapter%206b%20Comoros%20English.pdf> accessed on 8 March 2024.

2.11.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

Local shareholders are in certain specified sectors such as mining, oil, and gas²⁰⁰.

2.11.2.4. Artisanal Mining Sector

There is no information available in this regard.

2.11.2.5. Judicial System

The Comorian legal system rests on Islamic law, an inherited French (Napoleonic code) legal code, and customary law (mila na ntsi). Village elders, kadis or civilian courts settle most disputes²⁰¹.

Comoros court structure includes the Supreme Court, Courts of Appeal, and local courts. The judiciary plays a crucial role in interpreting and upholding the law. The Supreme Court serves as the highest judicial authority, overseeing the legal landscape in Comoros.

- **Judicial Independence**

The constitution and law provide for an independent judiciary, and the government generally respects judicial independence. However, as noted by the US State Department in its report on the Comoros, judicial inconsistency, unpredictability, and corruption are concerns²⁰².

- **Enforcing Contracts and Efficiency in Settling Disputes**

According to the World Bank, in 2019 Comoros made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism²⁰³.

- **Protection of Minority Investors**

In 2015, according to the World Bank, the Comoros strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions²⁰⁴.

²⁰⁰ ENS – Doing Business Guide (Comoros). Available on <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwixytiRpeWEAxVSSfEDHeC6A2wQFnoFCCUQAQ&url=https%3A%2F%2Fwww.ensafrika.com%2Fdoing-business%2Fdownload%3FtermId%3D21&usg=AOvVaw0vjiUECyazNxUFwpYjgh-4X&opi=89978449> accessed on 8 March 2024.

²⁰¹ Dullah Omar Institute, Comoros - This section contains a brief description of the legal system of Comoros. Available on <https://dullahomarinstitute.org.za/acjr/resource-centre/comores#:~:text=The%20Comorian%20legal%20system%20rests,civilian%20courts%20settle%20most%20disputes>. Accessed on 8 March 2024.

²⁰² U.S. Department of State, 2022 Country Reports on Human Rights Practices: Comoros. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/comoros/> accessed on 8 March 2024.

²⁰³ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 8 March 2024.

²⁰⁴ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 8 March 2024.

2.11.2.6. Arbitration

Comoros became a signatory to the New York Convention in 2015, which convention facilitates international arbitration for dispute resolution in the mining sector.

2.11.3 Licencing and Permit Regime

There is no information available in this regard.

2.11.4 Taxation

There is no information available in this regard.

2.11.5 Mineral Beneficiation

There is no information available in this regard.

2.11.6 Macroeconomics

Real GDP grew an estimated 2.9% in 2022, up from 2.2% in 2021, despite the surge in global prices following Russia's invasion of Ukraine. On the supply side, agriculture held up better, benefiting from the high prices of major export commodities. On the demand side, growth was driven by household final consumption spending, sustained by fund transfers from the diaspora.

Inflation in the Comoros rose to 12.4% in 2022 from 0.1% in 2021 on the spike in energy and food prices. The central bank implemented a restrictive monetary policy in 2022, raising the minimum reserve requirement from 10% to 15% and conducting several liquidity-absorbing operations.²⁰⁵

2.11.7 Governance and Risk Ratings

2.11.7.1 Ease of Doing Business

Comoros ranks 160 out of 190 countries in the 2020 World Bank Ease of Doing Business Report²⁰⁶.

2.11.7.2 Investment Climate

The investment climate in Comoros can generally be characterised as poor. The economy is fragile and state institutions are weak.

²⁰⁵ African Development Bank, Comoros Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/comoros/comoros-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,following%20Russia%27s%20invasion%20of%20Ukraine>. Accessed on 8 March 2024.

²⁰⁶ Doing Business 2020. Economy Profile Comoros. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/comoros/COM.pdf> accessed on 8 March 2024.

2.11.7.3 Risk Ratings

Global insurer Allianz attributes a poor rating to Comoros based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise²⁰⁷.

The Comoros is not party to the EITI initiative, nor is the country included in the Fraser Institute perception index.

2.11.8 Good Governance Evaluation

The Comoros has a very small and nascent mining industry. The outlook on minerals output is not likely to change significantly because Comoros has very limited mineral resources and weak infrastructure²⁰⁸.

The country is, however, committed to creating an attractive investment climate, fostering good governance, and addressing socio-economic challenges. Ongoing legal and regulatory developments signal the nation's dedication to shaping a responsible and transparent mining industry that contributes to the overall development of Comoros. One specific example of this is the recent ratification of the African Continental Free Trade Area (AfCFTA). AfCFTA is a free trade area encompassing most of Africa. It was established in 2018 by the African Continental Free Trade Agreement. According to the UN Resident Coordinator in Comoros, Comoros is heavily dependent on imports. Therefore, the AfCFTA is seen as a potential engine of economic growth, sustainable development and, importantly, poverty reduction. The AfCFTA is an instrument for strengthening social inclusion; therefore, it must be ensured that women and youth are involved in these discussions and can take full advantage of trading opportunities in Africa²⁰⁹.

Additionally, Comoros has joined the Intergovernmental Forum on Mining, Minerals, Metals, and Sustainable Development (IGF), becoming the organization's 85th member. In joining the IGF, the government stated its aim is to strengthen mineral resource management and mining governance in terms of transparency, taxation, social impacts, and environmental protection. The government is also working to promote geological research and facilitate investment in its mining sector²¹⁰.

²⁰⁷ Allianz, Economic Research – Comoros. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/comoros.html accessed on 8 March 2024.

²⁰⁸ U.S. Geological Survey Minerals Yearbook—2003, The Mineral Industries of Burundi, Comoros, Malawi, Mauritius, Reunion, Rwanda, And Seychelles. Available on <https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/mineral-pubs/country/2003/bycnmimpfrrwsemyb03.pdf> accessed on 8 March 2024.

²⁰⁹ United Nations Africa Renewal, Comoros has huge untapped investment potential, March 2023. Available on <https://www.un.org/africarenewal/magazine/march-2023/comoros-has-huge-untapped-investment-potential> accessed on 15 March 2024.

²¹⁰ The IGF Welcomes Comoros as 85th Member Country, April 2024. Available on <https://www.igfmining.org/announcement/comoros-joins-igf/>, accessed on 7 May 2024.

2.12 Côte d'Ivoire

2.12.1 Introduction

The Republic of Côte d'Ivoire (Ivory Coast) is a country on the southern coast of West Africa. The de facto capital is Abidjan; the administrative capital designate is Yamoussoukro. It borders Guinea, Liberia, Mali, Burkina Faso, Ghana, and the Gulf of Guinea (Atlantic Ocean). Ivory Coast has approximately 32 million inhabitants (2024) and the official language is French²¹¹.

Ivory Coast is a leading producer of gold, manganese, oil, and gas, alongside various other mineral resources. While the extractive sector plays a secondary role to agriculture, it contributed approximately 15% of total export values and 6% of government revenues in 2021²¹². Mining has typically been a small industry in the Ivory Coast, compared to the agricultural sector. Mining currently accounts for approximately 5% of the Ivorian country's GDP and is set to become the second largest driver of growth in its economy, after agriculture, with a target of 8% of GDP by 2030²¹³. Since revising its mining code in 2014, the focus has been on diversifying the gold-dominated sector, due to the growing global demand for critical raw materials such as nickel, cobalt, rare earth elements and lithium²¹⁴.

2.12.2 Policy and Legal Framework

2.12.2.1. Institutional and Policy Overview

Ivory Coast was proclaimed an independent republic on August 7, 1960. The 1960 constitution was suspended following the December 1999 military coup, and a new constitution was approved in 2000. Another new constitution was approved in 2016 and amended in 2020, under which executive power is vested in the president, who is directly elected, serves a five-year term, and, beginning in 2020, can only be re-elected once²¹⁵.

From a mining perspective, the primary Ministry that regulates mining is the Ministry of Mines and Geology. Other Ministerial departments that *inter alia* regulate the extractive industry in Ivory Coast are the Ministry of Petroleum, Ministry of Energy and Renewable Energy and Ministry of Water and Forests. Operational and administrative affairs of the mining industry are administered by the SODEMI²¹⁶, which is the Société pour le Développement Minier en Côte d'Ivoire, a state-owned company under the management of the Ministry of Industry and Mines.

²¹¹ Britannica, Côte d'Ivoire, Available on <https://www.britannica.com/place/Cote-dIvoire>, accessed on 27 April 2023.

²¹² EITI, Côte d'Ivoire. Available on <https://eiti.org/countries/cote-divoire>, accessed on 31 March 2024.

²¹³ The mining sector in Ivory Coast: a booming sector with outstanding potential. Available on <https://h2gconsulting.com/ivory-coast/mining-in-ivory-coast/?lang=en#:~:text=Mining%20currently%20accounts%20for%205,8%25%20of%20GDP%20by%202030>. Accessed on 2 April 2024.

²¹⁴ Institute for Security Studies, Côte d'Ivoire's mines risk degrading its fragile environment. Available on <https://issafrica.org/iss-today/cote-divoires-mines-risk-degrading-its-fragile-environment> accessed on 27 March 2024.

²¹⁵ Britannica, Côte d'Ivoire - Resources and power. Available on <https://www.britannica.com/place/Cote-dIvoire/Resources-and-power> accessed on 27 March 2024.

²¹⁶ ICLG TO: MINING LAW 2019, Chapter 13 – Ivory Coast. Available on https://www.acc.com/sites/default/files/resources/vi/membersonly/Article/1490831_1.pdf accessed on 2 April 2024.

Mining licenses are awarded by the Council of Ministers on the recommendation of the Ministry of Mines and Energy.

2.12.2.2. Relevant Legal Instruments

The Ivory Coast mining code (**Mining Code**) was adopted by the National Assembly by Law N°2014-138 of March 24, 2014. It was indirectly modified in 2018 by Law N°2018-144 of February 14, 2018, relating to the modification of article 169e of the Mining Code. The Code regulates the prospecting, exploration, exploitation, possession, transport, enrichment and sale of mineral substances in Ivory Coast²¹⁷. The mining cadastre is accessible online²¹⁸, as well as consultable via the Official Gazette.

Other legislative sources of law that are relevant to the mining industry in Ivory Coast include²¹⁹:

- Uniform Act Relating to General Commercial Law dated 15 December 2011;
- Law No.2003-206 dated 7 July 2003 enacting the Tax Code;
- the Law No.96-766 of 3 October 1996 enacting the Environmental Code;
- the Law No.2015-532 of 20 July 2015 enacting the Labor Code; and
- the Order No.18/2003/CM/UEMOA amended by the Order No.02/2009/CM/UEMOA of 27 March 2009.

2.12.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Article 5 of the Mining Code provides that any natural person or legal entity, whether an Ivory Coast national or a foreign national, may undertake or carry on an activity governed by the Mining Code on the territory of the Ivory Coast provided that a mining title or an authorization has first been obtained²²⁰.

2.12.2.4. Artisanal Mining Sector

The Mining Code and associated authorisation framework provides for artisanal and small-scale mining, by way of regulation of semi-industrial and artisanal exploitation of ore (as well as to industrial or artisanal exploitation of quarry substances). The country's main ASM products are gold, nickel, diamonds and coltan, other minerals such as manganese and silver are also produced²²¹.

²¹⁷ African Mining Legislation Atlas, Côte d'Ivoire, April 2022. Available on <https://www.a-mla.org/en/country/C%C3%B4te%20d%27Ivoire> accessed on 27 March 2024.

²¹⁸ Cartographic portal of the Mining Cadastre of Côte d'Ivoire. Available on <https://portals.landfolio.com/CoteDivoire/FR/> accessed on 27 April 2024.

²¹⁹ ICLG TO: MINING LAW 2019, Chapter 13 – Ivory Coast.

https://www.acc.com/sites/default/files/resources/vl/membersonly/Article/1490831_1.pdf accessed on 2 April 2024.

²²⁰ LAW No.2014-138 OF 24 March 2014 CONTAINING THE MINING CODE. Available on https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Ivory+Coast/Ivory_Coast_Mining_Code_Law_No._2014-138_2014_English.pdf accessed on 27 March 2024.

²²¹ UNECA, Cote d'Ivoire ASM Profile. Available on <https://knowledge.uneca.org/asm/cotedivore> accessed on 2 April 2024.

2.12.2.5. Judicial System

- **Judicial independence**

Ivory Coast has a republican constitution with a unitary system of government, made up of a legislature, an executive branch headed by the president, and an independent judiciary, headed by the Supreme Court. As a result of French colonialism, Ivory Coast's legal system is based on the French civil code tradition. Additionally, some institutions, such as the Constitutional Court, are based on the French model. African tradition and Islamic law have also influenced the legal system²²².

The legal system has two levels. The lower courts and upper courts. The upper courts include the Supreme Court, the High Court of Justice, and the State Security Court. The lower courts of Ivory Coast include the courts of appeals, the courts of first instance, the courts of assize, and the justice of peace courts. These were established by Presidential Decree. Ivory Coast has three courts of appeals. These courts have appellate jurisdiction over the courts of first instance and the courts of assize. The chamber of appeals consists of a president and two appeal judges²²³.

Ivory Coast's three highest bodies within the judiciary are the Court of Cassation, which deals with criminal and civil matters; the Council of State, which handles administrative disputes; and the Court of Auditors, which oversees matters pertaining to public finances and accounts. There are also subordinate Courts of Appeal and Courts of First Instance. The Superior Council of Magistracy is the body that oversees matters pertaining to the employment and disciplinary matters of judges²²⁴.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, Ivory Coast made enforcing contracts easier in 2014 by creating a specialized commercial court. Furthermore, in 2016, it made enforcing contracts easier by introducing new provisions for voluntary mediation. Similarly, in 2017, it made enforcing contracts easier by introducing a simplified fast-track procedure for small claims that allows for parties' self-representation. In 2019, it made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism. Finally, in 2020, Ivory Coast made enforcing contracts easier by publishing reports on commercial court performance and progress of cases²²⁵.

- **Protection of Minority Investors**

In 2015, Ivory Coast strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for

²²² Washington University Manual of International Legal Citation, Cote d'Ivoire. Available on <https://apps.law.wustl.edu/GSLR/CitationManual/countries/ivorycoast.pdf> accessed on 27 March 2024.

²²³ Judicial System - Cote d'Ivoire. Available on <https://countrystudies.us/ivory-coast/62.htm>, accessed on 27 March 2024.

²²⁴ Britannica, Côte d'Ivoire - Constitutional framework. Available on <https://www.britannica.com/place/Cote-dIvoire/Constitutional-framework> accessed on 27 March 2024.

²²⁵ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 27 March 2024.

shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions²²⁶.

2.12.2.6. Arbitration

The Ivory Coast arbitration regime is like many regimes in French-speaking West Africa. Ivory Coast's specific domestic law on arbitration (Law n° 93-671 of 9 August 1993 on Arbitration) was replaced by the OHADA provisions of 1999. The unified legislation supersedes the previous national legislation in each member state but does not prevent them from enacting specific legislation that does not conflict with the Uniform Acts (CCJA decision 001/2001/EP, 30 April 2001). However, there is currently no arbitration law in Ivory Coast to complement the OHADA provisions. Ivory Coast is a member of OHADA and a contracting party to the New York Convention²²⁷.

2.12.3 Licencing and Permit Regime

2.12.3.1. Types of Licences and Permits

Type of Permit ²²⁸	Duration	Period of Renewal
Exploration permit	Valid for a 4-year period as from its date of allocation.	The permit can be renewed for successive period of 3 years. An exceptional renewal may be granted for a period not longer than 2 years, upon application by the holder of the exploration permit, provided that said application is justified by the need to finalize the feasibility studies.
Exploitation permit	The permit is granted for the lifespan of the mine as specified in the feasibility study without the initial validity period being longer than 20 years.	The permit is renewable for successive periods of 10 years at most.
The semi-industrial mining exploitation authorization	The permit is valid for a period of 4 years.	The permit is renewable in accordance with the conditions specified by decree.

²²⁶ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 27 March 2024.

²²⁷ <https://www.acerislaw.com/cote-ivoire-arbitration-regime/> accessed on 27 March 2024

²²⁸ ACERIS LAW LLC, Côte d'Ivoire Arbitration Regime, September 2015. Available on <https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Ivory+Coast/Ivory+Coast+Mining+Code+Law+No.+2014-138+2014+English.pdf> accessed on 27 March 2024.

The non-industrial mining exploitation authorization	The permit is valid for a period of 4 years.	The permit is renewable in accordance with the conditions specified by decree.
The authorization to exploit quarry substances for industrial quarries of movable materials and substances	The permit is granted for a period of years at most as from its date of allocation for industrial quarries of other quarry.	The permit is renewable for 4 years at most as from its date of allocation.
Authorization to exploit non-industrial quarries	The permit is valid for a period of 2 years as from its date of allocation.	The permit is renewable in accordance with the conditions defined by decree.
Mining convention	The permit is valid for an initial term of validity of 12 years.	The permit is renewable for periods of validity not exceeding 10 years in accordance with the conditions defined by decree.

Table 5 Types of Licences and Permits in Côte d'Ivoire

2.12.3.2. Transferability of Mineral Rights

In terms of Article 41 of the Mining Code, a mining title is assignable or transferable subject to the prior approval of the Minister for Mines and in accordance with the conditions provided for by decree. Any agreement thus concluded may be executed only subject to the condition precedent of said authorization. The approval of the Minister for Mines must be granted when the holder of the mining title has complied with its obligations under the Mining Code²²⁹.

In terms of Article 49 of the Mining Code, the prospection authorization is not assignable, transferable or cannot be farmed out. The same restrictions apply to the semi-industrial mining exploitation authorization. It is only transferable in accordance with the conditions set by decree.

In terms of Article 72 of the Mining Code, the non-industrial mining exploitation authorization is also not assignable. It is only transferable in accordance with the conditions set by decree.

In terms of Article 88 the authorization to extract quarry materials is not assignable, transferable and cannot be farmed out.

Finally, in terms of Article 93, the authorization to exploit industrial quarries is assignable and transferable subject to the prior approval of the Minister for Mines.

²²⁹ LAW No.2014-138 OF 24 March 2014 CONTAINING THE MINING CODE. Available on <https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Ivory+Coast/Ivory+Coast+Mining+Code+Law+No.+2014-138+2014+English.pdf> accessed on 27 March 2024.

According to Article 98, the authorization to exploit non-industrial quarries is transferable subject to the prior approval of the Minister for Mines. It is not assignable or cannot be farmed out.

2.12.4 Taxation

2.12.4.1. Mining Royalties and Taxes

Ordinance no. 96-600 of 9 August 1996, as amended by the tax schedule to Ordinance no. 2011-480 of 28 December 2011, split the revenue from mining duties, taxes and royalties between the budget for the tax authorities and the State budget and the Ministry in charge of mines at 85% and 15% respectively. The Ministry's share is intended to finance its operational activities, the acquisition of geological data, the ongoing training of its staff and the development of new technologies, staff training, as well as the *Fonds Spécial pour la Promotion Minière* (Special Fund for Mining Promotion), to support geological and mining data collection, mapping and prospecting activities. prospecting activities²³⁰.

The royalty rate varies from 3% to 6% based on FOB value, depending on the substance (e.g., bauxite, gold, diamond, iron, gold)²³¹.

2.12.5 Mineral Beneficiation

There appear to be no requirements to beneficiate any minerals under the laws of Ivory Coast. Holders of an exploitation permit have the right to export the minerals exploited by their company. The company is required to inform the Mining Authority of certain information at least 48 hours prior to the export. Following the export, a copy of the export documents must be forwarded to the Mining Authority²³².

2.12.6 Macroeconomics

Real GDP growth dropped from 7.4% in 2021 to 6.7% in 2022 due to the ongoing effects of Russia's invasion of Ukraine and the COVID-19 pandemic. Growth is driven mainly by the extractive industry, manufacturing, construction, retail trade, telecommunications, private and public investment, and private consumption. Inflation rose from 4.2% in 2021 to 5.2% in 2022, induced mainly by higher food prices due to inadequate local supplies and by the higher cost of transportation caused by increased global energy prices. To maintain the population's purchasing power, the government subsidized oil prices in the first quarter of 2022, upgraded civil service salaries, and capped the price of mass-market products. Despite higher average interest rates for bank loans (6.1% in 2022 compared with 5.6% in 2021), credit to the economy rose 11.4%, against 12.5% in 2021, due to momentum in economic activity²³³.

²³⁰ EITI Côte d'Ivoire Report 2021. Available on https://eiti.org/sites/default/files/2024-01/Rapport-ITIE-CI-2021_version-finale-29-12-23.pdf accessed on 27 March 2024.

²³¹ EY, Mining and Metals Tax Guide – Ivory Coast. Available on <https://s3.amazonaws.com/rgi-documents/a3a7e2ead5afcbd4626f6a0edeb76e32381b8945.pdf>, accessed on 27 March 2024.

²³² Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 2 April 2024.

²³³ African Development Bank, Côte d'Ivoire Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/cote-d%E2%80%99ivoire/cote-divoire-economic-outlook#:~:text=Real%20GDP%20growth%20dropped%20from,public%20investment%2C%20and%20private%20consumption>. Accessed on 27 March 2024.

2.12.7 Governance and Risk Ratings

2.12.7.1. Ease of Doing Business

Ivory Coast ranks 110 out of 190 countries in the 2020 World Bank Ease of Doing Business Report²³⁴.

2.12.7.2. Investment Climate

The US State Department reports in its investment climate report that in Ivory Coast systemic administrative delays associated with highly bureaucratic decision-making exist. Investment climate challenges include point-of-entry challenges in obtaining financing and necessary government approvals to operate in the Ivory Coast. An overly complicated tax system and slow, opaque government decision-making processes.

To address these issues, the government is taking tangible steps. The government has begun to streamline operating procedures in some sectors, such as procurement, taxation, and regulation. New public procurement procedures adopted in 2019 were implemented in 2021, including implementation of an e-procurement module, and improved evaluation, prioritization, selection, and monitoring procedures. This is a work in process, and investors have expressed concerns that these procedures are not consistently or transparently applied. Similar concerns circulate about tax procedures, especially retroactive assessments based on changes in tax formulas. Other challenges include low levels of literacy, skills development, and income; weak access to credit for small businesses; corruption; and the immediate need to broaden the tax base to relieve some of the tax-paying burden on businesses.

Mining currently accounts for 5% of the Ivorian country's gross domestic product and is set to become the second largest driver of growth in its economy, after agriculture, with a target of 8% of GDP by 2030²³⁵.

2.12.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Ivory Coast based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C2 - medium risk for enterprise²³⁶.

Ivory Coast joined the EITI initiative in 2008. Côte d'Ivoire achieved a moderate score (80.5 points) in implementing the 2019 EITI Standard in April 2023²³⁷. Ivory Coast ranked 3rd most attractive in the Investment Attractiveness Index - Africa in the Fraser Institute perception index.

²³⁴ Doing Business 2020, Economy Profile Côte d'Ivoire. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/c/cote-divoire/CIV.pdf> accessed on 27 March 2024.

²³⁵ The mining sector in Ivory Coast: a booming sector with outstanding potential. Available on <https://h2gconsulting.com/ivory-coast/mining-in-ivory-coast/?lang=en> accessed on 27 March 2024.

²³⁶ Allianz, Economic Research - Côte d'Ivoire. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Cote-Ivoire.html accessed on 27 March 2024.

²³⁷ EITI, Côte d'Ivoire – Validation. Available on <https://eiti.org/countries/cote-divoire#validation-472> accessed on 27 April 2024.

Transparency International revealed in 2023 that Ivory Coast improved its corruption perception index, moving six places above last year's ranking and breaking into the top 100. Senior government officials emphasized their political will to fight corruption, which continues to hinder Ivory Coast's economy²³⁸.

2.12.8 Good Governance Evaluation

The U.S. State Department reports that at an operational level, lack of regulatory transparency is a concern. Publication of draft legislation and regulations is not required. Foreign and Ivorian companies complain that new regulations are issued with little warning and without a period for public comment. Further work in this area would boost investor confidence²³⁹.

The government of Ivory Coast is taking steps to address these issues. It developed the National Development Plan and Strategy 2030 seeks to digitize the government for a more transparent and inclusive economy. It directs the government to implement policies in support of transforming the economy away from a commodity export focus to increase value-added processing contributions to GDP and job creation. Together, these efforts and its significant manufacturing base, second only to Nigeria in the region, offer opportunities.

The government of the Ivory Coast must do more to create transparency and accountability. Corruption and weak judicial and security capacity must be addressed to ensure long-term and much-needed capital investment in the mining sector. Large deposits of critical raw materials such as nickel, cobalt, rare earths and lithium mean that the mining industry of Ivory Coast, with a well-developed mining code, can and should play an important role in mining in future.

²³⁸ U.S. Department of State, 2023 Investment Climate Statements: Côte d'Ivoire. Available on <https://www.state.gov/reports/2023-investment-climate-statements/cote-divoire/> accessed on 27 March 2024.

²³⁹ U.S. Department of State, 2023 Investment Climate Statements: Côte d'Ivoire. Available on <https://www.state.gov/reports/2023-investment-climate-statements/cote-divoire/> accessed on 27 March 2024.



2.13 Democratic Republic of Congo

2.13.1 Introduction

The Democratic Republic of the Congo (DRC), officially ‘République Démocratique du Congo’, is the second largest country in Africa, in terms of territory, and the third most populated country in Africa. The DRC is exceptionally endowed with natural resources, including cobalt, and copper as well as immense biodiversity, significant arable land, hydropower potential, and the world’s second-largest rainforest (the Congo Basin).²⁴⁰ From the 1880s until independence in 1960, the DRC was a Belgian colony.²⁴¹ The Congolese Democratic Franc (CDF) is the official currency of the DRC, which has a current exchange rate of 0.00040 to the United States Dollar.²⁴²

The mining sector in DRC plays a significant role in the economy and contributes approximately 30 percent of the GDP.²⁴³ The DRC is Africa’s largest producer of copper and the world’s largest producer of cobalt.²⁴⁴ DRC’s mineral reserves also include diamonds, gold, silver, zinc, manganese, tin, tungsten, tantalum, niobium, and lithium but much of the country is under-explored. The DRC is ranked among the top 10 producers of artisanal gold in the world. Artisanal mining holds an important place in the mining sector of the DRC with more than 2 million people involved and several other metals exploited such as gold, tin, niobium-tantalum, tungsten, and cobalt.

2.13.2 Policy and Legal Framework

2.13.2.1. Institutional and Policy Overview

The DRC adopted the amended Constitution of the Democratic Republic of the Congo (the Constitution) in 2005 which is the supreme law of the land.²⁴⁵ The Constitution introduced the rule of law to the DRC and established a real political, economic, social, and cultural State based on democracy.²⁴⁶ The court system in the DRC is made up of the following tiers²⁴⁷:

- Court of Cassation and Constitutional Court;
- Court of Appeals; and
- Tribunal de Grande, Magistrates' Courts and Customary Courts.

The Minister of Mines, the Ministry of Mines and the Mining Cadastre are the most important enforcement bodies:

²⁴⁰ World Bank “The World Bank in DRC” accessed in September 2023 <https://www.worldbank.org/en/country/drc/overview>.

²⁴¹ Foreign Policy “Confronting Belgium’s Colonial Legacy” accessed in September 2023 <https://foreignpolicy.com/2022/06/06/belgium-congo-colonialism-leopold-ii-commodities/>.

²⁴² Xe “Currency Exchange Rates and International Money Transfer” accessed in September 2023 <https://www.xe.com/currencycharts/?from=CDF&to=USD>.

²⁴³ Mining 2021 accessed in September 2023 https://www.vda.pt/xms/files/05_Publicacoes/2021/2021_mining_Democratic_Republic_of_the_Congo.pdf.

²⁴⁴ Andrew L Gully “One hundred years of cobalt production in the Democratic Republic of the Congo” accessed in September 2023 <https://www.sciencedirect.com/science/article/pii/S0301420722004500>.

²⁴⁵ The Constitution of the Democratic Republic of the Congo (hereinafter referred to as the Constitution), 2005.

²⁴⁶ The Constitution, preamble.

²⁴⁷ The Constitution, Article 153.

- The Minister of Mines is responsible for granting or refusing mining rights and other related permits and authorisations. He also establishes artisanal exploitation zones.
- The Ministry of Mines carries out technical studies, implements mining policies and conducts investigations.
- The Mining Cadastre is responsible for cadastral registration of (applications for) mining rights.

At the sectoral level, the mining industry is administered by the governors of the provinces, the Head of the Provincial Divisions of Mines and Technical Services, and specialised organisations:

- The Technical Unit for Mining Coordination and Planning (CTCPM).
- The Centre for Evaluation, Expertise and Certification of Precious Mineral Substances (CEEC).
- The Mining Cadastre (CAMI) – A public establishment in charge of the management of the mining domain as well as those of mining titles and quarries, CAMI is placed under the supervision of the Minister of Mines. To cover its operating costs, the CAMI is authorised to use funds provided by payment costs of filing documents and payment of annual surface rights. The CAMI is governed by Law No. 08/008 and its organisation and operation are set by Decree No. 17/005 of April 3, 2017. The CAMI is accessible online and is regularly updated.
- The Service of Assistance and Supervision of Artisanal and Small-scale Mining (SAEMAPE).
- The Geological National Service of Congo (SGNC).
- The Mining Fund for Future Generations (FOMIN) - The organisation and operation of FOMIN are determined by the Prime Minister's Decree n° 17/19 of November 25, 2019. The funds managed by this structure will help to overcome the environmental problems that people who are constantly exposed to certain risks due to mining may encounter.

2.13.2.2. Relevant Legal Instruments

Article 34 of the Constitution recognises that the State guarantees the right to individual or collective property acquired in accordance with law or custom, and no one may be deprived of his/her property except for reasons of public utility and in return for prior payment of just compensation under the conditions established by law. Consequently, a person's assets may only be seized by virtue of a decision issued by a competent judicial authority.²⁴⁸

In the DRC, mining law is governed by Law no 007/2002 of July 11, 2002, related to the Mining Code (the Mining Code),²⁴⁹ as amended and supplemented by Law no 18/001 of March 9, 2018, as well as Decree no 2003/038 of March 26, 2003 related to Mining Regulations (the Mining Regulations), as amended and supplemented by Decree no 18/024 of June 8, 2018 and special no of June 12, 2018.

²⁴⁸ The Constitution, Article 34.

²⁴⁹ Law no 007/2002 of July 11, 2002 related to the Mining Code (hereinafter the Mining Code).

The Mining Regulations and new Mining Code adopted in June 2018, have updated the mining laws, as the government aims to yield greater profits from the mining sector.²⁵⁰ Some of the key changes to the Mining Code are the following:

- At least 10 percent of the share capital of a company must be held by a Congolese private citizen for creating a mining company;
- The State royalties increased from 2 to 3.5 percent for non-ferrous and base metals;
- The exploitation licence duration period was reduced from 30 to 25 years, and the exploration licences are now only renewable once;
- The State free carry non-dilutable equity stake increased from 5 to 10 percent;
- At least 40 percent of the funds required to develop any project have to be contributed by way of capital injection, rather than being funded through debt; and
- State royalties increased from 2.5 to 3.5 percent for precious metals and were calculated on the gross market value of the products.

Under the new Mining Code, the Minister of Mines is responsible, *inter alia*, for:

- granting or refusing mining rights and other related permits and authorisations;²⁵¹
- establishing artisanal exploitation zones;²⁵²
- approving mining and quarrying agents;²⁵³
- authorising the extension of exploitation works;²⁵⁴
- approving mining mortgages;²⁵⁵
- disqualifying a holder, withdrawing mining and/or quarrying rights;²⁵⁶
- supervising the specialised public services of the Ministry of Mines;²⁵⁷
- Issuing authorisations for the processing of artisanal mining products;²⁵⁸

Commentators state that the Revised Mining Code has in fact created significant uncertainty in the industry. Attempts by the DRC government to clarify the interpretation and application of the Revised Code, through the publication of an annotated version of the Revised Code, were not successful the

²⁵⁰ Christophe Asselineau “Major changes to the mining code of the Democratic Republic of Congo” accessed in September 2023 <https://www.nortonrosefulbright.com/en/knowledge/publications/07ca4707/major-changes-to-the-mining-code-of-the-democratic-republic-of-congo>.

²⁵¹ Mining Code, Article 32.

²⁵² Mining Code, Article 282.

²⁵³ Mining Code, Article 341.

²⁵⁴ Mining Code, Article 10 and 49.

²⁵⁵ Mining Code, Article 169.

²⁵⁶ Mining Code, Article 10.

²⁵⁷ Mining Code, Article 10 and 15.

²⁵⁸ Mining Code, Article 10.

annotated version, in many instances, restated the content of the Revised Code as opposed to providing clarification or interpretation.

Therefore, the annotated version of the Revised Code, published in July 2020, did not allay investors' fears. These include the reduction of stabilisation periods from ten years to five years—calculated from 2018 when the Revised Code came into force and effect—as well as the “supertaxes” and increased royalties for strategic minerals such as cobalt²⁵⁹. The amendments have been confusing and at times contradictory which dissuades foreign investment and makes the investment climate for mining in the DRC more difficult.

According to the Constitution and the Mining Code, all deposits of mineral substances in the soil and subsoil are the exclusive property of the State.²⁶⁰ The Mining Code framework allows for any corporate entity to engage in non-artisanal research or exploration of mineral substances as the holders of mining rights. Mining rights are acquired either through a bidding (tender) process organised by the Minister of Mines or on a first-come, first-serve basis.²⁶¹

The following general principles are applicable to the mining industry in the DRC,²⁶² namely:

- The exploration and development of mineral resources is a way that promotes and contributes towards socio-economic development, and in accordance with international conventions to which the DRC is a party;²⁶³ such as the:
 - World Trade Organization;
 - International Labour Organisation;
 - South African Development Community;
 - African Continental Development Community;
 - Common Market for Eastern and Southern Africa;
 - Convention Establishing the International Centre for Settlement of Investment Disputes; and
 - African Continental Free Trade Area Agreement.
- With high unemployment, the mining industry aims to end child labour and respect human rights (health and safety) in the mining sector.
- The protection of the environment, natural sites, and landscapes and the conservation of mining sites.

²⁵⁹ Mining Weekly, Revised Code still plagues investors, February 2023. Available on <https://www.miningweekly.com/print-version/revised-mining-code-continues-to-plague-investors-2023-02-01>, accessed on 6 March 2024.

²⁶⁰ The Constitution, Article 9 and Mining Code, Article 3.

²⁶¹ Mining Code, Article 33.

²⁶² Minerals Policy of DRC. Available on https://chamberofmines.org.na/wp-content/uploads/2020/07/Minerals_Policy_Final.pdf.

²⁶³ *Op cit* note 5.



- The Mining Code places a corporate social responsibility obligation on permit holders, as a means to address social and community issues.
- Good governance.

Through the revision of the Mining Code in 2018²⁶⁴, the Government has made a commitment to implement the principles of the EITI and to deepen collaboration and partnership with all Stakeholders. This resulted in the integration of several EITI standards into the new Mining Code and Regulations:

- Art.1 Point 53 bis: Traceability;
- Art.1 Point 54 bis: Transparency;
- Art.7 ter: Transparency, Traceability and Certification;
- Art.7 quater: Publication of contracts;
- Art. 311 ter: Sanctions for hindering transparency and traceability in the extractive industry.

The principles of transparency, traceability and certification are reinforced. The mining contracts are published in the official journal and on the website of the Ministry of Mines within sixty days of the date of their signature.

The aspects of good governance are reflected in the ASM sector by the efforts to formalise the ASM sector in the Mining Code through the institution of SAEMAPE, Comptoirs, Cooperatives, Negociant Cart, the artisanal miner card, the creation of the Artisanal Mining Zone (“Zone d’exploitation artisanale” - ZEA).

2.13.2.3. Foreign Ownership, Migrant and Local Labour Requirements

In the DRC, there are no specific mandates regarding indigenous ownership. Nonetheless, there are measures in place to seek the consent of indigenous communities.

According to Act 22/030 of 15 July 2022 on the protection and promotion of the rights of indigenous Pygmy peoples provides that²⁶⁵ “the central government, the province and the decentralized territorial entities shall consult the indigenous Pygmy peoples concerned and shall cooperate through their representatives duly chosen by them with a view to obtaining their prior, free and informed consent before any development, use or exploitation of mineral, water, petroleum or other resources on the lands they own, occupy and use traditionally”.

Furthermore, there are requirements concerning local communities (not specifically indigenous), which include²⁶⁶:

²⁶⁴ Investment Policy Hub, 2018, DRC adoption of a new mining code, available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3227/adoption-of-a-miningcode#:~:text=The%20President%20of%20the%20Democratic,deemed%20a%20%22strategic%20substance%22,> accessed on 26 May 2023

²⁶⁵ Democratic Republic of the Congo: Mining Comparative Guide, <https://www.mondaq.com/energy-and-natural-resources/1321368/mining-comparative-guide>, accessed on 18 February 2024.

²⁶⁶ Ibid.

- Involving the Congolese population in general, including limitations on foreign workers and obligations to train Congolese workers. When applying for mining rights, commitments are made to local communities, ensuring compensation for affected land occupants, and maintaining constructive dialogue with them.
- Developing a local community plan before commencing exploitation. This plan entails various social responsibilities aimed at communities affected by mining activities. Approval from the provincial government is necessary for this plan. However, a significant number of mining companies do not have a designated local community plan. Due to the generally outdated or absent infrastructure in the DRC, companies are often tasked with contributing to local development, such as funding road construction, hospitals, or schools.
- Allocating 0.3% of the company's turnover to a legal entity responsible for local development, comprising company representatives and members of local communities. The entire amount must be provided by the end of the fiscal year following the establishment year of the company. The formation of this legal entity will be established through an interministerial decree issued by the Ministers of Mines and Social Affairs.
- Ensuring that subcontracting related to mining activities is carried out by companies majority-owned by Congolese nationals, as per Act 17/001 of 8 February 2017, which sets forth the regulations applicable to subcontracting in the private sector, allowing only limited exceptions.

Furthermore, the revised Code includes a new requirement for 10 percent of the shares in a mining company to be held by Congolese citizens (Article 71 bis).

2.13.2.4. Artisanal Mining Sector

The Assistance and Supervision Service for Artisanal and Small-Scale Mining²⁶⁷ was created under Decree No. 17/009 of April 04, 2017. SAEMAPE is a Technical Service in charge of administrative and financial autonomy with the following functions:

- Assist and supervise the artisanal and small-scale exploitation of mineral substances;
- Encourage and ensure the grouping of artisanal miners of mineral substances or quarry products in mining cooperatives;
- Formalise all artisanal or semi-industrial mining activities, and quarry products in the official production and marketing circuit;
- Request from the Ministry of Mines for the establishment of an artisanal mining area;
- Receive notification of the establishment of a ZEA for the supervision and assistance of artisanal miners affiliated with an approved mining cooperative, in particular; to issue;

²⁶⁷ http://www.saesscam.cd/SAESSCAM_New/

- the closure of a ZEA;
 - the request for prior authorisation for the processing of products by the mining cooperative or quarry products;
- Inform mining cooperatives of approved quarry products of the closure of a ZEA and, possibly, take charge of relocation to another legally established ZEA;
 - Ensure compliance with standards in terms of safety, hygiene, use of water and protection of the environment that apply to the operation of the mining cooperative or quarry products and the artisanal miner;
 - Collect the production statistics of cooperatives and/or approved quarry products and ensure the compensation of farmers for any damage caused by the cooperative activity, under penalty of withdrawal of approval by the Minister.

The Mining Code contains specific provisions with respect to artisanal or small to very small-scale mining rights (Comptoirs, Cooperatives, Negociant Cart, the artisanal miner card, and the creation of ZEAs). The 2018 Mining Code recognises artisanal mining as a legal activity. The aspects of the Mining Code pertaining to artisanal mining are:

- Artisanal miners must register and restrict their activity to certain designated areas in ZEAs);
- Be affiliated with a cooperative to be able to work in ZEAs (Ministerial Order, 2010); and
- Any actor involved in the chains of Mineral sourcing is required to adhere to the OECD Due Diligence Guidelines²⁶⁸ as well as the ICGLR Regional Certification Scheme (Ministerial Order, 2012).

ASM activities are reserved for Congolese nationals and are limited in scope and equipment. They are governed by a code of conduct with safety, health and environmental requirements. MASM licences (“carte d’artisanal miner”) must be renewed annually. Local mineral traders must be in possession of a trading licence (“carte de négociant”) and sell their minerals to designated buying establishments (the so-called “comptoirs” or “processing entities”). The latter are the only entities officially authorised to export minerals from artisanal production.

The ASM sector in DRC is subject to a variety of risks, including conflict funding, smuggling, child labour and forced labour, unsafe working conditions, and adverse environmental impacts. A recent ministerial decree adopted on 2 February 2022 introduced the Trading Centre (“Centre de Négoce”)²⁶⁹, which takes the form of a public centre for artisanal miners with adequate infrastructure to regulate and facilitate activities related to the sale of mineral substances from areas open to artisanal mining.

Artisanal mining in the DRC remains informal despite the creation of the SAEMAPE, as well as in the Artisanal Exploitation Zones (ZEA) not accessible to all artisans. Gold remains the substance mostly

²⁶⁸ OECD Due Diligence Guidance for Responsible Business Conduct. Available on <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>, accessed on 6 March 2024.

²⁶⁹ Artisanal mining and creation of trading centers under Congolese law, October 2022. Available on <https://www.legavox.fr/blog/yav-associates/exploitation-miniere-artisanale-creation-centre-29393.htm>, accessed on 6 March 2024.

exploited by artisans, especially in the west of the country. Other operations are widespread throughout the country and sometimes in conflict zones where they fuel armed conflicts and are even a source of conflict with neighbouring countries (Rwanda, Uganda).

2.13.2.5. Judicial System

- **Judicial Independence**

Courts play a vital role, owing to their power to interpret the law and issue binding orders²⁷⁰. Their independence is critical to maintaining the impartiality and integrity of key institutions. When courts are co-opted, however, they can rubber-stamp illegalities, entrench impunity, and weaken other oversight institutions²⁷¹.

In the DRC's apex courts, such as the Constitutional Court, which consists of nine justices, three from the President's own initiative, three from Parliament, where the President's coalition holds a supermajority, and the remaining three from the Governing Council of the Judiciary. President Félix Tshisekedi gained control of all these structures in 2021 after installing allies in the Governing Council of the Judiciary and the top courts, following in the footsteps of his predecessors, Joseph Kabila, Laurent Kabila, and Mobutu Sese Seko²⁷².

An example of such state interference in the judiciary is that the apex courts have sided with Tshisekedi on many controversial measures such as the "state of siege" he imposed in Ituri and North Kivu in 2021, which instituted martial law, the trial of civilians in military courts, and the suppression of voter registration and turnout in the 2023 elections²⁷³. The state of siege was extended more than 50 times despite evidence that it mainly targeted opposition activists, journalists, and human rights workers. As one legislator observed, "The president now has the constitutional court he wanted, the parliament he wanted, the same goes for the Senate, the prime minister and the government."²⁷⁴

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank's Doing Business report investigates various specific categories in its target countries in relation to the ease of doing business in a particular country. For the purposes of the ease of settling disputes, the report's research looks at factors including the time it takes to file and serve the case; the time it takes typically for a trial to proceed and the time to obtain the judgment and then the time it typically takes to enforce a judgment. It also covers the cost required to enforce a contract through the courts; court costs; the quality of judicial processes index and the court structure and proceedings. An average case takes almost two years to finalise. Singapore, by way of comparison, averages the quickest timeline at just four months. The cost of prosecuting the claim versus the claim amount is on average 80%,

²⁷⁰ Regime Capture of the Courts in Africa, February 2024. Available on <https://africacenter.org/spotlight/regime-capture-courts-africa/>, accessed on 6 March 2024.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Ibid.

compared with 20% in OECD high-income nation states²⁷⁵. Overall, the DRC’s ability to finalise disputes ranks poorly. Consequently, private investors typically seek arbitration clauses to be included in commercial agreements to speed up the finalisation of the dispute.

- **Protection of Minority Investors**

The 2020 World Bank Report on Doing Business states that the Democratic Republic of Congo strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions²⁷⁶.

2.13.2.6. Arbitration

Arbitration in the Democratic Republic of the Congo is governed by two sets of regulations: the revised Uniform Act on Arbitration adopted by the Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA) dated 23 November 2017 and Articles 159 to 194 of the Code of Civil Procedure. The Uniform Act applies to arbitrations that are seated in the OHADA Member States (Article 1), i.e., Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Cote d’Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Democratic Republic of Congo, Senegal, Chad, and Togo²⁷⁷.

The Democratic Republic of the Congo is a contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which regulates the enforcement of foreign awards in its territory. The has entered into approximately 20 bilateral investment agreements, which in turn protect arbitration provisions for foreign investors²⁷⁸.

2.13.3 Licencing and Permit Regime

2.13.3.1. Types of Licences and Permits

Exploration Permit	Exploitation Permit
<p>The licence required to undertake exploration activities is an exploration permit.</p> <p>An exploration permit does not vary depending on the type of mineral or the location of the activity.</p>	<p>An exploitation permit confers the exclusive right to carry out, within the area for which it has been granted and for the duration of its validity, exploration, development, construction and exploitation works targeting the minerals covered by the permit, as well as any associated or non-</p>

²⁷⁵ Doing Business 2020, Congo, Dem. Rep. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/congo-dem-rep/ZAR.pdf>, accessed on 6 March 2024.

²⁷⁶ Doing Business 2020, Congo, Dem. Rep. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/congo-dem-rep/ZAR.pdf>, accessed on 6 March 2024.

²⁷⁷ Arbitration and the Democratic Republic of the Congo, May 2023. Available on <https://www.acerislaw.com/arbitration-and-the-democratic-republic-of-the-congo/>, accessed on 6 March 2024.

²⁷⁸ Democratic-Republic-of-Congo-Treaties. Available on <https://www.acerislaw.com/wp-content/uploads/2023/05/Democratic-Republic-of-Congo-Treaties.pdf>, accessed on 6 March 2024.

<p>An exploration permit covers only the minerals for which it is granted (and associated substances, if the holder requests an extension to such associated substances)²⁷⁹.</p>	<p>associated substances if the permit holder has requested an extension thereto. The holder of an exploitation permit must process and transform the mineral substances it mines within the Congolese territory.²⁸⁰</p>
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Table 6 Types of Licences and Permits in the Democratic Republic of Congo

²⁷⁹ Democratic Republic of the Congo: Mining Comparative Guide. Available on <https://www.mondaq.com/energy-and-natural-resources/1321368/mining-comparative-guide>, accessed on 18 February 2024.

²⁸⁰ Democratic Republic of the Congo: Mining Comparative Guide, <https://www.mondaq.com/energy-and-natural-resources/1321368/mining-comparative-guide>, accessed on 18 February 2024.

2.13.3.2. The Application Process for Mining Licences and Permits

Application Requirement	Exploration Permit	Exploitation Permit	Tailing operating certificate	Small Mine Licence
Place of application	The Mining Cadastre	The Mining Cadastre	The Mining Cadastre	The Mining Cadastre
Validity or Duration of Licence or Permit	5 years	25 years	5 years	5 years
Renewable	Renewable once for a period of 5 years, at least 3 months and not more than 6 months before date	Renewal for periods of 15 years each. Application for renewal to be submitted to the CAMI at least one year and not more than five years before the expiry date of the operating permit.	Renewable several times over the same period	Renewable once for the same period: But the Minister may extend the duration beyond 10 years
Costs	The application fee for an exploration permit is \$1,000 per carré. The filing fee for the rehabilitation and mitigation plan is \$3,500.	The application fee for an exploitation permit is \$5,500. The filing fee for the mitigation and rehabilitation plan is \$3,500.	Not available.	Not available.
Application requirements or restrictions	Exploration permits can be owned by DRC or foreign legal entities whose corporate purpose relates exclusively to mining activities. In order to obtain an exploration permit, foreign companies must	Obligation of the applicant to treat and process in the DRC the substances that he exploits. Participation of natural persons of Congolese nationality in the share capital up to 10%	Surface mining, excluding underground mining.	-



	<p>elect domicile with a DRC 'mining agent'.</p> <p>To be eligible for an exploitation permit, a company must demonstrate a minimum financial capacity of at least five times the total amount of the annual surface rights payable for the area covered by the exploitation permit.</p> <p>In addition, the company will have to submit a rehabilitation and mitigation plan before starting any research activity. There are specific obligations for maintaining the permit, including the fact that an exploitation permit holder has to start construction work within one year of delivery of the permit.</p> <p>Obtaining an exploitation permit obliges the operator to transfer, to the State, a free carry participation of 10 percent of the operator's share capital.</p> <p>A person and his associates cannot hold more than 50 permits (less than 20,000 Km²).</p>			
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Table 7 Application Requirements for Licences and Permits in the Democratic Republic of Congo

2.13.3.3. Transferability of Mineral Rights

All mining rights in the DRC are conveyable. The revised Mining Code introduced several changes in relation to transfers and other transactions, including:

- A requirement for prior State consent for any direct or indirect change of control in the holder of a mining licence or its merger with another company (Article 276 bis and 276 ter).
- The introduction of a registration fee upon the transfer of a mining right of 1 % of the sale price (Article 185 ter).
- An increase in the fees payable for the registration of security over mining rights ranged from 0.1 % to 0.5 % of the sum secured (Article 171 (1)) which were previously modest fixed fees.

The total or partial transfer of the exploration permit and exploitation permit is allowed and is subject to the common legal provisions on transfers. However, the transferor remains responsible for its environmental obligations from before the transfer. The procedure is like that for the grant of an exploration permit²⁸¹.

In addition, the transferee must:

- Meet the eligibility criteria for applying for and maintaining a permit.
- Demonstrate sufficient financial capability to manage the permit.
- In cases of partial transfers, adhere to the configuration and location of mining areas covered by the transferred permit.

Upon approval, the Mining Cadastre will officially record the transfer upon payment of a registration tax equivalent to 1% of the transfer value. The transfer becomes legally binding to third parties only after registration.

2.13.4 Taxation

2.13.4.1. Mining Royalties and taxes

The fiscal, customs and tax regime applicable to the mining activities of the holder on the national territory is defined exclusively and exhaustively in the Mining Code. It concerns taxes, duties, royalties and other parafiscal levies collected both for the benefit of the Government and for that of the provinces and decentralised territorial entities.

Although mining royalties are deductible expenses for the determination of corporate income tax, they are due regardless of the mining company's profitability (Article 255). Royalties become due at the

²⁸¹ Democratic Republic of the Congo: Mining Comparative Guide. Available on <https://www.mondaq.com/energy-and-natural-resources/1321368/mining-comparative-guide>, accessed on 18 February 2024.



exploitation phase and are payable at the leaving of the goods from the exploitation or processing site of the project.

Mineral	Royalty rate (%)
Iron or Ferrous metals	3.5
Non-Ferrous metals	3.5
Precious metals	3.5
Gemstones	6
Industrial minerals	1
Common construction materials	0
Strategic minerals determined by the government (i.e., copper, cobalt, coltan, germanium)	10

Table 8 Royalty Rates in the Democratic Republic of Congo

The corporate income tax rate is set at 30% of turnover, as is the case under the DRC's common regime. Specific taxes are subject to the standard or common tax regime, such as taxes on rental revenues, real estate contributions (for surfaces falling outside the scope of the mining surface taxes or rights) and taxes on vehicles and roads.

Mining companies employing expatriates are subject to payment of an exceptional tax on the basic salary of these employees. The tax rate on remunerations for mining companies employing expatriates' is set at 25%.

The Mining Code has further implemented a super profit tax at a rate of 50%. The super profit tax is due when the commodity prices rise by 25% in comparison to those referred to in the feasibility study. The revenues subject to the super profit tax are then exempted from the profit tax (i.e., the corporate income tax at 30 %).

This regime has been extended to subcontractors, to holders of a Permanent Quarry Exploitation Authorisation (AECF) other than those for building materials in common use and to holders of approvals for approved processing entities. Mining companies seeking to invest in the DRC must note that pursuant to the New Mining Code, subcontracting activities in the mining sector are subject to Act No. 17/001 of 8 February 2017 establishing the rules applicable to subcontracting in the private sector (the Subcontracting Act). The Subcontracting Act notably provides that:

- activities can only be subcontracted to Congolese-owned companies or by Congolese nationals (with strictly limited exceptions);
- all companies established on Congolese national territory must put in place, internally, a policy of training that should allow Congolese nationals to acquire the technical know-how and the qualifications necessary to accomplish certain activities; and
- companies may not subcontract more than 40% of the value of a contract.

In this respect, whereas local content requirements were already imposed on subcontracting activities in the mining sector by a Ministerial Decree, the Subcontracting Act's implementation measures impose rather unclear obligations on mining operators and subcontractors. Furthermore, the subcontracting

authority has recently increased the frequency of its on-the-ground visits to control compliance of the mining actors with the Subcontracting Act and related regulations.

Generally, there are no legal restrictions on foreign investment in the mining sector, and currency exchange provisions are quite liberal. There are, however, some basic obligations with which operators must comply. The DRC adopted new Exchange Control Regulations on 25 March 2014, which have been in force since 24 September 2014. Their main characteristics are as follows:

- the export or import of funds equal to or above US\$10,000 is subject to a licence called 'Modèle RC' issued by the Central Bank as an approved intermediary; certain documents justifying the transfer will need to be provided;
- subject to the relevant tax being paid, the filing of the "Modèle RC" form and the delivery of other supporting documents required by the Central Bank, commercial banks in the DRC are authorised to transfer dividends, capital gains, interest, principal, fees and commissions on foreign loans outside the DRC. There is no exchange control restriction on transfers abroad of profit by a foreign company;
- there is a restriction for the payment in cash of amounts above or equal to US\$10,000;
- repatriation of incomes is within 60 days;
- transactions are paid for in local currency unless otherwise agreed; and
- taxes are paid in local currency.

2.13.5 Mineral Beneficiation

In line with the Africa Mining Vision²⁸², the revised Mining Code also introduces new requirements with respect to domestic processing. Article 108 bis of the Mining Code provides for the obligation of the holder of a mining exploitation right or a permanent quarrying authorisation must process or have processed the minerals into marketable products in its own facilities or at approved processing entities established in the territory of the DRC. A holder of an exploitation permit must submit to the Mining Directorate its industrialisation plan containing a programme to this end.²⁸³

For the exceptional processing of raw minerals outside the DRC, by way of derogation of the aforementioned Article 108, the holder of an exploitation permit may be authorised, for a period of one year, to have its mining products processed outside the DRC by an interministerial decree of the minister of mines and the minister of foreign trade, deliberated in the Council of Ministers, in return for payment of the related tax. The authorisation is granted only if the holder demonstrates²⁸⁴:

²⁸² The importance of downstream linkages and the importance of developing domestic processing and beneficiation capacity is a key theme in the Africa Mining Vision adopted by the African Union in 2009.

²⁸³ Mining Laws and Regulations of DRC 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/congo-d-r>, accessed on 18 February 2024.

²⁸⁴ Mining Laws and Regulations of DRC 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/congo-d-r>, accessed on 18 February 2024.

- the lack of a possibility to process the mining products in the DRC at an economically profitable cost for the mining project;
- the existence of a contract for custom processing of mining products outside the DRC concluded with a company established abroad;
- its agreement that the metal produced after processing abroad will be accounted for as an export on behalf of the DRC; and
- acceptance that the agreement will be subject to the duties and taxes due to the public treasury in connection with the exceptional processing of raw mineral substances abroad.

Receipts made after the sale must be repatriated to the DRC within 30 days of receipt of funds by the exporter.

2.13.6 Macroeconomics

For investment purposes, the DRC enjoys a strategic location by sharing a common border with nine countries. However, the DRC's economy is susceptible to epidemics, as observed during the growth slowdown in 2019 amid the Ebola virus outbreak.²⁸⁵

The DRC's Gross Domestic Product (GDP) has grown annually at a rate of 5.9 percent on average from 2015 to 2019, which was backed by favourable international prices for the country's commodity exports.

The GDP grew by 8.6 percent in 2022 and is up from 6.2 percent in 2021, which is directly correlated to an increase in the extractive sector (which grew by 20.8 percent) and the recovery in the non-extractive sector (which grew by 3.2 percent), driven by services despite a deteriorating security situation in east DRC.²⁸⁶

Trade plays an important role in the Congolese economy as it comprised a share of 43 percent of GDP on average per year, in the last decade. As such foreign direct investments and external financing contributed to building up reserves, reaching 7.9 weeks of imports in 2022, from 5.4 weeks a year earlier, and limiting excessive exchange rate fluctuations.²⁸⁷

With the ongoing war in Ukraine, the DRC has experienced higher global energy and food prices which exerted upward pressures on domestic inflation and lifted the average inflation rate from 9.1% in 2021 to 9.2% in 2022.²⁸⁸

²⁸⁵ The World Bank "The World Bank in DRC". Available on <https://www.worldbank.org/en/country/drc/overview>, accessed in September 2023.

²⁸⁶ *Op cit* note 30.

²⁸⁷ *Op cit* note 30.

²⁸⁸ *Op cit* note 30.

2.13.7 Governance and Risk Ratings

2.13.7.1. Ease of Doing Business

According to the World Bank Group, in 2020, the DRC scored 36.2 points in the ease of doing business which ranks the DRC in 183rd place on the ease of doing business rank.²⁸⁹ According to the US State Department Report on the DRC (2020), businesses in the DRC face numerous challenges, including poor infrastructure and a weak and corrupt bureaucracy. Violence is commonplace with armed groups remaining active in the eastern part of the country, making for a fragile security situation that negatively affects the business environment. According to the US State Department Report, reform of a non-transparent and often corrupt legal system is underway. While laws protecting investors are in effect, the court system is often very slow to make decisions or follow the law, allowing numerous investment disputes to last for years²⁹⁰.

2.13.7.2. Investment Climate

The investment climate in the DRC is complex. Corruption, predatory taxation, and harassment by local security forces are cited as the main obstacles to investment in the DRC, particularly in the areas of concessions, government procurement, dispute settlement, and taxation²⁹¹.

2.13.7.3. Risk Ratings

According to the US State Department Investment Climate Report of 2023, businesses in the DRC face numerous challenges, including poor infrastructure, a predatory tax system, and corruption²⁹². Global macroeconomic events such as COVID-19 and Russia's attacks on Ukraine have increased global prices for imported food and gasoline, driving up inflation in the country²⁹³ and increasing poverty. Armed groups remain active in eastern Congo, creating a fragile security situation that negatively affects the business environment. While laws protecting investors are in place, the court system is often very slow to make decisions or follow the law, allowing many investment disputes to drag on for years²⁹⁴.

2.13.8 Good Governance Evaluation

DRC's governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. Global insurer Allianz attributes a poor rating to the DRC based on its

²⁸⁹ World Bank Group "Doing Business 2020", accessed in September 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

²⁹⁰ U.S. Department of State, 2020 Investment Climate Statements: Democratic Republic of the Congo. Available on <https://www.state.gov/reports/2020-investment-climate-statements/democratic-republic-of-the-congo/>, accessed on 5 March 2024.

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Ibid.

²⁹⁴ U.S. Department of State, 2023 Investment Climate Statements: Democratic Republic of the Congo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/democratic-republic-of-the-congo/>, accessed on 5 March 2024.

research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D3 - sensitive risk for enterprise²⁹⁵.

According to the US State Department Investment Climate Report of 2023, the court system lacks basic digitalization to track cases, record decisions, or provide judges with the resources needed to make well-informed decisions. Judges, who generally earn low wages, are open to corrupt influences.

The DRC is endowed with exceptional natural resources, including mineral deposits (including cobalt and copper)²⁹⁶ there are continued concerns about the use of child labour and environmental degradation in the artisanal mining of copper and cobalt. These practices, together with corruption and lack of reform continue to negatively affect the image of the DRC mining sector, particularly in light of increased scrutiny of human rights and environmental practices.

The DRC began implementing the EITI in 2007 at the height of the commodity boom²⁹⁷. The willingness of the DRC government to commit to the implementation of the EITI standards in order to ensure better practices in the mining industry and to attract foreign direct investment to revive the mining sector and ensure that revenues are well managed for the benefit of citizens is a positive development.

²⁹⁵ Allianz Research, Economic Research – DR Congo. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/The-Democratic-Republic-Of-Congo.html, accessed on 5 March 2024.

²⁹⁶ U.S. Department of State, 2023 Investment Climate Statements: Democratic Republic of the Congo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/democratic-republic-of-the-congo/>, accessed on 5 March 2024.

²⁹⁷ EITI - Democratic Republic of the Cong. Available on <https://eiti.org/countries/democratic-republic-congo>, accessed on 5 March 2024



2.14 Djibouti

2.14.1 Introduction

The Republic of Djibouti is a country situated in the Horn of Africa. It is bordered by Somalia, Ethiopia, Eritrea, the Red Sea and the Gulf of Aden. In 1977 Djibouti attained independence from French rule. Djibouti is also the name of the capital city. Djibouti has less than a million people, making it the smallest population in mainland Africa. French and Arabic are the two official languages of Djibouti.

Although Djibouti produces minerals, it is an insignificant portion of its economy. Salt is harvested at Lake Assal and helps to make the country Africa's tenth-largest salt producer. Limestone and calcined lime are also currently mined in Djibouti. Additional minerals include marble, granite, gypsum, diatomite and perlite.

The country has a history of armed and violent conflicts within its borders, caused by rival political factions.

2.14.2 Policy and Legal Framework

2.14.2.1. Institutional and Policy Overview

The Ministry of Energy and Natural Resources administers mining in Djibouti.

2.14.2.2. Relevant Legal Instruments

The legislative framework for the mineral sector in Djibouti is provided by law No. L 138, SB, 16, 7th of July 23, 2016, and Law No. 117/AN/05 of October 16, 2005²⁹⁸.

2.14.2.3. Foreign Ownership, Migrant and Local Labour Requirements

There are no laws, practices, or mechanisms that discriminate against foreign investors²⁹⁹.

2.14.2.4. Artisanal Mining Sector

There is an active artisanal mining community in Djibouti. The primary focus is on salt harvesting.

2.14.2.5. Judicial System

- **Judicial independence**

Djibouti's legal system is based on Civil law, inherited from the French Napoleonic Code. The court system consists of three courts: a Court of First Instance presided over by a single judge; a Court of Appeals, with

²⁹⁸ USGS, 2019 Minerals Yearbook – DJIBOUTI. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-djibouti.pdf>, accessed on 15 March 2024.

²⁹⁹ U.S. Department of State, 2023 Investment Climate Statements: Djibouti. Available on <https://www.state.gov/reports/2023-investment-climate-statements/djibouti/#:~:text=Typically%2C%20the%20government%20originally%20owns,obtained%20their%20land%20are%20registered,> accessed on 15 March 2024.

three judges; and the Supreme Court. In addition, Islamic law (shariah) and traditional law is practised. Djibouti has a written commercial code and specialized courts, including commercial, criminal, administrative, and civilian courts.

The court system is in theory independent from executive power but according to reports, may be susceptible to political pressure. International lawyers practising in Djibouti have reported effective application of maritime and other commercial laws, but in the past, foreign companies operating in Djibouti have reported that court deliberations were biased or delayed³⁰⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank noted that in 2019 Djibouti made enforcing contracts easier by establishing a dedicated division within the court of first instance to resolve commercial cases and by adopting a new Code of Civil Procedure that regulates voluntary conciliation and mediation proceedings, as well as time standards for key court events.

- **Protection of Minority Investors**

The World Bank noted that in 2018 Djibouti strengthened minority investor protections by requiring greater disclosure of transactions with interested parties, strengthening remedies against interested directors, extending access to corporate information before trial, increasing shareholder rights and role in major corporate decisions, clarifying ownership and control structures, and requiring greater corporate transparency. Djibouti further strengthened minority investor protections in 2019 by requiring greater disclosure of transactions with interested parties, strengthening remedies against interested directors, extending access to corporate information before trial, increasing shareholder rights and role in major corporate decisions, clarifying ownership and control structures and requiring greater corporate transparency. Finally, in 2020, Djibouti strengthened minority investor protections by increasing corporate transparency³⁰¹.

2.14.2.6. Arbitration

Djibouti is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, commonly known as the New York Convention.

2.14.3 Licencing and Permit Regime

No information was available.

2.14.4 Taxation

No information was available.

³⁰⁰ U.S. Department of State, 2023 Investment Climate Statements: Djibouti. Available on <https://www.state.gov/reports/2023-investment-climate-statements/djibouti/#:~:text=Typically%2C%20the%20government%20originally%20owns,obtained%20their%20land%20are%20registered,> accessed on 15 March 2024.

³⁰¹ World Bank Group, Protecting Minority Investors – Djibouti. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 15 March 2024.

2.14.5 Mineral Beneficiation

No information was available.

2.14.6 Macroeconomics

Real GDP growth in Djibouti fell to 3.7% in 2022 from 4.8% in 2021 due to reduced port traffic attributable to the Tigray War and lower public investment. In 2022, the socioeconomic impacts of the COVID-19 pandemic eased, and inflation rose to 5.3% from 1.2% in 2021 due mainly to higher food prices. Expansionist monetary policy aims to support economic activity and counteract the impact of numerous external shocks. The budget deficit narrowed to 1.0% of GDP in 2022 from 1.3% in 2021 due to reduced aid and higher tax revenue. The deficit was financed largely by accumulated external arrears, bank loans, and external borrowing. The current account surplus narrowed from 28.0% of GDP in 2021 to 25.1% in 2022 due to exports falling more than imports and transfers dropping with no counterparts³⁰².

2.14.7 Governance and Risk Ratings

2.14.7.1. Ease of Doing Business

According to the World Bank Group, Djibouti is ranked 112 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings³⁰³.

2.14.7.2. Investment Climate

The investment climate in Djibouti remains challenging. According to the US State Department, economic development and foreign investment are hindered by high electricity costs, high unemployment, an unskilled workforce, a large informal sector, regional instability, opaque business practices, compliance risks, corruption, and a weak financial sector³⁰⁴.

2.14.7.3. Risk Ratings

Transparency International has rated Djibouti's public sector as one of the most corrupt in the world. Djibouti ranks 130 best out of 180 and had a score of 30 on a scale from 0 (perceived as most corrupt) to 100 (perceived as least corrupt)³⁰⁵.

³⁰² African Development Bank Group, Djibouti Economic Outlook. Available on <https://www.afdb.org/en/countries-east-africa-djibouti/djibouti-economic-outlook>, accessed on 15 March 2024.

³⁰³ Doing Business 2020, Economy Profile – Djibouti. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/d/djibouti/DJI.pdf>, accessed on 15 March 2024.

³⁰⁴ U.S. Department of State, 2023 Investment Climate Statements: Djibouti. Available on <https://www.state.gov/reports/2023-investment-climate-statements/djibouti/#:~:text=Policies%20Towards%20Foreign%20Direct%20Investment,-Djibouti%27s%20laws%20encourage&text=Faced%20with%20an%20unemployment%20rate,that%20discriminate%20against%20foreign%20investors>, accessed on 15 March 2024.

³⁰⁵ Transparency International, Corruption Perceptions Index. Available on <https://www.transparency.org/en/countries/djibouti>, accessed on 15 March 2024.

Global insurer Allianz attributes a poor rating to Djibouti based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C2 - medium risk for enterprise³⁰⁶.

2.14.8 Good Governance Evaluation

Djibouti's mining industry is insignificant in relation to its overall GDP. It is a country with few resources, but it recognizes the crucial need for foreign direct investment to stimulate economic development. The country's assets include a strategic geographic location, free zones, an open trade regime, and a stable currency. Certain reform programs are underway to try to modernize aspects of the economy.

Notwithstanding the efforts to modernize the economy, economic development and foreign investment remain hindered by factors such as an unskilled workforce, regional instability, opaque business practices, compliance concerns, corruption, and a judicial system that is not independent³⁰⁷.

Djibouti's weak institutions, a non-independent judiciary and poor governance frameworks make Djibouti a challenging country for investors.

³⁰⁶ Allianz Trade, Economic Research. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Djibouti.html, accessed on 15 March 2024.

³⁰⁷ U.S. Department of State, 2023 Investment Climate Statements: Djibouti. Available on <https://www.state.gov/reports/2023-investment-climate-statements/djibouti/#:~:text=Typically%2C%20the%20government%20originally%20owns,obtained%20their%20land%20are%20registered>, accessed on 15 March 2024.

2.15 Egypt

2.15.1 Introduction

The Arab Republic of Egypt is a transcontinental country spanning the northeast corner of Africa and the Sinai Peninsula in the southwest corner of Asia. It is bordered by the Mediterranean Sea, the Gaza Strip of Palestine and Israel, the Red Sea, Sudan, and Libya. The Gulf of Aqaba in the northeast separates Egypt from Jordan and Saudi Arabia. Cairo is the capital and largest city in Egypt. It is estimated that Egypt has approximately 105 million inhabitants, the third-most populated in Africa, behind Nigeria and Ethiopia³⁰⁸.

Egypt is home to mineral resources such as gold, copper, silver, zinc, platinum, and other precious and basic metals including phosphate, iron ore, kaolin and coal, found in abundance in the Eastern Desert, the Western Sahara Desert and the Alaq Valley. In addition to gold deposits on offer, Egypt also possesses copper and uranium deposits³⁰⁹.

2.15.2 Policy and Legal Framework

2.15.2.1. Institutional and Policy Overview

The Egyptian Ministry of Petroleum & Natural Resources (Ministry) and the Egyptian Mineral Resources Authority are the primary regulators of mining in Egypt along with the Egyptian Mineral Resources Authority (EMRA). The EMRA is the competent authority that is responsible for awarding the licence of exploration and exploitation. The EMRA also conducts bidding procedures however, the licence scheme is the most dominant.

2.15.2.2. Relevant Legal Instruments

The primary mining code for Egypt is the Mining Law of 2014 (Mining Code). This repealed the previous primary law on mining, that is the Mining Law of 1956³¹⁰. On 7 July 2019, the Egyptian Parliament passed Law No. 145 of 2019 (the Amendment) amending the Mining Code. The Prime Minister has issued a new executive regulation, which was officially published in January 2020³¹¹.

Other laws that govern the mining sector include³¹²:

- Law No. 27 of 1981 on Employment of Mining and quarrying workers;
- The Mining and Quarries Law No. 66 of 1953, as amended by Law No. 86 of 1956 and its Executive Regulations issued by Ministerial Decree No. 758 of 1972 (referred to as the Fuel Materials Law);

³⁰⁸ World Bank, Overview – Egypt. Available on <https://www.worldbank.org/en/country/egypt/overview>, accessed on 30 April 2024.

³⁰⁹ British Egyptian Business Association, Sectoral Mission June 2023: Unlocking Egypt's Mining Potential. Available on <https://beba.org.eg/sectoral-mission-june-2023-unlocking-egypts-mining-potential/>, accessed on 30 April 2024.

³¹⁰ African Mining Legislation Atlas, Egypt. Available on <https://www.a-mla.org/en/country/Egypt> accessed on 25 March 2024.

³¹¹ Egypt Amends Mineral Resources Law, February 2020. Available on <https://www.sharkawylaw.com/wp-content/uploads/2022/03/Egypt-Amends-Mineral-Resources-Law.pdf> accessed on 25 March 2024.

³¹² Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

- Law no. 202 of 2020 on Waste Management;
- The Environmental Law No. 4 of 1994 (Environmental Law) and its Executive Regulations issued by Prime Minister Decree No. 338 of 1995; and
- Article 32 of the Egyptian constitution of 2014.

2.15.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The Egyptian company law does not set any limitation on the number of foreigners, either as shareholders or as managers/board members, except for limited liability companies, where the only restriction is that one of the managers must be an Egyptian national. Companies are also required to obtain a commercial and tax license and pass a security clearance process³¹³.

2.15.2.4. Artisanal Mining Sector

Not much information is publicly available in relation to artisanal and small-scale mining in Egypt. This may be because the mining industry in Egypt is small, and that gold mining is undertaken by a small group of large foreign companies.

2.15.2.5. Judicial System

• Judicial independence

The judicial system of Egypt is separated from the government by the separation of powers principle. The Egyptian courts include both secular and religious courts. The Egyptian judicial system is based on European and primarily French legal concepts and methods, combined with Islamic (Shariah) law. The codification is primarily derived largely from the Napoleonic Code. The judicial branch plays an important role in the political process in Egypt, as the branch is given the responsibility to monitor and run the country's parliamentary and presidential elections³¹⁴.

Egypt has three supreme courts: the Supreme Constitutional Court, Court of Cassation, and Supreme Administrative Court. The Supreme Constitutional Court has exclusive jurisdiction to decide issues regarding the constitutionality of laws. The Court of Cassation is the supreme court of the common court system. The Supreme Administrative Court is the highest court of the administrative court system, called the State Council³¹⁵.

Notwithstanding the formal separation of the judiciary from the State, in 2016 an International Commission of Jurists (ICJ) report on the Lack of Effective Guarantees of Independence and Accountability in Egypt was published. The report sets out the lack of independence of the Egyptian judiciary. According to the ICJ, urgent measures are required to be taken in order to prevent a complete collapse of the rule

³¹³ U.S. Department of State, 2023 Investment Climate Statements: Egypt. Available on <https://www.state.gov/reports/2023-investment-climate-statements/egypt/> accessed on 25 March 2025.

³¹⁴ Hauser Global Law School Program, UPDATE: An Overview of the Egyptian Legal System and Legal Research. Available on <https://www.nyulawglobal.org/globalex/Egypt1.html> accessed on 25 March 2024.

³¹⁵ Egypt Judiciary - An Overview. Available on <https://egyptjustice.com/egypt-judiciary-an-overview> accessed on 25 March 2024.

of law in Egypt, including measures to ensure that the judiciary is independent and serves to safeguard human rights, such as the right to a fair trial and the right to life.

To this end, the Egyptian authorities must, according to the ICJ report, urgently undertake the following reforms, being *inter alia*:

- Executive interference in judicial affairs must end, including the unilateral removal of prosecutors and the imposition of restrictions on the jurisdiction of ordinary courts aimed at immunizing Executive decisions from judicial review;
- The convictions and sentences of all civilians tried by military courts and those of individuals convicted following unfair trials in civilian courts are to be quashed;
- Those against whom there is reasonable suspicion that they have committed a recognizable criminal offence (under national and international law) should be afforded a retrial within a reasonable time before an independent and impartial civilian tribunal in proceedings that meet international standards of fairness;
- A code of judicial conduct and ethics is to be established by judges, which must include obligations on judges to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected; and safeguard and uphold human rights.
- Disciplinary proceedings initiated against judges for the legitimate exercise of their right to freedom of expression, association and assembly should be dropped and sanctions imposed pursuant to such proceedings and to proceedings that failed to ensure judges' right to a fair hearing should be quashed³¹⁶.

● **Enforcing Contracts and Efficiency in settling disputes**

The World Bank notes that in 2010 Egypt made enforcing contracts easier by creating commercial courts³¹⁷.

● **Protection of Minority Investors**

According to the World Bank's research, Egypt has taken several different steps over the years to ensure greater protection of minority investors. These steps include the following:

In 2009, Egypt strengthened investor protections by introducing a requirement that an independent auditor assess related-party transactions before approval. In 2015, it strengthened minority investor protections by introducing additional requirements for approval of related-party transactions and greater requirements for disclosure of such transactions to the stock exchange. In 2016, law was introduced to bar subsidiaries from acquiring shares issued by their parent company. In 2017, shareholder rights were improved in terms of which they can now play a role in major corporate decisions. In 2018, Egypt

³¹⁶ Egypt's Judiciary: A Tool of Repression, July 2016. Available on <https://www.ici.org/wp-content/uploads/2016/10/Egypt-Tool-of-repression-Publications-Reports-Thematic-reports-2016-ENG-1.pdf> accessed on 25 March 2024.

³¹⁷ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 25 March 2024.

strengthened minority investor protections by increasing shareholder rights and role in major corporate decisions and in 2019, increasing corporate transparency. Finally, in 2020, Egypt strengthened minority investors protections by requiring shareholder approval when listed companies issue new shares³¹⁸.

2.15.2.6. Arbitration

The Egyptian Arbitration Law No. 27 of 1994 was adopted in 1994 and is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law (1985), with some variations. Most of the procedural rules governing the conduct of the proceedings are not mandatory and the parties may derogate from by agreement. However, few rules appear to be mandatory, such as witnesses and experts may not be heard under oath, awards may not be rendered by truncated tribunals, tribunals may not be constituted from an even number of arbitrators and parties may not agree to exclude the right to apply for setting aside of an award prior to the rendering of the said award³¹⁹.

Egypt signed the New York Convention on 2 February 1959, and it entered into force on 8 June 1959³²⁰.

2.15.3 Licencing and Permit Regime

2.15.3.1. Types of Licences and Permits

- Exploration licence:
 - Is issued based on the decision of the duly authorised government representative (including the Minister) with the approval of the competent Authority.
 - The duration for an exploration license is two years and can be renewed for one period only by the same period of time.
 - An exploration licence does not allow the licensee to take ore samples unless a written approval from the competent authority is obtained. If minerals are discovered because of exploration works undertaken by a licensee, then such licensee can apply for an exploitation (mining) licence for the entire area or part thereof as set out in the exploration licence. The licensee must provide a technical report that proves the existence of raw materials³²¹.
 - Exploration licences for precious metals and precious stones will be licensed by the MOP, without the need to issue a law; and

³¹⁸ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 25 March 2024.

³¹⁹ The Legal 500, Egypt: International Arbitration. Available on <https://www.legal500.com/guides/chapter/egypt-international-arbitration/> accessed on 25 March 2024.

³²⁰ Global Arbitration Review, Egypt: International Arbitration, August 2023. Available on <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2023/article/egypt> accessed on 25 March 2024.

³²¹ Mineral resources Law No. 198 of 2014. Available on <https://yousrsyaleh.com/blog/mineral-resources-law-no-198-of-2014/> accessed on 25 March 2024.

- Exploration licences for small mines (less than 1 km²) will be licensed by EMRA's board without the need to issue a law³²².
- Exploitation licence:
 - Exploitation licences for quarries, mines and saltworks up to 16 km² will be issued by the Competent Entity; and
 - Exploitation of precious metals, precious stones, as well as mines, quarries and saltworks exceeding 16 km² must be licensed by a special law.
 - Exploitation licences can be granted for up to a combined total of 15 years³²³.

2.15.3.2. Transferability of Mineral Rights

No information was available in this regard.

2.15.4 Taxation

2.15.4.1. Mining Royalties and Taxes

As part of the Egyptian government's ongoing effort to attract foreign investments to the mining sector in Egypt, new Executive Regulations (the Regulations) were promulgated by virtue of Prime Ministerial Decree No. 108 for the year 2020 and published in the official gazette on 14 January 2020. The Regulations were issued with a full repealing effect to the existing executive regulations. The Regulations grant the broad outline of the tax regime and outline some terms and conditions, such as royalties, rent during the exploitation period. The Regulations grant the Authority and the other competent authorities within the mining field broader powers based on which more detailed terms and conditions remain to be laid out.

The mining industry has for a long period of time complained about Egypt's system of mandatory joint ventures, burdensome royalties and profit-sharing agreements have made it unprofitable to explore for and exploit minerals. Under the Regulations, although the Authority has the right to form joint ventures with a minimum state ownership of 25%, private mining companies would not necessarily have to do this if their mining agreements were ratified by law.

Companies engaged in oil and gas exploration are subject to a corporate tax rate of 40.55%, while those involved in exploration and mining are obliged to a corporate tax rate of 22.5%.

³²² Egypt Amends Mineral Resources Law, February 2020. Available on <https://www.sharkawylaw.com/wp-content/uploads/2022/03/Egypt-Amends-Mineral-Resources-Law.pdf> accessed on 26 March 2024.

³²³ Ibid.

The royalty rates applicable in Egypt vary between 5% to 20% of the raw production value³²⁴. The following rates are applicable, according to ore type³²⁵:

- Gold - 5%
- Phosphate - 10%
- Zinc - 6%
- Copper - 8%
- Iron - 9%
- White sand - 18%

2.15.5 Mineral Beneficiation

Mineral beneficiation in Egypt contributes a small part to the economy. The reasons for this include factors such as a lack of skilled personnel in the field of mining and mineral processing sectors in Egypt. Mining technology in Egypt is generally regarded as being primitive and simple, with the exception of certain mines, including but not limited to the underground mining of coal, North of Sinai, and Abu-Tartur phosphate mining, where fully automated long wall operations are designed. New gold and tin-tantalum-niobium projects are being designed on modern surface mining and mineral processing technologies³²⁶.

Some requirements to beneficiate and export mined minerals do apply:

- It is not permissible to export any minerals, or quarries unless approval from the EMRA has been obtained.
- Exporting raw materials that have strategic and industrial value may be prohibited except in the case of value-added work or the construction of industrial projects.
- The request for export approval must be submitted twice a year for the shipment that needs to be exported, and the request must indicate the quantity, the sale price, the source of the crude and to whom it shall be exported.
- The exported ores of mines and quarries must be extracted from a valid licence with a production statement.

2.15.6 Macroeconomics

In 2021/22, real GDP growth increased to an estimated 6.6%, driven by gas extractives, communications, agriculture, and construction. But manufacturing performed below its potential. On the demand side,

³²⁴ Egypt Amends Mineral Resources Law, February 2020. Available on <https://www.shalakany.com/newsletter/the-new-mineral-resources-law-executive-regulations/>, accessed on 25 March 2024

³²⁵ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

³²⁶ Scientific Research Publishing, Mineral Industry in Egypt-Part I: Metallic Mineral Commodities. Available on <https://www.scirp.org/journal/paperinformation?paperid=4152> accessed on 25 March 2024.

growth was driven by household consumption and investment. The fiscal deficit fell from 6.9% of GDP in 2020/21 to an estimated 5.8% in 2021/22, with a primary surplus of 1.2% of GDP. Total spending increased but was compensated by a 15% rise in value-added tax revenue and a 40% jump in receipts from property taxes over the previous fiscal year.

Inflation increased from 4.5% in 2020/21 to 8.5% in 2021/22, led mostly by rising international food and energy prices and the depreciation of the Egyptian pound against the US dollar by 16% in May 2022. Subsidies and social protection programs have reduced the impact of high food and energy prices on vulnerable households. The poverty rate was 29.7% in 2020. Unemployment remained stable at 7.2% in June 2022³²⁷.

2.15.7 Governance and Risk Ratings

2.15.7.1. Ease of Doing Business

Egypt ranks 114 out of 190 countries in the 2020 World Bank Ease of Doing Business Report³²⁸.

2.15.7.2. Investment Climate

The Egyptian government understands the need to attract foreign direct investment and that this is key to addressing many of its economic challenges. The government has openly stated that it intends to create a more conducive environment for foreign direct investment. Notwithstanding this, according to the US State Department's research, investors continue to face obstacles, including excessive bureaucracy, lack of transparency, uneven enforcement of laws and regulations, difficulties accessing foreign currency to repatriate profits or import goods, a shortage of skilled labour, cumbersome customs procedures, corruption, and intellectual property issues³²⁹.

These factors make operating a business in Egypt challenging. There are however several reform programs underway by the Egyptian government to improve the investment climate.

2.15.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Egypt based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise³³⁰.

Egypt is not a party to the EITI initiative, nor is the country included in the Fraser Institute perception index. Any mining jurisdiction that wishes to attract foreign direct investment into that sector will participate in these initiatives.

³²⁷ African Development Bank, Egypt Economic Outlook. Available on <https://www.afdb.org/en/countries/north-africa/egypt/egypt-economic-outlook> accessed on 25 March 2024.

³²⁸ Doing Business 2020, Egypt. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/egypt/EGY-LITE.pdf> accessed on 25 March 2024.

³²⁹ U.S. Department of State, 2023 Investment Climate Statements: Egypt. Available on <https://www.state.gov/reports/2023-investment-climate-statements/egypt/> accessed on 25 March 2024.

³³⁰ Allianz, Economic Research – Egypt. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/egypt.html accessed on 25 March 2024.

2.15.8 Good Governance Evaluation

Egypt has introduced several regulatory reform laws in recent years. These include but are not limited to:

- the Investment Law (Law 72 of 2017);
- a new company law;
- Bankruptcy law in 2018; and
- a new Customs Law in 2020.

These laws aim to improve Egypt's investment and business climate and help the economy realize its full potential. Regulations for the Customs Law (Law 207 of 2020) were introduced in May 2022, which aims to streamline aspects of import and export procedures, including through a single-window system, electronic payments, and expedited clearances for authorized companies.

Notably, Egypt hosted the United Nations Climate Change Conference (COP 27) in November 2022. Egypt continues to adapt to climate change, ranking 128th out of 181 countries in terms of its readiness for climate change. It faces severe water scarcity and misuse and related impacts on agricultural production. Egypt has significant potential in renewable energy generation, particularly in wind and solar energy, and is investing heavily in green hydrogen, both for domestic use and eventual export³³¹.

According to the US State Department, the government continues to seek investment to finance several mega projects, including the construction of a new administrative capital and smart cities; and to promote mineral extraction opportunities. Egypt intends to capitalize on its location bridging the Middle East, Africa, and Europe to become a regional trade and investment gateway and energy hub.

Based on its efforts to reform its economy and to move away from the dominance of hydrocarbons, Egypt has the ability to position itself as an important mining country in Africa. Its close geographic location to Europe and strong European diplomatic ties, make Europe an ideal partner for the Egyptian mining industry in relation to critical minerals going forward.

³³¹ U.S. Department of State, 2023 Investment Climate Statements: Egypt. Available on <https://www.state.gov/reports/2023-investment-climate-statements/egypt/> accessed on 25 March 2024.

2.16 Equatorial Guinea

2.16.1 Introduction

Equatorial Guinea, located on the west coast of Central Africa, is known for its rich oil and gas resources. The country has a diverse cultural landscape and has experienced rapid economic growth in recent years. The government is working towards economic diversification beyond the hydrocarbon sector. Principal products from the country's extractive industry are petroleum, natural gas, gold, uranium, diamond and columbite-tantalite³³².

The country was formerly the colony of Spanish Guinea, its post-independence (from 1968 onwards) name refers to its location near both the Equator and in the African region of Guinea. As of 2023, the country had a population of 1,737,695³³³. Equatorial Guinea consists of two parts, an insular and a mainland region. The insular region consists of the islands of Bioko (formerly Fernando Pó) in the Gulf of Guinea and Annobón, a small volcanic island which is the only part of the country south of the equator. Bioko Island is the northernmost part of Equatorial Guinea and is the site of the country's capital, Malabo. The mainland region is bordered by Cameroon on the north and Gabon on the south and east.

2.16.2 Policy and legal framework

2.16.2.1. Institutional and Policy Review

Equatorial Guinea's legal system is influenced by Spanish civil law. The judiciary consists of various courts, with the Supreme Court as the highest judicial body. The legal framework incorporates both civil law principles and traditional customs.

The Ministry of Mines and Hydrocarbons of Equatorial Guinea is the public administration body in charge of the mining industry and fossil fuels. It is based in Malabo.

2.16.2.2. Relevant Legal Instruments

In terms of the mining code, the government is the custodian of all mineral resources and regulates them under law 9/2006 (replacing the former Mining Law, 9/1981).

2.16.2.3. Foreign Ownership, Migrant and Local Labour Requirements

A 2018 decree 72/2018 which replaces an earlier decree now provides that there are no local ownership requirements that apply in any sector of the economy other than in the oil and gas sector.

³³² World Bank Group, Country Overview: Equatorial Guinea. Available on <https://www.worldbank.org/en/country/equatorialguinea/overview>, accessed on 25 April 2024.

³³³ The World Factbook, Equatorial Guinea. Available on <https://www.cia.gov/the-world-factbook/countries/equatorial-guinea/>, accessed on 29 February 2024.

2.16.2.4. Artisanal Mining Sector

Petroleum exploration and production is Equatorial Guinea's main economic driver and accounts for over 90% of the country's national income. Consequently, very little attention has been given to exploring and making use of the country's mineral resources.

There is no commercial mining industry. Small artisanal gold mining operations do however exist. The government has conducted preliminary exploration programmes that indicate potential mining opportunities for diamonds and coltan and the Ministry of Mines is now promoting the country's mining potential in hopes of attracting investors.

2.16.2.5. Judicial System

- **Judicial independence**

Although nominally a constitutional democracy, all presidential and legislative elections have been widely regarded as flawed³³⁴.

Some Spanish laws from before independence (such as the Civil Code and the Civil Procedure Law) are still in force, although the country has passed important laws of its own, such as the General Labour Law, the oil and mining legislation and the recent Penal Code (which abolished the death penalty). Tribal laws and customs are respected in the formal court system when not in conflict with national law. At the top of the legal system is the country's 2012 Constitution, also known as the Fundamental Law of Equatorial Guinea. The President of the Republic also serves as the country's Chief Magistrate and has the power to appoint and remove judges³³⁵.

The Equatorial Guinean court system is structured as follows³³⁶:

- Supreme Court: The Supreme Court, located in the country's capital, Malabo, is comprised of 13 judges appointed by the President of the Republic for a period of five years. The Supreme Court has various chambers which have distinct jurisdiction to hear specific matters.
- First Instance Courts: First instance courts are in the capital of each municipality, and deal with Civil proceedings not assigned by law to other courts; the celebration of civil marriages; and appeals against decisions issued by Peace Courts.
- Specialized First Instance Courts

The Constitution of Equatorial Guinea is the basic document of that country. It was approved in 1991 and amended in 1995. In 2011, a referendum was held on a series of constitutional amendments. According to the US organisation Freedom House, the judiciary of Equatorial Guinea is not independent, and judges

³³⁴ Dullah Omar Institute, Equatorial Guinea. Available on <https://dullahomarinate.org.za/acjr/resource-centre/equatorial-guinea>, accessed on 13 March 2024.

³³⁵ Addleshaw Goddard, Doing Business in Africa - Equatorial Guinea. Available on <https://www.addleshawgoddard.com/en/doing-business-in-africa/africa-countries-a-z-list/equatorial-guinea/#:~:text=The%20Supreme%20Court%2C%20located%20in,Third%20Chamber%20for%20Administrative%20proceedings>, accessed on 13 March 2024.

³³⁶ Ibid.

in sensitive cases often consult with the office of the president before issuing important rulings. Under the constitution, the president is the nation's first magistrate. He also oversees the body that nominates judges. The court system's impartiality is further undermined by corruption. Judges are regularly accused of taking bribes³³⁷.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank notes that in 2019, Equatorial Guinea made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism³³⁸.

- **Protection of Minority Investors**

The World Bank notes that in 2015, Equatorial Guinea strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions³³⁹.

2.16.2.6. Arbitration

No information was found in this regard.

2.16.3 Licencing and Permit Regime

2.16.3.1. Types of Licences and Permits

The following mining rights are available in Equatorial Guinea.

- Mineral Exploration Contracts;
- Mineral Prospecting Contracts; and
- Mineral Exploitation or Production Contracts.

2.16.3.2. Transferability of Mineral Rights

As a rule, the mining rights are non-transferable. A transfer of mining rights is permissible subject to obtaining the prior written consent of the Mining Ministry³⁴⁰.

³³⁷ Freedom House, FREEDOM IN THE WORLD 2023. Available on <https://freedomhouse.org/country/equatorial-guinea/freedom-world/2023>, accessed on 1 March 2024.

³³⁸ World Bank Group, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 13 March 2024.

³³⁹ World Bank Group, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 13 March 2024.

³⁴⁰ Clarence Abogados & Asociados, GUIDE FOR INVESTORS IN THE MINING SECTOR IN EQUATORIAL GUINEA. Available on <https://clarenceabogados.com/client-alert/guide-for-investors-in-the-mining-sector-in-equatorial-guinea/>, accessed on 13 March 2024.

2.16.4 Taxation

2.16.4.1. Mining Royalties and Taxes

Details regarding mining royalties and taxes in Equatorial Guinea may be subject to the evolving legal framework. Typically, countries impose royalties and taxes to ensure the government receives a share of the economic benefits from mining activities.

The Mining Law provides for minimum royalties of 3%, which are payable annually, from the first year of production based on the net market price of the extracted mineral, in disposition or commercialised, subject to the type of mineral and in accordance with the percentages established under the applicable contract. The MMH is solely authorised to negotiate a different royalty in exceptional cases³⁴¹.

Type of contract ³⁴²	Frequency	Amount (USD)	Department
Prospecting contract	Annually, once only and in advance	One (1.00) USD/ hectare.	Public Treasury
Exploration contract	Payable once a year, in advance	2, 50 USD/ hectare	Public Treasury
Exploitation or production contract	Payable once a year, in advance	5 USD/ hectare	Public Treasury
Artisanal exploitation of minerals	Exempt	Obligation to register and obtain authorisation from the MMH.	Public Treasury

Table 9 Royalty Rates in Equatorial Guinea

2.16.5 Mineral Beneficiation

No information was found in this regard.

2.16.6 Macroeconomics

Equatorial Guinea's economy has historically been reliant on oil and gas exports. Efforts are underway to diversify the economy, including the development of the mining sector. The success of these diversification efforts can impact the overall macroeconomic situation.

According to the African Development Bank, real GDP grew by 3.1% in 2022, after having contracted by 0.9% in 2021. The budget surplus widened to 4.8% of GDP in 2022 from 2.6% in 2021. Public debt dropped from 42.8% of GDP in 2021 to 27.1% in 2022. Inflation was an estimated 5% in 2022, after 1.3% deflation

³⁴¹ Clarence Abogados & Asociados, GUIDE FOR INVESTORS IN THE MINING SECTOR IN EQUATORIAL GUINEA. Available on <https://clarenceabogados.com/client-alert/guide-for-investors-in-the-mining-sector-in-equatorial-guinea/>, accessed on 13 March 2024.

³⁴² Ibid.

in 2021, due to higher food prices resulting from Russia's invasion of Ukraine. Economic recovery widened the current account surplus to 3.9% of GDP in 2022 from a deficit of 4.0% in 2021. Higher prices for consumer goods and transportation reduced household purchasing power and accentuated urban poverty, which reached 67% of the population during the COVID-19 pandemic, leading to an overall poverty rate of 67% in 2022³⁴³.

2.16.7 Governance and Risk Ratings

2.16.7.1. Ease of Doing Business

In terms of the World Bank Doing Business Index, Equatorial Guinea ranked 178 out of 190 in 2020³⁴⁴.

2.16.7.2. Investment Climate

According to the US State Department, the investment climate in Equatorial Guinea reflects a lack of clear rules and regulations to establish and run a business, a lack of investment in critical infrastructure like power generation, and a lack of follow-through on high-level commitments to economic diversification or increased transparency³⁴⁵.

2.16.7.3. Risk Ratings

Equatorial Guinea's governance and risk ratings are generally regarded as poor. The President, Obiang Nguema, is Africa's longest-serving leader and has been in power for more than 40 years³⁴⁶.

The 2022 US State Department report on Equatorial Guinea states that government officials are engaged in corrupt practices with impunity. The president and members of his inner circle amass personal fortunes from the revenues associated with monopolies on all domestic commercial ventures, as well as timber and oil exports. Corruption at all levels of government remains a severe problem³⁴⁷.

2.16.8 Good Governance Evaluation

According to the US State Department's report on the general investment climate, ministers and ruling family members own important businesses and win many contracts. There is widespread abuse of power and corruption. The government has indicated intentions for economic diversification away from hydrocarbons, but no concrete steps have been taken to create an enabling environment for Foreign Direct Investment³⁴⁸.

³⁴³ African Development Bank, Economic Outlook. Available on <https://www.afdb.org/en/countries/central-africa/equatorial-guinea/equatorial-guinea-economic-outlook>, accessed on 29 February 2024.

³⁴⁴ Doing Business 2020, Economy Profile - Equatorial Guinea. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/equatorial-guinea/GNQ.pdf>, accessed on 29 February 2024.

³⁴⁵ U.S. Department of State, 2023 Investment Climate Statements: Equatorial Guinea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/equatorial-guinea/#:~:text=The%20investment%20climate%20in%20Equatorial,economic%20diversification%20or%20increased%20transparency>, accessed on 13 March 2024.

³⁴⁶ BBC, Equatorial Guinea country profile. Available on <https://www.bbc.com/news/world-africa-13317174>, accessed on 29 February 2024.

³⁴⁷ U.S. Department of State, 2022 Country Reports on Human Rights Practices: Equatorial Guinea. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/equatorial-guinea>, accessed on 29 February 2024.

³⁴⁸ U.S. Department of State, 2023 Investment Climate Statements: Equatorial Guinea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/equatorial-guinea/>, accessed on 1 March 2024.

Mining remains a small and underdeveloped industry in Equatorial Guinea with the legal framework being geared to oil and gas as opposed to mining. Corruption, the lack of an independent judiciary and a lack of administrative and oversight capacity make Equatorial Guinea a challenging jurisdiction for investment.



2.17 Eritrea

2.17.1 Introduction

The State of Eritrea is a country in the Horn of Africa (Eastern Africa), with its capital and largest city at Asmara. It is bordered by Ethiopia, Sudan, and Djibouti. The northeastern and eastern parts of Eritrea have an extensive coastline along the Red Sea.

Eritrea is one of the least developed countries in the world. It is a unitary one-party presidential republic in which national legislative and presidential elections have never been held. According to Human Rights Watch, the Eritrean government's human rights record is among the worst in the world. Eritrea is a member of the African Union and the United Nations.

Eritrea's natural mineral resources are copper, potash, zinc, oil, natural gas, cement, gypsum, granite, marble, ceramics, limestone, and iron ore. Mining accounted for approximately 20% of the economy in 2021³⁴⁹. This was driven primarily by natural gas, oil, gold, zinc, and potash. Most of the small-scale and artisanal mining is focused on gold. There have also been studies to determine the mineralisation potential of chromite, nickel and platinum group metal mineralisation in the Bisha region³⁵⁰.

2.17.2 Policy and Legal Framework

2.17.2.1. Institutional and Policy Overview

The Ministry of Energy and Mines was established in 1993 by the Legal Notice No.37/1993 comprising of the departments of energy, mines and water resources. In 1997, the Department of Water Resources separated from the Ministry.

The overall objective of the Ministry is to enhance the development and conservation of energy and mineral resources in a safe and environmentally sound manner in order to support the growth of the national economy and betterment of the quality standards of life of the Eritrean people.

Principal objectives include to:

- promote and guide the development of the energy and mining sectors;
- ensure proper management in the implementation, exploration, promotion and utilization of energy and mineral resources in the country;
- develop national policies and strategies for the sectors of energy and mines setting short and long-term standards of development plans for the sectors;

³⁴⁹ World Bank, Overview – Eritrea. Available on <https://www.worldbank.org/en/country/eritrea/overview>, accessed on 24 March 2024.

³⁵⁰ African Mining, Eritrea in focus, March 2024. Available on <https://www.africanmining.co.za/2024/03/01/eritrea-in-focus/#:~:text=Mining%20activities,-The%20main%20mining&text=The%20Eritrean%20authorities%20have%20however,central%20highlands%20and%20southwestern%20lowlands>, accessed on 21 March 2024.

- develop and issue laws and regulatory instruments that govern and guide the activities of the two sectors; and
- monitor the implementation process of proclamations and laws regarding energy and minerals.

2.17.2.2. Relevant Legal Instruments

The legal framework which governs mining and related activities in Eritrea is set out in the Minerals Proclamation 68/1995 as amended by Mineral Proclamation 165/2011 as well as the Mining Income Tax Proclamation 69/1995 and Regulations on Mining Operations Legal Notice 19/1995³⁵¹.

2.17.2.3. Foreign Ownership, Migrant and Local Labour Requirements

A mining company can sell the mined mineral products offshore in long-term sales contracts provided that the Minister of Energy and Mines has approved such long-term sales contracts. The Minister has the right to require a company to sell all or a percentage of its production, other than mineral product already subject to long-term or other contracts, to the State or an Eritrean national for the fair market value of the mineral product³⁵².

All foreign-owned mines must give a 10% stake to the Eritrean National Mining Corporation (ENAMCO), and ENAMCO has the option to buy another 30% equity in project³⁵³.

2.17.2.4. Artisanal Mining Sector

According to a UN report on artisanal and small-scale mining in Eritrea, the workforce involved in artisanal mining is estimated to be over 25 000 and annual gold production is calculated at about 324,360 g, of which 185,487 g (57%) was obtained using mercury. The baseline estimate of mercury used in this sector is calculated to be 204,036 g per year. Gold extraction and processing in Eritrea are conducted using rudimentary techniques and is labour intensive at all stages.

Generally, women make up 20% of the whole workforce and are mainly involved in the panning of gold. Children participate in different kinds of jobs along with their families (due to data constraints, a reasonable estimate is not possible to make). In terms of health impacts, women and children are directly exposed through these activities, as mothers and their breastfed children are exposed to mercury through inhalation during the gold amalgamation process (roasting). The most pressing

³⁵¹ Mayer Brown, Main legal issues regarding financing of mining projects in Eritrea, August 2009. Available on <https://land.igad.int/index.php/documents-1/countries/eritrea/investment-2/471-main-legal-issues-regarding-financing-of-mining-projects-in-eritrea/file#:~:text=The%20legal%20framework%20which%20governs,Operations%20Legal%20Notice%2019%2F1995>. Accessed on 21 March 2024.

³⁵² Mayer Brown, Main legal issues regarding financing of mining projects in Eritrea, August 2009. Available on https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2009/08/main-legal-issues-regarding-financing-of-mining-pr/files/news/miningaug09bulletineritrapdf/fileattachment/news/mining_aug09_bulletin_eritrea.pdf, accessed on 21 March 2024.

³⁵³ U.S. Department of State, 2023 Investment Climate Statements: Eritrea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eritrea/#:~:text=Eritrea%27s%20investment%20climate%20is%20not,exports%20severely%20limit%20foreign%20investment>. Accessed on 21 March 2024.

environmental impacts stemming from these activities in Eritrea are the release of mercury into the air and the degradation of lands by mining pits³⁵⁴.

2.17.2.5. Judicial System

- **Judicial independence**

The State of Eritrea currently has transitional laws that were established when Eritrea obtained independence from Ethiopia in 1993. The laws in Eritrea are based on civil law systems. The legal system is developing slowly in Eritrea, and the lack of clarity on the nature of the laws and their interpretation, and the fact that there are no precedents to rely on means there is uncertainty as to the legal system. Moreover, unfortunately, the political situation in Eritrea adds to this uncertainty³⁵⁵.

The judiciary is regarded as not being independent or transparent³⁵⁶.

- **Enforcing Contracts and Efficiency in settling disputes**

No information was found in this regard.

- **Protection of Minority Investors**

No information was found in this regard.

2.17.2.6. Arbitration

42 of Africa's 54 states are now State Parties to the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards. Eritrea is one of the remaining 12 non-parties³⁵⁷.

The Eritrean civil procedure code provides that foreign judgements (subject to any international conventions) and foreign arbitral awards may not be enforced in Eritrea unless reciprocity is ensured (meaning that the execution of arbitral awards made in Eritrea is allowed in the country where the arbitral award is made). As Eritrea is not a party to the New York Convention, no such reciprocity exists, and no

³⁵⁴ The State of Eritrea Ministry of Land, Water and Environment, National Action Plan for Reducing Mercury Use in the Artisanal and Small-scale Gold Mining (ASGM) Sector, 2020. Available on https://minamataconvention.org/sites/default/files/documents/national_action_plan/NAP_Eritrea_Final_2021.pdf, accessed on 21 March 2024.

³⁵⁵ Mayer Brown, Main legal issues regarding financing of mining projects in Eritrea, January 2015. Available on <https://land.igad.int/index.php/documents-1/countries/eritrea/investment-2/471-main-legal-issues-regarding-financing-of-mining-projects-in-eritrea/file#:~:text=The%20legal%20framework%20which%20governs,Operations%20Legal%20Notice%2019%2F1995>. Accessed on 21 March 2024

³⁵⁶ U.S. Department of State, 2023 Investment Climate Statements: Eritrea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eritrea/#:~:text=Eritrea%27s%20investment%20climate%20is%20not,exports%20severely%20limit%20foreign%20investment>, accessed on 21 March 2024.

³⁵⁷ Norton Rose Fulbright, Enforcement of awards across Africa – 42 of Africa's 54 states have now acceded to the New York Convention, March 2021. Available on <https://www.nortonrosefulbright.com/en/inside-africa/blog/2021/03/enforcement-of-awards-across-africa--42-of-africas-54-states> accessed on 21 March 2024.

foreign arbitral awards or foreign judgements may be enforced in Eritrea³⁵⁸. This is a significant concern for international investors in the mining industry in Eritrea.

2.17.3 Licencing and Permit Regime

2.17.3.1. Types of Licences and Permits

The types of licences available include:

- **Prospecting Licence**

A prospecting license grants an exclusive right to prospect for the minerals within the license area. It is valid for 1 year and non-renewable.

- **Exploration Licence**

An exploration license grants an exclusive right to explore all minerals within the area specified in the license other than construction material, mineral water and geothermal deposits. An exploration license is valid for an initial 3 years but may be renewed twice for terms of 1 year and with further renewals possible in certain circumstances³⁵⁹.

- **Mining Licence**

A mining license is valid for a period of 20 years with optional 10-year renewals. Once granted, the mining licence will entitle the person to whom it is granted to mine and undertake all ancillary processes. The mining licence is usually a short document containing the details of the area where mining is to be carried out and all the terms and conditions of the licence are provided in a separate mining agreement. The mining licence grants a usufruct right to use the mining land area to the mining company³⁶⁰.

- **Artisanal Mining License**

An artisanal mining license may be granted to Eritrean individuals, for minerals other than construction minerals, mineral water and geothermal deposits if the land in question is not the subject of any existing license or prior license application provided that mining in the artisanal license is restricted to a depth of 5 metres. An artisanal mining license shall be valid for 1 year and may be renewed indefinitely for like periods³⁶¹.

³⁵⁸ Mayer Brown, Main legal issues regarding financing of mining projects in Eritrea, August 2009. Available on https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2009/08/main-legal-issues-regarding-financing-of-mining-pr/files/news/miningaug09bulletineritrea.pdf/fileattachment/news/mining_aug09_bulletin_eritrea.pdf accessed on 21 March 2024

³⁵⁹ Eritrea Proclamation No. 68/1995, A Proclamation to Promote the Development of Mineral Resources. Available on <https://www.aml.org/en/country/pdf/32>, accessed on 24 March 2024.

³⁶⁰ Ibid.

³⁶¹ Ibid.

2.17.3.2. Transferability of Mineral Rights

Prospecting license may not be transferred, assigned, encumbered, or inherited. A mining license and artisanal mining license may be transferred, assigned, or encumbered and inherited with the prior approval of the Licencing Authority.³⁶²

2.17.4 Taxation

2.17.4.1. Mining Royalties and Taxes

The tax system makes provision for no dividend tax and income tax from mining operations is at 38% with a nominal rate of import duty (0.5%) on all inputs necessary for mining operations.³⁶³

Under the Regulation of Mining Operations (Legal Notice 19/1995), the holder of a mining licence shall pay the Eritrean government a royalty pursuant to Article 34(1) of Proclamation 19/1995. The royalties amount to:

- 5% in relation to precious minerals;
- 3.5% for metallic and non-metallic materials including construction materials; and
- 2% in respect of geothermal deposits and mineral water³⁶⁴.

2.17.5 Mineral Beneficiation

Very little information is available in respect of beneficiation in Eritrea. This may be due to the fact that the majority of mining activity in Eritrea is small-scale and artisanal in nature. The miners use rudimentary techniques which are labour intensive. Ore is often extracted with a chisel, sledgehammer and iron bars. In alluvial mines, ore is extracted with shovels and hoes. In both cases, the ore is put in strong bags of approximately 15 kg and is either processed on-site or transported to another area where water is available. In the case of alluvial deposits, the ore is directly panned as the gold is already liberated by mechanical disintegration in the course of the stream. In the case of hard rock deposits, the gold particles are still hosted by quartz vein which may bear sulphides and need to be further processed to be liberated. This is done by manual crushing, with the use of hammers. Subsequently, the crushed ore is milled to a smaller size using mortars to liberate the gold from the rock and is then panned³⁶⁵.

2.17.6 Macroeconomics

Real GDP growth slowed to an estimated 2.3% in 2022 from 2.5% in 2021 due partly to the impact of Russia's invasion of Ukraine on energy, fertilizer, and food prices. Russia and Ukraine account for nearly

³⁶² Ibid.

³⁶³ <https://www.africanmining.co.za/2024/03/01/eritrea-in-focus/> Accessed on 24 March 2024

³⁶⁴ Mayer Brown, Main legal issues regarding financing of mining projects in Eritrea, January 2015. Available on <https://land.igad.int/index.php/documents-1/countries/eritrea/investment-2/471-main-legal-issues-regarding-financing-of-mining-projects-in-eritrea/file> accessed on 21 March 2024.

³⁶⁵ The State of Eritrea Ministry of Land, Water and Environment, National Action Plan for Reducing Mercury Use in the Artisanal and Small-scale Gold Mining (ASGM) Sector, 2020. Available on https://minamataconvention.org/sites/default/files/documents/national_action_plan/NAP_Eritrea_Final_2021.pdf accessed on 21 March 2024

100% of Eritrea's wheat imports, and oil constitutes 71% of the country's energy consumption. Growth in 2022 was led by industry and services on the supply side and by private consumption and investment on the demand side. The recovery in public revenue due to higher international prices for metals (copper, gold, and ores constitute 50% of exports) and fiscal consolidation narrowed the fiscal deficit to 2.2% of GDP in 2022 from 4.1% in 2021³⁶⁶.

2.17.7 Governance and Risk Ratings

2.17.7.1. Ease of Doing Business

Eritrea ranks 189 out of 190 countries in the 2020 World Bank Ease of Doing Business Report³⁶⁷.

2.17.7.2. Investment Climate

According to the US State Department's report on the business climate in Eritrea, the Eritrean government professes a desire for more diversified foreign direct investment. However, strict governmental control of the economy, circulation of currency, access to foreign currency, land, labour, and capital, and the lack of a robust business and investment legal code make private investment difficult, time-consuming, and financially risky³⁶⁸.

2.17.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Eritrea based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise³⁶⁹. Eritrea is not a party to the EITI initiative.

2.17.8 Good Governance Evaluation

Governance structures in Eritrea are very poor. For example, according to the US State Department, legal and regulatory systems in Eritrea are not transparent. Ministries are empowered to (and do) issue new regulations, with no public debate. There is no publicly accessible location (online or otherwise) to find key proclamations, laws, or regulatory actions. There is no public oversight of government actions nor legal recourse against government actions taken. The government does not promote any form of transparency, including promoting or requiring companies' environmental, social, and governance disclosures. The seeming arbitrariness of government regulation and action hinders the economy³⁷⁰.

³⁶⁶ African Development Bank, Eritrea Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/eritrea/eritrea-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,%2C%20fertilizer%2C%20and%20food%20prices.> Accessed on 21 March 2024.

³⁶⁷ Doing Business 2020, Economy Profile Eritrea. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/eritrea/ERI.pdf> accessed 21 March 2024.

³⁶⁸ U.S. Department of State, 2023 Investment Climate Statements: Eritrea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eritrea/#:~:text=Eritrea%20has%20no%20investment%20agreement,U.S.%20persons%20or%20foreign%20investors.> Accessed on 21 March 2024

³⁶⁹ Allianz, Economic Research – Eritrea. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/eritrea.html accessed on 21 March 2024.

³⁷⁰ U.S. Department of State, 2023 Investment Climate Statements: Eritrea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eritrea/#:~:text=Eritrea%27s%20investment%20climate%20is%20not,exports%20severely%20limit%20foreign%20investment.> Accessed on 21 March 2024

Eritrea's mining industry is small and requires a lot of reform to attract international mining companies that would be able to mine at an industrial level.



2.18 Eswatini (Swaziland)

2.18.1 Introduction

Eswatini (formerly known as Swaziland) is a landlocked kingdom in South Africa which boasts a unique blend of tradition and modernity. The capital, Mbabane, and the royal capital, Lobamba, contribute to the administrative and cultural vibrancy of the nation.

The mining industry of Eswatini is not a significant contributor to the country's gross domestic product. The mining industry's contribution to GDP was around 2% in 2022 concentrated in coal and quarry mining³⁷¹. Eswatini has valuable mineral resources, including diamonds, coal, gold, diamonds, and asbestos.

2.18.2 Policy and Legal Framework

2.18.2.1. Institutional and Policy Overview

The mining industry of Eswatini vests with the Ngwenyama (the king) who authorizes mineral rights after due consultation with the Minerals Committee, which he appoints.

Royal family involvement in the mining sector has discouraged potential investors in that sector. Eswatini's land tenure system, where most rural land is "held in trust for the Swati nation," discourages long-term investment in commercial real estate and agriculture³⁷².

The Mining Department of the Ministry of Natural Resources and Energy is responsible for the administration of the mineral sector³⁷³.

2.18.2.2. Relevant Legal Instruments

Eswatini's mining sector operates under the Mines and Minerals Act 2011 (MMA), providing the legal framework for mineral exploration, exploitation, and related activities.

Other legislation that regulates the mining sector includes the Diamond Act No. 3 of 2011, the Explosive Act No. 4 of 1961, and the Mines and Quarries (Safety) Regulations to the MMA³⁷⁴,

It should be noted that section 122 (1) of the MMA makes it mandatory for any person granted a mineral right to comply with environmental laws and regulations. Any holder of a mineral right may not commence large-scale mining operations unless and until the Eswatini Environmental Authority (EEA) has issued an Environmental Compliance Certificate. This is derived from the Environmental Management Act

³⁷¹ African Development Bank, Eswatini Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/eswatini/eswatini-economic-outlook>, accessed on 27 April 2024.

³⁷² U.S. Department of State, 2023 Investment Climate Statements: Eswatini. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eswatini/>, accessed on 8 March 2024.

³⁷³ Eswatini Country Commercial Guide, May 2019. Available on <https://legacy.export.gov/article?id=Eswatini-Mining-and-Minerals>, accessed on 28 March 2024.

³⁷⁴ Ibid.

(EMA).²²⁰ The EMA proscribes any person from undertaking any project having an effect on the environment without the written approval of the EEA.

The Water Act promotes transparency and accountability through the National Water Authority (NWA). The NWA, established in terms of section 3 of the Act, is empowered to prepare a Water Resources Master Plan containing an inventory of the total water resources of Eswatini.³⁷⁵

2.18.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

There are no limits on foreign ownership and control of companies which can be 100% foreign-owned and controlled. The only exceptions to foreign ownership and control laws in relation to land ownership³⁷⁶. In relation to land, the Constitution bars the vesting of land ownership by foreign-owned companies or foreigners unless ownership was attained before its promulgation on 8 February 2006³⁷⁷.

2.18.2.4. Artisanal Mining Sector

The MMA sets out the different categories of mineral rights relating to small-scale operations. Mineral rights that may be granted in respect of small-scale operations are (a) a prospecting permit; or (b) a mining permit.

Mineral rights relating to small-scale operations can only be granted to an applicant who is a citizen of Swaziland in the case of an individual; or a body corporate in which citizens of Swaziland hold a simple majority of the beneficial ownership of the body³⁷⁸.

The Government's policies on small-scale mining operations offer opportunities to support the rural livelihoods of the Swazi nation. Small-scale mines need to be assisted in their efforts to operate in an economically and environmentally sustainable manner. The Government recognises its duty to discharge its regulatory responsibilities in an effective, even-handed and coordinated way. A process to establish appropriate legal and administrative arrangements and the requisite institutional capacity is in progress³⁷⁹.

The ASM sector and policies are sufficiently developed to sustain the construction industry, but this is not the case for precious minerals³⁸⁰. There is great potential to improve the livelihoods of the general population if policies and frameworks are put in place, which would accommodate the extraction and processing of precious minerals using artisanal methods. With the Government of Eswatini being keen on

³⁷⁵ Evaluating Mineral Revenue Transparency in Eswatini Against the Extractive Industries Transparency Initiative, July 2022. Available on https://repository.up.ac.za/bitstream/handle/2263/86919/Magagula_Evaluating_2022.pdf?sequence=3&isAllowed=y, accessed on 28 March 2024.

³⁷⁶ U.S. Department of State, 2023 Investment Climate Statements: Eswatini. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eswatini/>, accessed on 8 March 2024.

³⁷⁷ Doing Business 2020, Economy Profile Eswatini. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/eswatini/SWZ.pdf>, accessed on 28 March 2024.

³⁷⁸ THE MINES AND MINERALS ACT, 2011 (Act No.4 of 2011). Available on https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Eswatini+Swaziland/Eswatini_Swaziland_Mining_Law_2011_English.pdf, accessed on 28 March 2024.

³⁷⁹ Artisanal and Small-Scale Mining Handbook for Southern African Region, 2022. <https://www.planetgold.org/sites/default/files/Tychsen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf>, accessed on 28 March 2024

³⁸⁰ Ibid.

stimulating the economy through the mining sector, there is reason to believe that amendments to the current mining policy will be implemented, thus providing an enabling environment for investment, research and development, as well as an improved standard of living for the general population³⁸¹.

2.18.2.5. Judicial System

The country's judiciary comprises of the Courts of general jurisdiction, the Supreme Court, High Court and Magistrate Courts and other specialized courts, such as Swazi or Customary Courts.

- **Judicial Independence**

The Judiciary is independent and subject only to the Constitution, in terms of the Constitution, which is the supreme law of the country.

According to the US State Department however serious problems with the independence of the judiciary do exist and it is not deemed to be independent³⁸².

- **Enforcing Contracts and Efficiency in Settling Disputes**

There is no information available in this regard.

- **Protection of Minority Investors**

According to the World Bank, in 2011 Eswatini strengthened investor protections by requiring greater corporate disclosure, higher standards of accountability for company directors and greater access to corporate information for minority investors. Eswatini reduced the time to import by implementing an electronic data interchange system for customs at its border posts³⁸³.

2.18.2.6. Arbitration

Eswatini is not a signatory to the New York Convention (which convention facilitates international arbitration for dispute resolution in the mining sector)³⁸⁴.

³⁸¹ Ibid.

³⁸² U.S. Department of State, 2023 Investment Climate Statements: Eswatini. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/eswatini/> accessed on 8 March 2024.

³⁸³ World Bank, Protecting Minority Investors. <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 8 March 2024.

³⁸⁴ Lex Africa, Enforcement Guide – Swaziland. Available on <https://lexafrika.com/wp-content/uploads/2022/09/Enforcement-Guide-2021-Eswatini.pdf> accessed on 8 March 2024.

2.18.3 Licencing and Permit Regime

2.18.3.1. Types of Licences and Permits

Type of Licence	Period of Grant	Term of Renewal
Reconnaissance licence	One term not exceeding one year.	Non-renewable
Prospecting licence	The term of a prospecting licence shall not exceed one year.	The term of renewal of a prospecting licence shall not exceed one year and shall be specified in the licence. A prospecting licence may not be renewed more than twice.
Mining licence	The term of a mining licence shall not exceed twenty-five years or the forecasted life of the mine, whichever is the shorter.	The holder of a mining licence may apply for the renewal of the licence not later than one year before the expiry of the term of a mining licence in respect of all, or a part, of the licence areas. A mining licence shall not be renewed more than once. The term of renewal of a mining licence shall not exceed fifteen years or the forecasted remaining life of the mine, whichever is the shorter and shall be specified in the licence.
Retention licence	The term of a retention licence shall not exceed one year.	The licence is renewable to a maximum of one Year term.
Mining permit	The term of a mining permit shall not exceed two years and shall be specified in the permit.	Non-renewable ³⁸⁵ .

Table 10 Types of Licences and Permits in Eswatini (Swaziland)

³⁸⁵ THE MINES AND MINERALS ACT, 2011 (Act No.4 of 2011). Available on https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Eswatini+-Swaziland/Eswatini_Swaziland_Mining_Law_2011_English.pdf accessed on 28 March 2024.

2.18.3.2. Transferability of Mineral Rights:

In terms of section 30 of the MMA, a purported transfer or assignment of a mineral right, or of a share of such a right, shall be void unless it has been approved by the iNqwenyama. The Board shall not unreasonably withhold or delay approval for the transfer or assignment of a mineral right, or of a share of a mineral right³⁸⁶.

2.18.4 Taxation

2.18.4.1. Mining Royalties and Taxes

The Mines and Minerals Act of 2011 requires that the king (in trust for the Swati Nation) be granted a 25% equity stake in all mining ventures, with another 25% equity stake granted to the Government of the Kingdom of Eswatini³⁸⁷.

2.18.5 Mineral Beneficiation

There is no information available in this regard.

2.18.6 Macroeconomics

Real GDP growth fell to 3.6% in 2022 from 7.9% in 2021, reflecting the spillover effects from South Africa's weak growth and the disruptive effects of Russia's invasion of Ukraine, which induced a slump in demand due to an upsurge in inflation, an increase in the cost of credit, and fiscal constraints. Inflation rose to 4.8% in 2022 from 3.7% in 2021, driven mainly by food and transport costs. To tame rising inflation, monetary policy was tightened, with the discount rate gradually increasing to 7.25% in March 2023 from 3.75% in January 2022³⁸⁸.

2.18.7 Governance and Risk Ratings

2.18.7.1. Ease of Doing Business

Eswatini ranks 121 out of 190 countries in the 2020 World Bank Ease of Doing Business Report³⁸⁹.

2.18.7.2. Investment Climate

The investment climate in Eswatini can generally be characterised as poor. The economy is fragile and state institutions are weak.

³⁸⁶ THE MINES AND MINERALS ACT, 2011 (Act No.4 of 2011). Available on https://113dstor001.s3-eu-west-1.amazonaws.com/Community+Development+in+Mining/Eswatini+-Swaziland/Eswatini_Swaziland_Mining_Law_2011_English.pdf, accessed on 28 March 2024.

³⁸⁷ U.S. Department of State, 2023 Investment Climate Statements: Eswatini. Available on <https://www.state.gov/reports/2023-investment-climate-statements/eswatini/>, accessed on 8 March 2024.

³⁸⁸ African Development Bank, Eswatini Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/eswatini/eswatini-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=inflation%20rose%20to%204.8%25%20in,from%203.7%25%20in%20January%202022>, accessed on 8 March 2024.

³⁸⁹ Doing Business 2020, Economy Profile Eswatini. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/eswatini/SWZ.pdf> accessed on 8 March 2024.

The US State Department in its report about Eswatini stated the following:

“Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings; cruel, inhuman, or degrading treatment or punishment by the government; political detainees; serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media, including censorship; substantial interference with the freedom of peaceful assembly; restrictions on freedom of movement and residence within the territory of a state; serious and unreasonable restrictions on political participation; serious government restrictions on or harassment of domestic human rights organizations; and the existence of the worst forms of child labor”³⁹⁰.

2.18.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Eswatini based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise³⁹¹.

Eswatini is not a party to the EITI initiative, nor is the country included in the Fraser Institute perception index. Any mining jurisdiction that wishes to attract foreign direct investment into that sector will participate in these initiatives.

2.18.8 Good Governance Evaluation

Eswatini has a very small and nascent mining industry. The outlook on mineral output is not likely to change significantly. Eswatini has very limited mineral resources and weak institutions.

Notwithstanding this according to the US State Department, the legal and regulatory environment although underdeveloped is currently growing as the government has recently established additional regulatory bodies in the financial, energy, communications, and construction procurement sectors.

³⁹⁰ U.S. Department of State, 2022 Country Reports on Human Rights Practices: Eswatini. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/eswatini/#:~:text=Significant%20human%20rights%20issues%20included,arbitrary%20or%20unlawful%20interference%20with>, accessed on 8 March 2024.

³⁹¹ Allianz, Economic Research – Eswatini. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/eswatini.html, accessed on 8 March 2024.

2.19 Ethiopia

2.19.1 Introduction

The Federal Democratic Republic of Ethiopia is a country located in the Horn of Africa region of East Africa. It shares borders with Eritrea, Djibouti, Somalia, Kenya, South Sudan and Sudan. Ethiopia has 126.5 million people (2023), Ethiopia is the second most populous nation in Africa after Nigeria, and one of the fastest-growing economies in the region³⁹². The national capital (and largest city) in Ethiopia is Addis Ababa.

The mining sector contributed to less than 1% of GDP, 14% of exports in 2018. In its Growth and Transformation Plan, Ethiopia has set as a target for its mining sector to contribute to 10% of GDP by 2025³⁹³. Ethiopia is a significant producer of gold and limestone, and also produces smaller quantities of tantalum, salt and pumice.

2.19.2 Policy and Legal Framework

2.19.2.1. Institutional and Policy Overview

The Ethiopian Ministry of Mines, Petroleum and Natural Gas (Ministry) and its respective regional bodies regulate mining, including the functions of Licencing and supervising entities that are involved in the mining industry.

Ethiopia's regions issue their own proclamations and regulations, which businesses operating in their region would need to comply with. However, the Amhara region, in Ethiopia's northwest, is the only region at present to have its own legislation and regulations that apply specifically to mining activities. As such, investors considering operating in Amhara should also be aware of the following regulations and directives:³⁹⁴

- Regulation to decide the rate of land lease license, Royalty, and mining income tax in the Amhara region.
- Directive to decide construction minerals piece-price rate in Amhara region.
- Manual on the use of mining legal invoices during the selling of minerals in the Amhara region.
- Directive on creation of Job opportunities for youth in the Amhara region.
- Proclamation on Establishment The Amhara National Regional State Mines Resource Development Expansion Agency.

³⁹² World Bank, Country Overview – Ethiopia. Available on <https://www.worldbank.org/en/country/ethiopia/overview>, accessed on 30 April 2024.

³⁹³ United Nations Economic Commission for Africa, Ethiopia's mining sector has potential to stimulate economic growth & poverty reduction, says Chinganya, November 2019. Available on <https://uneca.org/stories/ethiopia%E2%80%99s-mining-sector-has-potential-stimulate-economic-growth-poverty-reduction-says>, accessed on 30 April 2024.

³⁹⁴ Ministry of Mines and Petroleum, Mining Licencing and Legislations. Available on <http://www.mom.gov.et/index.php/mining/legislation-and-regulations/> accessed on 28 March 2024.

- Directive on the establishment of a team supporting the activity of inspection and follow-up of mining operations in the Amhara region.

2.19.2.2. Relevant Legal Instruments

The laws that govern and regulate mining operations, petroleum operations, and transactions in precious minerals are:

- Mining Operations Proclamation No. 678/2010;
- Mining Operation (Amendment) Proclamation No. 816/2013;
- Petroleum Operations Proclamation No. 295/1996; and
- Transaction of Precious Minerals Proclamation No. 651/2009³⁹⁵.
- Transaction of Minerals Proclamation No. 1144/2019
- Environmental Impact Assessment Proclamation no. 299/2002
- Commercial Registration and Licencing Proclamation No 980/2016
- Integrated National Mining Cadastre Portal

The new national cadastre portal brings transformative changes to the efficiency and transparency of regulating and investing in the Ethiopian mining sector. The portal enables mining and exploration companies to conduct their operations remotely, from any country in the world. Investors will hugely benefit from the upgraded license application functionalities, and the most up-to-date Licencing information for each region³⁹⁶.

2.19.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Foreign and domestic private entities have the right to establish, acquire, own, and dispose of most forms of business enterprises. The Ethiopian Government's Investment Proclamation and associated regulations outline the areas of investment reserved for government and local investors. There is no private ownership of land in Ethiopia. All land is technically owned by the state but can be leased for up to 99 years. Small-scale rural landholders have indefinite use rights but cannot lease out holdings for extended periods.

A foreign investor intending to buy an existing private enterprise or shares in an existing enterprise needs to obtain prior approval from the Ethiopian Investment Commission (EIC). While foreign investors have complained about inconsistent interpretation of the regulations governing investment registration (particularly relating to accounting for in-kind investments), they generally do not face undue screening

³⁹⁵ Mehrteab Leul & Associates, Quick Guide on Mining and Energy in Ethiopia. Available on <https://mehrteableul.com/index.php/mining-energy-practice> accessed on 26 March 2024.

³⁹⁶ Ministry of Mines and Petroleum, Mining Data. Available on <http://www.mom.gov.et/index.php/mining/ethiopias-mining-data/> accessed on 26 March 2024.

of foreign direct investment, unfavourable tax treatment, denial of licenses, discriminatory import or export policies, or inequitable tariff and non-tariff barriers³⁹⁷.

In the mining industry, there are no restrictions on foreign ownership of project companies wishing to establish a mining operation in Ethiopia. However, reconnaissance operations may only be conducted by Ethiopians who have a licence, whereas foreigners are not permitted to conduct reconnaissance operations at all. Only Ethiopian nationals can apply for, and obtain, artisanal mining licences³⁹⁸.

2.19.2.4. Artisanal Mining Sector

The history of artisanal mining in Ethiopia spans three millennia – particularly for gold. Currently, artisanal and small-scale miners are producing clay, crushed stone, diatomite, a wide variety of gemstones including opal and emeralds, gold, gypsum, salt, sand, silica sand, and tantalum. However, it primarily still focuses on gold, gemstones (especially opals) and tantalum³⁹⁹.

Ethiopia has recently put in place a comprehensive Artisanal, Special Small-Scale Mining National Strategy. Its primary objective is to formalize the artisanal mining sector and promote responsible, inclusive and productive operations that contribute to sustainable development. While Ethiopia has an artisanal mining license process in place, around 94% of active artisanal miners are unlicensed. Relatedly, only around 20% of the royalties owed by artisanal miners are collected.

2.19.2.5. Judicial System

The judiciary of Ethiopia consists of a dual system with parallel court structures: the federal and state courts have independent respective administrations. The Ethiopian Constitution vests federal authority to the Federal Supreme Court.

- **Judicial independence**

In recent years, the judiciary experienced a lack of transparency corruption and nepotism from several politicians and bureaucrats. Since 2018 certain reforms have been initiated including qualifying court criteria and experienced judges, provision to courtrooms and drafting the Federal Court Proclamation and Federal Judicial Administration Proclamation⁴⁰⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2010 Ethiopia made enforcing contracts easier by reducing delays in the courts—through backlog reduction, improved case management and internal training, and an expanded

³⁹⁷ U.S. Department of State, 2023 Investment Climate Statements: Ethiopia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ethiopia/> accessed on 26 March 2024.

³⁹⁸ Mayer Brown, Africa mining finance know-how, Ethiopia. Available on https://www.mayerbrown.com/-/media/files/perspectives-events/publications/brochures/africa/africamining_ethiopia.pdf accessed on 28 March 2024.

³⁹⁹ Ministry of Mines and Petroleum, ASM in Ethiopia. Available on <http://www.mom.gov.et/index.php/artisanal-and-small-scale-mining/artisanal-mining-asm-in-ethiopia/> accessed on 28 March 2024.

⁴⁰⁰ Judiciary of Ethiopia. Available on https://en.wikipedia.org/wiki/Judiciary_of_Ethiopia accessed on 26 March 2024.

role for the enforcement judge. This was followed in 2019 when Ethiopia made enforcing contracts easier by establishing specialized benches to resolve commercial cases⁴⁰¹.

- **Protection of Minority Investors**

No information was available in this regard.

2.19.2.6. Arbitration

On 2 April 2021, Ethiopia enacted a new arbitration law, known as the Arbitration and Conciliation Working Procedure, Proclamation Number 1237/2021 (the Proclamation), to apply to commercial domestic arbitrations and international arbitrations whose seat is in Ethiopia. The new law is part of larger efforts in the country to modernize its laws and position Ethiopia as business-friendly, thereby attracting more foreign investment.

The Proclamation is partly based on The United Nations Commission on International Trade Law (UNCITRAL) Model Law and contains many provisions embracing international arbitration best practices. It also contains some interesting provisions relating to the finality of awards, non-arbitrability, res judicata, confidentiality, and the establishment and regulation of arbitral institutions. Nonetheless, a few potential challenges remain⁴⁰².

2.19.3 Licencing and Permit Regime

2.19.3.1. Types of Licences and Permits

The Ministry issues seven 7 types of mining license, known officially as mineral operations licenses⁴⁰³.

License Type	Description	Licence Period	Renewable
Reconnaissance License	Allows its holders to do a general search for any mineral in a particular region.	1.5 years	Non-renewable and non-exclusive
Exploration License	Allows its holders to search for any mineral in a specified region by means of photographs, images, geological, geochemical, geophysical, or drilling.	3 years	Exclusive and renewable up to a maximum of 10 years in total. However, upon each renewal the license holder is required to relinquish a portion of the licensed exploration area

⁴⁰¹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 26 March 2024.

⁴⁰² Ethiopia Modernizes Arbitration Framework. Available on <https://www.lexology.com/library/detail.aspx?g=eead8ca6-5e09-4c2d-9440-5f4b89e80799> accessed on 26 March 2024.

⁴⁰³ Ministry of Mines and Petroleum, Mining Licencing and Legislations. Available on <http://www.mom.gov.et/index.php/mining/legislation-and-regulations/> accessed on 28 March 2024.

			unless they can declare a resource.
Retention License	Issued to an applicant that has discovered a mineral resource of economic significance, but which cannot be developed immediately due to adverse market conditions or because the required processing technology might be unavailable.	3 years	Renewable once more for an additional 3 years.
Artisanal Mining License	Issued either to an individual or a small or micro enterprise whose mining operation is mostly manual and does not involve employed workers.	2 years	Exclusive and non-renewable.
Special Small-Scale Mining License	Issued to holders of an Artisanal Mining License who now have the capacity to employ machinery in their mining operations.	10 years	Exclusive and renewable every 5 years.
Small-Scale Mining license	Issued a mining operation whose annual run-of-mine ore does not exceed a specified amount. The maximum allowed run-of-mine ore amount varies depending on the relevant mineral.	10 years	Exclusive and renewable every 5 years.
Large-Scale mining license	issued to a mining operation whose annual run-off of mine ore exceeds the maximums amounts allowed under a Small-Scale License.	20 years	Exclusive and renewable every 10 years.

Table 11 Types of Licences and Permits in Ethiopia

2.19.3.2. Transferability of Mineral Rights

The proclamation No. 678/2010 allows the possibility of transferring licenses other than reconnaissance and retention, with prior consent of the relevant authority. Whereas artisanal or special small-scale mining licenses may only be transferred through inheritance⁴⁰⁴.

2.19.4 Taxation

The holder of a mining license shall pay royalty based on the sales price of the commercial transactions of the minerals produced. According to Proclamation No. 678/2010, the amount of royalty payable by holders of large-scale mining licenses shall be at the rates indicated below⁴⁰⁵.

Mineral Category	Royalty Percentage
Construction minerals	3%
Industrial minerals	4%
Metallic minerals	5%
Precious minerals	7%
Semi-precious minerals	6%
Salt	4%
Geothermal	2%

Table 12 Royalty Rates in Ethiopia

The amount of royalty payable by the holders of artisanal and small-scale mining licenses shall be at the rate fixed by the laws of the states.

2.19.5 Mineral Beneficiation

Mineral beneficiation should play a more prominent role in Ethiopia than it currently does. By way of a specific example, an African Mining publication reported in 2020 about new projects in Ethiopia and stated the following:

⁴⁰⁴ Ethiopian Extractive Industries Transparency Initiative, January 2021. Available on https://eiti.org/sites/default/files/attachments/2019_eeti_report_final.pdf accessed on 26 March 2024.

⁴⁰⁵ Proclamation No. 678/2010, A Proclamation to Promote Sustainable Development Of Mineral Resources. Available on <http://www.mom.gov.et/wp-content/uploads/2020/02/Proc.-No-678-2010-Mining-Operations-Proclamation-English-Version.pdf>, accessed on 28 March 2024.

The future minerals that are targeted for development are the tantalum and potash deposits. The most immediate aim is to attract an investor to develop a tantalum mine, followed by the construction of a refinery to increase in-country beneficiation. Ethiopia was ranked as the sixth biggest producer of tantalum last year⁴⁰⁶.

Ethiopia's Council of Ministers approved in December 2021 the creation of Ethiopian Investment Holdings (EIH) – Ethiopia's Sovereign Wealth Fund. EIH manages assets worth about \$2 billion across several sectors, including telecoms, mining, banking, aviation, and logistics⁴⁰⁷. If properly administered, this may prove a catalyst for the country's mineral processing sector.

2.19.6 Macroeconomics

Real GDP growth fell to 5.3% in 2022 from 5.6% in 2021 but remained above East Africa's average (4.7% in 2021 and 4.4% in 2022). Supply-side drivers of growth were industry and services, and demand-side drivers were private consumption and investment. Inflation rose to 34% in 2022 from 26.6% in 2021. Both growth and inflation were adversely impacted by internal conflict, drought, and the effects of Russia's invasion of Ukraine on commodity prices. Ethiopia benefited from the G20 Debt Service Suspension Initiative in 2020–21. However, Ethiopia's application for the G20 Common Framework for debt restructuring in 2021 saw global ratings agencies Fitch and S&P downgrade its sovereign rating from B to CCC respectively. Income per capita grew 2.7% in 2022, but internal conflict and drought increased humanitarian support requirements from 15.8 million people in 2021 to 20 million in 2022⁴⁰⁸.

2.19.7 Governance and Risk Ratings

2.19.7.1. Ease of Doing Business

Ethiopia ranks 159 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁴⁰⁹.

2.19.7.2. Investment Climate

According to the US State Department's report on the Ethiopian investment climate, the challenges of doing business in Ethiopia are daunting. Companies often face long lead times importing goods and dispatching exports due to logistical bottlenecks, corruption, high land transportation costs, and bureaucratic delays. An acute foreign exchange shortage impedes companies' ability to repatriate profits and obtain investment inputs. The lack of a capital market hinders private sector growth. Export performance remains weak as the country struggles to develop exports beyond primary commodities (coffee, gold, and oil seeds), further hindered by an overvalued Ethiopian birr.

⁴⁰⁶ Ethiopia: Good geology needs investment, September 2020. Available on <https://www.africanmining.co.za/2020/09/03/ethiopia-good-geology-needs-investment/> accessed on 26 March 2024.

⁴⁰⁷ U.S. Department of State, 2023 Investment Climate Statements: Ethiopia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ethiopia/> accessed on 26 March 2024.

⁴⁰⁸ African Development Bank, Ethiopia Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/ethiopia/ethiopia-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,and%204.4%25%20in%202022>). Accessed on 26 March 2024.

⁴⁰⁹ Doing Business 2020, Economy Profile Ethiopia. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/e/ethiopia/ETH.pdf> accessed on 26 March 2024.

Notwithstanding these challenges, the government has established the EIC, which is mandated to promote and facilitate foreign investments in Ethiopia. To accomplish this task, the EIC is charged with: 1) promoting the country's investment opportunities to attract and retain investment; 2) issuing investment permits, business licenses, work permits, and construction permits; 3) issuing commercial registration certificates and renewals; 4) negotiating and signing bilateral investment agreements; and 5) registering technology transfer agreements. In addition, the EIC has the mandate to advise the government on policies to improve the investment climate and to hold regular and structured public-private dialogues with investors and their associations. At the local level, regional investment agencies facilitate regional investment⁴¹⁰.

2.19.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Ethiopia based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C3 - sensitive risk for enterprise⁴¹¹.

Ethiopia joined the EITI initiative in 2014 but has been suspended subsequently due to non-participation in the annual information exchange process⁴¹². Ethiopia is not included in the Fraser Institute perception index due to non-participation.

2.19.8 Good Governance Evaluation

According to the US State Department, Ethiopia's regulatory system is generally considered to be fair, though there are instances in which burdensome regulatory or Licencing requirements have inhibited trade. Investment decisions can involve multiple government ministries, lengthening the registration and investment process.

Legal matters relating to the federal government are addressed by Federal Courts, while state matters go to regional courts. To ensure consistency of legal interpretation and to promote predictability of the courts, the Federal Supreme Court Cassation Division is empowered to give binding legal interpretation on all federal and state matters. Though there are no publicly listed companies in Ethiopia, all banks and insurance companies are obliged to adhere to International Financial Reporting Standards⁴¹³.

In April 2020, the government published the Administrative Procedure Proclamation number 1183/2020 (APP). The APP's aim is to allow ordinary citizens who seek administrative redress to file suits in federal courts against government institutions. Potential redress includes financial restitution. The enactment of the APP is widely viewed as a positive step in increasing confidence in the public sector and addressing the need for governmental institutions to adhere to the rule of law.

⁴¹⁰ U.S. Department of State, 2023 Investment Climate Statements: Ethiopia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ethiopia/> accessed on 26 March 2024.

⁴¹¹ Allianz, Economic Research – Ethiopia. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/ethiopia.html#:~:text=Growing%20exposure%20to%20the%20unfavorable%20external%20environment&text=The%20country%20is%20la ndlocked%2C%20which,conflict%20in%20the%20Nile%20area, accessed on 26 March 2024.

⁴¹² EITI, Ethiopia. Available on <https://eiti.org/countries/ethiopia>, accessed on 30 April 2024.

⁴¹³ U.S. Department of State, 2023 Investment Climate Statements: Ethiopia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ethiopia/> accessed on 26 March 2024.

Notwithstanding the regulatory and policy progress, political instability will remain high in 2024 owing to high levels of insecurity nationwide. A fragile peace deal in the Tigray region and active insurgencies in parts of the country present major stability and security risks. In spite of the risks, a relative improvement in political stability will drive a gradual increase in real GDP growth, supported by liberalisation and privatisation reforms⁴¹⁴ some of which have been outlined above.

⁴¹⁴ The Economist Intelligence Unit, Ethiopia. Available on <https://country.eiu.com/ethiopia> accessed on 26 March 2024.



2.20 Gabon

2.20.1 Introduction

Gabon is situated in a historically stable yet volatile region, which boasts significant economic advantages, including a relatively small population of around 2 million, abundant natural resources, and a strategic location in the Gulf of Guinea. Gabon actively encourages foreign investment, particularly in sectors such as oil and gas, infrastructure, timber, ecotourism, and mining. The government's revenue heavily relies on income from hydrocarbons.⁴¹⁵

For an extended period, Gabon's economic growth has been predominantly fuelled by the oil industry. However, notable advancements have been observed in the mining sector since the country gained independence. Gabon is the second-biggest manganese producer in the world and mined an estimated 4.6 million metric tons of the metal in 2022. The nation also holds substantial quantities of iron ore, exceeding 2 billion tonnes, with proven gold reserves surpassing 40 tonnes.⁴¹⁶ Additionally, Gabon possesses a variety of other rare minerals, including lead, zinc, copper, diamonds, niobium, and titanium. While the mining industry in Gabon experienced a period of stagnation in 2015, governmental initiatives have since aimed at unlocking the untapped potential of this sector. Strategic plans have been put in place with the objective of increasing the contribution of the mining industry to the GDP to over 30% within the next 15 years.⁴¹⁷

In August 2023, a bloodless revolution occurred in Gabon, shortly after the national elections. In terms of the coup d'état the sitting president was confirmed the winner of the elections. The head of the Presidential Guard assumed the position of Transitional President, borders were reopened, and economic life resumed briefly after the coup.⁴¹⁸ Nevertheless, economic uncertainty increased, and the investment climate is largely seen as compromised. Establishing and following a roadmap for returning to constitutional order is essential for stability.⁴¹⁹

2.20.2 Policy and Legal Framework

2.20.2.1. Institutional and Policy Overview

Gabon possesses a dual legislature consisting of the Senate and National Assembly, with the National Assembly comprising 120 deputies elected every five years. Gabon's judicial branch is organized into various courts with distinct roles.⁴²⁰

⁴¹⁵ 2022 Investment Climate Statements: Gabon, accessed in November 2023, <https://www.state.gov/reports/2022-investment-climate-statements/gabon/>.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ World Bank in Gabon, accessed in January 2024, <https://thedocs.worldbank.org/en/doc/bae48ff2f2fc5a869546775b3f010735-0500062021/related/mpo-gab.pdf>.

⁴¹⁹ Ibid.

⁴²⁰ New Mining Code in Gabon to give a major boost to investments, accessed in November 2023,

<https://www.lexology.com/library/detail.aspx?g=90cbb747-d4ee-44d4-8a51-a21652544e19#:~:text=The%20New%20Mining%20Code%20provides,encumbrances%20and%20is%20non%20dilutable.>

The highest court is the Constitutional Court, followed by the Court of Cassation, which adjudicates criminal, social, commercial, and civil cases. The Council of State oversees administrative matters and holds the highest authority in this regard. The Court of Accounts handles cases involving potential financial irregularities, while the Constitutional Chamber of the Supreme Court is responsible for judicial reviews of legislative acts. The legal system is grounded in the principles of the French Civil Law System.⁴²¹

The Minister overseeing Mines is responsible for executing the Government's policy in the mining sector. The Ministry holds the responsibility of evaluating all applications related to decisions on mining titles.⁴²² The New Mining Code establishes a regulatory authority tasked with overseeing various functions, including supervising bidding rounds, analysing the costs of mining operators, and evaluating claims pertaining to potential breaches of rights during mining activities.

The State is granted the non-mandatory right to maintain a 10% ownership interest in the share capital of exploitation permit holders. This interest is to be unencumbered and non-dilutable, with the State additionally retaining the option to acquire up to 25% of the share capital at market value. In the event of the sale or assignment of a mining title (excluding transactions between affiliates), the State possesses a pre-emption right. The New Mining Code designates SEM with the role of the national operator. In practical terms, SEM is expected to manage the State's participation in the share capital of holders of mining titles.

2.20.2.2. Relevant Legal Instruments

The Mining Code is the main legal mechanism controlling the allocation of mineral rights in Gabon and was adopted in 2019. The adoption of a new mining code, enacted through law no. 017/2014 dated 30 January 2015 (the “New Mining Code”), is intended to give a major boost to investments in this sector. The 2019 Mining Code regulates the institutional, technical, economic, and fiscal legal regime of mining activities and operations in Gabon.

The mining sector in Gabon is governed by international texts and commitments and by various Laws:

- Law No. 037/2018 of June 11, 2019, regulating the mining sector in the Gabonese Republic; Finance Law No. 031/2021 of March 23, 2022, determining the resources and expenses of the State;
- Decree No. 0023/PR/MPGM/ of 22 January 2021 setting the rules relating to the contribution of mining activity to local development in the Gabonese Republic; -
- Decree No. 00022/PR/MPGHM on the creation, powers and organisation of the General Directorate of Mines and Geology; -
- Order No. 001118/MMEPRH/SG/DGMG/DMC of 04 January 2007, setting the price of quarry materials used as the basis for establishing the extraction tax.

The New Mining Code provides a list of strategic minerals. Included in the strategic minerals are uranium, thorium, niobium, tantalum, lithium and rare earths. The State may declare that other substances are of

⁴²¹ Ibid.

⁴²² Ibid.

economic geostrategic interest. Classification as a strategic substance has no impact on the validity of a mining title, or its fiscal terms. However, the Minister in charge of Mines may impose, for economic reasons, that the holders of mining titles respect, for strategic substances, specific requirements relating to the construction and operation of the various structures and facilities. The State may build up stocks of strategic substances and set out production thresholds for such substances.

2.20.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The New Mining Code stipulates the following Local Content requirements:

- Mining title holders must contribute to a training fund and a mining support fund; in terms of employment of national workers, the title holder and its sub-contractors must: hire priority Gabonese workers with equal qualifications and experience; set up an annual training program for their employees; create internship positions; and set up a plan for the transfer of know-how and the increase of the number of Gabonese workers in the company.
- Preference to be given by mining title holders and their subcontractors to Gabonese companies provided that they offer equivalent prices, quantities and delivery terms. It is worth noting that the New Mining Code provides that preference for Gabonese companies is the counterpart of the tax and customs benefits granted under the mining code. It can be inferred from this provision that such benefits could be suspended, should the mining title holder not comply with the requirement relating to preference to be given to Gabonese companies;
- A minimum portion of the activity is to be set aside for small and medium-sized companies owned or controlled by Gabonese companies to be clarified by regulation. Such minimum portion shall range between 5% (during exploration, development and between the 5th and the 10th year of exploitation) and 15% (beyond the 25th year of exploitation); and
- Mining conventions may set out the share of the production which is to be transformed in Gabon.

2.20.2.4. Artisanal mining sector

Article 4 of the Gabonese Mining Code stipulates that ASM is any operation which is involved in extracting useful mineral substances by rudimentary, manual, traditional or semi-mechanised methods and processes.

Furthermore, Article 4 of the Mining Code also states that artisanal mining activities are conducted in accordance with the following general principles:

- the prohibition of the possession and use of chemicals and explosives on the sites;
- the exclusive allocation to nationals of authorisations mining;
- the prohibition of any semi-mechanised artisanal mining on the perimeter of a permit of research;
- the prohibition of artisanal mining of any kind on the perimeter covered by an operating title;
- the ban on the use of labour that is below age (child labour).

The holder of an operating ASM authorisation is required to:



- to start operations within three months, following the date of allocation of the exploitation right;
- to declare its production quarterly to the administration in charge of mines and keep a register of production and sales;
- to comply with the obligations relating to the protection of the environment;
- to explore and exploit the resource in the rules of art;
- to sell its production only to approved physical and moral persons (Gold Buying Centres “Comptoir”)

The holder of an operating ASM licence is subject to the quarterly payment of 5% of the market value of its production except for derogation granted by the Minister in charge of Mines under the conditions set by regulation. To practice ASM in Gabon, there are two types of authorisations required:

- individual ASM Authorisation also called an expert card, is issued by the administration in charge of mines for a period of two years renewable. It confers on its holder, within the limits of its perimeter, the right to exploit the mineral substance precisely for which it is attributed.
- collective ASM Authorisation is only open to mining cooperatives, cooperative societies and assimilated. Artisanal miners can join together in a mining cooperative. The authorisation is granted by order of the Minister in charge of Mines for a period of two years, renewable, in the forms and conditions set by the regulatory route. It confers on its holder, within the limits of its perimeter, the right to exploit the mineral substance precisely for which it is attributed. The area of an operating permit collective ASM cannot exceed 5 Km². The holder of a collective artisanal mining licence is subject to mining taxation.

2.20.2.5. Judicial System

According to Freedom House, the Washington-based non-profit organization, in its 2022 review of the country, the courts are subordinate to the president and the judiciary is accountable to the Ministry of Justice, through which the president has the power to appoint and dismiss judges⁴²³.

There is a lack of independence of the judiciary in Gabon. The separation of powers principle, being the division of state functions, with separate, independent powers and responsibilities, to avoid interference and conflict with others, is not apparent in Gabon. Gabon’s highest court is the Constitutional Court. It is made up of three members, who are directly appointed by the president of the country, two who are appointed by the National Assembly; one by the Senate, and three by the Superior Council of the Judiciary. The latter is run by the president and justice minister. The 2018 constitution also created a new special court, the Court of Justice of the Republic. It solely has the power and authority to review top executive and judicial officials. It consists of seven members, who are appointed by the Superior Council of the Judiciary and six members of Parliament⁴²⁴.

⁴²³ Freedom House, FREEDOM IN THE WORLD 2023. Available on <https://freedomhouse.org/country/gabon/freedom-world/2022>.

⁴²⁴ Freedom House, FREEDOM IN THE WORLD 2023. Available on <https://freedomhouse.org/country/gabon/freedom-world/2022>.

2.20.2.6. Arbitration

Gabon is a state member of OHADA. OHADA is the Organization for the Harmonization of Business Law in Africa (abbreviated as OHADA). It is an intergovernmental organization for legal integration and was established by Treaty on 17 October 1993, signed in Port Louis (Mauritius)⁴²⁵.

Gabon is governed by the OHADA uniform law on arbitration, which law is dated 11 March 1999. This uniform law, which governs 17 member countries, governs arbitration in all these member countries of OHADA. It applies to any internal and international arbitration, whether such arbitration is ad hoc or institutional in nature. The Uniform Act on Arbitration provides that any natural or legal person may resort to arbitration with respect to any rights that may be freely disposed of. States and other local governments as well as State-owned entities may also be parties to arbitration without being able to rely on their national laws to contest the arbitrability of the dispute, their capacity to be parties to arbitration or the validity of the arbitration agreement⁴²⁶.

the principles as provided for in the uniform law on arbitration, regulate the various stages of arbitral procedure. It furthermore provides the framework for the arbitration process and the framework for the recognition and enforcement of arbitral awards. On 23 November 2017, the OHADA member states adopted a uniform law dealing with mediation. This is supplementary to the uniform law on arbitration.

Gabon is generally seen as having a lack of transparency in administrative processes. Lengthy bureaucratic delays can frustrate foreign investors, particularly in relation to their equitable enforcement of contracts. Judicial capacity is weak with foreign courts and international arbitration decisions are accepted, but enforcement may be difficult⁴²⁷.

2.20.3 Licencing and Permit Regime

Applications for authorisation and mining titles are addressed to the Minister in charge of Mines. They must be registered with the service in charge of the mining cadastre or the mining property. Monitoring and issuance of authorisations and mining titles are carried out by this same service. After their delivery, the authorisations and mining titles subjected to the surface royalty are obligatorily transmitted to the Official Journal, within thirty days, for publication. The directory of authorisations and mining titles, with a cartographic representation allowing them to be located on the national territory, is made available to the public for consultation by any interested person.

2.20.3.1. Types of Licences and Permits

The New Mining Code provides for three types of mining titles - exploration permits, exploitation permits and mining concessions.

- **Geological reconnaissance authorisation**

⁴²⁵ OHADA. Available on <https://www.ohada.org/en/history-of-ohada/>.

⁴²⁶ Article 2 of the OHADA uniform law on arbitration. Available on <https://www.droit-afrique.com/uploads/OHADA-Uniform-Act-1999-arbitration.pdf>

⁴²⁷ U.S. Department of State, 2023 Investment Climate Statements: Gabon. Available on <https://www.state.gov/reports/2023-investment-climate-statements/gabon/>.

Any person who wants to carry out a reconnaissance activity must first obtain authorization from the administration in charge of mines for a period of one year, non-renewable. The reconnaissance authorization does not confer any exclusive rights over the area concerned.

- **Mining Research**

The right to explore for mineral substances is subject to obtaining a research permit.

The exploration permit is issued by order of the Minister responsible for Mines, for a period of three years, renewable twice for the same period, in the forms and conditions established by regulation.

It confers on its holder, within the limits of its perimeter and indefinitely in depth, the exclusive right of prospecting and research for mineral substances.

- **Mining Permit**

The right to exploit mineral substances under the mining regime is subject to obtaining one of the following permits:

The small-scale mining permit (Small-scale mining is exclusively reserved for companies with the required technical capabilities and whose capital is at least 35% owned by natural or legal persons of Gabonese nationality).

The large-scale mining permit (The right to exploit mineral substances on a large scale is subject to obtaining a large-scale mining permit, issued by decree of the President of the Republic, on the proposal of the Minister responsible for Mines).
The mining waste exploitation permit (The holder of a mining permit has the full right to exploit the waste resulting from his previous mining or metallurgical work).

The waste exploitation permit is granted to a legal entity, whose share capital is at least 25% held by nationals, unless an exemption is granted by the Minister responsible for Mines).

- **Collective Artisanal Mining Authorisation**

The collective artisanal mining authorization is only open to mining cooperatives, cooperative societies and similar.

Artisanal miners can form a mining cooperative. The terms of creation, organization and operation of the mining cooperative are established by regulation.

The collective artisanal mining authorization is granted by order of the Minister responsible for Mines for a period of two years, renewable, in the forms and conditions established by regulation.

- **Individual Artisanal Mining Authorisation**

The artisanal mining authorization does not constitute a mining title. It is not transferable.

2.20.3.2. The Application Process for Mining Licences and Permits in Gabon

Application Requirement	Geological reconnaissance authorisation	Exploration Permit	Small-scale mining licence	Large-scale mining licence
Duration of Licence or Permit	1 year	3 years	5 years	10 years 20 years
Renewable	Non-renewable	renewable two (2) times for a period of three (3) years each renewal	2 years for certain substances depending on their specificity	Per 5 years period Per 10 years period
Application Costs 1 XAF = 0.0015 EUR (11.05.23)	Granting (XAF) - 500 000	Granting (XAF) - 1500 000 First Renewal (XAF) - 1500 000 Second Renewal (XAF) - 30000000	Granting (XAF) - 250 000 First Renewal (XAF) - 500 000	Granting (XAF) - 15 000 000 – 30 000 000 First Renewal (XAF) - 30 000 000 – 60 000 000
Application requirements or restrictions	Not exclusive. Maximum area 3 000 Km ² .	An operator is restricted to holding a maximum of three exploration permits, with a specific provision allowing for two permits dedicated to diamond exploration. The permissible area for a single permit is capped at 1,500 sqm, and for diamond exploration, it is set at 5,000 sqm, a departure from the absence of such limitations in the 2000 Mining Code. exploitation permit is sought.	50 km ² Exclusive right of prospecting, research and exploitation, 35% of national investments	Determined by the volume of investments.

Table 13 Application Requirements for Geological Reconnaissance Authorisation, Exploration Permit, Small-scale Mining Licence and Large-scale Mining Licence in Gabon



Application Requirement	Exploitation licence for mining waste	Collective Artisanal Mining Authorisation	Individual Artisanal Mining Authorisation
Duration of Licence or Permit	5 years	2 years	2 years
Renewable	As many times as necessary	Renewable if in compliance with general principles	The artisanal mining authorization is renewable if the beneficiary has respected the general principles of artisanal mining and the obligations incumbent upon it and presented a renewal request in accordance with mining regulations.
Application Costs 1 XAF = 0.0015 EUR (11.05.23)	Granting (XAF) - 3 500 000 First Renewal (XAF) - 5 000 000	-	Granting (XAF) - 50 000 First Renewal (XAF) - 100 000
Application requirements or restrictions	Granted to a legal entity, whose share capital is held at least to 25% by nationals, unless waived by the Minister in charge of Mines.	Not assignable or transferable.	Not transferable or transferable over 5 Km ² . The holder of an artisanal mining authorization is required: -to start exploitation within three months following the date of allocation of the exploitation right; -declare its production quarterly to the administration in charge of mines and keep a production and sales register; -to respect obligations relating to environmental protection; -to explore and exploit the resource according to the rules of the art; -to sell its production only to approved natural and legal persons.

Table 14 Application Requirements for Exploitation Licence for Mining Waste, Collective Artisanal Mining Authorisation and Individual Artisanal Mining Authorisation in Gabon

2.20.3.3. Transferability of Mineral Rights

Reconnaissance/prospection authorisations are not transferable.

Exploration and production permits may be assigned with the prior authorisation of the Ministry in charge of mines. Transfer of exploitation permits is also subject to a State pre-emptive right unless it is transferred to an affiliated company⁴²⁸.

2.20.4 Taxation

2.20.4.1 Mining Royalties and Taxes

The research, exploitation, collection and marketing of mineral substances under the mining regime, on the national territory, give rise to the collection of duties, taxes, royalties and penalties according to the terms of assessment, liquidation and collection as fixed by this law. Unless otherwise provided, any administrative act, which confers mining rights, gives rise to the collection of the aforementioned taxes (Article 189, Mining Code).

According to Article 196 of the Mining Code, the surface tax is due at the beginning of each year and is determined on the basis of the surface area as well as the authorisations and mining titles held. The rates of Ad Valorem tax applicable to the mining titles of exploitation of the mining regime are fixed in the mining agreement, shown below.

Mineral	Royalty rate (%)
Base and other substances	5 - 10
Precious metals	5-8

Table 15 Tax per mineral category in Gabon

The mineral substances of the mining operation, with the exception of those placed in stock on the extraction sites, are subject to a mining royalty proportional to their value at the extraction sites. The proportional mining royalty is due by any holder of an exploitation title under the mining regime Article 202.

- Products resulting from local processing are not subject to the proportional mining royalty.
- The export, import, collection and marketing of precious substances as well as the manufacture and transformation of works in precious metals give rise to the payment of a tax, the rate of which is set in the table below:

⁴²⁸ Mining Laws and Regulations Gabon 2024, accessed in February 2024, <https://iclg.com/practice-areas/mining-laws-and-regulations/gabon>.



	Royalties Amount in XAF
Export or commercialization	5% of market value
- Precious metals	
- Precious stones	
Import	
- Diamond	10% of market value
- Other substances	8% of market value
Certificate of origin	
- Diamond	1 000 000
- Other valuable substances	5 000

Table 16 Tax for export, import, collection and marketing for precious metals and stones in Gabon

The rate of exit duties applicable to the export of mineral substances cannot be greater than 1%. Customs and Excise duties relating to permits.

- **Exploration phase**

Equipment, materials, supplies, machines, tools and capital goods included in the programme approved by the Ministry in charge of Mines as well as commercial vehicles, except those intended for the transport of persons, temporarily imported into Gabon by Holders of mining agreements are admitted to the normal temporary admission regime, in accordance with the provisions of Article 166 of the CEMAC Customs Code (Article 227, Mining law).

Equipment, materials, supplies, machines, tools, and products directly necessary for geological and mining research, including those intended for construction and installations, are admitted free of customs duties and taxes in accordance with the provisions of Article 276 of the CEMAC Customs Code. This exemption also extends to spare parts exclusively intended for machinery and equipment imported as part of mining reconnaissance or research activities (Article 228, Mining law).

- **Operation phase**

Machines, devices and gears temporarily imported into Gabon by mining companies during the exploitation phase are admitted to the special temporary admission regime, in accordance with Article 171 of the CEMAC Customs Code (Article 231, Mining law)

Materials, machines, equipment, tools and materials intended directly and definitively for mining benefit, on importation, from a reduced rate of 5%. Inputs used exclusively in the local transformation process benefit from an exemption from customs duties and taxes. The list of products and inputs referred to above eligible for the exemption from duties and taxes is indicated in the mining agreement. It is regularly updated at the initiative of the operator. The duration of the period of realisation of the investment extends from the date of signature of the mining convention of exploitation to the realisation of the first commercial product sale (Article 232, Mining law).

• Exemptions

The New Mining Code stipulates that the following exemptions will apply to mining title holders and their sub-contractors:

- Exploration phase:
 - domestic VAT in respect of certain goods for carrying out geological and mining activities, as set out by a ministerial order;
 - the corporation tax;
 - the flat minimum corporation tax (impôt minimum forfaitaire);
 - the business licence tax;
 - property tax on property other than houses; and
 - registration fees on deeds bearing capital increase and on professional leases.
- Operation phase:
 - holders of mining titles relating to projects having an exploitation period of at least 10 years, and their sub-contractors, will be exempted from the payment of the corporation tax and the flat minimum corporation tax during the first 5 years after the commencement of the exploitation phase. This tax holiday can be up to 8 years for the most important mining projects, i.e. those having a lifespan of 20 years or more. However, the tax holiday would cease to apply to those mining title holders who get a return on investment during the exemption period.

2.20.5 Macroeconomics

In 2022, Gabon's economy exhibited a growth rate of 3.0 percent, marking a significant recovery from the impacts of the Covid-19 crisis. This growth was driven by robust demand from China, eased OPEC+ restrictions, and previous investments that led to increased oil production. Other contributing sectors included wood, manganese, agriculture, and services.⁴²⁹

The infusion of private investments, particularly in the oil sector, coupled with net exports buoyed by commodities, played a pivotal role in supporting demand-side growth. Consequently, the current account balance attained a surplus of 6.7 percent of GDP in 2022, propelled by stronger commodity exports and a moderate increase in imports. Furthermore, higher oil revenues contributed to a fiscal surplus of 2.5 percent of GDP in 2022, representing the highest surplus since the oil price shocks of 2014.

This positive economic trend was further reinforced by enhanced government revenues, attributable to intensified tax collection efforts and reductions in tax exemptions during the same year. However, in

⁴²⁹ World Bank in Gabon, accessed in November 2023, <https://thedocs.worldbank.org/en/doc/bae48ff2fec5a869546775b3f010735-0500062021/related/mpo-gab.pdf>.

2023, the GDP contracted by 1.5 percent, primarily attributed to diminished manganese production amid disruptions in transportation.

Investor confidence has been severely diminished as a consequence of the coup that occurred in August 2023. This has resulted in increased political instability risks, and this is likely to adversely impact the near-term economic outlook. Global rating agencies have downgraded Gabon's economic outlook.⁴³⁰

In September 2023, news agency Reuters reported that credit ratings agency Fitch had placed Gabon on "rating watch negative" (RWN), citing high political uncertainty, following a military coup last year.⁴³¹

2.20.6 Mineral Beneficiation

The 2019 Mining Code provides that any holder of an exploitation license must locally process mineral resources according to a rate defined in the mining conventions to be signed with the State. In order to promote local content and processing of mineral substances, export of some processed mineral resources is exempted from the proportional mining royalties and additional tax incentives could be provided in the mining convention (such as reduction of export duties capped in any case to 1%)⁴³².

2.20.7 Governance and Risk Ratings

2.20.7.1. Ease of Doing Business

According to the World Bank Group, Gabon is ranked 169 among 190 economies (with a DB score of 45) in the ease of doing business, according to the latest World Bank annual ratings.⁴³³

2.20.7.2. Investment Climate

According to the US State Department's 2023 Investment Climate Statement on Gabon, foreign investors face difficulties in establishing new businesses, connecting to utilities such as power and water, and transferring company ownership. Difficulties in obtaining business funding are one of several issues that are raised by foreign investors. Banks have challenges releasing funds, especially to small and medium-sized enterprises, due to a lack of guarantees and insufficient documentation. These challenges, according to the US State Department's research make Gabon a difficult place for foreign businesses to operate.

According to the World Bank 2022 report, Gabon ranks 38th in Africa for the protection of minority investors and 43rd for the payment of taxes⁴³⁴.

⁴³⁰ Ibid.

⁴³¹ Reuters 'Fitch places Gabon on 'rating watch negative' following coup', accessed in January 2024, on <https://www.reuters.com/world/africa/fitch-places-gabon-rating-watch-negative-following-coup-2023-09-05/>.

⁴³² Mining Laws and Regulations Gabon 2024, accessed in February 2024, <https://iclg.com/practice-areas/mining-laws-and-regulations/gabon>

⁴³³ World Bank Group "Doing Business 2020" page 16, accessed in November 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

⁴³⁴ US Department of State: 2023 Investment Climate Statements: Gabon: <https://www.state.gov/reports/2023-investment-climate-statements/gabon/>

2.20.7.3. Risk Ratings

On 26 Jan 2024, Ratings agency Fitch affirmed Gabon's Long-Term Foreign-Currency Issuer Default Rating (IDR) at 'B-' and removed it from Rating Watch Negative and assigned a stable outlook.

The removal from Rating Watch Negative by rating agency Fitch reflects the easing of political uncertainties in Gabon, following the formation of a transitional government including people from the civil society, members of the opposition and the former Bongo administration. The incumbent government plans to organise a national dialogue to draft a new constitution and electoral code in order to hold free and fair elections, scheduled for August 2025. Whether the return to constitutional order could be achieved within the stated ambitious short timeframe, and the country's weak institutional capacity remains to be seen⁴³⁵. Gabon had formerly joined the EITI in 2007 but lost its status as an EITI implementing country when it was delisted in February 2013. Gabon rejoined the EITI in 2021⁴³⁶.

2.20.8 Good Governance Evaluation

Gabon's policies and laws frequently lack clear rules and regulations, making it challenging for foreign firms to navigate the bureaucracy. Despite reform efforts, obstacles and red tape persist, particularly at the lower and mid-levels of ministries. The lack of transparency in administrative processes and prolonged bureaucratic delays sometimes cause companies to question the fairness and integrity of contract enforcement⁴³⁷. No new regulatory systems have been introduced or reforms implemented in the past year. However, the government is collaborating with the IMF to enact reforms aimed at enhancing transparency and good governance in the petroleum sector in 2023. Some of Gabon's main sectors such as oil and mining, receive investment preferences through customs and tax incentives such as exemption from customs duties on imported machinery and equipment, making capital investments more affordable.

Following the military takeover in Gabon and the end of the three-month active monitoring period on 9 January 2024, the EITI Board decided not to suspend Gabon, in accordance with Article 8.2 of Section 1 of Part 2 of the 2023 EITI Standard, and to resume the regular monitoring of EITI implementation⁴³⁸. Gabon aims to use the EITI platform to enhance transparency in the extractive sector by strengthening disclosures, improving traceability and ultimately, creating value while enhancing the management of payments and revenues⁴³⁹. It has also adopted the Kimberley Process regulations for diamonds. Furthermore, initial measures for gold exploitation, processing, and trading have been implemented, facilitated by the commencement of gold exploitation and the opening of a gold refinery in early 2023⁴⁴⁰.

⁴³⁵ Fitch: rating action commentary: Gabon - <https://www.fitchratings.com/research/sovereigns/fitch-affirms-gabon-at-b-removes-rating-watch-negative-outlook-stable-26-01-2024>.

⁴³⁶ EITI, Gabon. Available on <https://eiti.org/countries/gabon>, accessed on 16 May 2024.

⁴³⁷ US Department of State: 2023 Investment Climate Statements: Gabon: <https://www.state.gov/reports/2023-investment-climate-statements/gabon/>, accessed on 16 May 2024.

⁴³⁸ EITI, Gabon: Board Decision. Available on <https://eiti.org/board-decision/2024-12>, accessed on 16 May 2024.

⁴³⁹ EITI, Gabon. Available on <https://eiti.org/countries/gabon>, accessed on 16 May 2024.

⁴⁴⁰ ICLG, Mining Laws and Regulations Gabon 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/gabon>, accessed on 16 May 2024.

2.21 Gambia

2.21.1 Introduction

The Gambia, a narrow strip of land on the West African coast, is known for its riverine landscapes and vibrant culture. The capital, Banjul, serves as the administrative and economic centre. Despite its small size, Gambia exhibits potential for economic growth, including in the mining sector.

The mining sector is in its early development stages and is based on industrial minerals, such as ilmenite, rutile, zircon, silica sand, kaolinitic and plastic clay, cockle shell, iron, and other construction materials⁴⁴¹.

2.21.2 Policy and Legal Framework

2.21.2.1. Institutional and Policy Overview

The Geological Department within the Ministry of Petroleum and Energy regulates mining in The Gambia (Ministry). The Ministry recognizes the importance of geosciences in underpinning national sustainable development, economic growth, environmental protection, and enhancement of the quality of life. The functions of the Ministry are as follows⁴⁴²:

- Initiate, promote, coordinate, implement and evaluate all geoscientific programs pertaining to mineral exploration and development;
- Collect, store and disseminate information relating to the geological and mineral resources;
- Participate in environmental studies which have reference to geological processes, e.g. coastal erosion, landfill site studies and land reclamation;
- Identify, monitor and manage all mining and quarrying sites including sand, gravel and other construction materials;
- Provide information and technical assistance to government institutions, consultants and the general public on matters pertaining to geology, geophysics and hydrogeology; and
- Collaborate with the Commissioner of Petroleum Exploration and Production on petroleum exploration and production matters.

2.21.2.2. Relevant Legal Instruments

The Mines and Quarries Act 2005 (Minerals Act) regulates the right to search for, mine and work minerals, within the territory of The Gambia. The Ministry, being the custodian of the Mines and Quarries Act, regulates the extraction of the mineral resources of the country. All mineral resources of the country belong to the state which is the custodian on behalf of the people of The Gambia. Section 113 of the

⁴⁴¹ Artisanal and Small-Scale Mining Handbook for Southern African Region, 2022. Available on <https://www.planetgold.org/sites/default/files/Tychsen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf>, accessed on 28 March 2024.

⁴⁴² Ministry of Petroleum and Energy, Mission and Vision. Available on <https://www.mope.gm/mission-and-vision> accessed on 28 March 2024.

Minerals Act provides for environmental protection in the activity in accordance with the provisions of the National Environment Management Act, 1994⁴⁴³.

2.21.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

The Gambian government encourages foreign investment and has made increasing FDI a priority. It also recognizes the importance of creating an environment that allows the private sector to be the engine of growth, transformation, and job creation. FDI is welcomed in almost every sector of the Gambian economy. There is no restriction on ownership of businesses by foreign investors in most sectors. Foreign companies can invest in Gambia without facing systemic discrimination in favour of local companies⁴⁴⁴. Apart from Defence-related activities, there are no sector-specific restrictions, limitations, or requirements were legally applied to foreign ownership and control⁴⁴⁵.

2.21.2.4. Artisanal Mining Sector

The Minerals Act recognises the ASM Sector in The Gambia. The Geological Department is mandated by the Government to carry out geological surveys and administer the Minerals Act. The Department initiates, promotes, implements and evaluates all geo-scientific programs pertaining to mineral exploration and development in the country. The regulatory functions of the Geological Department also include monitoring and supervising mining and quarrying activities, which enable direct interaction with the ASM sector. The Gambia is not yet a mining country; however, certain socio-economic and environmental matters need close regulation. These include but are not limited to:

- Water runoff from quarry sites;
- Destruction of natural habitats and losses of animal species;
- Destruction of arable land, soil erosion and sediment due to excavation;
- Impact of Health among ASM Operators
- The role of Women in the ASM sector; and
- Child labour in the national ASM sector.

To obtain a quarrying license/permit in The Gambia, one is required to consult with the local community surrounding the ASM site and complete a consent land use form. This ensures minimal confrontation with local farmers and stakeholders⁴⁴⁶.

⁴⁴³ Ibid.

⁴⁴⁴ U.S. Department of State, 2023 Investment Climate Statements: The Gambia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/the-gambia/> accessed on 8 March 2024.

⁴⁴⁵ U.S. Department of State, 2020 Investment Climate Statements: The Gambia. Available on <https://www.state.gov/reports/2020-investment-climate-statements/gambia/> accessed on 9 March 2024.

⁴⁴⁶ Artisanal and Small-Scale Mining Handbook for Southern African Region, 2022. Available on <https://www.planetgold.org/sites/default/files/Tychsen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf> accessed on 28 March 2024.

2.21.2.5. Judicial System

The Gambia's legal system is based on a tripartite system: English law, including the common law and principles of equity and statute law; customary law, which is administered by district tribunals; and Islamic/Shari'a law, which is administered by a Cadi Court system⁴⁴⁷.

- **Judicial Independence**

The judiciary in The Gambia lacks independence and has become an instrument of the Executive⁴⁴⁸.

- **Enforcing Contracts and Efficiency in Settling Disputes**

There is no information available in this regard.

- **Protection of Minority Investors**

In 2015, according to the World Bank, The Gambia strengthened minority investor protections by clarifying the duties of directors and providing new venues and remedies for minority shareholders seeking redress for oppressive conduct⁴⁴⁹.

2.21.2.6. Arbitration

Gambia is not a signatory to the New York Convention (which convention facilitates international arbitration for dispute resolution in the mining sector)⁴⁵⁰.

2.21.3 Licencing and Permit Regime

2.21.3.1. Types of Licenses and Permits

The Gambian mining legislation provides for a prospecting permit and a mining and quarrying licence⁴⁵¹.

Type of Licence	Initial Period	Period of Renewal
Reconnaissance licence	Granted for any period not exceeding one year.	Renewed by one period not exceeding one year.
Prospecting licence	Granted for any period not exceeding three years.	Renewed by two periods each of two years.

⁴⁴⁷ Amie Bensouda & Co., The Legal System – Gambia. Available on <https://www.amiebensoudaco.net/legal-system/#:~:text=The%20Gambia%27s%20legal%20system%20is,by%20a%20Cadi%20Court%20system> Accessed on 8 March 2024.

⁴⁴⁸ [The Gambia] Media Foundation for West Africa submission to the UN Universal Periodic Review, 2010. Available on https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/Session7/GM/MFWA_UPR_GMB_S07_2010_MediaFoundationforWestAfrica.pdf, accessed on 8 March 2024.

⁴⁴⁹ World Bank, Protecting Minority Investors. <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 8 March 2024.

⁴⁵⁰ Global Arbitration Review, Investment Treaty Arbitration – Gambia. Available on https://www.mayerbrown.com/-/media/files/news/2016/05/gar-knowhow--investment-treaty-arbitration--gambia/files/art_ahern_gar-know-how-gambia_par_may16/fileattachment/art_ahern_gar-know-how-gambia_par_may16.pdf, accessed on 8 March 2024.

⁴⁵¹ MINES AND QUARRIES ACT, 2005. Available on <https://faolex.fao.org/docs/pdf/GAM208792.pdf>, accessed on 28 March 2024.

Mining licence	Granted for twenty-five years, or the estimated life of the mine, whichever is shorter.	Renewed for fifteen years, or the estimated life of the mine, whichever is the shorter.
Retention licence	Granted for an initial period of one year.	The Secretary of State, on the advice of the Chief Geologist, may extend the period of validity of a retention licence for one year at a time, but the total period of extension shall not exceed five years.
Quarrying permit	Granted for an initial period of one year	Chief Geologist may extend validity of permit by a period of one year at a time.
Quarrying licence	Granted for an initial period not exceeding four years	Chief Geologist may extend validity of authority not exceeding four years.

Table 17 Types of Licences and Permits in Gambia

2.21.4 Taxation

2.21.4.1. Mining Royalties and Taxes

There is no information available in this regard.

2.21.5 Mineral Beneficiation

There is no information available in this regard.

2.21.6 Macroeconomics

After muted 0.6% growth in 2020 due to the COVID-19 pandemic, GDP growth remained subdued at 4.3% in 2021 and 4.4% in 2022, as the effects of Russia's invasion of Ukraine disrupted agriculture, tourism, construction activities, and private investment. Increased COVID-19 spending (0.5% of GDP) and food support (0.7% of GDP) protected livelihoods and businesses, bolstering real GDP per capita growth from -2.0% in 2020 to 1.9% in 2022. High food and fuel prices induced by Russia's invasion of Ukraine, freight charges, and the strong US dollar raised inflation from 7.4% in 2021 to 9.6% in 2022⁴⁵².

⁴⁵² African Development Bank, Gambia Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/gambia/gambia-economic-outlook>, accessed on 8 March 2024.

2.21.7 Governance and Risk Ratings

2.21.7.1. Ease of Doing Business

Gambia ranks 155 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁴⁵³.

2.21.7.2. Investment Climate

Despite challenges around transparency and weak institutional structures, the investment opportunities in The Gambia nevertheless remain compelling. According to a report by the US State Department (Embassies Abroad), the energy sector presents significant potential investment opportunities in electricity generation. By way of example, an additional 40 megawatts (MW) of electricity is needed just to meet current national demand, which is expected to reach 200 MW by 2025. Supply-side constraints have created a high demand for quality generators and energy storage equipment such as inverters and renewable energy devices.

Within the construction sector, currently, a significant portion of building materials are sourced from China and India, but an increasing demand for higher quality materials and equipment provides market opportunities for countries producing better quality materials.

Finally, in the agricultural sector, opportunities exist in the machinery and irrigation equipment sector.

The Gambia is becoming increasingly urban. The urbanization rate is 60 per cent, and it is increasing at a rate of approximately seven-tenths of a percentage point annually. This has led to a high demand for processed food⁴⁵⁴.

2.21.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Gambia based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D3 - sensitive risk for enterprise⁴⁵⁵.

The Gambia does not participate in the EITI Standards. The Gambia furthermore does not participate in the Fraser Institute Perception Index for mining.

2.21.8 Good Governance Evaluation

According to the US State Department, medium-term growth is expected to average 5.5 percent in 2020-25, attributed to strong growth in private sector activity, specifically construction and tourism.

Strides are also expected to be made in the energy sector (oil exploration and exploitation; renewable energies, specifically solar); natural resources (heavy mineral sands); agriculture (rice and cereal

⁴⁵³ Doing Business 2020. Economy Profile – The Gambia. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/g/gambia/GMB.pdf> accessed on 8 March 2024.

⁴⁵⁴ Gambia - Market Opportunities. Available on <https://www.privacyshield.gov/ps/article?id=Gambia-Market-Opportunities>, accessed on 28 March 2024.

⁴⁵⁵ Allianz, Economic Research – Gambia. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/gambia.html, accessed on 8 March 2024.

production, but also processed foods); tourism; and finally, infrastructure (roads, telecommunications systems, drainage systems, and bridges)⁴⁵⁶. Notwithstanding the potential of the country to develop its natural resources industry, poor governance structures and weak laws do not encourage this. In the areas of competition law, labour law and corruption enforcement for example basic regulations do not exist to implement the laws effectively⁴⁵⁷.

⁴⁵⁶ U.S. Department of State, 2020 Investment Climate Statements: The Gambia. Available on <https://www.state.gov/reports/2020-investment-climate-statements/gambia/>, accessed on 9 March 2024.

⁴⁵⁷ Ibid.



2.22 Ghana

2.22.1 Introduction

The Republic of Ghana is a country in West Africa. It abuts the Gulf of Guinea and the Atlantic Ocean, sharing borders with Ivory Coast, Burkina Faso, and Togo. Ghana is the second-most populous country in West Africa. Accra is the capital and largest city.

Ghana is Africa's top gold producer and a significant producer of diamond, bauxite, and manganese. The mining sector was the country's second-largest economic activity after retail trade at the end of 2022. Its share of GDP increased from 4.5 % in 2021 to 7.6 % in 2022⁴⁵⁸. There has also been recent discoveries of graphite and lithium deposits. Ghana has the ability to diversify its mining industry and to move away from its dominant focus on gold mining to other metals and minerals, that are particularly relevant for the energy transition⁴⁵⁹.

2.22.2 Policy and Legal Framework

2.22.2.1. Institutional and Policy Overview

The Ministry of Lands and Natural Resources and the Minerals Commission administer the mining industry in Ghana. The Minerals Commission was established under the Minerals Commission Act, 1993 (Act 450) with the statutory purpose of *"regulation and management of the utilisation of the mineral resources and the coordination of the policies in relation to them"*⁴⁶⁰.

The government of Ghana launched its National Energy Transition Framework⁴⁶¹ in November 2022 at the COP27 climate conference in Egypt. The plan is to guide the country's transition plans and map its resource needs for the coming 50 years. The National Energy Transition Framework identifies graphite and lithium as future opportunities for state revenue⁴⁶².

2.22.2.2. Relevant Legal Instruments

The key legislation regulating mining in Ghana is the 1992 Constitution of Ghana, the Minerals and Mining Act, 2006 (Act 703) as amended by the Minerals and Mining (Amendment) Act, 2015 (Act 900) and the Minerals and Mining (Amendment) Act, 2019 (Act 995), and the Minerals Commission Act, 1993 (Act 450).

Other substantive enactments that regulate mining are the Minerals Development Fund Act, 2016 (Act 912), the Minerals Income Investment Fund Act, 2018 (Act 978) as amended by the Minerals Income

⁴⁵⁸ Ghana Chamber of Mines, Performance of the Mining Industry in 2023. Available on <https://ghanachamberofmines.org/wp-content/uploads/2023/08/Performance-of-the-Mining-Industry-in-2023-.pdf>, accessed on 30 April 2024.

⁴⁵⁹ Natural Resource Governance Institute, Ghana's Transition Minerals: No Time to Lose, June 2023. Available on <https://resourcegovernance.org/articles/ghanas-transition-minerals-no-time-lose>, accessed on 30 April 2024.

⁴⁶⁰ ICLG, Mining Laws and Regulations Ghana 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/ghana>, accessed on 24 March 2024.

⁴⁶¹ National Energy Transition Framework 2022 – 2070. Available on <https://www.energymin.gov.gh/sites/default/files/2022-11/National%20Energy%20Transition%20Framework%20Abridged%20Version.pdf>, accessed on 30 April 2024.

⁴⁶² Natural Resource Governance Institute, Ghana's Transition Minerals: No Time to Lose, June 2023. Available on <https://resourcegovernance.org/articles/ghanas-transition-minerals-no-time-lose>, accessed on 30 April 2024.

Investment Fund (Amendment) Act, 2020 (Act 1024), and the Kimberley Process Certificate Act, 2003 (Act 652)⁴⁶³.

Other complementary laws regulating mining in Ghana include⁴⁶⁴:

- Ghana Geological Survey Authority Act, 2016 (Act 928);
- Forestry Commission Act, 1999 (Act 571);
- Water Resources Commission Act, 1996 (Act 522);
- Lands Commission Act, 2008 (Act 767);
- Environmental Protection Agency Act, 1994 (Act 490);
- Ghana Integrated Aluminium Development Corporation Act, 2018 (Act 976);
- Ghana Integrated Iron and Steel Development Corporation Act, 2019 (Act 988);
- Minerals Development Fund Act, 2016 (Act 912);
- Office of the Administrator of Stool Lands Act, 1994 (Act 481);
- Minerals Income Investment Fund Act, 2018 (Act 978);
- Local Governance Act, 2016 (Act 936);
- Land Act, 2020 (Act 1036); and
- Land Use and Spatial Planning Act, 2016 (Act 925).

2.22.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Generally, only companies incorporated under the Companies Act, 2019 or partnerships incorporated under the Incorporated Private Partnerships Act, 1962 are granted rights to undertake reconnaissance, exploration, or mining operations.

Non-citizens may apply for a mineral right in respect of industrial minerals if the proposed investment in the mineral operations is at least US\$10 million. A small-scale mining licence may only be issued to an individual who is a Ghanaian who has attained the age of 18 years and is registered by the Minerals Commission in an area designated for small-scale mining operations.

Additionally, all companies in Ghana with foreign participation must register with the Ghana Investment Promotion Centre under the Ghana Investment Promotion Centre Act, 2013. This act prescribes certain minimum capital requirements for the operation of foreign entities in Ghana. A wholly foreign-owned entity must invest a minimum of US\$500,000 in cash or goods/equipment, whilst a foreign entity, which

⁴⁶³ https://www.ndowuona.com/images/ML23_Chapter_7_Ghana.pdf accessed on 24 March 2024

⁴⁶⁴ Ghana Extractive Industries Transparency Initiative. Available on https://eiti.org/sites/default/files/2023-01/2020%20GHEITI%20Mining%20Sector%20Reconciliation%20Report_compressed_0.pdf, accessed on 24 March 2024.

partners with a Ghanaian entity must invest a minimum of US\$200,000 in cash or capital goods relevant to the investment, or a combination of both by way of equity participation. The Ghanaian partner must have at least 10% equity participation in the joint enterprise⁴⁶⁵.

2.22.2.4. Artisanal Mining Sector

In the late 1980s, the Ghanaian government regularised artisanal mining to allow citizens of 18 years and above to obtain licenses. Today, artisanal mining exists in two forms: licensed and unlicensed operations. Artisanal and small-scale mining employs approximately 1 million people in Ghana. An additional 5 million peoples' livelihoods depend on its proceeds. Artisanal and small-scale mining also accounts for 40% of gold produced in Ghana. A major problem with unlicensed mining is the government's inability to enforce mining laws. It is estimated that about 85% of artisanal and small-scale mining operators have no license to operate.

Ghana has a broad and comprehensive legal framework for mining, with overlapping responsibilities for state institutions. This, according to experts, hinders effective implementation. There are a number of environmental laws, with various government agencies being responsible for enforcement. Most importantly, the Minerals and Mining Commission, the Environmental Protection Agency and the Ministry of Lands and Natural Resource could not enforce mining laws due to corruption, regulatory capture and clientelism. Political influences and informal connections are the major obstacles to enforcing mining laws in the country. This includes politicians being either directly involved in illegal mining or having links with people in government⁴⁶⁶.

2.22.2.5. Judicial System

The legal system in Ghana is based largely on English common law. Civil law aspects relating to personal relationships and contracts are rooted in Ghanaian customary law. The Supreme Court is the final court of appeal and has jurisdiction over constitutional issues. The Court of Appeal deals with appeals relating to the High Court, which has jurisdiction over all civil and criminal cases except treason.

All but the most serious civil and criminal cases, and cases under family law, are heard in the circuit courts. These courts also deal with appeals arising from the district courts within their region. The least serious civil cases and most criminal cases come, in the first instance, before the district courts in which magistrates preside.

The chief justice of the Supreme Court is nominated by the president and approved by parliament⁴⁶⁷.

The Ghanaian constitution provides that in the exercise of the judicial power, the judiciary, in both its judicial and administrative functions, is subject only to this constitution of Ghana and shall not be the

⁴⁶⁵ International Comparative Legal Guides, Mining Laws and Regulations Ghana 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/ghana>, accessed on 24 March 2024.

⁴⁶⁶ The Conversation Africa, Ghana's artisanal miners are a law unto themselves: involving communities can help fix the problem, October 2022. Available on <https://theconversation.com/ghanas-artisanal-miners-are-a-law-unto-themselves-involving-communities-can-help-fix-the-problem-192256>, accessed on 24 March 2024.

⁴⁶⁷ Commonwealth Governance, Judicial System of Ghana. Available on <https://www.commonwealthgovernance.org/countries/africa/ghana/judicial-system/>, accessed on 24 March 2024.

subject to the control or direction of any person or authority. Neither the President nor Parliament shall interfere with judges, judicial officers or other persons exercising judicial power, in the exercise of their judicial functions; and all organs and agencies of the State shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to the constitution⁴⁶⁸.

- **Judicial independence**

Notwithstanding the enshrined constitutional protection, the judiciary in Ghana is generally not seen as independent. Perception of independence is important. The highest court must be seen to be stable, consistent and predictable in terms of its composition and membership. Thus, according to legal commentators, ensuring life tenure for judges similar to the position in the United States, would assist in ensuring judicial independence and integrity. By being insulated from political and other pressures, the judges can go about the business of administering justice in a fair and impartial manner. The present mandatory retirement age of 70 years for Supreme Court judges is, according to commentators, against judicial progress and judicial independence and integrity, as the law becomes less predictable with a constant influx of new judges⁴⁶⁹.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2008 Ghana introduced commercial courts in the capital, increasing the efficiency of commercial dispute resolution⁴⁷⁰.

- **Protection of Minority Investors**

No information was found in this regard.

2.22.2.6. Arbitration

The Alternative Dispute Resolution Act, of 2010 is the main piece of legislation governing arbitration between private persons in Ghana. Broadly, the act provides for the resolution of disputes by arbitration, mediation, and customary arbitration (which is exclusive to the Ghanaian legal system).

Relating to foreign investor-state arbitration, the Ghana Investment Promotion Centre Act, 2013 governs the terms of international investment arbitration. Generally, arbitration is voluntary and based on the principle that the parties must voluntarily submit their disputes to arbitration. In certain specialised areas of law, parties are required to compulsorily submit to arbitration despite the absence of an arbitration agreement (i.e. in certain labour or banking matters).

⁴⁶⁸ Article 127 - Independence of The Judiciary. Available on https://lawsghana.com/constitution/Republic/constitution_content/132, accessed on 24 March 2024.

⁴⁶⁹ African Human Rights Law Journal, The rule of law and democracy in Ghana since independence: Uneasy bedfellows? Available on http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962018000100013, accessed on 24 March 2024

⁴⁷⁰ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 24 March 2024

Ghana acceded to the New York Convention in 1968 without registering any reservations to the general obligations. The Convention was incorporated into Ghanaian municipal law by the Alternative Dispute Resolution Act, 2010⁴⁷¹.

2.22.3 Licencing and Permit Regime

2.22.3.1. Types of Licences and Permits

Licences Type	Type of Right	Initial Period	Renewal Period	Additional Information
Reconnaissance License	Reconnaissance Licence	Up to 12 months	Up to 12 months	-
	Restricted Reconnaissance Licence	Up to 12 months	Up to 12 months	For industrial minerals designated by the Minister
Prospecting License	Prospecting Licence	Up to 3 years	Up to 3 years	-
	Restricted Prospecting Licence	Up to 3 years	Up to 3 years	For industrial minerals
Mining Lease	Mining Lease	30 years	Up to 30 years	-
	Restricted Mining Lease	Up to 15 years	Up to 15 years	For industrial minerals
	Small-Scale Mining Licence	Up to 5 years	Determined by Minister ⁴⁷²	-

Table 18 Types of Licences and Permits in Ghana

The Mineral and Mining (Licencing) Regulations of 2012 provide for the creation of a cadastral system in Ghana. In terms of Regulation 1, a cadastral system shall be created. For the purpose of establishing mineral rights or mining cadastre, the surface of the Republic of Ghana is divided into cadastral units and the cadastral map shall be on a scale of 1:50,000. The location of cadastral coordinates on the ground by

⁴⁷¹ The Legal 500, Ghana: International Arbitration. <https://www.legal500.com/guides/chapter/ghana-international-arbitration/>, accessed on 24 March 2024.

⁴⁷² Natural Resource Governance Institute, Ghana's Transition Minerals: No Time to Lose, June 2023. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/ghana>, accessed on 24 March 2024.

GPS shall be made using the official geodetic transformation parameters provided by the Survey and Mapping Division of the Lands Commission⁴⁷³.

2.22.3.2. Transferability of Mineral Rights

A mineral right can only be transferred, assigned, mortgaged, or otherwise encumbered with the prior written approval of the Minister of Lands and Natural Resources⁴⁷⁴.

2.22.4 Taxation

2.22.4.1. Mining Royalties and Taxes

Mining companies are subject to a higher corporate income tax rate of 35%, and to the general withholding tax rates. The holder of a mineral right may be granted the following⁴⁷⁵:

- exemption from payment of customs import duty in respect of plant, machinery, equipment and accessories imported specifically and exclusively for the mineral operations;
- exemption of staff from the payment of income tax on furnished accommodation at the mine site;
- immigration quota in respect of the approved number of expatriate personnel; and
- personal remittance quota for expatriate personnel free from tax imposed by an enactment regulating the transfer of money out of the country.

The Minister may also, as a part of a mining lease, enter into a stability agreement with the holder of the lease to ensure that the holder will not, for a period not exceeding 15 years from the date of the agreement, be adversely affected by subsequent changes to⁴⁷⁶:

- The level of and payment of customs or other duties relating to the entry materials, goods, equipment and any other inputs necessary to the mining operations or project;
- The level of and payment of royalties, taxes, fees and other fiscal imports; and
- Laws relating to exchange control, transfer of capital and dividend remittance.
- The stability agreement is subject to parliamentary ratification.

Presently, an individual holding a mining lease, restricted mining lease, or small-scale mining license is obligated to remit royalties to the state for minerals extracted from their mining activities, at a rate determined by the Minister. The existing flat royalty rate of 5%, which was introduced by section 1 of the

⁴⁷³ MINERALS AND MINING (LICENCING) REGULATIONS, 2012. Available on <https://www.mincom.gov.gh/wp-content/uploads/2021/06/Minerals-and-Mining-Licencing-Regulations-2012-L-I.-2176.pdf>, accessed on 24 March 2024

⁴⁷⁴ International Comparative Legal Guides, Mining Law 2023 10th Edition, Chapter 7 - Ghana. Available https://www.ndowuona.com/images/ML23_Chapter_7_Ghana.pdf accessed on 24 March 2024

⁴⁷⁵ Lex Africa, Guide to Mining Regimes in Africa - Ghana. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

⁴⁷⁶ Ibid.

Minerals and Mining (Amendment) Act, 2010 (Act 794), remains the same until such time as the rate is altered or prescribed.

2.22.5 Mineral Beneficiation

There are no specific laws regulating the processing of minerals. Notwithstanding this, person must obtain a licence to export, sell or dispose of any mineral. If the applicant is not a holder of the mining lease, they must satisfy the Minister of Lands and Natural Resources that: the business plan or particulars of the programme of the proposed operations include the refining or polishing of the minerals in Ghana before export and the purchase of only refined or polished minerals for export; and a percentage of the minerals determined by the Minister is supplied to local refineries, to ensure regular supply to local users⁴⁷⁷. Shipment of rough diamonds to and from Ghana is subject to prescribed rules and regulations and must be in accordance with the Kimberley Process Certification Scheme⁴⁷⁸.

2.22.6 Macroeconomics

Real GDP growth slowed to 3.3% in 2022 from 5.4% in 2021 due to macroeconomic instability, global financial tightening, and spillover effects of Russia's invasion of Ukraine. Inflation was an estimated 31.5% in 2022, up from 10% in 2021, driven by food and energy prices and depreciating local currency. The Bank of Ghana tightened monetary policy; the policy rate was hiked to 27% in 2022 from 14.5% in 2021. The poverty rate declined from 11% in 2021 to 10% in 2022. However, living standards have been negatively impacted by the rising cost of living and unemployment. The latter increased from 11.9% in 2015 to 13.4% in 2021, with youth (ages 15–24) unemployment an estimated 7.2% in 2021, up from 7.3% in 2020⁴⁷⁹.

2.22.7 Governance and Risk Ratings

2.22.7.1. Ease of Doing Business

Ghana ranks 118 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁴⁸⁰.

2.22.7.2. Investment Climate

Although challenges do exist, the government has acknowledged the need to strengthen its business-enabling environment to attract foreign direct investment and is taking steps to overhaul the regulatory system, improve the ease of doing business, and restore fiscal discipline. Mining and in particular minerals processing and mining-related services subsectors are regarded as promising sectors in Ghana⁴⁸¹.

⁴⁷⁷ International Comparative Legal Guides, Mining Law 2023 10th Edition, Chapter 7 - Ghana. Available https://www.ndowuona.com/images/ML23_Chapter_7_Ghana.pdf accessed on 24 March 2024.

⁴⁷⁸ Lex Africa, Guide to Mining Regimes in Africa - Ghana. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

⁴⁷⁹ Africa Development Bank, Ghana Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/ghana/ghana-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=inflation%20was%20an%20estimated%2031.5,prices%20and%20depreciating%20local%20currency>, accessed on 24 March 2024.

⁴⁸⁰ Doing Business 2022, Economy Profile Ghana. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/g/ghana/GHA.pdf>, accessed on 24 March 2024.

⁴⁸¹ U.S. Department of State, 2023 Investment Climate Statements: Ghana. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ghana/> accessed on 24 March 2024.

According to the US State Department, investment laws in Ghana protect investors against expropriation and nationalization and guarantee that investors can transfer profits out of the country, although international companies have reported high levels of corruption in dealing with Ghanaian government institutions, making the investment climate challenging.

2.22.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Ghana based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁴⁸².

Ghana is a party to the EITI initiative⁴⁸³. In the 2022 Fraser Institute policy perception index, Ghana ranked as the 5th most attractive mining jurisdiction from a regulatory perspective in Africa. The policy perception index is a composite index, compiled by the Fraser Institute and it measures the effects of government policy on attitudes toward exploration investment⁴⁸⁴.

2.22.8 Good Governance Evaluation

According to the US State Department's report on the investment climate in Ghana, certain challenges hindering foreign direct investment include costly financial services, lack of transparency and stakeholder engagement, corruption, under-developed infrastructure, a complex property market, costly and intermittent power and water supply, the high costs of cross-border trade, a burdensome bureaucracy, and an unskilled labour force. Enforcement of laws and policies is weak, even where good laws exist on the books. Public procurements are sometimes opaque, and there are often issues with delayed payments. In addition, there have been troubling trends in investment policy over the last seven years, with the passage of local content regulations in the petroleum, power, and mining sectors that may discourage needed future investments⁴⁸⁵.

Although politically stable, Ghana is generally regarded as having a poor governance framework. The interference by the executive in the work of the judiciary, high levels of corruption and general governmental interference all contribute to making Ghana a challenging jurisdiction from an investment perspective. However, with significant known resources of critical raw materials including but not limited to bauxite, manganese, lithium and graphite, Ghana will, subject to necessary and important reforms become an important mining jurisdiction in Africa.

⁴⁸² Allianz, Economic Research – Ghana. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/ghana.html#:~:text=Inflation%20will%20remain%20elevated%20throughout,of%20%2B0.5%25%20in%202020. Accessed on 24 March 2024.

⁴⁸³ EITI, Ghana. Available on <https://eiti.org/countries/ghana>, accessed on 30 April 2024.

⁴⁸⁴ Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf>, accessed on 24 March 2024.

⁴⁸⁵ U.S. Department of State, 2023 Investment Climate Statements: Ghana. Available on <https://www.state.gov/reports/2023-investment-climate-statements/ghana/> accessed on 24 March 2024.

2.23 Guinea

2.23.1 Introduction

Guinea is a country situated in West Africa, on the Atlantic coast. Three of West Africa's major rivers—the Gambia, the Niger, and the Senegal respectively originate in Guinea. Guinea has an abundance of natural resources; however, the economy is still largely based on subsistence agriculture⁴⁸⁶.

Bauxite, iron ore, gold, and diamond mining are significant sectors for Guinea, with numerous companies engaged in production and exportation. These industries are relatively well-established. Apart from these, Guinea possesses commercially promising reserves of graphite, manganese, nickel, and uranium, although exploitation hasn't commenced on a large scale. In 2022, Guinea exported approximately USD 5.1 billion worth of bauxite (equivalent to 103 million tons at USD 50 per ton) and USD 5.8 billion worth of gold (3,139,383 ounces at USD 1,792 per ounce)⁴⁸⁷.

Guinea has a complicated and often violent post-independence history. Its recent history has been the subject of many violent *coup d'état* and other non-democratic processes. Guinea achieved independence from France in 1958. The first post-independence president was Sekou Toure. He ruled by way of dictatorship until his death in 1984, after which General Lansana Conte assumed power after a *coup* and seized the government. He too established an authoritarian regime and manipulated presidential elections until his death in December 2008. Thereafter Captain Moussa Dadis Camara led a military *coup*, seized power, and suspended the constitution. In 2009, presidential guards were involved in killing more than 150 people from an opposition party in Conakry, the capital. Subsequently, in 2009, Camara was wounded in an assassination attempt and exiled to Burkina Faso. In 2010 and 2013 respectively, the country held its first free and fair presidential and legislative elections. Alpha Conde won the presidential elections. In March 2020, Guinea passed a new constitution in a national referendum that changed presidential term limit rules. Conde argued that, given this change, he was allowed to run for a third term, which he then won in October 2020⁴⁸⁸.

This was followed by a military coup in 2021, ousting Conde and establishing the National Committee for Reconciliation and Development (CNRD). The constitution was suspended, and the government was dissolved. An interim government was formed on 22 January 2022. This is led by Dr. Dansa Kourouma and consists of appointed members representing a broad swath of Guinean society⁴⁸⁹. In February 2024, former Guinean opposition leader Mamadou Oury Bah has been appointed prime minister by the country's military junta, a week after it abruptly dissolved the government⁴⁹⁰.

⁴⁸⁶ Britannica, Countries of the World - Guinea. Available on <https://www.britannica.com/place/Guinea>, accessed on 11 March 2024.

⁴⁸⁷ U.S. Department of Commerce, International Trade Administration, Guinea - Country Commercial Guide, April 2024. Available on <https://www.trade.gov/country-commercial-guides/guinea-mining-and-minerals>, accessed on 5 May 2024.

⁴⁸⁸ The World Fact Book – Guinea. Available on <https://www.cia.gov/the-world-factbook/countries/guinea/>, accessed on 11 March 2024.

⁴⁸⁹ Ibid.

⁴⁹⁰ BBC, Guinea junta appoints Mamadou Oury Bah as new prime minister, February 2024. Available on <https://www.bbc.com/news/world-africa-68400220>, accessed on 11 March 2024.

2.23.2 Policy and Legal Framework

2.23.2.1. Institutional and Policy Overview

The principal body responsible for regulating mining law and regulations in Guinea is the Ministry of Mines and Geology. The Ministry of Mines and Geology is divided into several key departments which, taken as a whole, constitute the Mining Administration⁴⁹¹. These include:

- The National Geology Authority, which is responsible for geological, metallogenic and structural surveys within the national territory, and monitors the geological activities of mining projects that have acquired a mining title;
- The National Mines Authority, controls and monitors all mining projects in progress according to the provisions of the Mining Code and its implementing texts. It is in charge of granting all permits for the opening of granite, sand and laterite quarries;
- The Bureau National d'Expertise des Diamants, Or et autres Matières Précieuses (BNE) certifies all precious materials and their valuations to the Central Bank of the Republic of Guinea;
- The Mining Promotion and Development Centre (Centre de Promotion et de Développement Miniers) (MPDC) implements the government's policy on investment promotion for mineral resource development. In particular, it is in charge of inter alia managing and developing geological and mining data;
- The Study and Strategy Office carries out a detailed study of all geological and mining issues in the department in collaboration with the decentralised technical directorates;
- The Precious Materials Anti-Fraud Squad establishes strategies to effectively combat diamond dealers, gold dealers and all mining projects in operation that take mineral substances extracted from the Guinean subsoil without going through the Central Bank for certification;
- The Directorate General for Mining Projects;
- The Inspectorate General for Mines and Geology;
- The GeoServices Authority;
- The Managers and Assistant Managers of Mining Projects;
- The National Mining Commission was established to examine applications for the grant, renewal, transfer, extension and revocation/withdrawal of mining titles; and

⁴⁹¹ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide>, accessed on 11 March 2024.

- The Technical Committee of Titles was established as an internal committee of the mining administration and reviews applications for the grant, renewal, continuation and extension, as well as files relating to the revocation/withdrawal, of mining titles⁴⁹².

2.23.2.2. Relevant Legal Instruments

The mining sector in Guinea is governed by Law 2011/006/CNT dated 9 September 2011 (the Mining Code), amended by Law 2013/053/CNT adopted in 2013. The most relevant implementing decrees and orders of the Mining Code are:

- Decree D/2014/013/PRG/SGG relating to the application of the financial provisions of the Mining Code;
- Decree D/2014/012/PRG/SGG on the management of mining permits and titles; and
- Decree D/2014/015/PRG/SGG adopting a template of mining convention.

Other key pieces of legislation that impact the mining industry are:

- The Public Health Code;
- The Environmental Code;
- The Investment Code;
- The General Tax Code;
- The Customs Code;
- The Labour Code;
- The Water Code;
- The Code on Private and State-Owned Land;
- The Criminal Code;
- The Civil Code; and
- Decree D/2014/14/PRG/SGG dated 17 January 2014 on the environmental impact assessment methodology⁴⁹³.

⁴⁹² Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide>, accessed on 11 March 2024.

⁴⁹³ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide>, accessed on 11 March 2024.

In 2015, the Republic of Guinea decided to implement Spatial Dimension's enterprise-scale land management solution, Flexi Cadastre as its new mining cadastre to increase the capacity and performance of government institutions in the mining sector following an international tender process⁴⁹⁴.

2.23.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Only locally incorporated companies can obtain an industrial exploration permit or a semi-industrial exploration permit⁴⁹⁵.

2.23.2.4. Artisanal Mining Sector

In 2023, the UN reported that Guinea's artisanal and small-scale gold mining (ASGM) sector is valued at \$300 million, supporting over 240,000 livelihoods⁴⁹⁶. Due to the significant environmental degradation caused by the mercury extraction process, the Guinean Government has launched a \$17-million project to reduce the use of mercury by the nation's artisanal gold miners. According to the report, the chemical can travel far from its point of dispersal, bioaccumulating in air, water, and soil without breaking down in the environment. As such, the sector poses a transboundary health concern. Furthermore, the Guinean ASGM sector is one of the largest in West Africa, characterised by influxes of informal migratory workers from neighbouring countries, according to the Head of UNEP's GEF Chemical and Waste Portfolio. The intention is that the five-year project will align Guinea with international best practices, strengthening regulation for the formalisation of artisanal miners, reinforcing women's leadership within the sector, and facilitating a dialogue between miners and financial institutions to encourage investment in ASGM⁴⁹⁷. The artisanal diamond sector in particular largely falls within the ASGM sector. The customary or artisanal mining practices are not recognised nor regulated by Guinea's Mining code. Artisanal mining of diamonds is harder to regulate than gold or iron ore for example. For more than 50 years from 1958, diamonds were almost exclusively mined industrially, today diamonds are exclusively produced by artisanal miners⁴⁹⁸.

2.23.2.5. Judicial System

- **Judicial independence**

The judicial system in Guinea is based on French civil law, customary law, and decree; legal codes are under revision. Guinea has not accepted compulsory International Court of Justice jurisdiction. In 1958

⁴⁹⁴ Engineering News, New cadastre to take Guinea mining to the next level, November 2025. Available on <https://www.engineeringnews.co.za/print-version/new-cadastre-set-to-take-guinea-mining-to-another-level-2015-11-06>, accessed on 8 April 2024.

⁴⁹⁵ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide>, accessed on 11 March 2024.

⁴⁹⁶ United Nations Environment Programme, Guinea moves to transform its Artisanal and Small-Scale Gold Mining sector, April 2023. Available on <https://www.unep.org/gef/news-and-stories/press-release/guinea-moves-transform-its-artisanal-and-small-scale-gold-mining#:~:text=Guinea%27s%20artisanal%20and%20small%20scale,the%20country%27s%20artisanal%20miners%20annually>. Accessed on 11 March 2024.

⁴⁹⁷ Ibid.

⁴⁹⁸ Guinea ASM Profile. Available on <https://knowledge.uneca.org/ASM/Guinea>, accessed on 11 March 2024.

and 1965, the government introduced some customary law, but retained French law as the basic framework for the court system⁴⁹⁹.

The Guinean legal system is regarded as particularly unstable and not independent because of political interference. A new political position was introduced by way of Constitutional reform, namely the position of Prime Minister. According to commentators, this new position will help avoid eventual sources of tension in the Executive branch of power between the President on one side and the trade union leaders as has been the case in the past. There were many voices supporting the revision of the Constitution in order to introduce the position of the Prime Minister⁵⁰⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank assesses globally the time and cost required for resolving a commercial dispute through a local first-instance court, and the quality of judicial processes, evaluating whether each economy had adopted a series of good practices that promote quality and efficiency in the court system. In 2019, the report stated that Guinea made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism⁵⁰¹.

- **Protection of Minority Investors**

The World Bank assesses globally the mechanisms in place in a country to afford minority shareholders protection against oppressive actions. In 2015, Guinea strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions⁵⁰².

2.23.2.6. Arbitration

The Chamber of Arbitration of Guinea is tasked with administering arbitration matters in Guinea. This institution was put in place by the Presidential Decree D/150/PRG/SGG of August 11, 1998 (hereinafter the Decree No. 150). According to this Act, the Chamber of Arbitration is transitionally attached and placed under the supervision of the Ministry of Justice. Its mission consists of providing means to Guinean and foreign businesspeople to regulate their conflicts through arbitrators they freely choose. It organizes and supervises the operations of arbitration. Its seat is Conakry. The Chamber of Arbitration is divided into three organs: the Council of Administration, the Committee of Arbitration, and the Administrative Bureau⁵⁰³.

⁴⁹⁹ Guinea - Judicial system. Available on [https://www.nationsencyclopedia.com/Africa/Guinea-JUDICIAL-SYSTEM.html#:~:text=Guinea%20%2D%20Judicial%20system&text=The%20system%20is%20composed%20of,Conakry\)%20and%20the%20Supreme%20Court](https://www.nationsencyclopedia.com/Africa/Guinea-JUDICIAL-SYSTEM.html#:~:text=Guinea%20%2D%20Judicial%20system&text=The%20system%20is%20composed%20of,Conakry)%20and%20the%20Supreme%20Court), accessed on 11 March 2024.

⁵⁰⁰ Hauser Global Law School Program, Guinean Legal System and Research, December 2018. Available on <https://www.nyulawglobal.org/globalex/Guinea1.html#constitutionalcourt>, accessed on 11 March 2024.

⁵⁰¹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 11 March 2024.

⁵⁰² World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 11 March 2024.

⁵⁰³ Hauser Global Law School Program, Guinean Legal System and Research, December 2018. Available on <https://www.nyulawglobal.org/globalex/Guinea1.html#constitutionalcourt>, accessed on 11 March 2024.

Arbitration matters are regulated by the OHADA Uniform Act on Arbitration was adopted on 11 March 1999, and last amended on 23 November 2017. This Uniform Act on Arbitration is modelled after the UNCITRAL Model Law of June 1985.

Guinea is a signatory to the New York Convention.



2.23.3 Licencing and Permit Regime

2.23.3.1. Types of Licences and Permits

Exploration Rights	Exploitation Permits	Mining Convention	Prospecting authorisations	Quarry Search Authorisations
<p>Prospecting authorisations for substances of mines or quarries confer on the holder the right to carry out survey work to confirm the existence of one or several mining substances in zones classified as open. However, the holder of the authorisation must disclose the results of its survey work to the state.</p>	<p>Mining rights are determined by the type of exploitation permit held.</p> <p>The various exploitation permits in Guinea are:</p> <ul style="list-style-type: none"> - industrial and semi-industrial exploitation permits; - mining concessions; - artisanal exploitation authorisations for substances of mines or quarries; and - exploitation authorisations for quarry substances (permanent or temporary). 	<p>A mining convention is to be entered into between the holder of an industrial exploitation permit and the minister of mines and geology. The mining convention contains further rights and obligations in addition to those provided by the Mining Code. Such additional rights and obligations may consist of a stability regime and tax and foreign exchange provisions.</p>	<p>Prospecting permits confer on the holder the exclusive right to prospect for the mining substance(s) for which the permit is issued, within the limits of its area and without limitation as to depth.</p> <p>There are two types of exploration permits: industrial exploration permits and semi-industrial exploration permits.</p>	<p>Quarry search authorisations confers on the holder the right to prospect for all quarry substances in the area for which the authorisation is granted⁵⁰⁴.</p>

Table 19 Types of Licences and Permits in Guinea

⁵⁰⁴ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide#:~:text=The%20Guinean%20government%2C%20through%20the,driver%20of%20the%20national%20economy>. Accessed on 8 April 2024.



2.23.3.2. The Application Process and Requirements for Mining Licences and Permits in Guinea

Application Requirement	Exploration Rights	Exploitation Permits	Mining Convention
Place of Application	Technical Committee of Titles	Technical Committee of Titles & Council of Ministers	Minister of mines and geology
Validity or Duration of Licence or Permit	<p>An industrial exploration permit is granted for an initial period of up to 3 years.</p> <p>A semi-industrial exploration permit is granted for an initial period of up to 2 years.</p>	<p>An industrial exploitation permit (mining right) is valid for 15 years, starting from the date of signature of the decree of the Council of Ministers through which it is issued.</p> <p>A semi-industrial exploitation permit (mining right) is valid for 5 years, starting from the date of signature of the decree of the Council of Ministers through which it is issued.</p>	Depending on the terms.
Renewable	<p>Each renewal occurs automatically if the permit holder has satisfied certain pre-determined conditions.</p> <p>The permit may be renewed twice for up to 2 years each time, at the request of the permit holder and under the same conditions as apply for grant of the permit.</p>	<p>A semi-industrial permit may be renewed only once for up to 1 year, at the request of the permit holder and under the same conditions as applied for grant of the permit. Each renewal occurs automatically if the permit holder has satisfied certain pre-determined conditions.</p> <p>An industrial exploitation permit or semi-industrial exploitation permit is renewable upon request of the permit holder. The permit may be renewed indefinitely for subsequent 5-year periods. However, before applying for renewal, the permit holder must have complied with its obligations under the grant and renewal of the permit, as well as those listed in the specifications or the mining convention.</p>	Depending on the terms.

<p>Costs (Fees per km² (\$))</p>	<p>Minerals: Bauxite, iron, uranium <i>Grant 15; First renewal 40; Second renewal 100</i></p> <p>Minerals: Gold, diamond, gems and associated minerals <i>Grant 20; First renewal 53; Second renewal 133</i></p> <p>Minerals: Basic mineral and other substances <i>Grant 10; First renewal 27; Second renewal 67</i></p> <p>Flat fees of \$500, are payable at the time of the application for a prospecting authorisation and subsequently on each renewal.</p>	<p><u>An industrial exploitation permit</u></p> <p>Minerals: Bauxite, iron, uranium <i>Grant 7,500; First renewal 10,000; Transfer 22,500</i></p> <p>Minerals: Gold, diamond, gems and associated minerals <i>Grant 10,000; First renewal 12,500; Transfer 30,000</i></p> <p>Minerals: Basic mineral and other substances <i>Grant 5,000; First renewal 6,250; Transfer 15,000</i></p> <p>A flat fee of \$2,500 is payable at the time of the application for the industrial exploitation permit and subsequently on each renewal</p> <p><u>Semi Industrial Exploitation Permit</u></p> <p>Minerals: Gold, diamond, gems and associated mineral <i>Grant 4,500; First renewal 5,625; Transfer 12,600</i></p> <p>Minerals: Basic mineral and other substances <i>Grant 3,500; First renewal 4,375; Transfer 7,500</i></p>	<p>N/A</p>
<p>Application requirements or restrictions</p>	<p>The applicant files a request along with the documents supporting its technical and financial capacity to undertake the exploration activities.</p> <p>The applicant's request is assessed by the Technical Committee of Titles.</p> <p>Upon a favourable opinion of the Technical Committee of Titles, the applicant's request is also analysed by the MPDC. At this point, other</p>	<p>The key requirements in order to apply for an industrial or semi-industrial exploitation permit are as follows:</p> <ul style="list-style-type: none"> - The applicant must be a Guinean company (i.e., the company holding the exploration permit by virtue of which the application for the industrial or semi-industrial exploitation permit is made must establish a local subsidiary); and 	<p>An agreement called a 'mining convention' must also be entered between the holder of an industrial exploitation permit and the minister of mines and geology.</p> <p>The mining convention contains further rights and obligations in addition to</p>

	<p>technical and environmental assessments of the request may be made by the relevant bodies (ie, the National Mines Authority and the Ministry of Environment).</p> <p>Upon a favourable opinion of the MPDC, the exploration permit is granted by order of the minister of mines and geology.</p>	<p>- The application must be submitted at least three months before the expiry of the exploration permit.</p> <p>The procedure for applying for an industrial exploitation permit or a semi-industrial exploitation permit is as follows:</p> <ul style="list-style-type: none"> - The applicant files a request at least three months before the expiry of the exploration permit. - The applicant's request is assessed by the National Mining Commission. <p>Upon a favourable opinion of the National Mining Commission, the applicant's request is also analysed by the minister of mines and geology.</p> <p>Upon a favourable opinion of the minister of mines and geology, the permit is granted by decree of the Council of Ministers</p>	<p>those provided by the Mining Code. Such additional rights and obligations may consist of a stability regime and tax and foreign exchange provisions.</p>
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Table 20 Application Requirements for Exploration Rights, Exploitation Permits and a Mining Convention in Guinea

Application Requirement	Prospecting authorisations	Quarry Search Authorisations
Place of Application	National Geology Authority	National Geology Authority
Validity or Duration of Licence or Permit	A prospecting authorisation is granted for a maximum period of 6 months.	A quarry search authorisation is issued for a maximum period of 1 year.
Renewable	Renewable once for up to 6 months, under the same conditions as apply for grant of the authorisation.	Renewable for periods of up to 1 year, under the same conditions as apply for grant of the authorisation,
Costs (Fees per km² (\$))	<i>Grant 10; First renewal 15; Transfer 20</i> A flat fee of \$1,500 is also paid at the time of the application for exploration permit and subsequently on each renewal.	<u>Fees (\$/hectares/year)</u> <i>Grant 750; Renewal 750</i> Flat fees of \$1,500 are payable at the time of the application for a quarry search permit, and subsequently on each renewal.
Application requirements or restrictions	<p>The applicant files a request along with the documents supporting its technical and financial capacity to undertake the prospecting activities.</p> <p>The applicant's request is assessed by the National Geology Authority. Upon a favourable opinion of the National Geology Authority, the applicant's request is also analysed by the Mining Promotion and Development Centre (MPDC). Upon a favourable opinion of the MPDC, the prospecting authorisation is issued by the National Mines Authority or the quarry search authorisation by the decentralised departments of the National Mines Authority.</p>	<p>The applicant files a request along with the documents supporting its technical and financial capacity to undertake the prospecting activities.</p> <p>The applicant's request is assessed by the National Geology Authority. Upon a favourable opinion of the National Geology Authority, the applicant's request is also analysed by the Mining Promotion and Development Centre (MPDC). Upon a favourable opinion of the MPDC, the prospecting authorisation is issued by the National Mines Authority or the quarry search authorisation by the decentralised departments of the National Mines Authority⁵⁰⁵.</p>

Table 21 Application Requirements for Prospecting authorisations and Quarry Search Authorisations in Guinea

⁵⁰⁵ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide#:~:text=The%20Guinean%20government%2C%20through%20the,driver%20of%20the%20national%20economy>. Accessed on 8 April 2024.

2.23.3.3. Transferability of Mineral Rights

In Guinea, a prospecting right cannot be transferred but an exploitation right (mining right) can be transferred subject to approval by the Minister of Mines, an environmental audit and a health and safety audit⁵⁰⁶. An exploitation permit may be assigned or transferred, in whole or in part. If the exploitation permit is held by several owners, the consent of all owners is required prior to any assignment of transfer⁵⁰⁷.

2.23.4 Taxation

2.23.4.1. Mining Royalties and Taxes

In addition to taxes, royalties and duties provided in the General Tax Code, the holder of a mining title is subject to the payment of duties and royalties provided in the Mining Code, for its activities in Guinea. Unless agreed otherwise with the Government, the procedure for the collection and control of duties and royalties is that of the normal regime as set out in the General Tax Code and the Customs Code⁵⁰⁸.

The main taxes that are levied on mining operators in Guinea are (i) income tax at a rate of 35%; and (ii) withholding tax on income made by expatriates as well as their personal belongings, at a rate of 30%⁵⁰⁹.

The issuance of a mining title, as well as its renewal, extension, continuation, transfer, assignment and lease, is subject to the payment of a fixed fee, determined by applicable regulations. The same applies to other activities related to mining substances. For example, collection agents, trading houses and accredited trading agencies (trading diamonds, gold and other precious substances) are subject to a fixed annual royalty, the amount of which is determined by the applicable regulation⁵¹⁰. The surface royalty fees are shown below⁵¹¹.

Nature of the Title	Surface Royalties USD/km2	Surface Royalties USD/km2	Surface Royalties USD/km2
Exploration Permit	10	15	20
Industrial Mining licence	75	100	200

⁵⁰⁶ Lexology, Overview and outlook: mining law in Guinea. Available on <https://www.lexology.com/library/detail.aspx?g=ac73d313-7ded-4cfa-a530-41d1b34cddb1#:~:text=Article%20of%20the%20Mining,for%20by%20the%20Mining%20Code>. Accessed on 11 March 2024.

⁵⁰⁷ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide> accessed on 11 March 2024.

⁵⁰⁸ Law and Practise, Chambers Global Practice Guide, Mining Guinea. Available on https://baofils.com/wp-content/uploads/2019/02/Chambres_Mining_Guinea.pdf, accessed on 11 March 2024.

⁵⁰⁹ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide#:~:text=The%20Guinean%20government%2C%20through%20the,driver%20of%20the%20national%20economy>. Accessed on 8 April 2024.

⁵¹⁰ Law and Practise, Chambers Global Practice Guide, Mining Guinea. Available on https://baofils.com/wp-content/uploads/2019/02/Chambres_Mining_Guinea.pdf accessed on 11 March 2024

⁵¹¹ Ibid.



Semi-Industrial Mining licence	20	50	100
Mining Concession	150	200	300

Table 22 Royalty Rates in Guinea

The holder of a mining permit for mineral substances other than precious metals, tax payment is liable on the extraction of the mineral. The trigger for the payment occurs when the mineral substances are extracted from the mine. Said taxes are payable no later than the 15th day of the month following the extraction. However, with regard to the extraction of precious stones and other gemstones, the tax is payable on the date of the evaluation by the National Bureau of Expertise. The tax is calculated on the basis of the value of the mine substance extracted, which in turn is determined on the basis of the grade, weight and price index applicable to the mineral substance extracted⁵¹².

The extraction tax which is deductible from taxable profits are shown in the table below⁵¹³:

Mineral	Rate	Basis
Iron ore	3 %	Price of iron ore on the basis of Platts China Iron Fines CFR (Cost and freight Incoterm) 62 per cent minus the transport costs, as measured by Baltic Exchange Capesize Index Route C3-Tubarao/Qingdao
Bauxite	0.075 %	Three-month LME (London Metal Exchange) seller price
Gold	5 %	London PM fix

Table 23 Extraction tax deductible from taxable profits

2.23.5 Mineral Beneficiation

In terms of the Guinean Mining Code, the government is granted a free carry of 15% in mining projects, as well as the option of purchasing an additional 20% stake. The clause is designed to encourage companies to process raw materials inside the sovereign's borders. The state's stake in the projects is to shrink as the portion of value-added inside the country's borders increases⁵¹⁴.

While mining companies are entitled to export raw materials from Guinea before they are processed, Article 139 of the Mining Code provides that title-holders are strongly encouraged to establish facilities in Guinea for the processing of extracted minerals. Law No. L/2013/053/CNT of 8 April 2013 introduced a

⁵¹² Ibid.

⁵¹³ Lexology, Overview and outlook: mining law in Guinea. Available on <https://www.lexology.com/library/detail.aspx?g=ac73d313-7ded-4cfa-a530-41d1b34cbdb1#:~:text=Article%203%20of%20the%20Mining,for%20by%20the%20Mining%20Code>, accessed on 8 April 2024.

⁵¹⁴ KPMG Global Mining Institute, Guinea Country mining guide, 2014. <https://assets.kpmg.com/content/dam/kpmg/pdf/2014/07/guinea-mining-guide.pdf>, accessed on 11 March 2024.

pre-emption right in favour of the state over 50 per cent of the production of a titleholder if it sold minerals at a price below arm's-length price for a continuous period exceeding three months⁵¹⁵.

2.23.6 Macroeconomics

Real GDP in Guinea grew an estimated 4.8% in 2022, up from 4.4% in 2021, driven by output in the mining sector. The sustained growth demonstrates the country's resilience to socio-political shocks, the COVID-19 pandemic, and Russia's invasion of Ukraine. Inflation dropped to 12.2% in 2022 from 12.6% in 2021. Imported inflation was partially offset by the appreciation of the Guinean franc. The budget deficit narrowed to an estimated 1.3% of GDP in 2022 from 1.7% in 2021. Performance improved due to higher revenue from the mining sector but was constrained by rising electricity subsidies due to low tariffs for hydroelectric power. Public debt fell to 35.5% of GDP in 2022 from 40.4% in 2021. The risk of external over-indebtedness is moderate, but the fiscal space for the absorption of shocks is limited. The current account deficit widened to 7.4% of GDP in 2022 from 2.1% in 2021, as debt service payments resumed after the freeze implemented by the G20, the Paris Club, and the International Monetary Fund in response to the COVID-19 pandemic. The deficit was financed by foreign direct investment in mining, loans, and project funding grants. Foreign exchange reserves totalled 2.5 months of import cover in 2022, down from 2.8 months in 2021. The banking sector was stable, but the nonperforming loans ratio rose to 11% in 2022 from 10% in 2019, with most non-performing loans in transportation and commerce. The poverty rate fell from 55.2% in 2012 to 43.7% in 2019, and unemployment followed a bell curve, rising from 3.8% in 2012 to 5.2% in 2014 and dropping again to 4.8% in 2018⁵¹⁶.

2.23.7 Governance and Risk Ratings

2.23.7.1. Ease of Doing Business

According to the World Bank Group, in 2020 Guinea is ranked 156 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings⁵¹⁷.

2.23.7.2. Investment Climate

According to the US State Department 2023 report on the investment climate, Guinea enjoys sizeable endowments of natural resources, energy opportunities, and arable land. These resources have however not translated into economic development. Guinea's economy has been based on extraction of primary resources, from at least the French colonial era and the slave trade before it. This extractive paradigm and legacy of underdevelopment, combined with low levels of education, and longstanding patterns of nondemocratic governance dating back to the colonial era, have limited broad-based economic growth

⁵¹⁵ Lexology, Overview and outlook: mining law in Guinea. Available on <https://www.lexology.com/library/detail.aspx?g=ac73d313-7ded-4cfa-a530-41d1b34cddb1#:~:text=Article%20of%20the%20Mining,for%20by%20the%20Mining%20Code> accessed on 8 April 2024.

⁵¹⁶ African Development Bank, Guinea Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/guinea/guinea-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,and%20Russia%27s%20invasion%20of%20Ukraine>. Accessed on 11 March 2024.

⁵¹⁷ Doing Business 2020, Economy Profile Guinea. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/g/guinea/GIN.pdf>, accessed on 11 March 2024.

based on value addition, innovation, and productivity as opposed to extractive or rent-seeking investment⁵¹⁸.

Nevertheless, the reforms put in place since the modification of the Mining Code have considerably improved the framework for investment in the mining sector and have positioned Guinea as one of the most attractive destinations for investors in the global mining industry. As a result, Guinea is now one of the main mineral exporters and one of the largest exporters of bauxite. The Guinean government, through the Ministry of Mines and Geology, remains strongly committed to making the mining sector the main growth driver of the national economy. In this regard, the challenge is the diversification of mining production, local processing of mining products, capacity building of stakeholders and sustainable management⁵¹⁹.

2.23.7.3. Risk Ratings

Transparency International has rated Guinea's public sector as one of the most corrupt in the world. Guinea ranks 141 best out of 180 and had a score of 26 on a scale from 0 (perceived as most corrupt) to 100 (perceived as least corrupt)⁵²⁰.

Guinea's governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to Guinea based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁵²¹.

Guinea was accepted as EITI compliant by the international EITI Board at its meeting in Mexico City on July 2, 2014. As an EITI country, Guinea must disclose the government's revenues from natural resources. Guinea completed its most recent report in April 2022 for the 2019-2020 reporting period. Guinea achieved a high overall score (88 points) in implementing the 2019 EITI Standard in February 2022⁵²².

⁵¹⁸ U.S. Department of State, 2023 Investment Climate Statements: Guinea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/guinea/>, accessed on 11 March 2024.

⁵¹⁹ Mondaq, Guinea: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975732/mining-comparative-guide#:~:text=The%20Guinean%20government%2C%20through%20the,driver%20of%20the%20national%20economy>. Accessed on 8 April 2024.

⁵²⁰ Transparency International, Corruption Perceptions Index. Available on https://www.transparency.org/en/cpi/2023?gad_source=1&gclid=EAlaIqobChMwMP5_aLshAMVPy8GAB2WXg8bEAAAYASAAEgJE3PD_BwE, accessed on 11 March 2024.

⁵²¹ Allianz, Economic Research – Guinea. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Guinea.html, accessed on 11 March 2024.

⁵²² EITI, Guinea. Available on <https://eiti.org/countries/guinea#:~:text=Guinea%20achieved%20a%20high%20overall,EITI%20Standard%20in%20February%202022>. Accessed on 8 April 2024.

2.23.8 Good Governance Evaluation

While Guinea's laws promote free enterprise and competition, there is often a lack of transparency in the law's application. Business owners openly assert that application procedures are sufficiently opaque to allow for corruption, and regulatory activity is often instigated due to personal interests⁵²³.

Guinea has significant mineral potential. However, due to weak governance structures and poor enforcement mechanisms, corruption is rife and non-enforcement of environmental degradation practices and human rights abuses is commonplace. It is hoped that through initiatives such as the EITI membership, Guinea will be able to align itself with international best practices.

⁵²³ U.S. Department of State, 2023 Investment Climate Statements: Guinea. Available on <https://www.state.gov/reports/2023-investment-climate-statements/guinea/> accessed on 11 March 2024.



2.24 Guinea-Bissau

2.24.1 Introduction

Guinea-Bissau is a West African nation characterized by a diverse ethnic and cultural makeup. With a history marked by political instability, the country has struggled to achieve sustained economic development. The economy is predominantly agrarian, but there is growing interest in harnessing the potential of mineral resources, particularly bauxite and phosphates.

2.24.2 Policy and legal framework

2.24.2.1. Institutional and Policy Review

The State, through the Ministry in charge of the mining sector, is responsible for managing mining resources, the mineral production industry, distribution, trade, as well as the consumption of mineral goods. The General Directorate of Geology and Mining is responsible for ensuring the execution of this law, diplomas, and complementary regulations.

2.24.2.2. Relevant Legal Instruments

The mining industry in Guinea-Bissau is governed by the Mining Code 2014. This legislation outlines the regulatory framework for mineral exploration and extraction. It covers Licencing procedures, environmental protection measures, and community engagement requirements, emphasizing responsible and sustainable mining practices⁵²⁴.

- The law on petroleum activities is regulated in Law 2/82, of 31 May.
- Quarries are governed by Decree-Law no. 4/86, of March 29th.
- The legal regime for mines and minerals is based on Law no. 1/2000, of July 24th.

2.24.2.3. Foreign Ownership, Migrant and Local Labour Requirements

No information was found in this regard.

2.24.2.4. Artisanal Mining Sector

Mining in Guinea-Bissau is largely limited to small-scale production of construction materials, such as clays, granite, limestone, and sand and gravel⁵²⁵.

⁵²⁴ African Mining Legislation Atlas, Guinea-Bissau - MINING CODE 2014. Available on <https://www.a-mla.org/en/country/law/601#>, accessed on 18 March 2024.

⁵²⁵ Artisanal and Small-Scale Mining Handbook for Southern African Region. Available on <https://www.planetgold.org/sites/default/files/Tychsen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf> accessed on 29 February 2024.

2.24.2.5. Judicial System

Guinea-Bissau's legal system is based on Portuguese civil law. The judiciary comprises various courts, including the Supreme Court at the apex. The legal framework aims to provide a foundation for legal security and protect the rights of individuals and businesses.

- **Judicial independence**

The structure of the courts under the Constitution includes: (i) the Supreme Court, as the 'supreme judicial instance of the Republic'; (ii) courts with general jurisdiction; (iii) the Military Courts ('prosecution of crimes essentially military as defined by law') and the Administrative, Fiscal, and Audit Courts, as courts with specific jurisdiction; and (iv) the 'people's courts' designed to hear 'social disputes, whether civil or criminal'⁵²⁶.

The judges of the Supreme Court are appointed by the Supreme Judicial Council and sworn in by the President of the Republic. Article 123(3) of the constitution provides, however, that 'in cases specified by law', a judge may 'be subject, by reason of the exercise of its functions, to civil, criminal and disciplinary responsibility'. The application and interpretation of this provision shall be made in accordance with 'the independence of the courts', to the extent that this is one of the structural principles of the 1993 Constitution (Article 130(j))⁵²⁷.

The rule of law principle finds its translation in the state's subordination to the Constitution and the prediction of 'democratic legality' (Article 8(1)). Under Article 1 of the constitution, 'Guinea-Bissau is a sovereign, democratic, secular, and unitary Republic'. The 'republican form of the State' is protected by Article 130(a). A secular state is guaranteed by Article 130(b), and a specific reference is made to the 'separation of the State and religious institutions' (Article 6(1))⁵²⁸.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank reports that in 2011 Guinea-Bissau established a specialized commercial court, speeding up the enforcement of contracts. Furthermore, in 2019, Guinea-Bissau made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism⁵²⁹.

- **Protection of Minority Investors**

According to the World Bank, in 2015, Guinea-Bissau strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors

⁵²⁶ Introduction to the Constitution of the Republic of Guinea-Bissau, June 2013.

https://www.up.ac.za/media/shared/Legacy/sitefiles/file/47/15338/guinea_bissau_country_report.pdf, accessed on 29 February 2024

⁵²⁷ Ibid.

⁵²⁸ Ibid.

⁵²⁹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 13 March 2024.

and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions⁵³⁰.

2.24.2.6. Arbitration

Guinea-Bissau is not a signatory to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

2.24.3 Licencing and Permit Regime

2.24.3.1. Types of Licences and Permits

The following mining titles may be obtained⁵³¹:

- **Prospecting Authorization:** The validity period cannot exceed 1 year and is renewable once for a maximum period of 6 months. The prospecting authorization does not grant its holder exclusivity over an area to carry out mining activities to search for mineral deposits.
- **Research License:** It is granted for a maximum period of three years, renewable twice for a period of 2 years each. The initial license area must not exceed 1000 km² and must be reduced, in case of renewal, by at least 30%. The assigned perimeter must be free from any other mining rights.
- **Small Mining License:** This can be obtained after an exploration license, if the discovered deposit does not have sufficient characteristics for the development of a conventional mine. The small mining license cannot cover an area exceeding 10 hectares and is issued for a period of three years, renewable, upon request, for additional periods of 2 years, provided that the exploitable reserves are not exhausted, and the holder complies with its obligations.
- **Large Mining License:** This can be obtained after a research license. The large mining license is granted for the period requested by the applicant but cannot exceed 15 years. The large mining license may be renewed, upon request by the holder, for additional periods of 5 years, provided that the holder respects the obligations resulting from the law, regulations, and applicable mining convention.

2.24.3.2. Transferability of Mineral Rights

Mining rights are transferable. The prospecting authorization is not transferable.

2.24.4 Taxation

2.24.4.1. Mining Royalties and Taxes

No information was found in this regard.

⁵³⁰ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 13 March 2024.

⁵³¹ African Mining Legislation Atlas, Guinea-Bissau - MINING CODE 2014. Available on <https://www.a-mla.org/en/country/law/601#> accessed on 18 March 2024.

2.24.5 Mineral Beneficiation

No information was found in this regard.

2.24.6 Macroeconomics

Guinea-Bissau's economy has historically relied on agriculture, but efforts are underway to diversify, including the development of the mining sector. Economic diversification is crucial for achieving macroeconomic stability and fostering sustainable growth.

Real GDP growth dropped to 3.7% in 2022 from 6.4% in 2021 due to inflationary pressures that limited private consumption on the demand side and lower manufacturing and primary sectors on the supply side. Inflation rose to 7.9% in 2022 from 3.3% in 2021, driven by higher prices for imported food and oil. The budget deficit widened to 6.3% of GDP in 2022 from 5.6% in 2021 due to temporary measures to curb the effects of Russia's invasion of Ukraine, irregular hiring of workers, and expenses linked to upcoming elections⁵³².

2.24.7 Governance and Risk Ratings

2.24.7.1. Ease of Doing Business

In terms of the World Bank Doing Business Index, which ranks the ease of doing business in 190 countries, covering factors such as business registration, contract enforcement, and regulatory transparency, Guinea-Bissau ranked 174 out of 190 in 2020⁵³³.

2.24.7.2. Investment Climate

Guinea-Bissau was once hailed as a potential model for African development. It is now one of the poorest countries in the world. It has a massive foreign debt and an economy that relies heavily on foreign aid⁵³⁴.

2.24.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Guinea-Bissau based on its research around economic risk, business environment risk, political risk, commercial risk, and financing risk. The rating is D4 - high risk for enterprise⁵³⁵.

2.24.8 Good Governance Evaluation

Guinea-Bissau is a largely underdeveloped country with a high incidence of poverty. The World Bank⁵³⁶ notes that the country's outlook is subject to downside risks from continued inflationary pressures, shocks

⁵³² African Development Bank, Guinea-Bissau Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/guinea-bissau/guinea-bissau-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,sector%20on%20the%20supply%20side>, accessed on 13 March 2024.

⁵³³ Doing Business 2020, Economy Profile Guinea-Bissau. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/g/guinea-bissau/GNB.pdf>, accessed on 29 February 2024.

⁵³⁴ BBC, Guinea-Bissau country profile. Available on <https://www.bbc.com/news/world-africa-13443186>, accessed on 13 March 2024.

⁵³⁵ Allianz Trade, Economic Research - Guinea Bissau. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Guinea-Bissau.html, accessed on 29 February 2024.

⁵³⁶ World Bank, Overview - Guinea Bissau. Available on <https://www.worldbank.org/en/country/guineabissau/overview>, accessed on 1 March 2024.

to the cashew sector, political instability, fiscal risks, and climatic shocks. Risks associated with banking instability and the SOE sector also remain a threat to macro-financial stability.

A lack of infrastructure and reliable power make the country a challenging environment from a foreign investment perspective. Although the country has reserves of bauxite, diamonds, gold, heavy minerals and phosphate, the mining industry remains largely underdeveloped. The legal framework to support investment is poor and large-scale corruption makes Guinea-Bissau a challenging and high-risk jurisdiction for investment.



2.25 Kenya

2.25.1 Introduction

The Republic of Kenya is located in East Africa. It has a population of more than 47 million. Kenya's capital and largest city is Nairobi, while its oldest and second largest city, is the major port city of Mombasa, situated on Mombasa Island in the Indian Ocean and the surrounding mainland. Kenya is bordered by South Sudan, Ethiopia, Somalia, Uganda, Tanzania, and the Indian Ocean.

Kenya is still in an early exploration phase of its mineral potential. Initially, the country was mapped as an agricultural zone and historically there has been a low-level interest in prospecting for minerals. The country is vastly underexplored for minerals and its mining sector is currently dominated by the production of non-metallic commodities. Kenya is the third-largest producer of soda ash in the world and the seventh-largest producer of fluorspar. Metallic minerals currently produced in the country include titanium, gold, and iron ore.

It is estimated that Kenya will have the capacity to position itself as a regional mining sector leader for Eastern Africa. Kenya also recently made announcements of having world-class deposits of rare earth elements in the coastal region of the country. The recent discoveries are estimated to be worth more than USD 60 billion. According to experts, this will propel Kenya to the list of top five countries with rare earth deposits in the world. In addition, the country has the world's top six deposits for Niobium⁵³⁷.

2.25.2 Policy and Legal Framework

2.25.2.1. Institutional and Policy Overview

Mining in Kenya is regulated by the Mining Act, 2016 (the Act), The Act gives effect to the provisions of Article 60 of the Constitution of Kenya, 2010 (Constitution) which sets out the principles of land policy. Article 62(1)(f) of the Constitution provides that all minerals and mineral oils form part of public land and shall vest and be held by the national government in trust for the people of Kenya. Finally, article 69 sets out the obligations of the state with regard to the environment, particularly the use of the environment in a sustainable manner.

The Act replaces the pre-independence Mining Act Cap. 306 of 1940. The 1940 law was criticized by investors as having been out of date and out of touch with the times. The previous Act did not make any provision for technological, economic, and environmental advancements⁵³⁸.

The Ministry of Mining of Kenya (Ministry) is a Kenyan government ministry that oversees the Mineral sector in the country. The Ministry was established as an independent ministry after the 2013 general

⁵³⁷ Ministry of Mining, Kenya Mining Investment Handbook 2016. Available on <https://www.tralac.org/documents/resources/by-country/kenya/1928-kenya-mining-investment-handbook-2016/file.html> accessed on 23 March 2024.

⁵³⁸ Chambers and Partners, Exploring: A detailed look at Kenya's Mining Act, 2016. Available on <https://chambers.com/articles/exploring-a-detailed-look-at-kenyas-mining-act> accessed on 23 March 2024.



elections. Prior to its establishment, all mining-related activities in Kenya were overseen by the Ministry of Environment and Natural Resources⁵³⁹.

2.25.2.2. Relevant Legal Instruments

Mining, prospecting, and processing activities and related projects must undergo environmental impact assessment (EIA), environmental audit and monitoring continually. These activities are coordinated by the National Environmental Management Authority (NEMA) as per the Environmental Management and Coordination Act 1999 (EMCA) and a subsidiary legislation, the Environmental Impact Assessment and Audit Regulations (EIAAR) 2003⁵⁴⁰.

Other legislation that regulates the extractives industry in Kenya include:

- The Mining and Minerals Policy Sessional Paper No. 7 Of 2016;
- Mining Act 12 of 2016 (Subsidiary);
- Petroleum Act 2 of 2019;
- Petroleum Development Fund Act 4 of 1991;
- Explosives Act, Cap 115;
- Geologist Registration Act 10 of 1993; and
- Geologist Registration Act 10 of 1993 (Subsidiary).

2.25.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Where a mining right is to be granted to a company, it must be operating in the registered office subject to the provisions of the Kenyan Companies Act 2015 and must be in operation within Kenya. Also, a holder of a mineral right and any agent appointed by the holder must register an address in Kenya with the principal secretary in the Ministry of Mining to which all communications and notices made under the proposed law to the right holder or its agent may be sent⁵⁴¹.

The holder of a mining licence whose planned capital expenditure exceeds an amount prescribed by the Cabinet Secretary would be required to list at least twenty (20) percent of its equity on a local stock exchange within three years after the commencement of production. The holder of the mining licence may apply to the Cabinet Secretary responsible for mining to execute an alternative mechanism to meet the listing requirement and the Cabinet Secretary may also after consultation with the National Treasury

⁵³⁹ Ministry of Mining, About the Ministry of Mining, Kenya. Available on <https://web.archive.org/web/20151114135607/http://www.mining.go.ke/abtus.html>, accessed on 23 March 2024.

⁵⁴⁰ Ministry of Mining, Kenya Mining Investment Handbook 2016. Available on <https://www.tralac.org/documents/resources/by-country/kenya/1928-kenya-mining-investment-handbook-2016/file.html> accessed on 23 March 2024.

⁵⁴¹ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

extend the period for listing for reasons that the market conditions do not allow for a successful completion of the offering in the stock exchange⁵⁴².

2.25.2.4. Artisanal Mining Sector

In its 2016 Minerals Policy, the Kenyan Government recognised that artisanal and small-scale mining (ASM) takes place in many parts of the country. The predominant artisanal and small-scale mining activities are panning for gold, gemstone mining, winning of sand, gravel, clay and quarrying.

Although, according to the policy, ASM is an income-generating activity for vulnerable groups, its association with smuggling, tax evasion, health and safety risks, socio-cultural dislocation and a variety of illicit activities taints the sector. Indeed, the haphazard nature of ASM makes it difficult to regulate as it often takes place outside the mainstream industry (formal sector). There are immense advantages to be gained by mainstreaming artisanal and small-scale mining sectors, key among them being the widening of the tax base, a likelihood of safer, healthier and more environmentally compliant operations and enhancement of investment environment for large-scale mining through the elimination of some of the threats caused by the informal mining to formal mineral exploration and extraction operations⁵⁴³.

The Mining Act of 2016 specifically provides for the ASM sector and therefore formalising it. In particular, sections 92 to 100 of the Act regulate the ASM sector. The Act provides for the appointment of a representative of the Director of Mines who shall be the head of the ASM county office and who shall report to the Director of Mines. The functions of the officer shall be to⁵⁴⁴:

- grant, renew and revoke artisanal mining permits;
- compile a register of the artisanal miners and specify particulars that may be determined by the Cabinet Secretary;
- supervise and monitor the operation and activities of artisanal miners;
- advise and provide training facilities and assistance necessary for effective and efficient artisanal mining operations;
- submit to the Director of Mines, reports or other documents and information on artisanal mining activities within the county as prescribed in regulation;
- facilitate the formation of artisanal association groups or cooperatives; and promote fair trade of artisanal miners.

⁵⁴² Ibid.

⁵⁴³ Mining and Minerals Policy Sessional Paper No. 7 of 2016. Available on <https://repository.kippra.or.ke/bitstream/handle/123456789/527/Published%20mining%20policy%20Parliament%20final.pdf?sequence=1&isAllowed=y> accessed on 23 March 2024.

⁵⁴⁴ The Mining Act, 2016. Available on http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MiningAct_No12of2016.pdf accessed on 23 March 2024.



2.25.2.5. Judicial System

The Judiciary of Kenya consists of five Superior courts, namely the Supreme Court, Court of Appeal, High Court, Employment & Labor Relations Court, and the Environment & Land Court. The subordinate courts consist of the Magistrates Courts, Small Claims Courts, Kadhi Courts, Tribunals and the Courts Martial. In specific terms, Kenya's courts are as follows⁵⁴⁵:

- Supreme Court of Kenya is the highest court in Kenya, and all other courts are bound by its decisions. It was established under Article 163 of the Constitution as the final arbiter and interpreter of the Constitution;
- The Court of Appeal handles appeal cases from the High Court, the Environment & Land Court and the Employment & Labor Relations Court as prescribed by Parliament;
- The High Court of Kenya is established under Article 165 of the constitution of Kenya. It has supervisory jurisdiction over all other subordinate courts and any other persons, body or authority exercising a judicial or quasi-judicial function;
- Employment & Labour Relations Court was established under Article 162(2)(a) of the Constitution as well as The Employment & Labour Relations Act of 2011 to hear and determine disputes relating to employment and labour relations and for connected purposes;
- The Environment and Land Court was established as a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers, and for connected purposes;
- Article 169 1(a) of the Constitution creates the Magistrate court. This is where majority of the judiciary's cases are heard. Magistrate courts are generally located in every county in Kenya. The new Magistrate Courts' Act 2015 significantly increases the pecuniary jurisdiction of magistrate courts;
- Article 169 1(b) of the Constitution creates Kadhi's court. This is a court that hears civil matters relating to Sharia law. The parties involved must all be followers of Islam, and all must agree that the matter to be decided under Islamic law;
- Article 169 1(c) of the Constitution creates the Martial courts. Generally, this type of jurisdiction involves a group of law administrators, that is, the military court where matters involving members of the Kenya Defense Forces are heard. Appeals from this court are heard by the High Court; and
- Tribunals form part of Kenya's subordinate courts under Article 169(1)(d) of the constitution of Kenya 2010. They are established under various Acts of Parliament to determine disputes arising from the decision of government entities.

⁵⁴⁵ The Judiciary: Overview. Available on <https://judiciary.go.ke/overview/>, accessed on 23 March 2024.



- **Judicial independence**

After the coming into force and effect of the Constitution, various reforms of the judiciary took place. Parliament passed the Magistrates and Judges Vetting Act of 2011. A major part of reforming the judiciary was the vetting of Magistrates and Judges. The Judicature Act has also been amended to raise the minimum number of Magistrates and Judges allowing more judicial officers to be hired. More magistrates and judges are needed to clear the backlog of cases that have caused great delays in the conclusion of cases and to staff new courts. New courts are needed to bring the courts closer to the people, which is in line with devolution, a major principle written into the Constitution.

Notwithstanding a well-developed legal (and court) system, the judiciary in Kenya is generally not regarded as independent and impartial.

Kenya's judiciary has a history marred by interference from the political elite. However, the post-2010 constitutional era brought about substantial changes, including establishing an independent judiciary. The Constitution is aimed to insulate the judiciary from political influence and enhance its capacity to check executive power. Notwithstanding these reforms, the Kenyan judiciary has faced numerous challenges. Political interference, attacks on judicial officers, and attempts to undermine court decisions have been persistent issues⁵⁴⁶.

As recently as this year, news agencies have reported that the health of judicial independence in Kenya has come under scrutiny. This is due to the Kenyan president, William Ruto, launching an attack on the judiciary. He called the judiciary 'corrupt' and threatened to ignore court orders that delayed his planned public development projects⁵⁴⁷.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2012 Kenya introduced a case management system that will help increase the efficiency and cost-effectiveness of commercial dispute resolution⁵⁴⁸.

- **Protection of Minority Investors**

According to the World Bank, Kenya has taken a few steps to improve the rights of minority investors. These include:

In 2017, Kenya strengthened minority investor protections by clarifying ownership and control structures, introducing greater requirements for disclosure of related-party transactions to the board of directors, making it easier to sue directors in cases of prejudicial related-party transactions and allowing the rescission of related-party transactions that are shown to harm the company;

⁵⁴⁶ ICJ Kenya, Judicial Resilience and Resistance: Navigating Challenges For An Independent Judiciary, February 2024. Available on <https://icj-kenya.org/news/judicial-resilience-and-resistance-navigating-challenges-for-an-independent-judiciary/> accessed on 23 March 2024

⁵⁴⁷ AfricanLII, Tensions high in Kenya as President attacks judiciary, January 2024. Available on <https://africanlii.org/articles/2024-01-11/carmel-rickard/tensions-high-in-kenya-as-president-attacks-judiciary> accessed on 23 March 2024.

⁵⁴⁸ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 23 March 2024.

In 2019, Kenya strengthened minority investor protections by increasing disclosure requirements, regulating the approval of transactions with interested parties, and increasing available remedies if said transactions are prejudicial, increasing shareholders' rights and role in major corporate decisions and requiring greater corporate transparency; and

Finally, in 2020 Kenya strengthened minority investor protections by requiring shareholders to approve the election and dismissal of an external auditor⁵⁴⁹.

2.25.2.6. Arbitration

Section 154 of the Act provides that any mining-related dispute may be determined through a mediation or arbitration process as may be agreed upon by the disputing parties or as may be stated in an agreement. The Constitution, under Article 159(2), encourages the use of such mechanisms in the resolution of disputes before parties can approach court. Disputes that can be addressed through alternative dispute resolution may include land, boundary, compensation, and public participation, among others. The National Land Commission Act, 2012, for instance, encourages the use of alternative dispute resolution like mediation, arbitration and traditional dispute resolution mechanisms in resolving grievances relating to land⁵⁵⁰.

Kenya ratified the New York Arbitration Convention in 1989, making it a party to the Convention.

2.25.3 Licencing and Permit Regime

2.25.3.1. Types of Licences and Permits

The right which is granted depends on whether a prospecting or mining operation is classified under the Mining Act either as a largescale operation or a small-scale operation. Furthermore, the Mining Act also provides for rights that may be granted to artisanal miners, that is, miners using traditional or customary ways and means of mining⁵⁵¹.

⁵⁴⁹ <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reformsa> World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 23 March 2024.

⁵⁵⁰ The Mining Act, 2016. Available on <file:///C:/Users/KAHL2171/Downloads/The-Mining-Act-2016---Simplified-Version-1.10.2020-003.pdf> accessed on 23 March 2024

⁵⁵¹ Ibid.

Scale of Operation	Licences/Permits	Block/Size/ Area	Standard Requirements	Duration
Large Scale Mining	Reconnaissance Licence (RL)	0.21km ² - 1050km ²	Open to all regardless of nationality; Environmental licence from NEMA, technical competence, financial capabilities, local employment proposals	Up to 2 years, not renewable
	Prospecting Licence (PL)	0.21km ² - 315km ²	Same as RL	Up to 3 years, renewable twice
	Retention Licence (RTL)	0.21km ² - 315km ²	Same as RL	Up to 2 years, renewable
	Mining Licence (ML)	0.21km ² - 63km ²	Same as RL	Up to 25 years, renewable
Small Scale Mining	Reconnaissance Permit (RP)	Entire province	Kenyan citizens only; no specific qualifications required	1 year, not renewable
	Prospecting Permit (PP)	5.25km ²	Kenyan citizens only; proof of experience, financial resources, work programme	Up to 5 years, renewable once
	Mining Permit (MP)	0.42km ²	Same as PP	5 years, renewable
Artisanal Mining	Artisanal Mining Permit (AMP)	Up to 1 block	Kenyan citizenship, landowner consent, environmental permit	Up to 3 years, renewable once

Table 24 Types of Licences and Permits in Kenya

2.25.3.2. Transferability of Mineral Rights

In terms of the Act, the holder of a mineral right shall not assign, transfer, mortgage or trade such right or part thereof without the consent of the Cabinet Secretary on the recommendation of the Mineral Rights Board. The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of such an application. The Cabinet Secretary shall not consent to a proposed assignment, transfer, mortgage or

trade of a mineral right to a person or a body corporate, which is not eligible for the grant of a mineral right under the Act. The holder of a right must notify the Kenya Revenue Authority of the transfer of an interest in a mineral right.

The holder of a mineral right must notify the Cabinet Secretary of any significant proposed change in the ownership or control of the mining company with any single interest exceeding 25% interest in the licence. A proposed change shall not take effect until it has been approved by the Cabinet Secretary. The Cabinet Secretary shall not refuse to grant approval, except for valid reasons⁵⁵².

2.25.4 Taxation

2.25.4.1. Mining Royalties and Taxes

A mineral right holder shall pay royalties to the State. Royalties payable shall be determined by the gross value of the sales. The Mining (Mineral Royalties) Regulations of 2017 provides as follows:

- the purpose of mineral royalties is to provide monetary compensation to the people of Kenya, as owners of the minerals until they are won, for the loss of Kenya's non-renewable assets; and
- royalty payments are due in respect of each period of three months ending 31 March, 30 June, 30 September or 31 December (with conditions).

Rates that will apply include (all applied to the gross sales value of the mineral):

- 5% for gold and silver
- 8% for manganese and iron ore
- 8% for coal
- 10% for titanium ores and rare earths
- 12% for diamonds

Further royalties may apply, including the current 'exportation royalty' on gold at 2% of the gross value to be exported, and a 'dealership royalty' on gemstones at (a) 5% on the export value of raw gemstones or (b) 1% on the export value of value-added gemstones.

Failure to pay royalties within 60 days of filing returns leads to revocation of the licence.

Section 183(5) of the Act provides that the revenues collected by the State will be distributed as follows:

- 70% to the national government;
- 20% to county government; and

⁵⁵² The Mining Act, 2016. Available on http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MiningAct_No12of2016.pdf accessed on 23 March 2024.

- 10% to the community where the mining operations occur⁵⁵³.

The Ninth Schedule of the Income Tax Act, Cap. 470 of the Laws of Kenya has special rules relating to income tax. These rules relate to the deductions in respect of mining operations in Kenya⁵⁵⁴.

The Value Added Tax Act 2013 provides for the exemption from VAT of taxable goods to be purchased or imported for direct and exclusive use in mining prospecting subject to the recommendation of the Cabinet Secretary in charge of mining⁵⁵⁵.

2.25.5 Mineral Beneficiation

Very little information is available in relation to beneficiation in Kenya. There is one reference in the 2016 Mining and Minerals Policy Paper. This may be due to the fact that the Kenyan mining industry is small and that the majority of mining activity is ASM in nature.

In terms of the 2016 Mining and Minerals Policy Paper, the aim is to create a clear and well-coordinated institutional and regulatory framework which is crucial for the realization of the potential of the mining industry. Consequently, the Government shall put in place appropriate institutional arrangements to undertake inter alia the promotion of mineral value addition and beneficiation⁵⁵⁶. The Act is silent on beneficiation.

Minerals from Kenya can only be exported with an export permit issued by the Cabinet Secretary. Such permits are exclusively granted to holders of mining licenses, mining permits, or dealer's licenses. Each export consignment necessitates an export permit, valid for thirty days from the date of issuance⁵⁵⁷.

2.25.6 Macroeconomics

Real GDP growth slowed to 5.5% in 2022 from 7.5% in 2021, attributable to the drought, increased commodity prices, and tight global financial conditions. Growth was driven on the supply side by services and on the demand side by household consumption. Inflation rose to 7.6% from 6.1% in 2021, driven by food and energy inflation. Inflation was moderated by subsidies and raising the policy rate to 8.25% from 7% in 2021.

The Kenyan shilling depreciated to 123.3 per US dollar at end-2022 from 110.2 at end-2021. Credit risk concentration is high in manufacturing, energy and water, and agriculture. High extreme poverty (18%), unemployment (12.3%), and income inequality (Gini coefficient of 0.408)—manifestations of slow structural change—remain challenges⁵⁵⁸.

⁵⁵³ The Mining Act, 2016. Available on <file:///C:/Users/KAHL2171/Downloads/The-Mining-Act-2016---Simplified-Version-1.10.2020-003.pdf> accessed on 23 March 2024.

⁵⁵⁴ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024.

⁵⁵⁵ Ibid.

⁵⁵⁶ Mining and Minerals Policy Sessional Paper No. 7 of 2016. Available on <https://repository.kippra.or.ke/bitstream/handle/123456789/527/Published%20mining%20policy%20Parliament%20final.pdf?sequence=1&isAllowed=y> accessed on 23 March 2024.

⁵⁵⁷ Lex Africa, Guide to Mining Regimes in Africa, 2022. <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 26 March 2024

⁵⁵⁸ African Development Bank, Kenya Economic Outlook. Available on <https://www.afdb.org/en/countries-east-africa-kenya/kenya-economic-outlook> accessed on 23 March 2024.

2.25.7 Governance and Risk Ratings

2.25.7.1. Ease of Doing Business

Kenya ranks 56 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁵⁵⁹.

2.25.7.2. Investment Climate

According to the U.S. State Department, Kenya has a positive investment climate that has made it attractive to international firms seeking a location for regional or pan-African operations. Kenya's new government is focused on attracting more foreign direct investment and enacting policies that are conducive to foreign investment. The new administration's five-year economic development plan, dubbed the Bottom-Up Economic Transformation Agenda, identifies agriculture; micro, small and medium enterprises; affordable housing and settlement; universal healthcare coverage; digital superhighway; and the creative economy as core pillars towards achieving transformational inclusive growth.

Kenya's macroeconomic fundamentals remain among the strongest in Africa as it continues to rebound from the COVID pandemic with real gross domestic product increasing with over five percent growth in 2022⁵⁶⁰. This strong growth, coupled with a stable regulatory and governance framework, will position Kenya positively.

2.25.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Kenya based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C3 - sensitive risk for enterprise⁵⁶¹. Kenya is not party to the EITI initiative, nor is the country included in the Fraser Institute perception index. Any mining jurisdiction that wishes to attract foreign direct investment into that sector will participate in these initiatives.

2.25.8 Good Governance Evaluation

The Mining and Minerals Policy Sessional Paper No. 7 of 2016 was the precursor to the Act. In that policy paper, the Kenyan Government recognized the importance of the mineral and mining sector. It stated that the mining sector has the potential to contribute significantly to the country's economic development. The aim is to increase mining contribution to GDP to 10% by 2030. Kenya is regarded as a regional leader in several sectors, including in clean energy development, with more than 90% of its on-grid electricity coming from renewable sources⁵⁶². Unfortunately, corruption remains pervasive in Kenya and Transparency International ranked Kenya 123 out of 180 countries in its 2022 Global Corruption

⁵⁵⁹ Doing Business 2020, Economy Profile Kenya. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/k/kenya/KEN.pdf>, accessed on 23 March 2024.

⁵⁶⁰ U.S. Department of State, 2023 Investment Climate Statements: Kenya. Available on <https://www.state.gov/reports/2023-investment-climate-statements/kenya/>, accessed on 23 March 2024.

⁵⁶¹ Allianz, Economic Research – Kenya. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/kenya.html#:~:text=Kenya%27s%20real%20GDP%20is%20projected,6.6%25%20in%20December%202023). Accessed on 23 March 2024.

⁵⁶² U.S. Department of State, 2023 Investment Climate Statements: Kenya. Available on <https://www.state.gov/reports/2023-investment-climate-statements/kenya/>, accessed on 23 March 2024.

Perception Index – reflecting modest progress over the last decade but still below the global average⁵⁶³. Kenya has a well-developed mining law framework. The country has significant mineral potential and with the right reforms, including ensuring the independence of the judiciary, and addressing corruption, Kenya can become a regional leader in the mining industry.

⁵⁶³ Ibid.



2.26 Lesotho

2.26.1 Introduction

Lesotho, known as the "Kingdom in the Sky," is a landlocked country surrounded by South Africa. Maseru, the capital, serves as the economic and administrative hub. Lesotho is actively pursuing economic growth, with the mining sector playing a crucial role. It has a population of about two million and a per GDP of \$999.7 in 2022. Lesotho is classified as a lower middle-income country⁵⁶⁴.

The mining industry of Lesotho is heavily concentrated towards diamond mining and as such the broader mining sector in the country has not played any significant role in furthering its economy.

Besides diamonds, Lesotho also hosts various semi-precious gemstones. Uranium occurrences are limited, and interest in exploring and developing these deposits is minimal due to prevailing market conditions. Limited quarrying of dimension stone is also conducted⁵⁶⁵.

2.26.2 Policy and Legal Framework

2.26.2.1. Institutional and Policy Overview

The Ministry of Mining is responsible for overseeing the implementation of mining regulations. Under the Mines and Minerals Act of 2005, the Minister of Mining, along with the Commissioner of Mines and the Mining Board, is tasked with administering mining laws.

The Department of Environment, in accordance with the Environment Act, is responsible for regulating environmental matters, with support from the National Environment Council⁵⁶⁶.

2.26.2.2. Relevant Legal Instruments

The mining industry is regulated by the Minerals and Mining Policy of 2015. There are other key pieces of legislation that impact the mining industry, which include⁵⁶⁷:

- The Lesotho Constitution;
- The Land Act of 2010;
- The Mines and Minerals Act of 2005;
- The Precious Stones Order of 1970; and
- The Environmental Act of 2008.

⁵⁶⁴ World Bank, Overview – Lesotho. Available on <https://www.worldbank.org/en/country/lesotho/overview>, accessed on 16 March 2024.

⁵⁶⁵ African Mining, The kingdom of Lesotho – diamond in the rough, November 2023. Available on <https://www.africanmining.co.za/2023/11/01/the-kingdom-of-lesotho-diamond-in-the-rough/>, accessed on 27 April 2024.

⁵⁶⁶ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf>, accessed on 16 March 2024.

⁵⁶⁷ Ibid.

2.26.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

In addition to the requirement of registering a company under the laws of Lesotho, there are no specific regulations or special provisions pertaining to foreign applicants. However, through the Ministry of Natural Resources, the government does have the authority to obtain a minimum of 20% ownership in a prospective mine. The government will notify a mining lease applicant whether it intends to acquire a shareholding in the proposed mine. For diamond mines, the government's ownership stake is subject to negotiation with the prospective mining entity and is then formalized in the mining lease agreement⁵⁶⁸.

2.26.2.4. Artisanal Mining Sector

According to legal commentator Esther Makheta, in her 2016 PhD thesis entitled: *“Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho,”* the Mines and Minerals Act of 2005 is focused only on the presence and promotion of commercial diamond mining and thus underplays the role of ASM⁵⁶⁹. The legal framework therefore is not adequately geared to regulate small-scale and artisanal miners. The issuance of diamond licences under the 2005 Act is only for commercial miners, therefore in effect making all small-scale and artisanal mining activity illegal. According to Makheta, further work needs to be done in order to develop an institutional and regulatory framework for artisanal and small-scale miners, in order to ensure economic inclusion⁵⁷⁰.

2.26.2.5. Judicial System

Lesotho does not have a single code containing its laws. The Courts administer the Constitution, statutes laws, the common law (Roman-Dutch), and Customary law. These are drawn from a variety of sources. The following are sources of Lesotho law⁵⁷¹:

- Constitution
- Legislation
- Common Law
- Judicial precedent
- Customary Law
- Authoritative texts

The Judiciary of Lesotho consists of the Court of Appeal as the apex court, the High Court, and the Subordinate courts which are established in terms of the Constitution of Lesotho, section 118⁵⁷²

⁵⁶⁸ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf>, accessed on 16 March 2024.

⁵⁶⁹ E. Makheta, Small Scale Artisanal Diamond Mining and Rural Livelihood Diversification in Lesotho, 2016. Available on https://repository.up.ac.za/bitstream/handle/2263/62649/Makhetha_Small_2017.pdf?sequence=1&isAllowed=y accessed on 16 March 2024.

⁵⁷⁰ Ibid.

⁵⁷¹ Hauser Global Law School Program, The Law and Legal Research in Lesotho, 2008. Available on <https://www.nyulawglobal.org/globalex/Lesotho.html> accessed on 9 March 2024.

⁵⁷² The Judiciary of Lesotho. Available on <https://jud.gov.ls/> accessed on 9 March 2024.

- **Judicial Independence**

The Constitution (Section 118 (2)) further provides that; “The Courts shall, in performance of their functions under the Constitution or any other law be independent and free from interference and subject only to this Constitution and any other law.”⁵⁷³

- **Enforcing Contracts and Efficiency in Settling Disputes**

In 2012, according to the World Bank Lesotho made enforcing contracts easier by launching a specialized commercial court⁵⁷⁴.

- **Protection of Minority Investors**

In 2013, according to the World Bank, Lesotho strengthened investor protections by increasing the disclosure requirements for related-party transactions and improving the liability regime for company directors in cases of abusive related-party transactions⁵⁷⁵.

2.26.2.6. Arbitration

Lesotho is a signatory to the New York Convention (which convention facilitates international arbitration for dispute resolution in the mining sector).

2.26.3 Licencing and Permit Regime

2.26.3.1. Types of Licenses and Permits

- **Prospecting License:** Provides the holder the right to prospect for minerals to which the license relates. A prospecting license is acquired by way of application to the Mining Board through the Commissioner of Mines. The license is granted for a period of 2 years in terms of section 25 of the Mines and Minerals Act. The licence can be renewed for a period of up to 1 year.
- **Mining Lease:** Allows the holder to undertake all mining activities that are required to exploit a mineral deposit. A person wishing to obtain such a lease is entitled to apply to the Mining Board through the Commissioner. It is valid for 10 years and can be renewed for a period of 10 years.
- **Mining Permit:** Allows the right to mine the mineral to which the permit relates and the right to dispose of the mineral to which the permit relates. These permits are intended for small and artisanal miners who intend to mine a small concession area that is less than 100m² and for any mineral, other than precious stones. Such a permit is typically granted for 1 year and can be renewed for a further period not exceeding 1 year⁵⁷⁶.

⁵⁷³ Ibid.

⁵⁷⁴ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 9 March 2024.

⁵⁷⁵ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 9 March 2024.

⁵⁷⁶ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/01/Lesotho-Mining-2022.pdf> accessed on 16 March 2024.

2.26.3.2. Transferability of Mineral Rights

No Mineral Permit or any part or interest therein can be transferred without the prior approval of the Minister, in terms of section 51 of the Mines and Minerals Act.

2.26.4 Taxation

2.26.4.1. Mining Royalties and Taxes

Royalties in Lesotho on minerals are levied at 10 % for precious stones (diamonds) and 3 % for other minerals and mineral products. The royalty rate on diamonds is negotiable between the licence holder and the department⁵⁷⁷.

2.26.5 Mineral Beneficiation

There are no legal requirements to beneficiate minerals mines at present. There are restrictions in place in relation to the export of diamonds. Only licensed persons can export diamonds, namely licences dealers or producers⁵⁷⁸. The aim is to ensure that diamond beneficiation takes place in Lesotho.

2.26.6 Macroeconomics

Despite global disruptions caused by Russia's invasion of Ukraine, the economy remained resilient, growing 2.5% in 2022, driven by growth in services (2.6%) and construction (8.1%), fiscal stimulus, and COVID-19-related spending. This is an improvement on the 1.6% growth in 2021. Inflation rose to 8.3% in 2022 from 6.1% in 2021, owing to higher inflation in South Africa, the country's main trading partner. In 2022, the fiscal deficit narrowed to 4.3% of GDP from 4.8% in 2021 due to a rebound in Southern African Customs Union revenue. It was financed with government savings in the banking sector and borrowing. The current account deficit increased to 6.8% of GDP in 2022 from 4.2% in 2021, owing to higher imports. It was financed with South African capital transfers⁵⁷⁹.

2.26.7 Governance and Risk Ratings

2.26.7.1. Ease of Doing Business

Lesotho ranks 122 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁵⁸⁰.

2.26.7.2. Investment Climate

According to the U.S. State Department report on Lesotho, following independence, the nation has experienced a blend of governance styles, including rule by decree, coups, military administration, and democratically elected governments. Lesotho, functioning as a constitutional monarchy, grapples with

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ African Development Bank, Lesotho Economic Outlook. Available on <https://www.afdb.org/en/countries-southern-africa-lesotho/lesotho-economic-outlook> accessed on 9 March 2024.

⁵⁸⁰ <https://archive.doingbusiness.org/content/dam/doingBusiness/country/l/lesotho/LSO.pdf> accessed on 9 March 2024

various challenges such as poverty, income disparity, and one of the highest rates of HIV/AIDS prevalence globally⁵⁸¹.

2.26.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Lesotho based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C3 - sensitive risk for enterprise⁵⁸².

2.26.8 Good Governance Evaluation

The Government of the Kingdom of Lesotho has made major strides to improve the business environment in terms of Licencing, business registration, water, and electricity connections in recent years. A new government was appointed in October 2022, and the country announced its intention to strengthen the private sector and to welcome foreign direct investment focused on job creation, market diversification, and local capacity development⁵⁸³.

There is a trend that the government is making the operating environment for foreign investors more difficult. This includes for example, enacting regulations requiring foreign investors to renew their business licenses yearly instead of every three years, a condition that many foreign investors describe as onerous to the point of impossibility given the bureaucratic challenges⁵⁸⁴.

Furthermore, recent policy debates within the government around proposals to mandate a minimum percentage of local ownership enterprises earmarked for local citizens have caused real concern. Lesotho has known reserves of *inter alia*: base metals, clays, sand, gravel and uranium. The mining industry could play a more significant role in relation to its GDP if the regulatory and legal framework ensures stability, predictability and transparency. The key tenants of a stable and successful mining industry.

⁵⁸¹ U.S. Department of State, 2023 Investment Climate Statements: Lesotho. Available on <https://www.state.gov/countries-areas/lesotho/> accessed on 9 March 2024.

⁵⁸² Allianz, Economic Research – Lesotho. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/lesotho.html accessed on 9 March 2024.

⁵⁸³ U.S. Department of State, 2023 Investment Climate Statements: Lesotho. Available on <https://www.state.gov/reports/2023-investment-climate-statements/lesotho/> accessed on 9 March 2024.

⁵⁸⁴ Ibid.

2.27 Liberia

2.27.1 Introduction

Liberia, situated on the west coast of Africa, has a diverse cultural heritage and a history marked by periods of civil conflict. In recent years, however, Liberia has made efforts towards economic recovery and development. Liberia has a population of approximately 5,302,681 million⁵⁸⁵. The country's official language is English; however, over 20 indigenous languages are spoken. The capital is also the largest city, namely Monrovia.

Liberia's economy expanded by 4.7% in 2023. The expansion in 2023 was driven mainly by mining, specifically gold production⁵⁸⁶. In addition, the country has known deposits of base metals, manganese, bauxite, fluorspar and kyanite⁵⁸⁷.

2.27.2 Policy and Legal Framework

2.27.2.1. Institutional and Policy Review

The government of Liberia is a unitary constitutional republic and representative democracy in terms of its Constitution. The government has three co-equal branches of government: the executive, headed by the president; the legislative, consisting of the bicameral Legislature of Liberia; and the judiciary, consisting of the Supreme Court and several lower courts⁵⁸⁸.

The president is the head of state and the commander-in-chief. The president also signs or vetoes laws and appoints Cabinet members, judges, and other public officials. The president is elected to a six-year term by majority vote in a two-round system and can serve up to two terms in office⁵⁸⁹.

The Legislature is a bicameral structure and is made up of the Senate and the House of Representatives. The House has 73 members apportioned among the 15 provinces, with each province receiving a minimum of two members. Each House member represents an electoral district within a province. The Senate is made up of two senators from each county for a total of 30 senators⁵⁹⁰.

Mining in Liberia is regulated by the Ministry of Mines and Energy (MME) and the following institutions:

- Liberia Land Authority
- Petroleum – National Oil Company of Liberia (NOCAL)
- Liberia Petroleum Regulatory Agency –LPRA
- Agriculture – Ministry of Agriculture – MOA

⁵⁸⁵ World Bank, Data – Liberia. Available on <https://data.worldbank.org/country/liberia>, accessed on 30 April 2024.

⁵⁸⁶ World Bank, Overview – Liberia. Available on <https://www.worldbank.org/en/country/liberia/overview>, accessed on 30 April 2024.

⁵⁸⁷ Ore Geology Reviews Volume 101, A review of the mineral potential of Liberia, October 2018. Available on <https://www.sciencedirect.com/science/article/pii/S0169136818300994#:~:text=In%20recent%20years%20it%20has,%2C%20copper%2C%20zinc%20and%20chromite>. Accessed on 30 April 2024.

⁵⁸⁸ Liberia Political System. Available on <https://monrovia.embassy.qa/en/liberia/political-system> accessed on 30 April 2024.

⁵⁸⁹ Ibid.

⁵⁹⁰ Ibid.

- Forestry – Forestry Development Authority- Task force - FDA
- Fisheries – National Fisheries and Aquaculture Authority
- Fiscal Policies - Ministry of Finance and Development Planning - MFDP
- Fiscal Administration – Liberia Revenue Authority – LRA
- Environmental Protection – Environmental Protection Agency -EPA⁵⁹¹.

2.27.2.2. Relevant Legal Instruments

The mining sector in Liberia is governed by the Mineral and Mining Law of 2000, which has undergone amendments to address various issues. This legislation outlines the regulatory framework for mineral exploration and extraction. It covers Licencing procedures, environmental protection measures, and community engagement requirements.

Other laws, in addition to the Mining and Minerals Law of 2000 and regulations are the Mineral Policy of March 1, 2010; the environmental protection guidelines for mineral exploration and exploitation issued by the National Environmental Protection Agency of Liberia⁵⁹².

2.27.2.3. Foreign Ownership, Migrant and Local Labour Requirements

No information was found in this regard.

2.27.2.4. Artisanal Mining Sector

Artisanal and small-scale mining is a vital livelihood source for a sizable and needy population of rural and peri-urban Liberians. The benefits of artisanal and small-scale mining are often outweighed by its costs. The relative absence of adequate legislation and government controls in most countries makes the environmental and food chain impacts of poorly regulated small-scale mining arguably worse than those of large-scale mines⁵⁹³.

Artisanal and small-scale mining occurs predominantly in gold and diamonds. The sector is poorly regulated and dominated by unlicensed and illegal miners. A minority of artisanal miners hold small-scale mining licences. In the mining sector, safety, land disputes, pollution, and overlapping mining claims are critical concerns. Some of the most lucrative mines are in remote and inaccessible forest regions, and the government lacks the resources or capacity to monitor mining activities or enforce mining laws and regulations⁵⁹⁴.

⁵⁹¹ Liberia Revenue Authority, Natural Resource Tax Administration, 2022. Available on <https://revenue.lra.gov.lr/wp-content/uploads/2022/05/Module-13-Natural-Resource-Taxation-converted-compressed.pdf> accessed on 12 March 2024.

⁵⁹² Ministry of Mines and Energy, Government, Laws and Regulations. Available on <https://mme.gov.lr/laws-and-regulations/>, accessed on 30 April 2024.

⁵⁹³ African Development Bank, Liberia: New African Development Bank study outlines steps to draw artisanal and small-scale miners into formal sector, boosting economy, March 2023. Available on <https://www.afdb.org/en/news-and-events/press-releases/liberia-new-african-development-bank-study-outlines-steps-draw-artisanal-and-small-scale-miners-formal-sector-boosting-economy-59411#:~:text=%E2%80%9CArtisanal%20and%20small%20scale%20mining,or%20metals%20can%20be%20found.%E2%80%9D> accessed on 1 March 2024.

⁵⁹⁴ International Trade Administration, Liberia - Country Commercial Guide, 2022. Available on <https://www.trade.gov/country-commercial-guides/liberia-mining-and-minerals> accessed on 1 March 2024.

2.27.2.5. Judicial System

Liberia's highest court is the Supreme Court, made up of five members and headed by the Chief Justice. Members are nominated to the court by the president and are confirmed by the Senate. Supreme Court justices must retire at 70 years. Lower courts include circuit and speciality courts, magistrate courts, and justices of the peace. The legal system is based on common law, Anglo-American law and customary law. Informal traditional courts still exist within rural areas⁵⁹⁵.

- **Judicial independence**

The judicial power of the Republic vests in the Supreme Court and such subordinate courts as the Legislature may from time to time establish. Pursuant to this authority, the following subordinate Courts are established in addition to the Supreme Court:

- Criminal and Assizes Courts;
- The Circuit Courts;
- Debt Courts;
- Monthly and Probate Courts;
- Tax Courts;
- Revenue Courts;
- The Commercial Court;
- National Labour Court;
- Traffic Courts;
- Juvenile Court; and
- Magistrate Courts⁵⁹⁶.

In 2003 the Liberian judicial system was described by the International Legal Assistance Consortium (ILAC) as follows: “There is an almost unanimous distrust of Liberia’s courts and a corresponding collapse of the rule of law.” The report highlighted key issues as including systemic corruption; destroyed and looted infrastructure; lack of qualified personnel; unpaid salaries for judges, prosecutors, and court staff; little effective separation of powers; limited access to legal advice and defence counsel; and a limited understanding of the principles of transparency and accountability⁵⁹⁷.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank commented in 2013 that Liberia made enforcing contracts easier by creating a specialized commercial court⁵⁹⁸.

⁵⁹⁵ Liberia Political System. Available on <https://monrovia.embassy.qa/en/liberia/political-system> accessed on 30 April 2024.

⁵⁹⁶ Brief Overview of The Liberian Judiciary. Available on <https://judiciary.gov.lr/brief-overview/> accessed on 12 March 2024.

⁵⁹⁷ Building the Rule of Law. Available on <https://www.hrw.org/legacy/backgrounders/africa/liberia0905/5.htm> accessed on 12 March 2024.

⁵⁹⁸ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 12 March 2024.

• **Protection of Minority Investors**

The country is a member of The International Centre for Settlement of Investment Disputes (ICSID) and is a signatory to the Multilateral Investment Guarantee Agency (MIGA) Convention that guarantees the protection of foreign investments⁵⁹⁹.

2.27.2.6. Arbitration

Parties to a dispute involving the government (investment dispute) may specify any arbitration or other dispute resolution procedure upon which they agree. The Investment Act of 2010 states that “where a dispute arises between an investor and Government in respect of an enterprise, all efforts shall be made through mutual discussion to reach an amicable settlement.” Private entities entering investment contracts with the government frequently include arbitration clauses specifying dispute settlement outside of Liberia⁶⁰⁰.

2.27.3 Licencing and Permit Regime

2.27.3.1. Types of Licences and Permits

The following licences exist in Liberia:

- Class C license is valid for 1 year and only artisanal;
- Class B license is valid for 5 years;
- Class A license is valid for 25 years or more – you need a Mineral Development Agreement (MDA) before getting a Class A mining license, while an exploration license is needed before getting an MDA;
- Trading & Dealing licences⁶⁰¹.

2.27.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.27.4 Taxation

2.27.4.1. Mining Royalties and Taxes

The royalty rates under the Liberia Revenue Code are as follows:

- Iron ore- 4,5%
- Gold and other base metals- 3%

⁵⁹⁹ National Investment Commission, Invest in Liberia - Investors Guide. Available on <https://www.investliberia.gov.lr/invest-in-liberia/investors-guide/> accessed on 19 March 2024.

⁶⁰⁰ Bureau Of Economic and Business Affairs, 2013 Investment Climate Statement, April 2013. Available on <https://2009-2017.state.gov/e/eb/rls/othr/ics/2013/204678.htm> accessed on 1 March 2024.

⁶⁰¹ National Investment Commission, Invest in Minerals and Mining. Available on <https://www.investliberia.gov.lr/industries/minerals-and-mining> accessed on 12 March 2024.

- Commercial Diamonds- 5%⁶⁰².

2.27.5 Mineral Beneficiation

No information was found in this regard.

2.27.6 Macroeconomic

Liberia's economy expanded by 4.8% in 2022 despite global headwinds from the Russian invasion of Ukraine, high global inflation, and depressed demand in advanced economies. The expansion was driven by mining and a relatively good agricultural harvest. Growth in the agricultural sector accelerated to 5.9%, from 3.3% in 2021, on the back of increased rice and cassava production. Industrial output grew by 10.4% in 2022 largely driven by increased gold production. Growth in services slowed to 2.8 %, from 3.0% in 2021, reflecting a slowdown in construction services and hospitality⁶⁰³.

Liberia's current account balance remained high in 2022, despite significant gold exports. With the higher global prices for food and fuel (of which Liberia is a net importer), the current account deficit improved only slightly to 17.7% of GDP, down from 17.8% in 2021. The improvement in the current account balance was mainly due to an improvement in trade. The trade balance improved from a deficit of 13.1% of GDP in 2021 to 11.8% driven largely by higher volumes and export prices of gold⁶⁰⁴.

The country continues to expand the mining industry and introduce reforms in key sectors like energy, transportation, trade, and financial services. The growth of ongoing mining projects, together with improved infrastructure, is likely to lead to improved economic growth⁶⁰⁵.

2.27.7 Governance and Risk Ratings

2.27.7.1. Ease of Doing Business

In terms of the World Bank Doing Business Index, Liberia ranked 175 out of 190 in 2020⁶⁰⁶.

2.27.7.2. Investment Climate

The US State Department in its 2023 Investment Climate Report on Liberia commented that low human development indicators, expensive and unreliable electricity, poor roads, a lack of reliable internet access (especially outside urban areas), and pervasive government corruption constrain investment and development. The report goes on to state that the public perception of corruption in the public sector is high, as indicated by Liberia's poor showing in Transparency International's 2022 Corruption Perceptions

⁶⁰² Liberia Revenue Authority, Natural Resource Tax Administration, 2022. Available on <https://revenue.lra.gov.lr/wp-content/uploads/2022/05/Module-13-Natural-Resource-Taxation-converted-compressed.pdf> accessed on 12 March 2024.

⁶⁰³ World Bank, Overview – Liberia. Available on <https://www.worldbank.org/en/country/liberia/overview> Accessed on 29 February 2024.

⁶⁰⁴ Ibid.

⁶⁰⁵ Ibid.

⁶⁰⁶ Doing Business 2020, Liberia. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/l/liberia/LBR-LITE.pdf>, Accessed on 29 February 2024.

Index, where Liberia dropped six places from 2021 to 142 out of 180 countries. Low public trust in the banking sector and lack of access to business financing results in most cash being held outside of banks⁶⁰⁷.

2.27.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Liberia based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D4 - high risk for enterprise⁶⁰⁸.

Liberia was not included in the latest version of the Fraser Institute of global mining jurisdiction rankings due to a lack of response to the institute's request for information.

According to EITI reporting, in FY 2021/22, the extractive sector saw a remarkable revenue surge, reaching USD 182.35 million. Mining contributed 77%.

2.27.8 Good Governance Evaluation

Liberia has a good legal framework to govern its mining industry. It covers all areas of regulation expected of a developed mining jurisdiction. High levels of government corruption and a judiciary that is not deemed to be independent will stifle Liberia's long-term mineral potential.

Illegal mining and the lack of regulation of artisanal mining remain a major challenge for the Liberian mining industry. As stated by the African Development Bank, expanding financial access for Liberia's artisanal and small-scale mining sub-sector is important and this can be achieved through formalization and de-risking measures⁶⁰⁹.

⁶⁰⁷ U.S. Department of State, 2023 Investment Climate Statements: Liberia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/liberia/#:~:text=For%20enterprises%20owned%20exclusively%20by,25%20percent%20aggregate%20Liberian%20ownership>. Accessed on 12 March 2024.

⁶⁰⁸ Allianz, Economic Research – Liberia. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Liberia.html Accessed on 29 February 2024.

⁶⁰⁹ African Development Bank, Liberia: New African Development Bank study outlines steps to draw artisanal and small-scale miners into formal sector, boosting economy, March 2023. Available on <https://www.afdb.org/en/news-and-events/press-releases/liberia-new-african-development-bank-study-outlines-steps-draw-artisanal-and-small-scale-miners-formal-sector-boosting-economy-59411> accessed on 1 March 2024.

2.28 Libya

2.28.1 Introduction

Libya is situated in North Africa. It has significant natural resources, particularly in the energy and mining sectors. The nation has faced political and economic challenges, impacting its stability and development. The capital, Tripoli, serves as a central hub for administrative and economic activities.

Despite its challenges, Libya holds immense potential, especially in its mining sector. The mining of raw materials includes industrial minerals such as clay, cement, salt and limestone. Other mineral deposits include marble, gold, gypsum, iron oxide, potash, magnetite and sulphur⁶¹⁰. Although Libya remains largely dependent on hydrocarbons, there are known deposits of critical minerals that are relevant for the transition to a greener economy, such as copper, and therefore this sector, with the necessary policy interventions, may be more relevant in future⁶¹¹.

The current security situation in Libya remains fragile and unstable. Libya is divided at both the political and societal levels. Since March 2022, two governments are once again vying for political power and most state institutions are paralysed nationwide. The internationally recognised government in Tripoli, which controls parts of western Libya, faces a rival government that rules large sections in the east and south. Both sides are receiving foreign support⁶¹². As Libya works towards stability and economic growth, the mining sector is poised to play a crucial role in diversifying the nation's economy.

2.28.2 Policy and Legal Framework

2.28.2.1. Institutional and Policy Overview

The Ministry of Industry and Mineral Resources is responsible for executing government policies regarding industry and mineral resources⁶¹³.

2.28.2.2. Relevant Legal Instruments

The enabling laws for the mining and oil sector are in place. These are Law 5 on Encouragement of Foreign Capital Investment Law of 1426 (1997) and Law 25 of the Petroleum Law of 1955⁶¹⁴.

⁶¹⁰ Euro Libyan Trade Center, Understanding Mineral Demand in the Clean Energy Transition and Libya's Potential Role in Meeting It, June 2023. Available on <https://euroly.org/mineral-demand-in-the-clean-energy-transition/#:~:text=Libya%20at%20the%20forefront%20of,to%20the%20clean%20energy%20transition>. Accessed on 27 April 2024.

⁶¹¹ Ibid.

⁶¹² Federal Ministry for Economic Cooperation and Development, Ongoing power struggle prevents rapid development. Available on <https://www.bmz.de/en/countries/libya/political-situation-152398> accessed on 27 April 2024.

⁶¹³ Ministry of Industry and Mineral Resources. Available on <https://csc.gov.ly/en/portfolio/ministry-of-industry-and-mineral-resources/>, accessed on 9 March 2024.

⁶¹⁴ U.S. Geological Survey Minerals Yearbook—2001, The Mineral Industry of Libya. Available on <https://d9-wret.s3.us-west-2.amazonaws.com/assets/palladium/production/mineral-pubs/country/2001/lymyb01.pdf> accessed on 27 April 2024.

2.28.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

Domestic and foreign entities can establish business enterprises in Libya. Distinctions are made between investment vehicles and commercial vehicles. Investment projects that meet certain requirements receive certain tax benefits. Further, a foreign investor may wholly own the enterprise if the foreign investment exceeds LYD 5 million⁶¹⁵. For investment projects that do not meet minimum conditions, these benefits do not apply, and Libya's Commercial Code stipulates no more than 49 percent foreign ownership unless the enterprise is a branch of a foreign company, which the foreign company can then fully own. Full foreign ownership rights were further reinforced by the Libyan High Court's Department of Law, per an opinion issued on January 23, 2023, confirming the right to invest whether in the form of a branch or otherwise. The opinion also includes the right to invest without local partnership⁶¹⁶.

2.28.2.4. Artisanal Mining Sector

There is no information available in this regard.

2.28.2.5. Judicial System

The Libyan Civil Code is divided into two parts and four books. The first part addresses obligations or personal rights and contains similarly named subdivisions: Book I (Obligations in General) and Book II (Specific Contracts). The second part of both codes is entitled "Real Rights" and contains Books III (Principal Real Rights) and Book IV (Accessory Real Rights). In the absence of a legal provision, the Libyan civil code requires courts to adjudicate matters "in accordance with the principles of Islamic law." In the absence of an Islamic rule on a particular matter, the Code requires courts to look to "prevailing custom," and in the absence of any custom, "to the principles of natural law and the rules of equity"⁶¹⁷.

The Libyan court system consists of three levels: the courts of first instance; the courts of appeals; and the Supreme Court, which is the final appellate level. Libya's justice system has remained weak throughout the post-revolutionary period, and enforcement of laws remains a challenge for the government⁶¹⁸.

- **Judicial Independence**

In theory, the principle of an independent judiciary exists, which is open to all people equally, but in practice, it appears as though the judiciary is not truly independent, suffering interference from the executive. According to the ICJ, the international human rights non-governmental organization Libya must reform its legal framework and make revisions to the current draft Constitution in order to consolidate the rule of law and judicial independence⁶¹⁹.

⁶¹⁵ U.S. Department of State, 2023 Investment Climate Statements: Libya. Available on <https://www.state.gov/reports/2023-investment-climate-statements/libya/#:~:text=The%20ownership%20of%20real%20estate,limited%20to%20leasehold%20ownership%20only>. Accessed on 5 March 2024.

⁶¹⁶ Ibid.

⁶¹⁷ Ibid.

⁶¹⁸ Ibid.

⁶¹⁹ International Commission of Jurists, Libya: an independent and accountable judiciary is key to a successful transition, July 2016. Available on <https://www.icj.org/libya-an-independent-and-accountable-judiciary-is-key-to-a-successful-transition/> accessed on 27 April 2024.

- **Enforcing Contracts and Efficiency in Settling Disputes**

There is no information available in this regard.

- **Protection of Minority Investors**

There is no information available in this regard.

2.28.2.6. Arbitration

Libya is not a signatory to the New York Convention (which convention facilitates international arbitration for dispute resolution in the mining sector).

2.28.3 Licencing and Permit Regime

There is no information available in this regard.

2.28.4 Taxation

2.28.4.1. Mining Royalties and Taxes

There is no VAT in Libya. A flat rate of 20% for Foreign Companies applies for income generated in Libya from assets held in the country or work performed therein. Branches are subject to the same taxes as subsidiaries. A “deemed profit” basis of taxation may apply where a foreign entity is not registered at the time of contracting, it does not hold statutory books in Libya, or the books are not maintained in accordance with local regulations. The level of deemed profit applied to turnover varies according to the branch's type of business activity. Certain qualifying companies under the Investment Law are exempt from income tax for a period of five years (along with customs and stamp duties). Strategic infrastructure projects may be eligible for similar exemptions⁶²⁰.

2.28.5 Mineral Beneficiation

There is no information available in this regard.

2.28.6 Macroeconomics

In 2022, real GDP contracted sharply, by 12.1%, after growing by 28.3% in 2021. The recession was driven by rising conflict and lower performance of hydrocarbon, services, and, to a lesser extent, manufacturing. Inflation increased to 4.6% in 2022 from 2.8% in 2021, following the rise in prices of food and essential goods. As of January 2023, no agreement had been reached on unifying the Central Bank of Libya with its Eastern branch, affecting the country's monetary policy and banking system. The fiscal surplus rose to 13.8% of GDP in 2022 from 11.3% in 2021, due mainly to higher oil revenue. In 2022, spending also

⁶²⁰ Lloyds Bank, Tax rates in Libya. Available on <https://www.lloydsbanktrade.com/en/market-potential/libya/taxes> accessed on 27 April 2024.

increased, driven mainly by higher spending on salaries and an extraordinary budget outlay for the National Oil Corporation to fund operations and investments⁶²¹.

2.28.7 Governance and Risk Ratings

2.28.7.1. Ease of Doing Business

Libya ranks 186 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁶²².

2.28.7.2. Investment Climate

The US State Department in its report about Libya stated the following:

Despite the high potential for domestic and foreign investment in Libya due to its reconstruction needs, unmet consumer demand, and rich natural resources, the country still faces a difficult investment environment. The Government of National Unity (GNU), which came to power in March 2021, has shown an interest in attracting more foreign investment and collaborating with foreign companies. However, the country's foreign investment prospects remain hindered by threats from non-state militias, foreign mercenaries, and extremist and terrorist groups. Investment is also constrained by an unclear bureaucracy, complications resulting from the division of state institutions, burdensome regulations, and widespread corruption in public administration⁶²³.

2.28.7.3. Risk Ratings

Libya's governance and risk ratings are be influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to Libya based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁶²⁴.

2.28.8 Good Governance Evaluation

The mining industry of Libya does not contribute significantly to its economy. Mining resources are located in remote regions with limited accessibility. Oil is the dominant natural resource in Libya and the laws are developed for an oil economy and not a mining economy. Furthermore, corruption is endemic in Libya and is prevalent at all levels of public administration. There is a lack accountability and transparency and the oil reserves which are the bedrock of the economy are poorly managed. Libya is not a member of the EITI initiative for example. This shows the lack of commitment to transparency and good governance.

⁶²¹ African Development Bank, Libya Economic Outlook. Available on <https://www.afdb.org/en/countries/north-africa/libya/libya-economic-outlook> accessed on 9 March 2024.

⁶²² Doing Business 2020, Economy Profile Libya. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/l/libya/LBY.pdf> accessed on 9 March 2024.

⁶²³ U.S. Department of State, 2023 Investment Climate Statements: Libya. Available on <https://www.state.gov/reports/2023-investment-climate-statements/libya/> accessed on 9 March 2024

⁶²⁴ Allianz, Economic Research – Libya. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Libya.html accessed on 9 March 2024.

2.29 Madagascar

2.29.1 Introduction

Being the world's fifth largest island, situated in the Indian Ocean off the coast of Southern Africa, Madagascar has a lot of potential for investors interested in Mining in Madagascar.⁶²⁵ Madagascar is known for its production of good quality chemical and metallurgical grade chromite, high-grade crystalline flake graphite, mica, and semi-precious stones. The possibilities for mining in Madagascar are vast, as the country has the world's largest reserves of sapphires and is also the world's 10th largest producer of chromite. In addition, Madagascar has deposits containing gold, nickel, cobalt, heavy mineral sands, bauxite, coal, and petroleum products.

2.29.2 Policy and Legal Framework

2.29.2.1. Institutional and Policy Overview

The primary authority overseeing the mining sector in Madagascar is the Ministry of Mines and Strategic Resources (MMRS). The Mining General Management Office, under the purview of the Ministry of Mines and Strategic Resources, assumes responsibility for the planning, execution, and regulation of mining activities. The MMRS is further tasked with formulating mining policies, issuing mining licences, and handling interactions with foreign investors engaged in the mining sector.

Beyond the MMRS, the institutional framework governing mining regulation in Madagascar comprises various structures and organizations. These include but are not limited to:

- Ministry of the Environment and Sustainable Development (MEDD)
 - Establish reserved zones in accordance with the stipulations outlined in the Mining Code, sanction activities within designated protection zones, identify supplementary protection zones, and communicate such designations to the relevant environmental authorities;
 - Evaluate and make decisions regarding environmental permits based on recommendations from the specialized assessment unit or committee, either approving or rejecting applications; and
 - Grant environmental authorizations for operations outlined in the Environmental Commitment Program to holders of licences or permits.
- Madagascar Mining Cadastre Office (BCMM)
 - Administration of mining permits and authorizations, including the collection of Mining Administration Fees (MAF) and equitable distribution of quotas among eligible recipients;

⁶²⁵ Africa mining 'Minig in Madagascar', accessed in October, on <https://projectsiq.co.za/mining-madagascar.htm>.

- Facilitation of public access to information pertaining to the mining cadastre and the processes involved in acquiring mining permits; and
- Advocacy for the advancement and visibility of the mining sector.
- National Agency for the Gold Sector (ANOr)
 - Implementing policy for the gold sector; and
 - Administration, management, formalization of the gold sector
- Office of National Mines and Strategic Industries (OMNIS)
 - Enhancing basic geological data; and
 - Mining Promotion Office
- National Office for the Environment (NOE)
 - Enforcement of the Decree concerning the environmental compatibility of investments (MECIE), emphasizing measures for preventing environmental risks.
 - Advocacy for the promotion and utilization of Strategic Environmental Assessment (SEA) processes to enhance environmental considerations in decision-making; and
 - Oversight and administration of the environmental information system for efficient management of environmental data.

2.29.2.2. Relevant Legal Instruments

Madagascar's mineral resources are governed by the Mining Code (Law No. 99-022 of 19 August 1999). The Mining Code addresses various facets of mining, with the primary focus currently being on the permitting process. Presently, a key point to note is that there is only one permit allocated per square, where each square measures 625 meters by 625 meters, and each permit necessitates the personal endorsement of the Minister of Mines. Furthermore, the Mining Code regulates mining rights, mining boards and their jurisdiction and deals with modalities involved in obtaining mining licences, leases, and exclusive prospecting orders.

Several laws, orders and decrees have been enacted in support of the Mining Code. Most important of these include the:

- Law 2001-031, on the mining code;
 - Establishing a special regime for major investments in the Malagasy mining sector (LGIM) amended by Law No. 2005-022 of October 17, 2005;
 - For investments exceeding 50,000,000,000 MGA in value as of April 30, 2005, implemented in Madagascar under an approved Investment Plan, and provided that the debt-to-equity ratio does not exceed 75:25 (Article 4 of LGIM);



- This regime is applicable to investors, license holders, transformation entities, and subcontractors (Article 27 and subsequent Articles of LGIM); and
- The Decree requires mining investment projects to be subject to an EIA, requires public participation as part of the process, and defines the requirements for an Environmental Licence
- Decree No. 2000-170 of 18 November 2000;
 - The Decree sets the conditions of application of the Mining Code.
- Decree No. 2012-430;
 - Provides for environmental and social protection in mining projects.
- Inter-ministerial Order No. 12032-2000 of 6 November 2000;
 - The Order sets out the regulation of the mining sector and matters relating to environmental protection.
- Order No 19560 of 18 October 2004;
 - Suspends the granting of mining permits in areas reserved for conservation.
- Decree No. 2003-942;
 - The Decree regulates the use of water for the production of hydroelectricity.
- Decree No. 2003-784
 - The Decree requires mining permit holders to contribute to the costs of environmental impact studies for all largescale mining projects.
- Decree No. 2023-334 of March 30, 2023, on the Gold Regime
 - The suspension of gold exports in September 2020, which was lifted during the Council of Ministers on March 31, 2023. The suspension was motivated by the extent of smuggling in the gold sector. The lifting of the suspension was preceded by the adoption of the Decree No 2023-334 of March 30, 2023, on the Gold Regime, strengthening the regulation of gold exports.
- Mining Code Reform

The 2005 Mining Code has been in suspension since 2010. The recent government has undertaken a revision of the draft for a new Mining Code, and this revised version has received validation from the Ministers' Council on April 12, 2023. Furthermore, the new Mining Code is being revised by the Ministry of Mines and Strategic Resources, which has been validated by Ministers' council of 12 April 2023. A reflection committee has been established, which includes representatives of the ministry, experts,

professionals from the mining sector and representatives from civil. It is important to note that in regulating the mining sector, Madagascar pays special attention to the following:

- Maximising state revenues through tariffs;
- Community development;
- Proper management and rehabilitation of the environment;
- Promotion of the supply of local goods and services;
- Creation of jobs and valorisation of national skills;
- Proper governance of the mining sector; and
- a policy of first come, first served concerning the grant of mining permits.

At the institutional level, the proposed law reinforces the jurisdiction of the mining minister and establishes a framework of state entities responsible for the supervision and management of various facets of the nation's mining operations.

The legislation elevates the role of the CNM (National Mining Committee - Comité National des Mines), an entity already established by current regulations, by emphasizing its coordinating authority. This emphasis aims to foster synergies among central and local government bodies as well as the private sector, ensuring collaborative efforts for the effective development of the country's mining sector.

The law also introduces a newly named Mining Brigade (Brigade minière) responsible for policing mining activities, including uncovering and recording mining offences. The bill proposes some new structures:

- The Geology Bureau of Madagascar (Bureau de Géologie de Madagascar) is entrusted with the responsibility of overseeing geological data pertaining to the mining potential of the country;
- A National Mining Fund (Fonds Minier National) is instituted to allocate a portion of the State's revenue generated from mining activities toward national and local development programs; and
- The legislation also forms a dedicated entity to act as the State's representative in transactions associated with the sale and processing of gold.

The proposed legislation also defines Strategic Mining Substances (SMS) as encompassing all substances that, contingent upon the prevailing national and international economic conditions, hold particular significance for the nation due to their critical nature and geopolitical context. The roster of strategic substances is established through regulation, following consultations with the CNM or, in its absence, groups of mining operators. Permit holders incorporating strategic mining substances are granted authorization to sell their production on the national or international market at market prices. Nevertheless, the State retains the prerogative to specify the production quota that the permit holder must allocate to the domestic industry, contingent upon actual requirements.

Malagasy law provides for a small-scale mining permit, which is available only to nationals using artisanal exploration and exploitation methods.⁶²⁶ However, since 2010, the granting of new mining permits was suspended, and this suspension is likely to continue until the publication of the revised Mining Code.

2.29.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Only Malagasy registered entities can own mining rights. No restrictions apply regarding foreign ownership of mining companies. However, this may change depending on the outcome of the ongoing revisions to the Mining Code.⁶²⁷

2.29.2.4. Artisanal Mining Sector

A small-scale regime allows nationals to undertake exploration and exploitation activities using artisanal techniques for extraction and not process minerals on site. If an ASM is no longer limited to the use of artisanal techniques in the execution of its research work and/or of mining operations, this then entails for him the obligation to request the transformation of his Small-scale Mining Licence into a standard Exploration Permit, (2005 Mining Code, Article 39).

While Madagascar's mining regulatory framework recognizes the ASM sector and makes permitting available, there remains limited uptake among operators in the sector and largely the sector operates informally.

2.29.2.5. Judicial System

Madagascar has an independent judicial system whose decisions are binding on the other branches of government. The legal system of Madagascar is a mixed legal system that combines elements of French civil law, customary law, and Roman-Dutch law. The foundation of its legal system is rooted in the French civil law tradition, with the influence of traditional Malagasy customs and practices. The legal framework includes the Constitution,⁶²⁸ statutory laws, and regulations, with French law having a significant impact. The legal system also recognizes customary law in certain areas, particularly in rural regions. The tiers of the Madagascan courts are as follows:

- Constitutional Court - This is the highest court in Madagascar, responsible for interpreting the constitution and ensuring its conformity with laws and international treaties. It has the authority to review the constitutionality of laws and government actions.
- Supreme Court - The Supreme Court is the highest court in matters related to ordinary, administrative, and financial jurisdictions. It oversees the application of laws and regulations.
- High Court - Madagascar is divided into several regions, each with its own High Court. These courts handle appeals from lower courts within their respective regions.

⁶²⁶ Mondaq, Madagascar: Mining Comparative Guide. Accessed in October, on <https://www.mondaq.com/energy-and-natural-resources/975736/mining-comparative-guide>.

⁶²⁷ Ibid.

⁶²⁸ The Constitution of Madagascar, 1992, accessed in October, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/33566/90472/F927746792/MDG33566%20English%20Extracts.pdf>.

- Lower Courts - These are the courts of first instance or trial courts. They handle both civil and criminal cases at the local level.

- **Judicial Independence**

In Madagascar, judicial independence is referred to in Article 108 of the Constitution of Madagascar (A constitutional referendum was held in Madagascar on 17 November 2010, in which voters approved a proposal for the state's fourth Constitution).

It states that the presiding Magistrates, the judges and assessors are independent, and they are only submitted to the Constitution and the law.

As such, except for the cases specified by the law and under reserve of the disciplinary power, they may not in any matter, be interfered with in the exercise of their functions.

- **Enforcing Contracts and Efficiency in settling disputes**

Disputes between foreign investors and the Malagasy government are governed by the following rules:

- Under the general legal framework, the applicable regulations during a dispute are those in effect at the time of the dispute, specifically referring to Law No. 2007-036 dated January 14, 2008, governing Investments in Madagascar;
- Regarding the stability guarantee as per the Mining Code, the relevant regulations are those in force either at the time of the option or subsequent favourable measures adopted after that date; and
- Concerning the Large Mining Investment Law (LGIM), the governing regulations include those in effect on the date of eligibility certification for LGIM, as well as the provisions outlined in the LGIM and its subsequent amendments. It is explicitly stated under the LGIM that, in the event of a dispute with the Malagasy state, the applicable law as determined by the international arbitral tribunal is Malagasy law (Article 139).
- Madagascar is a member state to the International Center for the Settlement of Investment Disputes (ICSID) Convention and under the Investment Law (2007-036), disputes between foreign investors and the state are handled through arbitrage proceedings administered by this institution. If the foreign investor is the initiator of the proceedings, he or she may also choose to submit the dispute to the Commerce Tribunal, the competent Malagasy jurisdiction⁶²⁹.
- Madagascar has been involved in three investment disputes with German and Mauritian entities mediated by ICSID. The first two, in 1982 and 1994, were resolved between the parties before recourse to an arbitral award, while the third, lodged in 2013, has yet to result in an arbitral award.

- **Protection of Minority Investors**

⁶²⁹ Privacy Shield Framework, Madagascar Country Commercial Guide, Dispute Settlement. Accessed in October on <https://www.privacyshield.gov/ps/article?id=Madagascar-dispute-settlement>

Article 115 of Law No. 2003-036 protects minority shareholders' rights. Joint decisions may be cancelled in case of undue use of the majority's powers and may result in the liability of the shareholders who voted for the joint decision against the minority shareholders.

2.29.2.6. Arbitration

Arbitration is an agreement between the parties to a contract (arbitration clause) or the parties to a dispute that has already arisen (arbitration agreement) to submit the settlement of a dispute to one or more arbitrators (Article 439 of the Code of Civil Procedure) instead of a court or tribunal settlement. It is the preferred method of dispute resolution for foreign investments and for investments in the mining sector.

Under Law No. 2007-036 of January 14, 2008, on Investments in Madagascar, disputes between the State and a foreign investor are settled in accordance with:

- Jurisdictional or arbitration proceedings arising from agreements and treaties relating to the protection of investments concluded between the Malagasy State and the State of which the foreign investor concerned is a national, or failing that, from the International Convention for the Settlement of Investment Disputes (**CIRDI**) between States and Nationals of Other States. signed in Washington in 1965 and ratified by the Malagasy State under Law No 66-011 of July 1966; and
- The competent Malagasy courts if the foreign investor is the claimant.

During the period of guaranteed stability, the Mining Code provides for the submission to arbitration of disputes between the licensee and the Malagasy State (Article 163 and 426 of the Mining Code implementing decree). The LGIM provides for recourse to binding international arbitration in accordance with the CIRDI for unresolved disputes with the Malagasy government. This international arbitration is agreed by the State in the decree certifying eligibility (Article 137).

2.29.3 Licencing and Permit Regime

Madagascar’s mining licences are all managed by the National Mining Cadastre (BCMM), which is attached to the Ministry of Mines. Mining permits and licences are awarded on a first-come, first-served basis.

2.29.3.1. Types of Licences and Permits

Exploration Permit	Exploitation Permit	Small-scale Mining Licence	Exclusive Authorization for Area Reservation (“AERP”)
<p>An exploration permit is granted to individuals and legal entities under Malagasy law. It confers to its holder the exclusive right to carry out exploration on a limited area of 10,000km².</p> <p>It covers minerals in the permit area for which it has been granted. However, if the permit holder discovers a new mineral that was not initially mentioned in the exploration permit, it can request an extension of the permit to cover such discovery.</p> <p>The exploration permit does not vary depending on the type of mineral or the location of the activity.</p>	<p>An exploitation permit confers to its holder the exclusive right to exploit the substance or substances covered by the permit, as well as to pursue prospecting and mining research on an area that cannot exceed 1,000 km².</p> <p>It covers the minerals mentioned in the permit that exist within the permit area for which it is granted. However, if the permit holder discovers a new mineral that was not initially mentioned in the exploitation permit, it may request an extension of the permit to cover the discovery.</p>	<p>The small-scale mining permit is for research and exploitation over an area that must not exceed 100km².</p>	<p>An AERP is not a mining title but a simple authorisation allowing an individual or a company to do some preliminary works in a specified area in which the prospector has the exclusive right to prospect.</p> <p>No environmental authorisation is required to undertake prospecting activities under an AERP.</p>

Table 25 Types of Licences and Permits in Madagascar



2.29.3.2. The Application Process for Mining Licences and Permits

Application Requirement	Exploration Permit	Exploitation Permit	Small-scale Mining Licence	Exclusive Authorization for Area Reservation (“AERP”)
Place of Application	Cadastral Mining Office of Madagascar	Cadastral Mining Office of Madagascar	Cadastral Mining Office of Madagascar	Cadastral Mining Office of Madagascar
Validity or Duration of Licence or Permit	5 years	40 years	8 years	3 months
Renewable	Renewable twice for a period of 3 years each renewal	Renewable once or several times for a period of 20 years upon each renewal	Renewable for 4 years upon each renewal	Non-renewable
Costs	Not available.	Not available.	Not available.	Not available.
Application requirements or restrictions	Only Malagasy registered entities can acquire exploration permits (justified by the certificate of incorporation and memorandum and articles of association). The applicant must provide proof of its capacity to carry	Only Malagasy registered entities can acquire exploration permits (justified by the certificate of incorporation and memorandum and articles of association). The applicant must provide proof of its capacity to carry out the	Malagasy individual nationals	Individual or company incorporated in Madagascar

	<p>out the activities (e.g., that it is not subject to any ban).</p> <p>The references of the permits held by the applicant must be confirmed.</p> <p>An investment plan and exploration programme, duly signed by the applicant, must be submitted.</p> <p>An environmental commitment letter must be submitted confirming that the applicant will not commence activities until it has obtained the necessary environmental authorisation.</p>	<p>activities (e.g., that it is not subject to any ban).</p> <p>An investment plan and exploration programme, duly signed by the applicant, must be submitted.</p> <p>An environmental commitment letter must be submitted confirming that the applicant will not commence activities until it has obtained the necessary environmental authorisation.</p>		
Sale of Material Extracted	No	Yes	Yes	No

Table 26 Application Requirements for Licences and Permits in Madagascar

2.29.3.3. Transferability of Mineral Rights

The Mining Code provides for the movement of mining permits, the transmission or transfer, the partnership, the pledge, and the leasing. These movements are freely approved by the holder of a mining permit, for the benefit of any person eligible to hold a mining permit. However, these must be registered with the BCMM.

For operators subject to the LGIM regime, prior approval, by decree taken in the Council of the Government is necessary to maintain the certification of the eligibility of the Investment:

- When the transfer of the rights of the Initial Investors screw to screw the Holder, the Processing Entity implies a modification of the investment plan; or
- In case of transfer of the certification of the eligibility of the Investment to a purchaser of the Mining Permits of the Project before the realization of the Investment Plan (Article 24 LGIM).

Prior approval is not required for the transfer of rights of investors not amending the approved investment plan and the transfer of the certification of eligibility to mortgage investor. However, the latter must be notified to the control and monitoring body of the Ministry of Mines. (Article 23 LGIM).

2.29.4 Taxation

2.29.4.1. Mining Royalties and taxes

The guarantee of stability provided for by the Mining code provides for the tax regime, the application of the regulations in force on the date of the option and the possibility of requesting the application of favourable measures applicable after that date.

The table below, attempts to summarize the main taxes and duties applicable to companies subject to the ordinary law regime (according to the Malagasy Tax Code (CDI) according to the initial finance law for 2023) and the LGIM.



Taxes	General law	LGIM
INCOME TAX	Applicable rate: 20% of net profit Threshold is subject: 200 million MGA of annual turnover - or option for the regime of the real (even if annual turnover not reached)	Applicable rate: 25% for the Data Controller and its subcontractors
		Applicable rate: 10% for the Processing Entity and its subcontractors
		When the historical results of the processing entity and the holder taken together reach an after-tax internal rate of return of 20%, the applicable income tax rate is 35%. This rate rises to 40% when the after-tax internal rate of return reaches 25% or more.
		Specific reliefs including exemptions, depreciation deductions and reductions are also provided.
FLAT-RATE TRANSFER TAX (TFT) / NON-RESIDENT INCOME TAX (IRNR)	Applicable rate: 10% of the amount paid to the non-resident person	Applicable rate: 15% of 45% of the amount paid to the non-resident for services rendered Exemption from transfers relating to external loans and insurance.
SYNTHETIC TAX	Applicable rate: 5% of gross income Threshold of liability: less than 200 million MGA	N/A
TAX ON INCOME FROM MOVABLE CAPITAL	Applicable rate: 20% of income and 10% for dividends paid to non-residents	Applicable rate: 10% for dividends and other distributions to shareholders and exemption from interest on external loans (subject to conditions)
TAX ON REAL ESTATE CAPITAL GAINS	Applicable rate: 20% of the capital gain	Rate in accordance with the general law
VALUE ADDED TAX (VAT)	Applicable rate: 20% of the value or amount of taxable business and 0% if export Threshold for liability: turnover greater than or equal to MGA 400 million	Applicable rate: 20% and 0% if export (including sale between Holder and processing entity) Exemption of loans in the investment plan and imports of personal effects of expatriate employees Possibility of refund of VAT Credit
REGISTRATION FEES FOR ACTS AND TRANSFERS	Applicable rate: (variable according to the nature of the act to be registered)	Reduced rates
	<ul style="list-style-type: none"> ▸ 2% for commercial leases ▸ 0.5% for acts of formation and extension of company 	<ul style="list-style-type: none"> ▸ 4% Emphyteutic leases ▸ Duty for acts of formation or extension of company and Capital duty: from 0% to 2% depending on the capital tranche
LAND TAX	Applicable rate: 1% market value of the land	Applicable rate: 1% limited to MGA 200 million per year
PROPERTY TAX ON BUILDING	Applicable rate: 5 to 10% of rental value	Applicable rate: 1%, limited to MGA 200 million per year and exempt for 5 years
TAX ON INSURANCE CONTRACTS (risks)	Applicable rate: 4% of sums stipulated for the benefit of the insurer and accessories	Applicable rate: 4%

Source: CDI 2023, Mining code, LGIM and subsequent texts

Table 27 Taxes and duties in Madagascar

Mining royalties are payable on the sale of the mineral and differ according to metal or mineral type as shown in the table below.

Mineral/Metal	Royalty Rate (%) -2005 Mining Code
Industrial Stones (cut)	3
Industrial Stones (uncut)	6
Precious Stones (cut)	4
Precious Stones (uncut)	8
Minerals such as Nickel & cobalt	4
Precious Metals	4

Table 28 Royalty Rates in Madagascar

Mining royalties are a tax levied on operators' Gross profit, levied on the first invoicing of mining transactions and the rate of which is 2% according to Article 117 of the mining code. They are divided into mining royalties (0.60%) collected on behalf of various administrations and other central organisations, and in the rest rebate (1.40%) collected for the benefit of the Autonomous Provinces, Regions and Communes.

The rates of distribution of revenue from mining royalties are set as follows:

- 10% for the Mining Cadastre office;
- 15% for the Gold Agency;
- 10% for the National Mines Committee; and
- 65% for the general budget on behalf of the Central Department in charge of Mines, the Interregional Directorate in charge of Mines concerned and the entity in charge of the Mining.

Taxes to be paid by foreigners engaged in the marketing or export of stones precious stones are levied at the rate of 6% and are distributed as follows:

- 2% mining royalty;
- 2% entering from the General Budget and
- The remaining 2% is intended for the Ministries concerned, in particular the Ministry of Energy

In addition to the two categories of taxes, there is a specific internal taxation which governs especially in the mining sector. These are the Excise Duty (DA) and the Special Duty on Mining Transactions (DSTM).

- The Duties on Harvested Products (DA) are imposed on products harvested, extracted, manufactured, or imported in Madagascar. Specifically for mineral substances, this duty applies to precious stones, semi-precious stones, precious metals (classified as luxury items), and certain

industrial stones essential for the high-tech industry. The Duties on Harvested Products is a non-refundable fee, often categorized as a mining parafiscal tax. Following the issuance of an operating permit, the Bureau du Cadastre Minier de Madagascar (BCMM) imposes a fee based on the permit category and duration. The amount of this levy is determined by interministerial order, and its collection is carried out by BCMM branches in provincial capitals. Central management retains 60% of these funds, with distribution allocated to decentralized territorial communities and the general budget.

- Law 2005-022 dated October 17, 2005, which amends Law 2001-031 from October 8, 2002, establishing a special regime for large-scale investments in the Malagasy mining sector (LGIM), introduces a specific incentive framework for substantial investment projects exceeding MGA 50 billion, following certification granted by government decree. The LGIM regime primarily encompasses legal, financial, and tax stability guarantees; the flexibility to benefit from any more advantageous measures; and specific tax and financial exemptions, subject to defined conditions.
 - The duty will be 5 % of the amount of an investment in the case of the sale or purchase of a company or company shares, changes to a company's name or its shareholders, or transfers by inheritance; and 10 % of the value of the right affected in the case of farm-outs, pledges, and partnering operations.

Tax on exports⁶³⁰:

- No tax on export for ore exported, processed ore and refined metal.

For gold:

- 1) A certificate of conformity is required in case of export of processed or refined ore. The certificate of conformity is issued by the Agence Nationale de l'Or (ANOR).

- Value of gold of less than MGA 50 millions: MGA 100 000
- Value of gold of more than MGA 50: 0.2%

- 2) Poinçonnage for export of refined ore, payable to the Agence Nationale de l'Or

- Less than 5 kilos: MGA 2 000 per gram
- More than 5 kilos: MGA 1 500 per gram

2.29.5 Mineral Beneficiation

In the context of mineral processing and refining, it is essential for the operator to uphold a processing register that details the quantities, source, and approximate value of all substances utilized as inputs in the operation.

⁶³⁰ PWC, Mining Taxes Summary Tool. <https://www.pwc.com/gx/en/industries/energy-utilities-resources/mining-metals/mining-taxes-summary-tool.html>.

The Exploitation permit holder must also retain the following documents:

- an entry and exit register in respect of all minerals, specifying their origins and their destination; and the originals of all invoices, for a period of five years.
- The export of minerals is subject to an export declaration submitted to the regional department of the Ministry of Mines.

The export declaration dossier includes:

- A declaration form, duly signed;
- The types of minerals and the quantity of samples to be controlled; and
- A free pass, duly completed, with respect to the products to be exported or all invoices relating to the products.

The regional department of the Ministry of Mines will undertake a compliance check of the products and issue a compliance certificate within 48 hours of receiving the export declaration.

2.29.6 Macroeconomics

Following a strong growth pattern in 2021, economic expansion decelerated to 3.8 percent in 2022 due to a combination of factors, including a global economic slowdown and natural disasters. It is expected that growth will bounce back to 4.5 percent during the period spanning 2023 to 2025, supported by increased global demand and strategic reforms in key industries.⁶³¹

The persistent high inflation in the double digits continues to present significant challenges for Madagascar. Urban areas have experienced an increase in poverty as employment opportunities have dwindled due to reduced firm productivity. Substantial risks persist, such as uncertainties surrounding the upcoming presidential elections, elevated prices, and the ongoing crisis in the vanilla sector.⁶³²

The government's dedication to fiscal consolidation, along with limited budget spending, contributed to a reduction in the fiscal shortfall to an average of 1.4 percent of the Gross Domestic Product (GDP) from 2016 to 2019. During this period, the overall government debt decreased to 38.7 percent of the GDP by the end of 2019.⁶³³

Madagascar faces difficulties in seizing economic opportunities even during relatively stable periods and is susceptible to frequent, deep, and enduring crises. The COVID-19-induced economic downturn is just one in a series of setbacks the country has experienced. While increased social protection coverage led to a 3-percentage point reduction in extreme poverty, the overall poverty rate remained high at 75.2 percent in 2022, measured using the national poverty line of 1,477,566 MGA per person per year.

The main obstacles to Madagascar's development include uneven investments in physical and human capital, declining productivity, stagnant economic structural changes, and vulnerability to external shocks.

⁶³¹ World Bank, Overview – Madagascar. Accessed in October, on <https://www.worldbank.org/en/country/madagascar/overview>.

⁶³² World Bank, Overview – Madagascar. Accessed in October, on <https://www.worldbank.org/en/country/madagascar/overview>.

⁶³³ Ibid.



Governance issues have hindered significant reform progress, and the recent surge in international oil prices due to Russia's invasion of Ukraine has heightened fiscal and inflationary pressures while jeopardizing human capital development.

2.29.7 Governance and Risk Ratings

2.29.7.1. Ease of Doing Business

According to the World Bank Group, in 2020, Madagascar is ranked 161 among 190 economies in the ease of doing business, with a DB score of 47.7.⁶³⁴

2.29.7.2. Investment Climate and Risk Ratings

Despite Madagascar's abundant natural resources, its approximately 28 million inhabitants (as of 2020) contend with one of the highest global poverty rates. In December 2023, Andry Rajoelina secured his re-election as the President of the Republic of Madagascar, a victory confirmed during the initial round of presidential elections on November 16, 2023. Subsequently, he reappointed Christian Ntsay as Prime Minister. The inauguration of the new government occurred on 14 January 2024, comprising a total of 27 ministries.⁶³⁵

Over the past decades, Madagascar has grappled with sluggish economic growth and enduring poverty, primarily attributed to deficiencies in governance, insufficient development of human and physical capital, and a gradual pace of structural transformation. The situation is further compounded by escalating climate crises and heightened susceptibility to external shocks.⁶³⁶ Additionally, the combination of feeble economic growth and rapid population expansion has resulted in Madagascar maintaining one of the world's highest poverty rates, reaching 75% in 2022 based on the national poverty line.

Although economic growth decelerated from 5.7% in 2021 to 3.8% in 2022, largely influenced by the spillover effects of the war in Ukraine and climate shocks, there has been a gradual recovery. Anticipated growth rates indicate stabilization at 4% in 2023, followed by an acceleration to approximately 4.7% in 2024 – 2025. Inflationary pressures have intensified, with headline inflation escalating from 6.9% in June 2022 to 11.3% in June 2023. Expectations are for inflation to persist at 10.5% in 2023 before moderating to around 8.5% in 2024 - 2025.⁶³⁷

The current account deficit, which expanded from 5% of GDP in 2021 to 5.6% in 2022, is projected to diminish further to 4.5% of GDP in 2023-25. This reduction is attributed to the decline in global oil prices, contributing to a contraction in the current account deficit as the decrease in imports surpasses the deceleration in exports.⁶³⁸ However, challenges may arise in the rebound of exports, particularly due to

⁶³⁴ World Bank Group "Doing Business 2020" page 16, accessed in October 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

⁶³⁵ World Bank, Overview – Madagascar. Accessed in October, on <https://www.worldbank.org/en/country/madagascar/overview>.

⁶³⁶ Ibid.

⁶³⁷ World Bank, Overview – Madagascar. Accessed in October, on <https://www.worldbank.org/en/country/madagascar/overview>.

⁶³⁸ Ibid.

restrictive import policies, such as the imposition of lower permissible nicotine levels in imported food products, by Madagascar's primary vanilla trading partners.

The overall fiscal deficit, expanding from 2.8% of GDP in 2021 to 6.4% in 2022, accompanied by a rise in total public debt to 56.9% of GDP in 2022, is primarily a consequence of delayed payments of oil duties by oil distributors.⁶³⁹ The resolution of these cross-liabilities is anticipated to narrow the budget deficit to 3.8% of GDP in 2023, fuelled by an increase in tax revenues to 12.8% of GDP from 9.6% in 2022. Furthermore, the gradual augmentation of capital expenditure from 5.1% of GDP in 2021 to 8.7% in 2025 reflects improved budget execution and the implementation of the government's priority projects.⁶⁴⁰

2.29.8 Good Governance Evaluation

Madagascar has significantly high levels of poverty and low economic growth. Factors, such as weak governance frameworks, inadequate human and physical capital development, lack of legal certainty, backwardness of land legislation and slow structural transformation all contribute to the lack in development.

The Corruption Perceptions Index, as prepared by Transparency International since 2005 is regarded as one of the leading global indicators of public sector corruption. The index offers an annual snapshot of the relative degree of corruption by ranking countries and territories from all over the globe. In 2023 Madagascar ranked poorly, at 145/180 with a score of 25/100⁶⁴¹. Madagascar is going to have to undertake material reforms in local and national government spheres in order to attract foreign direct investment and consequently grow its nascent mining industry.

⁶³⁹ Ibid.

⁶⁴⁰ Ibid.

⁶⁴¹ Transparency International Initiative Madagascar. Accessed on 5 March 2024, on <https://www.transparency.org/en/countries/madagascar>.

2.30 Malawi

2.30.1 Introduction

The Republic of Malawi and formerly known as Nyasaland, is landlocked, sharing its borders with Mozambique, Zambia, and Tanzania. The country's estimated population is 20.41 million (2022)⁶⁴². Malawi's capital and largest city is Lilongwe.

Malawi has historically produced cement, coal, crushed stone, lime, and limestone for domestic consumption⁶⁴³. Mining accounted for less than 1% of the national GDP in 2021. The forestry sector accounted for about 7% of GDP. The government however plans to scale up the contribution of the sector to between 10 and 15% by 2030 in line with the Malawi Vision 2063⁶⁴⁴.

Notably, Malawi is also a producer of uranium, a critical mineral for the global energy transition. Other critical raw materials that are found in Malawi include rare earths (including strontianite and monazite), graphite, titanium minerals, and vermiculite⁶⁴⁵.

2.30.2 Policy and Legal Framework

2.30.2.1. Institutional and Policy Overview

The Department of Mines at the Ministry of Mining (Department of Mines) is the Government entity responsible for the administration of the minerals sector, including granting mining licences. It has statutory oversight of the mining sector, including the following⁶⁴⁶:

- ensuring technical assistance in setting up mining operations;
- researching the benefits of various minerals;
- providing technical support and assistance to the minerals sector;
- promoting the mineral resources of Malawi; and
- granting prospecting and mining licences and permits.

The Ministry of Mining is responsible for:

- ensuring good management of Malawi's natural resources;

⁶⁴² World Bank, Overview – Malawi. Available on <https://www.worldbank.org/en/country/malawi/overview> accessed on 27 April 2024.

⁶⁴³ USGS, 2019 Minerals Yearbook. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-malawi.pdf> accessed on 27 March 2024.

⁶⁴⁴ EITI, Malawi. Available on <https://eiti.org/countries/malawi>, accessed on 27 March 2024.

⁶⁴⁵ International Trade Administration, Malawi - Country Commercial Guide. Available on <https://www.trade.gov/country-commercial-guides/malawi-mining-and-minerals#:~:text=Malawi%20has%20several%20minerals%20with,%2C%20titanium%20minerals%2C%20and%20vermiculite>, accessed on 27 March 2024.

⁶⁴⁶ 6th Malawi EITI Report Covering the period from July 2020 to June 2021. Available on <https://eiti.org/sites/default/files/2023-07/6TH%20MALAWI%20EITI%20FINAL%20REPORT%20-%20PERIOD%20JULY%202020%20TO%20JUNE%202021.pdf> accessed on 27 March 2024.

- promoting development, implementation and compliance of natural resources, energy and environment policies, programmes, legislation and other related instruments;
- realising capacity building in environmental education, public awareness and participation in sound natural resources, energy and environmental management practices; and
- ensuring participatory development and implementation of natural resources, energy and environmental management planning and monitoring tools.

In order for it to fulfil its mandate, the Department of Mines developed and adopted a Mines and Minerals Policy. The government adopted the policy to ensure the development of the Malawi mining industry with the aim to directly contribute to the economic growth of the country.

The Malawi Revenue Authority is a Government agency under the Ministry of Finance. It is responsible for the assessment, collection, and accounting of tax revenues.

The Ministry of Finance is mandated to formulate economic and fiscal policies and manage the financial and material resources of the Government of Malawi in order to realise balanced and sustainable economic growth and to reduce poverty.

The Geological Survey Department falls within the Ministry of Mining and is the Government agency responsible for:

- geological mapping of the entire country;
- preliminary exploration and evaluation of mineral resources;
- updating and keeping custody of all geological and mineral resource data of the country; and
- conduct research on the local utilisation of Malawi's mineral resources.

In 2016, Malawi introduced a cadastral system for the purposes of its mineral rights management⁶⁴⁷.

2.30.2.2. Relevant Legal Instruments

Malawi's mining and quarrying sector is governed by the Mines and Minerals Act 2019 (Mines Act), which replaced the Mines and Minerals Act 1981 and the Mines and Minerals (Mineral Rights) Regulations 1981⁶⁴⁸.

The subordinate legislation in force includes but is not limited to⁶⁴⁹:

- Mines and Minerals (Claims) Regulations;
- Mines and Minerals (Disputes) Regulations;

⁶⁴⁷ Malawi Mining Cadastre Map Portal. Available on <https://portals.landfolio.com/Malawi/>, accessed on 1 April 2024.

⁶⁴⁸ USGS, 2019 Minerals Yearbook. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-malawi.pdf> accessed on 27 March 2024.

⁶⁴⁹ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf>, accessed on 1 April 2024.

- Mines and Minerals (Miscellaneous Fees) Regulations;
- Mines and Minerals (Non-Exclusive Prospecting Licence) Regulations;
- Mineral Permits (Prescribed) Regulations;
- Mines and Minerals (Prescribed Operations) Regulations;
- Mines and Minerals (Public Purposes) (Prescription) Regulations;
- Mines and Minerals (Reserved Minerals) Regulations;
- Mines and Minerals (Reserved Minerals Licence) Regulations;
- Mines and Minerals (Royalty) Regulations; and
- Mining (Safety) Regulations.

2.30.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Investors have the right to establish, acquire, and dispose of interests in business enterprises. Regarding foreign ownership restrictions in Malawi as it relates to mining, there are none. A foreign company can own exploration rights, reconnaissance rights and large- and medium-scale mining rights. Only small-scale mining rights are reserved for Malawian citizens only⁶⁵⁰.

However, it is noteworthy that in 2022 the Government enacted amendments to the land laws which include clauses that negatively affect foreign ownership and investment in land-based enterprises⁶⁵¹.

Malawian law identifies two categories of land: public land, which includes government land and unallocated customary land; and private land, including freehold, leasehold, or customary estate land. Certain amendments to the land law in 2022, now prohibit the sale of vacant freehold land under certain circumstances and furthermore allow the minister to appropriate undeveloped freehold land without compensation. In addition, the Customary Land Act, as amended in 2022, prohibits the sale of customary land estates. This all amounts to a phasing of the freehold category of land in the context of large tracts of unused freehold land⁶⁵².

2.30.2.4. Artisanal Mining Sector

Artisanal and Small-scale Mining (ASM) is an important sub-sector of the mining industry in Malawi. Out of the total workforce in the formal sector, women account for only 5-10 percent. However, the number of women self-employed in the informal mining sector especially small-scale operators is slightly over 40 percent of the total miners. It is generally difficult to get the actual number of artisanal and small-scale

⁶⁵⁰ Ibid.

⁶⁵¹ U.S. Department of State, 2023 Investment Climate Statements: Malawi. Available on <https://www.state.gov/reports/2023-investment-climate-statements/malawi/#:~:text=Malawi%20is%20open%20to%20foreign,export%20or%20for%20domestic%20markets>. Accessed on 27 March 2024.

⁶⁵² M. Wegerif, Malawi, Light Country Assessment, 2022. Available on https://d3o3cb4w253x5q.cloudfront.net/media/documents/Malawi_LCA_Final_Eng.pdf accessed on 1 April 2024.

miners since most of these operate in remote areas and are unregulated. This also means that the actual production statistics as indicated earlier above remain partial and largely, unaccounted for⁶⁵³. Minerals mined in the ASM sector in Malawi are mostly gemstones, gold, talc, coal, gypsum, limestone, coal, dimension stone, construction materials and clay⁶⁵⁴.

The Ministry of Mining also drafted an Artisanal and Small-Scale Mining Policy (ASM Policy) which was approved by the Office of the President and Cabinet and is now operational. The ASM policy has been developed to stimulate and guide ASM operations by administering, regulating and facilitating the growth of the sub-sector through a well-organised and efficient institutional framework. The Policy will further promote orderly and environmentally friendly artisanal and small-scale mining⁶⁵⁵.

According to the EITI country report on Malawi, the Government, through the Ministry of Mining, continued with the process of formalising the ASM sub-sector in the country. As of January 2023, a total of 32 groups of informal ASM operators across the country have been formed and some of them have undergone or are undergoing the full formalisation process. 17 groups were already formalised while 2 are at the final stage of formalisation⁶⁵⁶.

2.30.2.5. Judicial System

• Judicial independence

The 1994 constitution (theoretically) protects the independence of the judiciary. The court system is based on English law. The High Court sits in Blantyre, Lilongwe, Mzuzu and Zomba, and has original jurisdiction to hear and determine any civil or criminal proceedings. The magistrates' courts have original jurisdiction to hear and determine most civil or criminal cases and are in cities and towns throughout the country. Appeals from the magistrates' courts are heard by the High Court and those arising from the High Court are by the Supreme Court of Appeal in Blantyre, which is the final court of appeal⁶⁵⁷.

Malawi's judiciary is however not regarded as truly independent. Some key weaknesses as identified in a Freedom House report entitled "*Politics of Judicial Independence in Malawi*" are as follows⁶⁵⁸:

- a) Chronic and acute underfunding: Such underfunding of the judiciary has undermined judicial independence in Malawi and at a functional level has resulted in the judicial institutions operating slowly and inefficiently.

⁶⁵³ 6th Malawi EITI Report Covering the period from July 2020 to June 2021. Available on <https://eiti.org/sites/default/files/2023-07/6TH%20MALAWI%20EITI%20FINAL%20%20REPORT%20-%20PERIOD%20JULY%202020%20TO%20JUNE%202021.pdf> accessed on 27 March 2024.

⁶⁵⁴ UNECA, Malawi ASM Profile. Available on <https://knowledge.uneca.org/asm/Malawi> accessed on 1 April 2024.

⁶⁵⁵ 6th Malawi EITI Report Covering the period from July 2020 to June 2021. Available on <https://eiti.org/sites/default/files/2023-07/6TH%20MALAWI%20EITI%20FINAL%20%20REPORT%20-%20PERIOD%20JULY%202020%20TO%20JUNE%202021.pdf> accessed on 27 March 2024.

⁶⁵⁶ Ibid.

⁶⁵⁷ Commonwealth Governance, Judicial System of Malawi. Available on <https://www.commonwealthgovernance.org/countries/africa/malawi/judicial-system/>, accessed on 27 March 2024.

⁶⁵⁸ Freedom House, Politics of Judicial Independence in Malawi https://freedomhouse.org/sites/default/files/inline_images/Politics%20of%20Judicial%20Independence%20in%20Malawi_1.pdf accessed on 27 March 2024.

- b) Weak Perception of the Judiciary: Despite a relatively robust track record of independent decision-making by judges at the highest level of the judiciary, overall perceptions of judicial independence are poor. The appointment process is undermining judicial legitimacy due to its opacity and the perceived/actual influence of the Executive. In addition, claims of judge or forum shopping persist and are particularly vocal in relation to political cases.
- c) Political Interference: Malawi's political environment continues to represent a serious threat to judicial independence. On one hand, the judiciary represents a critical institutional bulwark against potential regression into authoritarianism. However, on the other hand, the courts, as a central arena for the key political disputes of the day, risk further politicization, which in turn renders them vulnerable to interference.

- **Enforcing Contracts and Efficiency in settling disputes**

Between 2009 and 2019, according to the World Bank, Malawi made enforcing contracts easier by *inter alia*: adopting new civil procedure rules regulating time standards for key court events; simplifying the enforcement of contracts by raising the ceiling for commercial claims that can be brought to the magistrates' court and making enforcing contracts easier by opening a commercial court and hiring judges for the court⁶⁵⁹.

- **Protection of Minority Investors**

According to the World Bank, Malawi in 2017 strengthened minority investor protections by increasing shareholder rights and role in major corporate decisions, by clarifying ownership and control structures through the prohibition of a subsidiary company from acquiring shares issued by its parent company, and by extending the ability for shareholders to recover their legal expenses⁶⁶⁰.

2.30.2.6. Arbitration

With its accession to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Malawi became the 167th State Party to the New York Convention. The Convention entered into force for Malawi on 2 June 2021⁶⁶¹.

⁶⁵⁹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 27 March 2024.

⁶⁶⁰ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 27 March 2024.

⁶⁶¹ UNCITRAL, Malawi accedes to Convention on the Recognition and Enforcement of Foreign Arbitral Award. Available on https://uncitral.un.org/en/NYC_Malawi, accessed on 27 March 2024.

2.30.3 Licencing and Permit Regime

2.30.3.1. Types of Licences and Permits

Type of Licence	Duration	Renewal
Non-exclusive prospecting licence	12 months.	Once for an additional term of one (1) year.
Reconnaissance licence	12 months.	Once only, for an additional term of 12 months.
Exploration licence	An initial term of an exploration licence shall be 3 years.	Extensions of the term of licence for a period of up to 2 years.
Retention licence	The initial terms must not exceed 5 years.	Non renewable
Medium-scale mining licence the term of its licence.	Initial grant for a period of up to 25 years or for the life of the mine, whichever is shorter.	Extension of up to 15 years to the term of its licence. There is no limit on the number of term extensions that may be granted to the holder of a medium-scale mining licence.
Large-scale mining licence	Initial grant for a period of up to 25 years or for the life of the mine, whichever is shorter.	Extension of up to 15 years to the term of its licence. There is no limit on the number of term extensions that may be granted to the holder of a large-scale mining licence.
Small-scale mining licence	Valid for an initial period of 2 years	further periods not exceeding 2 years at a time There shall be no limit on the number of term extensions that may be granted to the holder of a small-scale mining licence ⁶⁶² .

Table 29 Types of Licences and Permits in Malawi

⁶⁶² The Malawi Gazette Supplement, dated 15th February 2019, containing Act (No. 2C). Available on <https://faolex.fao.org/docs/pdf/mlw199882.pdf>, accessed on 1 April 2024.

2.30.3.2. Transferability of Mineral Rights

In terms of section 60 of the Mines Act, the transfer of mineral rights is subject to Ministerial approval. A mineral right cannot be transferred unless the Minister approves the transfer of a Mineral Right. An application for the approval by the Minister under the subsection above of a transfer shall be made to the Commissioner in accordance with the relevant regulations.

The Minister may give, or refuse to give his approval, or may give his approval subject to such conditions as he deems necessary in the circumstances to impose⁶⁶³.

2.30.4 Taxation

2.30.4.1. Mining Royalties and Taxes

Royalty rates specified in the regulations of the Mines Act are⁶⁶⁴:

- 10% on exports of rough uncut precious and semi-precious stones and 5% on any other state (Precious metals, radioactive minerals); and
- 7% on exports of unprocessed industrial minerals.

Development Agreements may provide agreed rates for royalties (by agreement).

2.30.5 Mineral Beneficiation

In the 2007 Mines and Minerals Policy, the government noted the inadequate mineral processing and analytical laboratory technologies and human resource within the country. Notwithstanding this passing comment as a concern, the policy does not deal in detail with the challenge. Although the government wishes to develop the downstream processing capacity for the mining industry, it appears that little has in fact been achieved in this regard.

There are no special regulatory provisions relating to processing or further beneficiation of minerals in Malawi. In considering applications for a licence for mining operations, the administrators shall look at whether the operations provide for the beneficiation of the minerals. The position may encourage applicants to consider planning for the same⁶⁶⁵.

Furthermore, there are restrictions on the export of minerals from Malawi. Minerals can only be exported from Malawi using a minerals export permit. A minerals export permit is required to do so. However, the

⁶⁶³ Malawi Mines and Minerals Act. Available on <https://media.malawilii.org/files/legislation/akn-mw-act-1981-1-eng-2014-12-31.pdf> accessed on 27 March 2024.

⁶⁶⁴ 6th Malawi EITI Report Covering the period from July 2020 to June 2021. Available on <https://eiti.org/sites/default/files/2023-07/6TH%20MALAWI%20EITI%20FINAL%20%20REPORT%20-%20PERIOD%20JULY%202020%20TO%20JUNE%202021.pdf> accessed on 27 March 2024

⁶⁶⁵ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 1 April 2024.

Minister may prescribe minerals that do not require a permit prior to exportation. Currently, there is no such prescription⁶⁶⁶.

2.30.6 Macroeconomics

Russia's invasion of Ukraine, global logistical challenges, and climate shocks dampened growth. The largest contributor to 2022 GDP growth was agriculture (22.1%), followed by wholesale and retail trade (12.6%) and real estate and construction (6.5%). The downward trend in manufacturing's contribution to growth reversed to 12.7% in 2022. Inflation jumped from 9.3% in 2021 to 21.0% in 2022 on account of higher food and non-food prices. Malawi continues to face structural balance of payments challenges on account of COVID-19-induced economic weaknesses in China and Russia's invasion of Ukraine, the country's key tobacco export destination⁶⁶⁷.

2.30.7 Governance and Risk Ratings

2.30.7.1. Ease of Doing Business

Malawi ranks 109 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁶⁶⁸.

2.30.7.2. Investment Climate

According to the World Bank, a number of key obstacles exist that are slowing down the investment climate in Malawi. A major issue is Malawi's competitiveness; Malawi has a lower cost of labour than any other comparator country in its region. However, despite this advantage, it remains extremely uncompetitive in the international economy. Other major business constraints are the lack of electricity throughout the country, lack of available skilled workers, crime, and corruption⁶⁶⁹.

2.30.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Malawi based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁶⁷⁰.

Malawi is a party to the EITI initiative. According to the 6th Malawi EITI Report, covering the period from July 2020 to June 2021, the Mining Sector is key to Malawi Vision 2063 the Government of Malawi continues to seriously regard and promote mining as one of the strategic growth sectors of the economy

⁶⁶⁶ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 1 April 2024.

⁶⁶⁷ African Development Bank, Malawi Economic Outlook. Available on [https://www.afdb.org/en/countries/southern-africa/malawi/malawi-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=The%20largest%20contributor%20to%202022,estate%20and%20construction%20\(6.5%25\)](https://www.afdb.org/en/countries/southern-africa/malawi/malawi-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=The%20largest%20contributor%20to%202022,estate%20and%20construction%20(6.5%25)). Accessed on 27 March 2024.

⁶⁶⁸ Doing Business 2020, Economy Profile Malawi. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/m/malawi/MWI.pdf> accessed on 27 March 2024.

⁶⁶⁹ World Bank, Summary of Malawi investment climate assessment. Available on <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/238641468271201779/summary-of-malawi-investment-climate-assessment> accessed on 27 March 2024.

⁶⁷⁰ Allianz, Economic Research – Malawi. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/malawi.html accessed on 27 March 2024.



and a catalyst for achieving industrialization in the country as reflected in the Malawi Vision 2063 and the Sustainable Development Goals. The sector has tremendous potential to develop and support the inclusive wealth creation agenda. The first 10-year implementation plan of the MW 2063 also identifies the mining sector as one of the key priority areas. Plans are underway to scale up the contribution of mining to GDP to between 10 and 15% by 2030⁶⁷¹.

2.30.8 Good Governance Evaluation

Malawi is open to foreign and domestic investment. Foreign investors may invest in any sector and may access government investment incentives. There are no restrictions on ownership, size of investment, source of funds, investment sector, or whether the products are destined for export or for domestic markets. An investor can disinvest 100 percent, make international payments, and cannot be forced into local partnerships⁶⁷².

Corruption, fraud, bribery of public officials, illicit payments, misuse of funds, and conflicts of interest are challenges that exist in Malawi. According to the US State Department, the government however continues to work on policy reforms to support business development and investment. The legal, regulatory, and accounting systems are partially transparent and consistent with international norms. Almost all proposed laws, regulations, and policies (including investment laws) are subject to public consultation before approval by Parliament. However, public consultation notices are often posted late, such that only insiders are aware of and able to participate in the consultation process. Enforcement of laws and regulations varies by location and sector and is limited by government resources and capacity⁶⁷³.

Malawi has several minerals with economic potential and includes critical raw materials, such as uranium, rare earths, graphite, and titanium minerals. Malawi has the ability to position itself as an attractive destination for mining.

⁶⁷¹ 6th Malawi EITI Report Covering the period from July 2020 to June 2021. Available on <https://eiti.org/sites/default/files/2023-07/6TH%20MALAWI%20EITI%20FINAL%20%20REPORT%20-%20PERIOD%20JULY%202020%20TO%20JUNE%202021.pdf> accessed on 1 April 2024

⁶⁷² U.S. Department of State, 2023 Investment Climate Statements: Malawi. Available on <https://www.state.gov/reports/2023-investment-climate-statements/malawi/#:~:text=Malawi%20is%20open%20to%20foreign,export%20or%20for%20domestic%20markets>. Accessed on 27 March 2024.

⁶⁷³ Ibid.



2.31 Mali

2.31.1 Introduction

Mali is a landlocked country situated in western Africa. Although Mali is one of the largest countries in Africa, it has a relatively small population, which resides mainly along the Niger River. Mali is bordered by Algeria, Niger, Burkina Faso, Côte d'Ivoire, Guinea, Senegal and Mauritania⁶⁷⁴.

In June 2021, EITI Chair Helen Clark issued a statement on the situation in Mali following the coup d'état. The humanitarian and human rights situation in Mali remains poor amid ongoing abuses by armed Islamist groups, state security forces, and government-allied foreign fighters respectively. Civilians are regularly exposed to violence and freedom of expression and peaceful assembly are severely restricted. Since the conclusion in November 2022 of the nine-year French-led counterinsurgency campaign in Mali, the transitional government deepened its military and diplomatic ties with Russia⁶⁷⁵.

Mali is Africa's third largest gold producer and thirteenth in the world. Production by registered companies was 63 tons in 2021 whereas artisanal production of raw gold was estimated to be 6 tonnes in 2020. In 2021, the country's extractive sector accounts for 23% of government revenues and nearly 9.2% of the country's GDP⁶⁷⁶. The Ministry of Mines estimates Mali has 800 tons of gold deposits, two million tons of iron ore, five thousand tons of uranium, 20 million tons of manganese, four million tons of lithium, and ten million tons of limestone⁶⁷⁷.

2.31.2 Policy and Legal Framework

2.31.2.1. Institutional and Policy Overview

The Ministry of Mines and Petroleum is the government body tasked with the administration and regulation of mining and mining-related activities in the Republic of Mali.

2.31.2.2. Relevant Legal Instruments

In 2023, Mali adopted a new law (Mining Code) that increases State and private Malian interests in new projects. The new Code now allows the Government to take a 10% stake in mining projects and the option to buy an additional 20% within the first two years of commercial production. A further 5% stake could be ceded to locals, taking state and private Malian interests in new projects to 35%, from up to 20% today. Furthermore, certain tax exemptions were abolished⁶⁷⁸.

⁶⁷⁴ Britannica, Mali. Available on <https://www.britannica.com/place/Mali> accessed on 28 April 2024.

⁶⁷⁵ Human Rights Watch, Mali. Available on <https://www.hrw.org/africa/mali> accessed on 28 April 2024.

⁶⁷⁶ EITI, Mali. Available on <https://eiti.org/countries/mali> accessed on 28 April 2024.

⁶⁷⁷ U.S. Department of Commerce, International Trade Administration, Mali - Country Commercial Guide, August 2022. Available on <https://www.trade.gov/country-commercial-guides/mali-mining> accessed on 20 March 2024.

⁶⁷⁸ Investment Policy Hub, Mali Adopts new Mining Code increasing the State and local participation in new projects, August 2023. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/asures/4352/mali-adopts-new-mining-code-increasing-the-state-and-local-participation-in-new-projects-#:~:text=On%20August%202023%2C%20Mali,two%20years%20of%20commercial%20production>. Accessed on 20 March 2024

Mining Cadastre of Mali: An online repository of the Ministry of Mines and Petroleum of Mali is open to the public.⁶⁷⁹

Other legislation that regulates the mining industry in Mali include⁶⁸⁰:

- Law 01-020 dated 30 May 2001 governing pollution and environmental damages (the Environmental Code) and its implementing decrees, such as Decree 03-594 governing environmental impact assessments;
- Ordinance 00-027 dated 22 March 2000, amended by Law 002-008 dated 12 February 2002, Law 2012-001 dated 10 February 2012 and Law 2016-025 dated 14 June 2016 and its implementing decrees;
- the Labour Code; and
- the General Tax Code.

2.31.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Foreign and domestic private entities have the right to establish and own business enterprises with no restriction to forms of remunerative activities. There are some specific limits on ownership in the mining and media sector: Malian law requires the owners and primary shareholders of media companies be Malian nationals. Foreign investors in the mining sector can own up to 90% of a mining company⁶⁸¹.

New legislative changes now require mining companies to gradually reduce the proportion of foreign employees (in all relevant categories) from 10% in the first three years of operations to 5% in the following three years – with an obligation to gradually reach full Malian employment thereafter. Furthermore, all goods and services procured for mining operations be sourced from Malian subcontractors, with an exception where the service cannot be provided by a local company, or at costs comparable to those of foreign entities, or according to “international standards” applicable in the mining sector⁶⁸².

2.31.2.4. Artisanal Mining Sector

It is estimated that more than two million people, or over 10% of Mali’s population, depend on the mining sector for income. This occurs mainly in the Sahel region and the practices are dangerous, with repeated reports emerging of the use of child labour in artisanal mining operations⁶⁸³.

⁶⁷⁹ Mining Cadastre of Mali. Available on <https://itie.ml/cadastre-minier-mali/> accessed on 24 March 2024.

⁶⁸⁰ Mondaq, Comparative Mining Guide – Mali. Available on <https://www.mondaq.com/guides/results/17/131/all/mali-mining-guide> accessed on 20 March 2024.

⁶⁸¹ U.S. Department of State, 2023 Investment Climate Statements: Mali <https://www.state.gov/reports/2023-investment-climate-statements/mali/#:~:text=There%20are%20some%20specific%20limits,percent%20of%20a%20mining%20company>. Accessed on 20 March 2024.

⁶⁸² Lexology, The impact of Mali’s revised legislation on foreign mining companies. Available on <https://www.lexology.com/library/detail.aspx?g=d34f08f2-c46a-4d50-8669-932a49dc1a4a> accessed on 21 March 2024.

⁶⁸³ Aljazeera, More than 70 dead in artisanal mine collapse in Mali. Available on <https://www.aljazeera.com/news/2024/1/24/more-than-70-dead-in-artisanal-mine-collapse-in-mali> accessed on 21 March 2024.

Processing methods are always crude, elaborated with makeshift means. Recuperations are often bad and final products have poor commercial quality. When it is unmechanized, processing remains traditionally the domain of women⁶⁸⁴.

Although the new Mining Code has introduced new provisions regarding artisanal mining, namely the introduction of two different types of artisanal mining titles depending on whether the method used is purely manual or traditional (artisanal exploitation permit) or semi-mechanized (semi-mechanized exploitation permit)⁶⁸⁵. Notwithstanding these changes, the new Mining Code does not effectively deal with bringing artisanal miners into the mainstream mining industry. Instead, it appears to rather prioritise industrial mining companies to formalise the presence of artisans within their concessions (rather than displace them)⁶⁸⁶.

2.31.2.5. Judicial System

- **Judicial independence**

According to article 81 of the Mali Constitution, judicial authority shall be independent of executive and legislative authority. It shall be exercised by the Supreme Court and the other Courts and Tribunals. Judicial authority shall be the guardian of liberties defined in the present Constitution. It shall protect the respect of rights and liberties defined by the present Constitution. It shall be charged with the application in its proper domain of the laws of the Republic⁶⁸⁷.

According to a World Justice Project on Mali's judicial independence, corruption is the greatest challenge to civil justice in Mali. Improper government influence, as judges and magistrates are perceived as the second to most corrupt state actors in Mali and courts the least trusted institution. These views are also important since only 7% of Malians take their civil and administrative disputes to courts, a government body, or the police for help better understanding or resolving their problem⁶⁸⁸.

In a specific example, in 2020 Mali's Constitutional Court overturned the results of more than two dozen parliamentary seats won by the opposition. Its decision to hand these seats over to the ruling party sparked an uprising that led to the government's overthrow⁶⁸⁹.

- **Enforcing Contracts and Efficiency in settling disputes**

⁶⁸⁴ Mining, Minerals and Sustainable Development, Study on Artisanal and Small-Scale Mining in Mali, August 2001. Available on <https://www.iied.org/sites/default/files/pdfs/migrate/G00726.pdf> accessed on 21 March 2024.

⁶⁸⁵ Norton Rose Fulbright, Mali: Entry Into Force of the New Mining Code, December 2019. Available <https://www.nortonrosefulbright.com/en/inside-africa/blog/2019/12/mali-entry-into-force-of-the-new-mining-code#:~:text=The%20New%20Mining%20Code%20provides%20that%20any%20titleholder%20producing%20over,in%20the%20New%20Mining%20Decree>. Accessed on 21 March 2024.

⁶⁸⁶ Mining, Minerals and Sustainable Development, Study on Artisanal and Small-Scale Mining in Mali, August 2001. Available on <https://www.iied.org/malis-new-mining-law-improvement-fails-artisanal-miners> accessed on 21 March 2024.

⁶⁸⁷ Mali's Constitution of 1992. Available on <https://independence-judges-lawyers.org/country/mali/> accessed on 21 March 2024.

⁶⁸⁸ World Justice Project, The Rule of Law in Mali. Available on https://worldjusticeproject.org/sites/default/files/documents/WJP_ROL%20in%20Mali_Jun2020.pdf accessed on 21 March 2024.

⁶⁸⁹ Open Society Justice Initiative, Around Africa - Judicial Independence Confronts Viral Authoritarianism, September 2020. Available on <https://www.justiceinitiative.org/voices/around-africa-judicial-independence-confronts-viral-authoritarianism> accessed on 21 March 2024.

According to the World Bank, in 2010 Mali improved its contract enforcement process through amendments to its civil procedure code introducing case time limits and allowing a summons to be served, with no intervention by the judge, upon the filing of the complaint at the competent court. This was followed in 2019 whereby Mali made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism⁶⁹⁰.

- **Protection of Minority Investors**

The World Bank notes that in 2010 Mali strengthened investor protections through an amendment to its civil procedure code increasing shareholders' access to corporate information during trial. In 2015, Mali further strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions⁶⁹¹.

2.31.2.6. Arbitration

Mali is party to the New York Convention. It has furthermore adopted a domestic National Arbitration Law, the OHADA Act Uniform Act on Arbitration. Mali has also concluded a number of Bilateral Investment Treaties with other countries.

2.31.3 Licencing and Permit Regime

2.31.3.1. Types of Licences and Permits

The types of permits in Mali include exploration rights; mining rights; artisanal exploitation permits; semi-mechanised exploitation permits; small-scale exploitation permits and large-scale exploitation permits.

Exploration rights confer on their holder the exclusive right to prospecting, research and exploitation of mineral substances for which the exploration licence or the prospecting authorisation was issued.

A mining right confers on its holder the exclusive right to mine mineral substances for which the licence is issued. It also gives its holder the right to carry out processing and marketing of commercial mining products extracted from the perimeter in accordance with the terms of the licence.

An artisanal mining permit grants the holder the right to mine within its perimeter using manual or traditional methods and processes, excluding the use of chemical products, for the substances for which the permit is issued.

A semi-mechanised mining permit grants the holder the exclusive right to exploit, using semi-mechanised methods and processes, the substances for which the permit is issued, within the designated perimeter of an artisanal mining corridor.

⁶⁹⁰ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 20 March 2024.

⁶⁹¹ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 20 March 2024.

The Small Mine Exploitation Permit grants its holder the exclusive right to mine the mineral substances for which the licence is issued. It also confers the right to process and market the commercial mining products extracted from the perimeter, in accordance with legal and regulatory requirements⁶⁹².

2.31.3.2. Transferability of Mineral Rights

An exploration authorisation cannot be transferred, but a research permit can be transferred. The assignment agreement must be notified to the minister of mines within 30 days of its execution. Such transfer is effective only after the issuance of an order from the minister of mines granting the exploration permit to the assignor (i.e., the new holder)⁶⁹³.

2.31.4 Taxation

2.31.4.1. Mining Royalties and Taxes

Similar to the 2012 Mining Code, the new Mining Code provides that exploitation titleholders are subject to a mining royalty composed of the Special Tax on Certain Products and the Ad Valorem Tax, the rate of which will now be set out in the General Tax Code, rather than in a Minister of Mines' Order as per the 2012 Mining Code. The new Mining Code also adds that in the event of a significant increase in commodity prices, as compared to the prices retained in the feasibility study, titleholders will be required to pay a progressive royalty, the basis, rates and payment modalities⁶⁹⁴.

2.31.5 Mineral Beneficiation

Only the holder of an exploitation permit can carry out the processing or refining of minerals⁶⁹⁵.

2.31.6 Macroeconomics

Real GDP grew 3.7% in 2022, up from 3.1% in 2021, driven by the primary and secondary sectors, particularly cereal production (up 16.7%) and industrial gold production (up 4.4%), and higher consumption by households and government agencies. Inflation rose to 9.7% in 2022 from 3.9% in 2021, leading to three 25 basis point increases in key Central Bank of West African States rates. The budget deficit widened to 5.0% of GDP in 2022 from 4.9% in 2021. Public debt declined to 49.9% of GDP in 2022 from 52.0% in 2021, but the risk of over-indebtedness remains moderate. Social conditions deteriorated in 2022, with the poverty rate rising to 45.4% from 44.6% in 2021, 1.3 million additional people in need of humanitarian aid, 20% of schools closed, and 2.5 million people lacking health coverage⁶⁹⁶.

⁶⁹² Steering Committee of The Extractive Industries for Transparency in The Extractive Industries in Mali, ITIE Report - Mali 2019. Available on <https://itie.ml/wp-content/uploads/2022/03/Rapport-ITIE-MALI-2019-version-definitive.pdf> accessed on 28 April 2024.

⁶⁹³ Mondaq, Mali: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/970502/mining-comparative-guide> accessed on 21 March 2024.

⁶⁹⁴ Norton Rose Fulbright, Mali: Entry into Force of the New Mining Code, December 2019. Available <https://www.nortonrosefulbright.com/en/inside-africa/blog/2019/12/mali-entry-into-force-of-the-new-mining-code> accessed on 21 March 2024.

⁶⁹⁵ Mondaq, Mali: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/970502/mining-comparative-guide> accessed on 21 March 2024.

⁶⁹⁶ African Development Bank, Mali Economic Outlook. Available on <https://www.afdb.org/en/countries/west-africa/mali/mali-economic-outlook> accessed on 20 March 2024.

2.31.7 Governance and Risk Ratings

2.31.7.1. Ease of Doing Business

Mali ranks 148 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁶⁹⁷.

2.31.7.2. Investment Climate

According to the US State Department report on the investment climate in Mali, there are significant obstacles to investing in Mali, including political instability, allegations of corruption, poor infrastructure, and ongoing insecurity throughout the country. Mali remains under transition government rule after a *coup d'état* in August 2020, followed by a further consolidation of military power in May 2021. In addition to the very fragile security situation and delays related to the adoption of necessary institutional reforms, the intricate socio-political environment constitutes an important threat to the return to normal constitutional order. The uncertainty surrounding these dynamics clouds the appeal of much-needed greenfield investment⁶⁹⁸.

2.31.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Mali based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is poor, namely D4 - sensitive risk for enterprise⁶⁹⁹. Mali joined the EITI initiative in 2007. Mali was found to have achieved a fairly low score in implementing the 2019 EITI Standard in October 2022, following its third Validation⁷⁰⁰.

2.31.8 Good Governance Evaluation

Governance structures in Mali are poor. The political environment is fragile and from a business perspective, businesses face constant corruption in procurement, customs procedures, tax payment, and land administration. An extensive and wide-ranging overhaul of the governance structures is required in Mali to create an environment that will attract foreign investment. Mali's mining industry is small and is dominated by small-scale and artisanal miners. This is mainly in gold. Mali nevertheless has deposits of critical raw materials including uranium, manganese and lithium. Consequently, Mali could play an important role on the global mining stage, but at this point, notwithstanding attempted reforms, the legal, governance and security frameworks are simply too volatile to ensure sustainable investment into the sector.

⁶⁹⁷ Doing Business 2020, Economy Profile Mali. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/m/mali/MLI.pdf> accessed on 20 March 2024.

⁶⁹⁸ U.S. Department of State, 2023 Investment Climate Statements: Mali. Available on <https://www.state.gov/reports/2023-investment-climate-statements/mali/#:~:text=There%20are%20some%20specific%20limits,percent%20of%20a%20mining%20company>. Accessed on 21 March 2024.

⁶⁹⁹ Allianz, Economic Research – Mali. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Mali.html accessed on 21 March 2024.

⁷⁰⁰ EITI, Mali – Validation. Available on <https://eiti.org/countries/mali#validation-549>, accessed on 7 May 2024.

2.32 Mauritania

2.32.1 Introduction

Mauritania, officially the Islamic Republic of Mauritania is a sovereign country in Northwest Africa. It is bordered by the Atlantic Ocean, Western Sahara, Algeria, Mali, and Senegal. 90% of its territory is situated in the Sahara⁷⁰¹. The population is about 4.9 million (2023), making it one of the least densely populated countries in the world⁷⁰². Approximately one-third of all inhabitants live in the capital city, Nouakchott.

Mauritania's mineral sector is dominated by iron ore mining and its beneficiation. Mauritania has deposits of copper, beryllium, lithium, uranium, kaolin, chromium, manganese, and titanium as well as cobalt, manganese, and rare earth elements⁷⁰³.

2.32.2 Policy and Legal Framework

2.32.2.1. Institutional and Policy Overview

The following government departments are the principal institutions regulating mining in Mauritania⁷⁰⁴:

- Ministry of Petroleum, Energy and Mines (Ministry of Mines);
- Directorate of Mining Cadastre and Geology;
- Ministry of Finance;
- Directorate General of Customs;
- Ministry of the Environment; and
- Director - Environmental Control (including environmental assessment).

2.32.2.2. Relevant Legal Instruments

The legal instruments relevant to the regulation of the Mauritanian mining industry are as follows⁷⁰⁵:

- **The Mauritanian Constitution of 1991**

The Constitution guarantees certain fundamental rights and freedoms of Mauritanian citizens. It expressly recognises and guarantees for example every citizen the right to sustainable development and to a healthy environment. More specifically, the Constitution states that citizens enjoy the same rights and have the same duties towards the Nation. The Mauritanian Constitution also recognises and protects the right to

⁷⁰¹ <https://en.wikipedia.org/wiki/Mauritania> accessed on 28 March 2024

⁷⁰² World Bank, Overview – Mauritania. Available on <https://www.worldbank.org/en/country/mauritania/overview>, accessed on 28 March 2024.

⁷⁰³ The International Institute for Sustainable Development, Évaluation du cadre directif pour l'exploitation minière : Mauritanie, 2017. Available on <https://www.iisd.org/system/files/publications/mauritania-mining-policy-framework-assessment-french.pdf?q=sites/default/files/publications/mauritania-mining-policy-framework-assessment-french.pdf>, accessed on 28 March 2024.

⁷⁰⁴ Ibid.

⁷⁰⁵ Ibid.

private property and allows expropriation only for reasons of public utility determined by law and in return for fair and equitable compensation.

- **The 2008 Mining Code: Act no. 2008-011 of 27 April 2008 (Mining Code)**

The Mining Code has been amended several times including by laws no. 2009-026 of 7 April 2009; no. 2012-014 of 22 February 2012 and no. 2014-008 of 29 April 2014. The Mining Code is the primary legal instrument governing mining activities in Mauritania. It identifies and categorises the various mining resources available as well as the regime that applies to them. There are seven groups of minerals listed in Article 5 of the Code (Law 12-14):

- Group 1: Iron, manganese, titanium (in rock), chromium, vanadium ;
- Group 2: Copper, lead, zinc, cadmium, germanium, indium, selenium, tellurium, molybdenum, tin, tungsten, nickel, cobalt, platinum, gold, silver, magnesium, antimony, barium, boron, fluorine, sulphur, arsenic, bismuth, strontium, mercury, titanium and zirconium (in sand), rare earths;
- Group 3: Coal and other fossil fuels;
- Group 4: Uranium and other radioactive elements;
- Group 5: Phosphate, bauxite, sodium and potassium salts, alum, sulphates other than alkaline earth sulphates, any other metallic mineral exploited for industrial uses industrial uses, any industrial or ornamental rock, excluding quarry minerals, exploited for quarried mineral substances, exploited for industrial uses, such as: asbestos, talc, mica, graphite, kaolin, pyrophyllite, onyx, chalcedony and opal;
- Group 6: rubies, sapphires, emeralds, garnets, beryl, topaz, as well as all other minerals used for industrial purposes.
- Group 7: Diamonds.

The Mining Code sets out the procedures for granting, renewing, abandoning, and withdrawing mineral permits, as well as the administrative authorities responsible for granting such permits. It identifies the rights and obligations of investors, including the relationship between title holders and the State, as well as with third parties, and the tax and customs applicable to each security.

The Mining Code has been amended several times since 2008. However, these various amendments have not yet been consolidated into a single piece of legislation, and all the implementing decrees identified in the Mining Code have not yet been adopted. There are many decrees that have been adopted. These include *inter alia*:

- Decree No. 2008-158 PM/MIM of 4 November 2008 setting mining taxes and royalties;
- Decree no. 2009-051 of 4 February 2009 amending and supplementing Decree no. 2008-159 PM/MIM on mining and quarrying permits;



- Decree no. 2009-176 of 17 May 2009 amending and supplementing decree no. 2008-158 of 4 novembre 2008 *fixant les taxes et redevances minières*;
- Decree 2009-131 of 20 April 2009 on the Mining Police;
- Decree no. 2010-140 of 14 June 2010 regulating the collection, storage, transport, purchase, sale and export of scrap metal in Mauritania; and
- Order no. 2474 of 02 November 2010 setting the conditions for application of Decree no. 2010-140 of 14 June 2010 regulating the collection, storage, transport, purchase, sale and export of scrap metal in Mauritania; and sale and export of scrap metal in Mauritania.

- **The Model Mining Convention law no. 2012-012 of 12 June 2012**

This law, which was adopted in 2012, is the benchmark for negotiating agreements on mining projects between the Mauritanian government and investors. It applies to both holders of exploration licences as well as holders of operating licences or industrial quarrying for industrial quarrying. However, the conclusion of an agreement between the government and the investor is not systematic, as the government retains discretion as to whether to negotiate and sign such an agreement. In practice, many mining titles have been granted without a specific agreement. Furthermore, the agreement is intended to determine the legal, economic, financial, tax and customs conditions applicable to the holder based on the commitments defined in the feasibility study that led to the granting of the mining licence. It also includes a stability clause.

- **The Investment Code: Law 2012-52 of 31 July 2012 on the Investment Code Investments**

The Investment Code: Act no. 2012-52 of 31 July 2012, amended by Act no. 2016-12 of 13 April 2016. It is aligned with Mauritania's overall strategy for promoting and developing the private sector, entrepreneurship, and competitiveness of the national economy. It aims to encourage direct investment by national and foreign capital, secure them and facilitate the related administrative procedures. The investment does not cover activities governed by mining and hydrocarbons legislation. Nevertheless, the aspects of mining investments not covered by the Mining Code remain governed by the Investment Code.

- **The Tax Code (2015): Act no. 2015-03 of 22 January 2015 on the Finance Act for the year 2015**

The General Tax Code governs the taxation of natural persons and legal entities and contains provisions relating to the basis of assessment and payment of the various types of tax of taxes payable in Mauritania at national and local authority level. Although the Code does not expressly refer to it, taxation of the mining sector is governed specifically by the Mining Code and the Model Mining Convention. The taxation of mining companies at municipal level is governed by the ordinary law regime set out in the General Tax Code, whereas taxation of mining companies at national level under the Mining Code is more favourable to companies than the ordinary law regime.

- **The Environmental Code: Law 2000-045**

This is the framework law on the environment was adopted on was adopted on 26 July 2000, with the aim of "establishing the general principles that should national policy on environmental protection and serve as a basis for harmonising ecological environmental imperatives with the requirements of sustainable economic and social development". *economic and social development*" (article 1). The aim is therefore to provide a framework for environmental issues in all sectors of development, including mining. It exclusively identifies the Ministry of the Environment as the authority responsible for the precautionary measures required to protect the environment.

2.32.2.3. Foreign Ownership, Migrant and Local Labour Requirements

There is no law prohibiting or limiting foreign investment in any sector of the economy. There are no laws or regulations specifically authorizing private firms to adopt articles of incorporation or association, which limit or prohibit foreign investment, participation, or control. There are no other practices by private firms to restrict foreign investment. The government continues to prioritize foreign investment in all sectors of the economy and is working closely with the International Monetary Fund, the World Bank, and the international donor community to improve basic infrastructure and to update laws and regulations⁷⁰⁶.

2.32.2.4. Artisanal Mining Sector

Artisanal and small-scale mining (ASM) is new to Mauritania. The rapid emergence of the sector presents the government with a pressing need to engage with a group of miners that is largely informal, and to ensure that these miners have the support and capacity to carry out their activities in a safe, legal and sustainable manner that protects the environment, and is respectful of mining concessions of large-scale operations.

This will be a major challenge, but also a considerable opportunity for the Ministry of Mines and for the country. Capacity-building efforts could focus on supporting the government in developing a policy framework, strategy and action plan for the management of ASM in Mauritania, which would include:

- Exploring the feasibility of developing and effectively implementing a bespoke ASM Licencing regime, as well as the regulations governing the sector;
- Exploring options for promoting good ASM practice to address social, environmental and economic challenges environmental and economic challenges;
- Improving financing, savings and access to credit for miners;
- Identifying priority environmental protection needs;
- Understanding the feasibility and costs of implementing solutions such as ASM zones; and

⁷⁰⁶ U.S. Department of State, 2023 Investment Climate Statements: Mauritania. Available on <https://www.state.gov/reports/2023-investment-climate-statements/mauritania/#:~:text=Mauritania%20does%20not%20have%20a,fund%20facility%20on%20January%2025>, accessed on 29 March 2024.

- Ensuring the protection of women and promote their participation in the sector⁷⁰⁷.

The government has established MAADEN Mauritania, a public company under the authority of the Ministry of Mines. It was created by decree N 2020-65 dated 28 May 2020 to manage and supervise artisanal and semi-industrial mining. Its missions are:

- To grant the necessary authorisations for artisanal and semi-industrial mining, artisanal and semi-industrial mining;
- Technical supervision of artisanal mining of gold and other minerals and small-scale mining;
- Eliminating the use of mercury and other chemicals in the chemicals in mineral processing, in collaboration with the relevant departments of the Ministry of Mines;
- The regulation, under the supervision of the Ministry of the Environment, of chemical of chemical product flows and the establishment of liquid discharge standards;
- The regulation and monitoring/control of marketing channels for gold and other artisanal and semi-industrial minerals;
- Formalising artisanal and semi-industrial activity, in particular by setting up an interface tailored to the target groups;
- Disseminating best practice and training artisanal and semi-industrial miners and semi-industrial operators; and
- Finding sources of funding for artisanal miners⁷⁰⁸.

Notwithstanding the plans to modernise the ASM sector, there is a lot of illegal mining and according to the Fraser Institute global perception report, the Mauritanian government's permissiveness with illegal mining is hurting the industry and discouraging investment in new mines⁷⁰⁹. This is therefore an area that requires urgent and focused attention.

2.32.2.5. Judicial System

- **Judicial independence**

According to a 2023 Freedom House report, Mauritania's judiciary lacks independence. The president has the power to unilaterally appoint many key judges, including three of the six judges on the Constitutional Court and the chair of the Supreme Court. The courts are subject to political pressure from the executive

⁷⁰⁷ The International Institute for Sustainable Development, Évaluation du cadre directif pour l'exploitation minière : Mauritanie, 2017. Available on <https://www.iisd.org/system/files/publications/mauritania-mining-policy-framework-assessment-french.pdf?q=sites/default/files/publications/mauritania-mining-policy-framework-assessment-french.pdf>, accessed on 28 March 2024.

⁷⁰⁸ MAURITANIE RAPPORT ITIE 2022. Available on https://eiti.org/sites/default/files/2023-10/Rapport2022_2.pdf, accessed on 29 March 2024.

⁷⁰⁹ Fraser Institute Annual Survey of Mining Companies 2021. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2021.pdf>, accessed on 29 March 2024.

branch. Instances of judges facing retaliatory measures for issuing rulings against the government have been reported⁷¹⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, Mauritania has taken several steps to improve the enforcement of contracts. In 2008 Mauritania made enforcing contracts easier by hiring additional judges and updating the way in which commercial courts function. This was followed by Mauritania making enforcing contracts easier by making judgements rendered at all levels in commercial cases available to the public on the courts' websites. Finally, in 2020 Mauritania made enforcing contracts even easier by introducing a simplified procedure for small claims, setting time standards for key court events, and limiting adjournments. Mauritania also adopted a law that regulates all aspects of mediation as an alternative dispute resolution mechanism⁷¹¹.

- **Protection of Minority Investors**

According to the World Bank, Mauritania strengthened minority investor protections in 2017 by requiring prior external review of related-party transactions, by increasing director liability and by expanding shareholders' role in major transactions⁷¹².

2.32.2.6. Arbitration

Disputes between the government and individuals or legal entities related to the Investment Code (Law No. 2012-052) are settled by arbitration in terms of the Arbitration Code and the New York Convention. The government accepts binding international arbitration of investment disputes, and courts or traditional mediation mechanisms provide for the settlement of domestic disputes. A new international mediation and arbitration centre, which permits arbitration from international courts, was opened in January 2020 to settle investment disputes⁷¹³.

⁷¹⁰ FREEDOM IN THE WORLD 2023. Available on <https://freedomhouse.org/country/mauritania/freedom-world/2023> accessed on 29 March 2024.

⁷¹¹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 29 March 2024.

⁷¹² World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 29 March 2024.

⁷¹³ Doing Business 2020, Economy Profile Mauritania. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/m/mauritania/MRT.pdf>, accessed on 29 March 2024.

2.32.3 Licencing and Permit Regime

2.32.3.1. Types of Licences and Permits

Type of Licence	Period of Grant	Term of Renewal
Prospecting Licence	4 months	Once, for 4 months
Research Licence	3 years	Twice, per 3-year period
Mining Licence	30 years	Per period of 10 years until depletion of the deposit
Small scale mining licence	3 years	Twice every 3 years ⁷¹⁴

Table 30 Types of Licences and Permits in Mauritania

2.32.3.2. Transferability of Mineral Rights

Type of Licence	Transferability
Prospecting Licence	Non-transferable
Research Licence	Movable right in rem, indivisible and non-transferable
Mining Licence	Real right in immovable property, assignable, divisible and transfer subject to the Minister's approval.
Small scale mining licence	Transferable, indivisible movable right in rem and transfer subject to the Minister's approval ⁷¹⁵ .

Table 31 The Transferability of Mineral Rights in Mauritania

⁷¹⁴ The International Institute for Sustainable Development, Évaluation du cadre directif pour l'exploitation minière : Mauritanie, 2017. Available on <https://www.iisd.org/system/files/publications/mauritania-mining-policy-framework-assessment-french.pdf?q=sites/default/files/publications/mauritania-mining-policy-framework-assessment-french.pdf> accessed on 28 March 2024.

⁷¹⁵ The International Institute for Sustainable Development, Évaluation du cadre directif pour l'exploitation minière : Mauritanie, 2017. Available on <https://www.iisd.org/system/files/publications/mauritania-mining-policy-framework-assessment-french.pdf?q=sites/default/files/publications/mauritania-mining-policy-framework-assessment-french.pdf> accessed on 28 March 2024.

2.32.4 Taxation

2.32.4.1. Mining Royalties and Taxes

The Treasury collects and manages taxes paid to the central government. The three main taxes and fees imposed on mining companies include unique annual royalties, dividends from state participation and contributions to the state budget, a fee which was introduced in 2014⁷¹⁶.

Holders of mining licences, small-scale mining licences or industrial quarrying or industrial quarrying permits are subject to an operating royalty calculated based on the sale price of the product resulting from the final stage of processing of the ore in Mauritania (or the Free on Board (INCOTERM)) value of the ore if it is exported before being.

Royalties depend on the type of mineral or metal concerned, with a variable rate of between 1.5% and 6.5%, as follows:

- 6% is charged for diamonds,
- 4% to 6.5% for gold,
- 2.5% to 4% for iron and
- 1.5 % for coal and other fossil fuels

The royalty rate also varies for quarries, depending on whether the operation is industrial or small-scale. For materials intended for construction use, the rate is 1.4%, If intended for industrial use, its 1.6% and 1.5% for those intended for commercial use⁷¹⁷.

2.32.5 Mineral Beneficiation

No information was available in this regard.

2.32.6 Macroeconomics

Real GDP growth rose to 5.3% in 2022 from 2.4% in 2021, underpinned mainly by higher extractive and agricultural production and trade. The major drivers of growth on the demand side remain household consumption and investment. Inflation rose to 9.6% in 2022 from 3.8% in 2021 due to higher global prices for imported foodstuffs and petroleum products. The Central Bank of Mauritania pursued a restrictive monetary policy in 2022 by raising its key rate by 300 basis points to 8%. The banking sector increased financing to the private sector by 16.4% from 2021.

Debt restructuring agreements with Kuwait and Saudi Arabia reduced debt to 48.4% of GDP in 2022 from 57.9% in 2018. The current account deficit widened to 13.7% of GDP in 2022 from 7.9% in 2021 due to higher prices for food imports and petroleum products. The COVID-19 pandemic had a negative impact

⁷¹⁶ <https://eiti.org/countries/mauritania> accessed on 29 March 2024

⁷¹⁷ The International Institute for Sustainable Development, Évaluation du cadre directif pour l'exploitation minière : Mauritanie, 2017. Available on <https://www.iisd.org/system/files/publications/mauritania-mining-policy-framework-assessment-french.pdf?q=sites/default/files/publications/mauritania-mining-policy-framework-assessment-french.pdf> accessed on 29 March 2024.

on the social well-being of the population, particularly on unemployment (11.5% in 2021, up from 10.4% in 2019) and multidimensional poverty (56.9%)⁷¹⁸.

2.32.7 Governance and Risk Ratings

2.32.7.1 Ease of Doing Business

Mauritania ranks 152 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁷¹⁹.

2.32.7.2 Investment Climate

According to the World Bank's fifth Economic Update on Mauritania, published on June 21, 2022, Mauritania's economic recovery in 2021 was robust. Growth is expected to average 6.5% of GDP in 2023-2024⁷²⁰.

Since the country's independence, the mining sector has spearheaded Mauritania's economy. The export of iron ore has enabled this sector to play a leading role. Mauritania's extractive sector accounted for 76.76% of total exports and 23.85% of GDP in 2022⁷²¹.

The investment climate in Mauritania is generally positive. Although there are material challenges that relate to transparency and accountability and the application of laws, the political system is stable, and the mining industry welcomes foreign investment.

2.32.7.3 Risk Ratings

Global insurer Allianz attributes a poor rating to Mauritania based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁷²².

Mauritania joined the EITI initiative in 2007⁷²³. Mauritania participates the Fraser Global Institute perception index. It ranks amongst the highest African countries in terms of overall policy perception (50 out of 84 global jurisdictions)⁷²⁴.

2.32.8 Good Governance Evaluation

A lack of access to credit domestically, a lack of infrastructure and a lack of skilled labour as well as systemic corruption remain significant barriers to sustainable and equitable economic growth. Despite

⁷¹⁸ World Bank, Overview – Mauritania. Available on <https://www.afdb.org/en/countries/mauritania/mauritania-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,remain%20household%20consumption%20and%20investm ent,> accessed on 29 March 2024.

⁷¹⁹ Doing Business 2020, Economy Profile Mauritania. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/m/mauritania/MRT.pdf>, accessed on 29 March 2024.

⁷²⁰ U.S. Department of State, 2023 Investment Climate Statements: Mauritania. Available on <https://www.state.gov/reports/2023-investment-climate-statements/mauritania/#:~:text=Mauritania%20does%20not%20have%20a,fund%20facility%20on%20January%202025>. Accessed on 29 March 2024.

⁷²¹ EITI, Mauritania. Available on <https://eiti.org/countries/mauritania>, accessed on 27 April 2024.

⁷²² Allianz, Country Risk - Mauritania. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/mauritania.html accessed on 29 March 2024.

⁷²³ EITI, Mauritania. Available on <https://eiti.org/countries/mauritania>, accessed on 29 March 2024.

⁷²⁴ Fraser Institute Annual Survey of Mining Companies 2021. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2021.pdf> accessed on 29 March 2024.

having a legal framework meant to safeguard against corruption, the laws are unevenly enforced. Poor stewardship of public funds, graft, embezzlement, illicit enrichment, and other forms of corruption leaves Mauritania with a low ranking of 130 out of 180 countries assessed on Transparency International's 2022 Corruption Perceptions Index⁷²⁵.

According to the US State Department, the government continues to adopt laws and regulations to improve transparency. The government holds full authority in allocating the licenses for all natural resources and controls their finances. The criteria and procedures by which the government awards natural resource extraction contracts or licenses are specified in Mauritania's investment code, the Mining Code, and a new hydrocarbon law.

Mauritania offers promising opportunities for mining investment, boasting a largely untapped mineral-rich terrain and a vast 20-billion-ton iron ore deposit. With the government's adoption of proactive reforms and attractive mining policies, the country can position itself as an attractive mining destination⁷²⁶.

⁷²⁵ U.S. Department of State, 2023 Investment Climate Statements: Mauritania. Available on <https://www.state.gov/reports/2023-investment-climate-statements/mauritania/#:~:text=Mauritania%20does%20not%20have%20a,fund%20facility%20on%20January%202025>, accessed on 29 March 2024.

⁷²⁶ International Trade Administration, Mauritania - Country Commercial Guide. Available on <https://www.trade.gov/country-commercial-guides/mauritania-mining> accessed on 28 March 2024.



2.33 Mauritius

2.33.1 Introduction

Mauritius is an island nation in the Indian Ocean. The country has positioned itself as a financial hub and remains committed to sustainable development and good governance.

The mining industry is very small and other than basalt and lime there are very few other minerals available on the island.

2.33.2 Policy and Legal Framework

2.33.2.1. Institutional and Policy Overview

Mauritius became independent on March 12, 1968. A constitution was adopted in the same year. The country is a constitutional monarchy with the British monarch as head of state. In 1991, a constitutional amendment was passed providing for a republican form of government, with a president as head of state; the amendment went into effect in 1992. Legislative power is vested in a National Assembly, elected every five years. Executive power is exercised by a Council of Ministers headed by a prime minister (appointed by the president), who assembles a government from members of the National Assembly. The president and vice president are elected by the National Assembly for a term of five years⁷²⁷.

2.33.2.2. Relevant Legal Instruments

There is no information available in this regard.

2.33.2.3. Foreign Ownership, Migrant, and Local Labour Requirements

There is no information available in this regard.

2.33.2.4. Artisanal Mining Sector

There is no information available in this regard.

2.33.2.5. Judicial System

Mauritius has a single-structured judicial system consisting of two parts, the Supreme Court and the Subordinate Courts. The Subordinate Courts consist of the Court of Rodrigues, the Intermediate Court, the Industrial Court, the District Courts, the Bail and Remand Court, the Criminal and Mediation Court and the Commercial Court. The Chief Justice is head of the judiciary. The Constitution of Mauritius is the supreme legal document of the country. The final appeal from decisions of the Court of Appeal of

⁷²⁷ Britannica, Independence of Mauritius. Available on <https://www.britannica.com/place/Mauritius/Independence>, accessed on 9 March 2024.

Mauritius to the Judicial Committee of the Privy Council in London as provided for under the Constitution of Mauritius⁷²⁸.

- **Judicial Independence**

The Constitution provides for the concept of separation of powers principle, ensuring that the judiciary is independent of the executive and legislature.

- **Enforcing Contracts and Efficiency in Settling Disputes**

The World Bank has noted the following steps taken by the Mauritian government regarding Mauritian policy on enforcing contracts:

- In 2010, Mauritius made enforcing contracts easier by setting up a specialized commercial division in its supreme court;
- In 2011, Mauritius sped up the resolution of commercial disputes by recruiting more judges and adding more courtrooms;
- In 2014, Mauritius made enforcing contracts easier by liberalizing the profession of court ushers, including by allowing registered ushers to serve as bailiffs in carrying out enforcement proceedings;
- In 2015, Mauritius made enforcing contracts easier by introducing an electronic filing system for court users; and
- In 2020 Mauritius made enforcing contracts easier by publishing performance measurement reports for the commercial division of the Supreme Court.

- **Protection of Minority Investors**

In its 2019 Doing Business report, the World Bank noted that Mauritius strengthened minority investors protections by clarifying ownership and control structures and requiring greater corporate transparency⁷²⁹.

2.33.2.6. Arbitration

Mauritius is a signatory to the New York Convention (which convention facilitates international arbitration for dispute resolution in the mining sector).

2.33.3 Licencing and Permit Regime

There is no information available in this regard.

⁷²⁸ Introduction to the Supreme Court of Mauritius. Available on <https://web.archive.org/web/20130208113746/http://www.gov.mu/scourt/cjei/index.html>, accessed on 9 March 2024.

⁷²⁹ World Bank. Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 9 March 2024.

2.33.4 Taxation

2.33.4.1. Mining Royalties and Taxes

There is no information available in this regard.

2.33.5 Mineral Beneficiation

There is no information available in this regard.

2.33.6 Macroeconomics

Real GDP growth rose to an estimated 8.7% in 2022, up from 3.4% in 2021, spurred by sustained policy support and the lifting of travel restrictions and buoyed by recovery in the tourism sector. Monetary policy remained accommodative to support economic activity, taking advantage of low inflation. However, inflation rose sharply in 2022, to an estimated 10.8% from 4.0% in 2021, driven largely by surging imported food and energy prices because of Russia's invasion of Ukraine. Public finances have been under pressure in recent years. The fiscal deficit stood at 10.4% of GDP in 2021 and narrowed to an estimated 6.1% in 2022 as the economy continued to recover and the government resumed fiscal consolidation, which had been suspended during the COVID-19 pandemic. Public debt reached 100.7% of GDP in 2021, owing to increased COVID-19-related spending and the contraction in GDP. It started a downward trajectory in 2022 thanks to strong economic recovery and government plans to sell nonstrategic assets to allow for early repayment of debt⁷³⁰.

2.33.7 Governance and Risk Ratings

2.33.7.1. Ease of Doing Business

Mauritius ranks 13 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁷³¹.

2.33.7.2. Investment Climate

The US State Department stated the following about Mauritius:

*Mauritius has become one of Africa's most stable and developed economies with a multi-party democracy and free market orientation*⁷³².

2.33.7.3. Risk Ratings

Mauritius' governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to Mauritius

⁷³⁰ African Development Bank, Mauritius Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/mauritius/mauritius-economic-outlook>, accessed on 9 March 2024.

⁷³¹ Doing Business 2020, Economy Profile Mauritius. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/m/mauritius/MUS.pdf>, accessed on 9 March 2024.

⁷³² U.S. Department of State, Mauritius. Available on <https://www.state.gov/countries-areas/mauritius/>, accessed on 9 March 2024.

based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely B3 - sensitive risk for enterprise⁷³³.

2.33.8 Good Governance Evaluation

The mining industry of Mauritius is largely non-existent. It does not have any significant geological deposits of importance. Other than basalt and lime, Mauritius is not a producer of minerals. Consequently, its legal framework for mining is very underdeveloped. Notwithstanding this, Mauritius is a stable democracy with a transparent and accountable government. Mauritius' focus is not on the extractive industry, but rather on tourism, agriculture, fisheries and financial services.

⁷³³ Allianz, Country Risk – Mauritius. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/mauritius.html, accessed on 9 March 2024.



2.34 Morocco

2.34.1 Introduction

The Kingdom of Morocco is located on the southern coast of the Mediterranean and was a meeting point for various civilisations in the past. Today, it stands as a juncture for significant regional alliances. Rooted in its historical commitment to openness and a continued dedication to contribute to global betterment, Morocco has expedited the implementation of pivotal structural initiatives.⁷³⁴ Embracing a liberal orientation, the country has pursued modernization across political, economic, and social spheres, thereby fortifying national stability.

Morocco is major producer of phosphates. It is the second producer of phosphate rock in the world after China. However, is also a major producer and exporter of other critical minerals. According to the USGS Latest Report on Morocco and Western Sahara Minerals (USGS, 2022), Morocco was the 11th-ranked and 17th-ranked producer of cobalt and silver, respectively, and accounted for 1.8% and 1.4% of world output, respectively. Morocco also accounted for 1.4% of the world's copper production. Eight critical minerals account for 97% of its value export - lithium is the first critical mineral in terms of export value and accounts for 21% of the critical mineral export basket, followed by iron ore (18%), nickel (17%), phosphate rock (15%), and PGM (15%). The entire share of iron ore, nickel and PGMs is exported outside Africa, while lithium and phosphate are exported to Africa (7% and 10% respectively).⁷³⁵

Morocco has embarked on a series of structural reforms aimed at fostering robust and sustainable growth. Concurrently, with the incremental liberalization of all sectors, these reforms have yielded positive outcomes for the national economy.⁷³⁶

2.34.2 Policy and Legal Framework

2.34.2.1. Institutional and Policy Overview

The key institution governing the mining sector of Morocco is the Ministry of Energy, Mines and Sustainable Development (MEM).⁷³⁷ The MEM has delegated authority to:

- the Walis (representative of the central government in the local region) for the award of exploitation authorisations for projects of a value less than MAD200 million; and
- Regional Directors of the Energy and Mines Department of the MEM for the award of research permits (Order of the MEM No 2360-16 dated 9 December 2016).

In addition to the MEM, other key stakeholders in the mining sector of Morocco are:

⁷³⁴ Gide Loyrette Nouel, Mining in Morocco: overview, accessed in November 2023, https://www.gide.com/sites/default/files/mining_in_morocco_overview_w-018-41231.pdf.

⁷³⁵ Critical Minerals and Routes to Diversification in Africa: Opportunities for Diversification into Renewable Energy Technologies – The Case of Morocco, accessed in February 2024, https://unctad.org/system/files/non-official-document/edar2023_BP2_en.pdf

⁷³⁶ *Ibid.*

⁷³⁷ Ministry Of Energy Transition and Sustainable Development. Available on <https://www.mem.gov.ma/Pages/index.aspx>.

- The National Office of Hydrocarbons and Mines (ONHYM) is subject to the state supervision and financial controls applicable to Moroccan public establishments. ONHYM's mission is to:
 - carry out in the authorised zones, all studies, research and prospecting activities for the discovery of hydrocarbons deposits or any other fuel, mining deposits or any mineral substance, with the exception of phosphates;
 - undertake in the authorised areas, the development and exploitation of hydrocarbon or mining deposits or mineral substances, and to carry out all related activities, in particular ensuring the transport and upgrading of hydrocarbons and mining products in accordance with the regulations in force; and
 - promote any action likely to contribute to the development of hydrocarbon, mining and mineral products' exploration and exploitation.
- The Land Registry (ANCFCC: Agence Nationale de la Conservation Foncière du Cadastre et de la Cartographie) is a public establishment (établissement public) regulated by Law No 58-00, promulgated by Dahir No 1-02-125 dated 13 June 2002. It is subject to the state supervision and financial controls applicable to Moroccan public establishments. The Land Registry is in charge of the issuance of special titles (titres spécial) relating to each mining title registered with it.

Until 2016, Morocco's mining sector functioned within the regulatory framework of the *Règlement Minier*, governed by the *Dahir* issued on April 16, 1951. This was supported by Decree no. 2.57.1647 dated 17 December 1957, which implemented the *Dahir's* provisions, and the Decree dated 21 April 1951, concerning the submission and registration of research permits (later amended by the Decree on 1 January 1953).⁷³⁸

A comprehensive amendment of the mining regulations occurred with the introduction of Law no. 33-13 on 1 July 2015 (enacted by *Dahir* no 1-15-76 dated 6 August 2015), known as the New Mining Code, and Decree no 2-15-807 dated 20 April 2016. Effective from the publication in the Official Gazette of the Decree on 21 July 2016, the New Mining Code retained certain principles from the previous legislation while introducing new provisions.⁷³⁹ The amendments introduced under the New Mining Code encompass:

- Expansion of Coverage: Extending the application of the New Mining Code to encompass all mineral substances utilized for industrial purposes, excluding those used for construction and civil engineering.
- Elimination of Mine Categorization: Abolishing the categorization of mines and associated permit restrictions based on categories.

⁷³⁸ Morocco mining guide, accessed in November 2023, <https://www.nortonrosefulbright.com/en-af/knowledge/publications/070cda05/morocco-mining-guide#section1>.

⁷³⁹ Ibid.

- Replacement of Concessions: Abolishing concessions and introducing new mining authorizations, including an exploration authorization that empowers the holder to conduct exploration programs and grants priority to holders applying for exploration permits.
- Alteration of Exploration Permit Conditions: Changing the conditions for granting exploration permits and adjusting the renewal period to three years from the previous four.
- Introduction of Arbitration Committees: Establishing committees to arbitrate between authorities and operators and streamlining administrative formalities.
- Definition of Statutes for Mining Companies: Clarifying the statutes applicable to mining companies.

2.34.2.2. Relevant Legal Instruments

In addition to the abovementioned mining related regulations, Morocco has implemented a range of policies to regulate and promote sustainable development in its mineral and mining sector. These policies include:

- National Strategy for Mining Sector Development⁷⁴⁰
- the National Charter for the Environment and Sustainable Development⁷⁴¹
- the National Water Plan⁷⁴²,
- the Renewable Energy Policy, and Social and Environmental Impact Assessments (SEIAs).

Environmental regulation in Morocco is primarily governed by Law no 11-03 dated 12 May 2003, which aims to safeguard the environment from pollution and degradation while establishing a legal framework for liability to ensure compensation for environmental damages.

Within the framework of the New Mining Code, holders of mining licences are obligated to conduct an environmental assessment study and obtain environmental approval from the relevant authorities.

In situations where land occupation exceeds five years or the land is no longer suitable for its original purpose, the landowner has the right to request the holder of a research permit or mining license to acquire the land at a mutually agreed-upon price. In cases of disagreement regarding the acquisition price, the provincial commission, as referred to in Article 69 of the New Mining Code, is responsible for determining the price. If consensus is not reached on the commission-set price, the competent jurisdiction will establish the final price.

⁷⁴⁰ The National Strategy for Mining Sector Development, available on <https://www.mem.gov.ma/en/Pages/secteur.aspx?e=7>

⁷⁴¹ National Charter for the Environment and Sustainable Development, available on: <https://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/MOROCCO.pdf>

⁷⁴² Morocco: Country Commercial Guide, Water, available on: <https://www.trade.gov/country-commercialguides/morocco-water>

2.34.2.3. Foreign Ownership, Migrant and Local Labour Requirements

There is no restriction on the nationality of shareholders of a company engaging in mining activities in Morocco. It is not necessary to have a majority of local managers or directors, and there is no particular balance required with respect to the nationality of the members of the board or managers. As there is no citizenship requirement, shareholders are free to have exclusively foreign directors and/or managers.

In December 2022, Morocco adopted an Investment Charter⁷⁴³ that repealed the Investment Charter No. 1-95-213 of 8 November 1995. This charter is the principal regulatory document for foreign and domestic investments with an exception to investment in agriculture, as well as the exclusion of real estate and commercial sector investors from some provisions of the charter⁷⁴⁴. The charter:

- Aims at reducing regional disparities in investment attraction.
- Acknowledges the values of freedom in the market and equal treatment of investors regardless of nationality.
- Establishes investment support mechanisms for projects executed in regions and in priority sectors as well as offers incentives to strategic investment small enterprises and SMEs.

The Moroccan government can sign specific agreements and contracts with investors, providing subsidies for certain expenses, custom duty, and VAT exemptions when the agreed criteria are met. Morocco has ratified 72 investment treaties for the promotion and protection of investments and 62 economic agreements, including with the United States and most EU nations, that aim to eliminate the double taxation of income or gains.

2.34.2.4. Artisanal Mining Sector

The Artisanal and Small-Scale Mining sector in Morocco is localised in the mining region of Tafilalet and Figuig covering an area of 60,000 km² and the minerals involved are Lead, Zinc and Baryte. This is regulated with the Mining Law (ASM) Dahir No 1 -16-131 du 21 Kaada 1437 (25 August 2016) promulgating the Law 74-15 referring to the mining region of Tafilalet and Figuig.

Moroccan Artisanal and Small-Scale Mining is managed by The Central Buying & Development Organisation of Tafilalet and Figuig region (CADETAF). For better efficiency and productivity, the government amended the 1960 law governing mining in Tafilalet and Figuig to allow larger private investors to form partnerships with artisanal miners and develop exploration and extraction activities.

2.34.2.5. Judicial System

- **Judicial Independence**

⁷⁴³ Official Bulletin, Charte de l'investissement, http://www.sgg.gov.ma/BO/FR/2873/2022/BO_7152_Fr.pdf, 12 Dec 2022, accessed on 21 May 2023.

⁷⁴⁴ Morocco Adopts a new Investment Charter, UNCTAD, available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4186/morocco-adopts-a-newinvestment-charter>, accessed on 21 May 2023.

The Moroccan legal system is a hybrid of civil law (French system) and some Islamic law, regulated by the Decree of Obligations and Contracts of 1913 as amended, the 1996 Code of Commerce, and Law No. 53-95 on Commercial Courts⁷⁴⁵.

These courts also have sole competence to entertain industrial property disputes, as provided for in Law No. 17-97 on the Protection of Industrial Property, irrespective of the legal status of the parties. Royal Decree No. 1-97-65 (1997) established commercial court jurisdiction over commercial cases including insolvency⁷⁴⁶.

According to the US State Department's 2023 investment climate review of Morocco, the establishment of the aforesaid court structure has led to some improvement in the handling of commercial disputes but the lack of training for judges on general commercial matters remains a key challenge to effective commercial dispute resolution in the country⁷⁴⁷.

Generally seen, the court processes and procedures are seen and perceived to be time consuming and expensive. Disputes may be brought before one of eight Commercial Courts located in Morocco's main cities and one of three Commercial Courts of Appeal located in Casablanca, Fes, and Marrakech.⁷⁴⁸

The Moroccan government states that the 2011 Constitution guarantees the independence of the judiciary and establishes several mechanisms to ensure the separation of powers. The Constitution mandates that the judiciary must be independent of both the Executive and Legislative branches. The highest law of the country specifically provides against interference of judges and states that "a judge may not receive injunction or instruction, nor be submitted to any pressure whatsoever."⁷⁴⁹

To ensure that judicial independence is upheld, the Constitution furthermore authorizes judges to refer any infringements on their independence to the Superior Council of Judicial Power, which is responsible for judicial oversight⁷⁵⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

The Moroccan legal system is a hybrid of civil law (French system) and some Islamic law, regulated by the Decree of Obligations and Contracts of 1913 as amended, the 1996 Code of Commerce, and Law No. 53-95 on Commercial Courts⁷⁵¹.

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⁷⁴⁵US State Department's, 2023 Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion>

⁷⁴⁶ US State Department's, 2023 Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion>

⁷⁴⁷ Ibid.

⁷⁴⁸ Ibid.

⁷⁴⁹ Official Government website "Morocco on the Move" : <https://moroccoonthemove.com/reform/judicial-reform/>

⁷⁵⁰ Ibid.

⁷⁵¹US State Department's Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion>

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To ensure that judicial independence is upheld, the Constitution furthermore authorizes judges to refer any infringements on their independence to the Superior Council of Judicial Power, which is responsible for judicial oversight⁷⁵⁶.

● **Protection of Minority Investors**

Morocco has progressively over the years, according to the World Bank, improved minority shareholders rights from a statutory perspective. In 2011, Morocco strengthened investor protections by requiring greater disclosure in companies' annual reports. In 2012, Morocco further strengthened investor protections by allowing minority shareholders to obtain any nonconfidential corporate document during trial. In 2017, Morocco strengthened minority investor protections again by clarifying ownership and control structures and by requiring greater corporate transparency. And in 2020 Morocco strengthened minority investor protections even further by expanding shareholders' role in major transactions, promoting independent directors, increasing transparency on directors' employment in other companies, and making it easier to request general meetings⁷⁵⁷.

Minority shareholders have certain statutorily protected rights. These include but are not limited to:

- 10% shareholder can call for a meeting of shareholders;
- shareholders' approval is required every time new shares are issued;

⁷⁵² Ibid.

⁷⁵³ Ibid.

⁷⁵⁴ US State Department's, 2023 Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion>

⁷⁵⁵ Official Government website "Morocco on the Move" : <https://moroccoonthemove.com/reform/judicial-reform/>

⁷⁵⁶ Ibid.

⁷⁵⁷ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> Accessed on 5 March 2024.

- minority shareholders automatically receive pre-emption rights if new shares are issued; and changes to the rights of a class of shares only possible if the holders of the affected shares approve⁷⁵⁸.

2.34.2.6. Arbitration

According to the US State Department's 2023 Investment Climate Statement on Morocco, Morocco is signatory to over 70 bilateral treaties recognizing binding international arbitration of trade disputes, including one with the United States. Law No. 08-05 established a system of conventional arbitration and mediation, while allowing parties to apply the Code of Civil Procedure in their dispute resolution⁷⁵⁹.

Foreign investors commonly rely on international arbitration to resolve contractual disputes⁷⁶⁰. Commercial courts in Morocco recognise and enforce foreign arbitration awards and in the main, investor rights are backed by a transparent, impartial procedure for dispute settlement⁷⁶¹.

Morocco also officially recognises foreign arbitration awards issued against the government. Domestic arbitration awards are also enforceable subject to an enforcement order issued by the President of the Commercial Court, who verifies that no elements of the award violate public order or the defence rights of the parties. As Morocco is a member of the New York Convention, international awards are also enforceable in accordance with the provisions of the convention. Morocco is also a member of the Washington Convention for the International Centre for Settlement of Investment Disputes (ICSID), and as such agrees to enforce and uphold ICSID arbitral awards⁷⁶².

The Moroccan government established the Centre of Arbitration and Mediation in Rabat in 1999, and the Casablanca Finance City Authority established the Casablanca International Mediation and Arbitration Centre in 2014, which now sees a majority of investment disputes⁷⁶³.

2.34.3 Licencing and Permit Regime

The main law regulating the exploration and extraction of mineral resources in Morocco is the Mining Law, which requires the obtaining of a mining title before commencing mining activities.

⁷⁵⁸ Ease Of Doing Business in Morocco. Available on https://archive.doingbusiness.org/en/data/exploreconomies/morocco#DB_pi accessed on 5 March 2024.

⁷⁵⁹ US State Department's, 2023 Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion>

⁷⁶⁰ Ibid.

⁷⁶¹ Ibid.

⁷⁶² Ibid.

⁷⁶³ Ibid.

2.34.3.1. Types of Licences and Permits

Exploration Permit	Research Permit	Mining Licence
<p>Applicants must enter into a contractual agreement with the mining administration, outlining the proposed exploration and investment activities. Exclusive to legal entities, an exploration permit is contingent on the works program and investments envisioned by the applicant. It is not possible to hold more than four exploration permits.⁷⁶⁴</p>	<p>The research permit provides the holder, in accordance with the New Mining Code, with the exclusive right to explore for mine products within the designated perimeter. This includes activities such as geological, geochemical, and geophysical studies, as well as drilling holes and mining work aimed at determining the existence of a deposit.</p> <p>Upon the discovery of a deposit, the holder of the research permit gains the exclusive right to apply for a mining license for the identified perimeter. The application must be submitted before the expiration of the research permit. Notably, the New Mining Code allows for the refusal of a license application for reasons other than a failure to file within the validity period, although the code doesn't specify the criteria for such refusals.⁷⁶⁵</p>	<p>The mining license confers upon its holder the exclusive right to extract and/or develop mining products from a deposit, aiming to produce marketable mining products. This includes conducting studies, preparatory work, exploitation activities, and/or enrichment and beneficiation operations on these products. Additionally, the mining license allows for the establishment of the required infrastructure to facilitate these operations.</p> <p>Existing mining concessions that were valid at the time the New Mining Code took effect continue to be governed by the legal provisions in force at the time of their grant. However, once these concessions undergo renewal, the New Mining Code is applied.⁷⁶⁶</p>

Table 32 Types of Licences and Permits in Morocco

⁷⁶⁴ Morocco mining guide, accessed in November 2023, <https://www.nortonrosefulbright.com/en-af/knowledge/publications/070cda05/morocco-mining-guide#section1>.

⁷⁶⁵ Ibid.

⁷⁶⁶ Ibid.

2.34.3.2. The Application Process for Mining Licences and Permits

Application Requirement	Exploration Permit	Research Permit	Mining Licence
Validity or Duration of Licence or Permit	2 years (Article 26)	Valid for 3 years (Article 37)	10 years
Renewable	Renewal once for one year (Article 26)	Renewal once for a 4-year period	Renewable for 10 years till exhaustion of resource
Costs	MAD2,000 Exploration authorisations are subject to the performance of a minimum amount of work per square kilometre ranging between MAD10,000 and MAD66,000	MAD50 per square kilometre Research permits are subject to the performance of a minimum amount of work per square kilometre ranging between MAD10,000 and MAD66,000	MAD 18,000 A local annual tax applicable to mining exploitation activities is payable to the relevant region under Article 4 of Law No 47-06 related to local taxes, promulgated by Dahir No 1-07-195 dated 30 November 2007
Application requirements or restrictions	Legal Person, Exclusive rights (Article 22) Area between 100sqkm and 600sqkm. A holder cannot have more than 4 exploration licences	Legal Person, Exclusive rights. Area for this permit cannot be more than for exploration but it is determined by the Holder. It should cover at least 4 km in length. This is dependent on field work, reporting and financial expenditure for the planned field work (Article 37)	Legal Moroccan Entity (Article 46) You can only have a mining licence if you had the Exploration & Research permit

Table 33 Application Requirements for Licences and Permits in Morocco



2.34.3.3. Transferability of Mineral Rights

An exploration authorisation is a movable asset and cannot be used as a security. In addition, exploration authorisations cannot be transferred or leased. Research permits and operating licences can be transferred or leased (Article 14, Mining Law). Such transfers and leases are subject to prior authorisation of the MEM and must cover the whole of the relevant mining title.⁷⁶⁷

2.34.4 Taxation

2.34.4.1. Mining Royalties and taxes

Mining companies are subject to a corporate income tax rate of 17.5%, which is the standard rate for all companies in the country. Additionally, mining companies are subject to a resource tax, which is calculated based on the quantity and value of the minerals extracted. The resource tax rate varies depending on the type of mineral, and ranges from 2.5% to 10% of the value of the extracted minerals (Mining Code, 2015).

In addition to the taxes stipulated by the Tax Code that are applicable to all economic activities in Morocco, a local annual tax applicable to mining exploitation activities is payable to the relevant region (under Article 4 of Law No 47-06 related to Local Taxes, promulgated by Dahir No 1-07-195 dated 30 November 2007).⁷⁶⁸

The amount of this tax is based on the quantity of mining products extracted during mining exploitation. The rate varies depending on the extraction region between MAD1 and MAD3 per ton extracted. The taxpayer is either the concessionaire or the owner of the mining activity.

The Finance Law for the 2023 budget year confirms the continuation of the implementation of the roadmap outlined by Framework Law No. 69-19 on tax reform and advocates for its gradual implementation by 2026. The tax measures instituted by the Finance Act⁴³ are thus structured around the following advances:

- Corporate tax reform,
- Reform of Income Tax Regimes
- Value Added Tax
- Rationalisation of tax incentives.

In 2022 corporate tax (IS) was calculated, according to several rates (10%, 15%, 20%, 26%, 31% and 37%), depending on the amount of profit made, the nature of the activity carried out or of the economic sector concerned.

⁷⁶⁷ Mining in Morocco Overview, accessed on 17 February 202, https://www.gide.com/sites/default/files/mining_in_morocco_overview_w-018-41231.pdf

⁷⁶⁸ Ibid.

The Mining Law does not stipulate any further taxes or royalties. Royalties are only applicable in the ASM sector if and when production happens.

2.34.5 Mineral Beneficiation

Moroccan law does not impose any specific restrictions on the processing of extracted mineral resources or on the sale, export or import of extracted or processed minerals.

The OCP group (former Office Chérifien des Phosphates), founded in 1920, is a state-owned phosphate rock miner, phosphoric acid manufacturer and fertilizer producer. They have been processing some phosphate domestically given existing economies of scale despite having no regulatory obligation to do so.

2.34.6 Macroeconomics

Morocco has made substantial strides in both social and economic realms, propelled by substantial public investments, structural reforms, and measures aimed at fostering macroeconomic stability.⁷⁶⁹ The consequential growth has yielded notable advancements, including the effective reduction of extreme poverty, extended life expectancy, improved accessibility to fundamental public services, and considerable development in public infrastructure.⁷⁷⁰ These achievements have played a pivotal role in narrowing the standard of living disparity between Morocco and southern European countries.⁷⁷¹

The COVID-19 pandemic has precipitated a significant economic downturn, marking the first severe recession for Morocco since 1995. The economy is grappling with dual pressures from both domestic and external economic shocks. The real GDP contracted by 4 percent in 2020, a stark deviation from the initial projection of a 3.6 percent expansion before the onset of the outbreak.

Following a substantial contraction of 7.1 percent in the initial year of the pandemic, recently published rebased national accounts statistics indicate a robust rebound, with real GDP expanding by 7.9 percent in 2021. This recovery was notably driven by the impressive performance of the agricultural sector, which grew by 17.8 percent. The sector benefited from an outstanding cereal crop of 103 million quintals, a remarkable achievement following two consecutive years of drought. Additionally, domestic demand played a crucial role in driving growth, with private consumption increasing by 8.2 percent, supported by sustained remittances from workers. The recovery in investment was also robust, posting a 15.3 percent increase, with a notable surge of 24.5 percent in the second quarter of 2021, although gross capital formation has yet to reach pre-pandemic levels.

The onset of the agricultural season has experienced uncommonly dry conditions, leading to expectations of a poor cereal crop in 2022. This unfavourable development aligns with a global economic slowdown and escalating international commodity prices, with these trends exacerbating significantly following the Russian invasion of Ukraine.

⁷⁶⁹ The World Bank in Morocco, accessed in November 2023,

<https://documents1.worldbank.org/curated/en/099529307192239926/pdf/IDU020d792070df4a04e830957f0f9fd56c0f71e.pdf>.

⁷⁷⁰ Ibid.

⁷⁷¹ Ibid.

Notably, these shocks have become mutually reinforcing, as the drought compels Morocco to import larger quantities of cereals at significantly elevated prices due to the ongoing conflict. In this more challenging scenario, the economy is anticipated to decelerate sharply in 2023, with the current projection indicating a growth rate of 1.3 percent.

2.34.7 Governance and Risk Ratings

2.34.7.1. Ease of Doing Business

According to the World Bank Group, Morocco is ranked 53 among 190 economies (with a DB score of 73.4) in the ease of doing business, according to the latest World Bank annual ratings.⁷⁷²

2.34.7.2. Investment Climate

According to the 2023 US State Department's Investment Climate Statement on Morocco, Morocco creates an environment that encourages foreign direct investment. It does so, through investor friendly macro-economic policies, trade liberalization, structural reforms, infrastructure improvements, and incentives for investors⁷⁷³. Morocco adopted an Investment Charter in 1995, which served as the foundational Moroccan text on investment. It applied to both domestic and foreign investment⁷⁷⁴. Morocco is however in the process of transitioning from its previous Investment Charter to an updated Investment Charter, which was adopted on December 9, 2022, through framework law 03-22⁷⁷⁵.

The new Investment Charter is based on recommendations made by the special commission on the development model in 2021, setting out the fundamental objectives of the Moroccan State's action in terms of development and investment promotion, with a view to establishing Morocco as an attractive continental and international hub for investment⁷⁷⁶.

In terms of Article 1 of the new Investment Charter, some of the key aims and objectives are:

- a) the creation of stable jobs;
- b) Directing investment towards priority sectors of activity and the professions of the future;
- c) strengthening the attractiveness of the Kingdom with a view to establishing it as a continental and international hub for foreign direct investment;
- d) encouraging exports and the development of Moroccan companies internationally;
- e) encouraging import substitution by local production;

⁷⁷² World Bank Group "Doing Business 2020" page 16, accessed in November 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

⁷⁷³ US State Department's Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion.>

⁷⁷⁴ Ibid.

⁷⁷⁵ Ibid.

⁷⁷⁶ Dahir No. 1-22-76 of 14 Jumada I 1444 (December 9, 2022) promulgating Framework Law No. 03-22 forming an investment charter: <https://investmentpolicy.unctad.org/investment-laws/laws/363/morocco-morocco-investment-charter-2022>.

- f) the achievement of sustainable development;
- g) improving the business environment and facilitating the act of investing; and
- h) an increase in the share of private investment, both national and international, in total investment.

Article 2 sets out the guiding principles for the reform. These are:

The State's policy on development and investment promotion is based on the following principles:

- a) the freedom to conduct a business;
- b) free competition and transparency;
- c) equal treatment of investors regardless of their nationality;
- d) legal certainty; and
- e) good governance.

Prior to its discontinuation of the Doing Business Report, in 2020 the World Bank ranked Morocco 53 out of 190 economies, rising seven places since from the previous report in 2019 and climbing 75 places during the last decade from 128 in 2010⁷⁷⁷. Morocco has implemented reforms that have been positively received by international investors and which reforms have facilitate business registration, such as eliminating the need to file a declaration of business incorporation with the Ministry of Labour, reducing company registration fees, and eliminating minimum capital requirements for limited liability companies⁷⁷⁸.

2.34.7.3. Risk Ratings

The current EITI⁷⁷⁹ membership stands at 50. Morocco is currently not a member of the initiative. The Natural Resource Governance Institute (NRGI) is an independent non-profit organization dedicated to improving countries' governance over their natural resources (in particular oil, gas and minerals) to promote sustainable and inclusive development⁷⁸⁰.

The NGRI regularly produces a resource governance index. In 2021, the index review covered 18 countries, with a focus on how such countries manage their mineral endowments and what type of investment climate these countries create. The index covers a broad range of themes, but principally it covers the key characteristics of each country's extractives sector. It also covers realisation and revenue management, by the respective country's government as well as overall governance. What kind of enabling environment does the country present, from an extractive industry perspective⁷⁸¹.

⁷⁷⁷ The 2023 US State Department Investment Climate Statement on Morocco: <https://www.state.gov/reports/2023-investment-climate-statements/morocco/#:~:text=According%20to%20the%20United%20Nations,2018%20peak%20of%20%243.6%20billion.>

⁷⁷⁸ Ibid.

⁷⁷⁹ The Extractive Industries Transparency Initiative: <https://eiti.org/our-mission>

⁷⁸⁰ https://en.wikipedia.org/wiki/Natural_Resource_Governance_Institute

⁷⁸¹ Morocco Mining. Available on <https://resourcegovernanceindex.org/country-profiles/MAR/mining?years=2021>

In the 2021 survey Morocco scored 68 (satisfactory) in the overall category titled “Enabling Environment”. The report notes that the Moroccan extractive industry does lack transparency and that more work can and should be done to improve this⁷⁸².

Overall, Morocco scored only 40 points (“poor”) in its ability to realize value from the mining sector. Overall, disclosure of information is regarded as poor in Morocco. Morocco does not have a national mining cadastral system and information about projects are not generally disclosed. Additional concerns raised in terms of the 2021 index are:

- a) Due to the lack of a mining cadastral system, there is very little transparency in the mining licence processes;
- b) There is a lack of financial interest rules and disclosures, which can result in increased corruption and conflicts of interest; and
- c) A lack of disclosure on the social and environmental impacts of mining⁷⁸³.

Morocco has the opportunity, according to the NRG1 to improve its overall attractiveness as a mining jurisdiction, if it can address transparency and governance frameworks.

In terms of the Fraser Institute’s Investment Attractiveness Index (2022)⁷⁸⁴, Morocco, is the second most attractive jurisdiction in Africa both for investment and when only policies are considered. However, Morocco’s PPI score has diminished, relative to previous years. Morocco now ranks 17th (of 62), dropping out of the top 10 global jurisdictions after ranking 2nd (of 84) in 2021 in terms of policy⁷⁸⁵.

Investors, who form the basis of the index based on extensive interviews have expressed increased concerns over the following:

- a) uncertainty of administration and enforcement of existing regulations;
- b) labour regulations and employment agreements;
- c) uncertainty concerning disputed land claims;
- d) socio-economic agreements and community development conditions; and
- e) and trade barriers⁷⁸⁶.

2.34.8 Good Governance Evaluation

Morocco is a stable and attractive mining jurisdiction. It is rated by the Fraser Institute as the second most attractive jurisdiction in Africa both for investment and when (only) policies are considered. The

⁷⁸² Ibid.

⁷⁸³ Ibid.

⁷⁸⁴ Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf>.

⁷⁸⁵ Ibid.

⁷⁸⁶ Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf>.

attractiveness index measures the attractiveness of a jurisdiction based on policy factors such as onerous regulations, taxation levels, the quality of infrastructure, and the other policy related issues⁷⁸⁷.

However, Morocco's ranking dropped to 17th of 62 in 2022. This meant that Morocco dropped out of the top 10 jurisdictions after ranking 2nd (of 84) in 2021 in terms of policy. Investors that are interviewed as part of the index, expressed increased concerns over the uncertainty of administration and enforcement of existing regulations, labour regulations and employment agreements, uncertainty concerning disputed land claims, socio economic agreements and community development conditions as well as trade barriers⁷⁸⁸.

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid.



2.35 Mozambique

2.35.1 Introduction

Mozambique is located on the southeast coast of Africa. It is bordered by Eswatini, South Africa, Zimbabwe, Zambia, Malawi and Tanzania. Its long Indian Ocean coastline of 2,700 kilometres faces east to Madagascar. The Front for the Liberation of Mozambique (Frelimo) and the Mozambican National Resistance (Renamo) are the two main political parties in Mozambique. Frelimo has been in power since the country's independence from Portugal in 1975 and has dominated politics since the general peace accord of 1992⁷⁸⁹. Most of the population lives in rural areas. As of 2022, Mozambique had an estimated population of 33 million people⁷⁹⁰.

The Mozambique mining industry is rapidly developing, and its mineral potential is still largely untapped. The sector has played a significant role in the country's economy, contributing to approximately 7% of the nation's gross domestic product (GDP) and 6% of the government's total revenues in 2019. Coal mining stands out as the primary industry in Mozambique, benefiting from one of the largest coal reserves in the world. Additionally, gold mining holds notable importance. The country also boasts a wealth of other economically significant minerals, including heavy mineral sands such as silica, ilmenite, rutile, and zircon, along with graphite, limestone, marble, specialized clays, precious and semi-precious stones like ruby, garnet, and tourmaline, as well as diamonds.

2.35.2 Policy and Legal Framework

2.35.2.1. Institutional and Policy Overview

The Ministry of Mineral Resources and Energy (MIREME) is the central organ of the State, which directs and ensures the implementation of the Government's policy in geological research, exploitation of mineral and energy resources and the development and expansion of infrastructure for the supply of electricity, natural gas and petroleum products. The Ministry is responsible inter alia for:

- Drafting proposals and implementing policies in the Mineral Resources and Energy sector;
- Inventory and management of the country's mineral and energy resources;
- Promotion of an appropriate legal and institutional framework for the development of the sector;
- Promotion and dissemination of the potential of the Mineral Resources and Energy sector;
- Promotion of technological development with a view to the sustainable use of mineral and energy resources at national level;

⁷⁸⁹ World Bank, Overview – Mozambique. Available on <https://www.worldbank.org/en/country/mozambique/overview#:~:text=Mozambique%20borders%20Tanzania%2C%20Malawi%2C%20Zambia,and%20work%20in%20rural%20areas>. Accessed on 21 February 2024

⁷⁹⁰ Ibid.

- Promoting the participation of the private sector in the development and exploitation of the potential of mineral and energy resources and their infrastructures;
- Promotion and control of geological prospecting and research activities and rational and sustainable use of mineral resources;
- Inspection and supervision of the activities of the sector and control of the implementation of technical safety, hygiene and environmental protection standards.

The other key bodies responsible for regulating the Mozambican mining sector are:

- National Institute of Mines (INAMI)
- National Directorate of Geology and Mines (NGM)
- Ministry of Land and Environment (MTA)
- Tax Authority of Mozambique
- Bank of Mozambique and the High Authority of Extractive Industry (established by the Mining Law in 2014, this regulatory authority is not operational yet).

As a former Portuguese colony, Mozambique's legal system is based on civil law. The legal system is structured based on independent courts that are separate from the legislature and the executive, in terms of the separation of powers principle. This is enshrined in the Constitution⁷⁹¹.

The apex court is the Supreme Court, which is the final court of appeal. It also is the court of first instance in matters involving serious crimes. The judges appointed to the supreme court bench are appointed by the President⁷⁹². The legal system provides for an Administrative Court, which has jurisdiction over cases relating to public administration and oversees public expenses⁷⁹³. Finally, the judicial courts (provincial courts and district courts) are the lowest courts in the apex system, and these are the courts of first instance in civil and criminal matters. They hear all matters which the higher courts do not have jurisdiction over⁷⁹⁴. Specialist labour, customs and fiscal courts also exist. Community courts exist throughout the country, and these are small claims courts, dealing with small civil disputes and minor crimes.

2.35.2.2. Relevant Legal Instruments

Mozambique's mining sector is governed mainly by nationwide laws and implementing regulations. Some of the specific laws and regulations governing the country's mining sector include:

⁷⁹¹ Doing Business in Mozambique: Overview, November 2021. Available on [https://content.next.westlaw.com/practical-law/document/12ef12b1c1ed511e38578f7ccc38dcbee/Doing-Business-in-Mozambique-Overview?viewType=FullText&transitionType=Default&contextData=\(sc.Default\)](https://content.next.westlaw.com/practical-law/document/12ef12b1c1ed511e38578f7ccc38dcbee/Doing-Business-in-Mozambique-Overview?viewType=FullText&transitionType=Default&contextData=(sc.Default)) Accessed on 21 February 2024

⁷⁹² Ibid.

⁷⁹³ Ibid.

⁷⁹⁴ Ibid.

- Mining Law (Law 18/2014, of 19 August 2014): This law provides for the definition, rights and duties of holders of mining titles, concession and licences, as well as the legal framework for the exploitation, production and transport of minerals in Mozambique.
- Environmental Law (Law 7/2018, of 22 August 2018): This law seeks to ensure the protection of the environment and the balanced and sustainable use of natural resources, as well as the safety and health of people.
- Customs Clearance Regulations (Decree 9/2017, of 6 April 2017): This law regulates the import and export of goods, provides for customs exemptions and establishes a preferential customs regime for the import of goods intended for use in the mining operations.
- Council of Ministers Decree 23/2018, of 3 May: This decree aims to support and promote green projects, programmes and activities in order to contribute to the control and reduction of greenhouse gas emissions.
- Regulations on the Hiring of Expatriates for the Petroleum and Mining Sectors (Decree 63/2011, of 7 December 2011): This decree regulates the employment of foreign personnel in Mozambique, as well as the procedures for the notification and authorisation of the hiring of foreigners.
- Regulations on Marketing of Mineral Products (Decree 22/2009, of 6 April 2009): This decree sets the ground-rules for the marketing of mineral products in Mozambique for entities that do not hold mineral titles.
- Regulations on Marketing of Diamonds, Precious Metals and Gems (Decree 39/2007, of 11 December 2007): This decree establishes the specific rules for the marketing of diamonds, precious metals and gems.
- Resettlement Regulations (Decree 31/2012, of 8 August 2012): This decree sets out the measures to be taken in order to ensure the protection of the rights of all persons affected by a project or an activity.
- Environmental Regulations for Mining Activities (Decree 11/2006, of 31 March 2006): This decree establishes the requirements to ensure the compliance with environmental regulations in the mining sector.
- Law on the Taxation and Fiscal Benefits of Mining Operations (Law 28/2014, of 23 September 2014): This law regulates the taxation system applied to mining operations.

Mining Cadastral System

The MIREME has recently engaged Spatial Dimension, a Trimble Company, to upgrade its mining cadastre system. The INAMI is the implementing agency. The aim of the upgrade is to transition to an e-government based mining cadastre system, which will increase the efficiency of the Licencing process and improve

revenue collection.⁷⁹⁵ Apart from mapping mineral resources, the system also facilitates the submission of applications and management of licences online, as well as other statutory processes, such as executing payments, submitting reports and undertaking renewals. The e-government based mining cadastre system significantly enhances revenue collection from the mining sector in Mozambique. As such, it undoubtedly has a positive impact on the industry and aids economic growth in the country by making it easier for investors to explore and obtain relevant licensure in the nation's mining sector.

2.35.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Foreign applicants must also keep in mind that mining certificates, mining passes and mining concessions may only be awarded to Mozambicans and Mozambican companies.

2.35.2.4. Artisanal Mining Sector

Mozambique is home to a robust and vibrant ASM sector comprising of more than 53 registered and active associations across the nation. With gold production reaching 197 kg in 2014, Mozambique's ASM sector is an increasingly important component of the nation's economy, accounting for around 3.2% of all exports. The sector is largely composed of artisanal miners involved in the production of both precious metals and stones, with gold production as the main activity.

The Mozambican government is committed to a transparent and equitable exploitation of mineral resources and the adoption of the 2013 African Mining Vision has seen ASM formalised and integrated into the Mozambique economy. This is evidenced by the measures taken to create designated ASM areas and registered associations as well as government loan facilities aimed at the ASM sector.

One third of the labour force is women and children and higher level of activity in ASM is observed during lower agricultural production indicating a degree of livelihood diversification from miners⁷⁹⁶. The sector, however, does face some challenges and is strongly associated with deforestation, wildfires, and soil degradation, all of which have a negative impact on the environment.

The government has taken steps to address and mitigate the negative impacts of ASM in the country, such as the establishment of The Mining Development Fund, tasked with promoting and assisting ASM financially and technically. Another recent initiative is the creation of the Gemmological Institute, aimed at promoting value addition and proper valuation of gemstones of ASM origin. The government also offers loan facilities and incentivises value addition by allowing a 50% tax reduction on production when used in the local industry.

2.35.2.5. Judicial System

- **Judicial independence**

⁷⁹⁵ Trimble, Mozambique to upgrade to an Online Mining Cadastre System, available on: <https://landadmin.trimble.com/2020/06/02/mozambique-to-upgrade-to-an-online-miningcadastre-system/>, accessed on 21 May 2023

⁷⁹⁶ United Nations Economic Commission for Africa, ASM Country Profile, Mozambique, available on <https://knowledge.uneca.org/ASM/mozambique>, accessed on 31 May 2023.

Mozambique is a constitutional democracy. In terms of the 1990 Constitution, the system of judicial administration was significantly reformed. The Constitution established a new legal framework, based on the principle of separation of powers, which led to the elevation of courts to the status of sovereign bodies, which are subject to the structural principle of autonomy vis-a-vis the other powers of the State. Independence of judges, in the exercise of their functions, owe obedience and impartiality to the law and the Constitution. In reality however this does not appear to be the case. According to commentator, João Carlos Trindade, the rule of law and judicial independence are a project yet to be achieved in Mozambique. Their feasibility depends on the extent to which political decision-makers are capable of taking on the challenges that only a systemic, integrated and coordinated view among all the players can provide⁷⁹⁷.

- **Enforcing Contracts and Efficiency in settling disputes**

The Mozambican court system is generally regarded as weak and inefficient. In the World Bank Doing Business Indicator, Mozambique ranked 168th out of 190 countries, measuring enforcement of a contract (World Bank 2020)⁷⁹⁸. The monitor measures the time and cost of implementing a decision by a first instance court in a country⁷⁹⁹. Companies therefore need to spend a material amount of time and money to get a decision in the courts of first instance. This makes this route of dispute resolution very unappealing, particularly when the government is involved⁸⁰⁰.

- **Protection of Minority Investors**

In 2008, the World Bank in its Doing Business report stated the following: “Mozambique strengthened investor protections by enacting a new commercial code that allows shareholders to bring derivative suits against company directors, introduces detailed duties and liability for directors and major shareholders, expands the range of company information accessible to shareholders and permits shareholders to request the appointment of an expert to investigate the activities of the company”⁸⁰¹.

If a minority shareholder (individually or collectively) holding at least 5% of the share capital of a company votes against the appointment of a director, which director has been voted for, by a majority of shareholders, then minority shareholder(s) have the right to nominate at least one director,⁸⁰².

Under the Mozambican Company Code, shareholders have no legal remedy allowing them to act directly against the company. The protection of the shareholders’ interests is mainly achieved via either:

- remedies against directors or members of other company bodies; or

⁷⁹⁷ Mozambique at a Fork in the Road The Institutional Diagnostic Project, 2023. Available on <https://www.cambridge.org/core/books/mozambique-at-a-fork-in-the-road/rule-of-law-and-judicial-independence/6FAEFAB04ACFAF41FCBE4476F0F35E47> accessed on 13 March 2024.

⁷⁹⁸ World Bank, Assessment of the Legal and Regulatory Framework for Foreign Direct Investment, 2021. <https://documents1.worldbank.org/curated/en/450931639457296665/pdf/Mozambique-Assessment-of-the-Legal-and-Regulatory-Framework-for-Foreign-Direct-Investment.pdf> accessed on 21 February 2024.

⁷⁹⁹ Ibid.

⁸⁰⁰ Ibid.

⁸⁰¹ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 7 March 2024.

⁸⁰² Chambers and Partners, Shareholders' Rights & Shareholder Activism 2023, Mozambique - Law and Practice. Available on <https://practiceguides.chambers.com/practice-guides/shareholders-rights-shareholder-activism-2023/mozambique> accessed on 7 March 2024.

- challenge of shareholders' resolutions.

In addition, the law also provides for other mechanisms that allow shareholders to protect their interests, notably through the following mechanisms:

- certain information rights that may be exercised against the company;
- provision of a mechanism for judicial examination of the company; and
- judicial mechanisms for replacing members of the corporate bodies.

The scope of the above-mentioned rights will vary depending on the company type, but, as a rule, those remedies are available to minority shareholders⁸⁰³.

2.35.2.6. Arbitration

Mozambique has been a member of the International Centre for Settlement of Investment Disputes is an international arbitration institution since 1995. The centre was established in 1966, to deal with legal dispute resolution and conciliation between international investors and governments.

Mozambique ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1998. Domestic law establishes the framework regulating foreign investments in Mozambique.

In 1999 the National Assembly passed the Law on Arbitration (no. 11/99), which allows access to modern commercial arbitration for foreign investors. In 2017, the Judicial Council created the Regulations of Mediation Services (via resolutions no. 1/CJ/2017 and no. 2/CJ/2017), which apply in Judicial Courts and the Judicial Mediators' Code of Conduct. The government of Mozambique aims to create an enabling environment that promotes mediation as an alternative to litigation.

The Centre of Arbitration, Conciliation, and Mediation (CACM, Centro de Arbitragem, Conciliação e Mediação) offers commercial arbitration. The centre has over 330 arbitrators and mediators.

2.35.3 Licencing and Permit Regime

• Mining Contract

For large-scale projects, the State and the mining concessionaire may enter into a mining contract. A mining contract is a framework for agreeing further rights but not mandatory unless the project value exceeds USD500 million, in which case the government can demand the conclusion of a mining contract.

The contents of a mining contract cannot be in conflict with any Mozambican mining and other applicable legislation. The main terms of a mining contract must be published in the Official Gazette (Boletim da República), except confidential, strategic and competitively sensitive information. Mining contracts are broad and diverse, but they must include provisions on the following: the State's share in the undertaking, dispute resolution mechanisms, and minimum plan to benefit local communities.

⁸⁰³ Chambers and Partners, Shareholders' Rights & Shareholder Activism 2023, Mozambique - Law and Practice. Available on <https://practiceguides.chambers.com/practice-guides/shareholders-rights-shareholder-activism-2023/mozambique> accessed on 7 March 2024.

Under the Mega Projects Law (which potentially applies to large-scale mining projects), the State reserves the right to obtain up to 5% in the share capital of the project for free (at any point of the project) in mining projects under a mining concession. Between 5% and 20% of the capital of the project company or consortium must be reserved for placement, on commercial terms, on the Mozambique Stock Exchange within five years of commencing the activity, for "social inclusion".



2.35.3.1. Types of Licences and Permits

Prospecting and Exploration Licence	Mining Concession	Mining Certificates	Mining Treatment Licences	Mining Processing Licences	Mining Passes
The licence required to undertake exploration activities is an exploration permit.	Mining Concessions grant the concessionaire (a legal entity incorporated and registered under Mozambique Laws) the authority to extract, develop, and process mineral resources discovered under an Exploration License.	<p>Mining Certificates govern small-scale mining operations, which are defined as follows⁸⁰⁴:</p> <ul style="list-style-type: none"> - For the extraction of mineral resources intended for construction purposes, operations that do not surpass an annual production of 100,000 tonnes. - For precious metals exploration, operations that do not exceed an annual production of 12 kg. - For gemstone extraction, operations that do not surpass an annual production of 250 kg. - Operations that do not involve underground works deeper than 20 m, or galleries longer than 50 m, and employ 15 workers or fewer on the production front. 	Mining Treatment Licences oversee mining procedures that involve the recovery of usable ore and derivatives, transforming them into valuable mining products through physical treatments. This is applicable when the investor does not hold a valid Mining Concession, Mining Certificate, or Mining Pass permitting such activities.	Mining Processing Licences regulate the procedures necessary to produce ore concentrate through various methods, including physical, chemical, and metallurgical treatments. This is applicable when the investor does not hold a valid Mining Concession, Mining Certificate, or Mining Pass permitting such activities.	Mining Passes govern "artisanal" mining endeavours typically conducted by individuals, permitting the sale of mineral products resulting from such small-scale mining operations.

Table 34 Types of Licences and Permits in Mozambique

⁸⁰⁴ Chambers and Partners, Mining 2024, Mozambique. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/mozambique>.



2.35.3.2. The Application Process for Mining Licences and Permits in Mozambique

Application Requirement	Prospecting and Exploration Licence	Mining Concession	Mining Certificates
Place of application ⁸⁰⁵	The request for a Mining Concession must be submitted to the National Mining Institute and addressed to the Minister of Mineral Resources and Energy.	The request for a Mining Concession must be submitted to the National Mining Institute and addressed to the Minister of Mineral Resources and Energy. The Minister has 180 days to decide on a request for a Mining Concession, counting from the date of its submission.	The request for a mining certificate must be directed to the Minister of Mineral Resources and Energy, except for construction purposes, where it should be directed to the Governor of the Province overseeing the area. The Minister has 60 days counting from the date of the submission of the request.
Validity/Renewable ⁸⁰⁶	Valid for 2 years for mineral resources being supplied for the construction industry and are renewable once for a 2-year period. Valid for 5 years for other mineral resources and may be renewed once for a 3-year period.	Valid for 25 years and may be extended by another 25 years.	Valid for 10 years and may be extended by another 10 years.
Application requirements or restrictions	Awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique. Construction minerals - area may not exceed 198 hectares. Other minerals – area may not exceed 19,998 hectares.	Awarded to a legal person with technical and financial capacity that is incorporated and registered in Mozambique.	Only granted to Mozambican nationals and legal entities.

Table 35 Application Requirements for Prospecting and Exploration Licence, Mining Concession and Mining Certificates in Mozambique

⁸⁰⁵ Doing_Business_Mozambique_2023. Available on https://www.mdradvogados.com/xms/files/2024/Doing_Business_Mozambique_2023.pdf accessed 06 on March 2024.

⁸⁰⁶ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 06 March 2024.



Application Requirement	Mining Treatment Licences	Mining Processing Licences	Mining Passes
Place of application ⁸⁰⁷	Applications for Mining Processing Licences must be addressed to the Minister of Mineral Resources and Energy and filed with the National Institute of Mines.	Applications for Mining Processing Licences must be addressed to the Minister of Mineral Resources and Energy and filed with the National Institute of Mines.	The request for a Mining Pass should be directed to the Governor of the Province responsible for the area. The Governor of the Province has 30 days to decide on the request from the date of submission.
Validity/Renewable ⁸⁰⁸	Valid for a maximum of 25 years and can be renewed once. May not exceed 50 years in total.	Valid for a maximum of 25 years and can be renewed once. May not exceed 50 years in total.	Valid for 5 years and renewable for an equal period.
Application requirements or restrictions	<p>Awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique.</p> <p>The treatment of radioactive minerals such as uranium will necessitate additional authorizations as per the legislation concerning atomic energy and radioactive materials. Large-scale processing operations must be initiated within 24 months from the date of the issuance of the licence. Small-scale operations must be initiated within 12 months, from the date of the issuance of the licence.</p>	<p>Awarded to legal persons with technical and financial capacity that are incorporated and registered in Mozambique.</p> <p>The processing of radioactive minerals such as uranium will necessitate additional authorizations as per the legislation concerning atomic energy and radioactive materials. Large-scale processing operations must be initiated within 24 months from the date of the issuance of the licence. Small-scale operations must be initiated within 12 months, from the date of the issuance of the licence.</p>	Mining Passes may be awarded to Mozambican nationals in designated areas, for the direct benefit of the communities.

Table 36 Application Requirements for Mining Treatment Licences, Mining Processing Licences and Mining Passes in Mozambique

⁸⁰⁷ Doing_Business_Mozambique_2023. Available on https://www.mdradvogados.com/xms/files/2024/Doing_Business_Mozambique_2023.pdf accessed 06 on March 2024.

⁸⁰⁸ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrika.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 06 March 2024.

2.35.3.3. Transferability of Mineral Rights

As per the regulations outlined in the Mining Law, the transfer of mineral titles is subject to the following conditions:

- Prospecting and exploration licences, mining concessions, mineral handling licences, and mineral processing licences can only be transferred between legal entities that are incorporated and registered in compliance with Mozambican legislation.
- A mining certificate can only be transferred to a natural or legal person of Mozambican nationality who is domiciled within Mozambique.
- A mining pass can only be transferred to a natural person of Mozambican nationality or to a legal entity established by Mozambican nationals.

Furthermore, the transfer of mineral titles or shares (whether directly or indirectly) in a company holding mineral titles necessitates prior approval from the Ministry of Mineral Resources and Energy. Such requests may only be made two years after commencing mineral activities. The application must include a comprehensive report on the conducted activities and a tax clearance certificate issued by the tax authority⁸⁰⁹.

2.35.4 Taxation

2.35.4.1. Mining Royalties and Taxes

Mozambique's mining regulations on taxation and royalties provide for a special value added tax regime for mining companies in the production stage, alongside a mining production tax and surface tax applicable to mining operations. Tax exemptions and modifications to applicable administrative and labour regimes may be included in mining contracts.

Moreover, collateral environmental liabilities must be considered, as companies are required to provide a financial bond or insurance to cover potential costs associated with any damage caused by their operations. Lastly, capital gains taxes may be payable on the transfer of equity interests and other rights or participating interests in mining assets or rights located in Mozambique.

- Royalty rates (referred to as Mining Production Rates) are calculated by mineral category.

⁸⁰⁹ Chambers and Partners, Mining 2024, Mozambique. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/mozambique> accessed on 05 March 2024.



Mineral	Royalty rate (%)
Diamonds	8
Precious metals (gold, silver and platinum)	6
Precious stones and semi-precious stones	6
Sand and Stones	1.5
Base minerals and coal	3
Other minerals not included in other categories	3

Table 37 Royalty Rates in Mozambique

- Surface tax - The annual surface tax rates are calculated per mining title and is shown below.

Mining Title	Surface Tax (MZN ⁶⁶ per hectare)
Exploration Licence	17.5 for the 1 st and 2 nd year
	43.75 for the first year
	91 for the 4 th and 5 th year
	105 for the 6 th year
	210 for the 7 th and 8 th year
Mining Concession	30 from the 1 st to 5 th year
	60 from the 6 th year onwards

Table 38 Surface Tax in Mozambique

- Mineral Resource Rent Tax (MRRT) - is a tax on the net cash flow under a mining title and applies to mining projects that have realised net revenues (cash gains) during a fiscal year. It is payable at the rate of 20% from the moment that the cash flow reaches an internal return rate of at least 18% (before corporate income tax).
- The other general applicable taxes are:
 - Corporate income tax
 - Value added tax and customs duties.
 - Windfall profits tax
 - Capital gains tax on the transfer of equity interests.

These regulations serve to promote both foreign and local investment and ensure the government of Mozambique is actively involved in the economic development of the country.

- Export Levy

Mozambique's export levy policies are largely determined by the Consolidation Law on Export Tax⁸¹⁰, which states that commodities extracted by industrial or artisanal miners are subject to the export levy.

⁸¹⁰ PWC Mozambique corporate taxes, available on: <https://taxsummaries.pwc.com/mozambique/corporate/other-taxes>, accessed on 21 May 2021.

Depending on the type of minerals extracted, varying levy rates are applied. For example, diamonds are taxed at 8%, while base metals and coal are charged 3%.

A portion of the export levies is allocated to provincial and district development funds, as well as employee education and training programmes. The export levies are seen as an important source of government revenue and facilitate the reinvestment of funds into the local economy. The levy also has social objectives, such as reducing the health and safety risks associated with mining activities, as well as providing educational and training opportunities for Mozambicans.

Furthermore, Mozambique has established a process for receiving and responding to complaints from citizens affected by the export levy policy. In this way, the government is helping to ensure that the levies are applied equitably and fairly.

2.35.5 Mineral Beneficiation

Article 57 of the Mining Law establishes that whenever the availability of the resource and economic viability justify it, the processing of the minerals exploited in Mozambique must be carried out in the country. Under the Mining Law and Customs Clearance Laws and Regulations, mineral products are governed by a distinct export customs regime. Holders of exploration licences are solely permitted to export mineral samples for analysis and testing overseas. Conversely, holders of mining concessions are authorized to export the mineral products they have extracted from the designated area covered by their license. However, the exportation of mineral products is conditional upon the payment of the required Production Tax⁸¹¹.

2.35.6 Macroeconomics

According to the African Development Bank, real GDP growth in Mozambique rose from 2.3% in 2021 to an estimated 3.8% in 2022. This resulted from a recovery from major events such as the COVID-19 pandemic, conflict, and global geopolitical tensions⁸¹².

The growth resulted in increased inflation, which jumped materially from 5.7% in 2021 to 10.3% in 2022, with fuel and food price increases accounting for the majority of this increase⁸¹³. The Bank of Mozambique raised the reference interest rate from 15.25% in 2021 to 17.25% in August 2022, according to the bank.

2021 saw the national budget deficit narrow from 4.8% of GDP to 3.7% in 2022 due to higher economic activity, despite a high public sector wage bill and high debt service⁸¹⁴.

Mozambique's sovereign debt levels fell marginally, from 106.4% of GDP in 2021 to 102.6% in 2022, according to the African Development Bank. Notwithstanding this, new and more expensive domestic

⁸¹¹ Lex Africa, Guide to Mining Regimes in Africa. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 05 March 2024.

⁸¹² African Development Bank, Mozambique Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/mozambique/mozambique-economic-outlook> accessed on 21 February 2024.

⁸¹³ Ibid.

⁸¹⁴ Ibid.

borrowing has been secured by the government and this may impact the government's ability to repay its debt over time⁸¹⁵.

In September 2023, ratings agency Moody's ascribed a Caa2 (stable) outlook for Mozambique's economy⁸¹⁶.

2.35.7 Governance and Risk Ratings

2.35.7.1. Ease of Doing Business

According to the World Bank Group in 2020, Mozambique achieved a score of 138⁸¹⁷ among 190 economies.

2.35.7.2. Investment Climate

Challenges that face investors in Mozambique, as raised by the US State Department in its analysis, include Mozambique's opaque and complicated taxation policies, barriers to private land ownership, corruption, an underdeveloped financial system, high interest rates, poor infrastructure, and difficulties obtaining visas⁸¹⁸.

Infrastructure outside of the capital Maputo is often poor, while bureaucracy and corruption slow trade at many points of entry. Mozambican labour law is, according to the research of the US State Department investor unfriendly, making it difficult to hire and fire workers, with court systems inundated with labour disputes⁸¹⁹. There is a skills shortage in Mozambique, making necessary skills difficult to attain by industry. Obtaining visa's and work permits for expatriates with the necessary skills is difficult and bureaucratic⁸²⁰.

According to the US State Department's report on the investment climate in Mozambique (2023) noted that the government has announced a number of economic reforms in August 2022, which include fiscal reforms and investment incentives⁸²¹. The proposed reforms include the simplification in logistic corridors, implemented a new e-visa system to facilitate entry into the country for tourists and professionals, and it announced its intention to exempt 29 countries from entry-visa requirements⁸²².

⁸¹⁵ Ibid.

⁸¹⁶ Mozambique: Sovereign credit ratings. Available on https://www.theglobaleconomy.com/Mozambique/credit_rating/ accessed on 22 February 2024.

⁸¹⁷ Doing Business 2020, Economy Profile Mozambique. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/m/mozambique/MOZ.pdf> accessed on 22 February 2024

⁸¹⁸ International Trade Administration, Mozambique - Country Commercial Guide, Investment Climate Statement, March 2024. Available on <https://www.trade.gov/country-commercial-guides/mozambique-investment-climate-statement> accessed on 22 February 2024.

⁸¹⁹ International Trade Administration, Mozambique - Country Commercial Guide, Investment Climate Statement, March 2024. Available on <https://www.trade.gov/country-commercial-guides/mozambique-investment-climate-statement> accessed on 22 February 2024

⁸²⁰ Ibid.

⁸²¹ 2023 Investment Climate Statements: Mozambique. Available on <https://www.state.gov/reports/2023-investment-climate-statements/mozambique/#:~:text=for%20More%20Information-,EXECUTIVE%20SUMMARY,it%20as%20a%20risky%20market>. Accessed on 22 February 2024.

⁸²² Ibid.

2.35.7.3. Risk Ratings

According to Transparency International's corruption perception index, Mozambique ranks 145 out of 180 ranked countries⁸²³. Mozambique is has been member of the Extractive Industries Transparency Initiative (EITI) since 2009⁸²⁴, a global standard for the good governance of oil, gas and mineral resources. The aim of the initiative is to promote better governance, transparency and accountability within resource-rich countries.

2.35.8 Good Governance Evaluation

Mozambique's governance and risk ratings are be influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to Mozambique based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D4 - high risk for enterprise.

Although Mozambique has significant mineral resources and has the potential to play a very important role in the transition to a greener economy, it remains a country with weak institutions, high corruption, and high rates of poverty. According to the Fraser Institute 2020 analysis on mining jurisdictions globally, it stated that if both policy and mineral potential are considered (as per the Investment Attractiveness Index), then Mozambique has joined Zimbabwe as among the least attractive jurisdictions in which to invest⁸²⁵.

⁸²³ Transparency Internation, Mozambique. Available on <https://www.transparency.org/en/countries/mozambique> accessed on 22 February 2024.

⁸²⁴ EITI, Mozambique, available on <https://eiti.org/countries/mozambique>, accessed on 24 May 2023.

⁸²⁵ Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf> accessed on 7 March 2024.

2.36 Namibia

2.36.1 Introduction

The mining industry in Namibia is a significant part of the country's economy, in view of its history of mining, particularly in respect of copper, diamonds, gold, lead, limestone, lithium, salt (sodium chloride), semi-precious stones, silver, tin, and zinc.⁸²⁶ In 2022 the mining industry grew strongly, with its value added increasing by 34.6% year-on-year to USD1.6 billion, mostly related to a strong increase in raw material prices, which has a direct correlation to the Gross Domestic Product (GDP) increasing to 12.2% from 9.2% in 2021.⁸²⁷ Since its independence in 1990, Namibia remains as one of the most politically stable countries in Sub-Saharan Africa. Its currency, the Namibian Dollar, remains pegged to the South African rand.⁸²⁸

However, notwithstanding strong performance indicators in mining which are tied to the substance of the applicable regulatory framework, there are several considerations which impede development of the mining industry. For example, the relative limitations in the domestic market with a population of approximately 2.6 million people, uncertainty over land expropriation which has limited Foreign Direct Investment (FDI) in Namibia and the country's susceptibility to drought, which disrupts the agricultural sector and also results in electricity shortages from hydropower plants.⁸²⁹

2.36.2 Policy and Legal Framework

2.36.2.1. Institutional and Policy Overview

The Constitution of the Republic of Namibia (the Constitution) is the supreme law of the land.⁸³⁰ The introduction of the Constitution ended an era of parliamentary supremacy and welcomed democracy and the rule of law.⁸³¹ The legal systems of Namibia are largely based on Roman-Dutch law but are also influenced by the South African common law, and a majority of Namibian law is not codified, and must be distilled from the body of jurisprudence.⁸³² The Namibian court system is made up of three tiers,⁸³³ the:

- Supreme Court (which is the highest court of appeal);
- High Court (which include the Electoral Court and Labour Court); and

⁸²⁶ International Trade Administration "Namibia – Country Commercial Guide" accessed in August 2023, on <https://www.trade.gov/country-commercial-guides/namibia-mining-and-minerals>.

⁸²⁷ Who Owns Whom African Business Information "The Mining Industry in Namibia July 2023" accessed in August 2023, on <https://www.whoownswhom.co.za/mining-industry-namibia/#:~:text=Overview%20of%20Minerals%20in%20Namibia,-Namibia%20has%20significant&text=According%20to%20the%20WOW%20report,%2C%20exploration%2C%20and%20mining%20methods>.

⁸²⁸ BMI a Fitch Solutions Company "Namibia Country Risk Report Q3 2023".

⁸²⁹ *Ibid.* African Business "Namibia moves towards land expropriation" accessed in August 2023, on

<https://african.business/2018/11/economy/namibia-moves-towards-land-expropriation>. The

1990

(hereinafter referred to as the Constitution), Article 16(2).

⁸³⁰ The Constitution, preamble.

⁸³¹ The Constitution, Article 1.

⁸³² Mayer and Brown Namibia West Africa mining finance know-how accessed in September 2023, on https://www.mayerbrown.com/-/media/files/perspectives-events/publications/brochures/africa/africa-mining-finance-knowhow_namibia.pdf?la=en.

⁸³³ The Constitution, Article 78.

- Lower Courts (which are the regional and district Magistrates' Courts and Community Courts)

The Minerals (Prospecting and Mining) Act (the Minerals Act) provides for the reconnaissance, prospecting and mining for, and disposal of, and the exercise of control over, minerals in Namibia.⁸³⁴ The Minerals Act provides for rights and claims relative to mining operations and does so by establishing the Minerals Board of Namibia. The Minerals Act also regulates other matters relative to mining such as financial matters, the sale and export of minerals, the protection of the environment, environmental impact assessment and the liability of holders of licences or mining claims for pollution of the environment or other damage caused. However, the Minerals (Prospecting and Mining) Amendment Act amended the Minerals Act by introducing the levying of certain royalties by removing specific restrictions on maximum rates of royalties that are chargeable and introduced the imposition of a windfall royalty.⁸³⁵

The Namibia's Minerals Policy, 2003 serves as a foundational document outlining guiding principles and directions for the development of the mining sector. This policy articulates the values of the Namibian people and provides a framework for responsible development of national resources. The overarching goal is to position Namibia as a significant producer of mineral products while ensuring the maximum sustainable contribution to the country's socio-economic development. The Minerals Act and Mining Policy are currently under review. This signifies a proactive approach by the Namibian government to ensure that the legal and policy frameworks governing the mining sector remain responsive to contemporary challenges and opportunities. This commitment to review and adaptation speaks to Namibia's dedication to fostering a mining industry that aligns with national development goals while keeping pace with global advancements and standards.

The Ministry of Mines and Energy (MME) is established by the Minerals Act and the MME is mandated with attracting private investment in resources exploration and development through the provision of geoscientific information on minerals and energy resources. The MME carries the prime responsibilities of regulating the extractive industries and dangerous goods market in Namibia, including the collection of royalties, and ensuring that safety, health, and environmental standards are consistent with the relevant laws and regulations.⁸³⁶

The MME is divided into three departments and four directorates,⁸³⁷ three of which focus on mining:

- The Geological Survey of Namibia (GSN) is responsible for the generation and management of the country's geoscientific data and information;
- The Department of Mines promote the optimal exploitation of Namibia's mineral resources and integrates the mining industry with other sectors of the economy, this department includes the following divisions:
 - Minerals Rights and Resources Development.

⁸³⁴ Minerals (Prospecting and Mining) Act 33 of 1992, long title.

⁸³⁵ Minerals (Prospecting and Mining) Amendment Act 8 of 2008, long title and section 114.

⁸³⁶ Ministry of Mines and Energy accessed in September 2023, on <https://www.mme.gov.na/about-us/structure/>.

⁸³⁷ Ibid.

- Mine Safety and Operations.
- Controlled Minerals and Research.
- Small-Scale Mining.
- The directorate of the Diamond Affairs is the department tasked with protecting the Namibian diamond industry from unlawful activities, and with improving the contribution of diamond mining to the country's socio-economic development. It controls and monitors diamond exploration and mining activities to ensure that the country derives the maximum financial benefit from its resources;
- The Department of Mines is tasked with promoting the responsible, sustainable, and optimal exploitation of the country's mineral resources, and integrating the mining sector into other sectors of the economy; and
- The directorates of Energy, the National Energy Fund, Petroleum Affairs and Administration Services all mainly deal with non-mining MME activities.

The following officers are appointed as public officers, namely the:

- Minister of Mines and Energy, who is appointed by the President, and the Minister's responsibilities flow directly from the Minerals Act (and other related legislation);
- Deputy Minister of Mines and Energy;
- Executive Director of Mines;
- Deputy Executive Director of Mines;
- Deputy Executive Director of GSN;
- Director of Energy;
- Director of Administration Services;
- Commissioner of Diamonds;
- Commissioner of Petroleum Affairs;
- Commissioner of Mines / Mining;
- Director of Applied Geoscience; and
- Director of Mapping and Geo-information.

Furthermore, the Minerals Board of Namibia, established by virtue of section 9 of the Minerals Act consists of, *inter alia*, the above public officers and representatives from the below ministries:

- the Ministry of Finance;



- the Ministry of Wildlife, Conservation and Tourism;
- the Ministry of Fisheries and Marine Resources;
- the Ministry of Health and Social Services; and
- the Ministry of Agriculture, Water and Rural Development.

The Minerals Board of Namibia is responsible for considering applications for mining and non-mining rights, granting, renewing, or refusing to grant mining and non-mining rights, terminating, suspending or cancelling mining and non-mining rights, amending the terms and conditions of mining and non-mining rights, and advising the Minister of Mines and Energy on matters relating to his or her functions, powers and duties under the Minerals Act (as amended).⁸³⁸

2.36.2.2. Relevant Legal Instruments

Article 100 of the Constitution recognises that all natural resources below and above the surface of the land belong to the State unless they are otherwise lawfully owned. Article 16 of the Constitution grants the right to property to all persons in Namibia (to acquire, own and / or dispose of all forms of property). However, the State (or a competent body) can expropriate property in the *public interest* subject to the payment of *just* compensation. In recent years, the debate of amending the Constitution to provide for expropriation without just compensation has become more prevalent, with its rationale being the State's aim to 'correct' the land dispossession under apartheid and colonial rule by offering ownership, stability and employment to historically marginalised communities.⁸³⁹

The Foreign Investment Act (FIA) regulates all FDI in Namibia and provides for equal treatment for foreign investors and Namibian firms, including the possibility of just compensation in the event of expropriation, international arbitration of disputes between investors and the government, the right to remit profits and access to foreign exchange.⁸⁴⁰ In an effort to enhance the ease of doing business in Namibia, the Investment Promotion Act (which replaced the FIA) introduced the Namibia Investment Centre, which is the first point of contact for all potential investors in Namibia.⁸⁴¹

The following general principles are applicable to the mining industry in Namibia,⁸⁴² namely:

⁸³⁸ Minerals (Prospecting and Mining) Act 33 of 1992, section 10.

⁸³⁹ *Op cit* note 4.

⁸⁴⁰ Foreign Investment Act 27 of 1990, sections 3 and 11 - 13.

⁸⁴¹ Namibian Investment Promotion Act 9 of 2016, long title and sections 6, 7, 34 and 35. 2023 Investment Climate Statements: Namibia U.S Department of State accessed in September 2023, on [https://www.state.gov/reports/2023-investment-climate-statements/namibia/#:~:text=The%20Foreign%20Investment%20Act%20of%201993%20\(FIA\)%20currently%20governs%20Foreign%20disputes%20between%20investors%20and%20the](https://www.state.gov/reports/2023-investment-climate-statements/namibia/#:~:text=The%20Foreign%20Investment%20Act%20of%201993%20(FIA)%20currently%20governs%20Foreign%20disputes%20between%20investors%20and%20the).

⁸⁴² Minerals Policy of Namibia accessed in September 2023, on https://chamberofmines.org.na/wp-content/uploads/2020/07/Minerals_Policy_Final.pdf.

- the exploration and development of mineral resources is a way that promotes and contributes towards socio-economic development, and in accordance with international conventions to which Namibia is a party;⁸⁴³ such as the:
 - World Trade Organization (WTO).
 - World Bank.

British Commonwealth of Nations.

- Lomé Convention.
 - United Nations (UN).
 - International Monetary Fund (IMF).
 - African Union (AU)
- ensuring safety, health and environmental protection throughout mineral exploitation;
 - providing citizens with equitable access to mineral resources, and benefits from mineral resource development; and
 - the development of local communities in areas surrounding mining areas including the prioritisation of the needs, health and safety of such communities.

The following legislation is relevant to the mining industry, which is overseen by the MME, the:

- **Atomic Energy and Radiation Protection Act;**

Which provides for adequate protection of the environment and of people in current and future generations against the harmful effects of radiation by controlling and regulating the production, processing, handling, use, holding, storage, transport and disposal of radiation sources and radioactive materials, and controlling and regulating prescribed non-ionising radiation sources by establishing the Atomic Energy Board and the National Radiation Protection Authority.⁸⁴⁴

- **Diamond Act;**

Which provides for the establishment of the Diamond Board of Namibia, the Diamond Board Fund and the Diamond Valuation Fund while managing the processing and the import and export of diamonds.⁸⁴⁵

- **Environmental Management;**

⁸⁴³ West Africa mining finance know-how Mayer and Brown “Namibia (General Business)” accessed in September 2023, on <https://www.mayerbrown.com/-/media/files/perspectives-events/publications/brochures/africa/africa-mining-finance-knowhownamibia-general-business.pdf?la=de&rev=aaac9d30d7804abf8cf8c5fb09ede4dc>.

⁸⁴⁴ Atomic Energy and Radiation Protection Act 5 of 2005, long title.

⁸⁴⁵ Diamond Act 13 of 1999, long title.

Which promotes the sustainable management of the environment and the use of natural resources by establishing the Sustainable Development Advisory Council and sets out the principles for decision making on matters affecting the environment.⁸⁴⁶

- **Labour Act; and**

Which consolidates and amends the labour laws of Namibia by establishing a comprehensive labour law for all employers and employees in order to regulate basic terms and conditions of employment while ensuring the health, safety and welfare of employees and protecting employees from unfair labour practices.⁸⁴⁷

- **Prevention and Combating of Pollution of the Sea by Oil Act No. 6 of 1981.**

Which provides for the prevention and combating of pollution of the sea by oil by determining liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers or offshore installations.⁸⁴⁸

2.36.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Namibia's regulations on foreign investment in the mining sector include specific requirements aimed at promoting local ownership and participation. Foreign investors in mining are required to ensure that at least 5% of the company's ownership is held by Namibians. This is a mechanism to encourage local participation and benefit-sharing in the country's mining activities. Furthermore, at least 20 % of the management structure of the mining company must consist of Namibians. This requirement aims to facilitate skills transfer, promote local expertise, and ensure that the management reflects the diversity and interests of the Namibian population.

These regulations underscore Namibia's commitment to balancing the interests of foreign investors with the need for local empowerment and economic development. They also aim to prevent the complete foreign control of strategic resources, ensuring that the country and its citizens participate meaningfully in the exploitation of its mineral wealth.

2.36.2.4. Artisanal Mining Sector

Artisanal or Small-Scale Mining (ASM) in Namibia is conducted in an informal manner and has not fully been integrated in the Namibia's national economy. ASM mining is mainly concentrated in the Erongo Region as well as the northwestern and southern parts of Namibia. The ASM activity is mainly on the mining of accessory minerals such as topaz, quartz, tourmaline, aquamarine, beryl, fluorite, apatite, dimension stone and building materials.

The Minerals Act makes provisions for ASM activities. The Government has introduced a simplified and centralised claim registration system for ASM, which involves pegging and registering mining claims. MME's Small-scale Mining Division offers training and technical support to the ASM sector and is working

⁸⁴⁶ Environmental Management Act 7 of 2007, long title.

⁸⁴⁷ Labour Act 11 of 2007, long title.

⁸⁴⁸ Prevention and Combating of Pollution of the Sea by Oil Act 6 of 1981, long title.

toward decentralising the Licencing process. Artisanal mining's contribution to GDP is negligible since ASM is not fully integrated into the regular economy.

In order to undertake mineral prospecting and mining operations, small scale miners (SSMs) must adhere to an environmental contract, issued by Ministry of Environment and Tourism (MET) in consultation with MME. Additionally, SSMs also had to adhere to the following legislation:

- Communal Land Reform Act 5 of 2002;
- Soil Conservation Act No 76 of 1969;
- Soil Conservation Amendment Act No 38 of 1971;
- Nature Conservation Ordinance 4 of 1975;
- Water Act 54 of 1956; and
- National Heritage Act 27 of 2004.

2.36.2.5. Judicial System

The Namibian judicial system operates with independence, adhering exclusively to the Constitution and legal statutes. The judiciary is immune from external influence, with no authority, even from other branches of the government, dictating the outcome of judicial proceedings. The Constitution emphasizes the autonomy of the courts by assigning the Chief Justice of the Supreme Court the role of overseeing the judicial functions of all courts and assuming ultimate responsibility for their budgetary control. The Supreme Court holds the highest judicial authority in Namibia, led by the Chief Justice. Assisting the Chief Justice is the Deputy Chief Justice who acts in their absence. Additional judges on the Supreme Court are appointed by the President based on recommendations from the Judicial Service Commission. Notably, the Constitution does not prescribe a specific range for the minimum or maximum number of judges that must be appointed to the Supreme Court.

The Supreme Court in Namibia has the authority to review appeals arising from decisions rendered by the High Court, encompassing matters related to the interpretation and application of the Constitution. Typically, a panel of at least three judges collaborates to reach decisions in the Supreme Court. However, exceptions to this norm may be provided by an Act of Parliament, particularly in situations where a judge is incapacitated or unable to continue during the course of a proceeding.

The High Court, positioned as the next highest court in Namibia, is headed by the Judge-President, who concurrently serves as the Deputy Chief Justice of the Supreme Court. The President, acting on the recommendation of the Judicial Service Commission, holds the authority to appoint Deputy Judges President and additional Judges as deemed necessary. The High Court has jurisdiction over both criminal and civil cases, inclusive of matters pertaining to the interpretation and application of the Constitution. Furthermore, it possesses the prerogative to hear appeals originating from decisions made by lower courts.



The Lower Courts in Namibia are presided over by magistrates, or other judicial officers appointed according to procedures outlined in laws enacted by Parliament, maintain their independence through the establishment of a Magistrates Commission. The Magistrate's Commission is mandated to oversee the transfer, discipline, removal, remuneration, and other conditions of service for magistrates. The Constitution grants Parliament the authority to establish additional Magistrates Commissions to regulate matters pertaining to various types of Lower Courts.

Namibia's Lower Courts consist of two primary types:

- Magistrates' Courts, where the majority of the legal proceedings in the country originate, allow for appeals to the High Court; and
- Community Courts, operating under statutes passed by Parliament, possess the jurisdiction to hear and decide cases rooted in the customary law of the respective community they serve. Appeals from Community Courts are directed to Magistrates' Courts, and subsequently, to the High Court. This framework establishes a hierarchical appeal process within the Lower Courts system.

2.36.2.6. Arbitration

The regulation of arbitrations in Namibia falls under the Arbitration Act 42 of 1965 (the Arbitration Act). Importantly, the Arbitration Act does not repeal the common law on arbitration but coexists with it. The common law remains applicable to the extent that it does not conflict with the mandatory provisions outlined in the Arbitration Act. One notable distinction lies in the requirement for a written arbitration agreement. While the common law does not mandate an arbitration agreement to be in writing, the application of the Arbitration Act is specifically limited to cases where there is a written arbitration agreement in place. In this context, the Arbitration Act is considered more comprehensive and efficient in facilitating the resolution of disputes through arbitration compared to the common law.

The arbitration process is expeditious, efficient, and cost-effective nature when compared to court litigation. Court proceedings are often protracted, encumbered by formal and inflexible rules that make the process economically burdensome. In contrast, arbitration, when conducted appropriately, is designed to be completed within a relatively short timeframe, typically not exceeding four months.

However, it's important to note that while arbitration offers expeditious resolution, it also has limitations on court review. The court's powers are typically confined to specific circumstances, such as:

- Irregularities causing miscarriage of justice: The court may intervene if there are procedural errors that significantly affect the fairness of the proceedings.
- Lack of Jurisdiction: If the arbitrator exceeds their authority or if the arbitration is conducted outside the agreed scope, the court may intervene.
- Defects in Execution of Arbitrator's Mandate: Courts can review instances where there are flaws in how the arbitrator carries out their responsibilities.

- Misconduct by the Arbitrator: Judicial intervention is permitted in cases of arbitrator misconduct marked by moral turpitude, including dishonesty, partiality, or bad faith.

In summary, while arbitration provides a more efficient and cost-effective alternative to court litigation, there are specific grounds on which the court may intervene, emphasizing the need for a fair and just arbitration process.



2.36.3 Licencing and Permit Regime

2.36.3.1. Types of Licences and Permits

There are six types of licences that can be applied for and obtained under the Minerals Act. These licences fall into two main categories of licences relating to minerals in terms of the Minerals Act, namely category 1 (mining claim and non-exclusive prospecting licence), which are licences available only to Namibian entities for the development of small-scale mining and category 2 (exclusive prospecting licences, reconnaissance licences, exclusive reconnaissance licences, mining licences and mineral deposit retention licences), which are licences available to Namibian and Foreign entities.

Non-exclusive prospecting licence (NEPL)	Mining claims	Reconnaissance licence	Exclusive prospecting licence (EPL)	Mineral deposit retention licence	Mining licence (ML)
Gives the right to prospect on any land for any mineral or group of minerals.	For Namibians, mining on a small scale.	Regional, mainly remote sensing exploration for identification of exploration targets.	For an area of up to 1,000 km ² (100,000 ha). Granted for a specific mineral or group of minerals.	Allows exploration company to retain tenure on exclusive prospecting licence, mining licence or mining claim without any mining obligations.	Exclusive rights to the mining area.

Table 39 Types of Licences and Permits in Namibia



2.36.3.2. The Application Process for Mining Licences and Permits

Application Requirement	Non-exclusive prospecting licence (NEPL)	Mining claims	Reconnaissance licence	Exclusive prospecting licence (EPL)	Mineral deposit retention licence	Mining licence (ML)
Validity or Duration of Licence or Permit	12 months	3 years	6 months	3 years	5 years	25 years or life of Mine
Renewable	No	2-year extension, unlimited (Providing the claim is being worked on)	No	Twice for 2-year periods, with the area decreasing by 25 percent with each renewal	2-year periods	15-year periods
Application requirements or restrictions	Anyone over the age of 18 can apply; non-transferable.	A maximum of 10 claims can be held at any one time. Available to Namibian citizens only.	Not transferable.	Exclusive exploration rights to the land. (Renewals beyond seven years require special approval by the Minister).	Must meet work and expenditure obligations and submit regular project reviews.	Must demonstrate financial and technical ability to develop and operate a mine.

Table 40 Application Requirements for Licences and Permits in Namibia

2.36.3.3. Transferability of Mineral Rights

According to the Minerals Act, 1992, section 47, with the approval of the minister, mineral licence can be amended or transferred upon cession or assignment of any interest in any mineral licence or to be joined as a joint holder of a mineral licence and if the applicants are not satisfied with the outcome, they can appeal to Mining Minister and up to the level of the High Court of Namibia.

2.36.4 Taxation

2.36.4.1. Mining Royalties and taxes

Namibia operates a modern system of taxation that is reasonably competitive by international standards and is modified and updated on a regular basis usually, but not always, following announcements in the national budget speech. Tax administration is carried out primarily by the Directorates of Inland Revenue and Customs and Excise within the Ministry of Finance, which administer the Income Tax Act, Value Added Tax Act, Stamp Duty Act, Transfer Duty Act, as well as parts of the Petroleum Taxation Act. Some mining taxes, however, are the responsibility of the Ministry of Mines and Energy. Taxation for mining and quarrying, as well as that for oil and gas companies is different to other companies.

The mining sector generates significant revenue for Namibia through various mechanisms (including taxes, royalties, equity, fees, and levies). The rates are generally fair, regionally competitive, and equitably applied across the sector. The Ministry of Finance has divisions investigating large taxpayers and combatting transfer pricing. Policies on taxation and royalties can be decisive elements to attract or deter foreign investment but are also essential instruments to ensure that a fair share of the wealth generated by extraction remains in the source country. Mining companies pay royalties to the government. That said, local communities do not directly get a share of the royalties paid by the mining companies. Royalty rates differ according to metal or mineral type as shown in the table below.

Mineral	Royalty rate (%)
Semi-precious stones	2
Dimension stones	5
Base and rare metals	3
Precious metals	3
Diamonds	10
Industrial minerals	2
Non-nuclear fuels	2
Nuclear fuels	2

Table 41 Royalty Rates in Namibia

Taxation for the income from exploration and mining companies is done according to the Income Tax Act 1981 Act 24 of 1981. There is no restriction on repatriating profits for foreign investors. Namibia Revenue Agency (NamRA) is the nation's tax-collecting authority, while MME is the Royalty collecting authority.

The Export Levy Act 2 of 2016 to provide for the imposition of an export levy on certain goods to improve Namibia's value share in its resource base, to encourage further processing or beneficiation of or value



addition to such goods, to support national or regional industrial development, to promote the development of regional value chains and to meet revenue needs; and to provide for incidental matters. The export levy is higher for raw minerals than for processed or finished goods. There are laws in place that allow for adequate protection of the rights of investors. The state may lawfully expropriate property owned by foreign national in the public interest, provided that it is done in accordance with the law. Findings show that value addition plays a huge role even in cases of expropriation, as people who add value to their property are well compensated.

Namibia's National Special Economic Zone Policy (SEZ) expands and subsumes the existing Export Processing Regime (EPZ) by strengthening key provisions, such as expanded sectoral focus and a transparent monitoring and evaluation framework. The SEZ policy was finalised and adopted in August 2022 but the SEZ Act will only be enacted in 2023. The expected outcome of the National Special Economic Zone Policy is to bring about successful industrialisation. The Ministry of Industrialization and Trade (MIT) will review the SEZ policy every five years to incorporate new market dynamics and developments. The SEZ expects to yield the following outcomes:

- A regulatory framework that optimises the development and attainment of an inclusive SEZ regime in Namibia;
- A regionally balanced operation of SEZ across Namibia; attraction of both, qualitative and quantitative investments into the SEZ across industrial and services sectors; fostering key cross-border regional and bilateral value chains development through SEZ;
- Creation of industrial hubs and technical skills development and enhanced developmental impact of the SEZ regime. The SEZ policy has made a provision for both fiscal and non-fiscal investment incentives for various investment categories among others, exporters, and manufacturers. Some of the identified, but not limited to, incentives are lower Corporate Income Tax rates;
- Reduced import duties/customs tariffs; Capital Deductions Allowance;
- Research and Development Allowance; establishment of One-Stop Shop to support the facilitation of incentives for investors in the SEZ;
- Competitive Utility Tariffs; and
- Supportive and directed approach to provision of visa for non-resident foreign investors.

The Income Tax Amendment Act, 2020 repealed the provisions relating to tax incentives for manufacturers. These special income tax incentives granted to registered manufacturers by the time of the amendment in 2020, in relation to the above will continue to apply until the end of the 2025 tax year in respect of each registered manufacturer. The Ministry of Industrialisation and Trade, the Ministry of Finance and Namibia Investment Promotion and Development Board (NIPDB) are in the process of developing new incentives schemes for various investments outside the Special Economic Zones. The new incentives scheme is expected to be in place together with the Special Economic Zones Incentives Scheme by mid-year 2023.

2.36.5 Mineral Beneficiation

The Mineral Beneficiation Strategy for Namibia (2021) was developed as an inclusive long-term modernisation and economic transformation programme that enables substantive and sustained raising of living standards, intensifying structural change and accelerating Namibia's industrialisation. The strategy seeks to complement key national development initiatives by creating a conducive environment for investment and value-addition through the provision of mineral-based feedstock for a competitive manufacturing sector in an environmentally sustainable way. It aims to address critical intervention areas in order to direct Namibia's mineral endowment and outputs towards enhanced economic development and social progression.

The mineral beneficiation strategy provides a blueprint for Namibia to improve competitiveness as an investment destination. This competitiveness, coupled with considerable natural endowment in mineral resources, provides a platform for increased beneficiation, leading to the realisation of more economic value from the various mineral commodities in the country. The Namibian government has unquestionable commitment to working with the role players in the minerals industry to create the investment in infrastructure that is necessary for beneficiation to reach its full potential and contribute to the industrialisation of the country as outlined in Vision 2030 and the National Development Plans (NDP5 and beyond).

Below is an extract of the aims of the strategy:

- Increasing the number of women, youth, and people with disabilities actively participating in national and regional value chains by at least 20% by 2025.
- Increasing the local skilled workforce in mining, beneficiation, and manufacturing industries developed by at least 20% by 2025.
- Increasing the number of active partnerships between ASMs and large-scale mining, beneficiation, and manufacturing companies by at least 30% by 2025.
- Increasing the number and type of functioning geo-scientific databases and cadastral infrastructure systems increased by 50% by 2026.
- Decreasing the number of critical bottlenecks in the regulatory framework and overall business environment reduced by at least 50% between 2021 and 2030.
- Increase access to advanced mineral beneficiation technology by at least 20% (through assisting local companies to procure and develop modern equipment and implementing regional integration of technological facilities) by 2025.
- Improve productivity by at least 20% by 2023 through upgrading/developing new infrastructure and integrating it for use by the mineral industry Waste generation during production operations reduced by at least 20% by 2023 (through recycling, reusing, and implementing cleaner production principles for greater environmental sustainability).



- Increase trade of mineral-beneficiated products by at least 50% per year by 2025 and at least 85 percent by 2030.

In summary, there are no binding laws or policies mandating value addition although the state has developed plans and policies to incentivize voluntary value addition (and in the future mandate such value addition).

2.36.6 Macroeconomics

Namibia ranks among the countries with the highest levels of poverty and inequality.⁸⁴⁹ Namibia's economy was already constrained by structural problems before the COVID-19 pandemic, which included weaknesses in the business environment and skills mismatches in the labour market which have worsened.⁸⁵⁰

Namibia's economy recovered in 2022, and reached a 3.5% growth point, which was supported by the mining industry (especially the growth of diamond production, which increased by 46%), manufacturing, and the continued recovery of services.⁸⁵¹ The mining industry contributes approximately 12.2% to the GDP, which is 2.2% of the employment sector, and accounted for 27.5% of the country's export earnings in 2021.⁸⁵² More than 70% of the diamonds in Namibia are extracted from the sea, however experts predict that this will increase to more than 90%, as the depletion of terrestrial reserves increases.⁸⁵³

Despite the 2022 recovery, the socio-economic standards of Namibia have not improved as employment remains below what it was before the COVID-19 pandemic.⁸⁵⁴ As a result, inflation increased to a five-year high of 6.1% in 2022, which is directly correlated to higher fuel prices and the Russo-Ukrainian War.⁸⁵⁵

The World Bank projects that Namibia will recover from the effects of the COVID-19 pandemic with a 2.4% growth rate in 2023, which will be supported by the recovery of construction, services, and private investment.⁸⁵⁶ The consistently negative per capita GDP growth since 2016 and the COVID-19 pandemic will remain the main hurdles of the economy. The citizens of Namibia typically come from female-headed households, are less educated with larger families. A large majority of the country partakes in subsistence farming and is particularly prone to poverty.⁸⁵⁷

The impacts of policies like investment in skills development are expected to take time to affect the socio-econometrics, the poverty rate is expected to only decline slightly over the medium term.⁸⁵⁸

⁸⁴⁹ The World Bank "The World Bank in Namibia" last updated on 29 March 2023 accessed in September 2023, on <https://www.worldbank.org/en/country/namibia/overview>.

⁸⁵⁰ The World Bank "Namibia MPO" accessed in September 2023, on <https://thedocs.worldbank.org/en/doc/bae48ff2f5a869546775b3f010735-0500062021/related/mpo-nam.pdf>.

⁸⁵¹ *Op cit* note 24.

⁸⁵² *Op cit* note 25.

⁸⁵³ *Op cit* note 24.

⁸⁵⁴ *Op cit* note 24.

⁸⁵⁵ *Op cit* note 25.

⁸⁵⁶ *Op cit* note 25.

⁸⁵⁷ *Op cit* note 24.

⁸⁵⁸ *Op cit* note 25.

2.36.7 Governance and Risk Ratings

2.36.7.1. Ease of Doing Business

According to the World Bank Group, in 2020, Namibia scored 61.4 points in the ease of doing business which ranks Namibia in 104th place on the ease of doing business rank.⁸⁵⁹

2.36.7.2. Investment Climate

The Namibian government places a significant emphasis on fostering both domestic and foreign investment as a strategic approach to stimulate economic growth, address unemployment, and promote economic diversification. The Ministry of Industrialization and Trade (MIT) serves as the primary governmental entity tasked with implementing the provisions outlined in the FIA. Although the MIT is actively engaged in the development of new business legislation known as the Namibia Investment Promotion and Facilitation Act, this legislation is currently in draft form. Consequently, FIA continues to serve as the prevailing legal framework governing investment activities in the country.

Namibia maintains a generally positive investment climate, demonstrating resilience even amid global economic disruptions caused by the COVID-19 pandemic. The country sustains political stability, offering attractive conditions for inward FDI. Noteworthy advantages include an independent judicial system, robust protection of property and contractual rights, well-developed physical and telecommunications infrastructure, and convenient access to South Africa and the broader region.

Namibia is strategically upgrading its transportation infrastructure to enhance its appeal for investment and position itself as a regional logistics hub. Recent initiatives include the completion of an expansion project at Walvis Bay Port in 2019, ongoing renovations at Hosea Kutako International Airport, and plans to extend and rehabilitate the national rail line. Notably, these efforts aim to improve connectivity from Walvis Bay port to neighbouring countries. The World Economic Forum recognizes Namibia for having the best roads on the African continent.

In addition to these infrastructural developments, Namibia enjoys access to key economic partnerships, including the Southern African Customs Union (SACU) headquartered in Namibia, the Southern African Development Community's (SADC) Free Trade Area, and markets in Europe and Asia. With abundant solar radiation, extensive land and wind resources, Namibia is actively positioning itself as a global leader in renewable energies and green hydrogen. This strategic focus not only holds the potential to enhance local and regional energy access but also aligns with efforts to address climate change.

2.36.7.3. Risk Ratings

Best Practice in governance in Namibia has been identified as a priority by the Namibian government. The Harambee Prosperity Plan (HPP) is a targeted Action Plan to accelerate development in clearly defined

⁸⁵⁹ World Bank Group "Doing Business 2020" page 4, accessed in September 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

priority areas, which lay the basis for attaining prosperity in Namibia. The Harambee Prosperity Plan II (2021-2025) aims at implementing policy programmes that enhance service delivery and economic recovery to strengthen Namibia in terms of socioeconomic challenges and preparing it for global opportunities in relation with the COVID-19 pandemic. The HPP is based on four pillars and the first pillar, Effective Governance, focusses on continuously improving accountability and transparency to strengthen the national anti-corruption mechanisms.

The Corporate Governance Code for Namibia (NamCode) is a corporate governance manifesto for companies incorporated under the Companies Act 28 (2004) as well as entities incorporated by statute (i.e., so called incorporation by act of parliament. The code was prepared and drafted by the Namibian Stock Exchange with support from FNB Namibia Holdings Limited. The principles of this NamCode apply to Namibian entities (large private and listed companies across all industries) on a 'apply or explain' basis and that the best practice recommendations are provided as guidance for the application of the principles of this NamCode.

Namibia has the Anticorruption Act 8 of 2003 to lead the fight against corruption through effective law enforcement and preventative measures. In addition to this, the Anti-Corruption Commission has set out the National Anti-Corruption Strategy and Action Plan (NACSAP) that serves as a tool for fostering cooperation and continued synergy across all sectors and spheres of society in Namibia in attaining the national vision for a corruption-free Namibia.

The following sections in the Mineral Act make specific regulatory provisions for transparency in the mining industry of Namibia: section 45, 66, 76, 89 and 101. According to these sections, the following disclosures are mandatory:

- production records;
- productions plans; and
- records and financial statements and reports.

These disclosures are to be submitted to the MME by the holders of mining claims, reconnaissance licences, exclusive prospecting licences, mineral deposit retention licences and mining licences. Although the Mineral Act make provision for transparency, there is no monitoring body to monitor the implementation of this legislation.

Namibia has not joined the EITI to improve transparency in the mineral industry. However, Namibia is in the process of establishing a position on joining the EITI before the end of 2025.

2.36.8 Good Governance Evaluation

In terms of the Fraser Institute attractiveness index, Namibia was ranked 38th out of 62 jurisdictions surveyed in 2022, compared to 59 out of 84 jurisdictions in 2021. Namibia ranked sixth out of 16 African jurisdictions surveyed on overall investment attractiveness.

Namibia is regarded as a stable and predictable mining jurisdiction. It has a long history in mining and remains an attractive jurisdiction, in Africa, for investors. The significant oil and gas find off the coast of



Namibia will in all likelihood result in material inflows of revenue into the Namibian government coffers over the next few years. This in turn is likely to result in government spending on infrastructure and this will result in the country becoming even more attractive as a mining jurisdiction.

The increase on Namibia's overall score was a result of an improvement on the Best Practices Mineral Potential Index which increased by 12 points from 37 in 2021 to 53 in 2022⁸⁶⁰.

⁸⁶⁰ Why Africa, Namibia improves investment attractiveness as mining jurisdiction, May 2023. Available on <https://www.whyafrica.co.za/namibia-improves-investment-attractiveness-as-mining-jurisdiction/> accessed on 5 March 2024



2.37 Niger

2.37.1 Introduction

Bordered by Libya, Chad, Nigeria, Mali, Burkina Faso, Benin, and Algeria, Niger's expansive terrain encompasses vast deserts, rolling savannas, and the rugged peaks of the Air Mountains. The capital city, Niamey, situated along the Niger River, serves as the cultural and administrative hub.

Extractive activities play a major role in Niger's economy. Niger has Africa's highest-grade uranium ores and stands as the fourth-largest global uranium supplier (5% share in global uranium production). Uranium represents over 70% of Niger's export revenue and contributes approximately 5% to its GDP⁸⁶¹.

Additionally, the nation engages in the extraction of various other minerals, including gold, tin, gypsum, coal, and phosphates. The mining sector, primarily situated in the northern regions, is predominantly focused on uranium exploitation, with industrial operations targeting uranium, coal, and gold. Small-scale gold mining activities are observed in the Liptako region⁸⁶².

2.37.2 Policy and Legal Framework

2.37.2.1. Institutional and Policy Overview

Niger has a mixed legal system of civil law based on French civil law, Islamic law, and customary law. Niger has a constitution dating from 31 October 2010⁸⁶³.

In July 2020, Niger adopted a 15-year national mining policy which aims to diversify mining beyond uranium⁸⁶⁴. It is based on the following reference frameworks at an international level: the UN Millennium Development Goals; at a continental level: the African Union Agenda 2063; and at a regional level ECOWAS Vision 2020, ECOWAS Mining Directive and Policy and nationally, the 2010 Niger Constitution, Vision Niger 2035. It also takes into account other commitments specific to the mining sector to which Niger has subscribed (Global Reporting Initiatives, EITI), as well as best practice guidelines for the mining industry. The guiding principles of the national mining policy include but are not limited to⁸⁶⁵:

- mineral resources located in the soil and subsoil of Niger belong to the people of Niger;
- respect for the environment;
- sustainability;

⁸⁶¹ World Nuclear Association, Uranium in Niger, August 2023. Available on <https://world-nuclear.org/information-library/country-profiles/countries-g-n/niger.aspx>, accessed on 14 March 2024.

⁸⁶² UNECA, Niger ASM Profile. Available on <https://knowledge.uneca.org/ASM/Niger#:~:text=ASM%20in%20Niger%20mines%20mainly,Maradi%20areas%20in%20the%20south>, accessed on 14 March 2024.

⁸⁶³ Dullah Omar Institute, Overview – Niger. Available on <https://dullahomarinate.org.za/acjr/resource-centre/niger#:~:text=Niger%20has%20a%20mixed%20legal,dating%20from%2031%20October%202010>, accessed on 10 March 2024.

⁸⁶⁴ EITI, Niger. Available on <https://eiti.org/countries/niger> accessed on 27 April 2024.

⁸⁶⁵ Ministère des Mines, POLITIQUE MINIERE NATIONALE 2020 – 2035. Available on https://itieniger.ne/wp-content/uploads/2020/12/Politique-miniere-Nationale-2020-2035_.pdf, accessed on 28 March 2024.

- an inclusive approach;
- non-discrimination of investors;
- transparency and accountability;
- respect for gender;
- respect for human rights;
- respect for the rights of communities living near mining operations;
- duty of care.

The institutional framework of the mining sector comprises the Ministry of Mines, and other state institutions and players.

Niger created a Ministry of Mines and Hydraulics in 1979. Over time, this Ministry has undergone several changes to become the "Ministry of Mines" in November 2016. The Ministry of Mines is responsible for the design, development, implementation, monitoring and evaluation of national policies and strategies in the field of mining, in accordance with the guidelines laid down by the Government. Its responsibilities include setting up the legal framework for the mining sector and producing the basic geological infrastructure. It is also responsible for producing the basic geological infrastructure, negotiating mining contracts with investors, and monitoring the legal, financial, technical, environmental and social aspects of mining operations, as well as good governance of the sector. To carry out its missions, the Ministry of Mines is organised, under the terms of Decree No. 2017-219/PRN/MM of 23 March 2017, as follows:

- the Minister's Office;
- the General Secretariat;
- the General Services Inspectorate;
- the Direction Générale des Mines et des Carrières, comprising four National Technical Departments; and
- the Directorate General of Geology and Mining Cadastre⁸⁶⁶.

2.37.2.2. Relevant Legal Instruments

Other legislative and policy documents that govern mining in Niger are the Mining Policy Declaration (2001), the Mining Development Strategy (2007), the Mining Code (2007), the Economic and Social Development Plan (2017-2021).⁸⁶⁷

⁸⁶⁶ Ministère des Mines, POLITIQUE MINIERE NATIONALE 2020 – 2035. Available on https://itieniger.ne/wp-content/uploads/2020/12/Politique-miniere-Nationale-2020-2035_.pdf, accessed on 28 March 2024.

⁸⁶⁷ Ibid.



2.37.2.3. Foreign Ownership, Migrant and Local Labour Requirements

No information was found in this regard.

2.37.2.4. Artisanal Mining Sector

The country recognizes the significance of the artisanal mining sector and has established regulations to govern these activities. Artisanal mining is addressed within the legal framework of the Mining Code and associated regulations. Artisanal mining in Niger relates mainly to gold, salt, gypsum, and cassiterite. Coloured gemstone potential is reported in the Air Massif region in the north, Liptako region in the west and the Damagaram-Mounio, Zinder and Maradi areas in the south.⁸⁶⁸ It is estimated that there are over 60 artisanal gold mines across the country with 24 artisanal sites where gold is mined and processed using cyanide. Very few of these sites have any form of “government control or supervision”. It is estimated that two tonnes of gold are produced every year by Niger’s artisanal gold mines⁸⁶⁹.

2.37.2.5. Judicial System

- **Judicial independence**

Niger's independent judicial system is composed of four higher courts, namely the Court of Appeals, the Supreme Court, the High Court of Justice and the Court of State Security and the Constitutional Court. Lower courts such as lower criminal, civil and appeals courts also exist. The higher courts are:

- The Supreme Court of Niger is the highest judicial body of the State in administrative, judicial and financial matters. The Supreme Court hears cases appealed from lower civil and criminal courts, it only rules on the application of the law and constitutional questions: the lower Courts of Appeals may decide appeals on questions of fact and law.
- The Court of Appeals of Niger, one in each of Niger's eight regions, reviews questions of fact and law in criminal and civil law, and rulings may be appealed to the Supreme Court of Niger.
- The Constitutional Court of Niger has jurisdiction over constitutional and electoral matters, and is a provisionally organised court, responsible for ruling on the constitutionality of laws and ordinances, as well as compliance with international treaties and agreements.
- The State Security Court, established in the 1970s is a military court for trying offenses committed by the military and police.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2017 Niger made enforcing contracts easier by creating a specialized commercial court in Niamey and by adopting a new code of civil procedure that establishes time standards for key court events. Furthermore, in 2019, Niger made enforcing contracts easier by introducing a

⁸⁶⁸ UNECA, Niger ASM Profile. Available on <https://knowledge.uneca.org/ASM/Niger#:~:text=ASM%20in%20Niger%20mines%20mainly,Maradi%20areas%20in%20the%20south>, accessed on 10 March 2024.

⁸⁶⁹ Ibid.

simplified procedure for small claims, rules limiting adjournments and mediation as an alternative dispute resolution mechanism⁸⁷⁰.

• **Protection of Minority Investors**

According to the World Bank, in 2015, Niger strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions. In 2017, Niger strengthened minority investor protections by introducing a provision whereby requires the winning party's legal expenses are reimbursed by the losing party⁸⁷¹.

2.37.2.6. Arbitration

Niger is a party to the New York Convention, facilitating international arbitration for dispute resolution in the mining sector.

2.37.3 Licencing and Permit Regime

2.37.3.1. Types of Licences and Permits

The principal types of mining licenses in Niger may include:

- Prospecting licenses;
- Exploration permits;
- Small-scale mining permits;
- Large-scale mining permits;
- Artisanal mining licenses;
- Individual cards; and
- Trading licenses.

Small-scale mining permits shall be valid for a period of 5 years. They may be renewed for periods of 5 years each until depletion of deposits for which they have been issued. Large-scale mining licenses shall be valid for a period of 10 years. They may be renewed for periods of 5 years each until depletion of deposits for which they have been issued. Renewal application files and draft agreement shall be forwarded to the Minister of Mines at least one year before the expiry date of the mining permit.

Prior to the issuance of prospecting permit as well as a mining license, a mining agreement shall be signed between the Ministry of Mine and applicants. Mining Agreements shall set forth the rights and duties of

⁸⁷⁰ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 10 March 2024.

⁸⁷¹ Ibid.

the parties in relation to the legal, financial, fiscal and social requirements applicable to prospecting and mining operations during the validity period of such agreements. These agreements shall cover prospecting and exploration periods as well as the first validity period of mining permits. They shall be valid for a maximum period of twenty years and can be renegotiated at the time of renewal of mining permits⁸⁷².

2.37.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.37.4 Taxation

2.37.4.1. Mining Royalties and Taxes

Article 84 of the Mining Act provides for royalties payable for extracted mine substances. The tax base is the market value of the final product. This royalty shall be payable when the substances are removed from stocks for sale. The rate of the mining royalty is 5.5%. This royalty shall be paid by all mine title holders, except artisanal mining license holders. Mining royalties shall be deducted in calculating taxable profits⁸⁷³.

In Niger, the State, through the Ministry of Mines and its supervised entities, is involved in the exploration, research, production and marketing of mineral marketing of mineral substances. Under current mining law, the government automatically holds 10% of free shares in the capital of mining companies and may subscribe for up to an additional 30% in cash or in kind⁸⁷⁴.

2.37.5 Mineral Beneficiation

No information was found in this regard.

2.37.6 Macroeconomics

Real GDP growth rebounded to 7.2% in 2022, on strong performance across all sectors, particularly primary and tertiary services (which grew 7%), on the supply side and ongoing major infrastructure projects on the demand side. Inflation exceeded the west African Economic and Monetary Union target of 3%, fuelled by higher consumer food prices and the deteriorating international economic situation. The budget deficit widened to 6.6% of GDP in 2022 from 6.1% in 2021 due to public spending rising more than public revenue. Constraints on budgetary performance continue to be both structural (tax base, economic structure, economic and social needs, and the like) and cyclical (lower global price for uranium, closing of the border with Nigeria)⁸⁷⁵.

⁸⁷² Ministry of Mines and Energy , Mining Code 2007. https://www.howwemadeitinafrica.com/wp-content/uploads/2010/05/Niger_-_Mining-Code.pdf accessed on 28 March 2024.

⁸⁷³ National Implementation Scheme for the Extractive Industries Transparency Initiative Extractive Industries in Niger (DN/ITIE-Niger), EITI 2020 Report. Available on <https://itieniger.ne/wp-content/uploads/2022/12/Rapport-ITIE-Niger-2020-Final-Signe-311222.pdf>, accessed on 28 March 2024.

⁸⁷⁴ Ibid.

⁸⁷⁵ African Development Bank, Niger Economic Outlook. Available on <https://www.afdb.org/en/countries-west-africa-niger/niger-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments,projects%20on%20the%20demand%20side>, accessed on 10 March 2024.

2.37.7 Governance and Risk Ratings

2.37.7.1. Ease of Doing Business

Niger ranks 132 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁸⁷⁶.

2.37.7.2. Investment Climate

Niger's self-appointed military government has temporarily suspended the granting of new mining licences and ordered an audit of the sector, the mines ministry said. The ministry did not provide a reason for the licence suspension. The West African nation has the continent's highest-grade uranium ores and is the world's seventh-biggest producer of uranium, the radioactive metal used as fuel for nuclear energy⁸⁷⁷.

2.37.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Niger based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁸⁷⁸. Niger is a party to the EITI initiative. It is however not included in the Fraser Institute perception index due to a lack of participation.

2.37.8 Good Governance Evaluation

Niger is subject to political instability and turmoil. The legal framework, although present is subject to governmental interference, corruption and poor governance. Niger was expelled from the EITI program but was re-admitted in February 2020. With Niger being a significant producer of uranium and having reserves of gold, phosphates and tin, Niger has the ability to position itself as a mining jurisdiction. Niger has committed, through the EITI framework, to aim to use extractives data to inform public debate. Formalisation of artisanal mining, following the gold rush on the Aïr mountains, is also a key priority of the government according to EITI⁸⁷⁹. Niger has a limited pool of skilled labour, lack of regulatory clarity, and unreliable supply chains. A major concern remains child labour, particularly within the mining industry. While the Department of Labor found that Niger made moderate advancement in efforts to eliminate the worst forms of child labour in 2021, children in Niger are subjected to the worst forms of child labour, including in the mining sector⁸⁸⁰. Niger will need to ensure that it transforms the informal mining sector to eliminate all forms of child labour and human trafficking if it wishes to attract foreign direct investment and sustainably grow its mining sector.

⁸⁷⁶ Doing Business 2020, Economy Profile Niger. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/n/niger/NER.pdf> accessed on 10 March 2024.

⁸⁷⁷ Reuters, Niger junta temporarily stops granting new mining licences, January 2024. Available on <https://www.reuters.com/world/africa/niger-junta-temporarily-stops-granting-new-mining-licences-2024-01-25/> accessed on 10 March 2024.

⁸⁷⁸ Allianz, Economic Research. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Niger.html accessed on 10 March 2024.

⁸⁷⁹ EITI, Niger. Available on <https://eiti.org/countries/niger> accessed on 10 March 2024.

⁸⁸⁰ U.S. Department of State, 2023 Investment Climate Statements: Niger. Available on <https://www.state.gov/reports/2023-investment-climate-statements/niger/> accessed on 28 March 2024.

2.38 Nigeria

2.38.1 Introduction

Nigeria is bordered by Niger, Chad, Cameroon, the Gulf of Guinea of the Atlantic Ocean, and by Benin. Nigeria is not only large in area but also Africa's most populous country⁸⁸¹.

The mining sector in Nigeria is small. Nigeria has a well-developed oil and gas economy. Oil was discovered in 1956 in Nigeria. From there on, the focus was almost exclusively on oil and gas and the mining industry consequently received little or no investment. The oil industry developed quickly and for many years, more crude oil was produced in Nigeria than in any other country in Africa. In recent years, however, unplanned production outages have led to the country's crude oil production temporarily falling below that of Angola, the second-highest producing country in Africa⁸⁸².

Nigeria is endowed with a variety of natural resources ranging from precious metals to industrial metals such as barites, gypsum and kaolin. Most of these are yet to be exploited. The levels of mining in the country are extremely low in relation to the mineral wealth, making Nigeria a very interesting and relevant jurisdiction from a mining perspective. Known deposits of critical raw materials include barite, bauxite, bentonite, bismuth, cassiterite, iron ore, kaolin, lead, zinc, tantalite, tin and tungsten⁸⁸³.

2.38.2 Policy and Legal Framework

2.38.2.1. Institutional and Policy Overview

The Ministry of Mines and Steel Development is responsible for mining activity regulation in Nigeria. The Minister of Mines and Steel Development is empowered by the Minerals and Mining Act 2007 ("the Act") to ensure the sustainable development of Nigeria's mineral resources. The Minister is furthermore mandated to *inter alia* develop the infrastructure required for mining activities, the creation of a geoscientific databank for the collating of detailed data to determine the identity, quantity and quality of Nigeria's Mineral Resources⁸⁸⁴.

The Government of Nigeria has identified mining as an important and relevant sector that requires development and promotion. The Government has accepted that the decline of the mining industry started with the discovery of oil to an extent that Nigeria became a mono product economy and vulnerable to international oil politics.

The decline of the minerals industry led to a strong presence of illegal miners whose activities are characterized by inefficient mining, illegal trading of highly priced minerals, severe ecological degradation, spread of diseases and huge loss of revenue to the government through smuggling. In order to redress

⁸⁸¹ Britannica, Countries of the World – Nigeria. Available on <https://www.britannica.com/place/Nigeria>, accessed on 27 April 2024.

⁸⁸² U.S. Energy Information Administration, Nigeria was the top crude oil producer in Africa, but disruptions threaten production, June 2023. Available on <https://www.eia.gov/todayinenergy/detail.php?id=56840>, accessed on 17 March 2024.

⁸⁸³ Ministry of Foreign Affairs, Nigeria Natural Resources. Available on <https://foreignaffairs.gov.ng/nigeria/natural-resources/>, accessed on 17 March 2024.

⁸⁸⁴ Ministry of Mines and Steel Development. Available on <https://portal.minesandsteel.gov.ng/>.

this situation, the Government has adopted a National Policy on Solid Minerals. This policy shall ensure the orderly development of the mineral resources of country⁸⁸⁵. The principal and stated aims of the policy are to allow the Solid Minerals Ministry to act on all matters related to deregulation, management, operation, and environmental sanitisation of the Solid Minerals sector⁸⁸⁶.

According to Nigeria's National Development Plan (2021 – 2025), the Government acknowledges the potential importance of the mining industry and re-iterates the aims stated in the 2016 mining policy document entitled the *“Roadmap for the Growth and Development of the Nigerian Mining Industry:”*

“Government launched a new mining roadmap in 2016, entitled the “Roadmap for the Growth and Development of the Nigerian Mining Industry”, which aspired to “build a world-class minerals and mining ecosystem designed to serve a targeted domestic and export market. The objective was to position the sector to contribute 3.0 percent to GDP by 2025. Reaching this goal would lead to Nigeria’s global competitiveness and industrialisation in line with the African Mining Vision⁸⁸⁷.”

The Mines Inspectorate Department is the technical department that is solely responsible for:

- Supervision and evaluation of all reconnaissance, exploration and other mining activities;
- Establishment of health and safety regulations to ensure safe mining practices by operators; records of all mineral production nationwide; and
- Inspection and investigation necessary for ensuring compliance with applicable regulation.

Other relevant departments that regulate mining activity in Nigeria are the Artisanal and Small-scale Mining Department; the Mines Environmental Compliance Department; and the Mining Cadastre Office.

2.38.2.2. Relevant Legal Instruments

The mineral sector is regulated by the Act. The Act repealed the Minerals and Mining Act, No. 34 of 1999 and vests control and ownership of all properties and minerals in, under or upon, any land in Nigeria in the Federal Government⁸⁸⁸. The Act needs to be read in conjunction with the Minerals and Mining Regulations of 2011.

The Nigeria Minerals and Mining (Amendment) Bill, 2023 has been tabled. The bill seeks to amend the Act, in order to align it with current realities with a view to attracting potential investors into the sector⁸⁸⁹.

⁸⁸⁵ Ibid.

⁸⁸⁶ Nigerian govt approves draft policy on solid minerals development, October 2023. Available on <https://www.premiumtimesng.com/news/more-news/636402-nigerian-govt-approves-draft-policy-on-solid-minerals-development.html#:~:text=The%20policy%20will%20empower%20the,and%20securing%20Nigeria%27s%20economic%20survival>. Accessed on 17 March 2024.

⁸⁸⁷ Federal Ministry of Finance, Budget and National Planning, National Development Plan (2021 – 2025) Volume 1. Available on https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025_AA_FINAL_PRINTING.pdf, accessed on 17 March 2024.

⁸⁸⁸ Legal 500, Overview of The Nigerian Mining Sector: Challenges and Opportunities, August 2023. Available on <https://www.legal500.com/developments/thought-leadership/overview-of-the-nigerian-mining-sector-challenges-and-opportunities/#:~:text=The%20mineral%20sector%20is%20regulated,the%20Federal%20Government%5B8%5D>, accessed on 17 March 2024.

⁸⁸⁹ Report on NEITI Solid Minerals Industry Audit – Impact built on blocking leakages to grow revenue. Available on <https://eiti.org/sites/default/files/2024-01/NEITI-SMA-2021-Report.pdf> accessed on 17 March 2024.

Other relevant legal instruments that regulate the mining industry in Nigeria include: the Land Use Act of 1978, the Companies and Allied Matters Act of 2020, the National Environmental Standards, Regulations Enforcement (Establishment) Act of 2007, the Environmental Impact Assessment Act¹³, Mines and Quarries (Control of Building etc.) Act 14, Explosives Act 15 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act⁸⁹⁰.

2.38.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Foreign investors who wish to acquire mining rights in Nigeria may only do so through a company incorporated in Nigeria. Such a company may be wholly foreign-owned. Companies that are wholly foreign-owned are not restricted from obtaining mining rights. It is also not necessary for a foreign party to have a domestic partner⁸⁹¹.

2.38.2.4. Artisanal Mining Sector

The mining sector in Nigeria is largely dominated by activities of artisanal and small-scale miners. The main minerals mined in the informal sector include gemstones and precious metals. However, most of the production volume from the sector is driven by quarrying activities, which is mostly dominated by manufacturing and construction companies. As of 2020, the mining sector contributed about 0.5% to Nigeria's GDP, and accounts for 0.3% of national employment and 0.02% of exports. This, according to the Nigerian Extractive Industries Transparency Initiative's "*Solid Minerals Industry Report 2020*" is certainly a negative trend or development when compared to the sector's historic 5% contribution in the 1960s and 70s, when the economy was largely sustained by agriculture and solid minerals⁸⁹².

A large number of Nigerians, especially in the rural areas, rely on informal mining activities for their livelihood⁸⁹³.

The Act provides for the regulation of artisanal and small-scale miners by way of a small-scale mining lease, which confers an exclusive right to carry out artisanal, alluvial or other forms of mining operations involving the use of low-level technology or methods within the lease area, which cannot exceed three square kilometres. Furthermore, Nigeria has the Artisanal and Small-scale Mining Department. This department is responsible for monitoring and overseeing of all small-scale mining activities in the country.

Notwithstanding this regulation, the artisanal and small-scale mining industry in Nigeria remains largely informal and subject to dangerous practices.

⁸⁹⁰ Mondaq, Nigeria: A Guide to Navigating the Legal Regime of The Nigerian Mining Sector, June 2022. Available on <https://www.mondaq.com/nigeria/renewables/1199654/a-guide-to-navigating-the-legal-regime-of-the-nigerian-mining-sector>, accessed on 17 March 2024.

⁸⁹¹ Lexology, In brief: mining rights and title in Nigeria. Available on <https://www.lexology.com/library/detail.aspx?g=cf9e8858-8e3a-4956-a61d-1ddf435f4696#:~:text=Foreign%20parties%20that%20wish%20to,restricted%20from%20obtaining%20mining%20rights>. Accessed on 17 March 2024.

⁸⁹² NEITI Solid Minerals Industry Report 2020. Available on <https://neiti.gov.ng/cms/wp-content/uploads/2022/08/Final-2020-SMA-Report.pdf> accessed 17 March 2024.

⁸⁹³ NEITI Solid Minerals Industry Report 2020. Available on <https://neiti.gov.ng/cms/wp-content/uploads/2022/08/Final-2020-SMA-Report.pdf> accessed on 17 March 2024.

According to the United Nations (UN), certain things should be done to improve the artisanal and small-scale mining industry in Nigeria. These include but are not limited to:

- Reviewing and improving the legal and regulatory framework so that it can take into consideration the rights of miners and communities while bridging the clashes between the federal and state governments with regard to the administration of land and mineral resources;
- Provide appropriate support to artisanal and small-scale miners in order to improve their mining, processing and marketing practices towards increased revenue generation;
- Artisanal and small-scale workers need to be well-trained and equipped to minimize their environmental impact and improve their health/safety practices, which can have an adverse impact not only on the workers but also on surrounding community members' overtime; and
- The practice of child labour and constrained access to education for children working in the sector needs to be closely monitored and prohibited⁸⁹⁴.

2.38.2.5. Judicial System

- **Judicial independence**

The Nigerian judiciary is generally not seen as independent. Although the Constitution provides for the separation of powers principle, executive interference occurs. One example relates to the 2019 replacement of Chief Justice Walter Onnoghen, who was suspended on 25 January and replaced by Ibrahim Tanko Mohammad, which decision was taken by Nigeria's President, Muhammadu Buhari, who insisted he had "acted in compliance" with an order issued by a tribunal to decide on alleged breaches of the code of conduct for public officials.

The independent UN Special Rapporteur on the independence of judges and lawyers, Diego Garcia-Sayán stated: *"International human rights standards provide that judges may be dismissed only on serious grounds of misconduct or incompetence," he said. "Any decision to suspend or remove a judge from office should be fair and should be taken by an independent authority, such as a judicial council or a court."*⁸⁹⁵

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2019, Nigeria made enforcing contracts easier by issuing new rules of civil procedure for small claims courts, which limit adjournments to unforeseen and exceptional circumstances. In 2020, Nigeria made enforcing contracts even easier by introducing a pretrial conference as part of the case management techniques used in court. This reform made enforcing contracts easier

⁸⁹⁴ United Nations Development Programme, Beaming the Light on A Hidden Sector: Artisanal and Small-Scale Mining (ASM) As A Vital Sector for Sustainable Development in Nigeria, December 2023. Available on <https://www.undp.org/nigeria/blog/beaming-light-hidden-sector-artisanal-and-small-scale-mining-asm-vital-sector-sustainable-development-nigeria>, accessed on 17 March 2024.

⁸⁹⁵ UN News Global perspective Human stories, Judicial independence under threat in Nigeria, warns UN rights expert, February 2019. Available on <https://news.un.org/en/story/2019/02/1032391>, accessed on 17 March 2024.

by issuing new rules of civil procedure for small claims courts, which limit adjournments to unforeseen and exceptional circumstances⁸⁹⁶.

- **Protection of Minority Investors**

The World Bank notes that in 2016, Nigeria strengthened minority investor protections by requiring that related-party transactions be subject to external review and to approval by disinterested shareholders⁸⁹⁷.

2.38.2.6. Arbitration

On 23 May 2023, Nigeria introduced the 2023 Arbitration and Mediation Act (the New Act), repealing its 35-year-old arbitration act (the 1988 Nigerian Arbitration and Conciliation Act, Cap A18). The New Act aims to “provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation”. It also “*make[s] applicable, the convention on the recognition and enforcement of foreign arbitral awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration.*”⁸⁹⁸

This new legislation is primarily based on the 2006 the United Nations Commission on International Trade Law Model Law and applies to both domestic and international arbitrations. It significantly elevates Nigeria’s arbitration framework and creates increased confidence in foreign investors that any disputes that they have with Nigerian private companies, or the State will be heard in a fair and timeous manner. This has a positive impact on the image of Nigeria as an investment destination.

2.38.3 Licencing and Permit Regime

2.38.3.1. Types of Licences and Permits

Mineral rights/titles provided under the Act include:

- **Reconnaissance Permit**

This is a non-transferable, annual non-exclusive permit granted for the purpose of reconnaissance only. It is for a term of one year only and renewable annually. It allows holders the right to access, enter or fly over any land, obtain, and remove surface samples in search of mineral sources.

- **Exploration License**

Exclusive License for the exploration of all minerals for the duration of three years, renewable for further two periods of two years each. Granted over land area not exceeding 200 square kilometres and not subject to an existing exploration license, mining lease, small-scale mining lease or quarry lease. Unlike

⁸⁹⁶ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 17 March 2024

⁸⁹⁷ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 17 March 2024.

⁸⁹⁸ Aceris Law LLC, Arbitration in Nigeria: The 2023 Reform, August 2023. Available on <https://www.acerislaw.com/arbitration-in-nigeria-the-2023-reform/> accessed on 17 March 2024.

Reconnaissance Permit, the right holder may excavate and conduct bulk sampling and testing of mineral resources, export samples and sell resources within stated limits.

- **Small Scale Mining Lease**

Exclusive lease to carry out small-scale mining which covers an area greater than five acres but not exceeding three square kilometres. Akin to Artisanal and Small-scale miners, it is for a period of five years and renewable for another five years only.

- **Mining Lease**

Granted for a period of twenty-five years renewable every twenty-four years, it is an exclusive permit granted in respect of an area not exceeding fifty square kilometres and is not within an Exploration License Area or a Small-Scale Mining Area save granted to the holder of the Exploration License or Small-Scale Mining Lease covering the given area.

- **Quarrying Lease**

A five-year lease or less granted in respect of any area of land not exceeding 5 hectares. Applies to all naturally occurring quarriable minerals such as marble, limestone, sand, stone, late rite, mica, pipe clay, slate, asbestos, clay, gypsum, gravel, which may also be lawfully extracted under Mining Leases. It prohibits extracting any quarriable mineral from a quarry including sand dredging in the navigable water ways or else for industrial use without the grant of a lease or license by the Minister.

- **Mineral Buying Centre Licence**

Permits warehousing, storage and trading in mineral resources.

- **Possess or Purchase License**

This right allows persons not in ownership or possession of any of the other mineral right to engage directly in mineral trading and export. The 2011 Regulations makes it an offence to possess or move mineral resources from one place to another without the requisite license⁸⁹⁹.

2.38.3.2. Transferability of Mineral Rights

Except for reconnaissance permits, which are not transferrable at all, all of the other mineral titles in Nigeria can be transferred or assigned to a third party upon application to the Mining Cadastre Office and upon fulfilment of specified conditions and payment of all necessary fees.

The Nigeria Mining Cadastre Office was established in 2007 with the responsibility for the Administration and Management of Mineral Titles in Nigeria in accordance with Section 5 (1) of the Act⁹⁰⁰.

⁸⁹⁹ Mondaq, Nigeria: A Guide to Navigating the Legal Regime of The Nigerian Mining Sector, June 2022. Available on <https://www.mondaq.com/nigeria/renewables/1199654/a-guide-to-navigating-the-legal-regime-of-the-nigerian-mining-sector>, accessed on 17 March 2024.

⁹⁰⁰ Nigeria Mining Cadastre Office. Available on <https://www.miningcadastre.gov.ng/about-us> accessed on 17 March 2024.

2.38.4 Taxation

2.38.4.1. Mining Royalties and Taxes

Royalties are payable on minerals obtained while mining or exploration at rates ranging from 3 to 5% of the market value of the mineral. The Minister of Mines and Steel Development has the discretion to waive the payment of royalty's if a mineral is exported solely for the purpose of analysis or experiment or as a scientific specimen. In addition, the Minister may, upon the approval of the Federal Executive Council, defer the payment of any royalty on any mineral for a specified period. Annual service fees are payable for the maintenance of mineral titles⁹⁰¹.

From a corporation's tax perspective companies that are residents for tax purposes in Nigeria are liable to corporate income tax (CIT) on their worldwide income while non-residents are subject to CIT on their Nigeria-source income only. The CIT rate is 30% for large companies (i.e. companies with gross turnover greater than 100 million Nigerian naira), assessed on a preceding year basis (i.e. tax is charged on profits for the accounting year ending in the year preceding assessment)⁹⁰².

2.38.5 Mineral Beneficiation

The Minister of Mines in Nigeria recently announced a new Government initiative and strategy that is aimed at providing greater focus on the beneficiation of minerals and metals mined within the country. According to the ministry, any new applicant will need to show, upon making an application for a mineral licence, what business plan they have in relation to "value addition" to the proposed mineral. This would be a prerequisite to granting a licence⁹⁰³. The Act does not have a stand-alone section on beneficiation. It is not dealt with in detail. The Government appears to be using policy to drive this new initiative

2.38.6 Macroeconomics

Real GDP growth fell to 3.3% in 2022 from 3.6% in 2021, precipitated mainly by a decline in oil production. This led to a 5% shrinkage in the overall industry, which was offset by expansion in services (7%) and agriculture (2%). On the demand side, the decline in GDP growth was driven by a contraction in public consumption (2.5%) and net exports (80%). Growth in income per capita declined to 0.8% from 1.2% in 2021. The fiscal deficit narrowed to 4.9% of GDP in 2022 from 5.2% in 2021 and was financed by borrowing, bringing public debt to \$103.1 billion (about 22% of GDP) from \$92.6 billion in 2021. Inflation peaked at a two-decade high of 18.8%, fuelled by energy and food price increases and passthrough effects of exchange rate depreciation. The multidimensional poverty rate (63%) and unemployment (33.3%) remained high⁹⁰⁴.

⁹⁰¹ Lexology, At a glance: mining duties, royalties and taxes in Nigeria. Available on <https://www.lexology.com/library/detail.aspx?g=c4ea8208-cda7-4f5d-9992-3a5a9aa914ea>, accessed on 17 March 2024.

⁹⁰² PwC, Nigeria Corporate - Taxes on corporate income, February 2024. Available on <https://taxsummaries.pwc.com/nigeria/corporate/taxes-on-corporate-income> accessed on 27 April 2024.

⁹⁰³ The Herald, No beneficiation, no license, Nigeria tells mining firms, October 2023. Available on <https://www.herald.co.zw/no-beneficiation-no-licence-nigeria-tells-mining-firms/> accessed on 17 March 2024.

⁹⁰⁴ African Development Bank, Nigeria Economic Outlook. Available on <https://www.afdb.org/en/countries-west-africa-nigeria/nigeria-economic-outlook> accessed on 17 March 2024.

2.38.7 Governance and Risk Ratings

2.38.7.1. Ease of Doing Business

According to the World Bank Group, Nigeria is ranked 131 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings⁹⁰⁵.

2.38.7.2. Investment Climate

According to the Nigerian National Development Plan, the country intends to foster an investment-friendly mineral sector that is well-managed with transparent revenues and good governance. Establishing a sustainable mining sector inclusive of artisanal mining, environmentally friendly and socially responsible, will enhance Nigeria's mineral attractiveness to exploration and mining investors. The mineral sector can improve rural livelihoods and stimulate job creation while promoting inclusive and sustained economic growth. Achieving these outcomes will allow the mineral sector to contribute significantly more to GDP growth and socio-economic development to support Nigeria's global competitiveness and industrialisation⁹⁰⁶.

2.38.7.3. Risk Ratings

Nigeria joined the EITI initiative in 2007. According to the EITI, Nigeria is world's 12th largest producer of oil and the largest in Africa. It also holds the largest natural gas reserves on the continent. The oil and gas sector plays a significant role in the economy, contributing about 65% of government revenue and over 85% of total exports. Nigeria also has a largely underdeveloped mining sector, which makes up less than 1% of the country's GDP. Nigeria achieved a moderate overall score (72 points) in implementing the 2019 EITI Standard in November 2023⁹⁰⁷.

Global insurer Allianz attributes a poor rating to Nigeria based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C3 - sensitive risk for enterprise⁹⁰⁸.

2.38.8 Good Governance Evaluation

According to the US State Department's report on the investment climate in Nigeria, reform of Nigeria's power sector is ongoing, but investor confidence continues to be weakened by regulatory uncertainty and limited domestic natural gas supply. Security remains a concern to investors in Nigeria due to violent crime, kidnappings for ransom, and terrorism in certain parts of the country⁹⁰⁹.

⁹⁰⁵ Doing Business 2020, Economy Profile Nigeria. Available on

<https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf> accessed on 17 March 2024.

⁹⁰⁶ Federal Ministry of Finance, Budget and National Planning, National Development Plan (2021 – 2025) Volume 1. Available on https://nationalplanning.gov.ng/wp-content/uploads/2021/12/NDP-2021-2025_AA_FINAL_PRINTING.pdf accessed on 17 March 2024

⁹⁰⁷ EITI, Nigeria. Available on <https://eiti.org/countries/nigeria> accessed on 17 March 2024.

⁹⁰⁸ Allianz, Economic Research. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Nigeria.html accessed on 17 March 2024.

⁹⁰⁹ U.S. Department of State, 2023 Investment Climate Statements: Nigeria <https://www.state.gov/reports/2023-investment-climate-statements/nigeria/#:~:text=Reform%20of%20Nigeria%27s%20power%20sector,certain%20parts%20of%20the%20country>. Accessed on 17 March 2024.

Although Nigeria's mining industry is small, the Government has identified it as a growth area. The country is endowed with vast mineral wealth and much of this is relevant to the green transition. As Nigeria moves its focus to mining, away from oil and gas production, it intends to modernise its mining laws. This is evident from the recent proposed amendment to the Act in the form of the Nigeria Minerals and Mining (Amendment) Bill, 2023. The bill seeks to amend the Act in order to align it with current realities with a view to attracting potential investors into the sector⁹¹⁰. Furthermore, initiatives such as modernisation the country's arbitration laws and being a member of the EITI initiative assist in attracting foreign investment. Nigeria appears to be undertaking several positive measures to ensure that its mining industry is the beneficiary of foreign investment.

⁹¹⁰ NEITI Solid Minerals Industry Report 2021. Available on <https://eiti.org/sites/default/files/2024-01/NEITI-SMA-2021-Report.pdf> accessed on 17 March 2024.



2.39 Republic of The Congo

2.39.1 Introduction

The Republic of the Congo, also referred to as Congo-Brazzaville (Congo) is a country located on the western coast of Central Africa to the west of the Congo River. It is bordered by Gabon, Cameroon, the Central African Republic, the Democratic Republic of the Congo, the Angolan exclave of Cabinda and the Atlantic Ocean⁹¹¹.

The Republic of the Congo's economy is heavily dependent on the extractive sector, which contributed 66% of the government's total revenue in 2021. It is a leading producer of crude oil and produces gold and diamonds through artisanal mining⁹¹². The Congo ranks in the top ten African oil producers. Nearly all the country's hydrocarbons are produced offshore.

The country is endowed with abundant mineral deposits, yet its mining sector remains largely underdeveloped⁹¹³. The Congo is believed to have significant reserves of copper, lead, zinc, silver, coltan, cassiterite, wolframite, nickel, tungsten, rare earths, potash, phosphates, sandstone oil, cobalt and bauxite⁹¹⁴.

2.39.2 Policy and Legal Framework

2.39.2.1. Institutional and Policy Overview

The Ministry of Mines and Geology (Ministry) is responsible for the promotion and control of mining exploration and exploitation activities in the Congo. The Ministry is also responsible for implementing and monitoring of government policy and the drafting of legislative and regulatory provisions applicable to the mining sector. The Ministry is supported by a few key departments, forming a regulatory structure that oversees mining in the Congo⁹¹⁵.

The Minister of Mines and Geology (Minister) is tasked with the implementation of national policy in the mining industry. The main objectives are to include promoting, developing and assisting the mining and geological sectors. Ministerial priorities relate to economic development plans and seeking funding, promoting the industrial development of resources, drafting regulations and negotiating appropriate cooperation agreements with private sector participants.

- Decree no. 2018-201 of 23 May 2018 establishes the Direction Générale des Mines as a technical assistant office to the Minister. It supervises mining development policies, manages the mining cadastre, applies regulations, participates in development and investment studies, manages the national mining heritage, promotes private initiatives, cooperates with national and international bodies, issues technical

⁹¹¹ Britannica, Overview – Republic of the Congo. Available on <https://www.britannica.com/place/Republic-of-the-Congo>.

⁹¹² EITI, Republic of the Congo. Available on <https://eiti.org/countries/republic-congo>, accessed on 7 May 2024.

⁹¹³ Energy Capital & Power, The Congo Unearthed: A Look at the Republic of the Congo's Mining Sector, February 2022. Available on <https://energycapitalpower.com/the-congo-unearthed-a-look-at-the-republic-of-the-congos-mining-sector/>, accessed on 27 April 2024.

⁹¹⁴ Lexology, Mining legislation in the Republic of the Congo. Available on <https://www.lexology.com/library/detail.aspx?g=f3e88e8f-dadc-413b-9b91-2970686830bd>, accessed on 22 March 2024.

⁹¹⁵ Initiative pour la Transparence dans les Industries Extractives en République du Congo, EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/Rapport%20ITIE%20Congo%202021.pdf> accessed on 23 March 2024.

recommendations, checks the conformity of equipment, manages mining agreements and ensures the protection of the environment. It is also involved in negotiating and awarding mining contracts and permits.

- Decree no. 2018-200 of 23 May 2018 creates the General Directorate of Geology and Mining Cadastre to assist the Ministry in the fields of geology and mining cadastre. Its responsibilities include the application of regulations, the preparation of data for the mining cadastre, development and investment studies, promoting the exchange of scientific information, formulating technical recommendations, participating in the negotiation of agreements, managing mining titles and mining data, as well as producing geological maps.
- Decree No. 2008-336 of 22 September 2008 establishes the Kimberley Process Permanent Secretariat, which is an administrative structure attached to the Ministry. The Kimberley Process Permanent Secretariat is the body responsible for guiding, supervising and coordinating all activities relating to the Kimberley Process and diamond extraction in the Congo.
- Decree no. 2008-338 of 22 September 2008 established the Bureau d'Expertise, d'Evaluation et Certification des Substances Minérales Précieuses (BEEC). The BEEC operates under the supervision of a Permanent Secretariat and in accordance with the terms of application of the Kimberley Process Certification Scheme as defined by Decree No. 2008-337 of 22 September 2008. This is the body specialising in the appraisal, evaluation and certification of precious mineral substances. The body's main aims are:
 - the appraisal, sorting, categorisation and certification of precious mineral substances;
 - the evaluation of batches of precious mineral substances;
 - issuing certificates of appraisal;
 - keeping statistics; and
 - monitoring financial transactions and combating fraud and counterfeiting.

2.39.2.2. Relevant Legal Instruments

The mining sector in the Congo is governed by Law No. 4-2005 of April 11, 2005 on Mining Code (Mining Code); Law No. 24-2010 of December 30, 2010 fixing the rates and rules for levying mining titles; Decree No. 2007-274 of May 21, 2007 establishing the conditions for prospection, exploration and exploitation of minerals and the conditions for the exercise of administrative monitoring; Decree No. 2007-293 of May 31, 2007 establishing technical guidelines for quarries and geomaterials mining; and Decree No. 2008-338 of September 22, 2008 establishing and organizing the Bureau of expertise, evaluation and certification of precious minerals⁹¹⁶.

⁹¹⁶ Lexology, Mining legislation in the Republic of the Congo. Available on <https://www.lexology.com/library/detail.aspx?g=f3e0008f-dadc-413b-9b91-2970686830bd>, accessed on 22 March 2024.

The Mining Code applies to the prospecting, research, exploitation, possession, movement and processing of mineral or fossil substances across the country. Hydrocarbons are excluded from the scope of the Mining Code. Apart from the Mining Code and the above-mentioned texts, other texts are governing mining activities in Congo. These include Law No. 003/91 of April 23, 1991 on the protection of the environment, and Law No. 6-2003 of January 18, 2003 establishing the Investment Charter⁹¹⁷.

Finally, Law No. 003/91 of April 23, 1991 on the protection of the environment includes provisions for the protection of human settlements, fauna and flora, air, water and soil. This law defines the rules applicable to classified facilities and determines taxes and fees relating thereof. In addition, under this law, no economic development project can be implemented without an environmental impact assessment having first been undertaken⁹¹⁸.

2.39.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Minerals of the Congo are considered national mining heritage and are the property of the State, in accordance with the Constitution of 2002. Foreign companies are permitted to apply for mining licences and there are no restrictions relating to foreign ownership.

2.39.2.4. Artisanal Mining Sector

It is estimated that between 5,000-10,000 miners work in the informal small-scale mining sector. These miners are collectively responsible for the release of as much as 2.3 tonnes of mercury into the environment every year from both rudimentary and semi-mechanised gold refining operations. The use of mercury in Congo is of particular concern given the nation's global environmental significance. 65% of the country lies within the Congo Basin, Africa's largest contiguous tropical forest. A region of incredible biodiversity, the forest is also one of world's largest carbon sinks, making the continued health of the forest vital to global climate stability.

It is estimated that over 90% of Congo's gold miners operate informally. This endangers the Congo Basin landscape and the indigenous communities that live there⁹¹⁹.

Informality in the Congolese artisanal and small-scale mining sector makes it difficult for artisanal miners to organize and to access the traditional sources of financing, such as banks, which would allow them to transition to responsible and efficient processing technologies. The Congolese government is committed to reducing mercury pollution, having ratified the Minamata Convention in 2010 and completed an Artisanal Mining National Action Plan in December 2019 with the objective to formalize the sector by strengthening legal, institutional, and financial aspects while reducing and eliminating mercury use⁹²⁰.

2.39.2.5. Judicial System

- **Judicial independence**

⁹¹⁷ Ibid.

⁹¹⁸ Ibid.

⁹¹⁹ Planet Gold, Republic of the Congo. Available on <https://www.planetgold.org/republic-congo>, accessed on 21 March 2024.

⁹²⁰ Planet Gold, Republic of the Congo. Available on <https://www.planetgold.org/republic-congo>, accessed on 21 March 2024.

Congo's legal system is based on French civil law and Congolese customary law. The highest courts are the Supreme Court and the Constitutional Court. The High Court of Justice, outside the judicial authority, tries cases involving treason by the president. The subordinate courts are the Court of Audit and Budgetary Discipline, courts of appeal, regional and district courts, employment tribunals and juvenile courts⁹²¹.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, the Congo, in 2019, made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism⁹²².

- **Protection of Minority Investors**

The World Bank notes that in 2015 the Congo strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions⁹²³.

2.39.2.6. Arbitration

Arbitration is the preferred method of dispute resolution in the Congo. The OHADA Treaty, to which the Congo is a signatory, also provides an arbitration procedure. Disputes relating to the general OHADA Uniform Acts, or any other business dispute, can be submitted to the OHADA arbitration procedure. All national arbitration legislation has been superseded by the Uniform Act on Arbitration Law⁹²⁴.

2.39.3 Licencing and Permit Regime

2.39.3.1. Types of Licences and Permits

- **Prospecting Authorisation**

This permit is granted for one year and renewable once only. The prospecting authorisation confers on its holder, concurrently with other holders of prospecting authorisations for the same substances and in the same areas, the right to undertake exploration work.

- **Mining Exploration Permit**

⁹²¹ ENS Africa, Doing business in the Republic of the Congo. Available https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjU9tSL6uGFAxUOg_0HHQtICTQQFnoECBwQAQ&url=https%3A%2F%2Fwww.ensafrica.com%2Fdoing-business%2Fdownload%3FtermId%3D45&usg=AOvVaw2KaTf7taiHv-4iONxrUN&opi=89978449 accessed on 23 March 2024.

⁹²² World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 21 March 2024.

⁹²³ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 21 March 2024.

⁹²⁴ ENS Africa, Doing business in the Republic of the Congo https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjU9tSL6uGFAxUOg_0HHQtICTQQFnoECBwQAQ&url=https%3A%2F%2Fwww.ensafrica.com%2Fdoing-business%2Fdownload%3FtermId%3D45&usg=AOvVaw2KaTf7taiHv-4iONxrUN&opi=89978449 accessed on 23 March 2024.

A Mining Exploration Permit is granted for three years and is renewable twice for a period of 2 years each. This licence confers on its holder, within the limits of its perimeter and indefinitely at depth, the exclusive right to explore for minerals for which it was issued.

- **Authorisation for artisanal exploitation licence**

This is a three-year renewable licence – always for the same period. The artisanal exploitation licence confers on its beneficiary, within the boundaries limits of the area defined for it, the exclusive right to exploit the mineral or fossil mineral or fossil substance for which it is issued.

- **Artisanal for the exploitation of mines or quarries**

This permit is valid for five years. It is renewable at the request of its holder for a period of the same duration. The mining or quarrying licence confers on its holder, for the holder the exclusive right to exploit the mineral or fossil substance or group of substances for which it is granted and in a defined area, the exclusive right to:

- undertake exploration work and carry out exploitation work, where proof of the existence of mineral or fossil deposit is provided; and
- be granted a mining permit when mining activities reach a size that justifies the granting of such a permit.

- **Mining Licence**

Such licences are valid for a period of 25 years and renewable for a period of 15 years each. A mining licence confers on its holder, within the limits of its perimeter and indefinitely in depth, the exclusive right to exploit the substances for which the licence was granted⁹²⁵.

2.39.3.2. Transferability of Mineral Rights

An authorisation to prospect for minerals as issued by order of the Minister is not transferable and may not be amended. Artisanal mining permits are transferable or assignable with the agreement of the central administrative mining authority. A mining licence is transferable, assignable and amendable with the prior the prior written agreement of the Minister⁹²⁶.

⁹²⁵ Initiative pour la Transparence dans les Industries Extractives en République du Congo, EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/Rapport%20ITIE%20Congo%202021.pdf> accessed on 23 March 2024.

⁹²⁶ Initiative pour la Transparence dans les Industries Extractives en République du Congo, EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/Rapport%20ITIE%20Congo%202021.pdf> accessed on 23 March 2024.

2.39.4 Taxation

2.39.4.1. Mining Royalties and Taxes

Corporate income tax on income realised in the Congo for mining companies is levied at 28%⁹²⁷. Royalties are regulated by Article 157 of the Mining Code. Holders of a mining authorisation or licence are subject to a fixed-rate mining royalty.

The mining area levy is fixed between 1,000 and 25,000 CFA francs per km² per year depending on the mining titles. The mining royalty varies between 1 and 5% depending on the type of mineral being mined. The rate of the said royalty applies to the market value of the substance being the market price at export. The tax rate on corporate profits is 20% for quarry and 30% for mining⁹²⁸.

2.39.5 Mineral Beneficiation

No information was found in this regard.

2.39.6 Macroeconomics

Real GDP in the Congo grew 3.2% in 2022, up from 1.5% in 2021, thanks to strong performance in both the oil and non-oil sectors, which grew 45.3% and 3.4%, respectively. The main sources of non-oil growth were agriculture (with 4.9% growth) and lumber (with 6.5% growth), the clearing of domestic arrears, and public investment spending. In response to risks linked to low foreign exchange reserves and concerns raised by inflationary pressures, the Bank of Central African States raised the benchmark rate to 4% in 2022, following a 25-basis point increase to 3.5% in 2021. Overall inflation was 3% in 2022, with food inflation, at 6.3%, due to rising food prices and the effects of Russia's invasion of Ukraine. Debt fell to 109.7% of GDP from 114.4% in 2021. Higher export revenue and a strong exchange rate against the US dollar led to an external current account surplus of 19.2% of GDP, up from 11.9% in 2021⁹²⁹.

2.39.7 Governance and Risk Ratings

2.39.7.1. Ease of Doing Business

The Congo ranks 180 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁹³⁰.

2.39.7.2. Investment Climate

According to the US State Department investment climate report on the Congo, poor governance and a lack of economic diversification pushed the government to near insolvency, reduced its creditworthiness, and forced the central bank to expend significant foreign currency reserves. Despite some progress having

⁹²⁷ PwC, Republic of Congo - Corporate - Taxes on corporate income <https://taxsummaries.pwc.com/republic-of-congo/corporate/taxes-on-corporate-income>, accessed on 23 March 2024.

⁹²⁸ Lexology, Mining legislation in the Republic of the Congo. Available on <https://www.lexology.com/library/detail.aspx?g=f3e888f-dadc-413b-9b91-2970686830bd> accessed on 27 April 2024.

⁹²⁹ African Development Bank, Congo Economic Outlook. Available on <https://www.afdb.org/en/countries/central-africa/congo/congo-economic-outlook>, accessed on 23 March 2024.

⁹³⁰ Doing Business 2020, Economy Profile Republic of Congo. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/c/congo-rep/COG.pdf>, accessed on 23 March 2024.

been made in recent years, there are still challenges with government liquid currency reserves and the economy has remained in general decline. Investors report that the commercial environment in the Congo has not improved substantially in recent years.

The Congo has poor governance generally. Corruption, government interference in the judiciary, lack of transparency, and inefficiency in matters such as registering businesses, obtaining land titles, paying taxes and negotiating natural resource contracts⁹³¹ all contribute to a poor business and investment climate.

2.39.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to the Congo based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise⁹³².

The Congo joined the EITI initiative in 2007. The Republic of the Congo achieved a moderate score (70.5 points) in implementing the 2019 EITI Standard in March 2023⁹³³.

The country is not included in the Fraser Institute perception index.

2.39.8 Good Governance Evaluation

Generally, governance in the Congo is regarded as poor. According to the US State Department, a lack of transparency poses one of the greatest hurdles to foreign direct investment. Investors must navigate an opaque regulatory bureaucracy. Companies routinely find themselves embroiled in tax, customs, and labour disputes arbitrated by court officials who make decisions that do not conform with Congolese law and Ministry of Justice regulations. The government develops new regulations internally and rarely requests formal input from industry representatives. Various ministries have regulatory authority over the individual industries in their area of responsibility, with overall authority coordinated by the Ministry of Economy. The government does not usually offer a formal, public comment period with the government not normally making draft bills or regulations available for public comment⁹³⁴.

The mining sector in the Congo is small. The industry only accounts for an estimated 1% of economic activity. Given the important mineral reserves within the country, including copper, lead, zinc, gold, silver, coltan, nickel, tungsten, rare earths, potash, phosphates, cobalt and bauxite, the mining industry is likely to grow significantly in years to come. These are critical resources, which the world needs to move to a net carbon emission environment. However, in order for the mining industry to grow sustainably in the Congo, the government will need to ensure that real progress is made to modernise laws and regulations and improve transparency within the country's governance structures.

⁹³¹ U.S. Department of State, 2023 Investment Climate Statements: Republic of the Congo <https://www.state.gov/reports/2023-investment-climate-statements/republic-of-congo/>, accessed on 23 March 2024.

⁹³² Allianz, Economic Research – Republic of Congo. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Congo.html, accessed on 9 May 2024.

⁹³³ EITI, Validation - Republic of the Congo. Available on <https://eiti.org/countries/republic-congo#validation-629>, accessed on 9 May 2024.

⁹³⁴ U.S. Department of State, 2023 Investment Climate Statements: Republic of the Congo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/republic-of-congo/>, accessed on 23 March 2024.

2.40 Rwanda

2.40.1 Introduction

The Republic of Rwanda is a landlocked country in the Great Rift Valley of Central Africa, where the African Great Lakes region and Southeast Africa converge. Rwanda is bordered by Uganda, Tanzania, Burundi and the Democratic Republic of the Congo. Rwanda has a population above 13 million people (2022)⁹³⁵. Its capital and largest city is Kigali.

Rwanda is one of the world's largest producers of tin, tantalum, and tungsten and exports gold, lithium and gemstones⁹³⁶. Rwanda also possesses a variety of minerals such as silica sands, kaolin, vermiculite, diatomite, clays, limestone, talcum and gypsum⁹³⁷. The mining sector holds substantial significance to the country's GDP, contributing 3% to the national economy⁹³⁸.

Small-scale mining accounts for around 80% of the country's mineral output. The government is eager to formalize the sector, attract international mining investors, and increase processing of minerals in the country. A new Rwanda Mining, Gas and Petroleum Board was established in 2017 to coordinate government efforts in these sectors⁹³⁹.

2.40.2 Policy and Legal Framework

2.40.2.1. Institutional and Policy Overview

Mining activity (including licencing) is administered by the Rwanda Mineral Board (RMB)⁹⁴⁰, who acts as the regulator of the mining sector. Regulations were passed in 2019 setting out the services to be provided by the RMB in relation to mining and quarrying operations. The following are *inter alia* listed:

- mineral or quarry exploration services, including geological, geophysics, remote sensing and geochemistry activities; and
- environmental and social management services such as reclamation, re-vegetation, mine waste and water and tailings management, mine closure and rehabilitation and tailings management.
- The overarching responsibilities (and mandate) of the RMB include but are not limited to:
 - elaborate policies, strategic plans and regulations governing mineral, quarry, oil and gas resources for the benefit of the country;

⁹³⁵ World Bank, Overview – Rwanda. Available on <https://www.worldbank.org/en/country/rwanda/overview>, accessed on 30 April 2024.

⁹³⁶ Chambers and Partners, Rwanda, Mining 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/rwanda>, accessed on 20 March 2024.

⁹³⁷ International Trade Administration, Rwanda - Country Commercial Guide, Mining and Minerals. Available on <https://www.trade.gov/country-commercial-guides/rwanda-mining-and-minerals>, accessed on 20 March 2024.

⁹³⁸ Forbes Africa, The Macroeconomics of Rwanda's Mining Sector: Insights, Outlook and Challenges. Available on <https://cms.forbesafrica.com/wp-content/uploads/2024/02/Rwanda-Internal-Supplement2.pdf>, accessed on 30 April 2024.

⁹³⁹ Ibid.

⁹⁴⁰ Rwanda Mines Petroleum and Gas, Licencing services. Available on <https://www.rmb.gov.rw/1/Licencing> accessed on 20 March 2024.

- ensure compliance by license holders with the provisions of laws, regulations, directives and standards governing the mining, oil and gas industries in Rwanda;
- advise the Government on matters related to minerals, quarries, oil and gas resources;
- conduct research in geology, mining, oil and gas, and disseminate research findings;
- conduct exploration of mineral and quarry resources in the country;
- issue licenses for exploration, exploitation, transformation and trading of mineral and quarry products;
- monitor the operations related to exploration, exploitation, value addition and trading of mineral and quarry products; and
- monitor environmental matters and related geological matters and advise the Government accordingly.

The Rwanda Environment Management Authority is the national authority in charge of national environmental protection, conservation, promotion, and overall management, including advising the government on all matters pertinent to the environment and climate change⁹⁴¹.

2.40.2.2. Relevant Legal Instruments

Since 2018, mining activities in Rwanda have been governed by Law 58/2018 of 13 August 2018 on Mining and Quarry Operations (the Mining Law). The Mining Law has since been supplemented by various presidential orders, ministerial orders and regulations issued by the RMB. Rwandan Law 48/2018 of 13 August 2018 on the environment (the Environment Law) determines the modalities for protecting, conserving and promoting the environment. It sets out the fundamental principles governing environmental conservation, including the principle of sustainability and the “polluter pays” principle. The Environment Law has since been supplemented by various presidential orders, ministerial orders, and regulations⁹⁴².

2.40.2.3. Foreign Ownership, Migrant and Local Labour Requirements

There is no restriction on foreign investment in the exploration and mining sectors. However, any investors wishing to carry out mining-related activities must incorporate, or partner with, a local entity, as mining licences and quarrying licences can only be granted to companies registered in Rwanda⁹⁴³.

2.40.2.4. Artisanal Mining Sector

Artisanal mining makes up a very significant proportion of the Rwandan mining sector. One of Rwanda’s priorities is to formalise its mining sector, by better regulating and controlling artisanal and small-scale

⁹⁴¹ Chambers and Partners, Rwanda, Mining 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/rwanda>, accessed on 20 March 2024.

⁹⁴² Ibid

⁹⁴³ Ibid

mining activities (which still account for around 80% of the sector) and by attracting investors to increase exploration activities, to conduct medium or large-scale mining activities, and to set up modern, value-adding processing in the country⁹⁴⁴.

2.40.2.5. Judicial System

- **Judicial independence**

Rwanda's legal system is largely based on a civil law legal system. It is now undergoing a transformation from purely civil law to a more hybrid legal system that incorporates certain aspects of common law. In practice, the law remains heavily codified. Rwanda has a unitary system of government and all the powers and responsibilities with respect to mining are allocated to the Rwandan parliament and government⁹⁴⁵.

According to a 2022 Freedom House report (Freedom in the World), the Rwandan judiciary lacks independence from the executive. Top judicial officials are appointed by the president and confirmed by the majority party-dominated Senate. Judges rarely rule against the government in politically sensitive cases⁹⁴⁶.

- **Enforcing Contracts and Efficiency in settling disputes**

The World Bank notes that in 2009 Rwanda made enforcing contracts easier by launching 3 commercial courts. This was followed in 2013 by Rwanda having made enforcing contracts easier by implementing an electronic filing system for initial complaints. In 2017, Rwanda made enforcing contracts easier by introducing an electronic case management system for judges and lawyers. In 2018, Rwanda made enforcing contracts even easier by making judgements rendered at all levels in commercial cases available to the public through publication on the judiciary's website. Finally, in 2019, Rwanda issued new rules of civil procedure, which limit adjournments to unforeseen and exceptional circumstances and establish a simplified procedure for small claims⁹⁴⁷.

- **Protection of Minority Investors**

The World Bank notes that in 2010 Rwanda strengthened investor protections through a new company law requiring greater corporate disclosure, increasing director liability and improving shareholders' access to information. Rwanda further strengthened minority investor protections in 2014 by introducing provisions allowing holders of 10% of a company's shares to call for an extraordinary meeting of shareholders, requiring holders of special classes of shares to vote on decisions affecting their shares, requiring board members to disclose information about their directorships and primary employment and requiring that audit reports for listed companies be published in a newspaper. In 2016, Rwanda strengthened investor protections further through a new law allowing plaintiffs to cross-examine defendants and witnesses with prior approval of the questions by the court. Finally, in 2018, additional

⁹⁴⁴ Ibid

⁹⁴⁵ Ibid.

⁹⁴⁶ Freedom House, Freedom in The World 2022 - Rwanda. Available on <https://freedomhouse.org/country/rwanda/freedom-world/2022> accessed on 20 March 2024.

⁹⁴⁷ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 20 March 2024.

reforms were undertaken whereby Rwanda strengthened minority investor protections by making it easier to sue directors, clarifying ownership and control structures and requiring greater corporate transparency⁹⁴⁸.

2.40.2.6. Arbitration

Arbitration in Rwanda is governed by Law No. 005/2008 of 14 February 2008 on arbitration and conciliation in commercial matters (the 2008 Arbitration Act), which entered into force on 6 March 2008. The 2008 Arbitration Act has considerably modernised Rwandan legislation on arbitration and is influenced by the 2006 UNCITRAL Model Law on International Commercial Arbitration, from which it transposed important features, including on issues of validity of arbitration agreements and interim measures.

Although the 2008 Arbitration Act includes provisions typical of national legislations modelled on the UNCITRAL Model Law, a key distinction is worth mentioning. The Act applies to both domestic and international arbitration. The Act is, according to legal commentators unclear in certain respects. This includes for example that the Act does not list the provisions that would apply only to domestic arbitration or only to international arbitration⁹⁴⁹. Rwanda is a party to the 1958 New York Convention.

2.40.3 Licencing and Permit Regime

2.40.3.1. Types of Licences and Permits

Article 8 of the Mining Law, provides for the following types of mineral licences⁹⁵⁰:

- **Exploration licence**

An exploration licence has a maximum size of 400 ha and is valid for an initial period not exceeding four years. An exploration licence may be renewed once for a period not exceeding four years and a licence holder may be requested to relinquish a part of the licensed area. The holder of an exploration licence has the full right to explore minerals in respect of which the licence is granted and to do everything associated therewith. The holder of an exploration licence must:

- commence exploration operations within ninety days from the date of issuance of the exploration licence;
- submit a report to the competent authority every six months on the progress of the exploration operations as approved in the mineral exploration plan;

⁹⁴⁸ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 20 March 2024.

⁹⁴⁹ Global Arbitration Review, The Middle Eastern and African Arbitration Review 2023 - Rwanda, April 2023. Available on <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2023/article/rwanda> accessed on 20 March 2024

⁹⁵⁰ Rwanda Law on Mining and Quarry Operations, Law 58 of 2018. Available on <https://rwandalii.org/akn/rw/act/law/2018/58/eng@2018-08-13#:~:text=The%20general%20principles%20relating%20to,%3B2%C2%BAmineral%20exploration%2C%20exploitation%2C> accessed on 20 March 2024.

- train employees in accordance with the terms and conditions attached to the licence;
- immediately notify the competent authority of the discovery of any mineral deposit that was not subject to the licence right after such a discovery;
- keep records of exploration operations at the holder's address in Rwanda

- **Mining licence**

A mining licence is valid for an initial period not exceeding fifteen years. The mineral licence is renewable more than once when considered necessary, but each time does not exceed fifteen years. The holder of a mining licence has the right to mine the minerals under his or her licence, process, melt, refine and transport minerals or mineral products from the area under his or her licence. The duration of a mineral licence is determined based on a feasibility study and the project implementation program submitted and approved by the relevant organ. There are 3 types of mining licenses according to size:

- Small-scale mining licence (50 ha)
- Medium-scale mining licence (100 ha)
- Large-scale mining licence (400 ha)

Other licenses include:

- **Mineral processing licence**
- **Mineral trading License**

2.40.3.2. Transferability of Mineral Rights

Article 17 of the Mining Law provides for the transferability of mineral licences. It provides that:

A mineral licence holder has the right to transfer the licence through assigning all or part of their shares. However, before the transfer of a licence, the licence holder must apply in writing for the authorisation of the competent authority. The transfer of a mineral licence of private companies includes the following:

- any form of assignment, sale or any other disposal of a mineral licence;
- the pledge of a mineral licence or seizure of the pledged mineral licence;
- the transfer of any share by one or more shareholders having rights on a mineral licence.

The transfer of mineral licence for public companies consists of acquiring the controlling interest⁹⁵¹.

⁹⁵¹ Rwanda Law on Mining and Quarry Operations, Law 58 of 2018. Available on <https://rwandalii.org/akn/rw/act/law/2018/58/eng@2018-08-13#:~:text=The%20general%20principles%20relating%20to,%3B2%C2%BAmineral%20exploration%2C%20exploitation%2C> accessed on 20 March 2024.

Only a commercial small-scale quarry licence and an industrial quarry licence may be transferred. Upon the registration of the transfer of a quarry licence, the transferee assumes and is responsible for all rights, duties, other activities and liabilities of the transferor under the quarry licence⁹⁵².

2.40.4 Taxation

2.40.4.1. Mining Royalties and Taxes

The sale of minerals is subject to royalties amounting to 4% (all minerals except gold and gemstones) or 6% (gold and gemstones) of the sale price, which must be at arm's length. Law 55/2013 of 22 August 2013 on Minerals Tax is currently under review to promote mineral value addition in the country⁹⁵³.

2.40.5 Mineral Beneficiation

Rwanda currently has three processing and value-addition facilities, namely the Gasabo Gold Refinery, the Power X Refinery (refining tantalum), and the LuNa smelter (smelting tin). The RMB is now actively seeking to attract investors wishing to establish other processing plants, in particular for tungsten and lithium, as well as cutting and polishing facilities for gemstones⁹⁵⁴. There is limited information available on the regulations which govern mineral processing. Furthermore, mineral beneficiation is not discussed in the Vision 2050 report.

2.40.6 Macroeconomics

Rwandan GDP growth reached 10.9% in 2021 before declining to 8.2% in 2022 due to climate shocks on domestic food production; high energy, food, and fertilizer prices; and weak external demand on exports. Inflation rose from 0.8% in 2021 to 17.7% in 2022, reflecting higher costs for imported goods and low domestic food production. The government introduced fertilizer and public transport subsidies to prevent a spiral in the cost of living. The extreme poverty rate declined from 47% in 2019 to 45% in 2021, and unemployment worsened to 17.9% in 2020 from 15% in 2019, with youth unemployment up to 22.4% from 18.2% during the same period⁹⁵⁵.

Rwanda has a history of strong economic growth and a strong reputation for low corruption. The economy has in recent years suffered from the COVID-19 pandemic, Russia's invasion of Ukraine, climate change, and global supply chain disruptions. This saw inflation increase dramatically to some of the highest levels in Sub-Saharan Africa and tempered the pace of recovery. Over the past few years Rwanda has however implemented significant policy reforms intended to stimulate economic growth, improve Rwanda's

⁹⁵² Ibid.

⁹⁵³ Chambers and Partners, Rwanda, Mining 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/rwanda> accessed on 20 March 2024.

⁹⁵⁴ Chambers and Partners, Rwanda, Mining 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/rwanda> accessed on 20 March 2024.

⁹⁵⁵ African Development Bank, Rwanda Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/rwanda/rwanda-economic-outlook#:~:text=Recent%20macroeconomic%20and%20financial%20developments&text=Inflation%20rose%20from%200.8%25%20in,and%20Iow%20domestic%20food%20production>. Accessed on 20 March 2024.

competitiveness in selected strategic growth sectors, increase foreign direct investment (FDI), and attract foreign companies to operate in the newly created Kigali International Financial Centre⁹⁵⁶.

2.40.7 Governance and Risk Ratings

2.40.7.1. Ease of Doing Business

Rwanda ranks 38 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁹⁵⁷.

2.40.7.2. Investment Climate

According to the US State Department report on Rwanda's investment climate, many companies report that although it is efficient to start a business in Rwanda, it can be difficult to operate a profitable or sustainable business. Some reasons offered include the country's landlocked geography and resulting high freight transport costs, a small domestic market, limited access to affordable financing, payment delays with government contracts, challenges with tax administration, low-level corruption, and issues in competing with ruling party-owned, state-owned enterprises, and companies owned by individuals with strong ties with the government⁹⁵⁸.

Rwanda is generally seen as a pro-investment economy. It has modern laws and presents several opportunities in sectors including manufacturing, infrastructure, energy distribution and transmission, financial services, fintech, off-grid energy, health services, education, electric vehicles, agriculture and agro-processing, tourism, services, mining, and information and communications technology (ICT)⁹⁵⁹. Although the mining industry is small in Rwanda, the prevalence of critical raw materials needed for the transition to a greener economy makes Rwanda an important investment jurisdiction.

Vision 2050 is the Rwandan national development strategy, launched in December 2020 by President Paul Kagame. In terms of this planning document, the Government of Rwanda states as follows:

Vision 2050 takes into account the aspiration of leaving to Rwandan children a better world to live in. As such, growth and development will follow a sustainable path in terms of use and management of natural resources while building resilience to cope with climate change impacts⁹⁶⁰.

Rwanda's Vision 2050 articulates the long-term strategic direction of the country, which is to make Rwanda an upper-middle-income country by 2035 and a high-income country by 2050. In elaborating this long-term programme, the government took into consideration the global and regional development agendas, including the Sustainable Development Goals identified by the United Nations, and the Paris Agreement on climate change. Rwanda's goal is therefore for the country's growth and development to

⁹⁵⁶ U.S. Department of State, 2023 Investment Climate Statements: Rwanda. Available on <https://www.state.gov/reports/2023-investment-climate-statements/rwanda/> accessed on 20 March 2024.

⁹⁵⁷ Doing Business 2020. Economy Profile Rwanda. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/r/rwanda/RWA.pdf> accessed on 20 March 2024.

⁹⁵⁸ U.S. Department of State, 2023 Investment Climate Statements: Rwanda. Available on <https://www.state.gov/reports/2023-investment-climate-statements/rwanda/> accessed on 20 March 2024.

⁹⁵⁹ Ibid.

⁹⁶⁰ Rwanda, Vision 2050. Available on https://www.minaloc.gov.rw/fileadmin/user_upload/Minaloc/Publications/Useful_Documents/English-Vision_2050_full_version_WEB_Final.pdf accessed on 30 March 2024.

follow a sustainable path, in terms of the use and management of natural resources, while building resilience to cope with the impact of climate change⁹⁶¹.

2.40.7.3. Risk Ratings

Global insurer Allianz attributes a neutral rating to Rwanda based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C2 - medium risk for enterprise⁹⁶².

Rwanda is not party to the EITI initiative, nor is the country included in the Fraser Institute perception index. Any mining jurisdiction that wishes to attract foreign direct investment into that sector should participate in these globally recognised initiatives.

2.40.8 Good Governance Evaluation

Rwanda ranks very highly in the Ease of Doing Business ranking, being the second easiest place to do business in Africa (after Mauritius) and 38th place globally. Rwanda has embarked on an ambitious modernisation programme, as set out in the Vision 2050 roadmap. This modernisation includes adopting large infrastructure programmes and ensuring that Rwandan people are focused on the transformation of the entire economy.

According to the Vision 2050 document, there is a need to continue the journey towards self-reliance through a private sector led growth and transformation economic model. Rwanda should focus on growing its mining sector from what is largely small scale and artisanal to an industrialised industry (drawing foreign direct investment) and ensuring that the beneficiation of the minerals occurs within the country, in line with the principles set out in Vision 2050.

⁹⁶¹ Chambers and Partners, Rwanda, Mining 2024. Available on <https://practiceguides.chambers.com/practice-guides/mining-2024/rwanda> accessed on 20 March 2024.

⁹⁶² Allianz, Economic Research – Rwanda. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/rwanda.html accessed on 20 March 2024.



2.41 Senegal

2.41.1 Introduction

The Republic of Senegal is the westernmost country in Africa and is situated on the Atlantic Ocean coastline. Senegal is bordered by Mauritania to the north, Mali to the east, Guinea to the southeast and Guinea-Bissau to the southwest. French serves as the official language and has a population of approximately 16.7 million people. The capital city, Dakar, is positioned midway between the mouths of the Gambia and Sénégal rivers on the southeastern side of the Cape Verde Peninsula⁹⁶³.

Senegal's economy is mostly based on agriculture, fishing, and tourism. In relation to this, the mining sector is relatively small but has been growing in recent years. While Senegal's extractive sector accounted for less than 7% of government revenues, it contributed 32% of total exports in 2022⁹⁶⁴.

Senegal is a significant producer of phosphates, boasting an annual production of 2.6 million tonnes in 2022. Additionally, the nation has emerged as a gradually expanding producer of gold, natural gas, and construction materials⁹⁶⁵.

2.41.2 Policy and Legal Framework

2.41.2.1. Institutional and Policy Overview

The Ministry of Mines and Geology oversees the development and implementation of policies and regulations related to the exploration, exploitation, and processing of mineral resources. There are six directorates under the Ministry of Mines and Geology who manage the mining sector in Senegal⁹⁶⁶:

- Director of Mines
- Artisanal and Small-Scale Mining Directorate
- Directorate of Regulations, Mining Production and Statistics
- Directorate of Control and Monitoring of Mining Operations
- Directorate of Geology

2.41.2.2. Relevant Legal Instruments

The new Mining Code established by Law 2016-32 dated 8 November 2016 and its Implementing Decree 2017-459 dated 20 March 2017 are the main statutes that govern mining in Senegal. It replaced the former Mining Code established by Law 2003-36 dated 24 November 2003.

⁹⁶³ <https://en.wikipedia.org/wiki/Senegal> accessed on 3 April 2024.

⁹⁶⁴ EITI, Senegal. Available on <https://eiti.org/countries/senegal> accessed on 3 April 2024.

⁹⁶⁵ Ibid.

⁹⁶⁶ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 3 March 2024.

The new Mining Code provides the legal framework for all mining activities in Senegal. The code regulates the granting of mining permits, royalties, taxes, environmental and social responsibilities, and other related issues.

In addition, mining activities in Senegal are currently regulated by the following laws⁹⁶⁷:

- Regulation 18/2003 / CM / UEMOA of 23 December 2003 being the Community Mining Code of the member countries of the West African Economic and Monetary Union (UEMOA).
- ECOWAS Directive C / DIR 3/05/09 of 27 May 2009 on the harmonization of guiding principles in the mining sector.
- Decree 2017-459 dated March 8, 2017 laying down the procedures for the application of Law No. 2016-32 on the Mining Code.
- Law on the Environment Code of Senegal and its implementing decree - regulates all investment activities in Senegal, including the mining sector. It aims to create an attractive business environment for both local and foreign investors, offering tax incentives, customs exemptions, and other benefits.
- Order defining the definition of gold panning corridors in Kédougou and Tamba.

2.41.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The Government is entitled to 10% of the equity of the mining company that will have to operate the exploitation. The Government can also negotiate an additional 25% equity interest⁹⁶⁸.

Title holders are required to create, in cooperation with administrative and local authorities, a dedicated fund to support projects for the benefit of local communities and contribute (i) an amount to be negotiated with the State for the exploration/development phase and (ii) 0.5% of the annual turnover (excluding taxes) for the exploitation phase. Mining permit holders and their subcontractors must prioritize the employment of local citizens who possess the same qualifications and must establish a training program for Senegalese employees. However, the New Mining Code does not mandate specific quotas for Senegalese employees or require a portion of the production to undergo local processing⁹⁶⁹.

2.41.2.4. Artisanal Mining Sector

The ASM sector is regulated by the below Acts⁹⁷⁰:

⁹⁶⁷ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> accessed on 3 April 2024.

⁹⁶⁸ Ibid.

⁹⁶⁹ Norton Rose Fulbright, Senegal - A new mining decree to complete the 2016 mining code, May 2017. Available on <https://www.nortonrosefulbright.com/-/media/files/nrf/nrfweb/imported/senegal---a-new-mining-decree-to-complete-the-2016-mining-code.pdf?la=en-br> accessed on 3 April 2024.

⁹⁷⁰ AfricaMaVal, Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf> accessed on 3 April 2024.

- Ministerial Order No. 009249/MEM/DMG of 14 June 2013 on the organisation of gold panning activity;
- Ministerial Order No. 02472/MIM/DMG of 10 February 2014 defining the “gold panning corridor; and
- Interministerial Order No. 09931/MIM/MEF/MCESI of 18 June 2014 setting the procedures for opening and operating counters for the marketing of precious metals and precious stones.

Despite the above legislation, the sector is largely informal and plagued with environmental degradation and social issues. ASM gold production alone was estimated at 4.3 t between April 2016 and April 2018, i.e. a value of 86 billion CFA. Its contribution to job creation is extremely important, the sub-sector employs more than 32,500 people in the Kedougou mining region alone.

Going forward, the Directorate for Small Scale Mining is proposing an inclusive and participatory national ASM management strategy considering the legal, socio-economic and geo-environmental dimensions is underway. This strategy includes short-term actions such as the formalisation process and the establishment of an integrated artisanal mining management centre (CIEEMA), which included the construction of infrastructure that will house 420 treatment units on a 10 ha area. This centre will aim to collect and process minerals from artisanal mining within a radius of 5 km around the centre. This centre aims at eliminating the dumping of chemicals such as cyanide and mercury in the environment⁹⁷¹.

2.41.2.5. Judicial System

Senegal has a mixed legal system, which combines elements of civil law, Islamic law, and customary law.

The judiciary is independent of the executive and legislative branches of government and is responsible for interpreting and enforcing the law⁹⁷². Mining law is primarily governed by statutory law, which is a subset of civil law. Specifically, the legal framework for mining is set out in the Mining Code. Overall, while the judicial system in Senegal is generally regarded as independent and impartial, there have been concerns about corruption and political interference in the past. However, the government has taken steps to address these issues, including the establishment of a special court to investigate and prosecute cases of economic crimes and corruption⁹⁷³. Senegal has no history of extrajudicial action against foreign investors⁹⁷⁴.

2.41.2.6. Arbitration

Under the OHADA treaty, Senegal recognizes the corporate law and arbitration procedures common to the 16 member states in Western and Central Africa. Senegalese courts routinely recognize arbitration

⁹⁷¹ AfricaMaVal, Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf> accessed on 3 April 2024.

⁹⁷² Chambers and Partners, Senegal – Overview. Available on <https://chambers.com/content/item/4292> accessed on 11 April 2023.

⁹⁷³ Ibid.

⁹⁷⁴ U.S. Department of State, 2023 Investment Climate Statements: Senegal. Available on <https://www.state.gov/reports/2023-investment-climate-statements/senegal/#:~:text=The%20GOS%20welcomes%20foreign%20investment,in%20favor%20of%20local%20firms> accessed on 3 April 2024.

clauses in contracts and agreements. It is not unusual for courts to rule against SOEs in disputes involving private enterprises.

Disputes resulting from the termination of a mining convention are generally settled through international arbitration, notably before the International Chamber of Commerce (ICC) in Paris. An example is a case in 2009 which involved litigation between the state of Senegal and Arcelor Mittal on the exploitation of the iron mines of Falémé. Arcelor Mittal obtained the concession in 2007, but withdrew from it in 2009, citing financial difficulties and reserves that proved to be lower than expected (630 million tonnes of ore with an iron content ranging from 40% to 57%, instead of 750 million). In December 2013 the ICC found these reasons insufficient to justify Arcelor Mittal's failure to meet its contractual obligations in terms of mine development⁹⁷⁵.

2.41.3 Licencing and Permit Regime

2.41.3.1. Types of Licences and Permits

Licences and Permits are issued by the Government, through the Ministry of Mines and Geology. The various license and claim types for the mining sector of Senegal are listed and summarized below⁹⁷⁶:

- **Prospecting Authorization:** A non-exclusive right to prospect for the mineral substances covered by the authorization throughout the authorized area. It is granted for a period which cannot exceed six months and it is renewable once, with no fee required. Not transferable and does not give rise to any fiscal exemptions.
- **Exploration Permit:** An exploration permit confers on the holder the exclusive right to explore for the mineral substances for which it is issued. It is granted for an initial period of 4 years. It is renewable 2 more times. Each renewal of an exploration permit results in the reduction of one quarter of the area covered by the permit. A company cannot hold more than two exploration permits for the same mineral. Transferable, except during its first validity period. Transfer is subject to the approval of the minister of mines subject to the registration formalities and the payment of capital gains tax with the tax authority.
- **Exclusive Exploration Authorization:** A production sharing agreement (PSA) entered between the Ministry of Mines and a contractor grants the contractor an exclusive exploration authorization to carry out its obligations thereunder. The Mining Code and its implementing decree are silent on the duration of an exclusive exploration authorization. The duration is specific to the agreement. PSAs are not subject to renewal. Instead, the Mining Code provides that the procedure for renewing an exclusive exploration authorization (the permit that comes with a PSA) is the same as that for the exploration permit. A PSA can be granted only for promotional under a PSA. The PSA is approved by way of a decree and contains its validity period which is set by the parties. The transfer of an exclusive exploration authorization is the

⁹⁷⁵ Mondaq, Senegal: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975740/mining-comparative-guide> accessed on 3 April 2024.

⁹⁷⁶ AfricaMaVal, Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf> accessed on 3 April 2024.

same as that for the transfer of an exploration permit. zones, unless the holder of a permit for a mining area located outside a promotional zone opts to conduct the mining activities.

- **Semi-Mechanized Mining Authorization:** For investors who want to carry out operations on an area less than 50 ha. Issued for an initial period of up to three years. It may be renewed for further periods of the same duration. Entry fees are paid amounting to XAF 1.5 million and a surface royalty amounting to XAF 50,000 per hectare, per year.
- **Small Mine Permit:** Limited to 500 ha. It is renewable for five years at a time without limit on the number of renewals. Small Mine Permit holders must commence mining within three months of the permit grant; daily treatment capacity must not exceed 500 tonnes of mineral.
- **Mining Permit:** No limitations on the scale of its operations. It is valid for 5 – 20 years (depending on the mineral and investment required). It is renewable as many times as necessary until the resource is exhausted. Mining permit holders must commence operations as soon as possible and, if operations have not commenced within one year from the date of the grant, the permit holder will be liable to penalties of USD 100 000 per month for the first 3 months and increasing thereafter. The State may revoke the permit if the holder has not commenced work within 24 months.

2.41.4 Taxation

2.41.4.1. Taxes and Royalties

Royalties are calculated based on the value of the mineral produced, and taxes are based on the company's profits. The government has the power to renegotiate mining contracts if the company's profits exceed a certain threshold. The Mining Code sets out the formula for calculating royalties, and the government can renegotiate mining contracts if the company's profits exceed a certain threshold.⁹⁷⁷ Royalties are compulsory, but there can be some exemptions, as in the case where there is a production sharing agreement with the State. Royalties are calculated quarterly, and for domestic products it is calculated on the market value and for exports calculation is on the free on-board values⁹⁷⁸.

Annual surface royalty for a 'small mine permit' is FCFA 50,00092 per hectare and for a 'mining permit' is FCFA 250,000 per square kilometer.

⁹⁷⁷ https://eiti.org/sites/default/files/attachments/2016.11_code_minier_loi_2016_32_du_8_novembre_2016.pdf accessed on 11 April 2023.

⁹⁷⁸ AfricaMaVal, Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf> accessed on 3 April 2024.

Mineral	Royalty rate (%)
Calcium Aluminate Phosphate	5
Lime Phosphate	5
Phosphoric Acid	1.5
Cement	1
Iron Ore	5
Ore for local processing into steel	2
Basemetals for radioactive substances concentrated ore	3.5
Base metals for local processing	1.5
Gold (raw and refined abroad)	5
Gold refined in Senegal	3.5
Zircon, Limenite and other heavy minerals	5
Diamond and other gems (raw)	5
Diamonds and other gems (cut)	3
Alkaline Salts	3

Table 42 Royalty Rates in Senegal

2.41.5 Mineral Beneficiation

The Mining Code does not outline any criteria concerning mineral processing or refining. Permit holders are allowed to export extracted mineral substances freely, provided they comply with the customs duties specified by the prevailing regulations⁹⁷⁹.

2.41.6 Macroeconomics

According to the African Development Bank, real GDP growth of Senegal dropped to 4% in 2022 from 6.5% in 2021 because of Russia's invasion of Ukraine, a sharp slowdown in the secondary sector, and contraction in the primary sector (which shrank 0.5%) caused by an unfavorable agricultural season and sanctions against Mali, the leading customer for Senegalese exports. In 2022, inflation surged to a record high of 9.7%, primarily due to escalating food prices. To mitigate these inflationary pressures, the Central Bank of the West African States adjusted the minimum liquidity injection rate to 3% and the marginal lending rate to 5%. Additionally, the government increased energy subsidies to 4% of GDP and significantly reduced public investment. Despite these measures, the budget deficit slightly decreased from 6.3% of GDP in 2021 to 6.1% in 2022, aided by a 23% boost in public revenue⁹⁸⁰.

Although Senegal's macroeconomic situation remains generally stable, the combination of vigorous actions taken to offset the economic fallout from COVID-19, investments in public infrastructure projects, and increased commodity expenses linked to the conflict in Ukraine have propelled public debt to from

⁹⁷⁹ Mondaq, Senegal: Mining Comparative Guide, August 2020. Available on <https://www.mondaq.com/energy-and-natural-resources/975740/mining-comparative-guide> accessed on 11 April 2023.

⁹⁸⁰ African Development Bank, Senegal Macroeconomic outlook. Available on <https://www.afdb.org/en/countries/west-africa/senegal/senegal-economic-outlook#:~:text=Real%20GDP%20growth%20dropped%20to,the%20leading%20customer%20for%20Senegalese> accessed on 11 April 2023.

64% of GDP in 2019 to 75% in 2022. This exceeds the debt distress threshold set by the Economic Community of West African States (ECOWAS)⁹⁸¹.

2.41.7 Governance and Risk Ratings

2.41.7.1. Ease of Doing Business

Senegal ranks 123 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁹⁸² with notable areas of difficulty including dealing with construction permits, registering property, and paying taxes.

2.41.7.2. Investment Climate

According to the US State Department's assessment of the Senegalese investment climate, investors occasionally highlight burdensome and unpredictable tax administration, intricate customs procedures, bureaucratic obstacles, opaque public procurement practices, an inefficient judicial system, limited access to financing, and a rigid labor market as hindrances⁹⁸³.

Senegal ranks in the bottom half of the Transparency International's Corruption Perceptions Index (73 of 180 in 2021)⁹⁸⁴. Although some companies report problems, Senegal scores favorably on corruption indicators compared to other countries in the region⁹⁸⁵.

2.41.7.3. Risk Ratings

As of 2022, Senegal has a relatively favorable country risk rating compared to other sub-Saharan African countries. Global insurer Allianz attributes a rating to Senegal based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C2 - medium risk for enterprise⁹⁸⁶. Senegal joined the EITI initiative in 2013. Senegal achieved a very high overall score (93 points) in implementing the 2019 EITI Standard in October 2021⁹⁸⁷.

2.41.8 Good Governance Evaluation

Senegal's mining sector exhibits considerable potential, especially in gold and phosphate, and the government has initiated measures to attract investment by providing tax incentives, enhancing infrastructure, and streamlining regulations. Nonetheless, there are persisting challenges such as limited infrastructure in certain mining regions and the necessity for further refinement of the legal and

⁹⁸¹ U.S. Department of State, 2023 Investment Climate Statements: Senegal. Available on <https://www.state.gov/reports/2023-investment-climate-statements/senegal/> accessed on 11 April 2023.

⁹⁸² Doing Business 2020, Economy Profile Senegal. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/s/senegal/SEN.pdf> accessed on 11 April 2023.

⁹⁸³ U.S. Department of State, 2023 Investment Climate Statements: Senegal. Available on <https://www.state.gov/reports/2023-investment-climate-statements/senegal/>, accessed on 11 April 2023.

⁹⁸⁴ Transparency International, Corruption Perceptions Index - Senegal. Available on <https://www.transparency.org/en/cpi/2021/index/sen> accessed on 11 April 2023.

⁹⁸⁵ U.S. Department of State, 2023 Investment Climate Statements: Senegal. Available on <https://www.state.gov/reports/2023-investment-climate-statements/senegal/>, accessed on 11 April 2023.

⁹⁸⁶ Allianz, Economic Research – Senegal. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/senegal.html accessed on 11 April 2023.

⁹⁸⁷ EITI, Senegal. Available on <https://eiti.org/countries/senegal> accessed on 11 April 2023.

regulatory framework to ensure a stable investment environment. Senegal stands as an appealing destination for mining investors due to its noteworthy political stability and favorable legislation among West African nations.

Although many existing laws and policies (including key innovations outlined in the new Mining Code) are relatively robust, the primary challenge lies in their effective implementation, monitoring, and enforcement. The new Mining Code, while more stringent than its predecessor, requires investors to adhere strictly to mining legislation at all times.

The ASM sector serves as a vital source of income and sustenance for a significant portion of Senegal's populace, particularly in the southeastern region. The introduction of new mechanisms for formalizing the artisanal and small-scale mining sector, such as mining authorization cards, ASM corridors, and purchasing counters, signifies a positive step toward integrating the sector into the formal economy and legal framework⁹⁸⁸.

⁹⁸⁸ IGF Mining Policy Framework Assessment Senegal, December 2016. Available on <https://www.iisd.org/system/files/publications/senegal-mining-policy-framework-assessment-en.pdf> accessed on 3 April 2024.



2.42 Seychelles

2.42.1 Introduction

Seychelles is an archipelagic nation of 115 islands located off the eastern coast of Africa in the Indian Ocean. The country has strategically positioned itself as an economic hub in the region, focusing on industries such as tourism, fisheries, and offshore financial services⁹⁸⁹.

The legal and regulatory frameworks in Seychelles underscore the government's dedication to transparency, efficiency, and responsible resource management.

Seychelles does not produce oil, gas or minerals, although international companies are exploring for petroleum offshore⁹⁹⁰.

2.42.2 Policy and Legal Framework

2.42.2.1. Institutional and Policy Overview

Seychelles has a mixed jurisdiction legal system. The civil law is governed by a Civil Code derived from the French Napoleonic Code. The criminal law is substantially based on the common law⁹⁹¹.

2.42.2.2. Relevant Legal Instruments

The mining sector of the Seychelles is governed by the Mineral Act of (1962), Petroleum Mining Act (1976) and Tax Code (Amendment 2013).

2.42.2.3. Foreign Ownership, Migrant and Local Labour Requirements

No information was found in this regard.

2.42.2.4. Artisanal mining sector

No information was found in this regard.

2.42.2.5. Judicial System

- **Judicial independence**

The constitution of the Seychelles provides for an independent judiciary, enshrining the separation of powers. The justice system derives from English common law and the French Napoleonic Code.

The magistrates' courts are the courts of first instance for cases under civil and criminal codes. The most serious civil and criminal cases, and appeals from the magistrates' courts, come before the Supreme Court.

⁹⁸⁹ U.S. Department of State, 2023 Investment Climate Statements: Seychelles. Available on <https://www.state.gov/reports/2023-investment-climate-statements/seychelles/>, accessed on 10 March 2024.

⁹⁹⁰ EITI – Seychelles. Available on <https://eiti.org/countries/seychelles>, accessed on 30 April 2024.

⁹⁹¹ Constitution of the Republic of Seychelles. Available on <https://www.wipo.int/wipolex/en/legislation/details/9115>, accessed on 10 March 2024.



The Constitutional Court is a division of the Supreme Court and deals with human rights as well as constitutional matters. Appeals from the Supreme Court are heard by the Court of Appeal⁹⁹².

Other courts include the Family Tribunal, Rent Control Board and employment tribunals.

Judges are generally recruited from other Commonwealth countries and employed on contracts. The chief justice and other judges are appointed by the President of the republic, the other judges in consultation with the chief justice⁹⁹³.

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2015 the Seychelles made enforcing contracts easier by establishing a commercial court, implementing and refining its case management system, introducing court-annexed mediation, and addressing scheduling conflicts within the courts⁹⁹⁴.

- **Protection of Minority Investors**

No information was found in this regard.

2.42.2.6. Arbitration

The Seychelles acceded to the New York Convention on 3 February 2020, making it the 162nd State to become party to the New York Convention. The New York Convention facilitates international arbitration for dispute resolution in the mining sector.

2.42.3 Licencing and Permit Regime

2.42.3.1. Types of Licences and Permits

According to Section 5 of the Mineral Act of (1962), prospecting shall be lawful under 3 types of agreement:

- a prospecting right;
- an exclusive prospecting licence; or
- a special exclusive prospecting licence granted by the Minister.

Section 6 of the same Act stipulates that mining activities should be lawful under:

- Mining rights;
- Mining leases; or

⁹⁹² Commonwealth Governance – Seychelles, Judicial System of Seychelles. Available on <https://www.commonwealthgovernance.org/countries/africa/seychelles/judicial-system/>, accessed on 10 March 2024.

⁹⁹³ Commonwealth Governance – Seychelles, Judicial System of Seychelles. Available on <https://www.commonwealthgovernance.org/countries/africa/seychelles/judicial-system/>, accessed on 10 March 2024

⁹⁹⁴ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 10 March 2024.

- Special mining leases granted by the Ministry.

Institutional Framework

The Mineral Act (1962) does not provide the name of the Ministry, which is supposed to supervise the quarrying and mining sector in Seychelles. The legislation refers to it as Ministry without specifying. It appears that the quarrying and mining industry in Seychelles is governed by the Ministry of Habitat, Infrastructure and Land Transport (MHILT), which was previously called the Ministry for Land Use and Housing. MHILT is responsible for land policy and land-related legislation and timely review thereof.

MHILT is the government institution that grants rights to mining companies to conduct quarrying activities on state-owned lands⁹⁹⁵.

2.42.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.42.4 Taxation

2.42.4.1. Mining Royalties and Taxes

No information was found in this regard.

2.42.5 Mineral Beneficiation

No information was found in this regard.

2.42.6 Macroeconomics

GDP growth rebounded to 7.9% in 2021 and 9.5% in 2022, exceeding the East Africa averages of 4.7% and 4.4%. Growth was driven by tourism and fisheries on the supply side and by household consumption and investment on the demand side. Monetary policy remained accommodative, and inflation declined to 2.8% in 2022 from 9.8% in 2021 as supply disruptions eased but remained higher than before the pandemic. The Seychellois rupee appreciated 33% in 2022, to 14.4 per US dollar, on higher tourism. The fiscal deficit narrowed to 3.6% in 2022 from 6.8% in 2021 as revenue collection improved. The current account deficit also narrowed, to 7.0% of GDP in 2022 from 10.8% in 2021, on buoyant tourism performance. Both deficits were financed by concessional loans and domestic borrowing. Reserves remained strong at around 4 months of import cover in 2021/22. Debt declined to 75.0% of GDP in 2022 from 89.5% in 2020 amid rebounding GDP and an effective debt management strategy⁹⁹⁶.

⁹⁹⁵ Seychelles Extractive Industries Transparency Initiative (SEITI) Available on https://www.statehouse.gov.sc/uploads/downloads/filepath_108.pdf, accessed on 10 March 2024.

⁹⁹⁶ African Development Bank, Seychelles Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa-seychelles/seychelles-economic-outlook>, accessed on 10 March 2024.

2.42.7 Governance and Risk Ratings

2.42.7.1. Ease of Doing Business

Seychelles ranks 100 out of 190 countries in the 2020 World Bank Ease of Doing Business Report⁹⁹⁷.

2.42.7.2. Investment Climate

In July 2022, the IMF assessed that the Government of Seychelles had made impressive progress in implementing the IMF-supported program and restoring macroeconomic balances. It highlighted that the country's economic recovery has outperformed expectations, fuelled by a strong rebound in tourism and significant fiscal overperformance.

The Seychelles is a small country with a small population. It is stable and well-run and the policies and laws underpin its strategy of attracting foreign direct investment.

2.42.7.3. Risk Ratings

The Seychelles governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a poor rating to the Seychelles based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C2 - medium risk for enterprise⁹⁹⁸.

Seychelles joined the EITI platform in August 2014, however in November 2023, the EITI Board decided to pause EITI implementation in Seychelles, given the lack of extractive industry activities in the country. Prior to this, Seychelles had been using the EITI platform to strengthen the legal and policy framework for its extractive sector, including on beneficial ownership disclosure and Licencing transparency⁹⁹⁹.

2.42.8 Good Governance Evaluation

While the Seychelles has legislation in the form of the Seychelles Investment Act, which is designed to attract foreign investment, related regulations restrict foreign investment in a number of sectors where local businesses are active, including artisanal fishing, small boat charters, taxi driving, and scuba diving instruction.

The country's investment policies encourage the development of Seychelles' natural resources, and infrastructure improvements. All developments must however be done in accordance with strict environmental regulations.

⁹⁹⁷ Doing Business 2020, Economy Profile Seychelles

<https://archive.doingbusiness.org/content/dam/doingBusiness/country/s/seychelles/SYC.pdf>, accessed on 10 March 2024.

⁹⁹⁸ Allianz, Economic Research – Seychelles. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/seychelles.html, accessed on 10 March 2024.

⁹⁹⁹ EITI – Seychelles. Available on <https://eiti.org/countries/seychelles>, accessed on 30 April 2024.

Seychelles puts a premium on maintaining its unique ecosystems and screens all potential investment projects to ensure that any economic, social, or industrial benefits will not compromise the country's international reputation for environmental stewardship¹⁰⁰⁰.

The mining sector in the Seychelles is almost non-existent. The mining laws are not well developed. Unless there is a significant discovery, it is not likely that this position will change. On the other hand, in relation to oil, however, this could be a growth industry, if a resource is discovered.

¹⁰⁰⁰ U.S. Department of State, 2023 Investment Climate Statements: Seychelles. Available on <https://www.state.gov/reports/2023-investment-climate-statements/seychelles/>, accessed on 10 March 2024.



2.43 Sierra Leone

2.43.1 Introduction

The Republic of Sierra Leone is a country on the southwest coast of West Africa. It shares its southeastern border with Liberia and is bordered by Guinea to the north. Sierra Leone has a population of approximately 7,752,000 (2024) people. Freetown is both the capital and largest city respectively¹⁰⁰¹.

Sierra Leone has a substantial mining sector, primarily driven by the large-scale production of iron ore, diamonds, rutile and bauxite. It also hosts small-scale and artisanal mining of gold and diamonds¹⁰⁰². In 2021, mining contributed 0.6% to GDP, 67% of export earnings, 4.1% to total government revenues, and 3% to employment¹⁰⁰³.

2.43.2 Policy and Legal Framework

2.43.2.1. Institutional and Policy Overview

The Ministry of Mines and Mineral Resources (Ministry) is responsible for the management of the country's minerals sector¹⁰⁰⁴. The Ministry shall be responsible *inter alia* for—

- Promoting and facilitating the effective and efficient management and development of minerals in Sierra Leone;
- Preparing minerals and mining-related policies, laws and regulations;
- Preparing and implementing of regulations, procedures, guidelines, and orders necessary to implement this Act; and
- Publishing of annual report on mineral activities in Sierra Leone and the operations of the Ministry not later than 90 days after the end of each year to be submitted to Parliament and for public review.

In 2019, the following Mineral Sector Policies were officially launched in Sierra Leone¹⁰⁰⁵:

- **Minerals Policy**

The Minerals Policy was developed within a sequence of legal, regulatory, and institutional reforms initiated by the Government to ensure that Sierra Leone could maximize gains from its mineral resource endowments.

¹⁰⁰¹ Britannica, Sierra Leone. Available on <https://www.britannica.com/place/Sierra-Leone>, accessed on 4 May 2024.

¹⁰⁰² EITI, Sierra Leone – Extractive Sector. Available on <https://eiti.org/countries/sierra-leone#extractive-sector-data-12953>, accessed on 4 May 2024.

¹⁰⁰³ U.S. Department of Commerce, International Trade Administration, Sierra Leone - Country Commercial Guide. Available on <https://www.trade.gov/country-commercial-guides/sierra-leone-mining-and-mineral-resources>, accessed on 4 May 2024.

¹⁰⁰⁴ Mines and Minerals Development Act, 2022. Available on https://sierralio.gov.sl/akn/sl/act/2023/16/eng@2023-05-12#part_XVI, accessed on 4 May 2024.

¹⁰⁰⁵ National Minerals Agency, Mineral Sector Policies. Available on <https://www.nma.gov.sl/policies/> Accessed on 30 March 2024.



- **The Geo-data Management Policy**

The Geo-data Management Policy provides the framework within which the Government will manage geological data.

- **Artisanal Mining Policy**

The Artisanal Mining Policy sets out a clear framework for guiding actions leading to the improvement of artisanal mining sector governance and management, improving sustainable artisanal mining practices, enhancing environmental protection, community and occupational health and safety safeguards, ensuring that miners get a fair deal for their winnings; and strengthen linkages between artisanal mining and other sectors of the economy¹⁰⁰⁶.

2.43.2.2. Relevant Legal Instruments

The Mines and Minerals Development Act of 2022 (Mines Act) regulates mining in Sierra Leone. It replaces the Mines and Mineral Act of 2009 and introduces new provisions for exploration, mines and mineral development, sale and export for the socio-economic benefits of the people of Sierra Leone. The Act emphasises transparent and accountable management of the minerals sector in line with international best practices. The legislation addresses various aspects related to the responsible and sustainable management of Sierra Leone's mineral resources. The comprehensive nature of the Act reflects an effort to create a regulatory framework that facilitates responsible and sustainable mining practices in Sierra Leone¹⁰⁰⁷.

The Mines Act provides for the establishment and maintenance of a mining cadastre office, which serves as a liaison between the Ministry, and applicants or holders, on any question related to licences including written notifications, and which is required to install, operate and maintain a mining cadastre system. The mining cadastre is a public portal which shall be in a digital format for registering and administering applications and licences, comprising inter alia of a cadastral survey map in the form of maps.

Other important legislative instruments for the minerals sector includes¹⁰⁰⁸:

- The National Protected Area Authority and Conservation Trust Fund Act, 2012
- Local Content Agency Act, 2016
- The Extractive Industries Revenue Act, 2018
- The National Minerals Agency Act, 2012

¹⁰⁰⁶ ASM Handbook for Southern Africa. Available on <https://www.planetgold.org/sites/default/files/Tychsen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf> Accessed on 30 March 2024.

¹⁰⁰⁷ Sierra Leone Mines and Minerals Development Act 2022. Available on <https://www.iea.org/policies/18022-sierra-leone-mines-and-minerals-development-act-2022> accessed on 26 March 2024.

¹⁰⁰⁸ National Minerals Agency, Legislative Instruments for the Minerals Sector. Available on <https://www.nma.gov.sl/legal-regulatory-instruments/> accessed on 30 March 2024.

- Environmental Protection Agency Act, 2022
- Environment Protection Act, 2022

2.43.2.3. Foreign Ownership, Migrant and Local Labour Requirements

In terms of article 32 of the Mines Act (restrictions on eligibility), to hold a licence under the Mines Act in Sierra Leone, a foreign natural or legal person shall appoint and maintain an authorised agent, resident in Sierra Leone for the duration of the licence¹⁰⁰⁹.

2.43.2.4. Artisanal Mining Sector

ASM in Sierra Leone plays a vital role in the extraction of the country's mineral resources. It is estimated that over 80% of Sierra Leone's diamonds are extracted by artisanal miners and that the sector provided approximately 4.5% of GDP in 2007¹⁰¹⁰. In 2018, 100% of gold and coltan production was from artisanal mining operations¹⁰¹¹.

Article 84 of the Mines Act draws a clear distinction between artisanal and small-scale mining operations. The Director of Mines issues these licenses and regulates the mining and marketing of precious minerals produced under these licenses through the Precious Minerals Trading Department, formerly, Government Gold and Diamond Office. A scheme for artisanal licenses, the Alluvial Diamond Mining Scheme, has been in existence since 1956 and has been a major source of employment for unskilled labour and a major source of revenue for Sierra Leoneans¹⁰¹².

2.43.2.5. Judicial System

- **Judicial independence**

The Judiciary of Sierra Leone is the branch of the Government of the Republic of Sierra Leone which interprets and applies the laws of Sierra Leone to ensure impartial justice under the law and to provide a mechanism for dispute resolution. The independence of the judiciary is guaranteed by the Constitution.

The judicial system, headed by the Chief Justice of Sierra Leone, comprises the inferior courts, represented by the Magistrates courts and the Local courts and the superior courts, represented by the High Court, the Court of Appeal and the Supreme Court¹⁰¹³.

¹⁰⁰⁹ Mines and Minerals Development Act, 2022. Available on <https://sierraliii.gov.sl/akn/sl/act/2023/16/eng@2023-05-12/source.pdf> accessed on 26 March 2024.

¹⁰¹⁰ ASM Handbook for Southern Africa. Available on <https://www.planetgold.org/sites/default/files/Tyksen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf> accessed on 30 March 2024.

¹⁰¹¹ Artisanal Mining Policy for Sierra Leone, 2018. Available on <https://www.nma.gov.sl/wp-content/uploads/2019/05/Artisanal-Mining-Policy-for-Sierra-Leone.pdf> accessed on 30 March 2024.

¹⁰¹² ASM Handbook for Southern Africa. Available on <https://www.planetgold.org/sites/default/files/Tyksen%2C%20et%20al.%202022.%20ASM-handbook-for-Southern-African-region.pdf> Accessed on 30 March 2024.

¹⁰¹³ Hauser Global Law School Program, Sierra Leone Legal System and Legal Research. Available on https://www.nyulawglobal.org/globalex/Sierra_Leone1.html accessed on 27 April 2024.

The Supreme Court is the final court of appeal and has jurisdiction in constitutional matters. It also has responsibility for the administration of the judicial system, which includes the Court of Appeal, the High Court and the magistrates' courts. The Supreme Court is presided over by the chief justice. Its justices are appointed by the President of the republic and appointments must be approved by at least 60% of members of parliament in a parliamentary vote¹⁰¹⁴.

- **Enforcing Contracts and Efficiency in settling disputes**

In 2012, Sierra Leone made enforcing contracts easier by launching a fast-track commercial court¹⁰¹⁵.

- **Protection of Minority Investors**

According to the World Bank 2010, Sierra Leone strengthened investor protections through a new company act enhancing director liability and improving disclosure requirements¹⁰¹⁶.

2.43.2.6. Arbitration

The Sierra Leone Arbitration Act was passed into law by the parliament of Sierra Leone in 2022. The Act entails extensive provisions on the jurisdiction of the arbitral tribunal, appointment of emergency arbitrators and interim measures and modern elements of international arbitration.

The Arbitration Act provides *inter-alia* for the incorporation of the Convention on the Recognition and Enforcement of Arbitral Awards (1955), in respect of awards made in Sierra Leone and to provide for fair settlement of disputes by domestic and international arbitration. The purpose of the Act is to give efficacy and power to arbitrators and arbitral proceedings¹⁰¹⁷.

Sierra Leone became the 166th State Party to the New York Convention. The Convention entered into force for Sierra Leone on 26 January 2021.

2.43.3 Licencing and Permit Regime

2.43.3.1. Types of Licences and Permits

The following licences can be applied for and granted in Sierra Leone:

- **Reconnaissance licence**

A Reconnaissance licence applies to surface-level sample collection and airborne reconnaissance activities. Approving Body Minister's Approval is required for the first year. Minerals Advisory Board (MAB)

¹⁰¹⁴ Commonwealth Governance, Judicial System of Sierra Leone. Available on https://www.commonwealthgovernance.org/countries/africa/sierra_leone/judicial-system/ accessed on 26 March 2024.

¹⁰¹⁵ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 26 March 2024.

¹⁰¹⁶ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 26 March 2024.

¹⁰¹⁷ The Sierra Leone Arbitration Act Of 2022 (Slaa): Key Provisions For Effective Adr System. Available on <https://sierralii.gov.sl/articles/2023-11-09/Abi/the-sierra-leone-arbitration-act-of-2022-slaa-key-provisions-for-effective-adr-system#:~:text=The%20Sierra%20Leone%20Arbitration%20Act%2C%202022%20was%20passed%20into%20law,arbitration%20like%20Third%20Party%20Funding>. Accessed on 26 March 2024.

certification required for subsequent years. The maximum area is 10,000 sq. km and is valid for 1 year and renewable one time for 1 year¹⁰¹⁸.

- **Exploration licence**

An exploration licence allows for the testing of mineral-bearing qualities of the land, defining the extent and determining the economic value of mineral deposits using approved exploration methods as stipulated in the Mines Act. The maximum applicable area is 250 sq. km and it is valid for 9 years maximum, with an initial period of 4 years and two renewals of 3 years and 2 years respectively¹⁰¹⁹.

- **Artisanal mining licence**

An application for an artisanal mining licence shall be submitted to the relevant authority setting out inter alia particulars of the technical expertise available to the applicant to implement the licence; a statement of the financial resources available to the applicant to implement the licence; and details of minerals in respect of which the licence is sought. An artisanal mining licence shall be limited to issuance of up to 3 licences to one holder and shall not be contiguous and employ not more than 50 workers. An artisanal mining licence shall be valid for up to 1 year and may be renewed on an annual basis for the commercial life of the deposit. Mining operations in licensed areas that do not exceed half a hectare.

- **Small-scale mining licence**

A small-scale mining licence applies to mechanised operations NOT exceeding twenty metres in depth or involving the sinking of shafts, driving of adits, or other various underground openings. It shall be valid for up to 3 years. Upon evidence of prescribed requirements, a small-scale mining licence may continue to be renewed for up to 3 years upon each application for renewal for the commercial life of the deposit. The maximum area is 1 sq. km¹⁰²⁰.

- **Large-scale mining licence**

A large-scale mining licence applies to any safe & approved mining method and shall be valid for up to 25 years. Upon evidence of prescribed requirements, a large-scale mining licence may continue to be renewed for up to 15 years upon each application for renewal for the commercial life of the deposit. The maximum area is 125 sq. km¹⁰²¹.

- **Dealer licence**

The holder of a dealer licence shall have the non-exclusive right to purchase minerals from licenced artisanal mining operations in Sierra Leone, transport and store such minerals and sell such minerals in

¹⁰¹⁸ Nationals Minerals Agency, Tenable Licence Types. Available on <https://www.nma.gov.sl/licence-application-process/> Accessed on 30 March 2024.

¹⁰¹⁹ Nationals Minerals Agency, Tenable Licence Types. Available on <https://www.nma.gov.sl/licence-application-process/> Accessed on 30 March 2024.

¹⁰²⁰ Ibid.

¹⁰²¹ Ibid.

Sierra Leone. A dealer licence shall be valid for up to 1 year and upon evidence of prescribed requirements, a dealer licence may be renewed annually¹⁰²².

- **Exporter licence**

The holder of an exporter licence shall have the non-exclusive rights to purchase minerals from dealer licence holders or from artisanal mining licence holders and export minerals in accordance with the laws of Sierra Leone. An exporter licence shall be valid for up to 1 year and upon evidence of prescribed requirements, an exporter licence may be renewed annually¹⁰²³.

2.43.3.2. Transferability of Mineral Rights

In terms of Article 47 of the Mines Act, a holder shall, in writing, notify the Director General and the Minister when there is a proposed change in the control of ownership or control of the licence including transfer, lease, mortgage or other conveyance or when a single interest in the licence exceeds 20%. Such change of control shall not have legal effect until, in writing, it has as prescribed been approved by the Minister and such change shall be registered with the Agency as prescribed.

Furthermore, the Mines Act provides for which mineral rights can and cannot be assigned, transferred, leased, pledged, or mortgaged without consent and which can. The following licences that shall not be subject to assignment, transfer, lease, pledge, mortgage or other conveyance:

- reconnaissance licence;
- artisanal mining licence;
- dealer licence; and
- exporter licence.

The following licences may be assigned, transferred, leased, pledged, mortgaged or otherwise conveyed to an eligible applicant subject to the written approval of the Minister which shall not be unreasonably withheld—

- exploration licence;
- small-scale mining licence; and
- large-scale mining licence.

¹⁰²² Mines and Minerals Development Act, 2022. Available on https://sierralii.gov.sl/akn/sl/act/2023/16/eng@2023-05-12#part_XVI accessed on 30 March 2024.

¹⁰²³ Ibid.

2.43.4 Taxation

2.43.4.1. Mining Royalties and Taxes

A holder of a mineral right shall be subject to royalties and mineral resource rent tax as imposed by the Extractive Industries Revenue Act, 2018. A licence holder is furthermore subject to income tax as imposed by the Income Tax Act, 2000 and modified by the Extractive Industries Revenue Act, 2018 (EIRA) and all other applicable taxes, and charges, including those listed in the First Schedule of the National Revenue Authority Act, 2002.

The EIRA 2018 sets out the rates of royalty as follows:

- 8% for special stones;
- 6.5% for precious stones other than special stones;
- 5% for precious metals;
- 3% in other cases, including bulk minerals; and
- 3% for all minerals obtained pursuant to an artisanal mining license¹⁰²⁴.

In terms of article 160 of the Mines Act, the beneficial ownership of rights holders must be disclosed. A holder of a permit shall disclose as prescribed, details of persons holding a participating interest in the licence. This requirement does not apply to artisanal mining, dealer licence or exporter licence. A person who holds 5% or more interest shall be defined as holding a “participating interest” in the shares shall declare such interests to the Agency and other authorised institutions.

In terms of article 161 of the Mines Act, the State has the right to participate in large-scale mining licences, in the following ways:

- a non-dilutable free carried of interest of 10%; and
- up to 35% shares on terms to be agreed with the holder as applicable.

2.43.5 Mineral Beneficiation

The Sierra Leone mining ministry has emphasized the importance of establishing domestic diamond beneficiation industries to gain a competitive advantage in global markets. The importance of incorporating cutting-edge technologies into the beneficiation and value-added processes of the diamond value chain has been identified and the government intends to develop this¹⁰²⁵.

¹⁰²⁴ Sierra Leone Extractive Industries Transparency Initiative (SLEITI), EITI Report 2020 – 2021. Available on https://eiti.org/sites/default/files/2023-04/SLEITI%202020-2021%20Report_0.pdf accessed on 27 April 2024.

¹⁰²⁵ Call for Diamond Beneficiation in Africa: Sierra Leone’s Deputy Minister Calls for Value Addition in Mining Sector, March 2024. Available on <https://gleanersl.com/call-for-diamond-beneficiation-in-africa-sierra-leones-deputy-minister-calls-for-value-addition-in-mining-sector/> accessed on 26 March 2024.

2.43.6 Macroeconomics

Real GDP growth declined to 2.8% in 2022 from 4.1% in 2021 due to the impact of Russia's invasion of Ukraine. Growth was driven by mining exports (iron ore) on the demand side and by the recovery in key sectors on the supply side. Inflation rose to 26.1% in 2022 from 11.9% in 2021, driven by food and fuel inflation and depreciation of the currency. The exchange rate depreciated sharply after mid-2021 due mainly to the widening trade deficit. The financial sector is underdeveloped but generally sound, with most indicators above the recommended minimum, except the nonperforming loans ratio (at 14.8% in 2021 against a regulatory target of 10%). Sierra Leone is characterized by high poverty (59.2% in 2020), income inequality (Gini coefficient of 0.357 in 2018), and high youth unemployment (70%), compounded by skills mismatch¹⁰²⁶.

2.43.7 Governance and Risk Ratings

2.43.7.1. Ease of Doing Business

Sierra Leone ranks 163 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹⁰²⁷.

2.43.7.2. Investment Climate

The Government of Sierra Leone has a positive attitude towards foreign direct investment. There is a general call on investors to invest in all economic sectors, especially in infrastructure and energy, as the government looks for private sector-led economic growth and development for the country. The Government of Sierra Leone's medium-term National Development Plan (2019-2023) established a growth agenda to support economic diversification and competitiveness, and to develop a viable private sector to increase participation in global trade while addressing the legislative, institutional, and regulatory impediments to inward investment to create a more investor-friendly environment. The government's diversification initiative is primarily directed toward agriculture, fisheries, tourism, and infrastructure. The government promotes sustainable investment in mechanized commercial agriculture, value addition, and agricultural research.

Sierra Leone allows foreign investors to compete on the same terms as domestic firms. The Investment Promotion Act of 2004 protects foreign entities from discriminatory treatment. The Act creates incentives and customs exemptions, provides for investors to freely repatriate proceeds and remittances, and protects against expropriation without adequate compensation. The Act further provides for arbitration under the UNCITRAL rules in the event of a commercial dispute.

Additionally, the Government of Sierra Leone established the National Investment Board (NIB) in 2022 to serve as a one-stop shop to facilitate the setting up of businesses and provide support and information to start and operate a business. This institution aims to streamline and standardize processes which at present are marred by bureaucratic inefficiency, fraud, and corruption, and create a conducive and safer

¹⁰²⁶ African Development Bank, Sierra Leone Economic Outlook. Available on <https://www.afdb.org/en/countries-west-africa-sierra-leone/sierra-leone-economic-outlook> accessed on 26 March 2024.

¹⁰²⁷ Doing Business 2020, Economy Profile Sierra Leone. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/s/sierra-leone/SLE.pdf> accessed on 26 March 2024.

investment environment. The NIB's mandate is to promote investment opportunities, assist investors in obtaining facilities relating to their business, and improve the investment climate in the country.

However, poor quality and limited infrastructure pose significant challenges to investment and practical commercial activity. The shortage of skilled labour, the slow legal system, and the high level of corruption, which is pervasive at all levels of government, are significant obstacles to FDI¹⁰²⁸.

2.43.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Sierra Leone based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise¹⁰²⁹.

Sierra Leone is party to the EITI initiative. It joined in 2008. Mining plays an important role in the country's economy, although the sector has been in decline over the past years. Sierra Leone achieved a high overall score (87.5 points) in implementing the 2019 EITI Standard in October 2022¹⁰³⁰.

2.43.8 Good Governance Evaluation

According to the US State Department's investment climate report on Sierra Leone, the country offers significant investment potential across numerous sectors, including mineral resources, especially in relation to iron ore, diamonds, gold, rutile, ilmenite, and bauxite.

FDI is crucial to the country's economic recovery. Therefore, there has been a continuous drive and policy focus on encouraging FDI into the country. There are, however, legislative, institutional, and regulatory challenges to investment, including governance, the rule of law, business and human rights, dispute resolution, finance, and banking. Poor quality and limited infrastructure also pose significant investment challenges as the country lacks the capacity necessary to support practical commercial activities. Challenges similarly persist in corruption, skilled labour, accessing land, high-interest rates, and contract enforcement¹⁰³¹.

Sierra Leone will need to undertake further wholesale reforms to ensure an improvement of accountability and governance should it wish to sustainably attract investment for its mining industry. The rule of law, business and human rights, dispute resolution, and the independence of the judiciary are all challenges that require attention to ensure sustainable long-term investment into the Sierra Leone mining sector.

¹⁰²⁸ U.S. Department of State, 2023 Investment Climate Statements: Sierra Leone. Available on <https://www.state.gov/reports/2023-investment-climate-statements/sierra-leone/> accessed on 26 March 2024.

¹⁰²⁹ Allianz, Economic Research – Sierra Leone. Available on https://www.allianz-trade.com/en_global/economic-research/country-reports/Sierra-Leone.html accessed on 26 March 2024.

¹⁰³⁰ EITI, Sierra Leone – Validation. Available on <https://eiti.org/countries/sierra-leone#validation-676>, accessed on 7 May 2024.

¹⁰³¹ U.S. Department of State, 2023 Investment Climate Statements: Sierra Leone. Available on <https://www.state.gov/reports/2023-investment-climate-statements/sierra-leone/>, accessed on 26 March 2024.

2.44 Somalia

2.44.1 Introduction

Somalia, located in the Horn of Africa, has faced prolonged conflict and political instability. The country is bordered by Ethiopia, Djibouti, the Gulf of Aden, the Indian Ocean, and Kenya.

Somalia officially produces small quantities of gemstones and salt. It also has deposits of feldspar, gypsum, iron ore, copper, gold, kaolin, limestone, natural gas, quartz, silica sand, tantalum, tin and uranium. Gemstone and salt producers are mainly artisanal and small-scale in nature¹⁰³².

2.44.2 Policy and Legal Framework

2.44.2.1. Institutional and Policy Review

Somalia is a federal parliamentary republic led by President Hassan Sheikh Mohamud. He was elected on May 15. He is the country's third president since the Federal Government of Somalia was founded in 2012 and previously served as president from 2012 to 2017¹⁰³³. The President of Somalia is the head of state and commander-in-chief of the Somali Armed Forces and selects a Prime Minister to act as head of government.

2.44.2.2. Relevant Legal Instruments

The primary mining code of Somalia is the Mining Law of 1984¹⁰³⁴. It regulates and governs the conduct of all mining operations and related activities within the territory of the Republic of Somalia. The Code is in the process of being overhauled and potentially replaced.

2.44.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Both locals and foreigners are allowed to apply for a prospecting permit if they are capable in terms of technicality, finance, and expertise¹⁰³⁵.

2.44.2.4. Artisanal Mining Sector

The mining sector in Somalia is largely artisanal in nature. Gold, gemstones and salt producers are mainly artisanal and small-scale in nature¹⁰³⁶. The 1984 mining code does not specifically regulate artisanal and small-scale mining. The proposed reforms do however propose regulating this sector.

¹⁰³² African Mining, The mysterious horn of Africa: Somalia, Somaliland and Puntland, May 2023. Available on <https://www.africanmining.co.za/2023/05/01/the-mysterious-horn-of-africa-somalia-somaliland-and-puntland/>, accessed on 14 March 2024.

¹⁰³³ U.S. Department of State, 2022 Country Reports on Human Rights Practices: Somalia. Available on <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/somalia/>, accessed on 28 February 2024.

¹⁰³⁴ African Mining Legislation Atlas, Somalia - Mining Law 1984. Available on <https://www.a-mla.org/en/country/law/52>, accessed on 28 February 2024.

¹⁰³⁵ Ministry of Energy and Minerals. Available on <https://moem.govsomaliland.org/article/mineral-1>, accessed on 14 March 2024.

¹⁰³⁶ African Mining, The mysterious horn of Africa: Somalia, Somaliland and Puntland, May 2023. Available on <https://www.africanmining.co.za/2023/05/01/the-mysterious-horn-of-africa-somalia-somaliland-and-puntland/>, accessed on 14 March 2024.

2.44.2.5. Judicial System

- **Judicial independence**

Somalia's legal system has been influenced by a combination of Islamic law, customary law, and remnants of Italian and British colonial legal systems. The judicial system faces challenges due to political fragmentation. Different regions may have varying legal structures. The Judiciary of Somalia is defined by the Provisional Constitution of the Federal Republic of Somalia which was adopted on 1 August 2012 by a National Constitutional Assembly in Mogadishu¹⁰³⁷.

The national court structure is arranged into three tiers: the Constitutional Court, Federal Government level courts and State level courts. Federal level judges are appointed by a Judicial Service Commission, which also selects and presents potential Constitutional Court judges to the House of the People of the Federal Parliament for approval. If candidates that are proposed are endorsed then the President appoints the candidate as a judge of the Constitutional Court. The five-member Constitutional Court adjudicates on all matters pertaining to the constitution¹⁰³⁸.

Somalia is in the process of developing its mining sector, and key legislation is still evolving. The country is working on establishing a legal framework to regulate mineral exploration and extraction.

- **Enforcing Contracts and Efficiency in settling disputes**

No information was found in this regard.

- **Protection of Minority Investors**

No information was found in this regard.

2.44.2.6. Arbitration

Somalia is not a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to facilitate enforcement of international arbitral awards in Somali. The country does have a law dealing with domestic arbitration in the form of the Civil Procedure Code, Law No. 19 of 27 July 1974.

2.44.3 Licencing and Permit Regime

2.44.3.1. Types of Licences and Permits

- **Reconnaissance License**

A reconnaissance license allows the holder to undertake all operations and works connected to the non-intrusive search for mineral resources utilising geophysical, geochemical, photo-geological, or other remote sensing techniques, as well as surface geology. Drilling and excavation are not included. Whether

¹⁰³⁷ The Federal Republic of Somalia Provisional Constitution, 2012. Available on <http://hrlibrary.umn.edu/research/Somalia-Constitution2012.pdf>, accessed on 28 February 2024.

¹⁰³⁸ Ibid.

foreign or domestic, any person or company can apply for this license if they have not committed any offence under the Act. After an applicant has taken all applicable measures and submitted the form, the Minister shall, within four weeks, give a decision on whether the grant has been considered or not. The period for this license is valid for two years.

- **Exploration License**

The exploration entitles the holder to undertake all actions aimed at determining whether there are minerals beneath the surface. Mining may be conceivable in the future if the exploration process discovers commercially viable minerals.

- **Retention license**

A retention license's main aim is to do more evaluation work on a mineral resource that is presently not economically feasible to mine to determine its economic feasibility and eventually lead to exploitation of the mineral resource. The owner of an exploration license may apply to the Minister for a retention license on the basis that he has discovered a commercially significant mineral deposit within his exploration area but cannot be developed immediately due to some technical constraints, adverse market conditions, or other economic factors that are, or maybe, of a temporary nature. A retention license validity is two years and can only be renewed once.

- **Mining License**

A mining license grants the holder the exclusive right to dig for specific minerals. Before applying for a mining license, the applicant must establish that a mineral resource has been identified. A mining licence shall be granted if the company is registered in Somalia and is determined to have a technical qualification and financial capability to carry out its operations. In the enterprises to which a Mining License is awarded, the government is entitled to a 10% stake (however, if the company has a mineral agreement or a particular mineral concession, it can apply for a waiver).

- **Small Scale mining**

Mining operations that generate less than 1,000,000 tons of Construction Materials or 100,000 tons of ore comprising Minerals, Art Stones, or Gemstones require a Small-scale Mining Licence. A small-scale mining license is valid for five years from the date of issuance and can be renewed honouring the condition of the Act.

- **Artisanal Mining**

A mining operation is deemed artisanal if it is of such a scale that the proposed mining activities do not include any investment or expenditure over the amount that the Minister may specify.

- **Special Mineral Concessions (SMC)**



The Minister of Energy and minerals may enter into a special mineral concessions contract with the holder of an exploration or mining license if the license holder is willing to invest above ten million dollars with the cabinet approval¹⁰³⁹.

2.44.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.44.4 Taxation

2.44.4.1. Mining Royalties and Taxes

In terms of the mining code, all minerals obtained in the course of prospecting or mining operations and any substance or matter extracted therefrom, after deducting the amount of any minerals used or consumed in the conduct of such operations shall be liable to such royalty as may be provided in the mining regulations or in the terms and conditions of any permit, license or lease.

The liability for the payment of royalty shall be deemed to have arisen immediately after the minerals have been extracted or produced and shall be payable in the manner prescribed¹⁰⁴⁰.

2.44.5 Mineral Beneficiation

Very little information is available about beneficiation and processing of minerals in Somalia. In a Ministry of Petroleum And Mineral Resources draft 2019 National Mineral Resources Policy document, reference is made to the fact that through its mining regulatory authorities, the government intends to strive to carry out its mandate with administrative efficiency in the mining sector and that this shall entail several initiatives including but not limited to setting up of a one stop shop for ease of processing mining applications and approvals¹⁰⁴¹.

2.44.6 Macroeconomics

Somalia's macroeconomic situation has been affected by conflict and instability. The informal economy plays a significant role, and the development of the formal economy, including the mining sector, could contribute to economic growth and stability. The current government was elected in May 2022 and has maintained macroeconomic stability and economic reforms focused on the completion point of the Heavily Indebted Poor Countries¹⁰⁴².

¹⁰³⁹ Somaliland Standard, A careful inspection of Somaliland's Mining Act-2019: How Relevant is it to guide our mining industry?, October 2021. Available on <https://somalilandstandard.com/a-careful-inspection-of-somalilands-mining-act-2019-how-relevant-is-it-to-guide-our-mining-industry/>, accessed on 14 March 2024.

¹⁰⁴⁰ African Mining Legislation Atlas, Somalia - Mining Law 1984. Available on <https://www.a-mla.org/en/country/law/52#> accessed on 9 April 2024.

¹⁰⁴¹ National Mineral Resources Policy, 2019. Available on <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fmopmr.gov.so%2Fwp-content%2Fuploads%2F2019%2F12%2FDraft-Somalia-Mining-Policy-18102019-v2.docx&wdOrigin=BROWSELINK> accessed on 9 April 2024

¹⁰⁴² U.S. Department of State, 2023 Investment Climate Statements: Somalia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/somalia/#:~:text=The%20World%20Bank%20ranked%20Somalia,a%20country%27s%20business%2Finvestment%20climates>, accessed on 28 February 2024.



Real GDP growth dropped to 1.7% in 2022 from 2.9% in 2021 due to drought, insecurity, and food and fuel inflation triggered by Russia's invasion of Ukraine. GDP growth is projected to be 3.5% in 2024, driven by private consumption and external demand. Inflation is projected to be 4.0% in 2024 as supply chains stabilize. The fiscal deficit is projected to reach 1.9% of GDP in 2024, calling for stronger public revenue mobilization¹⁰⁴³.

2.44.7 Governance and Risk Ratings

2.44.7.1. Ease of Doing Business

The World Bank ranked Somalia 190 of 190 countries in its 2020 Ease of Doing Business Report¹⁰⁴⁴. Factors such as regulatory transparency, contract enforcement, and business registration processes need improvement to attract and facilitate mining investments.

2.44.7.2. Investment Climate

According to the US State Department's 2023 Investment Climate Statement on Somalia, low human development indicators, expensive and unreliable electricity, poor roads, a lack of reliable internet access (especially outside urban areas), and pervasive government corruption constrain investment and development. Moving money into and out of Somalia remains difficult, and the financial sector is constrained by the lack of private sector correspondent banking relationships¹⁰⁴⁵. Somalia remains a challenging jurisdiction in which to operate and invest.

2.44.7.3. Risk Ratings

No information was found in this regard.

2.44.8 Good Governance Evaluation

According to the US State Department report (2023) on Somalia, potential investors still face challenges such as the lack of a comprehensive legal and regulatory framework, a civil judicial system incapable of solving disputes and enforcing contracts, and endemic corruption. Investors also face potential terrorist-related threats in certain parts of the country¹⁰⁴⁶. The investment landscape in Somalia remains challenging and unpredictable.

¹⁰⁴³ African Development Bank, Somalia Economic Outlook. Available on <https://www.afdb.org/en/countries-east-africa-somalia/somalia-economic-outlook>, accessed on 1 March 2024.

¹⁰⁴⁴ Doing Business 2020, Economy Profile – Somalia. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/s/somalia/SOM.pdf>, accessed on 28 February 2024.

¹⁰⁴⁵ U.S. Department of State, 2023 Investment Climate Statements: Somalia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/somalia/#:~:text=The%20World%20Bank%20ranked%20Somalia,a%20country%27s%20business%2Finvestment%20climates>, accessed on 28 February 2024. *Ibid.*

¹⁰⁴⁶ *Ibid.*

2.45 South Africa

2.45.1 Introduction

South Africa is a country located at the southernmost tip of Africa. It is the second largest country in Africa by land area, covering an area of approximately 1,221,037 km² and has a population of approximately 60 million people, with a diverse mix of ethnic groups and languages.

South Africa's economy is a mix of developed and developing industries, with sectors such as mining, agriculture, manufacturing, and services making up a significant portion of its GDP. In 2022, the mining industry's direct contribution to GDP grew by 4% to R494 billion (2021: R475 billion) and the percentage contribution of mining to the economy was 7.53% (2021: 7.56%).¹⁰⁴⁷

South Africa has the largest reserves of Platinum Group Metals (PGMs) (88%), manganese (80%), chromite (72%) and gold (13%) known reserves in the world. It is ranked second in titanium minerals (10%), zirconium (25%), vanadium (32%), vermiculite (40%) and fluorspar (17%). In addition, the country contains 17% of the world's antimony reserves.¹⁰⁴⁸

2.45.2 Policy and Legal Framework

2.45.2.1. Institutional and Policy Overview

In South Africa, the Department of Mineral Resources and Energy (DMRE) is responsible for the regulation of the mining and energy sectors in South Africa.¹⁰⁴⁹ The DMRE issues mining, and exploration permits, monitors compliance with regulatory requirements and enforces penalties for non-compliance. The department also promotes investment in the sector and supports local beneficiation and manufacturing of mineral products.

In addition, the Department of Trade, Industry and Competition (DTIC) plays an important role in for economic development and industrial policy in South Africa and provides incentives and support for local beneficiation and manufacturing of mineral products. Another relevant authority is the South African Revenue Service (SARS), which is responsible for the administration and collection of taxes, including mining royalties and income tax on mining activities.¹⁰⁵⁰

2.45.2.2. Relevant Legal Instruments

South Africa's legal framework for the mining sector is based on several laws and regulations, including:

- **The Mineral and Petroleum Resources Development Act (MPRDA) of 2002**

¹⁰⁴⁷ Minerals Council South Africa, Facts and Figures 2022. Available on <https://www.mineralscouncil.org.za/downloads/send/18-facts-and-figures/2170-facts-and-figures-2022> Accessed on 22 March 2024.

¹⁰⁴⁸ University of the Witwatersrand, The South African mining sector. Available on https://www.wits.ac.za/wmi/about-us/the-south-african-mining-sector/#_ftn1 Accessed on 22 March 2024.

¹⁰⁴⁹ Department for Mineral Resources & Energy, Beneficiation Economics. Available on <https://www.dmr.gov.za/mineral-policy-promotion/beneficiation-economics>, accessed on 8 March 2023.

¹⁰⁵⁰ South African Revenue Service, Mineral and Petroleum Resource Royalty. Available on <https://www.sars.gov.za/types-of-tax/mineral-and-petroleum-resource-royalty/>, accessed on 8 March 2023.



The MPRDA provides the legal framework for prospecting, mining, and exploration activities in South Africa. It regulates the granting and renewal of mining rights, the conversion of old-order mining rights to new-order mining rights, and the calculation of mining royalties.¹⁰⁵¹ The MPRDA also requires mining companies to comply with environmental and social responsibility standards and to submit social and labour plans to ensure that mining activities contribute to local development.

- **National Environmental Management Act (NEMA)**

The NEMA provides the framework for the management of the environment in South Africa, including the regulation of activities that may have an impact on the environment, such as mining and mineral processing.¹⁰⁵² The B-BBEE Act of 2003 is a broad-based empowerment policy that aims to redress the imbalances of the past by promoting the participation of previously disadvantaged groups in the economy.¹⁰⁵³ The Act requires companies to achieve certain levels of black ownership, management control, skills development, and preferential procurement in order to qualify for government contracts and licenses.

- **Broad-Based Black Economic Empowerment (B-BBEE) Act of 2003**

The B-BBEE Act of 2003 is a broad-based empowerment policy that aims to redress the imbalances of the past by promoting the participation of previously disadvantaged groups in the economy.¹⁰⁵⁴ The Act requires companies to achieve certain levels of black ownership, management control, skills development, and preferential procurement to qualify for government contracts and licenses.

- **Mining Charter 2018**

It is a revision of the previous charter of 2010, and a government policy that sets out specific targets for the transformation of the mining industry. It aims to ensure equitable access to mineral resources, address the historical imbalances in the ownership and control of the mining industry and sets out requirements for skills development, community development, and mine closure planning. Specific targets include increasing black ownership of mining companies to 30%, ensuring that at least 50% of mining company board members and executive management are black, and increasing procurement from black-owned companies.

2.45.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The local content requirements are governed by the MPRDA. The specific requirements can vary depending on the type of mining operation and the mineral being mined, but they generally cover areas such as:

¹⁰⁵¹ Mineral and Petroleum Resources Development Act 28 of 2002. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a28-02ocr.pdf, accessed on 8 March 2023.

¹⁰⁵² National Environmental Management Act 107 of 1998. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a107-98.pdf, accessed on 8 March 2023.

¹⁰⁵³ Broad-based Black Economic Empowerment Act 53 of 2003. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a53-030.pdf, accessed on 8 March 2023.

¹⁰⁵⁴ Ibid.

- **Employment:** Mining companies are required to prioritize the hiring of South African citizens and to provide training and development opportunities for local workers.
- **Procurement:** Mining companies are required to procure goods and services from South African suppliers, wherever possible. The percentage of local procurement required can vary depending on the specific circumstances of the mining operation.
- **Technology Transfer:** Mining companies are encouraged to transfer knowledge and technology to local firms, with the aim of developing local skills and capacity in the mining sector.
- **Research and Development:** Mining companies are encouraged to support research and development activities in South Africa, with the aim of improving local technological capacity and promoting innovation.

Migrant labour has been an important part of the mining industry in South Africa for many decades. Historically, mining companies relied heavily on cheap migrant labour from neighbouring countries to work in the mines. While the use of migrant labour has declined in recent years, it still plays a significant role in the sector.¹⁰⁵⁵

Today, the requirements for migrant labour in the mining sector in South Africa are regulated by the Immigration Act of 2002 and the Mine Health and Safety Act of 1996. According to these laws, mining companies can hire foreign workers if they meet certain requirements, including:

- **Work permits:** Foreign workers must obtain a work permit from the Department of Home Affairs before they can work in South Africa. The work permit must specify the type of work that the worker will be doing and the duration of their stay.¹⁰⁵⁶
- **Health and safety:** Mining companies must ensure that all workers, including migrant workers, are provided with adequate health and safety protections. This includes regular medical examinations, training on safety procedures, and protective equipment.¹⁰⁵⁷
- **Recruitment:** All companies, including those in the mining sector, must follow strict guidelines when recruiting foreign workers. They must demonstrate that there are no suitable South African workers available for the job and that the foreign worker has the necessary skills and qualifications.
- **Fair labour practices:** Migrant workers must be treated fairly and provided with the same rights and benefits as South African workers. This includes access to housing, healthcare, and other social services.

Local labour requirements in the mining sector in South Africa are regulated by a number of laws and regulations aimed at promoting employment opportunities for South African workers and protecting their

¹⁰⁵⁵ Pretorius, A., & Blaauw, D. (2023). Mining towns and migration: Comparing three South African cases. *Front. Sustain. Cities*.

¹⁰⁵⁶ Immigration Act No. 13 of 2002. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a13-020.pdf, accessed on 8 March 2023.

¹⁰⁵⁷ Mine Health and Safety Act 29 of 1996. Available on https://www.gov.za/sites/default/files/gcis_document/201409/act29of1996s.pdf, accessed on 8 March 2023.

rights. The most important laws governing local labour requirements in the mining sector are the MPRDA of 2002 and the Basic Conditions of Employment Act (BCEA) of 1997.¹⁰⁵⁸

The MPRDA requires mining companies to submit a Social and Labour Plan (SLP) as part of their mining license application. The SLP is a document that outlines how the company plans to provide employment opportunities for local communities and contribute to their social and economic development. The SLP must include targets for local employment and training, as well as initiatives to promote local procurement and enterprise development.

Under the BCEA, mining companies are required to provide their employees with certain minimum employment conditions, including minimum wages, working hours, leave entitlements, and health and safety protections. In addition, mining companies must comply with various sector-specific regulations that set out additional requirements for health and safety, skills development, and social responsibility.

The Mining Charter also includes specific requirements for local labour, as it requires mining companies to meet certain targets for local ownership, employment, procurement, and community development. Specifically, the charter requires mining companies to achieve a minimum of 30% black South African ownership, as well as a minimum of 70% local procurement.

In addition to these legal requirements, many mining companies have their own internal policies and initiatives aimed at promoting local employment and development. These may include programs to recruit and train local workers, as well as initiatives to support local businesses and communities.

2.45.2.4. Artisanal Mining Sector

Artisanal mining plays an important role in the South African economy, particularly in rural communities. It is estimated that there are about 30 000 artisanal miners in South Africa, who collectively produce around 10% of the country's gold output.¹⁰⁵⁹ The sector is subject to a range of social, environmental, and economic challenges. These include safety risks for the miners, environmental degradation, and negative social impacts such as child labour and exploitation.¹⁰⁶⁰

On 30 March 2022, the DMRE published the 2022 ASM Policy¹⁰⁶¹, following the 2021 Draft ASM Policy that was open for public comments on 5 May 2021. The ASM Policy aims to address the challenges of illegal mining activities, provide definitions and regulations for ASM, and incorporate ASM into the existing regulatory framework. The DMRE is the primary regulator of ASM operations in South Africa and will have oversight of the implementation of the 2022 ASM Policy¹⁰⁶².

¹⁰⁵⁸ Basic Conditions of Employment Act of 1997. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a75-97.pdf, accessed on 8 March 2023.

¹⁰⁵⁹ Mining Technology, The benefits of legalising artisanal mining in South Africa. Available on <https://www.mining-technology.com/features/benefits-legalising-artisanal-mining-south-africa/>, accessed on 8 March 2023.

¹⁰⁶⁰ International Labour Organisation, Mapping interventions addressing child labour and working conditions in artisanal mineral supply, 2020. Available on <https://www.ilo.org/media/386566/download>, accessed on 8 March 2023.

¹⁰⁶¹ Mineral and Petroleum Resources Development Act: Artisanal and small scale-mining policy 2022. Available on https://www.gov.za/sites/default/files/gcis_document/202203/46124gon1938.pdf, accessed on 8 March 2023.

¹⁰⁶² Ibid.



The 2022 ASM Policy defines “Artisanal mining” as traditional and customary mining operations using traditional or customary ways and means. This includes the activities of individuals using mostly rudimentary mining methods, manual and rudimentary tools to access mineral ore, usually available on the surface, or at shallow depths; and “Small-scale mining” as a prospecting or mining operation that does not employ specialised prospecting, mechanised mining technologies, chemicals including mercury and cyanide or explosives; or the proposed prospecting or mining operations, do not involve investment or expenditure which exceed such amount as may be prescribed¹⁰⁶³.

Furthermore, the 2022 ASM Policy proposes investment thresholds to distinguish between artisanal mining and small-scale mining. The threshold for artisanal mining is a maximum of ZAR1-million; and for small-scale mining is a maximum of ZAR10-million. ASM is to be licenced through the issuance of either an Artisanal Mining Permit or a Small-Scale Mining Permit, and are capable of being transferred, mortgaged and/or capitalised, unlike the mining permits provided for in section 27 of the MPRDA. The 2022 ASM Policy does not specify the duration of an ASM Permit once it is issued, are to be reserved for South Africans, may be limited to surface and open case mining only¹⁰⁶⁴.

The 2022 ASM policy distinguishes between illegal miners commonly known as “zama-zamas” who are to be criminalised in terms of the Criminal Procedure Act, 1977 amongst other laws. Illegal mining has made a considerable dent in the South African economy, estimated to be over R70 billion annually in gold alone and resulting in loss of revenue for both government and the mining sector. In November 2023, President Cyril Ramaphosa authorised the deployment of 3,300 South African National Defence Force (SANDF) personnel to support SAPS in their fight against illegal mining for a six-month period. Furthermore, the National Coordination and Strategic Management Team (NCSMT), which was established in 2010 continues to co-ordinate government’s efforts to fight illegal mining and the trafficking of precious metal¹⁰⁶⁵.

2.45.2.5. Judicial System

The judicial system in South Africa is made up of a hierarchy of courts, the Supreme Court of Appeal, High Court and magistrates’ courts, as well as several special courts, including the special income tax courts, labour and labour appeal courts, and Land Claims Court, that are responsible for interpreting and enforcing the law¹⁰⁶⁶. The Constitution of South Africa is the supreme law of the country, and all other laws and actions must be consistent with its provisions. The system is guided by the principles of equality before the law, the right to a fair trial, and the presumption of innocence. The judiciary is independent

¹⁰⁶³ Ibid.

¹⁰⁶⁴ ENS, South Africa: Policy to Formalise Artisanal and Small-scale Mining In South Africa Published, April 2022. Available on <https://www.mondaq.com/southafrica/environmental-law/1179442/policy-to-formalise-artisanal-and-small-scale-mining-in-south-africa-published>, accessed on 8 March 2023.

¹⁰⁶⁵ C. Augustine, Government Opinion Pieces, Illegal mining, February 2024. Available on <https://www.gov.za/blog/illegal-mining#:~:text=The%20cost%20of%20illegal%20mining,and%20health%20of%20surrounding%20communities>, accessed on 22 March 2024.

¹⁰⁶⁶ Commonwealth Governance, Judicial System of South Africa. Available on https://www.commonwealthgovernance.org/countries/africa/south_africa/judicial-system/#:~:text=Judicial%20System%20of%20South%20Africa&text=The%20judicial%20system%20comprises%20the,courts%2C%20and%20Land%20Claims%20Court., accessed on 8 March 2023.

and impartial and plays a critical role in upholding the rule of law and protecting the rights and freedoms of all South Africans.

- **Judicial Independence**

The independence of South Africa's judicial system has been enshrined in the country's Constitution since the end of apartheid in 1994. The judiciary is tasked with interpreting the law and providing checks and balances to the executive and legislative branches of government. Judges are appointed through a rigorous process by an independent body, the Judicial Service Commission, which is made up of members from various sectors of society, including the legal profession and civil society.¹⁰⁶⁷

However, like any judicial system, the independence of the South African judiciary is not immune to challenges. There have been concerns raised about political interference in the appointment of judges, and there have been instances where judges have been subject to intimidation and attacks for their decisions.¹⁰⁶⁸ Despite these challenges, the overall consensus is that South Africa's judicial system is independent and functions effectively in upholding the rule of law.

- **Enforcing Contracts and Efficiency in Settling Disputes**

While enforcing contracts in South Africa can be time-consuming and expensive, the country's legal system provides a reliable mechanism for resolving commercial disputes and enforcing contractual obligations. Due to the country's generally independent and impartial judiciary, it is ensured that contracts are enforced fairly and objectively.

However, it can be a lengthy and costly process, and it may vary depending on the complexity of the contract and the amount of money at stake. According to the World Bank's Doing Business 2019 report, it takes an average of 600 days to enforce a contract in South Africa which is significantly longer than the average for high-income OECD economies.¹⁰⁶⁹ In recent years, the South African government has taken steps to streamline the process of enforcing contracts and to make it more accessible to businesses. For example, in 2015, South Africa made enforcing contracts easier by amending the monetary jurisdiction of its lower courts and introducing voluntary mediation and in 2020, South Africa made enforcing contracts easier by introducing a specialized court dedicated to hearing commercial cases¹⁰⁷⁰.

- **Protection of Minority Investors**

According to the World Bank's Doing Business 2022 report, South Africa scores relatively well in terms of protecting minority investors, ranking 40th out of 190 economies assessed.¹⁰⁷¹ Some of the strengths of South Africa's legal framework include requirements for shareholder meetings, disclosure of related-party

¹⁰⁶⁷ Office of the Chief Justice Republic of South Africa. The Judicial Service Commission. Available on <https://www.judiciary.org.za/index.php/judicial-service-commission/about-the-jsc>, accessed on 8 March 2023.

¹⁰⁶⁸ Siyo, L., & Mubangizi, J. (2015). The independence of South African judges: A constitutional and legislative perspective. Potchefstroom Electronic Law Journal (PELJ). Available on <https://www.saflii.org/za/journals/PER/2015/42.html>, accessed on 8 March 2023.

¹⁰⁶⁹ The World Bank, Time required to enforce a contract, 2019. Available on <https://data.worldbank.org/indicator/IC.LGL.DURS>, accessed on 8 March 2023.

¹⁰⁷⁰ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 22 March 2024.

¹⁰⁷¹ World Bank, Protecting Minority Investors. Available on <https://archive.doingbusiness.org/en/data/exploretopics/protecting-minority-investors>, accessed on 8 March 2023.

transactions, and mandatory disclosure of material information. Additionally, the country has strong anti-corruption laws, which help to protect minority investors from fraudulent or unethical behaviour.

2.45.2.6. Arbitration

Arbitration procedures in South Africa are generally considered to be efficient and effective. The country has a robust framework for arbitration that is recognized internationally which makes arbitration a popular choice for resolving disputes in a timely and cost-effective manner. The International Arbitration Act, 2017 (2017 Act) was aimed at consolidating and updating South Africa law on international commercial arbitration. The 2017 Act incorporates the UNCITRAL Model Law on International Commercial Arbitration, 1985 (UNCITRAL Model Law) into South Africa Law¹⁰⁷². As South Africa is a signatory to the New York Convention, international arbitration agreements and foreign arbitral awards are recognised and enforced in South Africa in accordance with the New York Convention.

Mining-related arbitrations may be conducted under a variety of institutional rules, such as the rules of the International Chamber of Commerce (ICC) or the rules of Arbitration Foundation of Southern Africa (AFSA). Parties may also choose to conduct ad hoc arbitrations, where the arbitration process is not governed by any particular set of rules.

2.45.3 Licencing and Permit Regime

2.45.3.1. Types of Licences and Permits

Obtaining licenses and permits in the mining sector in South Africa is a complex process that requires significant resources and expertise. Companies must ensure that they comply with all relevant regulations and laws to avoid fines and other penalties.

Prospecting Right	Mining Right	Mining Permit
A prospecting right is a permit which allows you or your company to survey or investigate an area of land for the purpose of identifying an actual or probable mineral deposit.	A mining right gives a company or an individual permission to mine for a specified period of up to 30 years.	A mining permit gives a company or individual permission to mine a small area of land (not more than 1.5 hectares) for a specified period of up to 2 years.

Table 43 Types of Licenses and Permits in South Africa

The operation of a mineral refinery requires a number of different permits to be obtained. They depend on a variety of factors like the type of minerals being processed the location of the refinery, and various

¹⁰⁷² CMS, International Arbitration Law and Rules In South Africa. Available on <https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/south-africa>, accessed on 22 March 2024.

environmental and safety regulations. Some of the permits include a mining permit, an environmental permit, a water use permit or occupational health and safety permits.¹⁰⁷³

2.45.3.2. The Application Process for Mining Licenses and Permits

The South African Mineral Resources Administration System (SAMRAD) is an online portal which allows for the general public to view the locality of applications, rights and permits made or held in terms of the Mineral and Petroleum Resources Development Act (Act 28 of 2002), (The MPRDA), and where applications in terms thereof can be submitted electronically.

Application Requirement	Prospecting Right	Mining Right	Mining Permit
Place of Application	SAMRAD	SAMRAD	SAMRAD
Validity	Five Years. Renewal for a period of three years.	30 Years.	Two years. Renewable for three more periods of no more than a year each.
Application Requirements	<ul style="list-style-type: none"> Payment of application fee. Simultaneous application for environmental authorisation. Access to financial resources. Financing plan compatible with intended prospecting operation. Compliance with the Mine Health and Safety Act. Prospecting not contravening Mineral and Petroleum Resources Development Act. 	<ul style="list-style-type: none"> Payment of application fee. Access to financial resources. Ability to mine mineral optimally. Financing plan compatible with intended mining operation. Prevention of unacceptable pollution or damage to the environment as a result of the mining operation. Ensuring financial and other provisions for the prescribed social and labour plan. 	<ul style="list-style-type: none"> Payment of application fee. Mining Area does not exceed 1,5 ha. Submit an environmental management plan. Consultation with the landowner and legal occupier of the land as well as any other affected party. Submit outcome of the consultation to regional manager within 30 days.

¹⁰⁷³ (South African Diamond and Precious Metals Regulator, 2023) Available on <http://www.sadpmr.co.za/pages/document-library/licenses-and-permits>

	<p>No license or permit was issued for same mineral and land.</p> <p>No unacceptable pollution or damage to the environment.</p> <p>Consultation with the landowner and legal occupier of the land as well as any other affected party.</p> <p>Submit outcome of consultation to regional manager within 30 days.</p>	<p>Mining not contravening the Mineral and Petroleum Resources Development Act, 2002.</p> <p>Operation in line with Mining Charter.</p> <p>Applicants must apply for environmental authorisation under NEMA, 2008, and NEWMA, 2008 for listed activities triggered by MPRDA, 2002, as amended applications.</p>	
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Table 44 Application Requirements for Licenses and Permits in South Africa

Other permits aim for a restriction, that mostly aim for environmental protection:

- **Environmental authorizations:** These are permits that are issued to mining companies to ensure that their operations do not harm the environment. Companies must prepare environmental impact assessments and obtain approval from the Department of Mineral Resources and Energy (DMRE) before they can commence operations.¹⁰⁷⁴
- **Water use licenses:** Mining companies must also obtain water use licenses from the Department of Water and Sanitation (DWS) to ensure that their operations do not negatively impact water resources.
- **Social and Labour Plans:** Mining companies must also submit social and labour plans (SLPs) to the DMRE, which outlines how the company plans to address the social and economic impacts of their mining activities on local communities.
- **Mineral and Petroleum Resources Development Act (MPRDA) compliance:** The MPRDA is the primary legislation that governs the mining sector in South Africa. Mining companies must ensure that they comply with the provisions of the MPRDA, including the payment of royalties and other fees.

2.45.3.3. Transferability of Mineral Rights

The transfer of prospecting mining rights is carefully regulated under Section 11 of the MPRDA. It is specifically designed to ensure transparency, accountability and adherence to the law when transferring mining rights. The current holder must provide written notice to both the Minister of Mineral Resources

¹⁰⁷⁴South African Government. About applying for a mining permit. Available on <https://www.gov.za/services/mining-and-water/apply-mining-permit>, accessed on 8 March 2023.

and Energy and the Minister of Finance regarding the intended transfer. This notification should be comprehensive, outlining details of the transferee and the terms of the proposed transfer. The Minister will evaluate the application, considering various factors, including the transferee's capacity to comply with the MPRDA and the government's policies on mining¹⁰⁷⁵. Mining permits are not transferable.

2.45.4 Taxation

2.45.4.1. Mining Royalties and Taxes

The Tax Administration Act (TAA) of 2011 and the South African Revenue Service (SARS) regulate the collection of taxes in South Africa. South African mining companies are subject to the following taxes¹⁰⁷⁶:

- **Income Tax:** Mining companies are subject to corporate income tax on their profits, which is governed by the South African Income Tax Act of 1962. The current corporate income tax rate in South Africa is 28% for mining companies.
- **Value Added Tax (VAT):** Mining companies are also subject to VAT on their taxable supplies of goods and services, which is governed by the Value Added Tax Act of 1991. The standard VAT rate in South Africa is currently 15%.
- **Transfer Pricing:** Transfer pricing rules may also apply to mining companies in South Africa. These rules regulate the pricing of transactions between related parties, such as sales of minerals or services, and aim to prevent tax evasion through transfer pricing manipulation.
- **Tax Incentives:** The South African government provides certain tax incentives to promote investment in the mining sector, such as accelerated depreciation allowances, tax incentives for exploration and development expenditures, and tax incentives for small-scale mining operations.
- **Compliance and Reporting:** Mining companies are required to comply with tax regulations, maintain proper accounting records, and file regular tax returns with the South African Revenue Service (SARS). Non-compliance can result in penalties, fines, or other consequences.

The Mineral and Petroleum Resources Royalty Act 28 of 2008¹⁰⁷⁷ regulates the imposition and calculation of mining royalties. Mining royalties are deductible for income tax purposes. The Royalty Act distinguishes between a 'refined mineral resource' and an 'unrefined mineral resource':

- A refined mineral resource is a mineral resource that is solely listed in Schedule 1 of the Royalty Act; or a dual listed resource, which is listed in Schedule 1 and Schedule 2, and has been refined to or beyond the condition specified in Schedule 1 for that mineral resource. Examples: gold (processed to at

¹⁰⁷⁵ Mineral and Petroleum Resources Development Act 28 of 2002. Available on https://www.gov.za/sites/default/files/gcis_document/201409/a28-02ocr.pdf, accessed on 8 March 2023.

¹⁰⁷⁶ AfricaMaVal, Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf>, accessed on 3 April 2024.

¹⁰⁷⁷ The Mineral and Petroleum Resources Royalty Act 28 of 2008. Available on https://www.gov.za/sites/default/files/gcis_document/201409/316351260.pdf, accessed on 22 March 2024.

least 99.5% purity), platinum group metals (processed to at least 99.9% purity), copper (processed to at least 99% purity).

- An unrefined mineral resource is a mineral resource that is listed solely in Schedule 2 of the Royalty Act; or a dual-listed mineral resource (i.e. a mineral resource listed in Schedule 1 and Schedule 2) that fails to meet the condition specified in Schedule 1 for that mineral resource. Examples: coal of specified grades, rough diamonds, 80% uranium oxide in the uranium concentrate sold, concentrates, and bulk.

Royalty payments are calculated using a prescribed formular in Section 4 of the Royalty Act, based on the earnings before interest and taxes from gross sales of refined or unrefined mineral resources. Royalties are capped and cannot exceed 5% for refined mineral resources and 7% for unrefined mineral resources.

Mining royalties and taxes are an important source of revenue for the South African government. In the fiscal year 2021/22 payments by extractors grew quite substantially by R14.2 billion (100.0%) to R28.5 billion due to a significant improvement in the commodity prices such as platinum, iron ore as well as coal.¹⁰⁷⁸ In recent years, there has been some debate over the appropriate level of royalties and taxes, with some arguing that the current system may be discouraging investment in the mining sector.

Repatriation of profits by mining companies is subject to various regulations, including requirements for the payment of taxes and royalties, as well as regulations governing the movement of capital out of the country. The specific requirements can vary depending on the type of mining operation and the mineral being mined. Furthermore, mining companies are required to apply for permission from the Reserve Bank before repatriating profits. The Reserve Bank will consider factors such as the company's financial position, the impact of the repatriation on the country's balance of payments, and the overall economic situation before granting permission.

There have been some concerns raised about the repatriation of profits by mining companies, e.g. that the country is not getting a fair share of the profits generated by the mining sector, and that more needs to be done to ensure that mining companies contribute to the development of local communities and the economy as a whole. In response to these concerns, the South African government has introduced various measures aimed at increasing the contribution of the mining sector to the country's development. These measures include increased taxation of mining companies, the introduction of local ownership requirements, and the establishment of a fund to support communities affected by mining activities.

2.45.5 Mineral Beneficiation

The South African government has identified mineral beneficiation as a key driver for economic growth and has implemented various policies and initiatives to support the development of the sector. These include tax incentives for companies investing in mineral beneficiation, research and development programs, and funding for infrastructure development¹⁰⁷⁹.

¹⁰⁷⁸ South African Revenue Service. Available on <https://www.sars.gov.za/about/>, accessed 8 March 2023.

¹⁰⁷⁹ Department for Mineral Resources & Energy. Beneficiation Economics. Available on <https://www.dmr.gov.za/mineral-policy-promotion/beneficiation-economics>, accessed on 8 March 2023.

According to the MPRDA, before any person intends to beneficiate any mineral mined in South Africa outside the country, the holder may only do so after written notice and in consultation with the Minister. The holder of a mining right is entitled to process minerals mined under the auspices of a mining right as the holder of a mining right. However, there are further statutory provisions that are applicable to processing of precious metals and diamonds and these requirements are regulated by the Precious Metals Act, 2005 and the Diamonds Act, 1986 respectively¹⁰⁸⁰.

There are restrictions on the export of certain minerals, such as diamonds in terms of the Diamonds Act, 1986 and precious metals in terms of the Precious Metals Act, 2005. A permit is required to export and export levies are imposed¹⁰⁸¹.

2.45.6 Macroeconomics

South Africa is the second-largest economy in Africa (after Nigeria), with a GDP of approximately \$349 billion in 2021. Real GDP growth dropped to 2.0% in 2022 from 4.9% in 2021, mainly on account of persistent electricity shortages, flooding in KwaZulu Natal, and constraints in the transport sector, coupled with the global downturn following Russia's invasion of Ukraine. Inflation rose to 6.9% in 2022 from 4.5% in 2021, driven by higher food and fuel prices. To curb rising inflation, the Reserve Bank of South Africa raised the base interest rate to 6.25% in September 2022 from 5.5% in July 2022. The rand depreciated from 15.3 per US dollar in January 2022 to 17.3 in December 2022.

The budget deficit widened marginally, to 4.9% of GDP in 2022 from 4.6% in 2021, due to higher growth in priority spending, including spending related to the COVID-19 for the most vulnerable. The current account deficit also narrowed, to an estimated 0.5% of GDP in 2022 from a surplus of 3.7% in 2021, mainly because prices and volume of imports exceeded those of exports. External reserves increased from \$58.4 billion in August 2021 to \$63.4 billion in October 2022 (about 5.5 months of import cover), boosted by higher export earnings. Public debt increased marginally, to 71.4% of GDP in 2022 from 68.0% of GDP in 2021, due to increased budget financing requirements and fluctuations in interest and exchange rates. The financial sector continued to recover strongly from the impacts of the COVID-19 pandemic, with the nonperforming loans ratio declining from 4.5% in 2021 to 4.0% in 2022. Poverty remains high, with an estimated 30% of people living in extreme poverty in 2022. Inequality is also high, with a Gini coefficient of 0.63 in 2021. Unemployment was an estimated 32.7% as of December 2022¹⁰⁸².

2.45.7 Governance and Risk Ratings

2.45.7.1. Ease of Doing Business

According to the World Bank Group, in 2020, South Africa ranked 84 among 190 economies in the ease of doing business¹⁰⁸³. The ease of doing business in South Africa has improved over the years, but the country

¹⁰⁸⁰ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> Accessed on 22 March 2024.

¹⁰⁸¹ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf> Accessed on 22 March 2024.

¹⁰⁸² African Development Bank, South Africa Economic Outlook. Available on <https://www.afdb.org/en/countries/southern-africa/south-africa/south-africa-economic-outlook>, accessed on 8 March 2023.

¹⁰⁸³ Doing Business 2020, Economy Profile South Africa. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/s/south-africa/ZAF.pdf>, accessed on 8 March 2024.

still faces challenges in several areas. The country has made progress in areas such as starting a business, registering property, and resolving insolvency. However, challenges remain in areas such as getting electricity, enforcing contracts, and dealing with construction permits. The government has implemented various reforms aimed at improving the ease of doing business, but further efforts are needed to attract more investment and promote economic growth.

2.45.7.2. Investment Climate

South Africa generally welcomes foreign investment and virtually all business activities are open to foreign investors. The South African economy is highly diversified from a sectoral perspective and is the most developed and technologically advanced economy on the African continent. The investment climate is fortified by stable institutions, an independent judiciary and a robust legal sector that respects the rule of law, a free press and investigative reporting, a mature financial and services sector, and experienced local partners¹⁰⁸⁴. Although South Africa has a robust anti-corruption framework, laws are inadequately enforced, and public sector accountability is low, and whistle-blowers remain at risk. Corruption is perceived as a barrier to investment, particularly in public procurement.

The investment climate in South Africa's mining sector has been challenging in recent years, with concerns about policy uncertainty, regulatory burdens, corruption and social unrest affecting investor confidence¹⁰⁸⁵. The SAMRAD (South African Mineral Resources Administration System) was introduced in 2011 and has a number of problems including a lack of transparency leading to corruption in exploration licence awards¹⁰⁸⁶. The deficiencies have also led to duplicate rights being issued on the same properties. According to Minerals Council estimates there is a backlog in applications for more than 3,000 prospecting and mining rights worth pent-up investment of more than R30bn¹⁰⁸⁷. Furthermore, mineral export revenue declined by more than 11% year-on-year in the first 11 months of 2023, as bulk commodity exporters contended with Transnet's deteriorated rail infrastructure. A major obstacle to investment lies in the ongoing issue of "loadshedding," a term used in South Africa to describe rolling blackouts. Throughout 2022, the country faced loadshedding for over 200 days, and the trend has continued nearly every day in 2023. The lack of dependable power access severely hampers economic development and remains a primary worry for potential investors. Solar, wind and other alternative renewable energy projects are being developed in terms of a public private partnership initiative with the Government.

The government has implemented several policy changes and the launch of various initiatives aimed at addressing these concerns and promoting investment in the sector as well as measures to streamline regulatory processes and reduce administrative burdens for mining companies and improve infrastructure challenges, such as:

¹⁰⁸⁴ U.S. Department of State, 2023 Investment Climate Statements: South Africa. Available on <https://www.state.gov/reports/2023-investment-climate-statements/south-africa/>, accessed on 10 May 2024.

¹⁰⁸⁵ U.S. Department of State, 2023 Investment Climate Statements: South Africa. Available on <https://www.state.gov/reports/2023-investment-climate-statements/south-africa/>, accessed on 8 May 2024.

¹⁰⁸⁶ SA Govt unveils winning bidder for minerals cadastre. Available on <https://www.miningmx.com/news/markets/55659-sa-unveils-pmg-consortium-as-winning-bidder-for-new-minerals-cadastre/>, accessed on 8 May 2024.

¹⁰⁸⁷ Ibid.

- **New Mining Licensing System:** The DMRE has concluded the process to appoint a service provider for the design, implementation, maintenance, and support of the Mining Licensing System that will heighten transparency in the application and processing of mining rights, permits and licenses¹⁰⁸⁸.
- **Junior Mining Exploration Fund (JMEF):** The DMRE and the Industrial Development Corporation (IDC) have signed a Memorandum of Agreement (MOA) officially establishing the JMEF. The establishment of this fund forms part of South Africa's mineral exploration strategy. The main objective of the fund is to enable eligible South African junior mining enterprises to access funding so they can conduct prospecting work; increase access to mine ore bodies; and promote economic inclusion to support equitable economic growth¹⁰⁸⁹.
- **Freight Logistics Roadmap:** On the 8th of December 2023, Cabinet approved the Roadmap for the Freight Logistics System in South Africa. The roadmap aims to outline a clear set of actions to stabilise and improve Transnet's performance in the short term and to fundamentally reform the logistics system in the long term. To ensure this work receives dedicated attention, we established the National Logistics Crisis Committee, which is chaired by the Presidency and brings together all of the relevant government departments to drive a coordinated response to the logistics challenges¹⁰⁹⁰.
- **Integrated Resource Plan (IRP) 2019¹⁰⁹¹:** Outlines South Africa's strategic plan and roadmap for future electricity generation capacity as well as demand, specifically up to 2030. The policy and regulatory frameworks within the energy sector have been altered dramatically to crowd-in private sector capital and operational participation in the energy sector. This was essential, especially in a highly constrained electricity supply environment which has been limiting the economy's performance and growth potential, as well as the limited fiscal space¹⁰⁹².
- **Just Energy Transition Investment Plan (JET-IP)¹⁰⁹³:** The JET-IP was unveiled during COP 27 in November 2022 and sets out the investments deemed necessary over the period 2023-2027 to support South Africa's decarbonisation commitments. The JET-IP has been hailed as a first-of-its-kind initiative globally. Its implementation will unleash numerous investment opportunities for private sector participants, domestic and foreign¹⁰⁹⁴.

¹⁰⁸⁸ Media Statement: DMRE Announces the Preferred Bidder for The Mining Licensing System, 31 January 2024. Available on <https://www.dmr.gov.za/news-room/post/2166/media-statement-dmre-announces-the-preferred-bidder-for-the-mining-licensing-system>, accessed on 8 May 2024.

¹⁰⁸⁹ Media Statement: DMRE And IDC Sign Moa to Officially Establish the Junior Mining Exploration Fund, 7 Feb 2024. Available on <https://www.dmr.gov.za/news-room/post/2174/media-statement-dmre-and-idc-sign-moa-to-officially-establish-the-junior-mining-exploration-fund>, accessed on 8 May 2024.

¹⁰⁹⁰ Roadmap For the Freight Logistics System In South Africa. Available on <https://www.transport.gov.za/wp-content/uploads/2023/02/Roadmap-for-the-Freight-Logistics-System-in-South-Africa-FINAL-FOR-RELEASE.pdf>, accessed on 8 May 2024.

¹⁰⁹¹ Integrated Resource Plan (IRP2019). Available on <https://www.energy.gov.za/irp/2019/IRP-2019.pdf>, accessed on 8 May 2024.

¹⁰⁹² South Africa Investment Conference 2023 Case Booklet. Available on http://www.investsa.gov.za/wp-content/uploads/2023/05/South-Africa-Investment-Conference-2023_Case-Booklet_online.pdf, accessed on 8 May 2024.

¹⁰⁹³ South Africa's Just Energy Transition Investment Plan (JET-IP). Available on <https://www.climatecommission.org.za/south-africas-jet-ip>, accessed on 8 May 2024.

¹⁰⁹⁴ South Africa Investment Conference 2023 Case Booklet. Available on http://www.investsa.gov.za/wp-content/uploads/2023/05/South-Africa-Investment-Conference-2023_Case-Booklet_online.pdf, accessed on 8 May 2024.

2.45.7.3. Risk Ratings

Moody's maintains a stable investment outlook for South Africa yet assigns its sovereign debt a sub-investment grade. Fitch reaffirmed South Africa's credit ratings as junk status with a stable outlook in November 2022. Meanwhile, S&P upgraded its overall investment outlook to positive from stable in May 2022, attributing it to an enhanced fiscal trajectory. In November 2022, it maintained its positive outlook on South Africa, as the agency expects that a net external creditor position and the implementation of some structural reforms could lead to an easing of economic pressures. In March 2023, S&P revised South Africa's status from positive to stable, citing the effects of ongoing electricity shortages and infrastructure limitations on economic growth. This adjustment occurred shortly after South Africa was grey-listed by the Financial Action Task Force (FATF) in February 2023¹⁰⁹⁵. These ratings indicate that South Africa is considered a moderate to high-risk country for investment, with challenges including a high debt burden, low economic growth, and social and political instability.

Furthermore, South Africa is not an implementing country under the EITI. The EITI provides standards for reporting on extractive industries and the disclosure of beneficial ownership in companies is a key tool in the fight against corruption, tax avoidance, capital flight, environmental mismanagement and other ills linked to the sector in South Africa.

2.45.8 Good Governance Evaluation

The South African economy has become increasingly diversified over the years, thereby reducing its sectoral concentration risks, particularly in mining. It has unlocked a diverse range of high-yield investment opportunities, predominantly but not exclusively in sectors with high export propensities. South Africa is described as a “Gateway to Africa” and many foreign companies have based their sub-Saharan operations in South Africa due to its advanced infrastructure and economy (especially compared to other African countries), political stability and strong South African business and Government ties to the rest of the continent¹⁰⁹⁶.

South Africa's rich endowment of mineral resources offers enticing investment prospects spanning precious metals, energy minerals, ferrous and non-ferrous metals, battery minerals, and other minerals essential for green and digital economies. The DMRE is committed to expediting initiatives aimed at promoting investment, hastening transformation, and bolstering regional integration in the mining sector.

The global acceleration of the energy transition, including the expansion of renewable energy infrastructure, the burgeoning electric vehicle industry, battery production, and the green hydrogen economy, is projected to increase demand for chromium, cobalt, copper, graphite, iron ore, lead, manganese, nickel, platinum, and other minerals. Positioned as a leader in the global platinum supply chain, South Africa is poised to capitalize on opportunities in the PGM sector as the global green hydrogen

¹⁰⁹⁵ U.S. Department of State, 2023 Investment Climate Statements: South Africa. Available on <https://www.state.gov/reports/2023-investment-climate-statements/south-africa/accessed>, on 8 May 2024.

¹⁰⁹⁶ Lex Africa, Guide to Doing Business in Africa. Available on <https://lexafrica.com/wp-content/uploads/2024/03/LEX-Africa-Guide-To-Doing-Business-In-Africa-2024.pdf>, accessed on 8 May 2024.

economy advances. Furthermore, the significant infrastructure development program slated for the forthcoming years will boost demand for locally manufactured downstream metal products¹⁰⁹⁷.

Efforts to enhance policy clarity and establish robust investment protection mechanisms aim to mitigate risks for potential investors and existing industry participants. Industrial policy support mechanisms seek to alleviate private equity capital financing risks for exploration and the development of new resources in the mining sector. Moreover, streamlined processes leading to shortened timeframes for prospecting, environmental, and water use licenses are expected to stimulate fresh mining investments¹⁰⁹⁸. South Africa remains a destination conducive to investment, as the fastest-growing consumer market in the world.

¹⁰⁹⁷ South Africa Investment Conference 2023 Case Booklet. Available on http://www.investsa.gov.za/wp-content/uploads/2023/05/South-Africa-Investment-Conference-2023_Case-Booklet_online.pdf, accessed on 8 May 2024.

¹⁰⁹⁸ South Africa Investment Conference 2023 Case Booklet. Available on http://www.investsa.gov.za/wp-content/uploads/2023/05/South-Africa-Investment-Conference-2023_Case-Booklet_online.pdf, accessed on 8 May 2024.



2.46 South Sudan

2.46.1 Introduction

The Republic of South Sudan is a landlocked country in eastern Central Africa. It is bordered by Ethiopia, Sudan, the Central African Republic, the Democratic Republic of the Congo, Uganda, and Kenya, and includes the vast swamp region of the Sudd, formed by the White Nile. The population is 15,254,000 million (2024 est.). Juba is the capital and largest city. South Sudan gained independence from Sudan on 9 July 2011, making it the youngest sovereign state or country as of 2024¹⁰⁹⁹. South Sudan is known as an important oil producer. Mining plays a small and insignificant role in the South Sudanese economy. Other than artisanal gold mining, the mineral wealth of South Sudan is yet to be explored.

2.46.2 Policy and Legal Framework

2.46.2.1. Institutional and Policy Overview

The Ministry of Petroleum contributes more than 90% of South Sudan's total income through oil production and exportation via pipeline from the oil fields in South Sudan to Port Sudan on the Red Sea¹¹⁰⁰. The stated policy aims of the South Sudan Mining Ministry include¹¹⁰¹:

- Ensure that South Sudan's mineral endowment is developed for the benefit of the nation and the people of South Sudan as a whole;
- Foster mineral development and mining as a vehicle for economic growth and community development;
- Apply modern principles of transparency and accountability to the minerals and mining sector and enforce strict rules against corrupt practices;
- Ensure that the benefits of mining are fairly distributed among investors, the Government, the states and local communities;
- Provide a fair and balanced regulatory and fiscal framework that encourages investment;
- Ensure that mineral development and mining activities are conducted with due regard to the natural environment; and
- Establish measures to maximize the opportunities for South Sudan nationals to play a full part in exploration and mining operations, and for South Sudan businesses, enterprises and service providers to derive maximum benefit.

¹⁰⁹⁹ Britannica, South Sudan Available on <https://www.britannica.com/place/South-Sudan>.

¹¹⁰⁰ Africa News, Industry Revitalization and Investment: South Sudan's Minister of Petroleum Hon. Puot Kang Chol Places South Sudan on Stage at African Energy Week in Cape Town, August 2021. Available on <https://web.archive.org/web/20210905114153/https://www.africanews.com/2021/08/12/industry-revitalization-and-investment-south-sudan-s-minister-of-petroleum-hon-puot-kang-chol-places-south-sudan-on-stage-at-african-energy-week-in-cape-town/>, accessed on 15 March 2024

¹¹⁰¹ Ministry of Mines, Overarching Policy Objectives. Available on <https://mom.gov.ss/ministry-objectives/> accessed on 15 March 2024

2.46.2.2. Relevant Legal Instruments

The Mining Act of 2012 and Mineral Title Regulation 2015 govern the mining industry.¹¹⁰²

- **Mining Cadastre System**

On 28 April 2015, the Ministry of Petroleum and Mining in South Sudan launched South Sudan's new Mining Cadastre System. The cadastre is compliant with the requirements of the Mining Act of 2012 and the Mining Regulations of 2015.¹¹⁰³

2.46.2.3. Foreign Ownership, Migrant and Local Labour Requirements

No information was found in this regard.

2.46.2.4. Artisanal Mining Sector

The Mining Act of 2012 makes provisions for small-scale and artisanal mining licences. Not much information is available about this sector, but because the South Sudanese economy is primarily focused on the oil and gas industry, the mining industry as a whole remains small, and the exploitation of metals and minerals is largely done on a small scale and artisanal basis. According to interviews undertaken with mining operators in South Sudan, there is no formal gold mining taking place in the country. Mining is undertaken only through crude traditional means and equipment.¹¹⁰⁴

2.46.2.5. Judicial System

- **Judicial independence**

The South Sudanese Transitional Constitution, states that “the judiciary shall be independent of the executive and the legislature” and sets out safeguards for judicial independence.¹¹⁰⁵

Notwithstanding these stated aims, as contained in the Constitution, the judiciary in South Sudan does not appear to be truly independent. The International Court of Justice compiled a report on the independence of the judiciary and the report noted that members of South Sudan's executive as well as its military power had ‘exercised undue pressure on and illegitimate interference with the exercise of judicial functions, in violation of international standards.’¹¹⁰⁶

- **Enforcing Contracts and Efficiency in settling disputes**

¹¹⁰² Ministry of Mines. Available on <https://mom.gov.ss/home/> accessed on 15 March 2024

¹¹⁰³ South Sudan goes live with new Mining Cadastre System and launches web portal. Available on <https://spatialdimension.com/articles/south-sudan-goes-live-with-new-mining-cadastre-system-and-launches-web-portal/> accessed on 15 March 2024.

¹¹⁰⁴ INTERVIEW: ‘No formal gold mining in South Sudan’-Mining ministry. Available on <https://radiotamazuj.org/en/news/article/interview-no-formal-gold-mining-in-south-sudan-mining-ministry> accessed on 15 March 2024.

¹¹⁰⁵ International Commission of Jurists, South Sudan: Court structure, June 2014. Available on <https://www.ici.org/cijlcountryprofiles/south-sudan/south-sudan-introduction/south-sudan-court-structure/> accessed on 15 March 2024.

¹¹⁰⁶ AfricanLII, Sacking of 14 judges by South Sudan President unconstitutional: East African Court of Justice, July 2020. Available on <https://africanlii.org/articles/2020-07-30/carmel-rickard/sacking-of-14-judges-by-south-sudan-president-unconstitutional-east-african-court-of-justice> accessed on 15 March 2024.

No information was found in this regard.

- **Protection of Minority Investors**

No information was found in this regard.

2.46.2.6. Arbitration

South Sudan is one of 12 remaining African non-member states of the New York Convention on the enforcement of arbitral awards.¹¹⁰⁷

2.46.3 Licencing and Permit Regime

2.46.3.1. Types of Licences and Permits

- A **reconnaissance licence** is granted for a period of 2 years, with a maximum of 25,000 sq. km coverage and a minimum of 10 sq. km coverage under the licence. This class of licence is not renewable.
- An **exploration licence** is granted for a period of 5 years, with a maximum of 2,000 sq. km coverage and a minimum of 10 sq. km coverage under the licence. This class of licence is renewable for 2 terms of 5 years each.
- A **large-scale mining licence** is granted for 25 years, with renewal possible based on application and based on what is technically required by the mining operations. The licence is renewable for up to 20 years.
- A **small-scale mining licence** is granted for a period of 10 years with a maximum coverage of 1 sq. km. This class of licence is renewable only once.
- An **artisanal mining licence** is granted for 1 year with a maximum coverage of 1 sq. km. This class of licence must be renewed annually by the local government authorities.¹¹⁰⁸

2.46.3.2. Transferability of Mineral Rights

No information was found in this regard.

¹¹⁰⁷ Norton Rose Fulbright, Enforcement of awards across Africa – 42 of Africa’s 54 states have now acceded to the New York Convention, March 2021. Available on <https://www.nortonrosefulbright.com/en/inside-africa/blog/2021/03/enforcement-of-awards-across-africa--42-of-africas-54-states> accessed on 15 March 2024.

¹¹⁰⁸ Ministry of Mines. Available on <https://mom.gov.ss/home/> accessed on 15 March 2024.

2.46.4 Taxation

2.46.4.1. Mining Royalties and Taxes

If mining activity is governed by the National Government, 5% shall be paid to the States and communities as follows¹¹⁰⁹:

- 2% shall be paid to the State; and
- 3% to the communities.

If Mining activity is governed by State Government, 5% shall be paid to the counties and communities as follows¹¹¹⁰:

- 2% shall be paid to the county; and
- 3% to the communities.

2.46.5 Mineral Beneficiation

No information was found in this regard.

2.46.6 Macroeconomics

Real GDP contracted an estimated 2.9% in 2021/22, after contracting 4.9% in 2020/21, driven by the oil sector. Oil production declined to 156,000 barrels a day in 2021/22 from 169,000 in 2020/21 after several oilfields were damaged by floods. The sector was the leading contributor on the supply side (–0.6 percentage point) to the real GDP contraction in 2021/22. Agriculture, which contributed –0.1 percentage point, was affected by floods and drought. On the demand side, the contraction was driven by net exports (–1.3 percentage points). Poverty remains high, with an estimated 7.7 million people requiring emergency food assistance in 2022.¹¹¹¹

2.46.7 Governance and Risk Ratings

2.46.7.1. Ease of Doing Business

South Sudan ranks 185 out of 190 countries in the 2020 World Bank Ease of Doing Business Report.¹¹¹²

2.46.7.2. Investment Climate

The investment climate in South Sudan is very challenging. Factors inhibiting investment in South Sudan include a lack of skilled labour and limited physical infrastructure riddled with arbitrary checkpoints.

¹¹⁰⁹ African Mining Legislation Atlas, South Sudan - Mining Law 2012. Available on <https://www.a-mla.org/en/country/law/45#> accessed on 18 March 2024.

¹¹¹⁰ Ibid.

¹¹¹¹ African Development Bank, South Sudan Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/south-sudan/south-sudan-economic-outlook#:~:text=Real%20GDP%20contracted%20an%20estimated,driven%20by%20the%20oil%20sector>. Accessed on 15 March 2024.

¹¹¹² Doing Business 2020, Economic Profile South Sudan. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/s/south-sudan/SSD.pdf> accessed on 15 March 2024.

According to the US State Department Investment Climate report on South Sudan, the country remains the most dangerous place in the world for humanitarian aid workers, with at least 10 humanitarian aid workers, contractors, and volunteers killed between January and March 24, 2023.¹¹¹³

Furthermore, according to the US State Department, the legal system is underfunded, dysfunctional, and subject to corrupt practices and interference. Government entities do not enforce laws equitably or consistently. Corrupt government officials operate with impunity.

2.46.7.3. Risk Ratings

Corruption extends beyond the oil sector. Transparency International ranked South Sudan the country with the world's worst public sector corruption in its 2021 rankings and tied for second worst in 2022. Additionally, the 2023 Report of the Commission on Human Rights in South Sudan (advanced edited version) highlighted the link between South Sudan's human rights violations and economic crimes.¹¹¹⁴

Although in 2011 South Sudan announced that it would implement the EITI, the global standard for transparency of natural resource revenues, the country is yet to implement to EITI standard.¹¹¹⁵

2.46.8 Good Governance Evaluation

Arbitrary and conflicting regulations, multiple layers of taxation, airport and border obstructions, labour harassment, and looting of warehouses are some of the challenges that are regularly encountered in South Sudan by foreign investors. The legal framework governing investment and private enterprises remains underdeveloped. Contract dispute litigants are sometimes arrested and imprisoned until they agree to pay a financial settlement even when never charged with an offense or brought to court. All of these factors make South Sudan a difficult and challenging environment for investors.

¹¹¹³ U.S. Department of State, 2023 Investment Climate Statements: South Sudan. Available on [https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/#:~:text=South%20Sudan%20is%20not%20a,FTA\)%20with%20the%20United%20States](https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/#:~:text=South%20Sudan%20is%20not%20a,FTA)%20with%20the%20United%20States). Accessed on 15 March 2024.

¹¹¹⁴ U.S. Department of State, 2023 Investment Climate Statements: South Sudan. Available on [https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/#:~:text=South%20Sudan%20is%20not%20a,FTA\)%20with%20the%20United%20States](https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/#:~:text=South%20Sudan%20is%20not%20a,FTA)%20with%20the%20United%20States). Accessed on 15 March 2024.

¹¹¹⁵ EITI, President of South Sudan commits to global transparency standard, December 2011. Available on <https://eiti.org/news/president-south-sudan-commits-global-transparency-standard> accessed on 15 March 2024.

2.47 Sudan

2.47.1 Introduction

Sudan, located in North-East Africa, is characterized by a diverse ethnic and cultural landscape. The country has a history of civil conflicts and underwent a secession in 2011, leading to the creation of South Sudan.

Sudan is endowed with abundant natural resources, including gold, silver, chrome, asbestos, manganese, gypsum, mica, zinc, iron, lead, uranium, copper, kaolin, cobalt, granite, nickel and tin. Production from the mining sector accounts for under 10% of the GDP. Mineral extraction reported by the Government of Sudan includes gold, chromium, gypsum, salt, and cement. Production of gypsum, feldspar, salt, gold, and cement has increased since 2012.

2.47.2 Policy and Legal Framework

2.47.2.1. Institutional and Policy Review

The Ministry of Minerals, established in 2010, is the government authority responsible for matters related to the country's metals and mineral resources. The Ministry is supported by various administrative bodies including¹¹¹⁶:

The Technical Committee for Mining (Technical Committee)³ which must:

- receive and evaluate applications for licences and mining contracts;
- submit recommendations to the Minister in respect of these applications; and
- supervise and regulate the exploitation and exploration of Sudan's mineral resources.

The Geological Research Authority of Sudan (GRAS) which is empowered to:

- supervise the marketing, production and disposal of mineral resources that are mined;
- organise, promote and develop the mining sector in Sudan; and
- maintain an inventory of Sudan's mineral resources which have been identified through geological mapping, and geophysical as well as geochemical exploration programs.

2.47.2.2. Relevant Legal Instruments

Sudan has established comprehensive mining legislation to regulate the exploration and extraction of minerals. The Sudanese Mineral Resources Act and other related regulations govern the sector, providing guidelines for Licencing, environmental protection, and community engagement.

¹¹¹⁶ Herbert Smith Freehills, The Sudanese Mineral Law Regime and Potential Law Reform Recommendations, June 2021. Available on <https://hsfnotes.com/africa/2021/06/09/the-sudanese-mineral-law-regime-and-potential-law-reform-recommendations/> accessed on 18 March 2024

The Sudanese mining sector is governed under two Acts of Parliament:

- The Mineral Wealth and Mining Development Act of 2015 (2015 Act); and
- The Mineral Resources and Mining Development Act of 2007 (2007 Act).

2.47.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Medium and large-size private companies are open to non-South Sudanese investors. Foreign investors may own, or control business organizations in any sector of the economy of South Sudan as domestic business organizations¹¹¹⁷.

2.47.2.4. Artisanal Mining Sector

In 2018, there was an estimate of 1,400,000 million ASGM miners¹¹¹⁸. Artisanal gold mining accounted for 85% of the total gold extracted (2010-2015). The total gold produced for the period 2010-2015 was approximately 280 metric tons. The legalization of the mining sector is governed by the Mining Act of 2015 and regulations. For artisanal scale mining the law regulates the sector providing for the definition of an artisanal sub-sector, Licencing requirements, management of the environment and coordination with local mining councils in the States¹¹¹⁹.

2.47.2.5. Judicial System

Sudan operates under an Islamic legal system, with Sharia law being a primary influence. The judiciary consists of various courts, with the Constitutional Court at the highest level. The legal system varies between regions.

- **Judicial independence**

The legal system of Sudan has changed significantly over time. British colonial rule influenced the legal system significantly, with most lawyers and judges having been British-trained. Soon after independence, however, the need to reform the legal system began to come to the fore. Sudan adopted a new civil code that was based materially on the Egyptian civil code of 1949. The new system was controversial because it disregarded existing laws and customs and introduced largely foreign (Egyptian law). In 1973 the government repealed these codes and returned the legal system to its pre-1970 common-law status. In 1977 it was agreed that an Islamic-based legal system be considered. In September 1983, several decrees were issued, known as the September Laws, which made sharia the law of the land¹¹²⁰.

- **Enforcing Contracts and Efficiency in settling disputes**

¹¹¹⁷ Centurion Law Group, South Sudan's investment protection guide, February 2024. Available on <https://centurionlg.com/2024/02/06/south-sudans-investment-protection-guide/> accessed on 13 March 2024.

¹¹¹⁸ ASM Database – Sudan. Available on <https://artisanalmining.org/InventoryData/doku.php/country:sudan>, accessed on 30 April 2024.

¹¹¹⁹ UNCTAD, Artisanal Mining in Sudan - Opportunities, Challenges and Impacts, November 2015. Available on <https://unctad.org/system/files/non-official-document/17OILGASMINE%20Mohamed%20Sulaiman%20Ibrahim%20S4.pdf>, accessed on 30 April 2024.

¹¹²⁰ Shinn, David H. (2015). "The Legal System", Sudan – A country study. Available on <https://tile.loc.gov/storage-services/master/frd/frdcstdy/su/sudancountrystud00berry/sudancountrystud00berry.pdf>.

According to the World Bank, Sudan made enforcing contracts easier in 2019 by recognizing voluntary conciliation and mediation as ways of resolving commercial disputes¹¹²¹.

• **Protection of Minority Investors**

According to the World Bank, in 2017 Sudan strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and granting shareholders pre-emption rights in limited liability companies. However, Sudan weakened minority investor protections by making it more difficult to sue directors in case of prejudicial related-party transactions, decreasing shareholder rights and role in major corporate decisions, and undermining ownership and control structures.

According to the World Bank, Sudan in 2019 strengthened minority investor protections by easing access to evidence in shareholder litigation and increasing the rights and role of shareholders in private companies¹¹²².

2.47.2.6. Arbitration

The Arbitration Act 2016 is applicable to both local and international arbitrations. Under section 7 of the Arbitration Act an arbitration is considered an international arbitration if: (i) the headquarters of the business of the arbitration parties' is located in two different countries; (ii) the subject matter of dispute under the arbitration agreement is connected to more than one country¹¹²³.

Sudan is a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards¹¹²⁴. Furthermore, Sudan is party to several bilateral investment protection agreements with other countries.

2.47.3 Licencing and Permit Regime

2.47.3.1. Types of Licences and Permits

The 2015 Mining Act provides for five types of mining licences:

- **Prospecting licence:** which entitles a licensee to enter the area identified in the licence, or with respect to which a mining contract has been concluded, and search for minerals and mining materials;
- **Exclusive exploration licence:** which grants the licensee the exclusive right to explore in the area identified in the licence;

¹¹²¹ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 13 March 2024.

¹¹²² World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 13 March 2024.

¹¹²³ Legal500, Sudan International Arbitration. Available on <https://www.legal500.com/guides/chapter/sudan-international-arbitration/> accessed on 1 March 2024.

¹¹²⁴ Ibid.

- **Mining contract and a small mining contract:** which grants the contractor the exclusive right to mine the mineral resources regulated under the contract and which are located within the licensed area;
- **A traditional (artisanal) mining contract** grants the contractor the right to extract specific minerals by traditional means in the area identified in the contract; and
- **A contract for the extraction of minerals and industrial rocks**¹¹²⁵.

Applications for licences or contracts must be submitted to the Technical Committee. After the recommendation is provided, the Minister must issue the licence or conclude the contract¹¹²⁶.

2.47.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.47.4 Taxation

2.47.4.1. Mining Royalties and Taxes

The Sudanese fiscal regime imposes various taxes on mining companies which hold licences or are party to mining contracts. These companies are required to:

- pay 5% to 6% royalty rates on metallic and precious minerals;
- offer a 30% free carried interest in the company to the Government;
- pay 15% business profit tax; and
- pay surface rental fees which are calculated with reference to the surface area of the licence site¹¹²⁷.

2.47.5 Mineral Beneficiation

No information was found in this regard.

2.47.6 Macroeconomics

The Sudanese economy has traditionally been dependent on agriculture, but the mining sector, including gold and other minerals, has played a crucial role in recent years. Economic diversification efforts are underway to reduce reliance on a single sector.

GDP grew 0.7% in 2022 after contracting 1.9% in 2021 on account of political instabilities and spill over effects of Russia's invasion of Ukraine. Growth in 2022 was driven by agriculture and mining on the supply side and by private consumption on the demand side. The central bank adopted reserve money targeting, reducing money supply growth to 48% in 2022 compared with 153% in 2021. Inflation eased from 359.1%

¹¹²⁵ Herbert Smith Freehills, The Sudanese Mineral Law Regime and Potential Law Reform Recommendations, June 2021. Available on <https://hsfnotes.com/africa/2021/06/09/the-sudanese-mineral-law-regime-and-potential-law-reform-recommendations/#a07> accessed on 13 March 2024.

¹¹²⁶ Ibid.

¹¹²⁷ Ibid.

in 2021 to 139% in 2022 due largely to unifying the exchange rate and reducing monetization of the fiscal deficit. Banks dominate the financial sector, accounting for over 80% of assets¹¹²⁸.

2.47.7 Governance and Risk Ratings

2.47.7.1. Ease of Doing Business

According to the World Bank's 2020 Doing Business Report, Sudan ranked 185 out of 190 countries surveyed and obtained an economic score of 34.6 out of 100. Performance indicators, such as starting a business; obtaining electricity; obtaining credit and protecting minority investors scored particularly poorly¹¹²⁹.

Sudan's governance and risk ratings have been affected by historical political instability and conflicts. However, recent political developments and efforts toward economic reforms may impact these ratings positively. According to the World Bank's most recent Worldwide Governance Indicators, corruption was a severe problem. The law provides the legislative framework for addressing official corruption, but implementation under the Bashir regime was weak, and many punishments were lenient¹¹³⁰.

2.47.7.2. Investment Climate

According to the US State Department Investment Climate Report on Sudan (2022), the sectors of greatest interest to foreign investors remain mineral extraction (primarily gold, non-precious metals, oil, and natural gas) and agriculture. Sudan's infrastructure is however in significant need of modernization and expansion, but a lack of domestic investment capital, poor infrastructure, burdensome bureaucracy, endemic corruption, and low household incomes create challenges for any company considering the Sudanese market¹¹³¹.

2.47.7.3. Risk Ratings

Political instability is heightened in Sudan since the overthrow of dictator el-Bechir in 2019, the military coup in 2021 and the internal armed conflict since April 2023¹¹³². Inter-community violence in the southern regions, marked by the presence of militias, particularly in Darfur, Kordofan and Blue Nile; fighting fuelled by the armed conflict. Socio-economic factors that create instability include high rates of poverty, high unemployment, insecurity, dependence on food aid and risk of famine. Furthermore, unsustainable external debt exacerbated by the suspension of international financial aid and extremely low foreign exchange reserves, creates additional macroeconomic and country risk¹¹³³. Sudan was not

¹¹²⁸ African Development Bank, Sudan Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/sudan/sudan-economic-outlook> accessed on 13 March 2024.

¹¹²⁹ World Bank, Ease of Doing Business in South Sudan. Available on <https://archive.doingbusiness.org/en/data/exploreconomies/south-sudan>, Accessed on 28 February 2024.

¹¹³⁰ U.S. Department of State, 2020 Investment Climate Statements: Sudan. Available on <https://www.state.gov/reports/2020-investment-climate-statements/sudan/>, accessed on 28 February 2024.

¹¹³¹ U.S. Department of State, 2022 Investment Climate Statements: Sudan. Available on <https://www.state.gov/reports/2022-investment-climate-statements/sudan/> accessed on 13 March 2024

¹¹³² COFACE, Country Risk – Sudan. Available on <https://www.coface.com/news-economy-and-insights/business-risk-dashboard/country-risk-files/sudan#:~:text=Weaknesses,armed%20conflict%20since%20April%202023>. Accessed on 1 March 2024

¹¹³³ COFACE, Country Risk – Sudan. Available on <https://www.coface.com/news-economy-and-insights/business-risk-dashboard/country-risk-files/sudan#:~:text=Weaknesses,armed%20conflict%20since%20April%202023>. Accessed on 1 March 2024

included in the latest version of the Fraser Institute of global mining jurisdiction rankings due to a lack of response to the institute's request for information.

2.47.8 Good Governance Evaluation

Sudan has a relatively new and overhauled legal framework to govern its mining industry. It covers all areas of regulation expected of a developed mining jurisdiction. However, neither the 2007 Act nor the 2015 Act provide for an effective environmental law or regulation which properly governs matters related to the environment, rehabilitation, mine closure, mine-affected communities, or mine occupational health and safety¹¹³⁴.

Sudan remains very volatile and unstable with current insurrections having led to eight million people being displaced with the risk of growing hunger increasing. Notwithstanding the mineral potential, poor governance and a volatile political situation make the investment case in Sudan challenging currently.

¹¹³⁴ Herbert Smith Freehills, The Sudanese Mineral Law Regime and Potential Law Reform Recommendations, June 2021. Available on <https://hsfnotes.com/africa/2021/06/09/the-sudanese-mineral-law-regime-and-potential-law-reform-recommendations/> accessed on 18 March 2024.



2.48 Tanzania

2.48.1 Introduction

The United Republic of Tanzania is located in Eastern Africa. It is bordered by Kenya and Uganda to the North, Rwanda, Burundi and the Democratic Republic of Congo to the West and Zambia, Malawi and Mozambique to the South¹¹³⁵. Swahili (or Kiswahili) and English are the two official languages of Tanzania. Tanzanian's preoccupation with agricultural production, which increased in the 1970s and 1980s, is a reflection of the government's commitment, at that time, to socialist development and central planning, as outlined in the Arusha Declaration of 1967 (the Declaration).¹¹³⁶ The Declaration resulted in the nationalization of a number of industries and public services (including the mining sector).¹¹³⁷

In Tanzania, mining is a leading industrial sector, consistently increasing the value of its mineral exports. The contribution of the Tanzanian mining sector to the country's GDP grew by 2.5% from 2018 to 2021, jumping to 7.3% from 4.8%. It generates over \$2.5 billion annually and accounts for approximately 50% of exports by value. Tanzania's natural resources include gold, silver, tanzanite, iron ore, copper, nickel, cobalt, graphite, and uranium. Tanzania is also home to a wide expanse of approximately 24 rare earth elements and critical minerals currently in exploration¹¹³⁸. Even though the current discoveries of huge deposits of gas may change the equation,¹¹³⁹ the Government planned to deploy coal firepower to offset the shortage of energy.

2.48.2 Policy and Legal Framework

2.48.2.1. Institutional and Policy Overview

The Tanzanian legal system is based on the English common law.¹¹⁴⁰ It derived this system from its British colonial legacy, as it does the system of government, which is based to a large degree on the Westminster parliamentary model.¹¹⁴¹ After independence from the United Kingdom in 1961, Tanzania adopted its Constitution in 1977, the Constitution of the United Republic of Tanzania (as amended, the Constitution).¹¹⁴² The Constitution recognises the right to equality, privacy and freedom of expression, and does so by aiming to build a democratic society founded on the principles of justice, fraternity and concord.¹¹⁴³

¹¹³⁵ Ministry of Foreign Affairs and East African Cooperation, Tanzania Country Profile. Available on <https://www.foreign.go.tz/tanzania/category/country-profile>, accessed on 7 May 2024.

¹¹³⁶ *Op cit* note **Error! Bookmark not defined.**

¹¹³⁷ Arusha Declaration of 1967, page 22. The Arusha Declaration was passed on January 29, 1967 and it summarized Tanzania's commitment to socialism and the significant role that it plays in the country's development.

¹¹³⁸ U.S. Department of Commerce, International Trade Administration, Tanzania Rare Earth and Critical Minerals. Available on <https://www.trade.gov/market-intelligence/tanzania-rare-earth-and-critical-minerals>, accessed on 7 May 2024.

¹¹³⁹ R Alan 'Tanzania: From mining to oil and gas', accessed in September 2023, on <https://www.econstor.eu/bitstream/10419/146273/1/861501357.pdf>.

¹¹⁴⁰ Index: Mundi 'Tanzania: Legal System', accessed in September 2023, on https://www.indexmundi.com/tanzania/legal_system.html.

¹¹⁴¹ Christabel Manning and Seka Kaseru 'Update: Tanzanian Legal System and Legal Research', accessed in September 2023, on [UPDATE: Guide to Tanzanian Legal System and Legal Research - GlobaLex \(nyulawglobal.org\)](https://www.nyulawglobal.org/globalex/tanzania.html).

¹¹⁴² The Constitution of the United Republic of Tanzania, 1977 (hereinafter the Constitution)

¹¹⁴³ *Ibid.*

The government of Tanzania exercises ownership and control over all natural resources on behalf of the people of Tanzania. All activities related to exploration of natural wealth and resources are to be conducted by the government on behalf of the people.¹¹⁴⁴ Without jeopardising applicable laws of the land, every person has the right to own property and the right to keep their property in accordance with the laws of Tanzania.

The principal legislation regulating mining in Tanzania is the Mining Act, 2010¹¹⁶. The Act provides for:

- the reconnaissance, prospecting and mining for, and disposal of, and the exercise of control over, minerals in Tanzania.
- rights and claims relative to mining operations and does so by establishing the Commission for Mines, for the administration of the Act. grant, tenure, terms and conditions, renewal and termination of mineral rights, payment of various taxes, fees, duties, royalties and other applicable charges.
- regulates other matters relative to mining such as financial matters, the sale and export of minerals, the protection of the environment, environmental impact assessment and the liability of holders of licences or mining claims for pollution of the environment or other damage caused.¹¹⁴⁵
- Provide for the renewal and transfer of mineral rights and the payment of royalties.
- Require the mining company to demonstrate that it has the financial capacity to carry out mining activities and comply with the terms of the mining licence.
- Require the mining company to demonstrate that it has the technical competence to carry out mining activities and comply with the terms of the mining licence.
- State that the transfer of mineral rights must be in the national interest of Tanzania. The Mining Commission may refuse to approve a transfer if it is not in the national interest.
- Require the mining company to be following all applicable laws and regulations in order for a transfer to be approved.
- Require mining companies to disclose their beneficial ownership information to the government.

Several regulations have been enacted in support of the Mining Act, 2010. Most important of these include:

- The Mining (Environmental Protection for Small Scale Mining) Regulations, 2010
- The Mining (Safety, Occupational, Health and Environmental protection) Regulations, 2010

¹¹⁴⁴ Mining Act, 1979, section 15.

¹¹⁴⁵ Mining Act, 1979, section 36 and 37

¹¹⁵ The Minerals Policy of Tanzania, 2009, available on

https://www.madini.go.tz/media/Mineral_Policy_of_Tanzania_2009_sw.pdf, accessed on 25 May 2023

¹¹⁶ The Mining Act, 2010, available on <https://www.madini.go.tz/media/The-Mining-Act-2010.pdf>, accessed on 25 May 2023.

- The Mining (Mineral Beneficiation) Regulations, 2010
- The Mining (Mineral Trading) Regulations, 2010
- The Mining (Radioactive Minerals) Regulations, 2010

The main institution regulating mining activities in Tanzania is the Ministry of Minerals. The Minister for Minerals (the Minister) is responsible for formulating policies, strategies and a legislative framework for mineral exploration and exploitation.

There is a Mining Commission (the Commission) constituted under the Mining Act, with responsibility, among others, to the granting of mining licences and related matters, and acts as an advising aid to the fulfilment of the Minister's duties. The Mining Commission performs its functions through various committees and officers, such as:

- Resident Mines Officers - The most important roles of the Officers include the monitoring of the day-to-day production process in mining projects, the verification of records kept by miners, the authorisation of entries into storage facilities, and having an overview of the transportation of minerals to government mineral warehouses.¹¹⁴⁶

- Inspector of Mines

- Furthermore, the Commission controls all operational functions that were performed by Minerals Division under Ministry of Energy and Minerals and all functions that were performed by Tanzania Minerals Audit Agency (TMAA) and Tanzania Diamond Sorting Organization (TANSORT).¹¹⁴⁷ The management team of the Commission is headed by the Executive Secretary. The Executive Secretary exercises a supervisory role over the management of officers and staff of the Commission and be responsible for the day-to-day management of the affairs of the Commission and carrying out directives of the Commission. The Commission is comprised of four Departments and 12 Sections, and each Department is headed by a Director who is assisted by Managers for each section, as follows:

- **Mines Inspectorate and Environment Department**

The Mines Inspectorate and Environment Department is responsible for carrying out inspections, investigations, audit and monitoring of health, safety and environmental issues related to mining operations for safe working environment and environmental protection. This department includes the Inspectorate Section; Explosives Management Section; and Environment Section.

- **Mineral Rights and Information Systems Department**

The Mineral Licencing and Information Systems Department administer mineral licenses, certificates and facilitate comprehensive data collection and dissemination. This department comprises of the Mining Cadastre Section; and Information Systems Management Section.

¹¹⁴⁶ The United Republic of Tanzania Mining Commission, accessed in September 2023, on <https://www.tumemadini.go.tz/>.

¹¹⁴⁷ Ibid.

- **The Corporate Service Department; and**

The Corporate Service Department provides services on finance and accounts, human resources and administration, communications and public relations, research and planning services to the Commission. The department has, the Finance and Accounts Section; Administration and Human Resources Management Section; Research and Planning Section; and Communication and Public Relations Section, within it.

- **Mineral Audit and Trade Department.**

The Mineral Audit and Trade Department's function is to audit the financial, local contents, minerals production and sales while managing the minerals trade and counteracting minerals smuggling. The department comprises of the Financial Audit, Tax Review and Local Content Section; Mineral Audit and Laboratory Services Section; and Mineral Trade Section.

2.48.2.2. Relevant Legal Instruments

The following general principles are applicable to the mining industry in Tanzania, namely:

- The Tanzania Development Vision 2025 was officially launched by the government in 1999 and has three principal objectives, which are:

- Achieving quality and good life for all;
- Good governance and the rule of law; and
- Building a strong and resilient economy that can effectively withstand global competition.

- The National Environmental Policy, 1997 which recognizes that development is sustainable if it takes place within nature's tolerance limits, both in the short and in the longer-term perspective. This policy seeks to provide the framework for making fundamental changes that are needed to bring environmental considerations into the mainstream of decision-making in the mining sector. The overall objectives of the policy are, *inter alia*, to:

- Ensure sustainability, security and equitable use of resources for meeting the basic needs of the present and future generations without degrading the environment or risking health or safety;
- Prevent and control degradation of land, water, vegetation, and air which constitute life's support systems;
- Conserve and enhance the natural and man-made heritage, including the biological diversity of the unique eco-systems of Tanzania;

- The Mineral Policy of Tanzania, 1997 aims to attract and enable the private sector to take the lead in exploration, mining development, mineral beneficiation and marketing. The role of the public sector is



to stimulate and guide private mining investment by administering, regulating, and promoting the growth of the sector. The policy was also published to address the following challenges:

- To raise significantly the contribution of the mineral sector in the national economy and increase the Gross Domestic Product (GDP);
- To increase the country's foreign exchange earnings;
- To increase government revenues;
- To create gainful and secure employment in the mineral sector and provide alternative source of income particularly for the rural population; and
- To ensure environmental protection and management in accordance with international conventions to which Tanzania is a party; such as the:
 - i. World Trade Organization;
 - ii. World Bank;
 - iii. British Commonwealth of Nations;
 - iv. United Nations;
 - v. International Monetary Fund; and
 - vi. African Union.

Other social considerations are to local content requirements. The Mining (Local Content) Regulations of 2018 require that licence holders, contractors and subcontractors or licensees must ensure that local content requirements, including minimum local content levels, are complied with. These requirements include the fact that indigenous Tanzanian companies are given first preference in the granting of mining licences and, thus, subject to variations as may be made by the Minister, to qualify for the granting of a mining licence, there must be 5 percent equity participation by an indigenous Tanzanian company.¹¹⁴⁸

Mining companies, as far as is practicable, are required to set up a project office within the district where the project is located before carrying out any work. There are no specific requirements on how the office should be set up and therefore this should be at the discretion of the company. A company that does not qualify as non-indigenous and intends to provide goods and services to a licence holder is required to incorporate a joint venture company with an indigenous Tanzanian company, in which the latter must have an equity participation of at least 20 percent.¹¹⁴⁹ The following legislation is relevant to the mining industry:

- Natural Wealth and Resources (Permanent Sovereign);¹¹⁵⁰

¹¹⁴⁸ Mining Act, 1979, section 68.

¹¹⁴⁹ Ibid.

¹¹⁵⁰ Natural Wealth and Resources (Permanent Sovereign) Act 5 of 2017.

- Environment Management Act,¹¹⁵¹
- Tanzania Extractive Industries Act,¹¹⁵²
- Employment and Labour Relations Act;¹¹⁵³ and
- Village Land Act.¹¹⁵⁴

2.48.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Licensing: Foreign mining investors must obtain the necessary licences and permits from the government before commencing mining operations in Tanzania.

Taxation: Foreign mining investors are subject to Tanzanian tax laws and regulations. Tanzania imposes corporate income tax on mining companies at a rate of 30%.

Employment of foreign workers: Foreign mining investors are required to comply with Tanzanian laws on the employment of foreign work. These laws include obtaining work permits and complying with minimum wage requirements¹¹⁵⁵.

2.48.2.4. Artisanal Mining Sector

Tanzania has specific laws and policies that apply to artisanal and small-scale mining (ASM) activities. The Mining Act, of 2010 provides for the Licensing and regulation of ASM activities in Tanzania. The Act provides for the issuance of a primary mining licence for ASM operators and is granted for a period of up to five years, renewable upon application. The licence provides ASM operators with legal recognition and access to mineral resources, which can be used as collateral for loans and investments. In addition, the Mineral Rights Board is responsible for the issuance of mining licences, including primary mining licences for ASM operators, and to ensure compliance with the relevant laws and policies governing the mining sector, including ASM activities¹¹⁵⁶.

The Mining (Mineral Rights) Regulations, 2018, provides specific regulations for the allocation of areas for ASM activities, including the requirement for ASM operators to obtain a certificate of entry and work plan approval. The work plan should include environmental management, health and safety measures, and social responsibility. Moreover, The National Mineral Policy (2009) recognises ASM activities as an important contributor to the country's mineral sector and provides for the development of sustainable ASM practices. In 2020, the government launched the National Action Plan for the Formalisation of

¹¹⁵¹ Environment Management Act 20 of 2004.

¹¹⁵² Tanzania Extractive Industries Act 23 of 2015.

¹¹⁵³ Employment and Labour Relations Act 6 of 2004.

¹¹⁵⁴ Village Land Act 5 of 1999.

¹¹⁵⁵ AWIMA, D4.1 - Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf>.

¹¹⁵⁶ Ibid.

Artisanal and Small-Scale Mining, which provides a framework for the formalisation and regulation of ASM activities¹¹⁵⁷.

2.48.2.5. Judicial System

The President appoints the chief justice and judges, judges of appeal with the advice of the chief justice and High Court judges with the advice of the Judicial Service Commission.¹¹⁵⁸ The Tanzanian court system is made up of the following tiers,¹¹⁵⁹ the:

- **Court of Appeal**

The Court of Appeal is the supreme court and the final appellate court, and it is presided over by the Chief Justice (i.e., Ibrahim Hamis Juma).

- **High Courts**

The High Court has its headquarters in Dar es Salaam. The High Court has unlimited civil and criminal jurisdiction and hears appeals arising in the lower courts.

- **Lower Courts**

The district courts and primary courts are presided over by magistrates, the primary courts having more limited jurisdiction than the district courts.

According to a 2022 dissertation submitted in partial fulfilment of the requirements for the degree of Master of Arts in Governance and Leadership (Department of Political Science and Public Administration of the Open University of Tanzania) entitled: “The role of the Independence of the Judiciary in promoting good governance in Tanzania: a case of Korogwe district court” the author states that due to low judicial remuneration, lack of transparency and accountability, corruption, and the lack of respect for the rule of law, a big challenge is that the judiciary is under constant attack from the heads of state and the executive arm of government. This situation takes place because the judiciary runs against the practices and aspirations of the executive that wishes to assert control over people. The independence of the Judiciary in Tanzania is guaranteed under Articles 4 and 107B of the Constitution of the United Republic of Tanzania. In reality, however, the judiciary is under constant threat from outside (including political) factors.

The study found that the independence of the judiciary was affected by political parties, the parliament, the intelligence agencies and criminal networks. This is because the working of the judiciary is susceptible to the political sphere that has the power to influence it. The also study found that political parties affected the independence of the judiciary moderately. Sometimes the ruling party would interfere with the court in judicial matters to fulfil the existing political party in power interest¹¹⁶⁰.

¹¹⁵⁷ AWIMA, D4.1 - Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf>

¹¹⁵⁸ The Constitution, Article 118.

¹¹⁵⁹ The Constitution, Article 107.

¹¹⁶⁰ The Role of the independence of the judiciary in Promoting Good Governance in Tanzania: A Case of Korogwe District Court. Masters thesis, The Open University of Tanzania. Available on <http://repository.out.ac.tz/3667/>, accessed on 4 April 2024

2.48.2.6. Arbitration

The Arbitration Act, No-2 of 2020 introduces additional options for disputes resolution by way of adjudication and conciliation both in civil and certain criminal matters, previously not available under the repealed Arbitration Act Cap. 15.

Tanzania has signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. However, the treaty has not been domesticated into law in Tanzania¹¹⁶¹.

2.48.3 Licencing and Permit Regime

2.48.3.1. Types of Licences and Permits

Prospecting License	Primary Mining License	Mining License	Special Mining Lease
This license is issued for the exploration and identification of minerals within a specified area	Confers on the holder the exclusive right to carry on prospecting and mining operations in the mining area.	Confers on the holder the exclusive right to carry on mining operations in the mining area for minerals specified in the licence	A special mining licence will be granted for large-scale mining operations in which capital investment exceeds US\$100 million.

Table 45 Types of Licences and Permits in Tanzania

¹¹⁶¹ Chambers and Partners, International Arbitration 2023 – Tanzania. Available on <https://practiceguides.chambers.com/practice-guides/comparison/733/11459/18468-18469-18470-18471-18472-18473-18474-18475-18476-18477-18478-18479-18480>, accessed on 4 April 2024.

2.48.3.2. The Application Process for Mining Licences and Permits in Tanzania

Application Requirement	Prospecting License	Primary Mining License	Mining License	Special Mining License
Place of Application	Mining Commission	Mining Commission	Mining Commission	Mining Commission
Validity or Duration of Licence or Permit	4	7	10	It is granted for the estimated life of the ore body indicated in the feasibility study or any other such period as the licensee request, whichever is shorter.
Renewable	The initial duration of a prospecting license is four years and is renewable for a further three years.	The law does not specify either the number of years for which the licence may be renewed or the number of times that it may be renewed. In practice however, a primary mining licence is normally renewed for the same period as the initial period for which it was granted. A primary mining licence may be	may be renewed once for a period not exceeding 10 years	A special mining licence is renewable, and an application for renewal may be submitted at any time, but no later than one year before expiry of the licence.



		converted into a mining licence.		
Application Costs	Application fees - \$300 for metallic minerals, energy minerals and kimberlitic diamonds, building materials and gemstone excluding kimberlitic diamond; and \$200 for building materials) Preparation fee - \$200.	Unavailable	Application fee - \$2,000 Preparation fee - \$1,000	An application fee - \$5,000 Preparation fee - \$2,000
Application requirements or restrictions	It may be applied for and issued for minerals falling under groups as specified under Mining Act (metallic minerals, energy minerals, gemstones excluding kimberlitic diamond, industrial minerals or building materials) -minimum expenditure under a prospecting licence is US\$100 for industrial minerals and building materials and US\$250 for prospecting for gemstones.	This type of licence is granted only to citizens of Tanzania or to companies that are exclusively composed of Tanzanians, whose directors are Tanzanians and in which control of the company is exercised from within Tanzania by persons who are all citizens of Tanzania.	Granted for operations for which the capital investment is between US\$100,000 and US\$100 million.	The license also imposes obligations on the holder to comply with all applicable laws, regulations, and environmental standards, and to provide employment and training opportunities for Tanzanian citizens ¹¹⁶² .

Table 46 Application Requirements for Licences and Permits in Tanzania

¹¹⁶² Ibid.

2.48.3.3. Transferability of Mineral Rights

Prospecting licenses can be transferred freely without needing prior consent, with no limitations on direct or indirect transfers.

Special mining licenses and mining licenses are also transferable, but permission from the Mining Commission must be obtained beforehand. Approval will typically be granted unless there is evidence of significant development within the licensed region. If the transfer involves an affiliated individual or assignment to a bank, consent is unnecessary¹¹⁶³.

2.48.4 Taxation

2.48.4.1. Mining Royalties and Taxes

The Tanzania Revenue Authority (TRA) is the body responsible for the administration and management of taxes in Tanzania. In particular, the TRA administers and manages the collection of taxes in relation to the transfer of mineral rights, such as stamp duty, VAT, withholding tax, and corporate income tax, as provided for in the Mining (Mineral Rights) Regulations, 2018 and the Mining (Local Content) Regulations, 2021.

The TRA is also responsible for the assessment and collection of royalties for the extraction of certain minerals. Mining companies are subject to a special mining tax regime, which includes a corporate income tax rate of 30% and royalties are charged on Gross Value for different mineral commodities as follows:

- Diamonds and gemstone – 6%
- Uranium – 6%; precious metals (gold, silver, copper, platinum etc.) - 6%
- Polished and cut gemstones – 1%
- Others (building materials, salt, industrial minerals) – 3%
- Inspection and clearance fees which is applied to all minerals – 1%

Recent changes to Tanzania's mining laws have increased local content requirements and the use of local goods and services in mining operations, creating challenges for companies that rely heavily on imported goods and services. Under the Mining (Reinvestment of Profits) Regulations, 2018, mining companies are also required to reinvest at least 5% of their profits in the mining sector in Tanzania.

Under the Mining Act, 2010 and the Mining (Mineral Rights) Regulations, 2018, the transfer of mineral rights is subject to the payment of taxes. In particular, the transfer of a mineral right is subject to stamp duty in accordance with the Stamp Duty Act, of 1992.

Under the Income Tax Act, of 2004, the Mining Act, of 2010, and the Special Economic Zones Act, of 2019, investors in Tanzania may be eligible for a range of tax incentives, depending on the type of project and the applicable laws and regulations. Foreign investors may be eligible for special tax incentives and

¹¹⁶³ Mondaq, Tanzania: Mining Comparative Guide, January 2023. Available on <https://www.mondaq.com/energy-and-natural-resources/975742/mining-comparative-guide>, accessed on 31 January 2024.



reductions, including income tax exemptions, corporate income tax reductions, and tax holidays. Investors may also be eligible for duty-free imports of certain goods and services to support their operations in Tanzania. In addition, the Special Economic Zones Act, 2019 provides for a range of tax and customs incentives for investors in special economic zones in Tanzania.

Under the Investment Act, of 1997 and the Capital Market and Securities Regulations, of 2004, foreign investors are permitted to repatriate profits subject to certain conditions. For example, foreign investors are required to submit an audited statement of their accounts prior to the repatriation of profits, as well as proof of taxes paid¹¹⁶⁴.

2.48.5 Mineral Beneficiation

The Mining (Mineral Beneficiation) Regulations, 2018 (and the Mining (Mineral Trading) Regulations, 2010) outline the restrictions on the export of minerals from Tanzania. Under these regulations, mining companies are required to have their minerals processed or refined in Tanzania before exporting. They also require mining companies to apply for a special permit for the export of minerals that have not been processed or refined in Tanzania. All minerals are to be exported through authorised mineral dealers and quarterly reports on their mineral sales and exports must be submitted. Mining companies are required to submit beneficiation plans for approval by the Mining Commission. Mining companies in Tanzania are encouraged to add value to minerals mined within Tanzania to increase revenue and create jobs for Tanzanian citizens¹¹⁶⁵

2.48.6 Macroeconomics

Tanzania has recovered strongly after the pandemic despite a challenging international environment. The GDP growth rate reached 4.6 percent in 2022 and is expected to rise to 5.1 percent in 2023, which will be supported by the implementation of structural reforms to strengthen the competitiveness of the economy, improve the business and investment environment, and reduce the cost of regulatory compliance¹¹⁶⁶.

However, the economy of Tanzania continued to experience some of the effects of global shocks, which are induced by high commodity prices, the resurgence of COVID-19, climate change and high inflation. These shocks are due to supply-chain disruptions caused by the Russia-Ukraine war and the resurgence of the COVID-19 outbreak in some countries.¹¹⁶⁷

The Tanzanian economy grew by 4.8 percent in the quarter ending June 2022 compared with 3.8 percent in the quarter ending 2021. The main drivers of the growth during the quarter were economic activities in the agriculture; construction; transport and storage: trade and repair; manufacturing; and financial and insurance sectors. As for the first half of 2022, growth averaged 5.2 percent, which was higher than the

¹¹⁶⁴ AWIMA, D4.1 - Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf>

¹¹⁶⁵ AWIMA, D4.1 - Report on mining regimes with respect to the ESG objectives. Available on <https://africamaval.eu/wp-content/uploads/2023/06/AfricaMaVal-D41-Report-on-mining-regimes-with-respect-to-the-ESG-objectives.pdf>

¹¹⁶⁶ The World Bank 'The World Bank in Tanzania', accessed in September 2023, on <https://www.worldbank.org/en/country/tanzania/overview>.

¹¹⁶⁷ Bank of Tanzania 'Economic Bulletin for the Quarter Ending September 2022 VOL. LIV NO. 3', accessed in September 2023, on <https://www.bot.go.tz/Publications/Regular/Quarterly%20Economic%20Bulletin/en/2022120811291459.pdf>.

4.4 percent growth in 2021, and this indicated that there is a continued recovery of economic activities in Tanzania¹¹⁶⁸.

The economy's growth has largely been from sectors that employ relatively fewer workers from low-income households, and as a result, this has resulted in a weak impact of economic growth on poverty reduction. While no significant change in the poverty rate is anticipated in 2023, the prospects for poverty reduction in Tanzania are modestly optimistic as economic recovery continues.¹¹⁶⁹ The Tanzanian Government plans to have the mining sector contribute 10% of the GDP by 2025¹¹⁷⁰.

2.48.7 Governance and Risk Ratings

2.48.7.1. Ease of Doing Business

According to the World Bank Group, Tanzania is ranked 141 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings. The rank of Tanzania improved to 141 in 2019 from 144 in 2018¹¹⁷¹.

2.48.7.2. Investment Climate

According to the US State Department, Tanzania welcomes foreign direct investment, though investors cite regulatory bureaucracy; land acquisition and ownership; logistics and infrastructure inefficiencies; and investment facilitation coordination as ongoing challenges. Sustainable economic growth is at the forefront of the current administration's policies, strategies, and goals. Consistent with a positive rhetorical shift towards the private sector, promised reforms to improve the investment climate continue to take shape. A new Tanzania Investment Act was passed and enacted in 2022, introducing reforms broadly intended to create a more favourable investment environment for domestic and foreign investors.

However, while several laws have been reviewed, business climate legislative reforms have not yet been sweeping. There remain significant legislative obstacles to foreign investment such as the Natural Resources and Wealth Act, Permanent Sovereignty Act, Public Private Partnership Act, and the Mining Laws and Regulations. Despite pledges by the current president and senior government officials, these have yet to be resolved.

The primary business and investment challenges, according to the US State Department, lie in tax administration; opening and closing businesses; inconsistent institutions compounded by corruption and requests for "facilitation payments" at many levels of government; late payment issues; and cross-border trade obstacles. Corruption, especially in government procurement, taxation, and customs clearance

¹¹⁶⁸ Ibid.

¹¹⁶⁹ *Op cit* note 30.

¹¹⁷⁰ Ministry of Energy and Minerals 'The Mineral Policy of Tanzania' 2000 page 8. The National Environmental Policy (NEP), 1997 (URT, 1997) recognizes that development is sustainable if it takes place within nature's tolerance limits, both in the short and in the longer-term perspective. It seeks to provide the framework for making fundamental changes that are needed to bring environmental considerations into the mainstream of decision making.

¹¹⁷¹ World Bank Group "Doing Business 2020" page 4, accessed in September 2023, on

<https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

remains a concern for foreign investors, though the government has prioritized efforts to combat the practice¹¹⁷².

2.48.7.3. Risk Ratings

Global insurer Allianz attributes a moderate rating to Tanzania based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely C2 - medium risk for enterprise¹¹⁷³.

Tanzania joined the EITI in 2009 as part of the government's wider reform efforts to make the extractive sector more competitive and maximise the benefits from mining. Tanzania has been using the EITI process to produce data on local content, the East Africa Crude Oil Pipeline and the contribution of artisanal and small-scale mining to mining revenues and local content. Tanzania was found to have achieved a moderate overall score (77 points) in implementing the 2019 EITI Standard in November 2023, following its third Validation¹¹⁷⁴.

2.48.8 Good Governance Evaluation

The Tanzanian constitution guarantees judicial independence. However, many perceive that political interference and corruption in the form of illicit payments to influence decisions infringe on judicial independence.

According to the US State Department, Tanzania has laws and institutions designed to combat corruption and illicit practices. It is a party to the UN Convention against Corruption, but it is not a signatory to the OECD Convention on Combating Bribery. Tanzania has three institutions specifically focused on anti-corruption. The Prevention and Combating of Corruption Bureau (PCCB) prevents corruption, educates the public, and enforces the law against corruption. The Ethics Secretariat and its associated Ethics Tribunal under the president's office enforce compliance with ethical standards defined in the Public Leadership Codes of Ethics Act 1995. Additionally, the Zanzibar Anti-corruption and Economic Crimes Authority is the counterpart to PCCB with jurisdiction in Zanzibar. Companies and individuals seeking government tenders are required to submit a written commitment to uphold anti-bribery policies and abide by a compliance program. These steps are designed to ensure that company management complies with anti-bribery policies, though the effectiveness of this step is unclear¹¹⁷⁵.

Transparency International, which ranks perception of corruption in the public sector, gave Tanzania a score of 38 points out of 100 for 2022 and 39 points for 2021.

According to the US State Department, mining investors continue to complain about local banking requirements, which are real impediments to investment, through both domestic and foreign investors are subject to these regulations. Tanzania must ensure that the regulatory framework improves, that

¹¹⁷² U.S. Department of State, 2023 Investment Climate Statements: Tanzania. Available on <https://www.state.gov/reports/2023-investment-climate-statements/tanzania/>, accessed on 4 April 2024.

¹¹⁷³ Allianz, Country Risk – Tanzania. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/tanzania.html, accessed on 4 April 2024.

¹¹⁷⁴ EITI, Tanzania. Available on <https://eiti.org/countries/tanzania>, accessed on 4 April 2024.

¹¹⁷⁵ U.S. Department of State, 2023 Investment Climate Statements: Tanzania. Available on <https://www.state.gov/reports/2023-investment-climate-statements/tanzania/>, accessed on 4 April 2024.

corruption is effectively addressed and that the ease of doing business improves in order to attract foreign investment into the mining industry.



2.49 Togo

2.49.1 Introduction

Togo, located in West Africa, has a diverse cultural landscape and is known for its phosphate resources. Additionally, Togo has mineral reserves of limestone, gold, and diamonds. The country also has various untapped potentials to produce minerals like iron ore, gypsum, bauxite, manganese, zinc, rutile, marble, and others¹¹⁷⁶. The country has experienced political stability in recent years, contributing to economic development. Togo aims to diversify its economy beyond agriculture and phosphate mining.

2.49.2 Policy and Legal Framework

2.49.2.1. Institutional and Policy Review

Mining activities are conducted under the authority of the Ministry of Mines and Energy. The Directorate General of Mines and Geology is the specific institution geared towards mineral exploration, analysis, and control of mining, which is in turn divided into three branches: the Research Directorate of Geology and Mining, The Directorate of Development and Mining Control, and the Laboratories Directorate of Mining and Oil¹¹⁷⁷.

The National Agency for Environmental Management plays a crucial role in assessing the environmental impacts of mining projects and enforcing environmental regulations¹¹⁷⁸.

2.49.2.2. Relevant Legal Instruments

Togo has enacted mining legislation to regulate the exploration and extraction of minerals, with a focus on its phosphate industry. The legal framework outlines Licencing procedures, environmental protection measures, and community engagement requirements.

Law no. 96–004/pr of February 26, 1996, and as amended by Act no. 2003–012 regulates mining activity in Togo¹¹⁷⁹. Other relevant legislation regulating the mining industry includes:

- Regulation No. 18/2003/CM/UEMOA of 23 December 2003 on the Community Mining Code;
- Law No. 2018 – 024 of 20 November 2018 on the General Tax Code (CGI) as amended by Law No. 2020-019 of 22 December 2020 on the 2021 Finance Law;
- Law No. 2018-025 of 20 November 2018 on the Book of Tax Procedures (LPF);
- Law No. 2018-007 of 25 June 2018 on the National Customs Code (CDN); and

¹¹⁷⁶ ARISE IIP, Natural Resources and Mining Industry in Togo. Available on <https://www.ariseiip.com/natural-resources-mining-industry-in-togo/#:~:text=Togo%20offers%20various%20regions%20with,a%20diverse%20range%20of%20products>, accessed on 29 February 2024.

¹¹⁷⁷ LEX AFRICA, Guide to Mining in Africa 2015. Available on <https://s3.amazonaws.com/rgi-documents/55ae34affefd413dcc48f42b71853a3a48b67000.pdf>, accessed on 12 March 2024.

¹¹⁷⁸ Togo EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/ENG%20Togo-EITI-Report-2021.pdf>, accessed on 12 March 2024.

¹¹⁷⁹ Ibid.

- Law No. 2019-005 of 17 June 2019 on the Investment Code in the Togolese Republic¹¹⁸⁰.

2.49.2.3. Foreign Ownership, Migrant and Local Labour Requirements

Togo does not have any laws or practices that discriminate against foreign investors, and there have been no significant changes since last year. The Investment Code, adopted in June 2019, prescribes equal treatment for Togolese and foreign businesses and investors; free management and circulation of capital for foreign investors; respect of private property; protection of private investment against expropriation; and investment dispute resolution regulation¹¹⁸¹.

2.49.2.4. Artisanal Mining Sector

Artisanal and small-scale mining is regulated by the mining code. Article 21 of the Mining Code defines small-scale mining as follows: "*Artisanal activities are defined as prospecting, research and exploitation activities carried out in a non-mechanised or minimally mechanised manner by individuals or companies of Togolese or foreign nationalities*". The increased importance of small-scale and artisanal mining is due to the creation of jobs in rural areas. The small-scale mining activity brings together the group of small-scale miners and the group of artisanal miners. The latter operates under an artisanal permit granted by the Director General of Mines and Geology¹¹⁸².

A study allowing a detailed assessment of the Togolese artisanal and small-scale mining sector was carried out in 2019 by the National Institute of Statistics and Economic and Demographic Studies in collaboration with the Ministry of Mines and Energy. A survey was carried out among a sample of artisanal mining producers at the various mining sites identified throughout the national territory. Following meetings held with several stakeholders, this study was not updated in 2021. A total of 1,621 small-scale mining economic units have been identified throughout the country. The main minerals mined are sand, gravel, gold, clay, marble, laterite and other stones for construction. Most of the units surveyed (94.2%) operate without authorisation, i.e. they do not have any mining rights to search for or exploit minerals¹¹⁸³.

The majority of artisanal gold and diamond mining operations operate outside formal economic and legal structures, making the contribution of artisanal gold and diamond mining to the national economy almost impossible to assess.

2.49.2.5. Judicial System

Togo's legal system is influenced by French civil law. The judiciary comprises various courts, including the Court of Appeals and the Supreme Court.

The legal framework is designed to uphold the rule of law and protect the rights of individuals and businesses. Although Article 113 of the Constitution establishes the judiciary as an independent authority,

¹¹⁸⁰ Togo EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/ENG%20Togo-EITI-Report-2021.pdf>, accessed on 12 March 2024.

¹¹⁸¹ U.S. Department of State, 2023 Investment Climate Statements: Togo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/togo/>, accessed on 12 March 2024.

¹¹⁸² Togo EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/ENG%20Togo-EITI-Report-2021.pdf>.

¹¹⁸³ Ibid.

there are regular reports of widespread executive power interference with matters that are within the court's jurisdiction¹¹⁸⁴.

The Constitutional Court is composed of seven members, several of whom belong to the ruling political party. Its main function is to rule on the constitutionality of law¹¹⁸⁵.

The Supreme Court is the highest court in the country, with two chambers, one for judicial matters and one dealing with administrative issues. Law 97-05 of 6 March 1997 states that the Supreme Court is chaired by a judge, appointed upon the proposal of the High Council of the Magistracy (Conseil Supérieur de la Magistrature). According to Article 9 of this law, judges cannot be pursued, arrested, detained, or tried for opinions expressed in their judgment¹¹⁸⁶.

At the local level, the village chief or council of elders may try minor criminal and civil cases.

- **Judicial independence**

According to the US State Department, the Togo judiciary remains independent of the executive branch and that the judicial process is procedurally competent, fair, and reliable¹¹⁸⁷

- **Enforcing Contracts and Efficiency in settling disputes**

According to the World Bank, in 2014 Togo made enforcing contracts easier by creating specialized commercial divisions within the court of first instance. Furthermore, in 2019, Togo made enforcing contracts easier by adopting a law that regulates all aspects of mediation as an alternative dispute resolution mechanism¹¹⁸⁸.

- **Protection of Minority Investors**

According to the World Bank, in 2015 Togo strengthened minority investor protections by introducing greater requirements for disclosure of related-party transactions to the board of directors and by making it possible for shareholders to inspect the documents pertaining to related-party transactions and to appoint auditors to conduct an inspection of such transactions¹¹⁸⁹.

2.49.2.6. Arbitration

The OHADA Arbitration Act is applicable for arbitrations with their seat in Togo. The OHADA (Organisation pour l'harmonisation en Afrique du Droit des Affaires) Treaty is one of the legal reforms in Africa aimed at promoting a stable business environment and the expeditious resolution of disputes, by harmonising commercial law within its 17 member States with a set of Uniform Acts. One of these acts is the OHADA

¹¹⁸⁴ Togo – Attacks on Justice 2000. Available on https://www.icj.org/wp-content/uploads/2001/08/togo_attacks_justice_2000.pdf, accessed on 29 February 2024.

¹¹⁸⁵ Ibid.

¹¹⁸⁶ Ibid.

¹¹⁸⁷ U.S. Department of State, 2023 Investment Climate Statements: Togo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/togo/>, accessed on 12 March 2024.

¹¹⁸⁸ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms> accessed on 12 March 2024.

¹¹⁸⁹ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms>, accessed on 12 March 2024.

Uniform Arbitration Act, with provisions on the administration of arbitral proceedings and the execution of arbitral awards¹¹⁹⁰. Togo is not party to the New York Convention.

2.49.3 Licencing and Permit Regime

2.49.3.1. Types of Licences and Permits

- **The prospecting authorization**

The holder of the prospecting authorisation acquires a non-exclusive right to prospect for the minerals applied for within a maximum perimeter surface area of 10,000 km. The prospecting authorization is valid for a period of 2 years, renewable twice, each for a term of one year and each time with the abandonment of half of the covered area.

- **The license of Research**

The research licence gives its holder the exclusive right to undertake prospecting and research in a perimeter whose surface area does not exceed 1,000 km. The license of research is valid for a period of 3 years, renewable twice, each for a term of 2 years with each time by relinquishing half the covered surface. It is transferable with the consent of the Minister of Mines.

- **The license for Mining**

The mining licence may be issued by the holder of the research permit who has demonstrated that he has found a deposit, or by any other natural or legal person who meets the conditions, as well as for unallocated deposits. The license for mining is composed of a small-scale license for investments less than or equal to 300 million CFA francs, and a large-scale License for investments exceeding 300 million CFA francs. As for the large-scale license, it is valid for a period of 20 years, renewable several times, each for a period of 10 years. The small-scale license is valid for a period of 5 years, renewable several times, each for a period of 3 years¹¹⁹¹.

2.49.3.2. Transferability of Mineral Rights

Mining licenses are assignable and transferable and may be used as security with the discretionary approval of the Minister of Energy and Mines¹¹⁹².

2.49.4 Taxation

2.49.4.1. Mining Royalties and Taxes

Various taxes and royalties apply to mining companies in Togo.

¹¹⁹⁰ The OHADA Arbitration Act. Available on <https://www.acerislaw.com/ohada-arbitration-act/>, accessed on 28 March 2024.

¹¹⁹¹ LEX AFRICA, Guide to Mining in Africa 2015. Available on <https://s3.amazonaws.com/rgi-documents/55ae34affefd413dcc48f42b71853a3a48b67000.pdf>, accessed on 12 March 2024.

¹¹⁹² Ibid.

Surface Royalties Tax paid by holders of mining titles, artisanal and quarry exploitation authorizations, research and small and large-scale exploitation permits. This royalty is set by regulation, on an annual basis and is paid in advance from the date the title is awarded (Art. 50 of the Mining Code). Furthermore, any holder of a mining title pays a mining royalty on the mineral substances produced or sold. The amounts of these royalties are decided by interministerial decree, specifying the payment conditions (Art. 51 of the Mining Code)¹¹⁹³.

Mining Royalties are payable in Togo accordingly:

- Industrial Minerals other than phosphates: 1% of the market value
- Non-precious ferrous and non-ferrous metals: 2% of the market value
- Precious metals: 3% of the market value
- Precious and semi-precious stones: 5% of the market value
- Other mineral substances: 2% of the market value
- Phosphates: 2% of the market value
- Precious metals, precious stones: 1% of the market value
- Semi-precious Minerals: 2% of the market value¹¹⁹⁴.

2.49.5 Mineral Beneficiation

Any person or entity, Togolese or foreigner, who has the authorization of the Minister of Energy and Mines can benefit from the mining right¹¹⁹⁵.

2.49.6 Macroeconomics

Togo's economy has traditionally relied on agriculture and phosphate mining. Efforts are however underway to diversify the economy, including the development of the mining industry. According to the African Development Bank, real growth domestic product growth declined to 5.5% in 2022 from 6.0% in 2021 due to the security crisis in the far north of the country and Russia's invasion of Ukraine. Inflation rose from 4.6% in 2021 to 7.8% in 2022, driven by higher food and energy prices. The fiscal deficit widened from 4.7% of GDP in 2021 to 8.4% in 2022 due to purchasing power support measures (subsidies and tax exemptions for basic products) as well as additional security spending. The bank further advises that the current account deficit widened from 0.9% of GDP in 2021 to 3.7% in 2022 due to higher costs of imported goods (oil and food) brought about by the disruption of supply chains during the COVID-19 pandemic and

¹¹⁹³ Togo EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/ENG%20Togo-EITI-Report-2021.pdf>, accessed on 29 February 2024.

¹¹⁹⁴ LEX AFRICA, Guide to Mining in Africa 2015. Available on <https://s3.amazonaws.com/rgi-documents/55ae34affefd413dcc48f42b71853a3a48b67000.pdf> accessed on 12 March 2024.

¹¹⁹⁵ LEX AFRICA, Guide to Mining in Africa 2015. Available on <https://s3.amazonaws.com/rgi-documents/55ae34affefd413dcc48f42b71853a3a48b67000.pdf> accessed on 12 March 2024.

the effects of Russia's invasion of Ukraine. The risk of debt distress is moderate. Public debt dropped to 55.9% of GDP in 2022 from 63.1% in 2021 due to debt management measures¹¹⁹⁶.

The government has a 2025 roadmap for infrastructure projects and economic, financial, and structural reforms, including those aimed at boosting agricultural production and yields. Possible headwinds include unfavourable fluctuations in global phosphate and oil prices, prolongment of Russia's invasion of Ukraine, repeated terrorist attacks in the country's northern regions, and the effects of climate change¹¹⁹⁷.

2.49.7 Governance and Risk Ratings

2.49.7.1. Ease of Doing Business

In terms of the World Bank Doing Business Index, which ranks the ease of doing business in 190 countries, covering factors such as business registration, contract enforcement, and regulatory transparency, Togo ranked 97 out of 190 in 2020¹¹⁹⁸.

2.49.7.2. Investment Climate

According to the US State Department Report of 2023 on Togo, corruption is endemic, and the institutions are weak and poorly governed. According to the report: "Challenges include an opaque legal system, lack of clear land titles, and government interference in various sectors. Corruption remains a common problem in Togo, especially for businesses. Often "donations" or "gratuities" result in expedited registrations, permits, and licenses, thus resulting in an unfair advantage for companies that engage in such practices"¹¹⁹⁹.

2.49.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Togo based on its research around economic risk, business environment risk, political risk, commercial risk, and financing risk. The rating is C3 - sensitive risk for enterprise¹²⁰⁰. Togo was not included in the latest version of the Fraser Institute of Global Mining jurisdiction rankings due to a failure to respond to the institute's request for information.

The Togolese government made a commitment in December 2009 to adhere to the EITI programme. The country was admitted as an EITI candidate in October 2010. Togo has worked to achieve compliance status

¹¹⁹⁶ African Development Bank, Togo Economic Outlook. Available on <https://www.afdb.org/en/countries-west-africa-togo/togo-economic-outlook>, accessed on 29 February 2024.

¹¹⁹⁷ Ibid.

¹¹⁹⁸ Doing Business 2020, Togo. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/t/togo/TGO-LITE.pdf>, accessed on 29 February 2024.

¹¹⁹⁹ U.S. Department of State, 2023 Investment Climate Statements: Togo. Available on <https://www.state.gov/reports/2023-investment-climate-statements/togo/#:~:text=Policies%20Towards%20Foreign%20Direct%20Investment,-Attracting%20more%20foreign&text=Togo%20has%20achieved%20real%20success,%2C%20World%20Investment%20Report%202022>). Accessed on 12 March 2024.

¹²⁰⁰ Allianz, Country Risk – Togo. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/togo.html, accessed on 29 February 2024.

with the EITI Standard, which means that it meets transparency and accountability requirements in the extractive sector. Togo was declared to be a "compliant country" on 22 May 2013¹²⁰¹.

According to the 2021 EITI report, EITI in Togo has contributed to better management of natural resources by enabling government and civil society to use data to monitor revenues, budget allocation and social impact of extractive industries. Furthermore, membership in the EITI has strengthened Togo's efforts to fight corruption and promote good governance in the extractive sector. According to the report, Togo continues to work on improving transparency and accountability in the extractive industries through its membership of the EITI, thereby contributing to the country's sustainable development¹²⁰².

2.49.8 Good Governance Evaluation

Togo has a well-developed legal framework to govern its mining industry. It covers all areas of regulation expected of a developed mining jurisdiction. Illegal mining and the lack of regulation of artisanal mining remains a major challenge for the Togo mining industry. Furthermore, corruption and poor governance frameworks also add to the challenges faced by the mining industry in attracting foreign investment. Notwithstanding these challenges, Togo is undertaking processes to diversify its economy, which includes the development of the mining industry.

¹²⁰¹ Togo EITI Report 2021. Available on <https://eiti.org/sites/default/files/2024-02/ENG%20Togo-EITI-Report-2021.pdf>, accessed on 8 May 2024.

¹²⁰² Ibid.



2.50 Tunisia

2.50.1 Introduction

Tunisia is bordered by Algeria, Libya and by the Mediterranean Sea. As of 2024, Tunisia has an estimated population of almost 12 million people. Arabic is the official language, and most people speak a dialect of Tunisian Arabic. Modern Standard Arabic is taught in schools. French nevertheless continues to play an important role in the press, education, and government. To a lesser extent, English and Italian are also spoken¹²⁰³.

Tunisia has historically produced *inter alia* aluminium fluoride; cement; crude petroleum and refined petroleum products; gypsum; iron and steel; phosphate rock, phosphate fertilizers, and other phosphate-based products. Tunisia was once one of the world's largest producers of phosphate minerals, which are used to make fertilisers, but its market share fell after the 2011 revolution. Since then, localised protests and strikes have steadily cut into production. Notwithstanding this, Tunisia is seeking to regain its position as a leading exporter of phosphate, in order to take advantage of the sharp increase in fertilizer prices due to the war in Ukraine¹²⁰⁴.

2.50.2 Policy and Legal Framework

2.50.2.1. Institutional and Policy Overview

Mines are state-owned properties in Tunisia, and they are regulated by the National Office of Mines, which also conducts geologic research, prepares geologic and geophysical maps, and promotes the private ownership of mines.

The National Office of Mines functions under the Ministry of Industry and Small and Medium-sized Enterprises, which became the Ministry of Industry, Mines, and Energy in 2020¹²⁰⁵.

2.50.2.2. Relevant Legal Instruments

Tunisia's mining code (law No. 2003–30 of April 28, 2003) regulates mining activities in the country, including prospecting, exploration, and production¹²⁰⁶ (**Mining Code**).

2.50.2.3. Foreign Ownership, Migrant and Local Labour Requirements

In terms of Decree-law No.61-14 of August 30, 1961, foreigners are restricted from undertaking certain commercial activities. These are:

- real estate agent;

¹²⁰³ Britannica, Tunisia. Available on <https://www.britannica.com/place/Tunisia/Languages> accessed on 28 April 2024.

¹²⁰⁴ Reuters, Tunisia doubles phosphate output in first quarter, targets 5.5 million tonnes in 2022, April 2022. Available on <https://www.reuters.com/world/middle-east/tunisia-doubles-phosphate-production-first-quarter-year-2022-04-03/#:~:text=Tunisia%20was%20once%20one%20of,billions%20of%20dollars%20in%20losses>. Accessed on 28 April 2024.

¹²⁰⁵ USGS, 2019 Minerals Yearbook, The Mineral Industry of Tunisia. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-tunisia.pdf> accessed on 19 March 2024.

¹²⁰⁶ Ibid.



- commissioner, broker and commercial agent;
- general or special agent of insurance;
- dealer, consignee, general representative, sales agent; and
- travelling salesmen;

Pursuant to the same Decree-law, any non-Tunisian person or entity who wants to perform any of the above activities must apply for a foreign trade card, with the following exemptions:

- activity of extraction of raw materials (mining, oil & gas);
- banking, exchange, and stock exchange activities subject to applicable regulations; and
- trade and distribution of hydrocarbons.

Notwithstanding the above restrictions, foreign investments in industry and services are permitted, except for activities subject to authorizations and/or compliance with specifications. Tunisia decided in 2018 to adopt a policy of a negative list of activities for certain strategic sectors, such as transport, banking and finance, hospitality, hazardous industries, health, education, telecommunication, and other commercial and service activities¹²⁰⁷.

2.50.2.4. Artisanal Mining Sector

No information was found in this regard.

2.50.2.5. Judicial System

- **Judicial independence**

Following the democratic transition in 2011 and the enactment of a new constitution in 2014, priority was given to reinstating the judiciary as a cornerstone in the building of a democratic state that upholds fundamental rights and freedoms. This was done through the establishment of a Supreme Judicial Council, most of its members are elected, and entrusted by the Constitution to ensure the sound functioning of the judiciary and its independence.

Despite these seemingly positive developments, the Tunisian judicial system has continued to suffer from a few shortcomings that impacted its effectiveness. The judicial system is seen as being slow and ineffective, particularly in matters related to bribery, corruption, and electoral offences. There is a shortage of judges and a deterioration of court infrastructure, and the absence of modern tools for judicial administration have all reinforced this negative public perception of the judiciary¹²⁰⁸.

¹²⁰⁷ The Global Legal Post, The New World of Foreign Direct Investment - Tunisia, April 2023. Available on <https://www.globallegalpost.com/lawoverborders/the-new-world-of-foreign-direct-investment-246697424/tunisia-1666993459> accessed on 19 March 2024.

¹²⁰⁸ Arib Reform Initiative, The Judicial System in Tunisia: The Diagnosis of a Crisis, February 2024. Available on <https://www.arab-reform.net/publication/the-judicial-system-in-tunisia-the-diagnosis-of-a-crisis/> accessed on 19 March 2024.

- The District Courts

At the base of the Tunisian judicial structure are 51 District Courts, in which a single judge hears each case. The jurisdiction of the District Courts extends to civil cases of lesser value, as well as cases related to issues of labour and nationality, civil affairs, personal estate actions, actions in recovery and injunctions to pay.

- The Courts of First Instance

The Courts of First Instance serve as the appellate courts for the District Courts. There is a Court of First Instance located in each region of Tunisia. Each Court is composed of a three-judge panel. The Courts of First Instance hear *inter alia* all commercial and civil cases, irrespective of the monetary value of the claim.

- The Courts of Appeal

The Appeals Courts serve as the appellate courts for decisions made in the Courts of First Instance. Cases that were originally heard in the District Courts and appealed to the Courts of First Instance may be further appealed to the Supreme Court. There are three courts of appeal.

- The Supreme Court

The Supreme Court, or Court of Cassation, is in Tunis and serves as the final court of appeals. The Court has one criminal and three civil divisions.

- High Court

The High Court meets in a case of high treason committed by a member of the Government. The mandate and procedures applied in this Court are determined by the Law. The Chapter on the Judiciary includes one section on Judicial Justice, another on Administrative Justice and one on Financial Justice. Former structures such as the Council of State (Article 69 of former constitution) will probably be reshaped accordingly¹²⁰⁹.

- **Enforcing Contracts and Efficiency in settling disputes**

No information was found in this regard.

- **Protection of Minority Investors**

The World Bank notes that in 2009 Tunisia strengthened investor protections by allowing minority investors to request in court the rescission of related-party transactions that harm the company. In 2010, Tunisia further strengthened investor protections by enhancing approval and disclosure requirements for related-party transactions. In 2019, Tunisia strengthened minority investor protections further by improving disclosure requirements of related-party transactions to the public and by requiring disclosure of directorships and primary employment¹²¹⁰.

¹²⁰⁹ <https://www.eajtn.com/judicial-systems/tunisia/> accessed on 19 March 2024.

¹²¹⁰ World Bank, Protecting Minority Investors. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/protecting-minority-investors/reforms> accessed on 19 March 2024.

2.50.2.6. Arbitration

The Tunisian Arbitration Code is largely inspired by the UNCITRAL Model Law. According to the Tunisian Arbitration Code, arbitration is based on an arbitration agreement between the parties¹²¹¹. Tunisia is a signatory of the New York Convention.

2.50.3 Licencing and Permit Regime

2.50.3.1. Types of Licences and Permits

Mining titles that can be issued in Tunisia include Prospecting Authorisations, Exploration Permits, and Exploitation Concessions. These titles grant the right to conduct Prospecting, Exploration, or Exploitation of mineral substances. The granting authority is the Tunisian State, represented by the Minister in charge of Mines or any competent administration as referred to in the Mining Code¹²¹².

2.50.3.2. Transferability of Mineral Rights

No information was found in this regard.

2.50.4 Taxation

2.50.4.1. Mining Royalties and Taxes

The Tunisian mining code sets a corporate tax rate of 25% on profits from mining operations but includes a 5-year tax holiday that starts at the beginning of mine production. The mining code also requires payment of a 1% royalty on the value of the sales of mining products to be paid every 6 months¹²¹³.

2.50.5 Mineral Beneficiation

No information was found in this regard.

2.50.6 Macroeconomics

Real GDP grew an estimated 2.4% in 2022, driven by industry and services, down from 4.3% in 2021 due to a catching-up effect. Inflation rose from 5.7% in 2021 to 8.3% in 2022 due to Russia's invasion of Ukraine, which led to higher oil and food prices.

Unemployment was 15.3% in the third quarter of 2022, with higher rates among women (20.5%), young people aged 15–24 (37.2%), university graduates, and residents of the interior of the country. The poverty

¹²¹¹ IBA Arbitration Committee, Country Report on Local Requirements for The Validity of The Arbitral Award, July 2023. Available on <https://www.ibanet.org/document?id=Validity-arbitral-awards-Tunisia#:~:text=The%20Tunisian%20Arbitration%20Code%20is%20largely%20inspired%20by%20the%20UNCITRAL%20Model%20Law.&text=Ac%20ording%20to%20the%20Tunisian%20Arbitration,of%20the%20Tunisian%20Arbitration%20Code>. Accessed on 19 March 2024.

¹²¹² Republic of Tunisia, Mining Code. Available on <https://www.resourcedata.org/dataset/rqi-tunisia-mining-code/resource/11e2e038-6e60-40a0-a531-084c4b70678a/view/0c232a45-2da9-4165-91b5-034aabc8dcb6> accessed on 28 April 2024.

¹²¹³ USGS, 2019 Minerals Yearbook, The Mineral Industry of Tunisia. Available on <https://pubs.usgs.gov/myb/vol3/2019/myb3-2019-tunisia.pdf> accessed on 19 March 2024.

rate, 15.3% overall, was higher in rural areas (26%) than in small and medium municipalities (15%) and much lower in large urban centres (6.3%)¹²¹⁴.

2.50.7 Governance and Risk Ratings

2.50.7.1. Ease of Doing Business

Tunisia ranks 78 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹²¹⁵.

2.50.7.2. Investment Climate

In 2021, Tunisia underwent political turmoil, resulting in a presidential decree being ordered which decree granted the president certain executive, legislative, and judiciary powers and authority to rule by decree.

In a July 2022 referendum, 94.6% of voters approved a new constitution, much of which President Saied personally drafted. The constitution concentrates powers in the presidency, removes checks and balances on the executive, weakens the parliament, and gives the president enhanced authority over the judiciary and the legislature.

Certain much-needed structural reforms have been advanced over the past few years. Certain of these initiatives included introducing an improved bankruptcy law, an investment code, an initial “negative list,” a law enabling public-private partnerships, and a supplemental law designed to improve the investment climate. The Government of Tunisia encouraged entrepreneurship through the passage of the Start-Up Act in June 2018. These reforms are intended to help Tunisia attract both foreign and domestic investment.

Nevertheless, according to the US State Department report on the Tunisian investment climate, substantial bureaucratic barriers to investment remain and additional economic reforms have yet to be achieved. State-owned enterprises play a large role in Tunisia’s economy, and some sectors are not open to foreign investment. The informal sector, estimated at 40% to 60% of the overall economy, remains problematic, as legitimate businesses are forced to compete with smuggled goods¹²¹⁶.

2.50.7.3. Risk Ratings

Global insurer Allianz attributes a poor rating to Tunisia based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is the worst rating possible, namely D4 - high risk for enterprise¹²¹⁷.

¹²¹⁴ African Development Bank, Tunisia Economic Outlook. Available on <https://www.afdb.org/en/countries-north-africa-tunisia/tunisia-economic-outlook> accessed on 19 March 2024.

¹²¹⁵ Doing Business 2020, Economy Profile Tunisia. Available on <https://archive.doingbusiness.org/content/dam/doingBusiness/country/t/tunisia/TUN.pdf>, accessed on 20 March 2024.

¹²¹⁶ U.S. Department of State, 2023 Investment Climate Statements: Tunisia. Available on [https://www.state.gov/reports/2023-investment-climate-statements/tunisia/#:~:text=Tunisia%27s%20strengths%20include%20its%20proximity,foreign%20direct%20investment%20\(FDI\)](https://www.state.gov/reports/2023-investment-climate-statements/tunisia/#:~:text=Tunisia%27s%20strengths%20include%20its%20proximity,foreign%20direct%20investment%20(FDI).). Accessed on 20 March 2024.

¹²¹⁷ Allianz, Economic Research – Tunisia. Available on https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/tunisia.html accessed on 20 March 2024.

Notwithstanding announcing that it will become a member of EITI, Tunisia is not yet a formal member of the initiative. The EITI standard is designed to enhance transparency in the resources sector by ensuring that companies publish what they pay, and governments disclose what they receive from natural resources.

Tunisia is not included in the Fraser Institute's annual survey on the perceptions of mining company executives about various optimal and sub-optimal public policies that might affect the hospitality of a jurisdiction to mining investment. This is due to Tunisia's non-participation in the survey.

2.50.8 Good Governance Evaluation

The Tunisian extractives industry is largely based on hydrocarbons, with mature legislation governing this sector. The mining sector is regulated by a separate code. The mining sector in Tunisia is very small and does not play a significant role in the economy. Phosphate rock is the primary mineral that is mined in Tunisia. Much of the mining sector is state owned and controlled.

While the 2022 Tunisian constitution mandates an independent judiciary, the judiciary suffers from interference from the executive and is not regarded as truly independent. For example, in February 2022, the president dissolved the Supreme Judicial Council, the highest judicial authority responsible for judicial assignments and enforcing ethical standards and discipline and replaced it with a temporary council.

Tunisia will need to modernise its legal system and improve governance structures in order to create an enabling environment for foreign investment into the mining sector.

2.51 Uganda

2.51.1 Introduction

The Republic of Uganda is a multi-party democracy. It is a landlocked country in east-central Africa. Uganda is populated by dozens of different ethnic groups. The capital is Kampala, which is built along the shore of Lake Victoria, Africa's largest freshwater lake. Uganda is bordered by South Sudan, Kenya, Tanzania and Rwanda, and the Democratic Republic of the Congo. Uganda has an estimated population: (2024) of 47,066,000¹²¹⁸.

Industrial mining commenced in Uganda in the 1970's with the establishment of the Kilembe Mine as a large-scale mine producing blister copper as well as cobalt, phosphates and limestone. Tungsten, tin, beryl, niobium, tantalum and gold operations also existed¹²¹⁹. According to the Uganda Extractive Industries Transparency Initiative (UGEITI) report of 2020/2021, precious minerals and base metals in Uganda are typically mined in smaller and often artisanal mines¹²²⁰. From 1986, the Ugandan mining industry saw an upswing in activity, generally due to improved commodity prices. This resulted in a generally more favourable business climate in Uganda. An increase in license applications in the mining sector occurred in this period which resulted in increased exploration activity and the resultant discovery of minerals. According to the UGEITI report of 2020/2021, the mining sector in Uganda today has a limited number of large-scale producers of limestone and volcanic materials for cement manufacture¹²²¹.

2.51.2 Policy and Legal Framework

2.51.2.1. Institutional and Policy Overview

The Ugandan Constitution of 2005 (Constitution) enshrines the independence of the judiciary as a fundamental principle. The Constitution provides that no person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions. Furthermore, the Constitution preserves the principle of separation of powers.

The court hierarchy is established in terms of the Constitution as follows:

- the Supreme Court of Uganda;
- the Court of Appeal of Uganda;
- the High Court of Uganda; and
- such subordinate courts as Parliament may by law establish.

¹²¹⁸ Britannica, Country Overview – Uganda. Available on <https://www.britannica.com/place/Uganda>, accessed on 12 May 2024.

¹²¹⁹ Uganda Extractive Industries Transparency Initiative (UGEITI) Report for Fiscal Year 2020-21. Available on <https://eiti.org/sites/default/files/2023-09/UGEITI%20Report%20FY%202020-21%20-%20Final%20clean-V070923.pdf>, accessed on 27 February 2024.

¹²²⁰ Ibid.

¹²²¹ Ibid.

The Supreme Court, the Court of Appeal and the High Court of Uganda are the superior courts of record and shall each have all the powers of such a court.

The Supreme Court of Uganda consists of:

- the Chief Justice; and
- such number of justices of the Supreme Court, not being less than six, as Parliament may by law prescribe.

The Supreme Court shall be duly constituted at any sitting, if it consists of an uneven number not being less than five members of the court. When hearing appeals from decisions of the Court of Appeal sitting as a constitutional court, the Supreme Court shall consist of a full bench of all members of the Supreme Court; and where any of them is not able to attend, the President shall, for that purpose, appoint an acting justice. The Chief Justice shall preside at each sitting of the Supreme Court, and in the absence of the Chief Justice, the most senior member of the court as constituted shall preside. The Supreme Court is the final court of appeal.

The Court of Appeal of Uganda shall hear appeals from the High court and the bench consists of:

- the Deputy Chief Justice; and
- such number of justices of Appeal not being less than seven as Parliament may by law prescribe.

The Court of Appeal is constituted at any sitting if it consists of an uneven number not being less than three members of the court. The Deputy Chief Justice shall preside at each sitting of the court and in the absence of the Deputy Chief Justice, the most senior member of the court as constituted shall preside.

The Chief Justice, in consultation with the Deputy Chief Justice, may create divisions of the Court of Appeal as the Chief Justice may consider necessary:

- consisting of such numbers of justices of Appeal as may be assigned to them by the Chief Justice;
- sitting at such places in Uganda as the Chief Justice may, after consultation with the Attorney General, by statutory order, determine.

The High Court has unlimited jurisdiction in all branches of the law (civil, commercial, family, land, criminal, anti-corruption, international crimes, and execution and bailiffs). The main seat is in Kampala and it sits periodically in 12 other locations across the country¹²²².

The lowest courts are magistrates' courts, being courts of first instance in a limited range of civil and criminal matters. Appeals arising from the magistrates' courts are heard by the High Court¹²²³.

¹²²² Commonwealth Governance, Judicial System of Uganda. Available on <https://www.commonwealthgovernance.org/countries/africa/uganda/judicial-system/>, accessed on 28 February 2024.

¹²²³ Ibid.

2.51.2.2. Relevant Legal Instruments

The following legal instruments are applicable to the mining industry in Uganda, namely:

- Mining and Minerals Act, 2022 (the Act)

On 14 October 2022, Uganda adopted the Mining and Minerals Act, 2022, which replaced the Mining Act, 2003¹²²⁴. The new legislation introduces new concepts into mining legislation such as:

- the creation of new classes of mineral rights that may be applied for, including large-scale mining licence; medium scale mining licence; small scale mining licence; and artisanal mining licence¹²²⁵;
- it broadens the scope of applicants for mineral rights to include body corporates registered under the laws of Uganda, a partnership, a cooperative society, a trustee, or an association or business registered under any other written law¹²²⁶;
- it establishes the Uganda National Mining Company (UNMC) which is wholly owned by the Ugandan State to manage Uganda's commercial holding and participating interests in mineral agreements¹²²⁷;
- establishing the framework for the granting of a large scale or medium scale mining licence. The State is entitled to a free carry interest of up to a maximum of 15 per cent, in such projects, at its election¹²²⁸;
- unlike the Mining Act, 2003 which limits exploitation of building minerals to domestic use, the new Act provides for the right to exploit building substances for commercial purposes¹²²⁹.

Other relevant and notable pieces of legislation that are relevant to the mining industry and mining policy in Uganda include:

- the National Environment Act, 2019;
- the National Environment (Environment Impact Assessment) Regulations;
- the Public Finance Management Act, 2015;

¹²²⁴ UNCTAD, Investment Policy Hub, New Mining and Minerals Act 2022 assigns the State an ownership interest in large and medium scale mines. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4454/new-mining-and-minerals-act-2022-assigns-the-state-an-ownership-interest-in-large-and-medium-scale-mines#:~:text=Uganda-.New%20Mining%20and%20Minerals%20Act%202022%20assigns%20the%20State%20an,large%20and%20medium%20scale%20mines&text=O n%2014%20October%202022%2C%20Uganda,replaces%20the%20Mining%20Act%2C%202003>. Accessed on 27 February 2024.

¹²²⁵ Ibid

¹²²⁶ Ibid

¹²²⁷ UNCTAD, Investment Policy Hub, New Mining and Minerals Act 2022 assigns the State an ownership interest in large and medium scale mines. Available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/4454/new-mining-and-minerals-act-2022-assigns-the-state-an-ownership-interest-in-large-and-medium-scale-mines#:~:text=Uganda-.New%20Mining%20and%20Minerals%20Act%202022%20assigns%20the%20State%20an,large%20and%20medium%20scale%20mines&text=O n%2014%20October%202022%2C%20Uganda,replaces%20the%20Mining%20Act%2C%202003>. Accessed on 27 February 2024.

¹²²⁸ Ibid.

¹²²⁹ Ibid.

- the Occupational Safety and Health Act, 2006;
- the Employment Act, 2006; and the Companies Act, 2012.

In terms of the new mining legislation, a new mineral cadastre department has been created under the Directorate of Geological Survey and Mines (DGSM) to carry out (online) licensing¹²³⁰. This is separate from the regulation function retained under the mines department. The law gives the minister responsible for energy and mineral development powers to grant and revoke mineral rights, licences, and permits. These powers previously belonged to the head of DGSM¹²³¹. The minister can also enter mineral agreements with investors for and on behalf of the government. And the finance minister, in collaboration with the ministry of energy and mineral development, has powers to give incentives such as tax waivers to investors in the sector¹²³².

2.51.2.3. Foreign Ownership, Migrant and Local Labour Requirements

In terms of section 197 of the Act, a holder of a mineral right, licensee, contractor and subcontractor shall give preference to goods which are produced or available in Uganda and services which are rendered by Ugandan citizens and companies owned by Ugandan citizens.

A holder of a mineral right, licensee, contractor and subcontractor shall develop a plan for the procurement of goods and services available in Uganda and in particular, within the area of operations, or where the goods and services are not available within the said area, then from sources based within the national jurisdiction of the operations.

Where the goods and services are not available in Uganda, the mineral rights holder, licensee, contractors and subcontractors may source the goods and services from within the East African Community or a Member State of the African Union.

The plan needs to be approved by the Minister of Mines and needs annual reporting on compliance.

2.51.2.4. Artisanal Mining Sector

According to the EITI report on Uganda dated November 2022, artisanal and small-scale mining constitutes the informal economic sector that includes workers who use basic implements to extract minerals from the earth. The Act defines artisanal mining operations as mining operations that do not exceed ten meters depth and are undertaken in accordance with the Act and the Artisanal Mining Licence¹²³³. The Act also provides for artisanal mining regulation in detail.

Artisanal mining is an important socio-economic sector for the rural poor in many developing nations, many of whom have few other options for supporting their families. Artisanal mining has become a major

¹²³⁰ African Centre for Media Excellence, An overview of Uganda's new mining law, March 2022. Available on <https://acme-ug.org/2022/03/20/an-overview-of-ugandas-new-mining-law/>, accessed on 6 March 2024.

¹²³¹ Ibid.

¹²³² Ibid.

¹²³³ Uganda Extractive Industries Transparency Initiative (UGEITI) Report for Fiscal Year 2020-21. Available on <https://eiti.org/sites/default/files/2023-09/UGEITI%20Report%20FY%202020-21%20-%20Final%20clean-V070923.pdf>, accessed on 27 February 2024.

contributor in Uganda's mining industry and plays an important role in local development as well as job creation¹²³⁴. Artisanal mining also represents the mainly informal sector and is not accounted for in the country's GDP calculation.

According to the UGEITI report of 2020/2021, over 80% of Uganda's mining workforce are artisanal miners. Artisanal and small-scale miners in Uganda are responsible for the majority production of gemstones and more than 90% of metallic minerals, industrial minerals (e.g., gypsum, limestone, pozzolanic material) and other building minerals (e.g., clay, sand, aggregate)¹²³⁵.

In terms of the Act, the Minister of Mines may, in consultation with the Directorate and the relevant local government establish an artisanal mining area, within the limits of a set geographic area where, due to the features of certain deposits of gold, diamonds or any other mineral substance, technical and economic factors do not allow for large scale, medium scale or small-scale mining operations, but do allow for artisanal operations.

In locations where associations or entities of artisanal miners have been formed and are operational, artisanal mining by individuals who are not registered or are not members of an association or entity is illegal and prohibited.

2.51.2.5. Judicial System

• Judicial independence

Uganda's judiciary is regularly subjected to political meddling and interference, so much so that the country's chief justice recently issued a statement to the effect that he is concerned about the true independence of the judiciary¹²³⁶. It is an encouraging sign that the judiciary and its head can openly voice their concerns around political interference in the judicial process.

• Enforcing Contracts and Efficiency in settling disputes

The World Bank assesses globally the time and cost required for resolving a commercial dispute through a local first-instance court, and furthermore the quality of judicial processes, evaluating whether each economy had adopted a series of good practices that promote quality and efficiency in the court system¹²³⁷. In 2011, the report stated that Uganda continues to improve the efficiency of its court system, greatly reducing the time to file and serve a claim. No further updates have been provided in this regard, since 2011.

• Protection of Minority Investors

¹²³⁴ Uganda Extractive Industries Transparency Initiative (UGEITI) Report for Fiscal Year 2020-21. Available on <https://eiti.org/sites/default/files/2023-09/UGEITI%20Report%20FY%202020-21%20-%20Final%20clean-V070923.pdf>, accessed on 27 February 2024.

¹²³⁵ Ibid.

¹²³⁶ News Release: Interference of court processes undermines judicial independence. Available on <https://pbs.twimg.com/media/GDaCZCVaQAziVG?format=jpg&name=large>, accessed on 6 March 2024.

¹²³⁷ World Bank, Enforcing Contracts. Available on <https://subnational.doingbusiness.org/en/data/exploretopics/enforcing-contracts/reforms>, accessed on 6 March 2024.

One specific feature of the mining sector that heightens sovereign risk is that the exploration, development and production take place where the minerals are. Once the investment has been sunk, host governments may renege on their earlier commitments and toughen the regulatory and fiscal environment. The recurring variations in mineral prices can also make an apparently profitable deal under an agreement previously negotiated look unattractive, and this can be a trigger point for the government to revise fiscal terms, sometimes to the detriment of the mining companies. For these reasons and prior to investing in developing countries, mining companies seek assurance that the risk of unilateral and arbitrary changes to the law and investment agreements which can dilute the value of their projects can be satisfactorily managed.

There are typically three legal mechanisms which investors seek to mitigate the risks of investing in emerging market geographies. These are used to protect against arbitrary government action, political risk or and the resulting economic loss thereof. The mechanisms are legislative, contractual and treaty-based - all of which are embedded in Uganda's mineral legal regime.

Firstly, from a legislative perspective, support exists against unilateral revision of mineral fiscal terms. This is contained in substantive provisions in national legislation setting out guarantees for the protection of a category of investments. The Ugandan Constitution, for example, prohibits the government from arbitrarily depriving a person of property or interest over any property except in public interest in which case a prompt and fair compensation must be made.

Secondly bilateral and multilateral investment treaties are also used to protect investors. Bilateral investment treaties concluded between capital exporting and importing countries set out substantive principles on investment protection, as well as the procedures of investor state arbitration. The umbrella clause, the Fair and Equitable Treatment standard and the principle of utmost good faith embedded in such treaties ensure the provision of additional protection.

Uganda presently has such treaties with inter alia Denmark, France, Germany, Netherlands, Switzerland, and the United Kingdom. Treaties have been signed with China, Belgium and Luxemburg, Eritrea, Nigeria, South Africa, and Egypt but are not yet in force.

Finally, investors in the mining sector can rely on stabilisation clauses. The Mining Act is silent on stabilisation clauses in mining agreements and is thus not very clear whether their inclusion can stand legal scrutiny. These clauses aim at ensuring that future changes in a country's legislation do not vary the terms of the mining agreements as originally concluded. Stabilisation clauses aim at ensuring that the fiscal terms and related terms of the investment or mining agreements executed are not altered to the disadvantage of the investor during the duration of the project¹²³⁸.

¹²³⁸ Uganda's Mineral Regulatory Regime A fresh perspective. Available on <https://cristaladvocates.com/?mdocs-file=22071>, accessed on 13 May 2024.

2.51.2.6. Arbitration

The Arbitration and Conciliation Act 2000 regulates alternative dispute resolution in Uganda. This law is based primarily on English legal principles. The predecessor law, the Arbitration Act was not user friendly and complex, and enforcement of international awards was not straightforward¹²³⁹.

Uganda does not have a long history of formal arbitration, but it has recently embraced the best international standards of arbitral practice reflected in the Arbitration and Conciliation Act 2000 which closely follows international best practice in the form of the United Nations Commission on International Trade Law (UNCITRAL) model law including the Arbitration Rules and the Conciliation Rules¹²⁴⁰.

¹²³⁹ Uganda - Arbitration Law and Practice in Africa. Available on <https://arbitrationlaw.com/library/uganda-arbitration-law-and-practice-africa>, accessed on 28 February 2024.

¹²⁴⁰ Ibid.



2.51.3 Licencing and Permit Regime

2.51.3.1. Types of Licences and Permits

Section 15 of the Act sets out the types of mineral rights that can be applied for and issued in Uganda¹²⁴¹.

Prospecting Licence	Exploitation Licence	Retention Licence	Large Scale Mining Licence	Small Scale Mining Licence	Medium Scale Mining Licence	Artisanal Mining Licence
A licence granted to the applicant to search for mineral deposits. This can include rights to test the mineral bearing qualities within the grant area.	Granted to the applicant to delineate and measure the mineral resource within the licence area. This right allows the holder to determine the extent of the mineral rights and the quality of the deposit.	This licence is granted to the holder of a prospecting license and applies in the period between the prospecting right and the mining right period. The right is granted to holders of a prospecting right who cannot develop the mineral area under the right due to reasons including adverse market conditions.	A licence granted for large scale mining, typically by international multinational mining companies. The mining license allows for the sinking of shafts, development of multiple openings and pits. The licence requires a minimum investment of circa 300 billion shillings (circa 80 m USD).	This licence is only capable of being issued to Ugandan citizens. This is either to Ugandan individuals or juristic entities that are owned by Ugandan nationals. The minimum investment is between 400 m Ugandan Sillings (circa 105 000 USD) and 20 billion Ugandan Sillings (circa 5 300 000 USD).	This type of licence can only be granted to partnerships, comprising of Ugandan nationals and foreigners. The licence cannot be granted to natural persons.	This licence is granted to Ugandan nationals who mine on a non-mechanised bases. This licence may be granted for a single site or for multiple sites.

Table 47 Types of Licences and Permits in Uganda

¹²⁴¹ Acquiring Mineral Rights and Mining Licenses in Uganda, 2023. Available on <http://www.franktumusiimeadvocates.com/wp-content/uploads/2023/05/Mining-Licenses-in-Uganda.pdf>, accessed on 10 May 2024.



2.51.3.2. The Application Process and Requirements for Mining Licences and Permits in Uganda

Sections 35 to 94 of the Act, read together with the 2022 Mining (Licencing) Regulations, set out the regulations as Application Process and requirements for Mining Licences and Permits in Uganda. Below are the broad frameworks as they relate to each category of permit and licence¹²⁴²:

Application Requirements	Prospecting Licence	Exploration Licence	Retention Licence
Place of Application /counterpart	An application for a prospecting licence shall be made to the Minister in a manner prescribed by regulations.	An application for an exploration licence shall be made to the Minister in a manner prescribed by regulations.	An application for a retention licence shall be made to the Minister in a manner prescribed by regulations
Validity or Duration of Licence or Permit	A prospecting licence shall be valid for a period of one year.	Subject to the provisions of the Act, an exploration licence shall be valid for a period not exceeding four years from the date of grant of the exploration licence.	A retention licence may be granted for a period not exceeding three years.
Renewable	No.	Yes. An exploration licence may be renewed for a single period not exceeding three years.	Yes. Where the Minister is satisfied that commercial development of a mineral deposit is or has not been possible at the expiry of a retention licence, that licence may, on the application of the holder, be renewed for a single period not exceeding two years.
Costs	500 000 Ugandan Shillings.	500 000 Ugandan Shillings – registration fees; 1 000 000 Ugandan Shillings – preparation fees; 50 000 Ugandan Shillings per square kilometre (or part thereof) of mineral lease area. 300 000 Ugandan Shillings for gazetting licence.	500 000 Ugandan Shillings – registration fees; 5 000 000 Ugandan Shillings – preparation fees; 100 000 Ugandan Shillings per square kilometre (or part thereof) of mineral lease area; 300 000 Ugandan Shillings for gazetting licence.

¹²⁴² THE MINING AND MINERALS ACT, 2022. Available on <https://bills.parliament.ug/attachments/Mining%20and%20Minerals%20Act,%202022.pdf>, accessed on 10 May 2024.

<p>Application requirements or restrictions / rights</p>	<p>The holder of a prospecting licence shall-</p> <p>(a) carry on prospecting operations in accordance with his or her licence;</p> <p>(b) conduct prospecting operations in an environmentally and socially responsible manner in accordance with this Act, the National Environment Act, 2019 and any other written law;</p> <p>(c) submit to the Minister quarterly, or at such other intervals as may be prescribed by regulations, geological and financial reports and any other information; report any mineral discovery to the Minister; remove on or before the expiration of the prospecting licence, any camps, temporary buildings or installations which may have been erected; repair or make good any damage caused to the surface of the land to the satisfaction of the Minister and the National Environment Management Authority;</p> <p>(g) compensate users of land for damage to land and property, where applicable; and</p> <p>(h) pay the fees prescribed by regulations.</p>	<p>An exploration licence shall not be granted to an applicant unless the Minister is satisfied that-</p> <p>(a) the applicant has adequate financial resources, technical competence, and experience to carry out effective exploration operations;</p> <p>(b) the programme of proposed exploration operations is adequate for the period of the licence;</p> <p>(c) the applicant's proposal for exploration operations has provided for the employment and training of Ugandan citizens and purchase of goods and services available in Uganda;</p> <p>(d) the applicant is able and willing to comply with the terms and conditions of the exploration licence;</p> <p>(e) the relevant consents required under any other written law have been obtained;</p> <p>(f) the minerals to which the proposed exploration licence relate exist in the proposed exploration area; and</p> <p>(g) the applicant is not in default</p>	<p>A retention licence confers on the holder of the licence an exclusive right to apply for a mining licence over the area in respect of which the retention licence has been granted.</p> <p>(2) The holder of a retention licence shall-</p> <p>(a) continue to carry out studies referred to in section 53(3) (e) during the period of the licence; and</p> <p>(b) pay the prescribed annual mineral rent for the whole area covered by the retention licence, in accordance with this Act, prior to the grant of the licence, and thereafter, annually on or before the anniversary of the grant until the termination or expiry of the retention licence.</p>
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Table 48 Application Requirements for Prospecting Licence, Exploration Licence and Retention Licence in Uganda.

Application Requirements	Large Scale Mining Licence	Small Scale Mining Licence
Place of Application /counterpart	An application for a large-scale mining licence shall be made to the Minister in a manner prescribed by regulations.	An application for a small-scale mining licence shall be made to the Minister in a manner prescribed by regulations.
Validity or Duration of Licence or Permit	The period for which a large-scale mining licence is granted shall be specified in the licence and shall not exceed twenty-one years or the estimated life of the mineral body proposed to be mined, whichever is shorter.	A small-scale mining licence shall be valid for a period not exceeding five years.
Renewable	<p>Yes. The holder of a large-scale mining licence may apply to the Minister for the renewal of the licence in respect of all or part of the mining area, fifteen months before the expiry of the licence.</p> <p>The period for renewal shall not exceed fifteen years or the life of the mineral ore body whichever is shorter, for which renewal is sought.</p>	Yes, renewable on application made to the Minister for such further periods not exceeding three years at a time.
Costs	5 000 000 Ugandan Shillings for application and preparation of a mining licence.	5 000 000 Ugandan Shillings for application and preparation of a mining licence.
Application requirements or restrictions / rights	<p>A large-scale mining licence shall not be granted to an applicant unless he or she satisfies the Minister that-</p> <p>(a) the area of land over which the licence is sought is not in excess of the area reasonably required to carry out the applicant's programme of proposed mining operations;</p> <p>(b) the programme of proposed mining operations takes proper account of the certificate of approval of environmental and social impact assessment issued by the National Environment Management Authority and health and safety factors;</p>	<p>A small-scale mining licence shall not be granted over an area of land in, or which is, an exploration area, a retention area to a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a medium scale mining licence or large-scale mining licence in respect of that area.</p> <p>(2) Where at area of land is subject to a small-scale mining licence, no other small scale mining licence shall be granted in respect of that area.</p> <p>(3) A small-scale mining licence shall not be granted to an applicant unless the Minister is satisfied that -</p>

	<p>(c) the feasibility study of the relevant mineral body indicates that the mineral deposit in question can be profitably mined;</p> <p>(d) the applicant has adequate financial resources, technical competence and experience to carry on effective mining operations;</p> <p>(e) the applicant's proposals for the employment and training of citizens of Uganda are adequate;</p> <p>(f) the applicant's proposals with respect to the procurement of goods and services obtainable within Uganda are adequate;</p> <p>(g) the applicant demonstrates a willingness and an ability to comply with the terms and conditions applicable to the large-scale mining licence;</p> <p>(h) the applicant has secured the surface rights of the land which is the subject of application; and</p> <p>(i) the applicant is not in default.</p>	<p>(a) the applicant has adequate financial resources, technical competence and experience to carry out effective mining operations;</p> <p>(b) the programme of proposed small scale mining operations is adequate for the period of the licence;</p> <p>(c) the applicant's proposal for small scale mining operations has provided for the employment and training of Ugandan citizens and purchase of goods and services available in Uganda;</p> <p>(d) the applicant is able and willing to comply with the terms and conditions of the small-scale mining licence;</p> <p>(e) the minerals to which the proposed small scale mining licence relate exist in the proposed exploration area; and the applicant is not in default.</p>
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Table 49 Application Requirements for Large Scale Mining Licence and Small-Scale Mining Licence in Uganda

Application Requirements	Medium Scale Mining Licence	Artisanal Mining Licence
Place of Application /counterpart	An application for a medium scale mining licence shall be made to the Minister in a manner prescribed by regulations.	An application for an artisanal mining licence shall be made to the Minister in a manner prescribed by regulations.
Validity or Duration of Licence or Permit	A medium scale mining licence shall be valid for a period not exceeding ten years.	An artisanal mining licence shall be valid for a period not exceeding three years.
Renewable	Yes, renewable on application made to the Minister for such further periods not exceeding seven years at a time.	Yes, renewable on application made to the Minister for periods not exceeding two years at a time.
Costs	5 000 000 Ugandan Shillings for application and preparation of a mining licence.	5 000 000 Ugandan Shillings for application and preparation of a mining licence.
Application requirements or restrictions / rights	<p>A medium scale mining licence shall not be granted over an area of land in, or which is, an exploration area, a retention area or a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a small-scale mining licence or large-scale mining licence, as the case may be, in respect of that area.</p> <p>Where land is subject to a medium scale mining licence, no other medium scale mining licence shall be granted in respect of that area.</p> <p>A medium scale mining licence shall not be granted to an applicant unless the Minister is satisfied that-</p> <p>(a) the applicant has adequate financial resources, technical competence and experience to carry out effective mining operations;</p>	<p>The Minister shall, upon receipt of an application for an artisanal mining licence under section 96, forward the application and the accompanying documents to the Mining Cadastre Department for review and verification to ensure that the application meets the requirements of this Act and any other written law, and that the applicant has secured the surface rights or documentary evidence of consent of the mining area applied for.</p> <p>The Mining Cadastre Department shall, after reviewing the application under subsection (1), make recommendations to the Minister on whether to grant or reject the application.</p> <p>The Minister may, upon receipt of the recommendations of the Mining Cadastre Department under subsection (2)-</p> <p>(a) grant the artisanal mining licence applied for on such terms and conditions as the Minister may determine; or</p>

	<p>(b) the program of proposed medium scale mining operations is adequate for the duration of the licence;</p> <p>(c) the applicant's proposal for medium scale mining operations has provided for the employment and training of Ugandan citizens and purchase of goods and services available in Uganda;</p> <p>(d) the applicant is able and willing to comply with the terms and conditions of the medium scale mining licence;</p> <p>(e) the minerals to which the proposed medium scale mining licence relate exist in the proposed exploration area; and the applicant is not in default.</p>	<p>(b) refuse to grant the artisanal mining licence.</p> <p>Where the Minister refuses to grant the artisanal mining licence under subsection (3) (b), he or she shall inform the applicant, in writing, giving reasons for the refusal.</p> <p>The Minister may, in granting an artisanal mining licence under this Act, include a condition that the Minister may withdraw or cause to be relinquished portions of the licence area covering land that has been earmarked by Government for a public infrastructure project, at no cost to Government.</p>
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Table 50 Application Requirements for Medium Scale Mining Licence and Artisanal Mining Licence in Uganda

2.51.3.3. Transferability of Mineral Rights

In terms of section 156 of the Act, a person shall not transfer any type of mineral right or a share of a right without the prior written approval of the Minister and any purported transfer shall be null and void.

An application for the approval of the transfer of a mineral right shall be submitted to the Minister in a manner prescribed by regulations:

- The Minister shall confirm the legal and technical capacity, competence and financial strength of the person to whom the mineral right or share of that right is to be transferred and approve or reject the application for transfer.
- Where the Minister has given his or her approval to the transfer of a mineral right, the transferee of the mineral right shall assume and be jointly and severally responsible for all rights, liabilities and duties of the transferor under the mineral right prior to the transfer.
- The Minister shall process an application for transfer within thirty days from the date of submission of a complete application.

The section is widely drafted and contemplates direct and indirect transfers and change of control. In other words, if there is a company(ies) interposed between the company that holds the mineral right and the ultimate parent company, then a change of control of any of the interposed companies will trigger the anti-transfer provision and not simply a change of control of the company that holds the mineral right.

2.51.4 Taxation

2.51.4.1. Mining Royalties and Taxes

In terms of the Ugandan Income Tax Act, Cap. 340 (Tax Act) a comprehensive taxation system for mining entities and activities is set out. Mining companies are subjected to a tax rate of 30%, and mining operations are taxed according to the specific license area. Non-resident mining contractors are taxed at a rate of 10% of the gross amount of the service fee¹²⁴³.

In terms of section 180 of the Tax Act, all minerals obtained or mined in the course of prospecting, exploration or mining operations shall be subject to the payment of royalties on the gross value of the minerals produced based on the prevailing market price of the minerals at such rates as shall be prescribed by the Minister in collaboration with the Minister responsible for finance by statutory instrument.

The holder of a mineral right or licence for beneficiation shall submit a return to the Commissioner General of the Uganda Revenue Authority and to the Minister relating to the payment of royalty.

The royalty payable under subsection (1) shall be distributed in the manner prescribed in Schedule 2 to the Act. All minerals obtained in the course of prospecting or mining operations shall be liable to such royalties as may be prescribed from time to time, and no minerals shall be exported except after payment

¹²⁴³ Lex Africa, Guide to Mining Regimes in Africa, 2022. Available on <https://lexafrica.com/wp-content/uploads/2023/07/LEX-Africa-Mining-Guide-2023.pdf>, accessed on 05 March 2023.



or securing of royalty under such conditions as may be prescribed. The specific royalty rates do not appear to have been promulgated yet or if they have been, they are not available in the public domain.

The Act however does provide for the specific royalties that are paid, to be shared in proportions as follows: the central government 65%; district local government 20%; sub-county/town council 10%; and registered or customary owners, lawful or *bona fide* occupants of the land 5%. The Tax Act also allows state participation of up to 35% in some medium to large-scale mineral projects in terms of section 179 of the Tax Act.

2.51.5 Mineral Beneficiation

Mineral beneficiation is defined in the Act, as including but not limited to the following: processing, smelting, refining, cutting, blasting or polishing of minerals.

Under section 10 of the Act, it is prohibited to undertake processing, refining or other beneficiation operation under Uganda's jurisdiction without an authorisation, licence, lease, permit or approval in accordance with the Mining Act, the National Environment Act, 2019 or any other written law.

In terms of section 122 of the Act, the Minister may licence integrated projects to process, smelt, refine, cut, blast, polish and trade minerals or a licence for a combination of two or more of these projects. Notwithstanding this, the Minister may issue an independent licence for processing, smelting, refining, cutting, blasting, polishing of minerals or trade in minerals. The Minister may, by regulations, prescribe requirements for processing, gemstone cutting, polishing and blasting facilities and trade activities.

A person who intends to smelt, refine, cut, blast, polish, trade or construct and operate a mineral processing facility shall apply to the Minister for a licence in a manner prescribed by regulations.

Uganda has adopted a national development plan in the form of Vision 2040. Vision 2040 is a plan that is: *conceptualized around strengthening the fundamentals of the economy to harness the abundant opportunities around the country. The opportunities include; oil and gas, tourism, minerals, ICT business, abundant labour force, geographical location and trade, water resources, industrialisation, and agriculture. On the other hand, the fundamentals include: infrastructure for (energy, transport, water, oil and gas and ICT); Science, Technology, Engineering and Innovation (STEI); land; urban development; human resource; and peace, security and defence.*¹²⁴⁴

One of the country's goals under 'Vision 2040' is to promote local beneficiation and to establish an industrial base for local production of consumer and industrial goods. According to Vision 2040, the aim is to *promote local beneficiation, the country will ensure value addition on the minerals and provide manufacturing feedstock. This will help establish an industrial base for local production of consumer and industrial goods.*

Establishing processing industries for phosphates, limestone and iron ore is a priority. The Mining Act promotes this goal by regulating value addition and beneficiation of minerals. It requires all persons

¹²⁴⁴ Uganda Vision 2040. Available on <https://www.greenpolicyplatform.org/sites/default/files/downloads/policy-database/UGANDA%20Vision%202040.pdf>, accessed on 12 May 2024.

involved in beneficiation of minerals to obtain a licence¹²⁴⁵. There currently remains a ban on the export of unprocessed minerals. This was imposed in 2015 and still stands¹²⁴⁶.

2.51.6 Macroeconomics

According to the African Development Bank¹²⁴⁷, real GDP grew an estimated 6.3% in 2022, which is an increase on the 5.6% growth in 2021, notwithstanding disruptive macro-economic factors such as higher commodity prices, less favourable financial conditions due in the main to Russia's invasion of Ukraine, and continued global supply chain disruptions. In 2022 inflation was 7.2%, driven by a 14.9% increase in food prices and a 12.7% increase in energy prices. The Bank of Uganda raised the prime lending rate four times in 2022, from 6.5% to 10%. The financial sector remains well capitalized, with a capital adequacy ratio of 21.7% in 2022. Risk of public debt distress is moderate, and public debt remains sustainable. GDP is projected to grow 6.5% in 2023 and 6.7% in 2024, on the basis that any global growth slowdown will not be protracted. Although inflation is expected to slow, it is projected to remain above the central bank's medium-term target of 5%.

2.51.7 Governance and Risk Ratings

2.51.7.1. Ease of Doing Business

According to the World Bank Group, Uganda is ranked 116 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings¹²⁴⁸.

2.51.7.2. Investment Climate

Uganda's investment climate presents both important opportunities and major challenges for investors. Uganda's capacity and political will to regulate the mineral trade across its borders remain weak. Uganda's gold refining sector relies on conflict minerals illicitly imported from neighbouring countries, especially from eastern DRC. Despite having no significant gold reserves, gold was the leading annual export commodity in 2018 to 2021. This slowed down significantly to \$200 million in 2022 from \$1 billion due to a tax dispute that gold exporters protested. Public procurement, which includes the obtaining and issuance of mineral rights remains a high-risk area with non-transparent "under-the-table cash payments" often being demanded from procurement officers.

Widespread corruption involving public officials has had a material impact on the investment climate in Uganda. Areas of high risk from a corruption perspective are any transactions involving the state or related institutions. The Ugandan government does not adequately enforce domestic laws related to human

¹²⁴⁵ Towards A Vibrant Mining Sector in Uganda: A Review of The New Mining and Minerals Act 2022. Available on <https://www.mmaks.co.ug/articles/2023/07/25/towards-vibrant-mining-sector-uganda-review-new-mining-and-minerals-act-2022>, accessed on 13 May 2024.

¹²⁴⁶ Ban on raw minerals export to stay – Govt. Available on <https://www.monitor.co.ug/uganda/news/national/ban-on-raw-minerals-export-to-stay-govt-3982402>, accessed on 13 May 2024.

¹²⁴⁷ African Development Bank, Uganda Economic Outlook. Available on <https://www.afdb.org/en/countries/east-africa/uganda/uganda-economic-outlook>, accessed on 05 March 2023.

¹²⁴⁸ Doing Business 2020. Economy Profile Uganda. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/u/uganda/UGA.pdf>, accessed on 27 February 2024



rights, labour rights, consumer protection, environmental protections, or other laws intended to protect individuals from adverse business impacts¹²⁴⁹.

2.51.7.3. Risk Ratings

Transparency International has rated Uganda's public sector as one of the most corrupt in the world. In 2023, Uganda ranked 141 best out of 180 and had a score of 26 on a scale from 0 (perceived as most corrupt) to 100 (perceived as least corrupt)¹²⁵⁰.

The World Bank's 2015 Worldwide Governance Indicators ranked Uganda in the worst 12 percentile of all countries. According to the United States Department of State's 2012 Human Rights Report on Uganda, "The World Bank's most recent Worldwide Governance Indicators reflected corruption was a severe problem" and that "the country annually loses 768.9 billion shillings (\$286 million) to corruption."

Uganda joined the EITI as a member in 2020 in order to strengthen efforts to ensure overall transparency in the sector, strengthen tax collection, promote public debate, improve the investment climate, build trust and create lasting value from petroleum and mineral resources¹²⁵¹. Some of the stated governmental objectives to support the EITI initiative is the development of a work plan which includes inter alia: the development of a policy and plan on contract and license publication, the documentation of planned reforms on beneficial ownership transparency, a scoping study on state participation in the extractive sector and activities relating to communication and dissemination of data¹²⁵². The EITI plan further seeks to enhance revenue management and accountability. Uganda's governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a moderate rating to Uganda based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is C3 - sensitive risk for enterprise¹²⁵³.

Uganda is not included in the latest edition of the Fraser Institute Perceptions Index. This is because the country failed to respond to the institute's questionnaire.

2.51.8 Good Governance Evaluation

Uganda has important mineral endowments, which can play a role in the transition to a greener economy. Notwithstanding the modernisation of the mining legislation, reports of the compromised licensing processes through bribery, corruption and political patronage emerge regularly. A large and unregulated artisanal mining industry also poses concerns to the mining industry at large.

¹²⁴⁹ U.S. Department of State, 2023 Investment Climate Statements: Uganda. Available on <https://www.state.gov/reports/2023-investment-climate-statements/uganda/>, accessed on 15 May 2024.

¹²⁵⁰ Corruption Perceptions Index. Available on <https://www.transparency.org/en/countries/uganda>.

¹²⁵¹ Uganda Extractive Industries Transparency Initiative (UGEITI) Report for Fiscal Year 2020-21. Available on <https://eiti.org/sites/default/files/2023-09/UGEITI%20Report%20FY%202020-21%20-%20Final%20clean-V070923.pdf>, accessed on 27 February 2024. <https://eiti.org/countries/uganda> accessed on 6 March 2024

¹²⁵² Ibid.

¹²⁵³ https://www.allianz.com/en/economic_research/country-and-sector-risk/country-risk/uganda.html accessed on 6 March 2024

On paper, Uganda's legal and regulatory systems are generally transparent, non-discriminatory, and in line with international standards. However, in practice, bureaucratic obstacles and corruption affect all investors, with a particularly heavy impact on foreigners who must navigate an informal parallel system. Furthermore, the government does not require companies to disclose ESG profiles¹²⁵⁴.

¹²⁵⁴ U.S. Department of State, 2023 Investment Climate Statements: Uganda. Available on <https://www.state.gov/reports/2023-investment-climate-statements/uganda/>, accessed on 15 May 2024.



2.52 Western Sahara (Morocco)

2.52.1 Introduction

Western Sahara is a disputed territory occupying an extensive deserted Atlantic-coastal area in the northwest of Africa. About 20% of the territory is controlled by the Sahrawi Arab Democratic Republic (SADR) and the remaining 80% is occupied and administered by neighbouring Morocco. The Western Sahara conflict is an ongoing conflict between the Sahrawi Arab Democratic Republic/Polisario Front and the Kingdom of Morocco. The conflict originated from an insurgency by the Polisario Front against Spanish colonial forces from 1973 to 1975 and the subsequent Western Sahara War against Morocco between 1975 and 1991. Today the conflict is dominated by unarmed civil campaigns of the Polisario Front and their self-proclaimed SADR state to gain fully recognized independence for Western Sahara¹²⁵⁵.

Phosphate deposits are one of Western Sahara's few natural resources. Abundant, pure phosphate deposits lie near the surface in certain regions¹²⁵⁶.

Morocco has a mixed legal system of civil law based on French civil law and Islamic (sharia) law, combined with judicial review of legislative acts by Constitutional Court¹²⁵⁷.

Morocco claims the territory of Western Sahara and administers the estimated 75% of that territory that it controls, the applicable Moroccan laws and policies will apply. Please refer to the chapter on Morocco for a detailed summary for:

- Policy and Legal Framework
- Licencing and Permit Regime
- Taxation
- Mineral Beneficiation
- Macroeconomics

Morocco ranks 53 out of 190 countries in the 2020 World Bank Ease of Doing Business Report¹²⁵⁸.

2.52.2 Governance and Risk Ratings

Moroccan law provides criminal penalties for corruption by officials, but according to the US State Department, the government generally did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity¹²⁵⁹. According to the US State Department Report on Western Sahara, development spending and military officers' involvement in private business created susceptibility

¹²⁵⁵ Western Sahara conflict. Available on https://en.wikipedia.org/wiki/Western_Sahara_conflict accessed on 10 March 2024

¹²⁵⁶ Earth Observatory, Bou Craa Phosphate Mine, Western Sahara. Available on <https://www.earthobservatory.nasa.gov/images/92794/bou-craa-phosphate-mine-western-sahara#:~:text=Phosphate%20deposits%20are%20one%20of,deposits%20lie%20near%20the%20surface>. Accessed on 10 March 2024.

¹²⁵⁷ Morocco Legal system. Available on https://www.indexmundi.com/morocco/legal_system.html accessed on 9 March 2024.

¹²⁵⁸ Doing Business 2020, Economy Profile Morocco. Available on <https://www.doingbusiness.org/content/dam/doingBusiness/country/m/morocco/MAR.pdf> accessed on 10 March 2024.

¹²⁵⁹ U.S. Department of State, 2018 Country Reports on Human Rights Practices: Western Sahara. Available on <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/western-sahara/> accessed on 10 March 2024.

to corruption, as well as opportunities for impunity, in Western Sahara. The government and state-owned enterprises were the territory's principal employers, and residents sought civil service jobs and taxi licences through personal contacts within the government.

2.52.3 Good Governance Evaluation

The Western Sahara is a conflict zone. Therefore, severe human rights abuses occur. The authority to rule the territory is contested and consequently, the region is unstable and unpredictable. The legal framework is unclear and the enforcement of an untransparent legal system is challenging. The conflict has witnessed numerous violations of human rights and serious breaches of the Geneva Convention on the part of all involved parties; the Polisario Front, the Moroccan government, and the Algerian government among them. In summary, the region is unattractive to foreign investors and the mineral wealth is controlled by parties that have a vested interest in the ongoing conflict.

2.53 Zambia

2.53.1 Introduction

Zambia is a landlocked country in south-central Africa, bordered by eight countries: Angola, the Democratic Republic of Congo, Tanzania, Malawi, Mozambique, Zimbabwe, Botswana, and Namibia. Zambia has a population of 20,856,000 (2024 estimate). Much of population is concentrated in the country's most developed area known as the Line of Rail which is served by the railway linking the Copperbelt with Lusaka, the capital.¹²⁶⁰

Zambia is globally acknowledged as a leading producer of copper and cobalt. The Zambian economy has been significantly dependent on copper and cobalt mining, and despite efforts to diversify its industrial and manufacturing sectors, this dependency persists. Other key metals produced include zinc and lead. In addition to these, Zambia possesses reserves of gold, uranium, nickel, iron, and manganese. The country also has deposits of gemstones such as emeralds, amethysts, aquamarine, rubies, garnets, and diamonds, which remain largely unexploited.¹²⁶¹

2.53.2 Policy and Legal Framework

2.53.2.1. Institutional and Policy Overview

The Ministry of Mines and Mineral Development (Mines and Mineral Development) in Zambia is primarily responsible for the issuance and administration of licences, permits relating to imports and exports and the monitoring of mining operations in accordance with approved operation programmes, and the Mines and Mineral Development Act, 2015 (MMDA), and furthermore, the Mines and Mineral Development collects, compiles and disseminates statistics relating to mineral production, reconnaissance surveys, and the delineation of mining areas.¹²⁶² In terms of section 5 of the MMDA, the following officers are appointed as public officers and are designated with the following responsibilities, namely the:

- Director of Mines which supervises and regulates the development of mines, and the carrying out of mining operations in accordance with the MMDA;
- Director of Mines Safety which is responsible for matters relating to the environment, public health, and safety in exploration, mineral processing, and mining operations;
- Director of Geological Survey which undertakes geological mapping of Zambia, advises the President on geological matters, assembles data regarding geology and mineral resources, and facilitates access by the public to such information; and
- Director of Mining Cadastre which is responsible for the administration of mining rights and mineral processing licences.

¹²⁶⁰ Britannica, Zambia – Overview. Available on <https://www.britannica.com/place/Zambia>, accessed on 16 May 2024.

¹²⁶¹ Lex Africa, Doing Business in Africa, 2021. Available on Available on <https://lexafrica.com/wp-content/uploads/2024/03/LEX-Africa-Guide-To-Doing-Business-In-Africa-2024.pdf>, accessed on 16 May 2024.

¹²⁶² Ministry of Mines and Minerals Development, Mines Development, accessed in June 2023, on https://www.mmd.gov.zm/?page_id=1084.

Furthermore, the Mining Licencing Committee, established by virtue of section 6 of the MMDA, consists of the Director of Mines, the Director of Mines Safety, the Director of Geological Survey, the Director of Mining Cadastre (who is the secretary of the Mining Licencing Committee), one representative from each of the ministries responsible for the environment, land, finance, and labour, and one representative from each of the following, namely the Attorney General of Zambia, the Zambia Development Agency, and the Engineering Institution of Zambia. The Mining Licencing Committee is responsible for considering applications for mining and non-mining rights, granting, renewing, or refusing to grant mining and non-mining rights, terminating, suspending or cancelling mining and non-mining rights, amending the terms and conditions of mining and non-mining rights, and advising the Minister of Mines and Mineral Development (Minister of Mines) on matters relating to his functions under the MMDA.

2.53.2.2. Relevant Legal Instruments

The primary legislation which governs the mining industry in Zambia is the MMDA as amended by the Mines and Minerals Development Amendment Act, 2016, and the Mines and Minerals Development Amendment Act, 2022.

In regard to the ownership of minerals in Zambia, section 3 of the MMDA provides that all rights of ownership including searching for, mining and disposing of minerals, vest in the President on behalf of Zambia.

The following general principles are applicable to mining and minerals development in Zambia,¹²⁶³ namely:

- the non-renewable nature of mineral resources, the conservation, development and sustainable use of such resources taking into consideration the needs of present and future generations, as well as the avoidance of wasteful mining practices;
- the exploration and development of mineral resources in a way that promotes and contributes towards socio-economic development, and in accordance with international conventions to which Zambia is a party;
- ensuring safety, health and environmental protection throughout mineral exploitation;
- providing citizens with equitable access to mineral resources, and benefits from mineral resource development; and
- the development of local communities in areas surrounding mining areas including the prioritisation of the needs, health and safety of such communities.

The Petroleum (Exploration and Production) Act, 2008 governs the exploration, development, and production of petroleum in Zambia, and it aims to provide for *inter alia* title to, and control of petroleum in Zambia, the establishment of a Petroleum Environmental Protection Fund, and a Petroleum Trust Fund.

¹²⁶³ Section 4(a) to (f) of the MMDA.

In addition to the Ministry of Mines and Mineral Development and the Mining Licencing Committee, there are several other structures and institutions that make up the institutional framework complex of mining regulation in Zambia. These include but are not limited to:

- **The Zambia Environmental Agency**

This Agency is responsible for *inter alia* issuing letters to applicants regarding the likelihood of such applicant's proposed project causing adverse effects on the environment, as well as the issue of an approved environmental authorisation. By way of example, the issue of an approved letter from the Zambia Environmental Agency is part of a criteria to be met in terms of sections 25(1), 31(1), and 41 of the MMDA prior to the commencement of exploration, mining or mineral processing operations respectively.

- **The Department of Geological Survey**

This Department was established in 1950 and is primarily responsible for the compilation of geoscience data in the context of the promotion of mining. It also functions as a repository for reports submitted by holders of rights, and it provides expertise on geotechnical, geological, hydrogeological and hydrocarbon information to the Zambian government and other stakeholders.¹²⁶⁴

- **National Mineral Resources Development Policy 2022**

In November 2022, the Ministry of Mines and Mineral Development published the National Mineral Resources Development Policy (2022-2027) (NMRD Policy). The NMRD Policy can be described as a comprehensive plan which aims to close the regulatory gaps in the Zambian mining sector and stimulate domestic and foreign investment in respect of the country's socio-economic demands.¹²⁶⁵ Additionally, the NMRD Policy outlines the Government's proposed interventions to achieve three million tonnes of copper production annually within the next nine years and to align Zambia's mining practices with global standards and mining best practices.¹²⁶⁶ The NMRD Policy addresses several topics including:

- **Mineral Resource Exploration**

According to the NMRD Policy, a significant portion of Zambia's land mass remains geologically unmapped, in that 45% of Zambia's landmass remains geologically unmapped. This has impacted the discovery of new deposits and resulted in the development of very few large-scale mines in recent times. To encourage private sector participation in mineral exploration and other mining activities, the Zambian government proposes to strengthen the Public Private Partnership (PPP) framework to ensure that the private sector is incentivised to participate in exploration and mining activities under PPPs, and in turn which is expected to revive the mining and exploration industry and lead to the discovery of new resources.¹²⁶⁷

- **Licencing**

The NMRD Policy addresses the perceived lack of transparency in the Licencing process at the mines cadastre department by introducing reforms aimed at improving efficiency, effectiveness, transparency, accountability, and integrity in licence management and issuance. These reforms include the use of technology and the development of integrated management information systems. The Mines Cadastre

¹²⁶⁴ Ministry of Mines and Minerals Development, Geological Survey, accessed in July 2023, on https://www.mmmd.gov.zm/?page_id=1079.

¹²⁶⁵ Mumbi Mulenga "Zambia's Mining Sector – Anticipated Regulatory and Institutional Reforms Following the Launch of New Mining Policy" 2023, on [Zambia's Mining Sector – Anticipated Regulatory and Institutional Reforms Following the Launch of New Mining Policy – Moira Mukuka Legal Practitioners](#)

¹²⁶⁶ Ibid.

¹²⁶⁷ Op cit note 6.

staff will also be trained on how to use the various electronic platforms. In addition, the Zambian government aims to improve stakeholder collaboration in licence management and issuance, as well as strengthen institutional capacity at the mines cadastre department.¹²⁶⁸

- **Mining Taxation**

The NMRD Policy seeks to establish a stable taxation regime by achieving a balance between the need to attract investment and maximising government revenue from the mining sector. The Zambian government has also recognised the need to achieve a balance between the competing interests of collecting revenues, attracting investment, and administrative feasibility of the tax regime. To achieve these goals, the Zambian government aims to facilitate a consultative, competitive, and sustainable tax regime by engaging stakeholders and developing best practice benchmarking strategies.¹²⁶⁹

- **Large-Scale Exploration and Mining**

The NMRD Policy acknowledges that many large-scale mining rights have been issued but very few are active while the rest are held speculatively which has resulted in the non-discovery of additional deposits. Third-party agreements reached by licence holders without the Minister of Mines' approval have also resulted in a lack of transparency and accountability in the Zambian mining industry. To address these issues, the Zambian government intends to strengthen enforcement mechanisms and create frameworks for monitoring and evaluation, including increasing the use of information and communication technologies and remote sensing technologies in monitoring exploration and mining activities.¹²⁷⁰

- **Artisanal and Small-Scale Mining**

The NMRD Policy seeks to formalise the artisanal and small-scale mining sector, and encourage the formation of cooperatives in gold, manganese, copper, gemstone, and industrial mineral exploration in order to maximise its socio-economic benefits. To address the risks associated with illegal, informal, and unsustainable mining operations, the Zambian government aims to provide artisanal and small-scale mining stakeholders with access to geological data, markets, capital, and modern equipment, as well as partnerships with local and foreign investors. Sector-specific regulations will also be developed to promote formalisation and sustainable growth within the artisanal and small-scale mining sector.¹²⁷¹

- **Local Ownership and Participation**

The NMRD Policy recognises that the majority of large-scale mining rights are owned by foreign entities with limited participation by Zambians. The low participation of Zambians in ownership is attributed to a number of factors, the most significant being a lack of access to affordable capital and modern technologies. To address this, the Zambian government proposes to develop mechanisms to promote local materials, products, contractors, suppliers, and service providers in the mining value chain, as well as measures to encourage partnerships between foreign investors and Zambians in the mineral value chain.¹²⁷²

- **Environmental Protection**

The NMRD Policy recognises the potential negative effects which mining operations have on the environment. To mitigate these negative effects, the NMRD Policy emphasises the need to strengthen the regulatory framework for health, safety, and environmental protection, as well as the use of appropriate

¹²⁶⁸ Op cit note 6.

¹²⁶⁹ Op cit note 6.

¹²⁷⁰ Op cit note 6.

¹²⁷¹ Op cit note 6.

¹²⁷² Op cit note 6.

technologies for the enforcement and management of environmental resources. In addition, the Zambian government seeks to implement measures to strengthen the administration of the Environmental Protection Fund and to improve institutional capacity to deal with health, safety, and environmental protection.¹²⁷³

Additional sources of law which impact the mining industry in Zambia include the following:

- Mines and Minerals (Trading in Reserved Minerals) Regulations Statutory Instrument, 1995;
- Mines and Minerals (Application for Mining Rights) Regulations Statutory Instrument, 1996;
- Mines and Minerals (Application for Mining Rights) (Amendment) Regulations, 1997;
- Environmental Management (Strategic Environmental Assessment) Regulations Statutory Instrument, 2021;
- Mines and Minerals (Environmental Protection Fund) Regulations Statutory Instrument, 1998;
- Mines and Minerals (Royalty) (Remission) Order Statutory Instrument, 2000;
- Mines and Minerals (Environmental) (Exemption) (Amendment) Order Statutory Instrument, 2000;
- Mines and Minerals Development (General) Regulations Statutory Instrument, 2008;
- Mines and Minerals Development (Prospecting, Mining and Milling of Uranium Ores and other Radioactive Minerals Ores) Regulations Statutory Instrument, 2008;
- Mines and Minerals Development (Mining Rights and Non-Mining Rights) Order Statutory Instrument, 2009;
- Mines and Minerals Development (Remission of Mineral Royalties) (Luanshya Copper Mines Plc) Regulations Statutory Instrument, 2009;
- Mines and Minerals Development (Mining Rights and Non-Mining Rights) Order Statutory Instrument, 2010;
- Mines and Minerals Development (General) (Amendment) Regulations Statutory Instrument, 2012;
- Mines and Minerals Development (General) (Amendment) Regulations Statutory Instrument, 2013; and
- Mines and Minerals Development (General) Regulations Statutory Instrument, 2016.¹²⁷⁴

The following legal instruments indirectly affect the mining industry, namely the:

- Environmental Management Act, 2011;
- Workers' Compensation Act, 1999;
- National Health Services Act, 2005;

¹²⁷³ Op cit note 6.

¹²⁷⁴ Ministry of Mines and Minerals Development, Mines Development, accessed in July 2023, on [Mining Laws and Regulations Report 2023 Zambia \(iclg.com\)](#).

- Zambia Wildlife Act, 2015; and
- National Pension Scheme Amendment Act, 2015.¹²⁷⁵

2.53.2.3. Foreign Ownership, Migrant and Local Labour Requirements

There are no ownership restrictions in respect of foreign ownership for holders of large-scale mining licences, mineral processing and mineral import and export.¹²⁷⁶

In terms of section 13(3) of the MMDA, a mining right over an area between a minimum of 2 cadastre units and a maximum of 120 cadastre units in extent shall only be granted to the following companies, namely:

- a citizen-influenced company, as defined in the Citizens Economic Empowerment Act, 2006 (Citizens Economic Empowerment Act);
- a citizen-empowered company as defined in the Citizens Economic Empowerment Act; or
- a citizen-owned company as defined in the Citizens Economic Empowerment Act.

A citizen-influenced company is defined as a company where 5 to 25% of its equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company in terms of section 3 of the Citizens Economic Empowerment Act.

A citizen-empowered company is defined as a company where 25 to 50% of its equity is owned by Zambian citizens in terms of section 3 of the Citizens Economic Empowerment Act.

A citizen-owned company is defined as a company where at least 50.1% of its equity is owned by Zambian citizens, and in terms of which the Zambian citizens have significant control of the management of the company in terms of section 3 of the Citizens Economic Empowerment Act.

In respect of labour requirements, section 20(2) of the MMDA provides that a holder of a mining right or mineral processing licence shall, in the course of its operations give preference in employment to Zambian citizens with relevant qualifications or skills and conduct training programmes for the transfer of technical and managerial skills to Zambian citizen.

2.53.2.4. Artisanal Mining Sector

Section 1 of the MMDA, places an inherent restriction on artisanal mining in Zambia by defining the concept as an artisan's mining operation undertaken by a citizen pursuant to a mining licence granted under Part III of the MMDA.

¹²⁷⁵ Ibid.

¹²⁷⁶ Eric Suwilanji Silwamba, Joseph Alexander Jalasi, and Lubinda Linyama "Mining Regulation in Zambia" accessed in July 2023, on [Mining regulation in Zambia - Mining Law Canada Blog \(dentonsmininglaw.com\)](https://www.dentonsmininglaw.com/).

In terms of section 29(2) and (3) of the MMDA, artisanal mining shall only be undertaken by a citizen or a co-corporative wholly composed of Zambian citizens and small-scale mining shall only be undertaken by a citizen-owned, citizen-influenced or citizen-empowered company.

Additionally, section 29(4) provides that an applicant for artisanal mining or a small-scale mining licence shall not be granted a mining licence in respect of radioactive minerals.

2.53.2.5. Judicial System

Zambia has a dual legal system, which comprises of both customary and statutory law and where conflict arises between the two categories of law, statutory law prevails. Additionally, where there are no applicable legal principles in customary and statutory law, recourse is had to the English common law. The Zambian judicial system consists of lower courts and superior courts which are ranked in hierarchical order. The lower courts include Courts as prescribed, the Local Court, the Small Claims Court, and the Subordinate Court and superior courts include the High Court of Zambia, the Court of Appeal, the Constitutional Court of Zambia, and the Supreme Court of Zambia. The Supreme Court of Zambia is the apex court and ranks equivalently with the Constitutional Court. The Constitutional Court's jurisdiction is limited to constitutional matters while the Supreme Court of Zambia's jurisdiction is limited to special cases which raise novel issues on which the Supreme Court of Zambia is required to pronounce on.¹²⁷⁷

- **Judicial independence**

In Zambia, judicial independence is referred to in Article 122 of the Constitution of Zambia Amendment, 2016 (Zambian Constitution) which provides that, in the exercise of judicial authority, the judiciary shall be subject only to the Constitution and the law, and not the control or direction of a person or an authority. Therefore, and accordance with the provisions of Article 118 of the Zambian Constitution, the courts in exercising judicial authority should ensure *inter alia* that the values and principles of the Zambian Constitution are protected and promoted.

- **Settling disputes**

The MMDA provides for an appeal process regarding disputes arising from adverse decisions made in terms of the MMDA, and which process is summarised below. In terms of section 96 of the MMDA, whenever the Minister of Mines, the Mining Licencing Committee, any of the Directors, or an authorised officer takes a decision against which an appeal may lie, the holder or applicant affected by the decision, will be informed in writing and by way of a nature of the decision and the reasons for such decision including information regarding the right of appeal.

- Section 97(1) of the MMDA provides that an appeal should be lodged within 30 days (as defined in section 1 of the MMDA as calendar days) of receipt of the decision against which the appeal lies, and that such appeal should be made to the Minister.
- In regard to an adverse decision taken by the Minister, section 97(4) of the MMDA permits a holder or applicant to appeal to the Mining Appeals Tribunal within 30 days of receipt of the

¹²⁷⁷ Sharon Sakuwaha, Mumbi Mulenga and Mofu Mbulo "Zambia: Legal System" accessed in July 2023, on [Legal System - Trials & Appeals & Compensation - Zambia \(mondag.com\)](https://mondag.com/legal-system-trials-appeals-compensation-zambia).

Minister's decision. In accordance with section 99 of the MMDA, the Mining Appeals Tribunal has 14 days to take a decision on an appeal, and to inform the appellant and the Minister of Mines of its decision, and the reasons therefor in writing.

- Should a holder or applicant be aggrieved by the decision taken by the Minerals Appeals Tribunal, section 100 of the MMDA provides that a person should within 30 days of receipt of such decision, apply to the High Court for relief.

2.53.2.6. Arbitration

Section 52(1)(b) of the MMDA provides that a holder of a mining right or mineral processing licence cannot exercise any rights under the MMDA without the consent of the landowner, the legal occupier of the land or the duly authorised agent:

- upon any land which is the site of, or which land is within 180 metres of an inhabited, occupied or temporarily uninhabited house or building;
- within 45 metres of any land which has been cleared or ploughed or otherwise prepared in good faith for growing of farm crops or upon which farm crops are growing; or
- upon any land which is the site of, or which land is within 90 metres of, any cattle dip tank, dam or any private water as defined in the Water Resources Management Act, 2011.

Section 52(1)(c) of the MMDA further provides that a holder of a mining right or mineral processing licence shall not exercise any rights under the MMDA on land occupied as a village, or other land under customary tenure without the written consent of the chief and the local authority for the district in which the village is situated. In terms of section 6 of the Arbitration Act, if parties have agreed to refer a dispute to arbitration, and one of the parties subsequently commence legal proceedings in court, the other party may apply to the High Court for the stay of the legal proceedings until the conclusion of the arbitration proceedings. In terms of section 16 of the Arbitration Act, upon the filing of an arbitration award at the High Court, an arbitration award is enforceable as if it were a decree of the High Court, in terms of section 16 of the Arbitration Act. In terms of paragraph 3 of Schedule 1 of the Arbitration Act, arbitrators shall make their award in writing within 3 months after agreeing to act as an arbitrator, or after having been requested from any party to the submission by written notice to act in a dispute.

2.53.3 Licencing and Permit Regime

2.53.3.1. Types of Licences and Permits

Part III of the MMDA refers to several types of licences, namely exploration licences, mining licences, mineral processing licences, gold panning certificates, mineral trading permits, and mineral import and mineral export permits.

In terms of section 12(1) of the MMDA, no person may explore for minerals, or carry out mining operations, mineral processing operations, or gold panning, unless such person has been granted a mining right, mining processing licence or gold panning certificate. Furthermore, section 12(2) requires that the written approval of an environmental impact assessment by the Zambian Environmental Management

Agency must be obtained prior to the commencement of exploration, mining or mineral processing activities.

- **Exploration Licence**

In order to acquire prospecting rights, an applicant is required to apply for an exploration licence which confers on the holder exclusive rights to carry out exploration in the exploration area for the minerals specified in the licence, and to do all such other acts that are necessary for, or incidental to the carry out of those operations.¹²⁷⁸

- **Mining Right or Mining Licence**

In order to conduct mining and dispose of minerals, an applicant is required to acquire a mining right or a mining licence, which is granted under the MMDA.¹²⁷⁹ A mining licence is also required for any artisanal and small-scale mining.¹²⁸⁰

- **Mineral Processing Licence**

A mineral processing licence permits the holder to process minerals, cut, polish and manufacture jewellery.¹²⁸¹

- **Gold Panning Certificates**

A gold panning certificate confers upon the holder exclusive rights to pan for gold and is issued only over areas specified by geographical coordinates along water courses and bodies.¹²⁸²

A gold panning certificate is only granted to Zambian citizens or a cooperative consisting only of Zambian citizens.¹²⁸³

- **Mineral Trading Permit**

A mineral trading permit is issued to indigenous Zambians and to registered limited companies which permit is utilised for the buying and selling of various minerals.¹²⁸⁴ Examples of mineral trading permits include, permits for, precious metals, gemstones, base metals, and industrial minerals.¹²⁸⁵ However, a mineral trading permit is not required if persons are holders of a mining licence.¹²⁸⁶

- **Mineral Import and Export Permits**

A mineral import or export permit is required to import or export any mineral, ore, or mineral product.¹²⁸⁷

¹²⁷⁸ Section 23(2) of the MMDA.

¹²⁷⁹ Op cit note 16.

¹²⁸⁰ Section 29(1) of the MMDA.

¹²⁸¹ Section 2 of the MMDA.

¹²⁸² Section 42(4) of the MMDA.

¹²⁸³ Section 42(1) of the MMDA.

¹²⁸⁴ Ministry of Mines and Minerals Development, Mines Development, accessed in July 2023, on [Exploration License – Ministry of Mines and Mineral Development \(mmd.gov.zm\)](https://www.mmd.gov.zm/).

¹²⁸⁵ Ibid.

¹²⁸⁶ Section 44(2) of the MMDA.

¹²⁸⁷ Section 41(1) of the MMDA.

2.53.3.2. The Application Process for Mining Licences and Permits in Zambia



Application Requirement	Exploration Licence	Mining Right or Mining Licence
Place of Application	Office of the Mining Cadastre for the attention of the Director of Mining Cadastre.	Office of the Mining Cadastre for the attention of the Director of Mining Cadastre.
Validity or Duration of Licence or Permit	An exploration licence is only valid for an initial period of four years but may on expiry be renewed for two further periods not exceeding three years each, however, the maximum period from the initial grant of the licence cannot exceed 10 years, and each renewal is subject to the 50% relinquishment of the exploration area. ¹²⁸⁸ However, an exploration licence for small-scale exploration and gemstones, other than diamonds, is not renewable. ¹²⁸⁹	A mining licence is granted for a period not exceeding: <ul style="list-style-type: none"> - two years for artisanal mining; - 10 years for small-scale mining; and - 25 years for large-scale mining.¹²⁹⁰
Costs	The fee for a small-scale exploration licence is K 900.00. The fee for a large-scale exploration licence is K 3 000.00. ¹²⁹¹	The fee for an artisanal mining right is K 900.00. The fee for a small-scale mining licence is K 4 500.00. The fee for a large-scale mining licence is K 48, 000.00. ¹²⁹²

¹²⁸⁸ Section 24 of the MMDA.

¹²⁸⁹ Ibid.

¹²⁹⁰ Section 34 of the MMDA.

¹²⁹¹ Prescribed Fees, Area Charges and Maximum Areas fees accessed in July 2023, on [Prescribed Fees Area Charges and Maximum Areas Fees for Mining & Non-Mining Rights.pdf \(azmec.co.zm\)](#).

¹²⁹² Ministry of Mines and Minerals Development accessed in July 2023, on [Mining License – Ministry of Mines and Mineral Development \(mmd.gov.zm\)](#).

<p>Application requirements</p>	<p>Application requirements for a small-scale and large-scale exploration licences</p> <ul style="list-style-type: none"> - A duly completed Form I with geographical coordinates of the area of interest which should fit the predefined cadastral grid as per form I. - Payment of the prescribed fee. - A certificate of incorporation, share capital, and articles of association. - A proposed programme for exploration operations which should include an estimate of the investment commitment in the approved format. - Proposals for the employment and training of Zambian citizens. - A proposal for the promotion of local business development. - A valid tax clearance certificate. - Proof of consent from appropriate authorities, if the exploration activity is in a national park or game management area. - An Environmental commitment plan. - Certified copies of NRC or passports of all shareholders or cooperative registered under the Cooperative Societies Act, 1998 (Cooperation Societies Act). - In the case of a large-scale exploration licence, a programme of intended mining operations which should include proposals for the effective conservation and use of mineral resources of the mining area in the national interest.¹²⁹³ 	<p>Application requirements for an artisanal mining licence</p> <ul style="list-style-type: none"> - A duly completed Form I. - Payment of the prescribed fee. - An Environmental Commitment Plan. - A programme of intended mining operations which should include proposals for the effective conservation and use of mineral resources of the mining area, in the national interest. - Certified copies of the applicants' identity. <p>Application requirements for a small-scale mining licence</p> <ul style="list-style-type: none"> - A duly completed Form. - Payment of the prescribed fee. - A certified copy of a company's certificate of incorporation, share capital, and articles of association. - A copy of the relevant prospecting permit and prospecting report. - A proposed programme of mining operations which should include a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore minerals recovered. - A description of the mineral deposit in the area over which the licence is sought. - A statement of the duration for which the licence is sought which should not exceed 10 years. - A valid tax clearance certificate. - An approved Environmental Project Brief. - Certified copies of shareholders' identity in the case of a company. <p>Application requirements for a large-scale mining licence</p> <ul style="list-style-type: none"> - A duly completed Form I. - Payment of the Prescribed fee. - A Certified copy of a company's certificate of incorporation, share capital, and articles of association. - A comprehensive statement of the mineral deposits in the area over which the licence is sought which should include details of all
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		<p>known minerals proved, estimated or inferred, ore resources and mining conditions.</p> <ul style="list-style-type: none"> - A feasibility study for mining operations which should include a forecast of capital investment, the estimated recovery rate of ore and mineral products, and the proposed treatment and disposal of ore and minerals recovered. - An approved Environmental Impact Statement. - Details of expected infrastructure requirements. - Proposals for employment and training of Zambian citizens. - Proposals for promotion of local business development. - A valid tax clearance certificate. - A plan of the proposed mining area. - Certified copies of shareholders' identity in respect of a company.¹²⁹⁴
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Table 51 Application Requirements for Exploration Licence and Mining Right/Mining Licence in Zambia

¹²⁹³ Ministry of Mines and Mineral Development accessed in July 2023, on [Exploration License – Ministry of Mines and Mineral Development \(mmd.gov.zm\)](https://mmd.gov.zm).

¹²⁹⁴ Ministry of Mines and Mineral Development accessed in July 2023 on, [Mining License – Ministry of Mines and Mineral Development \(mmd.gov.zm\)](https://mmd.gov.zm).

Application Requirement	Mineral Processing Licence	Gold Panning Certificates
Place of Application	Office of the Mining Cadastre for the attention of the Director of Mining Cadastre.	Applications for gold panning certificates are submitted to the Director of Mines.
Validity or Duration of Licence or Permit	A mineral processing licence is valid for a period of 25 years and may be renewed for a similar period. ¹²⁹⁵	A gold panning certificate is valid for a period of two years and is renewable for a further period of two years. ¹²⁹⁶
Costs	The fee for a mineral processing licence is K 48,000.00. ¹²⁹⁷	The fee for a gold panning certificate is K 150.00. ¹²⁹⁸
Application requirements	<ul style="list-style-type: none"> - A duly completed Form I with geological coordinates of the area of interest which should fit the predefined cadastral grid as per Form I. - Payment of the prescribed fee. - A description and Plan of surrounding developments. - A feasibility study for processing operations which should include a forecast of capital investment, proposed plant capacity, the estimated recovery rate of mineral products and the proposed treatment methods, and disposal of ore and minerals recovered. - An Environmental Management Plan which should include proposals for the prevention of pollution, the treatment of waste, the protection and reclamation of land and water resources, and proposals for eliminating or minimising adverse effects on the environment. - Details of expected infrastructure requirements. - Proposals for the employment and training of Zambian citizens during the renewal period. - A valid tax clearance certificate. - Documentation on title to land or the written consent of the legal occupier of the land. 	

¹²⁹⁵ Section 40(4) of the MMDA.

¹²⁹⁶ Section 42(6) of the MMDA.

¹²⁹⁷ Op cit note 39.

¹²⁹⁸ Op cit note 39.

	<ul style="list-style-type: none"> - Consent from the existing mining right holder if the area is over an area for which a mining right has been granted. - Certified copies of NRC or passports of all shareholders or cooperative registered under the Cooperative Societies Act. - A certificate of incorporation, share capital, and articles of association.¹²⁹⁹ 	
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Table 52 Application Requirements for Mineral Processing Licence and Gold Panning Certificates in Zambia

¹²⁹⁹ Ministry of Miners of Mineral Development accessed in July 2023, on [Exploration License – Ministry of Mines and Mineral Development \(mmmd.gov.zm\)](http://mmmd.gov.zm).

Application Requirement	Mineral Trading Permit	Mineral Import and Export Permits
Place of Application	Applications for mineral trading permits are submitted to the Director of Mines.	Applications for mineral import and export permits are submitted to the Director of Mines.
Validity or Duration of Licence or Permit	A mineral trading permit is valid for a period of three years and is renewable. ¹³⁰⁰	Both a mineral import and export permit is valid for a period of one year and is limited to the quantities specified on the permit. ¹³⁰¹
Costs	The fee for a mineral trading permit is K 2 100.00. ¹³⁰²	The fee for a mineral import permit is K 1050.00 and the fee for a mineral export permit is K 225.00. ¹³⁰³
Application requirements		<p>Application requirements for an import permit</p> <ul style="list-style-type: none"> - Payment of the prescribed fee. - Proof of clearance by the national authority responsible for mining in the country of origin. - For a conflict mineral, a regional certificate as confirmation that the minerals are not from a conflict area.¹³⁰⁴ <p>Application requirements for an export permit</p> <ul style="list-style-type: none"> - Payment of the prescribed fee. - A mineral analysis and valuation certificate issued by the Director of Geological Survey. - A verification report from the Commissioner-General of the payment of the mineral royalty.¹³⁰⁵

Table 53 Application Requirements for Mineral Trading Permit and Mineral Import and Export Permits in Zambia

¹³⁰⁰ Section 45(4) of the MMDA.

¹³⁰¹ Section 48 of the MMDA.

¹³⁰² Op cit note 39.

¹³⁰³ Op cit note 39.

¹³⁰⁴ Section 47(3)(a) of the MMDA.

¹³⁰⁵ Section 47(3)(b) of the MMDA.

A mining or artisanal mining licence should be granted within 90 days of receipt of the application provided that such application complies with the provisions of the MMDA. Once a mining or artisanal mining licence is granted, an exclusive right is conferred on the holder to carry on mining, processing, and exploration in the relevant mining area, and to do all such other acts which are necessary for, or incidental to, the carrying on of such operations.

An exploration licence should be granted within 60 days of receipt of the application provided that such application complies with the provisions of the MMDA. Once an exploration licence is granted, an exclusive right is conferred on the holder to carry on exploration in the relevant exploration area for minerals referred to in the licence, and to do all such other acts necessary for, or incidental to, the carrying on of such operations.

In regard to mineral processing licences, once a mineral processing licence is granted, an exclusive right is conferred on the holder to carry out mineral processing in the relevant mineral processing area of minerals referred to in the licence, and to do all such other acts as are necessary for, or reasonably incidental to, the carrying on of such operations.¹³⁰⁶

In terms of restrictions, a company or its subsidiaries is subject to being a holder of a limited number of licences, section 21(2) of the MMDA provides that a company or its subsidiaries shall not hold a number of licences whereby the accumulated total area is more than 299 400 cadastre units.

2.53.3.3. Transferability of Mineral Rights

A mining right and a mineral processing licence or an interest in a mining right or mineral processing licence, may not be transferred, assigned, encumbered, or otherwise dealt with, without the approval of the Minister of Mines and the production of a tax certificate.¹³⁰⁷

Therefore, a holder of a mining right or mineral processing licence, or a person with an interest in a mining right or mineral processing licence, who intends to transfer, assign, encumber, or otherwise deal with such right or licence, must submit an application to the Minister of Mines in the prescribed form and upon payment of the prescribed fee, which application must include the details of the transferee as would be required in an application for a mining right or mining processing licence.¹³⁰⁸

The Minister of Mines must approve an application for the transfer of a mining right or mineral processing licence, or an interest in such right or licence within 30-days of the submission of the application, unless the transferee is disqualified from holding a mining right or mineral processing licence in terms of the MMDA.¹³⁰⁹

¹³⁰⁶ section 40(2) of the MMDA.

¹³⁰⁷ Section 66(1) of the MMDA.

¹³⁰⁸ Section 66(2) and section 66(3) of the MMDA.

¹³⁰⁹ Section 66(4) of the MMDA.



Additionally, upon the transfer of a mining right or a mineral processing licence, the transferee assumes and is responsible for all the rights, liabilities, and duties of the transferor under the mining right or mineral processing licence for the unexpired period of such right or licence.¹³¹⁰

A further restriction which is placed on mining rights and mineral processing licences is that the holders of such rights and licences may not register the transfer of any shares, or enter into an agreement with any person, if the effect of doing so would provide that person with control of the company without the approval of the Minister of Mines.¹³¹¹

2.53.4 Taxation

2.53.4.1. Mining Royalties and Taxes

Section 89(1) of the MMDA was amended by the Mines and Minerals Development (Amendment) Act, 2016 (**MMDAA 2016**) which provides that the holder of a mining licence must pay a mineral royalty at the rate of:

- 5% of the norm value of the base metals or precious metals produced or recoverable under the licence except when the base metal is copper; and
- 5% of the gross value of the energy and industrial minerals produced or recoverable under the licence;
- 6% of the gross value of the gemstones produced or recoverable under the licence; and
- 6% of the norm value of precious metals produced or recoverable under the licence.

In view of Zambia's international recognition as a major producer of copper and cobalt, section 89(2) of the MMDA has been amended by the Mines and Minerals Development Act, 2022 so that where the base metal produced or recoverable under the licence is copper, the mineral royalty payable shall be applied at an incremental value in each price range at the rate of:

- 4% of the norm value when the norm price of copper is less than 4000 US dollars per tonne;
- 6.5% of the norm value when the norm price of copper is 4000 US dollars or higher per tonne but less than 5000 US dollars per tonne;
- 8.5% of the norm value when the norm price of copper is 5000 US dollars or higher per tonne but less than 7000 US dollars per tonne; and
- 10% of the norm value when the norm price of copper is 7000 US dollars or higher per tonne.

Mineral royalties are due and payable within 14 days after the end of the month in which the mineral is sold.¹³¹²

¹³¹⁰ Section 66(5) of the MMDA.

¹³¹¹ Section 67(1) of the MMDA.

¹³¹² Section 90 of the MMDA.



2.53.5 Mineral Beneficiation

As mentioned in Table 1 above, a mineral processing licence is required for any person who seeks to undertake the processing of any minerals in Zambia. Additionally, persons may obtain mineral trading permits, mineral import, and export permits as well as gold panning certifications.

However, Zambia lacks a robust regulatory framework to ensure that mineral products are thoroughly processed before the exportation thereof because most mineral products are exported in its raw form or with minimal processing. As a result, the Zambian government aims to develop frameworks for mineral beneficiation, facilitating access to modern beneficiation technologies, and providing opportunities for capacity development for local participation in the mineral beneficiation process through the NMRD Policy.¹³¹³

2.53.6 Macroeconomics

Zambia ranks among the countries with the highest levels of poverty and inequality which was worsened with the onset of the COVID-19 pandemic.¹³¹⁴ However, the World Bank projects that Zambia would progressively return to its pre-Covid-19 pandemic levels of poverty and inequality by 2025.¹³¹⁵

Zambia's economy recovered in 2021, with real Gross Domestic Product (GDP) growing at 4.6%, from a contraction of 2.8% in 2020, which was supported by firmer copper prices, favourable external demand, good rainfall, and post-election market confidence. In 2022, however, the pace of Zambia's post-pandemic recovery was slowed down by challenges in the agricultural, mining, and construction sectors. Real GDP grew by 3.7%, year-on-year, in the first to third quarters, which was driven by services.¹³¹⁶

The World Bank projects that Zambia's recovery is expected to strengthen, with its GDP growing by approximately 4.5% annually during the period 2023 to 2025. It is also expected that firmer copper demand from China and the commencement of fertilizer production at a newly established domestic plant will broaden the base of GDP growth in Zambia. Additionally, the completion of reform in regard to agricultural policies, business regulations, and the energy sector may boost fiscal sustainability and promote private sector-led growth.¹³¹⁷

However, the Bank of Zambia, projects that inflation will rise and remain above its target bank of 6 – 8% over the period between 2024 to 2025 on account of inflationary pressure from sustained exchange rate depreciation, and an increase in energy costs among others.¹³¹⁸

¹³¹³ Op cit note 6.

¹³¹⁴ World Bank "World Bank Overview: Zambia" last updated 29 March 2023 accessed in July 2023, on [Zambia Overview: Development news, research, data | World Bank](#).

¹³¹⁵ Ibid

¹³¹⁶ Op cit note 32.

¹³¹⁷ Op cit note 32.

¹³¹⁸ Op cit note 32.

2.53.7 Governance and Risk Ratings

2.53.7.1. Ease of Doing Business

According to the World Bank Group, in 2020, Zambia scored 66.9 points in the ease of doing business which ranks Zambia in 85th.¹³¹⁹

Zambia scored 60 points in the Protecting Minority Investors Category, 56.9 points in the Trading Across Borders Category and 88.90 points in the Paying Taxes Category.¹³²⁰

2.53.7.2. Investment Climate

Zambia has faced financial and economic crises since 2020, when the country became the world's first COVID-era default after Zambia missed a payment on \$3 billion of outstanding Eurobonds. Although growth recovered in 2021, the forecasts for growth of real GDP is contingent on Zambia receiving debt relief through the G20 Common Framework. The heavy debt burden continues to hinder economic growth, blocking the government's access to international capital markets and compelling it to finance a persistent budget deficit through domestic borrowing¹³²¹.

By December 2021, Zambia achieved staff-level agreement with the International Monetary Fund (IMF) on a \$1.4 billion Extended Credit Facility that has resulted in impressive progress on macroeconomic and fiscal reforms. Under the President Hakainde Hichilema, the administration has made significant strides reducing inflation, which has dropped from nearly 25.0 percent in July 2021 to 9.9 by the end of March 2023, despite Russia's war of aggression against Ukraine. In 2022, the IMF board approved an Extended Credit Facility for Zambia, with the government adhering well to the policy prescriptions of the program. The President has pledged to tackle fiscal and regulatory reforms aimed at strengthening Zambia's investment climate¹³²².

Zambia is Africa's second-largest producer of copper and is an important source of several other critical minerals, including nickel and cobalt. The Hichilema administration in its maiden budget introduced a key reform to Zambia's minerals tax policy (deductibility of mineral royalty taxes from corporate income tax payable) that is expected to attract new investment in the sector¹³²³. Zambia boasts one of the most liberal business environments in Southern Africa, promoting private investment across all major sectors, including agriculture, mining, manufacturing, tourism, and energy. The country has implemented new economic policies and liberalized trade and investment conditions¹³²⁴.

¹³¹⁹ Doing business 2020 "Economy Profile Zambia" World Bank Group page 4, accessed in June 2023, on [ZMB.pdf \(doingbusiness.org\)](#).

¹³²⁰ Ibid.

¹³²¹ U.S. Department of State, 2023 Investment Climate Statements: Zambia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/zambia/>, accessed on 16 May 2024.

¹³²² Ibid.

¹³²³ U.S. Department of State, 2023 Investment Climate Statements: Zambia. Available on <https://www.state.gov/reports/2023-investment-climate-statements/zambia/>, accessed on 16 May 2024.

¹³²⁴ Lex Africa, Guide to Doing Business in Africa – Zambia, 2021. Available on <https://lexafrica.com/wp-content/uploads/2024/03/LEX-Africa-Guide-To-Doing-Business-In-Africa-2024.pdf>, accessed on 16 May 2024.



2.53.7.3. Risk Ratings

In terms of the FIA Survey 2022, and more specifically, the overall Investment Attractiveness Index,¹³²⁵ the most regions ranked in the bottom of this Index are located in Africa, and Zambia ranks in the bottom 10 amongst several other countries including South Africa, China, the Democratic Republic of Congo, Papua New Guinea, Tanzania and Zimbabwe.

Zambia joined the EITI in 2009 and was declared compliant with the EITI standards in 2012. Zambia's EITI is administered by the Zambia Multi-Stakeholder Group, otherwise known as the Zambia EITI Council. Zambia achieved a high overall score of 89.50 points in implementing the 2019 EITI Standard in December 2021¹³²⁶. Zambia's next validation is expected to commence in October 2024.

2.53.8 Good Governance Evaluation

In general, Zambian law does not restrict foreign investors in any sector of the economy, although there are a few regulations and practices limiting foreign control. With support from cooperating partners, Zambia has undertaken economic reforms to improve its business facilitation process and attract foreign investors, including steps to support more transparent policymaking and to encourage competition. The impact of these progressive policies has been undermined by persistent fiscal deficits, struggling economy, high cost of doing business and widespread corruption. However, Zambia has a stable political climate that fosters security and stability for investors. Furthermore, its location, bordered by eight neighbouring countries, makes it a key hub for exporting manufacturing and agricultural commodities within the region¹³²⁷.

Notwithstanding strong performance indicators in mining which are tied to the substance of the applicable regulatory framework, there are several considerations which impede development of the mining industry such as the availability of geological information, fiscal and tax instability, inadequate cooperative governance in respect of licence management, consultation with stakeholders regarding legislative change, as well as investor concerns regarding public financial management and accountability¹³²⁸.

¹³²⁵ See Page 1 of the FIA Survey, 2022: The Investment Attractiveness Index is based on a combination of the Best Practices Mineral Potential index which rates regions based on their geological attractiveness, as well as the Policy Perception Index which measures the effects of government policy on attitudes towards exploration investment.

¹³²⁶ Zambia EITI, accessed in June 2023, on [Zambia | EITI](#).

¹³²⁷ Lex Africa, Guide to Doing Business in Africa – Zambia, 2021. Available on <https://lexafrica.com/wp-content/uploads/2024/03/LEX-Africa-Guide-To-Doing-Business-In-Africa-2024.pdf>, accessed on 16 May 2024.

¹³²⁸ World Bank Group, Zambia Mining Investment and Governance Review, April 2016, accessed in June 2023, on <https://documents1.worldbank.org/curated/en/305921468198529463/pdf/105820-REVISED-PUBLIC-Zambia-Report-ONLINE.pdf>.

2.54 Zimbabwe

2.54.1 Introduction

Zimbabwe occupies a strategic position as a land-locked nation in Southern Africa, surrounded by Zambia, Mozambique, South Africa, and Botswana. Like many other African countries, Zimbabwe is richly endowed with vast mineral resources of over 40 known minerals.¹³²⁹ The main minerals that are produced in Zimbabwe include gold, platinum group metals, chrome, coal, diamonds, and lithium.¹³³⁰ Zimbabwe has the second largest platinum deposit in the world, after South Africa.

For the past few decades, the Zimbabwean mining sector has been confronted with a harsh reality and despite booming mineral markets the domestic production has declined drastically with few exceptions. Only a handful of new and major platinum and diamond operations avoided the collapse of output in this critical sector, albeit developments in these regions, developed slowly due to the country's political climate. The political climate is one based on fear and reprisal where opponents to the main political party, ZANU-PF are harassed, arrested on unsound grounds, abused and tortured. This has had the effect of suppressing civil society activists and resulting in widespread disregard for the rule of law among security forces and the judiciary.

The currency of Zimbabwe is the Zimbabwe Dollar, which was established to replace Rhodesian Dollar and to signify the nation's independence from the United Kingdom in 1980. However, the Zimbabwe Dollar collapsed in 2009 due to hyperinflation caused by unregulated printing of money, the land reform program, and government involvement in the Second Congo War. Today, Zimbabweans rely on a multi-currency economic system set in place where money (i.e., US dollars and South African Rands) from around the world has become legal tender.

2.54.2 Policy and Legal Framework

2.54.2.1. Institutional and Policy Overview

Zimbabwe's Legal system consists of the Common law (non-statutory or unwritten Anglo-Roman Dutch Law). Apart from Criminal Law, which has recently been reformed and codified, Zimbabwe's law is not codified. However, Zimbabwe adopted the Constitution of Zimbabwe (as amended),¹³³¹ which is the supreme law of the country, in 1980.

Zimbabwe's mineral resources are governed by the Mines and Minerals Act, 1975 (the Act) under the guidance of the Ministry of Mines and Mining Development. The Act regulates mining rights, mining boards and their jurisdiction and deals with modalities involved in obtaining mining licences, leases and exclusive prospecting orders. However, but for the Act, Zimbabwe does not have a comprehensive mining

¹³²⁹ International Trade Administration 'Zimbabwe - Country Commercial Guide', accessed in September 2023, on <https://www.trade.gov/country-commercial-guides/zimbabwe-mining-and-minerals>.

¹³³⁰ Ibid.

¹³³¹ The Constitution of Zimbabwe [hereinafter referred to as the Constitution], 1980.

policy, as a result Zimbabwe's mining policy, since the colonial times, has largely been *ad hoc*, informed by the desire to take full advantage of mining.

As a means to consolidate the country's mining regulations, the Draft Minerals Policy (the Policy) was drafted in 2013.¹³³² The Policy document aims to provide comprehensive guidance to the investment community, encompassing both domestic and international stakeholders. It outlines a mineral regime that is competitive, aligning with African and global trends, while being rooted in local conditions and responsive to national interests.¹³³³ Emphasis is placed on intergenerational equity, prioritizing the well-being of both current and future generations of Zimbabweans. The Policy is designed to attract private investment for mineral resource development in an optimal manner, emphasizing resource stewardship and maximizing economic linkages to foster sustainable local and national growth and development.¹³³⁴ Furthermore, several regulations have been enacted in support of the Mines and Minerals Act. Most important of these include:

- **The Health and Sanitation Regulations**

Which regulates the provision of adequate health and sanitation facilities on a mine. This regulation is rarely applied on small-scale mines because these facilities are non-existent and there is no small-scale miner who has been legally charged for failure to provide the facilities to their employees.¹³³⁵

- **The Management and Safety Regulations**

Which seeks to control health and safety in and about mining operations. These regulations cover management and responsibility in mines, surface protection, and protection in working places, ventilation, gases and dust and examinations in several certificates of competency. They also cover certain International Labour Organization Conventions, including Convention 45, which prohibits women from working underground.¹³³⁶

Compliance with these regulations demands a certain level of technical competence on the part of mine management, and the availability of adequate resources to supply the safety clothing and equipment to employees. None of the current formal small-scale mines comply with at least 20% of the requirements of these regulations for the reasons cited above.

- **The Alluvial Gold and Public Streams Regulations**

These regulations seek to control the small-scale gold panning activities in Zimbabwe. The regulations empower local councils to issue permits, monitor and control gold panning in designated areas.¹³³⁷

The regulations also require that mining will take place only in the riverbed, and not closer than 3 m to either bank. Undercutting is prohibited, as are excavations deeper than 1.5 m and all mined out areas must be backfilled, and the gold sold to the Reserve Bank and / or its agents.

¹³³² Draft Minerals Policy, accessed in January 2024, on <https://miningzimbabwe.com/wp-content/uploads/2020/01/Draft-Minerals-Policy.pdf>.

¹³³³ Ibid.

¹³³⁴ Ibid.

¹³³⁵ The Mining (Health and Sanitation) Regulations, 1977.

¹³³⁶ The Mining (Management and Safety) Regulations, 1990

¹³³⁷ The Mining (Alluvial Gold and Public Streams) Regulations, 1991

The gold sector in Zimbabwe is governed by the Gold Trade Act (the Gold Act),¹³³⁸ which criminalizes possession of gold by unauthorized persons and controls licencing trade in gold. The Gold Act outlines three categories of licences,¹³³⁹ namely:

- gold dealing license;
- gold recovery works licence; and
- gold assaying license

It is important to note that access to each of these licences is unreasonable and information on procedural issues in obtaining them is uncertain. Owing to these barriers, illegal gold mining has proliferated among the groups that cannot meet the legal requirements of the Gold Act, creating violence in gold-rich areas. Consequently, there is massive looting of gold resources which is stimulated by crony accumulation under circumstances of shadowy networks and unclear dealings by unscrupulous politicians and businesspeople.

2.54.2.2. Relevant Legal Instruments

Although Zimbabwe has implemented national environmental policies and legislation, they are often seen as ineffective due to lack of adequate staff, expertise and resources to implement and enforce them. A wide range of environmental laws has been put in place to achieve the National Environmental Action Plan. Unfortunately, attempts to implement effective environmental measures are ensued in duplication and fragmentation of authority and responsibilities. Environmental issues relating to mining in general have been dealt with in several fragmented pieces of legislation.

To date the main focus on environmental management in Zimbabwe has been on developing an effective and efficient legal and administrative framework to facilitate management of natural resources. The National Conservation Strategy (NCS) was the first policy document to incorporate the concept of sustainability into development and environmental management.¹³⁴⁰ The NCS has established an Inter-ministerial Committee on Environment. Zimbabwe's Second Five Year Development Plan provides that environmental impact assessment should be undertaken for major development projects. An Environmental Impact Assessment Policy was put in place to govern environmental impact assessment.¹³⁴¹ The Following are the key legislations that govern the mining sector.

Zimbabwe Investment and Development Agency Act: provides for the promotion, entry, protection, and facilitation of investment; to provide for the establishment of the Zimbabwe Investment and Development Agency; to provide for the One Stop Investment Services Centre; to repeal the Zimbabwe Investment Authority Act the Special Economic Zones Act and the Joint Ventures Act; and to provide for matters incidental to or connected to the foregoing.

The Zimbabwe Investment and Development Agency Act applies to both foreign and domestic investments established in accordance with the laws of Zimbabwe. It also allows investors to invest in any and all sectors of the economy. Foreign investors can have unrestricted foreign ownership in open

¹³³⁸ Gold Trade Act, 1940.

¹³³⁹ Section 13 of the Gold Trade Act.

¹³⁴⁰ The National Conservation Strategy, 1987.

¹³⁴¹ Environmental Impact Assessment Policy, 1997.

sectors except in businesses involved in the extraction of diamonds and platinum, where 51% ownership is reserved for local investors.

- Gold Trade Act
- Labour Act

Declares and defines the fundamental rights of employees by giving effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as a member of or party to any other international organisation or agreement governing conditions of employment which Zimbabwe would have ratified, by defining unfair labour practices and regulating conditions of employment in order to provide for the control of wages and salaries.

Furthermore, the Labour Act provides for the formation, registration and functions of trade unions, employers organizations and employment councils, and regulates the negotiation, scope and enforcement of collective bargaining agreements and establishes the functions of the Labour Court.

Other sectoral laws relevant to mining include:

- Water Act;¹³⁴²
- Natural Resources Act;¹³⁴³
- Parks and Wildlife Act;¹³⁴⁴
- Forestry Act;¹³⁴⁵
- Hazardous Substances and Articles Act;¹³⁴⁶
- Atmospheric Pollution Prevention Act;¹³⁴⁷
- Explosives Act;¹³⁴⁸
- Communal Land Forest Produce Act;¹³⁴⁹ and
- Public Health Act.¹³⁵⁰

2.54.2.3. Foreign Ownership, Migrant and Local Labour Requirements

The Zimbabwean government has implemented various incentives to encourage investment in the mining sector. These measures encompass tax advantages, investment assurances, and streamlined regulatory processes. Notable tax incentives include:

- A five-year tax holiday for investments in industrial parks and tourism development zones;
- Exemptions from import duties on capital goods; and

¹³⁴² Water Act, 1998.

¹³⁴³ Natural Resources Act, 1996.

¹³⁴⁴ Parks and Wildlife Act, 1998.

¹³⁴⁵ Forestry Act, 1996.

¹³⁴⁶ Hazardous Substances and Articles Act, 1972

¹³⁴⁷ Atmospheric Pollution Prevention Act, 1971.

¹³⁴⁸ Explosives Act, 1972.

¹³⁴⁹ Communal Land Forest Produce Act, 1998.

¹³⁵⁰ Public Health Act, 1996.

- Reduced corporation tax for entities exporting 50% or more of their output

Investors engaging in Build, Own, Operate, and Transfer (BOOT) and Build, Operate, and Transfer (BOT) joint ventures benefit from a tax exemption during the initial five years, followed by a 15% tax rate thereafter. Beyond these favourable tax rates, prospective investors in the mining sector should take note of additional general incentives. These include exemptions from import duties on raw materials utilized in exports and the flexibility to carry forward losses indefinitely.

Furthermore, it is crucial for investors to acquaint themselves with regulations governing foreign investment. Certain sectors are reserved exclusively for Zimbabwean ownership, warranting careful consideration when planning investment strategies.

2.54.2.4. Artisanal Mining Sector

Artisanal and small-scale mining (ASM) holds significant importance in the Zimbabwean economy, both in terms of employment and production. As per the Zimbabwe Miners Federation (ZMF), approximately 500,000 Zimbabweans are directly engaged in ASM, benefiting at least 1.5 million people directly and indirectly (Nyavaya, K, 2021). ASM serves as a vital source of employment, particularly in rural areas where formal job opportunities are scarce.

The Ministry of Mines and Mining Development reports that ASM contributed over 60% of gold deliveries to Fidelity Printers and Refiners (FPR) in 2020. The sector also plays a substantial role in chromium production, contributing up to 50% of total chromium production. Additionally, ASM makes significant contributions to the national economy through tax and royalty payments. The government has implemented measures to formalize the ASM sector, ensuring that miners fulfil their tax and royalty obligations. In 2020, a gold support price of US\$45 per gram was introduced to boost gold deliveries to FPR and curb smuggling.

A 2016 report from PACT revealed that artisanal gold mining ranked as the third-largest contributor to the national GDP from the mining sector in Zimbabwe, accounting for 21% of the value, trailing behind Platinum Group of Metals (PGM) mining (32%) and large-scale gold mining (26%). FPR, the sole legal buyer of gold and a subsidiary of the Reserve Bank of Zimbabwe, attributes the growth in local gold production to ASM. In 2018, ASM contributed 21.7 tons compared to mining companies' 11.5 tons. However, challenges persist, with significant gold leakages occurring through a thriving black market, leading to substantial losses.

The ASM sector in Zimbabwe confronts various challenges, including limited access to finance, insufficient technical expertise, and restricted market access. Environmental and social concerns also arise due to the informal and unregulated nature of many ASM operations. Despite these challenges, the ASM sector is crucial to the country's economy. There is a pressing need for government support to formalize the sector and address the existing challenges, allowing ASM to contribute more effectively to the national economy while minimizing environmental and social impacts.

2.54.2.5. Judicial System

Zimbabwe's legal system is characterized as a hybrid or plural system, reflecting its historical context wherein laws from foreign jurisdictions were introduced and imposed by colonial settlers. Even after years of independence, remnants of the historical process of disempowerment and colonial influence persist in Zimbabwe's legal framework.

The legal system comprises elements such as Common Law (non-statutory or unwritten Anglo-Roman Dutch Law), Legislation, Case Law, and Customary Law. Unlike Criminal Law, which has undergone recent reform and codification, the majority of Zimbabwe's legal framework is not codified. The Constitution of Zimbabwe holds the highest authority as the Supreme Law of the country, serving as the foundational act that takes precedence over any other legislation.

Zimbabwe has an independent judicial system whose decisions are binding on the other branches of government. The country has introduced codified new commercial laws and established four commercial courts at the magistrate level. Administration of justice in commercial cases that do not touch on political interests is still generally impartial, but for politicized cases government interference in the court system has hindered the delivery of impartial justice. The Zimbabwean court system is made up of three tiers:

- Supreme Court

The Zimbabwean Supreme Court is the highest court in the land, and it consists of the Chief Justice, not less than two other judges and any acting judges who may be appointed. For exercising its jurisdiction, the Supreme Court is considered duly constituted if it consists of not less than three judges, one of whom must either be the Chief Justice or a permanent judge of the court.

- High Court

The High Court enjoys superiority over the Magistrates' Court. In a criminal trial, this court is constituted if composed of one judge and two assessors. The High Court has full original criminal jurisdiction over all persons and over all matters in Zimbabwe.¹³⁵¹

- Magistrates' Court

In criminal matters, magistrates can be divided into four categories: ordinary magistrates, senior magistrates, provincial magistrates and regional magistrates. In a criminal trial, a magistrate may either sit alone or preside with the assistance of one or two assessors. The criminal jurisdiction of magistrates is dependent upon the seniority of the magistrate whereas the civil jurisdiction is not.

2.54.2.6. Arbitration

Arbitration in Zimbabwe is regulated by the Arbitration Act.¹³⁵² Parties have the option to engage in arbitration either through a pre-existing arbitration agreement or by mutual consent. An arbitration agreement, as defined in Article 7 of the Arbitration Act, refers to an agreement between parties to submit all or specific disputes arising from a defined legal relationship whether contractual or not to arbitration.

¹³⁵¹ However, in terms of section 30 of the Constitution, the President enjoys immunity from any criminal proceedings whatsoever in any court.

¹³⁵² Arbitration Act (chapter 7:15).

This agreement can be in the form of an arbitration clause within a contract or as a separate, independent agreement.

When a dispute arises, and there is a pre-existing arbitration clause in the agreement, parties are obligated to pursue arbitration and cannot resort to traditional court processes. This process closely resembles litigation, with proceedings overseen by an impartial arbitrator. Unlike other forms of Alternative Dispute Resolution, the arbitrator actively participates in decision-making, ultimately rendering a binding decision in favour of one party. The binding decision termed an Arbitral Award, is recognised as binding according to Article 35 of the Arbitration Act. Parties can apply in writing to the High Court for enforcement, in accordance with Article 36.



2.54.3 Licencing and Permit Regime

2.54.3.1. Types of Licences and Permits

Ordinary/Special Prospecting License	Exclusive Prospecting Order	Special Grant	Mining Lease	Special Mining Lease
This license allows the holder to prospect for all minerals in a designated area except coal.	This is a more advanced license that allows the holder to prospect for minerals in a larger area. Applicable to any defined area (including reserved).	This license allows the holder to explore and mine for minerals in a designated area. Applicable to all minerals.	The holder of a mining location or contiguous registered mining locations may make written application for the issue of a mining lease in respect of a defined area within which such locations are situated ¹³⁵³ . The holder of a mining lease has the exclusive right of mining any deposit or mineral that occurs within the vertical limits of his lease.	The holder of one or more contiguous mining locations who intends to establish or develop a mine thereon and investment in the mine will be wholly or mainly in foreign currency and will exceed US\$100 million in value, and the mine’s output is mainly intended primarily for export, may apply for a special mining lease of a defined area within which his mining locations are situated ¹³⁵⁴ .

Table 54 Types of Licences and Permits in Zimbabwe.

¹³⁵³ Mining Law Zimbabwe. Available on <https://miningzimbabwe.com/wp-content/uploads/2017/12/Mining-Law-Zimbabwe.pdf> accessed on 8 March 2024.

¹³⁵⁴ Ibid.



2.54.3.2. The Application Process for Mining Licences and Permits

Application Requirement	Ordinary/Special Prospecting License	Exclusive Prospecting Order	Special Grant	Mining Lease	Special Mining Lease
Place of Application	Ministry of Mines and Mining Development Offices	Ministry of Mines and Mining Development Offices	President upon recommendation by Minister	Mining Affairs Board, Provincial Mining Director	Provincial Mining Director
Validity or Duration of Licence or Permit	2	3	5	25	25
Renewable	It can be renewed for a further two years.	It can be renewed for a further three years.	Perpetual annual renewal	Perpetual annual renewal	It can be renewed for a further 25 years
Application Costs ¹³⁵⁵ <i>Statutory Instrument 40 of 2022.[CAP. 21:05 Mining (General) (Amendment) Regulations, 2022 (No. 27)</i>	Ordinary Prospecting License 75,00 USD Special Prospecting License 563,00 USD	1 500,00 USD	1 500,00 USD	1 500,00 USD	3 750,00 USD
Application requirements or restrictions	-10ha precious metals and Stones -25ha Base Metals - Applicant can be any person above 18 years or a corporate body - Applicant must be a permanent resident of Zimbabwe	-65,000 ha -Any person or corporate body	Area to be situated in reserved ground 200,000ha for coal and 100,000ha for coal bed methane and Natural Gas	Holder of registered mining location	Holder of mining block applies for mining rights for a development wholly or mainly in foreign currency with the mine output intended mainly for export

Table 55 Application Requirements for Licences and Permits in Zimbabwe

¹³⁵⁵ [https://www.jsc.org.zw/upload/Gazette/S.I.%2040%20of%202022%20Mining%20\(General\)%20\(Amendment\)%20Regulations,%202022%20\(No.%2027\)%20impo.pdf](https://www.jsc.org.zw/upload/Gazette/S.I.%2040%20of%202022%20Mining%20(General)%20(Amendment)%20Regulations,%202022%20(No.%2027)%20impo.pdf) accessed on 7 December 2024.

2.54.3.3. Transferability of Mineral Rights

Most mining rights can be transferred without restrictions. In the event of the sale or alienation of a registered mining location, the seller is required to inform the Commissioner of the transaction within 60 days from the date of the transaction¹³⁵⁶. Additionally, the agreement must be officially registered with the Mining Commissioner.

The purchaser is obligated to pay transfer duty upon the sale, with the rate determined by Parliament, presently fixed at 1% of the total consideration. This duty must be settled within six months. If the payment comprises a combination of cash and shares in a company, the nominal value will be applied. In cases where payment is contingent on a future event, the buyer must furnish satisfactory security to the Mining Commissioner, ensuring payment of the transfer duty at a predetermined rate when the consideration becomes payable.

Transfers are restricted to permanent residents of Zimbabwe. If a transfer involves non-residents, the Mining Commissioner must receive assurance from the Reserve Bank of Zimbabwe confirming full compliance with all exchange control requirements. Upon receipt of the fee, the Mining Commissioner will then issue the new owner with a new registration certificate. No transfer is possible if:

- the mining location is liable for forfeiture or under attachment;
- duties, fees, royalties, rentals and other payments in respect of the mining location are outstanding with the Mining Commissioner's office; and/or
- there are outstanding payments due to the Rural District Council.

If the mining title is classified as a special grant, there are limitations on its transferability¹³⁵⁷. This special grant is granted solely to the holder and cannot be transferred, usually with a condition explicitly stating this restriction.

2.54.4 Taxation

2.54.4.1. Mining Royalties and taxes

The taxation regime applicable to the mining sector in Zimbabwe is mainly governed by the Income Tax Act (Chapter 23:06) and is administered by the Zimbabwe Revenue Authority (ZIMRA). According to the Act, mining companies are required to pay corporate income tax, mineral royalties, withholding tax and capital gains tax on mining operations. Other taxes applicable to mining operations include Value Added Tax (VAT), customs duty, and excise duty.

¹³⁵⁶ The International Comparative Legal Guides, Mining Laws and Regulations Zimbabwe 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/zimbabwe> accessed on 28 December 2024.

¹³⁵⁷ The International Comparative Legal Guides, Mining Laws and Regulations Zimbabwe 2024. Available on <https://iclg.com/practice-areas/mining-laws-and-regulations/zimbabwe> accessed on 28 December 2024.



Effective date 1 October 2022, payment of mining royalties in respect of gold, diamonds, platinum, platinum group metals (PGMs) and lithium to be paid as follows:

- 50% in kind in the form, purity, or quality prescribed by the Reserve Bank of Zimbabwe through a statutory instrument
- 10% in foreign currency (cash)
- 40% in Zimbabwe dollar

Mineral royalties are payable to the Government of Zimbabwe on all minerals extracted from the ground. All minerals have a fixed royalty rate, differentiated according to mineral value. The highest rate applies to diamonds and other precious stones. However, according to the set royalty rates for the minerals, Gold attracts a flexible royalty rate of 5% if the international market price is above US\$1,200 per ounce and if it is below that 3%, applying to large-scale miners only. Royalty rates differ according to metal or mineral type as shown in table below.

Mineral	Royalty rate (%)
Diamond & semi-precious stones	10
Platinum	5
Gold	5 (flexible)
Industrial Metals	2
Coal	1

Table 56 Royalty Rates in Zimbabwe

The artisanal and small-scale mining community have a fixed 1% preferential rate.

Royalty revenue from mining is more predictable because it is precipitated by the marketing of minerals, therefore, payable regardless of profits or losses incurred by the mining company. Generally, royalties are paid at the rates specified in the Mining Laws and are calculated based on the gross sales or market value of the minerals. The Ministry of Mines and Mining Development is responsible for collecting and ascertaining the payable amount of mineral royalties.

2.54.5 Mineral Beneficiation

A deliberate decision was made to stop the export of un-beneficiated minerals, which the government had talked about for years. Pleas have been made over the years for mining companies to engage in value addition to the minerals before they are exported to increase the revenue generated from mineral exports. This culminated in a series of statutory instruments by the Minister of Mines and Mineral Development in which the export of raw base minerals was prohibited and only allowed in certain circumstances.

A statutory instrument was put in place banning the export of un-beneficiated lithium through Statutory Instrument 213/2022. This was repealed a few weeks later and replaced by the Base Minerals Export Control (Unbeneficiated Base Mineral Ores) Order, 2023, which was gazetted on 6 January 2023 as Statutory Instrument 5/2023. In terms of this Order, a written permit issued by the Minister of Mines and Mining Development is required before one can export un-beneficiated base mineral ores.

Furthermore, no permit for the export of beneficiated lithium shall be granted unless the lithium has been dealt with in accordance with prescribed conditions and the selling price for the export of the beneficiated lithium is not less than that set by the Minerals Marketing Corporation of Zimbabwe from time to time. Furthermore, no permit for the export of un-beneficiated lithium shall be granted unless it complies with certain prescribed conditions, including the concurrence of the President. The Order also deals with controlling the movement of lithium ores within the country. The lithium may only be moved to and sold to an Approved Processing Plant (APP). The lithium ores cannot be stored anywhere except at the mining location or the premises of an approved APP.

2.54.6 Macroeconomics

Zimbabwe's economy contracted significantly in 2019 and 2020 because of economic mismanagement, the long-term impacts of the COVID-19 epidemic, and climatic shocks that hampered agricultural and electrical generation.

The real GDP growth in 2022 was 6.5%, a decrease from 8.5% in 2021, which was due to steady expansion in agricultural production. Mineral exporters profited from increased worldwide prices, while tourism, along with other industries, contributed to total economic development. However, the private sector demand was restricted by inflation. However, the GDP growth is projected to recover to 3.2% in 2023 and 2024, anchored largely by agriculture, mining, and services.

Zimbabwe has prioritized private financing to achieve its climate change targets in transitioning to green and inclusive growth. Currently, Zimbabwe is developing the National Climate Change Fund and Climate Finance Facility to crowd-in the private sector through blended finance and results-based approaches to de-risk markets and scale up investment and boost participation in scaling up climate actions.

2.54.7 Governance and Risk Ratings

2.54.7.1. Ease of Doing Business

According to the World Bank Group, Zimbabwe is ranked 140 among 190 economies in the ease of doing business, according to the latest World Bank annual ratings.¹³⁵⁸

2.54.7.2. Investment Climate

Zimbabwe poses a complex but potentially lucrative environment for investment. The nation boasts a skilled labour force, high literacy rates, abundant mineral resources, substantial agricultural potential, rich wildlife, and scenic landscapes, offering attractive commercial prospects for U.S. companies.¹³⁵⁹ Key sectors generating considerable investor interest include agriculture, with a particular focus on tobacco, as well as mining, energy, and tourism.

¹³⁵⁸ World Bank Group “Doing Business 2020” page 16, accessed in October 2023, on <https://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>.

¹³⁵⁹ The World Bank in Zimbabwe, accessed in January 2024, on <https://www.worldbank.org/en/country/zimbabwe/overview>.

In 2018, the government of Zimbabwe embraced an "open for business" policy to stimulate increased foreign direct investment (FDI).¹³⁶⁰ As part of this initiative, the government set an ambitious goal of attracting \$12 billion in investments to the mining sector by the end of 2023 and advocated for greater investments in renewable energy. However, despite these proclamations, the Zimbabwean government has not implemented a sufficient number of investor-friendly policies to attract robust investment, and corruption remains a significant concern. As a result, FDI into Zimbabwe continues to lag behind that of its regional counterparts.

In February 2023, the government took measures to adjust the foreign exchange regulations. Specifically, the proportion of foreign exchange that businesses are required to surrender to the Reserve Bank of Zimbabwe (RBZ) at the interbank rate, following the sale of goods and services in foreign currency on the domestic market, was reduced. The previous requirement, set at 20 percent of the receipts, was decreased to 15 percent.¹³⁶¹ Additionally, the proportion of foreign currency earnings that exporters must surrender to the RBZ, initially set at 40 percent at the less favourable interbank rate, was lowered to 25 percent. These adjustments reflect a shift in the government's policy to address and potentially mitigate economic challenges or encourage specific economic activities.¹³⁶²

2.54.7.3. Risk Ratings

In 2022, the human rights situation in Zimbabwe deteriorated, with the government failing to take significant actions to protect rights and ensure justice for past abuses, particularly those committed by state security forces. Investigations into instances of abductions, torture, arbitrary arrests, and other abuses against opposition politicians and activists have seen little progress.¹³⁶³ Notably, the government has yet to pass the Independent Complaints Commission Bill, a measure mandated by Zimbabwe's Constitution, which would establish an independent mechanism to receive and investigate public complaints against the security services.

Repressive measures against civil society organizations and activists persisted throughout the year. In November 2021, the government proposed amendments to the Private Voluntary Organizations Act, further restricting the operations of non-governmental organizations. Officially, the government cited the amendments as necessary to combat terrorism financing and money laundering to align with Financial Action Taskforce recommendations.¹³⁶⁴ However, there are concerns that the passage of these amendments could seriously jeopardize the right to freedom of association in the country.

The authorities in Zimbabwe have frequently engaged in arbitrary arrests, harassment, and prosecution of critics, particularly those opposing the ruling party.¹³⁶⁵ A notable example is the case of Tsitsi Dangaremba, a well-known critic and author, and another protester named Julie Barnes. Both were

¹³⁶⁰ T Kondo (ed) Law and Investment in Africa: The Governance of Foreign Direct Investment In Zimbabwe, accessed in January 2024, on https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072021000100016.

¹³⁶¹ T Kondo (ed) Law and Investment in Africa: The Governance of Foreign Direct Investment In Zimbabwe, accessed in January 2024, on https://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-49072021000100016.

¹³⁶² Ibid.

¹³⁶³ Human rights watch, accessed in January 2024, on <https://www.hrw.org/world-report/2023/country-chapters/zimbabwe>.

¹³⁶⁴ Ibid.

¹³⁶⁵ Ibid.

arrested in July 2020 during an anti-government protest and faced charges of public incitement to violence, breach of peace, and bigotry.

Following a prolonged trial, on September 29, the Harare Magistrate court handed down a six-month suspended jail sentence and imposed a fine on Dangaremba and Barnes¹³⁶⁶. The charges were related to their participation in a public gathering with the alleged intent to incite violence and for violating Covid-19 protocols. This case exemplifies the government's use of legal measures to target and penalize individuals expressing dissenting views or participating in protests against the ruling party.¹³⁶⁷

Finally, Zimbabwe faces challenges in its trade and investment environment due to issues like insecure property rights, bureaucratic obstacles, corruption, and legal complications.¹³⁶⁸ High financing costs, currency instability, and intricate taxation contribute to a less favourable business climate. Political uncertainties, possible interference in the legal system, insufficient funding, and problems retaining currency also act as deterrents to foreign investment, hindering overall economic growth.¹³⁶⁹

2.54.8 Good Governance Evaluation

The 2020 Finance Act (No 2) amended the highly controversial Indigenization Act, to remove diamonds and platinum as being subject to indigenization (requiring majority ownership by indigenous Zimbabweans), thus ending indigenization requirements in all sectors. According to the US State Department report on the Zimbabwe Investment Climate, the government has issued statements to reassure investors that no minerals will be subject to indigenization, including diamonds and platinum¹³⁷⁰. Although such moves are positive, Zimbabwe suffers from policy inconsistency, administrative delays and costs, and corruption. All of which hinder business facilitation¹³⁷¹. Although Zimbabwe has a good legal framework to support the extractive industries sector, the lack of judicial independence and the excessive interference by the executive in the judicial process makes the operating environment very unpredictable for investors.

In terms of the Fraser Institute Investment Attractiveness Index, Zimbabwe ranks as the least attractive jurisdiction in the world for investment when considering both policy and mineral potential¹³⁷². Zimbabwe has occupied this position for two years in a row.

Zimbabwe is joined by Mozambique, South Sudan, Angola, South Africa, China, Democratic Republic of Congo (DRC), Papua New Guinea and Zambia as among the least attractive jurisdictions in which to invest.

¹³⁶⁶ Ibid.

¹³⁶⁷ Ibid.

¹³⁶⁸ BMI Zimbabwe Trade and Investment Risk Report, accessed in January 2024, on <https://store.fitchsolutions.com/trade-investment-risk/zimbabwe-trade-investment-risk-report#:~:text=Zimbabwe's%20trade%20and%20investment%20landscape,complex%20taxation%2C%20dampen%20business%20attractiveness>

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¹³⁶⁹ Ibid.

¹³⁷⁰ U.S. Department of State, 2023 Investment Climate Statements: Zimbabwe. Available on <https://www.state.gov/reports/2023-investment-climate-statements/zimbabwe/> accessed on 11 March 2024.

¹³⁷¹ U.S. Department of State, 2023 Investment Climate Statements: Zimbabwe. Available on <https://www.state.gov/reports/2023-investment-climate-statements/zimbabwe/> accessed on 11 March 2024.

¹³⁷² Fraser Institute Annual Survey of Mining Companies 2022. Available on <https://www.fraserinstitute.org/sites/default/files/annual-survey-of-mining-companies-2022.pdf> accessed on 11 March 2024.

Zimbabwe's governance and risk ratings are influenced by factors such as political stability, corruption levels, and regulatory transparency. International indices and risk assessment reports provide insights into the current governance and risk environment. Global insurer Allianz attributes a moderate rating to Uganda based on its research around economic risk, business environment risk, political risk, commercial risk and financing risk. The rating is D4 – high risk for enterprise¹³⁷³

Zimbabwe has significant mineral resources. It will need to demonstrate to investors that it is able to effectively address issues such as lack of judicial independence, policy inconsistency, administrative delays and corruption in order to attract foreign investment, required for prospecting and developing mines of the future in Zimbabwe.

¹³⁷³ Allianz, Economic Research – Zimbabwe. Available on https://www.allianz.com/content/dam/onemarketing/azcom/Allianz_com/economic-research/country-risk/EHCountryRiskRatings_Q42020EXT.pdf accessed on 11 March 2024.



3 Artisanal and Small-Scale Mining (ASM) Country Profiles

The present section presents the results of work under the project task 7.5, through 15 country profiles and a final sub-chapter outlining concluding remarks based on the learnings from the analyses of the ASM sector for ECRM in the countries in scope. For greater details on the scope, methods and research background of this part of the deliverable, readers should refer to [section 1.2](#).



3.1 Burundi

3.1.1 Introduction and the ASM sector

Burundi is geographically and geologically located in Karagwe-Ankole belt (KAB), which also goes through Rwanda, south-west Uganda, north-western Tanzania and the Kivu Maniema region in the Democratic Republic of Congo (DRC). This area is mineralised with Niobium-Tantalum minerals found in coltan mineral ore, cassiterite embodying tin ores, lithium (especially amblygonite and spodumene), beryllium and other minerals mined in pegmatite rocks. It also contains quartz veins mineralised with cassiterite, and wolframite (Dewaele, 2015). Specifically, Burundi is geologically associated with niobium and tantalum ore (coltan), tin ore (cassiterite), tungsten ore (wolframite), lithium, rare earth elements, beryllium, gold, nickel (with minor PGE), and others (Vasters & Schütte, 2023). Burundi's products for domestic consumption include peats, limestone, kaolin, gravel, sand and others (EAC, 2024).

Mining activities in Burundi are dominated by ASM, although many operate informally and without the required mining permits. Minerals produced are mainly tin, tungsten and tantalum (3T) concentrates, as well as gold (WBG, 2016).

Before the suspension of industrial mining contracts in July 2021, including the UK's Rainbow Rare Earths Ltd and Russian Tanganyika Mining Company (Nininahazwe, 2021), which as the start of 2024 were still not renegotiated (World Bank, 2024); the Government of Burundi had reported that mining was the leading sector contributing to foreign currency to the country, with more than 50% contribution and overtaking the joint production of tea and coffee. Part of mineral exports that contributed to such values include gold, tin, tungsten, tantalum and rare earth minerals (Miriri, 2019). The extent of mineral value benefitting the country's economy and local communities is still questioned by stakeholders of civil society. For example, during the 2021 fiscal year, Burundi was expecting to earn \$ 1.5 million from mineral exports, while civil society members shared critical views believing that a more formal and transparent mining sector could lead to even higher revenues (Rédaction Africanews, 2021).

With the increased demand for 3T minerals, driven by the technology sector in 2010s, the Burundi's ASM sector became an important source of livelihood for nearly 34,000 people in rural areas. It was estimated that between 6,000 and 7,000 men and women work in mines producing 3T (the rest working in artisanal gold mining). Among them, around three quarters are in the mineral ore extraction and the other quarter are employed in the ore washing and transportation of minerals, among others. Assuming that on average each person involved in ASM has around five dependents, the World Bank estimated that 85,000 to 160,000 individuals depend on ASM as their main source of income (Perks and Hayes, 2016).

3.1.1.1 Regulatory framework

The 2023 mining code recognises ASM, and specific licenses can be obtained by individuals and organisations. For instance, articles 130 – 139 of the mineral code illustrate that only mining cooperatives can request ASM licenses and that the holder of any other type of mining license cannot receive an ASM license. Artisanal miners are allowed to use non-mechanised tools and equipment to mine and process minerals. As indicated in article 213, mechanised large and medium scale license holders can pay up 7%

of mineral royalties, ASM miners pay only up to 3% of mineral royalties. However, no distinction is made when it comes to addressing the costs of mineral traceability and certification fees for designated minerals (OBM, 2023).

The Ministry of Hydraulics, Energy and Mines is the regulator, licencing authority and key policy maker of the mining sector in Burundi. The Ministry is supported by Burundi's mines and quarry authority the Office Burundais des Mines et Carrières (OBM) which is responsible for geological studies, the mining cadastre, compliance with the mineral licensing system and related agreements with the Government, mine inspections, capacity building, monitoring of corporate social responsibility (CSR) projects and the collection of mineral royalties (OBM, 2024).

3.1.2 ASM mineral value chain

Circulation of minerals and funds: cassiterite, tantalite and wolframite

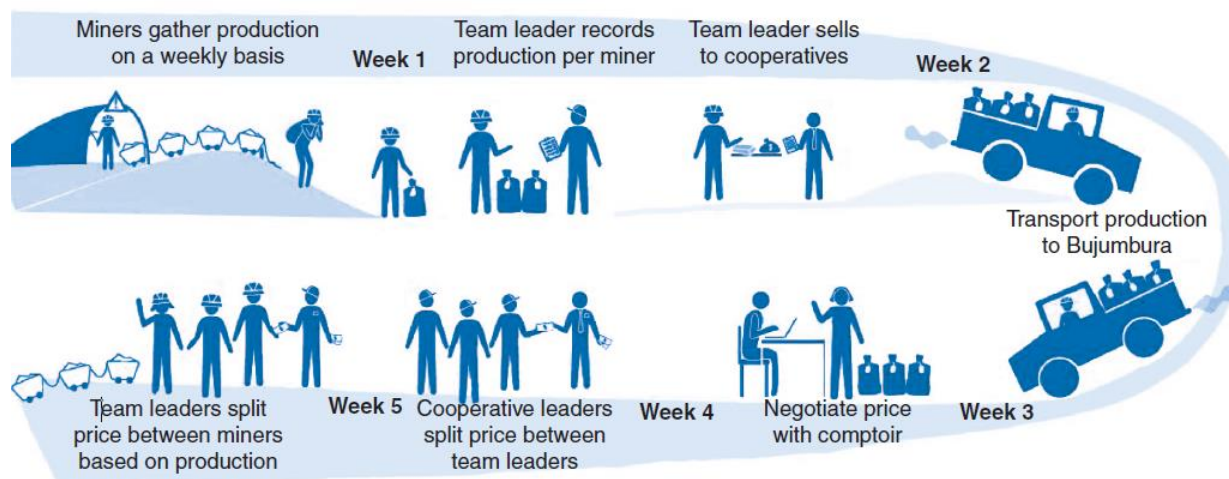


Figure 1 Relationships and Mineral Flows / Trade in the ASM sector in Burundi (Perks and Hayes, 2016)

The figure above provides a summarised representation of the value chain of the 3T minerals (cassiterite, tantalite and wolframite), with a particular focus on relationships among actors involved and how the minerals are moved, traded and how payments are done to miners involved in production.

ASM mineral extraction is done mainly through manual tools and labour, and it occurs both in open-cast and underground sites (Rupprecht, 2017). For instance, in ASM alluvial mining, for those working in pegmatite deposits and quartz hard rocks, miners use manual tools like picks, shovels, hammers and others. The ASM operations are usually organised in teams and key roles among workers include those involved in digging, transport of the mineral ore and those washing the ore to get mineral concentrates (Byizigiro & Al, 2020). ASM cooperatives are usually characterised either by mostly unstructured operations of families and groups who work together informally, or small-scale operations (Perks and Hayes, 2016).

In Burundi mineral processing of ASM produced minerals is limited to obtaining mineral concentrates from the ore. Therefore, minerals are exported in the form of concentrates and, at the time of writing this profile, no smelting or refining activity took place in country. For the products from pegmatite and alluvial mineralisation, including tantalum, tin and gold, the processing is done through traditional sluicing methods. For minerals from hard quartz veins, including tin and the tungsten; the ores are manually crushed, and mineral particles are collected through manual panning methods. However, these artisanal mineral processing techniques lead to mineral losses, as higher quantities of materials end up in tailings and are considered as waste (Midende, 2010). At the time of writing this profile, a laboratory was being constructed for the analysis of mineral ores (Personal communication with stakeholder, November 2023).

The minerals produced are sold through selling points called *Comptoirs*. Mineral dealers either buy minerals from Burundi or source minerals from neighbouring countries and then export them internationally through Burundi. Gold and 3T minerals are subject to the mineral traceability and certification process in line with the International Conference on the Great Lakes Region (ICGLR) Regional Certification Mechanism (RCM) (Pact World, 2022). Nevertheless, the regional mineral trading dynamics remain challenging, including smuggling and illicit trade from Burundi to neighbouring countries like Rwanda and Tanzania. Reportedly, those who manage to sell illicitly to Rwanda can obtain better prices for minerals like tantalum concentrate (Manirakiza & Ndabashinze, 2023).

3.1.3 ASM sector challenges

3.1.3.1 Technical limitations and low productivity

Despite the mineral potential in Burundi, reportedly production capacity remains low due to technical challenges and limited investments in the sector. Most mining and processing methods remain largely manual and rudimentary making it difficult to improve production outcomes and at the same time ensure health and safety standards of those involved in ASM. As observed at some mine sites, the introduction of semi-mechanised tools like electrical jackhammers for mining, compressors for underground's clean air, water pumps, jigs and shaking tables can increase safety and productivity. For instance, it was estimated that up to 75% - 90% of ore minerals contained in concentrates might get lost due to the manual processing of the mineral ore. Due to challenges in increasing productivity of mineral production (or due to fluctuating metal prices), many ASM operators choose to (temporarily) abandon mines and leave behind significant quantities of unprocessed tailings or poorly processed tailings (Midende, 2010).

3.1.3.2 Social and environmental impacts

Most ASM operations in Burundi present gaps in terms of compliance with health and safety and environmental standards. Cases of accidents and fatalities are often reported at ASM mines. In underground mining, tunnels are often not sufficiently protected by timber structures or completely lack any form of structural support to avoid collapses and incidents. Respiratory challenges, diseases and deaths can occur as a result of poor ventilation systems which do not allow enough clean oxygen to circulate in the tunnels. Health and safety risks also exist in open-cast mines, where limited control and activities coordination can lead landslides causing accidents, including fatalities. Although there are no official reporting mechanisms of accidents and fatalities, reportedly these take place regularly across the

ASM sector. Victims of such accidents include women and children, given that child labour has also been reported in the ASM sector in Burundi (Manirakiza & Ndabashinze, 2023).

Mining activities also constitute a challenge on the environment. Some ASM activities are done on river shores and marshlands where the mineral ore gets washed, causing pollution of water and the wetland ecosystems. With limited mines inspections being carried out and unauthorised ASM operations, forests and other types of vegetation are degraded, without clear reforestation and afforestation efforts. Affected mine sites are also characterised by soil erosion, soil degradation and landscape change, besides generating impacts on the availability of arable land (Byizigiro & Al, 2020).

3.1.3.3 The mining sector after conflicts in Burundi

Between 1993 and 2003 Burundi experienced a civil war that affected the country and its citizens and economy, including the mining sector. The war was triggered by the assassination of President Melchior Ndadaye by the military leadership. He was the first democratically elected Head of State, with a multiparty system in Burundi. In 2003, a peace accord between the then-government and militias ended the war and in 2005, a new president – Pierre Nkurunziza (a former militia member) was elected (Nkurunziza, 2018). Between 2005 and 2015, the security situation stabilised, and social and economic activities resumed. However, towards the end of this period, government clamped down increasingly on civic space and opposition politicians and many including the opposition considered the third attempt by the president to remain in power unconstitutional. This led to a coup attempt, civil unrest, and protests, which meant thousands of Burundians flee their countries heading to the neighbouring countries (DRC, Rwanda, and Tanzania). The use of force and other mechanisms were criticized by human rights defenders (Rufyikiri, 2021). Despite this, Nkurunziza was re-elected in 2015 and served until his death during the global pandemic in 2020, when a new president from his political party Evariste Ndayishimiye was elected. The mining sector is one of the industries that was affected by Burundi's conflicts. This sector, as others, started to revive in 2005 with the greater stability in the country. By the time of the 2015 unrests, 123 mining companies had already acquired mining licenses, including big companies with the Rainbow Rare Earth and Africa Mining Burundi Ltd which invested in rare-earth and gold. However, the 2015 conflicts did not disturb the sector significantly. In 2021 the large companies' contracts were suspended for mining contracts renegotiation. Although there are anti-Burundi militia groups operating in DRC and carrying out occasional attacks, the current political and security status seems to be more stable compared to the Burundi's history of ethnic and political violence. Within the scope of research for the present profile, the authors could not identify more specific impacts of the dynamics of conflict and unrest in the ASM sector.

3.1.4 Relevant initiatives and stakeholders

3.1.4.1 ICGLR Regional Certification Mechanism and ITSCI

Burundi is the host country of the ICGLR secretariat, an inter-governmental institution bringing together twelve members including Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, Uganda, Rwanda, Republic of South Sudan, Sudan, Tanzania and Zambia. ICGLR pact of creation got signed in 2006 and came into force in 2008, to end political instability and conflicts in the Great Lakes Region of Africa, under various pillars including preventing armed groups to be financed

through mining activities (ICGLR, 2024). As a member, Burundi is expected to comply with mineral traceability requirements and the certification mechanism known as Regional Certification Mechanism (RCM) with the aim to safeguard peace and security and end illegal mining and violations of human rights.

Since 2014 Pact World, implemented the International Tin Supply Chain Initiative (ITSCI). The programme labels 3T minerals mined from more than 150 sites across Burundi. Since October 2023, the management of ITSCI has transitioned to the NGO Kumbuka Afrika (PactWorld, 2023). Since the start, the programme has supported the formalisation of ASM activities, has given assistance on due diligence processes and better access to international markets (ITSCI, 2020). Miners and local communities benefit from the revenue from mining activities, which improves people's livelihoods. Mining operations that fully implement supply chain risk mitigation procedures developed and overseen by ITSCI and are complying with due diligence requirements have greater opportunities to sell their minerals onto the international market. In addition, the government has greater visibility and oversight in the 3Ts mineral sector for the purposes of taxes and royalties (Pact World, 2022). In 2019 the ITSCI programme started to work with the government of Burundi to develop a mobile application to support digital mineral traceability (Pact World, 2023). The application was launched in 2021 and it works to capture production, processing and export information related to 3T (Pact World, 2023). Such initiative aimed at simplifying the traceability process, heavily dependent on manual data handling. At the time of writing this profile, the authors did not identify specific impacts and results of the digitalisation efforts.

3.1.4.2 Development cooperation and the Extractive Industries Transparency Initiative (EITI)

Between 2023 and 2024, the Swiss Agency for Development and Cooperation (SDC) is funding a baseline study of ASM gold supply chains. The baseline will be carried out by Projekt Consult and to help identify areas where SDC could provide support in the African Great Lakes region, particularly in Burundi. Although the baseline will focus on ASM gold production, it could identify entry points for SDC support also in relation to other minerals. Such study and any follow up action decided upon its results, aims at contributing to peacebuilding in the region (Projekt Consult, n.d.).

Approximately between 2010 and 2015 both the German's international cooperation and development agency (GIZ) and the Federal Institute for Geosciences and Natural Resources (BGR) have been involved in the mining sector, especially to support research, capacity building and funding of specific projects. For instance, from 2012 to 2014 and on behalf of the German's Ministry of Economic Development and Cooperation (BMZ), BGR and GIZ supported the Burundian Government to improve the efficiency and transparency of the mining sector governance, including through interventions of technical mining training of officers in the Ministry of Mines (GIZ, 2015).

After failing to join the Extractive Industries Transparency Initiative (EITI) in 2015, the Government of Burundi decided in 2023 to submit again the candidacy to EITI to becoming an EITI implementing member, once the required conditions are fulfilled, for a more open and accountable mining industry (Government of Burundi, 2023).



3.1.5 Investment needs and opportunities

Although more recent literature is limited on the specific needs of the ASM sector in Burundi, the brief analysis within the scope of this profile indicates that further investments could increase mining productivity, including of ASM, considering the predominance the sector has in terms of mineral production contribution. Some investment areas are included below, based on conversations with stakeholders in the sector. At the same time, continued efforts should be made to support the formalisation of the sector, including addressing administrative and financial barriers to obtain licenses and develop social and technical programmes (Perks and Hayes, 2016).

3.1.5.1 Partnerships to enhance mineral potential through the ASM Sector

Considering the known potential of mineral resources, both in terms of the wider explored 3T sector, and less tapped into minerals such as lithium, opportunities to invest in targeted analysis and exploration should be considered. As the ASM sector represents an important contributor to minerals' production in Burundi (since the country does not have any major industrial mining operations), increased productivity would need to involve investments in the sector. Such investments can provide useful guidance and information to actors involved in ASM activities, as it might help increasing interest of investors willing to fund improved mining operations (Personal communication with stakeholder, April 2024). Partnerships with cooperatives or equivalent entities representing ASM producers should be encouraged as a pathway for investment in financial and technical capacity for mineral exploration and preliminary ore processing methods. Such investments could improve the recovery rate of ore minerals compared to the existing practices relying on artisanal washing methods such as ground sluicing and hand-panning, leading to mineral recovery inefficiencies. Better management of mineral waste and potentially reprocessing of tailings should also be considered as opportunity once better processing methods are introduced. This would have the dual benefit of potentially tapping into the economic value of tailings and managing existing waste from manual and artisanal mineral processing, while ultimately reducing negative impacts of unmanaged tailings. Such partnerships should and could also incentivise responsible mineral production to respect environmental standards, avoid conflicts between communities and mine workers and help cooperatives their income and the sustainability of mineral production.

Mineral processing such as refining and smelting, beyond the initial ore washing and processing, certainly remains a theme of interest for mineral producing countries, including Burundi (Personal communication with stakeholder, April 2024). However, feasibility and opportunities of investment in processing facilities appear limited in the context of the rather low 3T ASM production output of Burundi and, hence, might rather consider potential regional trading partnerships and shared facilities.

3.1.5.2 Technical support: training, equipment and access to finance

University-level education in Burundi offers geological studies and could be expanded to develop mining related study programmes such as mining engineering, metallurgy, mineral economics, mining governance, and others. Gaps also exist in technical and vocational training relevant for the mining sector, and miners largely rely on skills and knowledge acquired on the job and transmitted by others in the sector. The improvements and investments in the mining sector indicated above, should be coupled with

knowledge sharing support to individuals involved in mining, and potentially through the organisational structures such as cooperatives. This should focus on topics on mining and processing techniques, as well as environmental management, organisational management, and governance. It represents an opportunity for both business related capacity building initiatives and social entrepreneurship endeavours.

Improved skills should be associated with investments on increasing access to better equipment. Existing gaps could be filled by supporting the development of local production of required tools or / and establishing loan systems for ASM operators and negotiating supply agreements at larger scale, while also benefitting the ASM sector.

Finally, the sustainability of the sector also requires for the existing financing barriers to be addressed. Targeted programmes should be considered not only to increase direct funding of ASM activities or by supporting local financial institutions to improve understanding of the ASM sector and create products which support its development and access to formal financing.

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3.2 Cameroon

3.2.1 Introduction and the ASM sector

Cameroon has a relative abundance of natural resources. Mineral occurrences can be grouped into four different categories: (i) precious stones and metals, which include gold, diamonds, sapphire and kyanite; (ii) other metals/minerals, which include iron, tin, rutile, kyanite, bauxite, nickel and cobalt; (iii) energy minerals, which include uranium; and (iv) construction materials, which include sand, quartzite, clay and gravel stone such as granite and marble (Lemougna et al, 2023). The eastern regions of the country present the greatest concentration of ore minerals, primarily situated along the borders with the Central African Republic and Chad (Zang & Higuera, 2023). While the country possesses a huge potential of mineral resources, many of these remain largely unexploited. The country has undeveloped resources of extended critical raw materials (ECRM), which include cobalt, rutile, nickel and cassiterite (tine oxide) (KPMG, 2014).

Mining activities in Cameroon are essentially artisanal and predominately located in the eastern region of the country, where it does not appear to contribute to a large extent to improving the living conditions of the local population (Zang & Higuera, 2023). This is because there appears to be a history of a lack of integration and coordination among the government, mining companies and local communities, which in turn has led to conflict and tension (Weng & Margules, 2022). In 2003, the Cameroon government created the Artisanal Mining Support Unit, the Cadre d'Appui et de Promotion de l'Artisanat Minier (CAPAM), in an attempt to streamline the artisanal and small-scale mining (ASM) sector through formalisation efforts and help artisanal miners to access formal markets and ensure economic growth for both miners and surrounding communities (Charles & Tychem, 2023). However, CAPAM has appeared to not live up to its expectations, with weak governance structures and contradictory actions which disadvantaged the ASM sector (Weng & Margules, 2022). CAPAM has been made obsolete and was replaced by another government body in 2021, which will be discussed in more detail below in the challenges section. The production of mineral commodities represents only a minor part of the economy of Cameroon (International Monetary Fund 2020). Gross domestic product (GDP) in Cameroon in 2021 was 38,35 billion Euros (Charles & Tychem, 2023), resulting in the mining sector only contributing to 1% of GDP (Lemougna et al, 2023). The only metals that are currently produced in Cameroon are aluminum and gold. From 2016 to 2021, the total revenue that was generated by precious and semi-precious metals (excluding diamonds) was around 16,6 million Euros (Charles & Tychem, 2023).

While this profile tries to focus on ASM ECRM activities in Cameroon, it should be noted that information is limited as most of the ASM activities appear in the country to be centered around gold and diamond mining. It is estimated that in 2019 ASM contributed to around 95% of all the gold mined in the country (Karuri, 2019).

ASM is of vital importance to the economies of French-speaking Central and North African countries. It is estimated that there are around 100,000 artisanal miners in Cameroon. According to reports, almost all mining production in eastern Cameroon (where most of the ore minerals are concentrated) is carried out by the ASM sector (Charles & Tychem, 2023). The majority of artisanal miners in this area focus on gold



mining, although there is also a notable portion involved in extracting alluvial diamonds and various other precious stones (Hilson, 2020).

It is estimated that around 79% of the miners who worked in the ASM sector in Cameroon concentrated their activities to gold mining specifically (Zang & Higuera, 2023). Despite the rise in ASM activities in the eastern province of Cameroon, that region continues to be one of the poorest, with very low nutrition and literacy rates in comparison to regions in the South and West (Nguepjouo, 2017).

It has been reported that in over the past decade, a new development model has surfaced in eastern Cameroon that involved privately managed ASM gold operations, which are predominately financed by Chinese actors (Weng, 2022). From 2010 to 2012, 280 artisanal exploitation permits were issued, with over a third allocated to the eastern regions of Cameroon. Many of these recent permits have been allocated to small Chinese groups, resulting in a recent surge in privately managed small-scale mining activities in eastern Cameroon, particularly in areas such as Betare-Oya, Batouri, Yokadouma, and Garoua (Zang & Higuera, 2023). These emerging Chinese groups employ mechanisation and modern extraction techniques, characteristics that do not align with the legal definitions of artisanal or small-scale mining, as outlined in legislation (Weng, 2022). These mechanised extraction techniques created unfair competition as local artisanal miners lack the financial resources to adopt similar methods. This has resulted in numerous conflicts, culminating in confrontations erupting between local communities and Chinese operators on November 15, 2017 (Zang & Higuera, 2023).

3.2.1.1 Extended Critical Raw Materials and ASM

All mining of rutile in Cameroon has been from artisanal mining operations (Vasters & Schutte, 2023). It is estimated that there is nearly 3 million tons of rutile in Cameroon, most of which is located in Akonolinga, in Central Cameroon, which is the world's second largest reserve of rutile after Sierra Leone (Lemoungna et al, 2023). Rutile has been present in alluvial, eluvial and residual deposits since the last century in the east (located in Nanga-Eboko and Akonolinga) and west region of Yaoundé (located in Eseka-Pouma) (Zang & Higuera, 2023).

Cassiterite occurs in a small deposit at Mayo Darlé in the northwest of Cameroon, near the border of Nigeria (Zang & Higuera, 2023). The alluvial and eluvial Mayo Darlé deposit has been associated with ancient artisanal mining, where it is estimated that around 6,500 tons of cassiterite was extracted from 1933-1968 (Lemoungna et al, 2023).

3.2.1.2 Regulatory environment and governance

Law No.2016/017 of 14 December 2016, is the Mining Code that governs the mining sector and recognises artisanal mining. The 2016 Mining Code implemented a tiered system of licenses, including authorisations for artisanal mining and semi-mechanised artisanal mining, as well as permits for small-scale and industrial mining extraction (Weng & Margules, 2022). The Mining Code distinguishes small-scale mining from artisanal mining and semi-mechanised artisanal mining. An artisanal mining permit is a legal instrument that allows the artisanal miner an exclusive right to carry out basic artisanal mining operations within an allocated perimeter (Law No. 14, 2023). Semi-mechanised artisanal exploitation permits on the

other hand confers on the holder the exclusive right to carry out semi-mechanised artisanal mining of semi-precious substances using some mechanical means in the chain on operations within an allocated perimeter (Law No. 14, 2023).

Cameroon's 2001 Mining Code limits artisanal mining activities to Cameroonian nationals, who can apply for up to four permits per application, with each permit encompassing an area of 100m x 100m, not greater than 30 m in depth. There is no restriction of the number of applications one can submit (Weng & Margules, 2022). Artisanal mining permits in Cameroon are issued by the 'Délégué Régional des Mines territorialement compétent' (regional delegate of mines with territorial jurisdiction) after prior approval by the 'Ministre chargé des Mines' (Minister in charge of Mines) (CRADEC, 2023). The Semi-mechanised artisanal exploitation permit is issued by the Minister of Mines (CRADEC, 2023).

Under the 2001 Mining Code, small-scale mining companies could not legally operate under artisanal mining licenses. To formalise the ASM sector and further promote economic development, in 2010 the government of Cameroon amended the 2001 Mining Code, introducing clauses allowing foreign companies to legally operate in "small-scale" mining activities, with a requirement that at least 40% ownership be retained by "national interests" (Nodem et al., 2012). This was aimed at regulating the relationship among various stakeholders, including the state as represented by CAPAM, mechanized artisanal mining investors (primarily from China), and other local stakeholders. However, the ambiguity inherent in "national interests" paved the way for foreign companies to operate small-scale mines "legally" (Weng & Margules, 2022). It should be noted that Cameroon's Mining Code, even the most recent 2016 version, does not explicitly allow for foreign small-scale mining companies to operate under an artisanal mining license as these licenses are reserved exclusively for Cameroonian nationals (Law No.2016/017, 2026).

Nevertheless, a production sharing agreement was established between CAPAM, representing the Cameroonian state, and the mechanized artisanal mining companies (Weng & Margules, 2022). In 2013, the Ministry of Mines, Industry, and Technological Development released a new publication outlining a set of directives aimed at restoring the mining sector in Cameroon and supporting CAPAM's operations. According to this document, CAPAM was tasked with taking a central role in executing these directives. Among the measures outlined was the involvement of CAPAM in drafting the framework for implementing the production sharing agreement with mechanized artisanal mining companies (CAPAM, 2012). CAPAM did this by facilitating 'small, mechanised mining companies "leasing" artisanal mining permits; [whereby] a production sharing contract is convened between CAPAM and the mechanised artisanal mining companies' (CAPAM, 2012). These mining companies then retain 60% of the produced output, with 30% allocated to the Cameroonian government, 5.75% distributed to the local populace and artisanal miners, and 4.25% allocated to the executing agency and other oversight bodies (CAPAM, 2012). In 2016, the 49% foreign ownership was changed to (up to) 49%. This means that foreign mining companies were able to "legally" obtain artisanal mining permits by entering into product sharing agreements with CAPAM (Weng & Margules, 2022).

Furthermore, during the early 2000s, the government of Cameroon began attempts to regulate the country's ASM sector. These initiatives aimed at formalising the sector through legal reforms, often influenced by international development organizations. Advancements were achieved in the mining



industry as the Cameroonian government revamped legal and financial structures. This began with the enactment of Cameroon's Mining Code and its Application Decrees in 2001 and 2002, respectively (Weng & Margules, 2022).

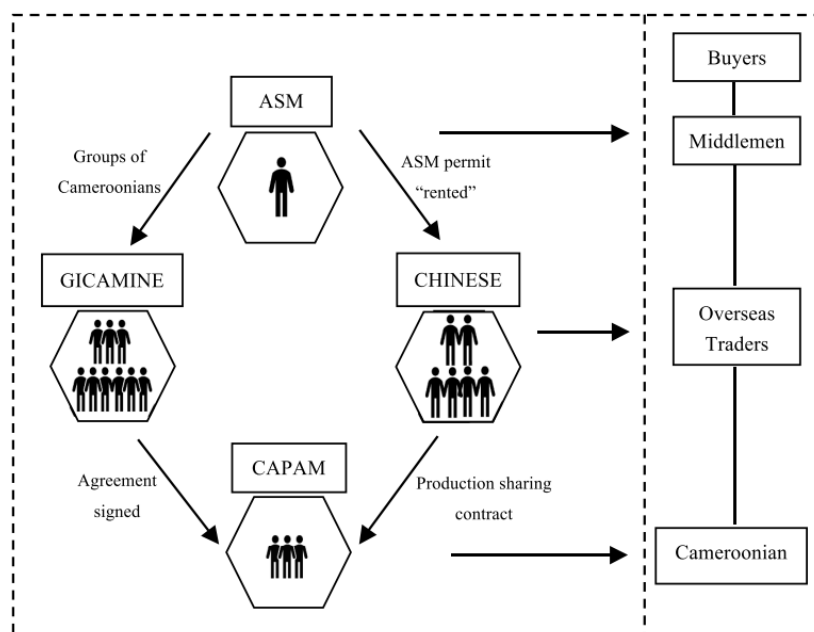


Figure 2 The formalisation process of ASM in Cameroon (Weng & Margules, 2022)

In 2003, the Cameroon government created the Artisanal Mining Support Unit, the *Cadre d'Appui et de Promotion de l'Artisanat Minier* (CAPAM). CAPAM was created with the mission to support and monitor the ASM sector, to ensure positive synergies between the ASM sector and the large-scale mining (LSM) sector and to improve the environment as well as the conditions of local surrounding communities (Charles & Tychsen, 2023). One of the main objectives of CAPAM was to equip artisanal miners with resources to facilitate the formalisation process, while also implementing taxation and regulatory measures on production. Functioning as the state's executive body, CAPAM has established formal access routes to markets and supplied equipment and technical aid to artisanal miners. These efforts operate within a framework that grants authorisation for artisanal exploitation (Weng & Margules, 2022).

CAPAM ran its first initiative between 2005-2009 with the aim of providing support to artisanal miners in their prospecting endeavours (Joyce, 2021). Under CAPAM's management framework, Common Initiative Groups for Artisanal Miners (GICAMINES) were established. These groups assemble independent miners into cohorts of fifty members, aiding their shift towards a more industrialised production approach and facilitating access to formal market channels. Through offering technical training and implementing a sustainable management strategy that focuses on improving organisation, exploitation, and financial administration in the long term, GICAMINE groups typically collaborate and pool their mineral resources, leading to more structured operations (Weng & Margules, 2022). Through CAPAM, 20 small-scale mining cooperatives were created and registered with GICAMINES, which altogether employs around 1000 miners (Joyce, 2021).

CAPAM's second initiative took place between 2011-2016 with the objective of enhancing ASM mining production. The initiative focused on expanding artisanal mining through heightened industrialisation and mechanisation of the sector and increasing the processing of ASM mining production, including through local transformation (Joyce, 2021).

On 14 December 2020, CAPAM was abolished by a presidential decree and was replaced by the Société Nationale des Mines (SONAMINES) (Presidential Decree No. 749, 2020). SONAMINES is responsible for developing and promoting Cameroon's whole mining sector and like CAPAM it is also responsible for supporting artisanal miners and helping to promoting the development of the ASM sectors' mining operations into more formalised ventures, such as mining cooperatives or mechanised operations (Joyce, 2021). The aim is to try and push ASM production into more formal channels so as to help artisanal miners enter more formal markets and to contribute to the country's overall economy (Charles & Tychsen, 2023).

3.2.2 ASM mineral value chain

The authors were not able to find information pertaining specifically to the ECRM value chain with regards to the ASM sector. All the secondary research appears to be based on the gold mining value chain of the ASM sector. However, some of the characteristics which can be defined as common across all ASM activities, will be described based on information available from the gold sector.

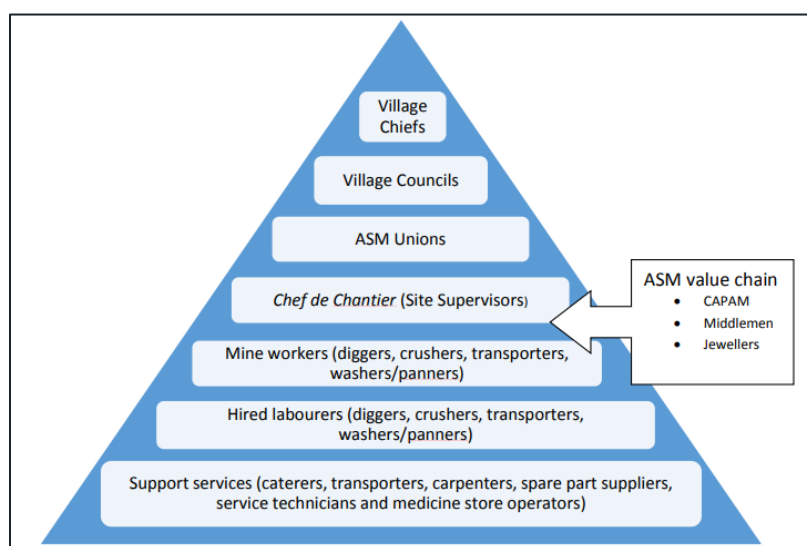


Figure 3 The Organisation structure of ASM communities in East Cameroon (Mbianyor, 2014)

Artisanal gold mining follows a traditional hierarchy led by the Village chief, who holds a position akin to the head of the mining field (Mundi, 2021). Their role extends beyond preserving traditions, customs, culture, and land; often, they also oversee leadership and representation in community development initiatives. Village chiefs govern their chiefdoms with the assistance of community leaders forming village councils. Together, they make or influence significant decisions, including land distribution, usage, ownership rights, and adjudication of customary and land-related matters (Mbianyor, 2014). The field leader manages the allocation of mining fields and may provide training to newcomers in the mine, typically receiving a percentage of miners' earnings (Mundi, 2021). Additionally, each mining pit is

overseen by a supervisor known as the chef de chantier (site manager), who possesses special mining privileges and leads activities within the pits, including hiring mine workers such as diggers, crushers, transporters, and washers/panners. In many instances, especially in large pits, both the chef de chantier and mine workers hire labourers to perform various tasks in the gold production chain on a daily wage basis (Mbianyor, 2014).

In Cameroon, the artisanal mining gold sector operates predominantly in an informal manner, with producers frequently selling their goods to intermediaries or middlemen who then smuggle the minerals out of the country to evade taxes (Weng & Margules, 2022). Middlemen, referred to as sponsors or negociants, offer financial assistance to artisanal gold miners to cover various mining expenses including equipment, site access fees, food, security, transportation, and licensing fees. In exchange, these traders anticipate obtaining some level of purchasing monopoly. Occasionally, interest is charged on these loans. Such exploitative and illicit arrangements frequently result in the accumulation of debts by the ASM operator, reinforcing the perception that ASM perpetuates poverty (Mbianyor, 2014).

GICAMINE groups typically collaborate and pool their mineral resources, leading to more organized operations. Although they often work in the same areas, they maintain a distinct separation from artisanal miners who are not affiliated with GICAMINES.

As discussed above, supposedly small-scale mining companies, primarily run by Chinese entities, lease artisanal mining permits through signing production-sharing contracts as financial and technical partners. CAPAM facilitates the leasing of artisanal permits held by Cameroonians to foreign investors (Mbianyor, 2014).

3.2.3 ASM sector challenges

3.2.3.1 Barriers to compliance

The Cameroon Mining Act sets out a comprehensive set of requirements that artisanal miners must fulfil to acquire mining authorisation. For example, to be granted an operational artisanal license, the miner is required to pay all the necessary fees as well as additional taxes applicable to that mining area. Many of the artisanal miners in Cameroon are impoverished and lack formal education and the struggle with the complexity of the administrative procedures and payment obligations for obtaining artisanal mining permits. As a result, many of these miners are discouraged from applying for permits and often operate outside of legal frameworks in a desperate attempt to secure a form of livelihood (Weng & Margules, 2022).

It has been reported that to obtain an artisanal mining permit, a miner will pay around XAF 1,800,000 (which is around USD \$3,000). There have also been reports of severe corruption and administrative bottlenecks with mining permits and many artisanal miners do not have the time or money to possess a permit (Mundi, 2021).

3.2.3.2 Governance and mining rights

In the last ten years, the involvement of Chinese companies financing ASM gold operations has emerged in eastern Cameroon (Weng, 2022). As recognised above, according to the country's Mining Code, foreign small-scale mining companies cannot operate under an artisanal mining license as these licenses are reserved exclusively for Cameroonian nationals (Law No.2016/017, 2026). However, based on information available, the legal framework does not correspond to the realities of ASM in Cameroon.

The fact that Chinese mining operators are able to “lease” artisanal mining permits, which by law are exclusively designated for Cameroon nationals, is not in line with Cameroon's mining Act. While the Act tasked CAPAM with “promoting cooperation with the private sector, development partners, and NGOs, and granted it unspecified authority to establish partnerships or joint ventures,” it never envisioned artisanal mining rights to be transferred from local artisanal miners to small-scale mining companies or foreign entities (Weng & Margules, 2022). The initial legislation instituting CAPAM did not introduce or endorse provision to transfer artisanal mining rights to small-scale mining companies or foreign entities. In fact, CAPAM's “official” goal was to channel artisanal mining production into formal economic pathways. Instead, terms were created that allowed foreign partnerships in ASM and foreign parties could own up to 60% of artisanal mines (which changed to 49% in 2016). The result has been that artisanal some miners have no other option but to sign an “Advanced Technical Financial Partner” with CAPAM, which requires them to “share” a limited proportions of profits with Chinese miners, who are seen as “technical financial partners” (Weng & Margules, 2022).

CAPAM has allowed the transfer of artisanal mining rights to companies that use industrial scale equipment and have foreign ownership. Of these new permits, a large number have been issued to small Chinese groups, leading to a recent expansion of privately operated small-scale mining in eastern Cameroon (Weng, 2022). The foreign companies possess significantly greater financial resources compared to local artisanal miners. They are also equipped with modern extraction technologies such as bulldozers, scrapers, sieves, and separators. All of these characteristics do not strictly correspond with what the law envisioned ASM would entail (Weng, 2022). It is very difficult for local artisanal miners to compete. Those regulations in favour of supporting and protection artisanal miners in Cameroon appear to be of limited benefit because there has been no control and action with respect to foreign entities operating under the ASM license. Many of these foreign companies have effectively captured the mining sector and inhibited local socio-economic improvement (Weng & Margules, 2022).

The 2016 Mining Code explicitly requires that preference is given to hiring Cameroonian personnel and that “90% of positions not requiring special skills are reserved for nationals” (Weng & Margules, 2022). However, many of the Chinese mining companies that have acquired mining permits tend to employ workers from their own countries, offering limited employment opportunities to locals, and appears to pay these foreign workers higher wages than local Cameroonians. Many of these foreign workers have minimal interaction with locals. In fact, only a few of them are proficient in English, French, or any other local language, relying on Cameroonian interpreters for their limited interactions with the community. Unlike artisanal mining, which relies heavily on manual labour and provides more job opportunities,



foreign investor companies employ mechanical equipment that requires less manpower (Zang & Higuera, 2023).

In terms of Cameroon's mining legislation, the state is required to put in place a product-sharing agreement as a means of enhancing the economic value of its sovereign rights over mineral resources (Law No. 14, 2023). While CAPAM no longer exists and its function has been taken over by SONAMINES, the product-sharing agreement system with artisanal miners and small-scale mining companies appears to still be in place, although the authors could not verify this information or whether the scope of activities changed further with the transition from CAPAM.

3.2.3.3 Lack of data on ASM sector and limited knowledge on mineral potential

At the time of writing this profile, there appears to be a notable lack of secondary data available on artisanal and small-scale miners in Cameroon among both government officials and the wider public, particularly with regards to ASM ECRM production. Although the production of rutile, cassiterite, and potentially nickel and cobalt by the ASM sector, especially in the Eastern parts of the country, has been identified, further information on the dynamics of the value chain is very limited. It has been reported that rutile, cassiterite and coltan is being produced by the ASM sector and exported or informally traded, some of which is allegedly being smuggled to Nigeria, where these commodities are reported to be produced and processed (Vasters & Schutte, 2023). Nevertheless, the limited information on ASM ECRM production affects the ability to identify opportunities for investment which would directly impact the production of these ECRMs. At the same time, it hinders efforts to develop effective policies and interventions that could enhance the sector's sustainability and the livelihoods of those involved (Mundi, 2021).

3.2.3.4 Social and environmental impacts

There appears to be a wide range of socio-economic and environmental issues related to artisanal mining in Cameroon. Although much of the secondary data available relates specifically to artisanal gold mining, many of these issues could be relevant to ECRM within the ASM sector and therefore should be considered (Nodem et al, 2019). Artisanal mining in Cameroon is associated with various environmental consequences, with deforestation and land degradation being the most significant. Most of the activities associated with ASM result in intensive reworking of the soil which increases susceptibility to erosion, leading to land degradation, barren landscapes, habitat loss and fragmentation, displacement of ecosystems, and reduced availability of arable land, significantly affecting local agriculture. The artisanal mining activities also contribute to the reduction in freshwater availability and increased turbidity as mining activities often alter or divert watercourses (Charles & Tychsen, 2023). During the exploitation phase of the artisanal mining process, open pits are dug and are typically left uncovered after mining, which poses risks as animal traps and health hazards. Abandoned sites and open pits lead to stagnating water which contributes to the proliferation of mosquitoes and diseases such as malaria (Funoh, 2014).

In Cameroon's eastern region, it has been reported that many children, particularly those under the age of 13, are leaving schooling to work in gold mines. Many of these children leave school to work under dangerous working conditions to help their family escape poverty. The East Regional Delegate of the

Ministry of Social Affairs estimated that around 3000 children were engaged in child labour at 46 mining sites in 2022 (Nenne, 2023).

3.2.4 Relevant initiatives

Although no specific programme or initiative has addressed the ASM value chains for ECRMs, such of the initiatives and associations listed in this section show important action to address some of the challenges described above. Some of these past / existing efforts could provide important learnings for future programmes aimed at the development of the ASM sector, including for ECRMs.

3.2.4.1 SONAMINES Zero Children in the Mines

The government of Cameroon is aware of the high number of children working in the mines, particularly in eastern part of the country. In response to this, in 2021, SONAMINES set out an action plan to combat child labour in the mines and help reintegrate children into the education system through a range of measures which involved supporting literacy and school enrolment. A pilot phase took place in Kambele, Eastern Cameroon. Around eight million CFA francs was invested in this project to help enroll children in the region into public schools, donate textbooks and school supplies, provide subsidies to teachers and parents and creating ongoing awareness-raising workshops for families and traditional chiefs. SONAMINES took the lessons learnt from the pilot phase and applied it to other regions in Eastern Cameroon in 2022 (SONAMINES, 2022).

3.2.4.2 ACP-EU Development Minerals Programme

A project led by the Organization of African, Caribbean, and Pacific States (OACPS), managed by the OACPS Secretariat, the ACP-EU Development Minerals Programme is a three-year, €11.1 million capacity building initiative. It is jointly financed by the European Union (EU) through the intra-ACP 11th European Development Fund (EDF) and the United Nations Development Programme (UNDP), with implementation carried out by UNDP. The program's goal is to enhance the recognition and enhance the management of development minerals ((including industrial minerals; construction materials; dimension stones; and semi-precious stones according to the definition used under the programme), thereby improving the livelihoods of those involved in the development minerals value chain (OACPS, n.d.).

Phase I of the Programme took place in 2015 - 2019, which provided increased support in six selected countries, including Cameroon. It also contributed to the formalization of Artisanal and Small-Scale Mining Enterprises (ASMEs) in Cameroon, promoting local business development and enhancing capacities in health, safety, and environmental management. Phase II duration is 2020-2024, where the Program has expanded to incorporate four more countries and endeavours to secure increased employment and income for ASMEs, with a particular emphasis on empowering women economically (OACPS, n.d.).

3.2.4.3 Community Development Program Support Project

The Government of Cameroon initiated the Community Development Program Support Project in 2004, intending to be executed over 12 years, divided into three four-year phases. The primary goal of the Project was to alleviate poverty and promote sustainable rural development in Cameroon. Phase I,



spanning from 2004 to 2009, was implemented in five out of the country's ten regions. The Project supported the development of various planning tools for regional and communal planning and assisted in the creation of 151 Community Development Plans (CDPs). Phase II, lasting from 2010 to 2013, was carried out in all 10 regions of the country. This phase facilitated the gradual transfer of local development responsibilities from Project entities to communes. It also supported the preparation of 178 new CDPs, bringing the total number of CDPs in the country to 329. The development objective of Phase III, which spans from 2019 to 2024, is to enhance local public finance management and participatory development processes in communes to ensure the delivery of quality and sustainable social and economic infrastructure (World Bank, 2024). The project is aimed at ensuring participatory community development in rural areas across the country, which includes areas where ASM activities take place.

3.2.4.4 Association des Femmes du Secteur Minier du Cameroun (AFEMIC)

Since its establishment in June 2016, the Association des Femmes du Secteur Minier du Cameroun (AFEMIC), association of women in the mining sector of Cameroon, has been actively engaged in enhancing the capacity of women artisanal miners and striving to enhance their living conditions. Numerous initiatives have been launched, including awareness campaigns, training programs, provision of personal protective equipment, and efforts to formalise their activities. The overarching goal of these endeavors has been to ensure women's access to legal rights, bolster their economic empowerment, address gender-based violence, promote better management of mining environments, combat child labor, and advocate for increased participation of women in mining projects within their communities (Charles & Tychsen, 2023). Some of the flagship projects that have been developed through the association include:

- **The "AFEMIC for a school bag" project**, which aims to raise awareness among parents in mining regions about the crucial role of education for children. It offers support to parents by supplying school essentials for their children, encouraging them to transition away from mining sites and prioritise their children's education (Charles & Tychsen, 2023).
- **A project funded by UNDP** aimed to enhance the resilience of women miners' groups operating in the Pouma stone (Littoral region) and Marom clay (West region) sectors in light of the COVID-19 pandemic. Through this initiative, AFEMIC sought not only to bolster the development of women's activities in the development minerals sector but also to enhance their competencies concerning safety, health, and environmental practices amidst this challenging crisis period (Charles & Tychsen, 2023).
- **The AFAMARA project**, supported by Care International, aimed to empower women artisanal miners in the Adamawa region of Cameroon. It centered around three key areas: combating gender-based violence, enhancing women's economic empowerment, and facilitating women's access to legal resources. The project duration spanned 12 months starting at the end of 2022 and ending in September 2023. (Charles & Tychsen, 2023).



3.2.5 Investment needs and opportunities

With the limited data available on ECRM value chains in Cameroon, it has been difficult within the scope of this profile to identify specific investment needs. As a result, this section will focus on two key recommendations, one inviting a more in-depth analysis of the potential contribution of the ASM sector, and the other looking at governance challenges, a precondition for any further development.

3.2.5.1 Analysis of ECRM potential

Considering the limited information available on the ASM contribution to ECRMs production, an in-depth analysis, assessing geological and economic potential should be considered. An economic analysis to quantify the ECRM potential in the country, and the role the ASM sector could play in the production of such commodities, would provide valuable insights into the contribution of artisanal mining to the national economy, including its GDP contribution, employment generation, and revenue generation. It would also inform the government itself, on the economic potential of mineral commodities which are high in demand internationally, and therefore being able to prioritise policies and activities.

This information could inform evidence-based decision-making, policy development, and investment strategies aimed at maximising the socioeconomic benefits of artisanal mining while mitigating environmental and social risks. This would help attract greater investment, both internationally and nationally and could provide the ASM sector with the chance to tap into formal markets and engage with formal market actors. This would in turn create the possibility of ASM actors being able to lock down more long-term commercial agreements that are not based on immediate returns. Addressing this issue will not only help to unlock the sector's full potential but also foster economic growth and allow a more informed strategy to address social and environmental impacts.

3.2.5.2 Governance and mining rights

The challenge illustrated with respect to dynamics of foreign companies' involvement in the ASM sector calls for attention on governance structures and challenges related to fair access to mining rights. Besides this being important for the existing gold sector, should greater potential be identified for ECRMs, solid governance would be essential to guarantee the ASM operators and the broader national economy could benefit from such opportunity. Particular monitoring efforts should be reserved to the involvement of foreign entities, to ensure this does not enhance corruption, limit national ASM groups access to mining rights and to guarantee economic opportunities to mining communities and local economies.

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3.3 Côte d'Ivoire

3.3.1 Introduction and the ASM sector

The industrial mining sector accounts for 5% of Côte d'Ivoire's GDP, producing materials such as gold, manganese, nickel and bauxite and with geological occurrences of iron ore, lithium and cobalt (H2G Consulting, n.d.; Gordon, 2023). On an industrial scale, the country has 4 gold mines, 4 manganese mines, 1 nickel mine and 1 bauxite mine (Gordon, 2023). Côte d'Ivoire is the 6th largest gold producer in Africa and gold contributes the most to export value out of all the materials extracted in country, totalling to USD 728.67 million in 2018 (H2G Consulting, n.d.; EITI, 2023). In 2019, industrial mining produced 32.4 tonnes of gold and in 2021, produced 41.8 tonnes of gold (H2G Consulting, n.d.; Balzac, 2023).

The Ivorian ASM sector is largely informal and employs approximately 500,000 people, of which 80-85% of those operating in Côte d'Ivoire are believed to be from neighbouring ECOWAS countries (AMDC, 2017). It is estimated that women make up 20% of the total ASM workforce and usually engage in activities such as crushing, washing, and sorting as well as providing additional services at the mine site such as food, water and petty trading (Tychsen and Charles, 2019). Women within the mining sector have limited access to and ownership of land due to social, cultural and religious factors (Tychsen and Charles, 2019). The ASM sector is predominantly associated with gold production and therefore most attention is given to ASM gold supply chains in the country (Personal communication with stakeholder, November 2023). It is estimated that the ASM sector produces 30-40 tonnes of gold, almost on par with the large-scale mining sector (Helbig de Balzac, 2023). However, in recent years, the diamond sector has received high interest from assistance programmes and marketing initiatives such as the Diamond Development Initiative, the Property Rights and Artisanal Diamond Development Programme (PRADD) in Côte d'Ivoire and the Kimberly Process (UNECA, 2024).

3.3.1.1 Extended Critical Raw Materials and ASM

Tantalum and niobium are reported to be extracted by ASM producers, although recorded exports in the last years have been low (Vasters & Schutte, 2023). Generally, there is little information about tantalum-niobium supply chains, and how much is actually produced by ASM and where ASM activities concerning these materials take place. The ASM sector might also be involved in tin extraction, but limited information is available Vasters & Schutte, 2023).

Most literature regarding ASM in Côte d'Ivoire centres on gold and diamond production and the associated social, environmental and economic challenges faced in their production. However, it has been announced that an exploration license has been granted to Guggenex Côte d'Ivoire SARL, to research tantalum-niobium deposits in Issia, Daloa and Zoukougbeu, in the central-western part of Côte d'Ivoire (Toussou, 2023).

3.3.1.2 Applicable regulation and governance

The mining sector is governed by Law No. 2014-138, which was developed in 2014 in aims to 'enhance mining investment in Côte d'Ivoire (Sauerwein, 2019). The code establishes that 'all mineral substances,



all mineral waters and all geothermal deposit contained in the ground and subsoil, the territorial waters are the property of the Côte d'Ivoire State' (Law No. 2014-138). The mining code makes a distinction between non-industrial and industrial exploitation, with non-industrial exploitation defined as 'extracting, concentrating mineral substances, and recovering commodities by using manual and traditional methods and processes', which artisanal and small-scale mining falls under (Law No. 2014-138). Articles 64-75 outline the legal framework for legal non-industrial mining exploitation. In order for ASM producers to be considered legal under the mining code, producers are required to obtain mineral rights and authorisation from the Ministry of Mines, be an Ivorian national or be part of an Ivorian majority cooperative and operate within the ASM zones designated by the government (Sauerwein, 2020). However, it has been argued that the mining code is vague and biased in favour of industrial and semi-industrial mining operations as it fails to fully consider the realities of ASM producers (Helbig de Balzac, 2023).

The Ministry of Mines, Petroleum and Energy (MMPE) (*Ministere des Mines du Petrole et de l'Energie*) is the main governing body of the mining sector in Côte d'Ivoire and is responsible for implementing and monitoring established government policy (MMPE, 2024a). Under the MMPE, is the General Directorate of Mines and Geology (*Direction Generale des Mines et de la Geologie*) which has 7 subdepartments. Overall, the General Directorate/ Department of Mines and Geology outlines its responsibilities as:

- Developing laws and regulations relating to mining and the use of explosive substances and pressure equipment;
- Developing the transformation of mineral substance into semi-finished and finished products;
- Managing standards and specification of mining products and quality control of products (MMPE, 2024a).

The Directorate/ Department of Mines and Geology has outlined its mining policy to focus on improving mining governance, increase mining production and diversify the range of minerals extracted (MMPE, 2024b). Specific to the ASM sector in Cote d'Ivoire, the Directorate/ Department highlights the following as crucial actions to ensuring the ASM sector contributes to the national economy:

- Continued support and creation of training camps
- Reactivation of 100 local technical committees
- Strengthening the Brigade for the Repression of Infringements of the Mining Code (BRICM)
- Strengthening the traceability of ASM production (MMPE, 2024b)

Another organisation important to the governance of the Ivorian mining sector is *Societe pour le Developpement Minier en Cote d'Ivoire*, a government parastatal created through Law No. 62-91 in 1965 (SODEMI, 2018). Some of the responsibilities of SODEMI include:

- Geological and mineral research



- Participating in the development and exploitation of mineral deposits on behalf of the state through partnership with private companies
- Upholding the mining code and intervention and transfer of mining rights.
- Marketing of mining products
- Support to the artisanal and small-scale mining sector through training programmes (*chantier école*) (SODEMI, 2018; SODEMI, 2021)

3.3.2 ASM sector challenges

Though a variety of materials are reported to be mined by artisanal and small-scale miners in Côte d'Ivoire, literature about the challenges faced in the sector tend to centre on gold and diamond production. It can be assumed that some of these challenges present can also be extended to tantalum-niobium production and will therefore impact the socio-economic development of the sector and should be considered when identifying and defining possible investment needs and opportunities of the ASM sector in Côte d'Ivoire in relation to ECRM production.

3.3.2.1 Limited implementation of legal framework and formalisation

There are discrepancies between what the mining code states and what is practiced by ASM producers (Helbig de Balzac, 2023). Although the law indicates how the sector should operate, its implementation is limited (Personal communication with stakeholder, September 2023). According to the mining code, all mineral resources and land is owned by the state, however, according to customary practice, which is largely followed by ASM producers, land and minerals belong to the owner of the land or the community (Helbig de Balzac, 2023). Reportedly, the existing legal requirements have been hindering the legalisation and formalisation of ASM activities (Helbig de Balzac, 2023), as a result of requirements difficult to comply or limiting ASM operations de facto. For example, the fact that industrial and artisanal mining cannot be concomitant on the same land, high taxation and perceived unfairness of forced closure of illegal artisanal sites impacting youth, have been reported as challenges for ASM operators (Helbig de Balzac, 2023). In addition, the process to obtain mining licences for ASM operators is reported to remain onerous and people and organisations involved lack any assistance or support to formalise their operations (Sauerwein, 2019). Administrative burden together with long waiting periods to obtain a response on licence application, seem to have hindered incentives for ASM producers to operate formally. Reportedly, initiatives to promote formalisation by the government, have mainly focused on forced closures of ASM gold sites, with no proper follow up, resulting in most cases, for miners to return once the government representatives have left supervision of the area (Sauerwein, 2019). Such implementation reportedly had impacts on livelihoods of many people and their communities, who were not put in the condition to transition to formal and legal activities, demonstrating a general limited understanding of the economic contributions of the ASM sector (Sauerwein, 2019).

3.3.2.2 Heavy focus on industrial mining and gold mining

Reportedly, the ASM sector is largely considered to be a deterrent to the economy and environment with over 400 ASM sites closed between 2013-2016 and little support from the government due to preference for large-scale mining investments and focus on the gold and diamond ASM sectors (UNECA, 2024; Sauerwein, 2019). In its efforts to attract greater investments, government actions and policies have focused and preferred large-scale mining. As a result, when it comes to ASM operations, financing opportunities are limited. For example, SODEMI have reportedly done some training with local mining communities, but such activities were financed by the organisation itself (Personal communication with stakeholder, September 2023).

3.3.2.3 Environmental and social impacts

Several negative social and environmental impacts are often associated with the ASM sector, especially when the sector is poorly regulated and operates largely informally. It can be expected, and it has been partially reported in the context of ASM gold mining, that the challenges highlighted in the previous sections negatively affect the opportunity to reduce and manage social and environmental impacts at scale, and beyond funded initiatives supporting few ASM cooperatives.

For example, deforestation in Côte d'Ivoire has been largely associated with agricultural activity, however the overall mining sector is still responsible for 8% of it, with the risk that unregulated mining activities having negative impacts on remaining, even if small, forests, when trees are cut either to make use of the wood or to utilise the surface (Soumahoro, 2023, Tychsen & Charles, 2019). Other risks related to mining rush activities which could impact natural parks and lands used for agriculture (Soumahoro, 2023).

ASM producers also remain exposed to the health and safety risks linked to poor mining practices, examples include diseases linked to hygiene conditions and accidents on site (Tychsen. & Charles, 2019). Reportedly the role of women in the ASM sector remains confined to specific roles such as mineral washing and related agricultural activities, while access to land and mining rights is limited due to cultural and religious belief (Tychsen. & Charles, 2019).

3.3.3 Relevant initiatives

Though investment in the Ivorian artisanal and small-scale mining sector has been focused largely on gold and diamond production, the below projects demonstrate that there have been previous initiatives focused on supporting the ASM sector and could be possible sources of guidance for future investments focusing on ECRM production in Cote d'Ivoire.

Global Opportunities for Long-term Development of the ASGM Sector+ Cote d'Ivoire: Cote d'Ivoire has been included alongside 22 other countries in the planetGOLD programme that seeks to reduce the use of mercury in ASGM, support formalisation of the sector, increase transparency in the country's gold supply chain and finance the adoption of sustainable mercury free technology (UNEP, 2023). This is a USD 17 million Global Environment Facility (GEF)-funded project spanning over 5 years and is led by the UN Environment Programme (UNEP) and supported by the Government of Cote d'Ivoire and IMPACT (UNEP, 2023).



Scaling Up - Enabling traders to build and sustain a responsible artisanal gold sector in Cote d'Ivoire:

This project is funded by the European Partnership for Responsible Minerals (EPRM) and implemented by IMPACT, Solidaridad, *Cooperative d'Entraide de Dabakala (COOPEDA)* and *Societe Ivoirienne de Commerce SARL (SICOM)* from October 2022 – October 2024 (EPRM, n.d.). The project aims to support responsible sourcing along the gold value chain by integrating traders within the complex network of the gold sector and is acting as a pilot project. The project aims to increase transparency, demonstrate responsible trading practice and provide incentives for traders and miners to engage within formal markets (EPRM, n.d.). The project employs knowledge already gained from the Just Gold Project established by IMPACT, COOPEDA and SICOM and digital and non-digital tools already tested by Solidaridad and IMPACT (EPRM, n.d.). In addition, the project aims to disseminate the information collected with the Government of Cote d'Ivoire and EU governments looking to support responsible sourcing and trade in CAHRAs (EPRM, n.d.).

Plan National de Rationalisation de l'Orpaillage (PNRO): Due to rising informal activities in the ASM sector impacting local populations and the environment, the Ministry of Mines and Industry, in collaboration with the UNDP, sought to 'clean up, organise and regulate the artisanal gold mining sector' between 2013 and 2016 (UNECA, 2024; Sauerwein, 2020). The project included five phases: (i) training government officials and informing local communities about illicit mining activities, (ii) information gathering on informal mining sites and activities to assess the issue, (iii) closing of informal mining sites by security forces, (iv) improvement of mining techniques implemented by SODEMI, and (v) rehabilitation of mining sites by former ASM operators (Sauerwein, 2020)

Property Rights and Artisanal Diamond Development (PRADD) II: This was a USD 18 million project funded by USAID and was implemented between 2013 and 2018 (USAID, 2020a). Some of the objectives of the project were to improve Cote d'Ivoire's compliance with the Kimberley Process and improve the livelihoods of artisanal diamond mining communities (USAID, 2020b). The project also had a strong focus on gender inequality by providing mechanisms to allow women secure land rights, have input in decision-making processes, access financing opportunities (USAID, 2020b).

3.3.4 Investment needs and opportunities

The ASM sector in Côte d'Ivoire presents some potential to contribute to future ECRM production, however, government policy regarding mining has largely focused on industrial mining operations, gold and diamond production. With strategic focus from the government, investment needs and opportunities can be identified, ensuring that the ASM sector can contribute to ECRM production efficiently, effectively and with social and environmental impacts accounted for. These investment opportunities have been suggested based on information collated from publicly available resources and conversations with stakeholders.

3.3.4.1 Strategic review of ASM sector and governance

Existing literature has highlighted the challenges for development of the ASM sector, and how these are embedded in the limited strategic contribution attributed to ASM mineral production. Reportedly, the government has been in the process of revising the strategic materials for the country, and this would take into account both industrial and ASM production, and potentially identify ways for legal cooperation



among the two and revise the mining code accordingly (Personal communication with stakeholder, November 2023). The government is looking at a greater integration of the ASM sector and critical minerals production as part of proposed reforms in the ASM in Côte d'Ivoire (Kabore, 2024). A strategic recognition of the role of the sector, and related policy actions represent a precondition for sustainable and responsible development of ASM operations, including in the area of ECRM production. This would call on the government to proactively carve a role in its governance for the support of the ASM sector, addressing the very concrete challenges which have been already identified, such as burdensome licensing processes and limited support to formalisation.

3.3.4.2 Baseline study of ASM activities of tantalum and niobium

Considering the lack of information about production capacity of ASM for ECRM such as tantalum and niobium, it would be beneficial for a baseline study to be conducted about the geological occurrences of these and other ECRM, how ASM production operates, who is involved in trade, the finance mechanisms in place and markets available. Such a study would not only help attract investment based on a better outlined Ivorian mineral potential but could also help substantiate the strategic focus on the ASM sector and identify or confirm existing limitations to the development of ASM mineral production. For example, the limited infrastructure, energy, and transport routes, hindering the production of critical raw materials (Personal communication with stakeholder, November 2023). Finally, it could guide the design of programmes which support the sector, beyond the production of gold and diamonds, as per existing initiatives like the EPRM funded work to support ASM gold producers or the planetGOLD project implemented by IMPACT. Nevertheless, such initiatives could provide useful learnings and methods to expand similar activities with ECRM producers.

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3.4 Democratic Republic of Congo (DRC)

3.4.1 Introduction and ASM sector overview

The Democratic Republic of Congo (DRC) is well recognised for its mineral wealth, rendering it one of the world's most prospective mineral-rich countries and certainly a key mineral producer in the African continent. It is arguably characterised by the most significant involvement of the artisanal and small-scale mining (ASM) sector in the production of extended critical raw materials (ECRM) commodities among the African countries. The ASM ECRM commodities in the DRC comprise copper, cobalt, cassiterite (tin), columbite-tantalite known as coltan (source of tantalum) and wolframite (tungsten) (defined often as a group as 3Ts) (Gerig et al., 2020).

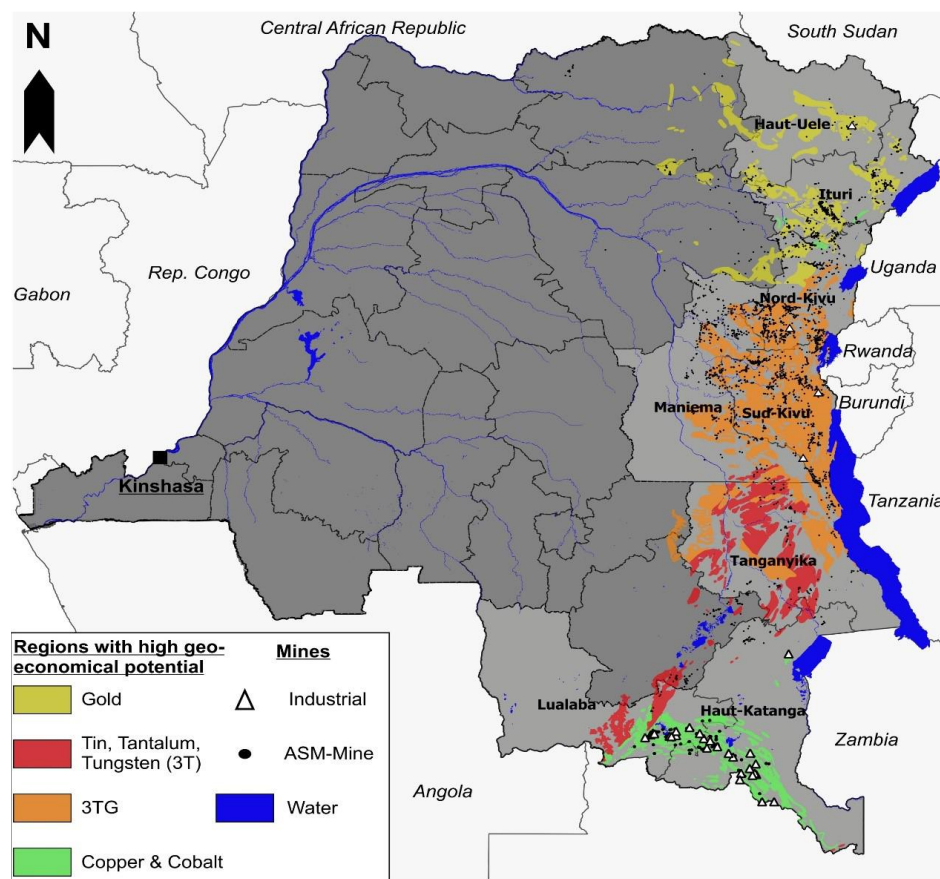


Figure 4 Map of the DR Congo and the most important mining regions, *Bundesanstalt für Geowissenschaften und Rohstoffe (BGR), 2021*

Considering the scope of the present profile, most of the analysis will focus on the 3T and cobalt-copper production. To the extent possible differentiation will be made across the different commodities based on data available from secondary sources and information received through stakeholders' interviews.

Copper-cobalt ASM production mainly takes place in the Southern provinces of Haut-Katanga and Lualaba (Gerig et al., 2020), and it has been assessed that it contributes between 15% and 30% of cobalt production in the country (BGR, 2019) (OECD, 2019). Despite the emergence of responsible sourcing

initiatives aiming at formalising ASM organisations, the majority of the ASM copper-cobalt sector continues to operate informally. ASM sites have been observed on operating large-scale mines (LSM) permits, on areas without operations but having either mining permit (PE) or exploration licenses (PR), or lands without any type of licence and not yet designated as an area for artisanal and small-scale exploration (Deberdt, 2021). The later section on ASM sector challenges will delve into the limitations derived from the lack of viable ASM designated areas.

3T minerals production has mostly been taking place in the Eastern region of the DRC and some more limited production in the former Katanga province. Key regions include North and South Kivu, Maniema and Tanganyika and Haut-Lomami (part of former Katanga province) (Gerig et al., 2020). Among the 3T, cassiterite registers the higher levels of production and the ASM sector represents about 30% of national cassiterite production (CTCPM, 2023). The figures below summarise the distribution of production of 3T among the key provinces, for the first semester of 2023 (CTCPM, 2023).

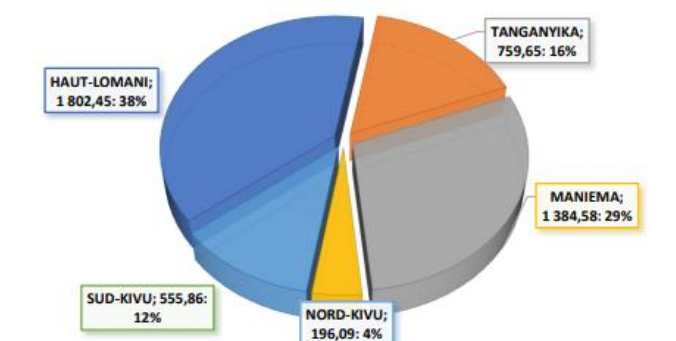


Figure 5 CTCPM, 2023, Distribution of artisanal cassiterite production (in tons) in the first semester of 2023

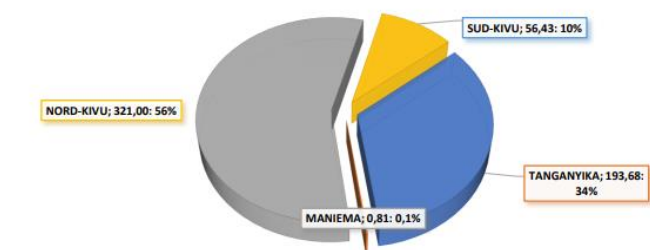


Figure 6 CTCPM, 2023, Distribution of artisanal coltan production (in tons) in the first semester of 2023

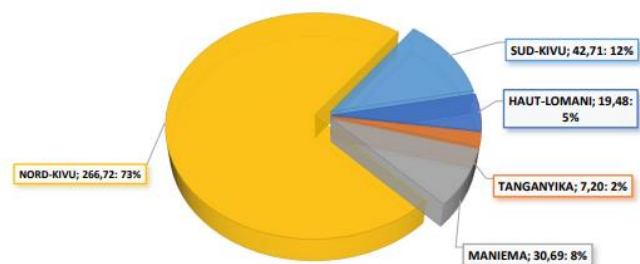


Figure 7 CTCPM, 2023, Distribution of artisanal wolframite production (in tons) in the first semester of 2023

Characterised by ongoing conflict and instability, the Eastern DRC regions have been under the attention of due diligence initiatives for over a decade. Risks of corruption, money laundering and interference of armed groups in mineral production have continued. Organisations like IPIS have been collecting data on such risks, in addition to information on miners involved and trading dynamics. As a result, the 3T sector has seen the development of several initiatives aiming at improving trading practices, and to prevent any link between 3T minerals production, conflict and some of the worst human rights violations. However, recent analysis identified that 61% of mine sites assessed still present some form of armed interference. This does not only affect 3T sites, but even more so gold sites, which represent about 85% of those assessed (Marie-Rose et al, 2023).

Despite the DRC's abundance of resource wealth, the country remains one of the poorest worldwide. It is estimated that almost 70% of the DRC's total population live under the extreme poverty line of USD 2.15 per day (OPHI-UNDP, 2023). Many people within the DRC have few livelihood options. This is a result of many years of conflict, corruption, political turmoil, and economic mismanagement. It is recorded that more than 97% of employment can be considered informal (ILO, 2023), putting the informality of the ASM sector into the broader picture of a significant informal economy.

Existing data collection efforts, both in the 3T and copper-cobalt sectors, give an indication of the number of people involved in ASM mineral production from which an estimation of how many depend on the sector for their livelihoods can be drawn. In eastern DRC alone, about 130,000 miners have been identified (Matthysen et al., 2023), while in the copper-cobalt production area, in the former Katanga province, estimates put the number of miners at 150,000 – 200,000 during periods of high cobalt prices (BGR, 2019), though may reduce significantly, down to about 50,000, during low-price periods. Despite difficulties in obtaining exact and updated estimations, also due to the informal and dynamic character of the sector, the data that IPIS has been collecting since 2009 across several eastern provinces, but also from fewer sites in the former Katanga province, provides an indication of the size of the sector, more than 2000 sites visited and almost 400,000 miners identified over the whole period. It can be deduced that the sector has some economic importance in these areas. A study in 2020 estimated that artisanal tin miners earn between USD 2.7 and 3.3 per day and despite the value being low, artisanal mining still represents a better option compared to alternative incomes in rural areas (De Brier et al., 2020). In fact, more than 73% of people in the DRC earn less than USD 1.9 per day (De Brier et al., 2020), below the World Bank extreme poverty line, estimated at USD 2.15 per day (World Bank, 2023). 2018-2019 estimations in the copper-

cobalt production show that daily earnings for artisanal miners can be higher than those observed in the 3T sector, depending on tasks covered at the mine site (miner, transporter, washer). However, these values highly depend on international market prices, and reductions at a global level can negatively impact miners, who in practice work in a subcontracting arrangement with their financiers (OECD, 2019).

3.4.1.1 Applicable regulation and mineral sector governance

The DRC Mining Code, LOI N° 007/2002 DU 11 JUILLET 200, , most recently amended in 2018 into LOI N°18/001 DU 09 MARS 2018, includes specific provisions for artisanal and small-scale mining. While a detailed analysis of the regulatory environment is beyond the scope of this country profile, further information can be found in the Deliverable 4.1 of the AfricaMaVal project (Awases et al., 2023), the DRC Country Case study under deliverable 9.3, and in the first section of the present deliverable 7.2. Therefore, this section outlines the key characteristics of the applicable laws impacting the ASM sector in the DRC and aims at providing relevant context to understand what is meant by ASM actors operating informally, i.e., not having obtained the required documentation, or illegally, i.e., operating in such a way which is not allowed by law.

The mining code defines ASM as the activity of artisanal miners, in the *Zone D'Exploitation Artisanale* (ZEAs), which performs minerals' extraction with non-industrial tools, methods and processes. An 'artisanal miner' or 'operator' is any natural person of Congolese nationality who holds a valid artisanal miners' card and is a member of a mining cooperative engaged in artisanal mining of mineral substances within a ZEA (Loi N° 18/001, 2018). Mining cards are delivered by the provincial representation of the ministry of mines, it has a validation period of one year, and it can be renewed for the same period without limitations (Loi N° 18/001, 2018). ZEAs are geographical areas defined by the Ministry, where based on technical and economic factors industrial or semi-industrial mining is not possible. Before the Ministry defines ZEAs, a recommendation is to be received by *l'Organisme spécialisé de recherches*, the provincial government, the head of the provincial mining division, from the local authority and the mining cadastre. Based on geological information also SAEMAPE can request the establishment of a ZEA (Loi N° 18/001, 2018). Based on the mining code, a ZEA cannot overlap with a mining permit, although the law foresees an exception in case of a written agreement between the mining permit holder and the ASM cooperative (SARW, 2018). According to mining law, ASM actors can only operate in recognised ZEAs and they should organise themselves in cooperatives. In practice, and in particular in the copper-cobalt areas, artisanal miners and organisations also operate on industrial mining permits. When there is no official tolerance or an agreement between the mining permit holder and the ASM organisation, the ASM activity can be considered illegal (EITI, 2023), although operators and local authorities may tolerate the presence of such artisanal miners in the interest of public security.

In terms of trade, artisanal miners can only sell their production to traders (*négociants*), commodity exchanges, official counters (*comptoirs*) or entities created or approved by the State (e.g., *l'Entreprise Generale du Cobalt* (EGC)) (Loi N° 18/001, 2018). A trader is any natural person of Congolese nationality who purchases mineral substances from artisanal miners from approved mining cooperatives and resell them to approved *comptoirs* and processors (Loi N° 18/001, 2018). Traders should also obtain a trader card, which is also delivered by the provincial authority, is valid for one year, and can be renewed without

limitations. Similarly, approved official *comptoirs* should also obtain a buying permit, agreed by the Ministry, which is also valid for one year, and renewable for the same period (Loi N° 18/001, 2018).

A ministerial order in 2022 has established the principles for the functioning of trading centres (*centre de négoce*). These trading centres would function as a public service, intended to regulate, and facilitate the trade of minerals produced by ASM organisations, in line with standards of transparency, traceability and responsible sourcing recognised by the State (*Arrêté ministériel n 00879/CAB.MiN/MINES/01/2022, 2022*).

Several institutions are involved in the governance of the mining sector, with specific responsibilities in relation to the ASM sector.

- The Ministry of Mines: implements the government programme and mining law, it is responsible to promote mineral resources, follow up and perform technical checks of the mining activities in the DRC. It provides direction to the government on all matters relating to mining.
- The *Cellule Technique de Coordination et de Planification Minière* (CTCPM): an institution with an advisory, research and coordinating role of the mining activities in the DRC. According to the applicable legal texts, the CTCPM in particular is responsible for harmonisation and coordination among the departments and institutions involved in the mining sector, planning of activities related to the value chain of minerals, from research to trading, divulging information related to the mining sector and to control the implementation of planned mining activities (CTCMP, n.d.).
- The *Centre d'Expertise, d'Evaluation et de Certification* (CEEC): has the objective to validate and certify minerals produced in the DRC. This includes ensuring the traceability of minerals including those produced by ASM and provide support to the counters (*comptoirs*) to control minerals' trade. In particular, the CEEC is responsible for the following certificates: Kimberley process, the ICGLR Regional Certification Mechanism (RCM) for the 3TG (tantalum, tin, tungsten and gold), the origin certificate at the export and trading certificates (CEEC, n.d.).
- The *Service d'Assistance et d'Encadrement de l'Exploitation Minière Artisanale et à Petite Echelle* (SAEMAPE): a technical public service, administratively and financially independent, with the objective to support the ASM sector (EITI 2023).
- The mining cadastre: in charge of managing the Congolese mining sector by overseeing the applications and allocation of mining licenses (CAMI, 2017). For the ASM sector, it is responsible to register ZEAs in the national cadastre system and ensure that mining licenses do not overlap with ZEAs (EITI, 2023). The national geological survey (SGN-C) shall be involved in outlining the ZEAs as far as geological evaluations are concerned.
- Provincial governors: they are responsible to define the provincial policies on several subjects, including on mining activities. They can propose areas where it is not allowed to perform mining activities and they are called to submit an opinion in the case of the establishment of ZEAs (EITI 2023).



- Provincial representative of the ministry of mines: working under the supervision of the provincial governor, they are responsible for overseeing the provincial mining activities.
- Mining division (*Division des Mines*): a national department under the Ministry of Mines responsible for the administration of the sector and it has provincial representation. At provincial level it provides further support to the provincial governor and ministry representatives on matters related to mining (EITI, 2023). They are responsible to emit the miner and trader's cards (Loi N° 18/001, 2018).
- *La Police des Mines et Hydrocarbures* (PMH) : it is responsible to support the maintenance of public order in the mining areas, engage in preventing and dealing with offences relating to the protection of mining resources, and take part in environmental protection and nature conservation initiatives, in collaboration with the relevant specialist departments and bodies (*Police Nationale Congolaise*, 2020).

3.4.2 ASM mineral value chains

Considering the informal character of the ASM sector in the DRC, as in other countries, drawing a precise picture of value chain relations can be challenging due to limited official information and the dynamic nature of the sector, which is constantly changing and evolving. As a result, this section tries to summarise the key actors of ASM sector in the DRC and then reflect on specific available information when it comes to the copper-cobalt and 3Ts and supply chains.

3.4.2.1 Value chain actors

Available resources to-date have mostly tried to represent the artisanal mining sector as a linear value chain. Certainly, the various phases do exist as the mining substances make their way to the end users in several geographies, but this representation struggles to reflect the broader sociological, economic, and political factors. The numerous interconnections, the number of transactions – frequently lateral – the coexistence of formal and informal relations, the overlapping of economic and political interests that confer on the system its own logic are often neglected. The present document will also be simplifying the value chain for descriptive purposes, but the authors wanted to highlight the limitations of a simplified model, and the need to look at these value chain chains by recognising their complex dynamics in reality.

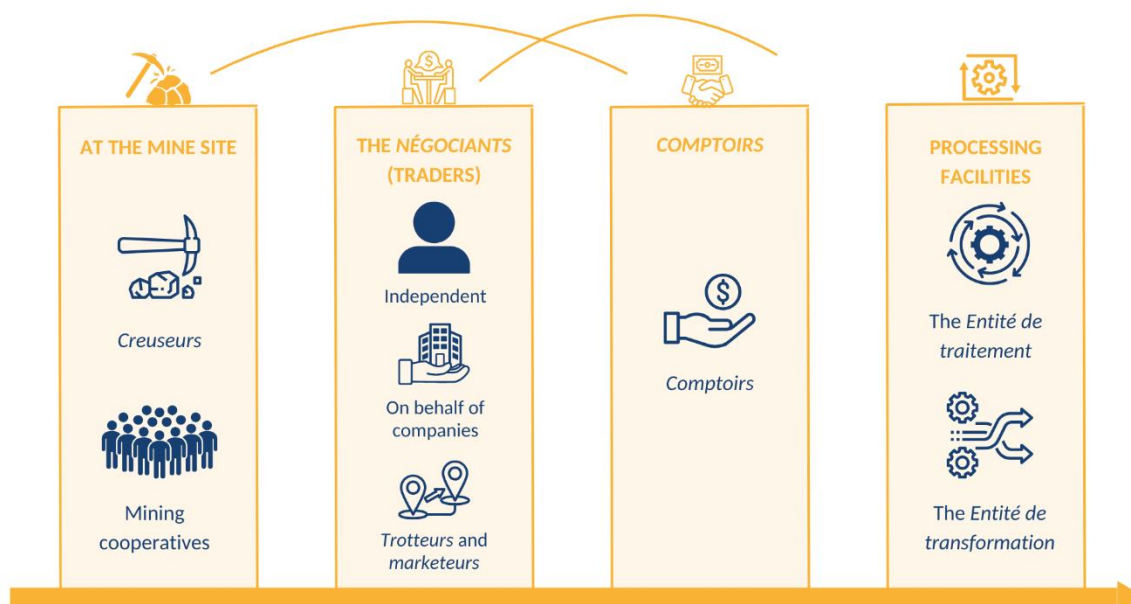


Figure 8 Simplified representation of ASM value chain actors, image created by the authors based on information presented in this report, March 2023.

3.4.2.1.1 The *creuseurs* (diggers)

The work at each mine site is mainly organised around the role of the *creuseur* (digger) and their team. *Creuseurs* refers to ASM diggers, while the broader term of ASM miners refers to all categories of workers directly involved in mineral production on an ASM site (diggers, washers, transporters). As most ASM production takes place in underground tunnels, each team is usually allocated to a specific pit. Their work is supervised by the team leader, who coordinates the work of the *creuseurs* and who acts as the main point of contact of the team with authorities and other stakeholders. The notion of the *creuseur* is not precisely defined by the legal texts governing artisanal mining production. As a matter of fact, the law does not represent the great variety of professions that can be identified at each artisanal production sites and only mentions one single category, namely the artisanal mine operators, as seen in the previous section.

3.4.2.1.2 The *négociants* (traders)

Traders buy minerals production from ASM operators by directly visiting the mines. The traders are many and they continuously change by moving across different sites. Based on observations and experts research in the areas of copper-cobalt, the following categories can be distinguished:

- Independent businessmen, among whom only a few are registered, who buy the mineral ore for their own trading activity.
- Other traders buy ore in larger quantities on behalf of companies with which they have long-term contracts.
- “Moving” traders called *trotteurs* and *marketeurs*, are individuals working for mining companies or for particular traders. They will visit any site in remote areas or in the proximity of large towns to take

samples, make agreements with miners and buy the production. Then they deliver to the trading hubs or processing plants of those who hired them. They negotiate directly with the miners, offering them a price and then make agreements to collect the ore. They usually do not pay the artisanal miners with their own financial resources, but they receive an advance payment from the trader or the company who has engaged them. They are also responsible for the transport of the ore, for example by using trucks of their financiers. Since the “moving” traders buy ore from anywhere, this makes identifying the origin of the minerals difficult, as no questions are usually asked to these traders about the origin of the material, and no information is recorded at the different stages of the different transactions.

Similar dynamics were observed in the 3T sector, where the *negociants* would usually prefinance mining activity, and at times engage commissionaires or managers who would buy ore from mine sites on behalf of bigger traders (Matthysen et al, 2019).

The great majority of the traders operate in the informal sector and operate as a micro-business. Some artisanal miners are active as micro-traders and prefer to keep their share of the product instead of to immediately selling it to the trader-financier.

3.4.2.1.3 Mining cooperatives

As indicated by the mining code, ASM miners need to be organised in cooperatives who are supposed to (but rarely do) operate in ZEAs and in accordance with legal requirements. A mining cooperative is incorporated in accordance with the Uniform Act on the Law of Cooperative Societies (Uniform Act, 2010). The mining cooperative is authorised to produce, sell and transport the ore to the processing or trading centres, or processing the ore directly if they have obtained specific permits by the Ministry (EITI, 2023). Reportedly, cooperatives in the mining sector mostly operate under the control of individuals or a group of individuals, who pay artisanal miners for the diverse functions at the site and who do not represent permanent members of the cooperative, but they would leave once they have completed their work if offered a better deal elsewhere (EITI, 2023). Reportedly, the cooperative model in the mining sector in the DRC does not always protect the interests of diggers, or even some traders. It can be exploitative to miners and there is cooperative functioning where miners as members can engage in decision making and overall management of the organisation.

3.4.2.1.4 Comptoirs

The 2018 mining code recognises the comptoirs as all the persons who have been authorised to buy mineral resources from ASM production either from traders or ASM producers themselves. They can resell locally or export in line with the requirements of the mining code (Loi N° 18/001, 2018).

3.4.2.1.5 Processing facilities (*Entités de traitement et transformation*)

A difference should be made between:

- The *entité de traitement*: any economic entity in the form of a sole proprietorship, trading company or mining cooperative which, through mineralogical and/or metallurgical processes, obtains a marketable mining product in the form of a concentrate or refined or refined metal from ores.

- The Entité de transformation: any economic entity in the form of a sole proprietorship, trading company or mining cooperative which, by means of industrial processes, changes the form and nature of the concentrate or of the refined or refined metal and obtains marketable finished or semi-finished products therefrom.

3.4.2.2 Copper-cobalt

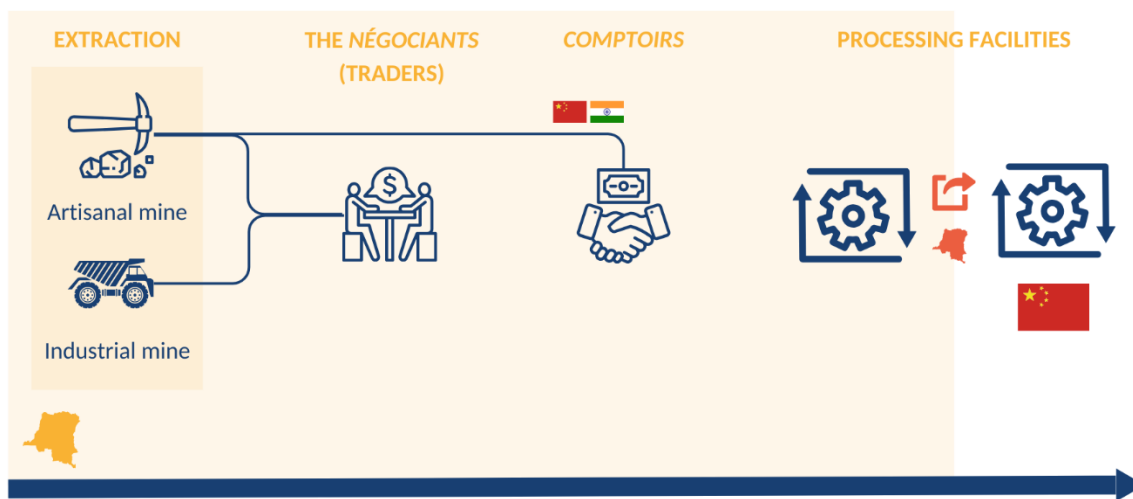


Figure 9 Simplified representation of ASM copper-cobalt value chain, image created by the authors based on information presented in this report, March 2023.

The copper-cobalt sector in the provinces of Haut Katanga and Lualaba is characterised by the joint presence of significant industrial operations and ASM actors. Although exact estimates of the share of production at any given time are difficult to obtain, these two groups certainly coexist and contribute to the Congolese cobalt's production. As indicated earlier, the ASM sector contributes between 15 and 30% of national cobalt production (BGR, 2019) (OECD, 2019). Despite the coexistence, there is no evidence that industrial mines have formal agreements with artisanal miners to buy the ore they produced (BGR, 2021). In February 2024, the announcement by *Gécamines*, a state-owned mining enterprise, has signed an agreement with EGC to concede five mining sites to artisanal producers (Reuters, 2024). The effects of such agreement are yet to be observed and it is not possible at this stage to assess how it will impact the trade of artisanal cobalt in these locations. Further details about EGC and recent announcements are included in the initiatives section later in this profile.

Existing observations of the trading dynamics in the copper-cobalt sector confirm that ASM cooperatives usually have agreements (often short-term and informal) with *comptoirs* involved in the mineral trade. These are mostly small or medium sized companies often owned by Chinese (e.g., CDM, TCC, MMC, Huachin) or Indian individuals and companies (e.g., Chemaf, SOMIKA). When not sold to specific clients, the cobalt (or copper) ore is taken to market hubs such as the Musompo or Kisanfu market. Reportedly,

creuseurs might not receive fair treatment at these hubs, as the weighting and testing methods which then determine the price, appear untransparent and disadvantageous to them. Nevertheless, at these counters miners would often get a better price than when traders buy directly from the site and where miners have even lower negotiating power. Generally, except for few pilot projects with international partners, trade of cobalt and copper is characterised by limited or complete lack of transparency, both in terms of materials and financial flows.

Another characteristic of the copper-cobalt supply chain is the presence of processing facilities in the country, which leads to cobalt concentrates, which are then usually locally refined to crude hydroxide before export. These crude cobalt refining products (both from industrial and ASM sources) are then further refined abroad. In 2022, companies in China had around 68% of the global cobalt refining capacity (Quiggin and King, 2023). In 2021, BGR identified 18 companies, likely sourcing from ASM as well, who export cobalt or copper intermediate or refined products from the DRC (BGR, 2021). Recent announcements have also referred to plans of developing a domestically owned copper-cobalt, project developed by the Congolese firm Buenassa, with U.S financing. The operation would aim at processing minerals produced by the ASM sector (Bloomberg, 2023).

3.4.2.3 3T minerals

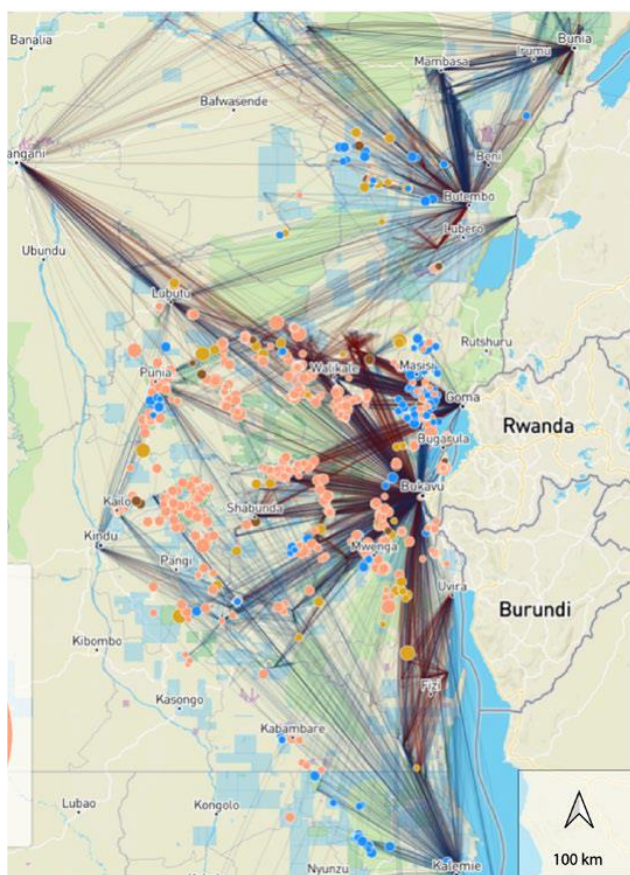


Figure 10 IPIS, 2021, Comparative analysis between cobalt and 3T sourcing from the DRC

For the descriptive purpose of this section, two main differentiating characteristics will be highlighted between the copper-cobalt and 3T value chains. First, the 3T sector presents higher transporting challenges, where the mines are located often in remote areas and further away from trading and export hubs (Hoex et al., 2021). Secondly, limited processing takes place for 3Ts within the DRC, compared to what was mentioned for the copper-cobalt sector. Most of the ore production would be exported as concentrate to then be smelted or refined abroad (Hoex et al, 2021).

Because of the remote location of 3T mine sites, it can happen that transporters walk for a day with bags of ore of 50kg until reaching the closest processing entities, situated in provincial or other larger cities (Hoex et al, 2021). These cities include mostly Goma and Butembo in North Kivu, Bukavu, Uvira in South Kivu, Kalemie in Tanganyika and potentially Bunia in Ituri and Kisangani in the Tshopo Province (Hoex et al, 2021). The figure on the side provides a visualisation of such trade

dynamics. The transport to the international market would then proceed beyond the border, mostly towards Mombasa in Kenya and the Dar El Salaam port in Tanzania (Hoex et al, 2021).

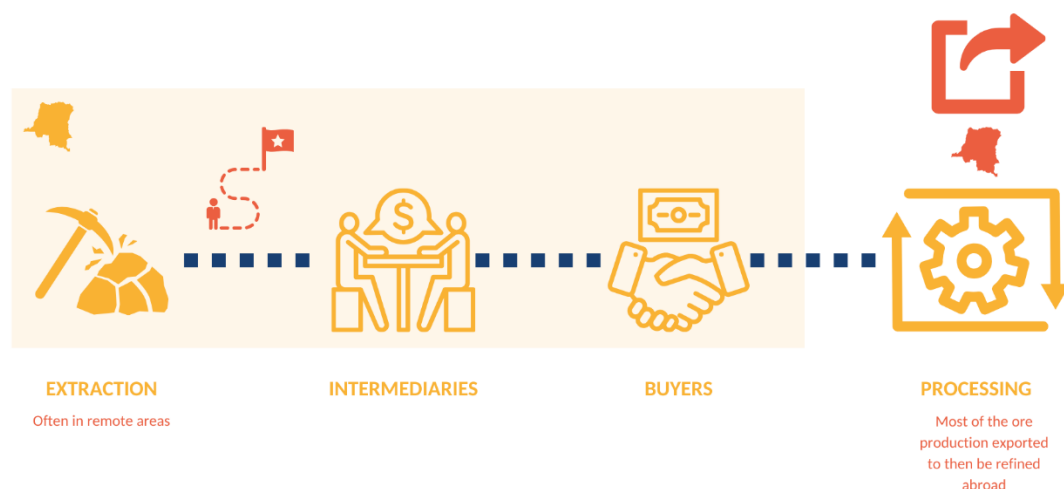


Figure 11 Simplified representation of 3T minerals value chain, image created by the authors based on information presented in this report, March 2023.

3.4.3 ASM sector challenges

This section outlines the challenges of the copper-cobalt and 3T-mineral sectors that prevent their development into responsible artisanal mining sectors that contribute to local economic development and prospering mining communities. Although there are key similarities between both sectors in terms of the challenges they face, especially environmental and social impacts, there are also important differences for certain elements around legal security of tenure, conflict and instability in the Eastern region, and ASM-LSM dynamics being specifically relevant for the copper-cobalt sector. Therefore, each sub-section below starts with a focus on copper-cobalt dynamics and related challenges, before highlighting similarities and differences with the 3T sector. The last sub-sections address cross-cutting challenges relevant for both mineral sectors combined. Importantly, the outlined challenges should be considered when identifying and defining responsible investment avenues for critical raw material production. Governance and ASM legal access to mineral deposits

Many of the issues facing the Congolese artisanal mining sector can be related to the lack of strong mineral sector governance. Despite the adoption of ASM as a legal form of mining in the Code Minier (2002, and revised in 2018); the clear stipulation of taxes and levies; procedures around permit licensing, and environmental and social requirements for ASM mining in the *Réglement Minier* (2003, and revised in 2018); and the presence of legitimate state authorities in ASM mine sites, the sector still seems to be plagued by high levels of informality, systemic corruption and illegal payments to government officials as well as a lack of effective state monitoring and oversight of ASM operations (OECD, 2019; BGR, 2021; Mancini et al, 2020). SAEMAPE for instance, the technical agency of the Ministry of Mines established to assist artisanal miners, is described to not (fully) fulfil its task while not respecting and enforcing ASM

related procedures at ASM mine site, often due to a lack of resources and capacity (BGR 2021). Mining authorities such as SAEMAPE and Division des Mines agents as well as Mining police agents (Mining Police - *Police des Mines et Hydrocarbures*) are frequently associated with illegal taxation practices (Diemel 2018, Iguma 2017).

3.4.3.1 Governance and ASM legal access to mineral deposits

3.4.3.1.1 Copper-cobalt

One of the biggest challenges of DRC's ASM sector governance is reportedly related to the absence of formal and sufficiently mineralised artisanal mining zones (*Zones d'Exploitation Artisanales*, ZEA's), which is often mentioned as a key impeding factor for the artisanal sector to become professionalised in line with internationally recognised human rights and environmental due diligence standards.

Potentially mineral-bearing land in the Lualaba and Haut-Katanga Provinces is already almost completely covered by industrial mining permits - including those owned by the Congolese parastatal *Gécamines*. This leaves only very limited space to create ZEA's that are economically viable for ASM miners and accessible through sufficiently developed infrastructure (OECD, 2019; ICG, 2021).

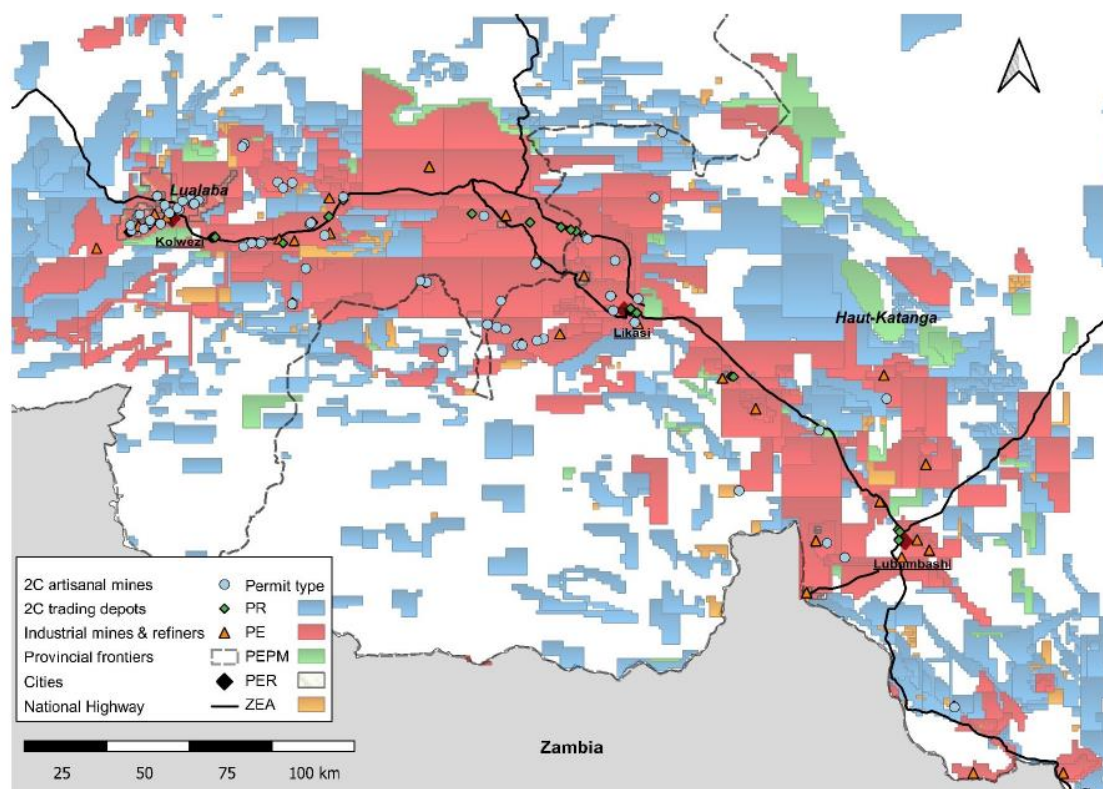


Figure 12 BGR map of Haut-Katanga and Lualaba mining and exploration licenses and ASM copper-cobalt sites (BGR 2021, p15).

As a result, artisanal mining largely takes place on privately owned mining permits, including the ones owned by *Gécamines* and other industrial mining companies. On those industrial permits, ASM takes

either place in parts where LSM actively operates (on PE: *Permits d'Exploitation*), which often leads to operational risks and dangerous situations, or on inactive parts of the permit and exploration permits (PR: *Permits de Recherche*). Permit holders may tolerate and allow artisanal miners to operate on their permits to benefit their social license to operate or simply because of the significant difficulties with resettling mining communities, who in some cases have been active on deposits since the 1990s. Notably, the Code Minier permits the closure of a ZEA with 60-days' notice if a mineral deposit viable for industrial exploitation is discovered which complicates the provision of long term legal mining rights to artisanal miners (ICG, 2021).

In its mapping of artisanal mine sites between 2019-2021, the German Federal Institute for Geosciences and Natural Resources (BGR), in cooperation with SAEMAPE, concluded that 87% of the ASM mine sites it studied were located on industrial permits, with only three of the total 53 mine sites studied by BGR and SAEMAPE taking place on actual ZEA's (BGR, 2021).

Consequently, the larger part of the ASM operations do not hold legal mining rights over the mineral deposits they operate, and the competing interest over mineral deposits often lead to confrontations between ASM and LSM operators. Artisanal miners are reported to harass and target industrial mines' personnel (OECD, 2019) and to damage equipment. On multiple occasions, cases of forced evictions and violent interactions were observed, leading to human rights abuses by private and public sector security forces linked to LSM operations.

In June and July 2019 for example, the Congolese army FARDC (*Forces Armées de la République Démocratique du Congo*) expelled over 10,000 artisanal miners that had illegally (and on multiple occasions violently) encroached on the industrial mining permit of Tenke Fungurume Mining (TFM)¹³⁷⁴ for decades. During the eviction, at least one artisanal miner lost his life and the FARDC torched the artisanal miners' settlements to prevent them from returning (ICG, 2021). During the same period, a large landslide accident occurred on the Kamoto Copper Company (KCC)¹³⁷⁵ permit, causing 43 artisanal miners to lose their lives. In a response to curtail ASM activity the FARDC deployed on KCC's permit and removed thousands of miners, leading to three deaths according to some sources (Reuters, 2019).

3.4.3.1.2 3T minerals

Such confrontations between ASM and industrial miners are less common in 3T mining in the eastern Kivu Provinces, Ituri and Northern Katanga considering that 3T minerals are to a far lesser extent mined through industrial operations. Nevertheless, the 3T sector does suffer from similar issues around the lack of legal ownership for ASM operations. Various ZEA's have been created by the Ministry of Mines over the past decade, but the total number of economically viable and mineralised ZEA's is very limited. In 2021 IPIS estimated that only 4% of the 3T mines in Eastern DRC are situated on a ZEA while the IPIS webmap demonstrates that the vast majority of 3T ASM operated mine sites are situated on industrial permits (either PE or PR) (Hoex et al, 2021).

¹³⁷⁴ TFM is a joint venture between the Congolese parastatal mining company *Gécamines* and China Molybdenum (CMOC) and located in the Lualaba province.

¹³⁷⁵ KCC is a joint venture between the Congolese parastatal mining company *Gécamines* (25%) and Katanga Mining (75%) a Glencore subsidiary.

In the copper and cobalt ASM sector, ASM operators located on industrial permits are in many cases tolerated but do not have legal rights. In the 3T sector, by contrast access to industrial permits is frequently obtained through various forms of legal agreements between cooperatives, mineral traders and permit owners. SAKMIMA, the Congolese state-owned mining company active in Eastern DRC, for instance, does not have the capacity to invest in industrial mineral exploitation and hence authorizes ASM cooperatives to operate on its permits in exchange for a fee on the production (Hoex et al, 2021). In Tanganyika, northern Katanga, 3T mineral traders (comptoirs) are known to sign 'leasing contracts' (contrats d'ammodiations) with industrial permit owners such as Gécamines (Diemel 2018, p114-118) allowing them to collaborate with cooperatives to extract 3T minerals on those permits.

3.4.3.2 Informal ASM mineral trade

3.4.3.2.1 Copper-cobalt

The informal set-up of ASM operations is mirrored in the organisation of ASM mineral trading in the provinces of Lualaba and Haut-Katanga. With smaller and larger ASM operations scattered across the two provinces, copper and cobalt mineral trading is fragmented between a large number of small mineral traders (négociants) selling and transporting minerals from mine sites to a wide set of mineral trading houses (comptoirs or also called *dépôts*) who in turn deliver to copper and cobalt processing entities (*Entité de traitement* or *Entité de transformation*) based in the main cities of Kolwezi, Likasi and Lubumbashi, or in some cases to industrial mining operators. The supply chain is shorter in case of the larger ASM sites that are directly situated in the outskirts of Kolwezi.

The comptoirs, where minerals are bought and sold, are mainly located in makeshift sheds located alongside the main national road between Likasi and Kolwezi (N39), such as at the Kisanfu, Musompo or Mulungwhishi mineral markets. Although the Code Minier stipulates that those comptoirs need authorisation from the Congolese mining authorities to operate legally and can only be owned by Congolese nationals, the mineral trade is dominated by Chinese, and, to a smaller degree, Indian and Lebanese nationals running the comptoirs, making it difficult for the Congolese authorities to trace mining products and collect taxes over artisanal mineral trade (Umpula and Basil, 2023; OECD, 2019). Adding further complexity to the sector is the involvement of politically exposed people (PEP). The substantial economic interest in controlling artisanal mineral extraction and trade has led to PEP's affiliation with mineral trading comptoirs (ICG, 2021; OECD, 2019) or their involvement in ASM cooperatives (OECD 2019, p30; Mancini et al, 2020).

These vested interests in the preservation of this informal and highly segmented mineral market, impede the establishment of longer-term formal mineral trading agreements or partnerships with cooperatives operating ASM mine sites. In instances where such agreements exist, they are not equally negotiated or in many instances not respected by the mineral traders. As a consequence of the absence of such stability in mineral off-take and pricing, as well as the lack of legal ownership over ASM operations, mining and trading actors seem to focus on quick profit rather than long-term investments into semi-mechanisation and professionalisation.

3.4.3.2.2 3T minerals

The segmented and informal mineral trading characterising the copper-cobalt sector, also applied to the pre-2011 Congolese 3T sector. However, the adoption of 3T mineral sector regulations and initiatives to formalise that 3T sector and trace minerals back to their origin, brought some change in 3T mineral supply chains after 2011. Conflict-mineral reporting requirements under Section 1502 of the Dodd Frank Act (2010), the adoption of the ICGLR Regional Certification Mechanism into Congolese law (2012) and the implementation of traceability schemes in the 3T sector increased transparency over mineral supply chains aiming to trace minerals from mine sites to processing (Diemel, 2018). Combined with DRC government decisions to award mineral trading rights to specific larger mineral traders in the 3T sector around 2012, mineral trade became concentrated in the hands of a few *comptoirs* (see the case of MMR in Iguma 2017 and Diemel 2018). This formalisation of the mineral supply chain negatively impacted intermediary traders (small-scale traders known as *négociants*) cutting them out of the supply chain while simultaneously increasing supply chain transparency and stability through direct and long-term mineral trading agreements between ASM operators and single *comptoirs* (see the case of MMR in Iguma 2017 and Diemel 2018). This in turn created more certainty around revenue flows for the *comptoirs* in 3T mineral trading, making it easier for them to predict profits and hence make investments into the ASM operations they sourced from (Diemel 2018). Despite such positive developments towards increased supply chain transparency, significant challenges remain. Expanding traceability schemes and mine site verification missions beyond a limited number of 3T mine sites appears difficult due to a combination of high levels of insecurity in various parts of the Eastern DRC provinces (IPIS 2022) the vastness of the Congolese 3T sector and the significant costs of tracing minerals along the supply chain. Additionally, international civil society organisations have reported how traceability schemes do not manage to effectively put a hold to illicit flows of minerals between the DRC and neighbouring countries and in cases even acerbate them (Global Witness 2022).

3.4.3.3 Instability and conflict in Eastern DRC

When illustrating the dynamics of the minerals and ASM sector in the DRC, the continuous conflict and instability affecting the Eastern regions of the country, cannot be overlooked. The risks of “conflict financing” have sparked significance attention to the region and led to the implementation of regulatory and due diligence efforts discussed in other sections of this profile. Despite the many years of research and reports trying to explain the relation between mineral resources and conflict, some of the recent analysis confirms the limitations of defining the exact characteristics of such relations (Matthysen and Gobbers, 2022). However, three types of conflict can be derived from this analysis. First, conflict over the mineral resources and involvement of armed groups to defend claimed land and resources. Secondly mineral trade being particularly used to finance the operations of armed groups and thirdly risks connected to the weak governance of the sector (Matthysen and Gobbers, 2022). While this profile will not replicate detailed analysis available on the subject, the risks connected to the instability and conflict in some of the mineral rich areas, in particular for the 3T minerals, should be considered when looking at the successes and challenges of existing initiatives or in the context of engaging the private sector on investment opportunities, since risks linked to conflict will likely represent a barrier.

3.4.3.4 Role and organisation of ASM cooperatives

While the previous 2002 version of the *Code Minier* recognised both individual artisanal miners and ASM cooperatives, a Ministerial Decree prohibited mining ‘*en solo*’ in the 3T sector from 2010 onwards and required artisanal miners to group in cooperatives (Diemel 2018; De Haan and Geenen 2015). The revised regulation led to the impressive rapid creation of numerous cooperatives in both the former Katanga province as well as the Kivu’s (Diemel 2018; De Haan and Geenen 2015). Additionally, the revised *Code Minier* (2018) requires all artisanal miners, also those in the copper-cobalt sector, to become affiliated to a cooperative.

The more prominent role allocated to cooperatives as a representative of artisanal miners’ interests in 3T and copper-cobalt mining has been applauded by international donors and civil society as an important development to empowering miners through political representation. However, many allege that these cooperatives are largely being used to advance capture of ASM mineral sector revenues and to foster personal economic interests of powerful PEPs (De Haan and Geenen 2015; Mancini et al, 2020; OECD 2019). Artisanal miners, for instance, indicate that cooperative membership to them means little more than the payment of a membership fee, without receiving any benefits in return, other than authorisation to access a specific ASM site (Mancini et al, 2020). Reportedly, cooperatives do not provide technical assistance, health and safety oversight or support mine site investment. In addition, artisanal miners do not seem to be represented by their cooperative in the negotiation of mineral prices vis-à-vis traders and in interaction with state mining authorities (Diemel 2018; DeHaan and Geenen 2015; Mancini et al, 2020).

Although these negative aspects, pertinent to the functioning of many cooperatives, have received attention through internationally funded programmes such as PROMINES (2010-2017), many of the DRC cooperatives continue to be organised top-down and are often owned or led by local or national PEPs (OECD 2019; Mancini et al, 2020), rather than adhering to fundamental cooperative principles.

3.4.3.5 Financial barriers to local ESG investment

ASM operators in copper-cobalt and 3T mineral supply chains, such as cooperatives, require access to financial services, as any other business, to fund minerals’ production, improvements in the efficiency of mineral extraction (e.g. through semi-mechanisation), but also to meet environmental and social requirements (e.g. investment into safer working conditions). However, in most cases ASM operators lack access to the formal banking sector for various reasons.

Whilst many countries officially recognise ASM and support it as a viable way to alleviate poverty and contribute to the country’s economy, the primary development objective in most of these countries continues to be focused on creating an investment climate for LSM operations (Siegel and Veiga, 2009). The banking sector has rarely considered ASM operators as a commercially interesting market, over the past years. Where this has happened, ASM operators were often faced with high interest rates and inflexible repayment schedules, following from the commercial banks’ perception of the ASM sector being non-transparent, uncertain and highly risky (PlanetGOLD, 2020).

ASM supply chain actors rely on cash-based financing outside of the realm of commercial banks. Small payment advances are for instance exchanged between miners and *nécogiants*, where *negotiants* function as *sponsors*, pre-financing excavation activities until artisanal miners actually find mineralised soil (Iguma, 2017). Another example relates to these same *négociants* being commonly pre-financed by larger *comptoirs* or exporters. Although such informal financial structures certainly allow for production and mineral trade to continue, additional larger scale investments are often needed to obtain legal mining licenses or to transform artisanal (rudimentary) mining into semi-mechanised small-scale mining and increase production as a result.

At the same time, the use of informal financing avenues is often a red flag for formal financial institutions and market actors, preventing them from entering relationships with artisanal miners. These red flags mostly relate to compliance risks regarding money laundering or connections to criminal activities like non-state armed groups or extremist organisations, as well as reputational negative impacts stemming from the risks of child labour in artisanal mining. This creates a vicious cycle for artisanal miners, as their use of informal lenders plays a significant role in preventing them from accessing formal markets and financing, which in turn leaves them reliant on those very same informal lending sources (Seguin et al, 2023).

Various financial institutions outside of the commercial banking sector, such as government-led and/or donor funds, do support ASM often with an explicit objective to promote ASM formalisation. Additionally, there exist multiple examples (Seguin et al, 2023) of **community savings groups, like Village Savings and Loans Associations (VSLAs) as well as** microfinance institutions (MFIs) that aim **to promote financial inclusion of artisanal miners and mining communities'** economic empowerment (PlanetGOLD, 2020). It is noteworthy that none of these community saving groups or micro-finance programmes seem to have achieved scale and financial sustainability in the DRC.

Recent successful collaboration with regional commercial banks as part of ASM professionalisation projects demonstrates that the long-held perception of the ASM sector as 'unbankable' is increasingly out of date. The USAID Zahabu Safi (Clean Gold) Project partnered with Equity BCDC and Trust Merchant Bank (TMB) to unlock financial services and products to ASM operators in eastern DRC (USAID, 2022). These experiences, that very well balance ASM related risks with ASM operators' wish to gain access to commercial banking services, bear key lessons and encouragement for other financial institutions as well as development agencies. Despite the significant challenges associated with their replication and upscaling, efforts involving TMB and Equity BCDC show that, even in highly complex markets such as the ASM gold sector in eastern DRC, private sector engagement approaches can help connect ASM operators with the local banking sector.

3.4.3.6 Occupational health and safety risks

The copper-cobalt and 3T artisanal mine sites are characterised by rudimentary modes of operation. Although copper and cobalt are in some cases hand-picked above ground (often referred to as *ramassage*) for example on industrial waste rock dumps or in former tailings dams, the larger part of copper-cobalt and 3T minerals are extracted through subterranean tunnelling. Such underground work comes with significant health and safety risks. The Congolese Code Minier has set limits to the vertical depth of

artisanal tunnels at 30m to reduce the risk of tunnel collapses. However, in many cases tunnels have much great depth, easily getting to 70m (BGR 2021 and Mancini et al, 2020). As ASM tunnel structures are not reinforced through timbering and lack basic support for climbing up and down to take out the ore, artisanal miners face significant safety risks including landslides, tunnel collapse, injuries from falling and rockfall. To provide a sense of the extent of such safety risks, BGR recorded 59 fatal accidents at 19 different copper-cobalt ASM mines sites, and a total of 851 injury related accidents at 44 copper-cobalt mine sites, in the provinces of Lualaba and Haut-Katanga in 2020 alone (BGR,2021).

SAEMAPE maintains registers of existing tunnels at mine sites. New tunnels are only allowed after authorisation. The agency is responsible to monitor safe distancing, prevent the risk of intersecting tunnels and tunnel collapse. However, such safety procedures are not always respected or enforced (BGR 2021).

Additionally, the absence of general mine site design, including storm water management, regularly results in flooding of tunnels and the associated risk of drowning, when heavy rainfall, in cases combined with water discharge from neighbouring industrial operations, lead to an excess of water inflow at artisanal mine sites. This occurred at the Kamilombe mine site in January 2022 (Sturmes, 2020).

Lastly, long-term exposure to mine-dust during mining and processing activities as well as exposure to heavy metal through mineral washing in washing ponds without the use of Personal Protective Equipment (PPE) leads to various serious occupational health risks (Mancini et al, 2020).

3.4.3.7 Child labour

Although the prevalence of child labour in artisanal mine sites has been described in multiple reports (e.g., PROMINES (2010)) over many years, more recent reporting from international NGOs (Amnesty International, 2016) managed to generate extensive attention to the presence of children at copper-cobalt mines, especially after media outlets picked up on it (CNN, 2018). Different forms of child labour have been observed in both copper-cobalt and 3T mineral mine sites, where children are involved in mineral collection, sorting, washing, crushing and transporting. According to research conducted in 2016 by the Center for Effective Global Action (CEGA), a research hub connected to the University of California (Berkeley), around 50% of children who were encountered at ASM mine sites were between 15-17 years old, 41% between 10-14 years old and 8% were younger than 10 (Faber et al, 2017). The older children were reported to be mostly involved in the worst types of child labour, such as underground tunnelling, and hence being exposed to associated detrimental health and safety risks. Many of these children begin working at mines at a very young age, usually accompanying their parents. Over time, families with limited income and economic opportunities can begin to depend on the money their children earn to help cover basic necessities, and children reaching adolescence start working independently at the mine sites (OECD, 2019).

While the exact number of children working in copper-cobalt ASM mine sites is unknown, estimates range between 5,000 and 35,000 (DoL, 2021). BGR's mapping of ASM copper-cobalt mine sites observed children present or working at 30% of the ASM sites surveyed, with numbers varying from site to site (BGR 2021). In-depth studies by the Centre for Child Rights and Business (Gaffar et al, 2021) and the University of

California-Berkeley's Center for Effective Global Action (Faber et al, 2017) indicate that child labour is largely driven by economic factors, and that children mostly work to cover school fees for themselves and their siblings, and to add to household incomes. The majority of children in the Copperbelt who perform work, mostly work on domestic chores (Faber et al, 2017). Among the children who work outside of their homes, 44% work in artisanal mining, (Gaffar et al, 2021). While, 72% of the children between 15-17 years old working in ASM communities work as artisanal miners due to a lack of alternative employment options (Gaffar et al, 2021).

3.4.3.8 Mineral pricing and miners' income

As artisanal miners mostly earn on the basis of their daily mineral production, their income heavily fluctuates with international prices of copper, cobalt and 3T minerals. Their vulnerability to the volatility of international mineral prices became apparent when for instance cobalt prices dropped by 75-80% in early 2018 (OECD 2019). The income position of artisanal miners is further jeopardized by their weak negotiation power during the sale of their mineral production. At *comptoirs*, where artisanal miners trade their minerals, mineral buyers are said to regularly misrepresent and manipulate the actual weight and mineral concentration measurement, offering artisanal miners low prices for the minerals produced (Mancini et al, 2020; BGR 2021).

3.4.4 Institutional reforms and relevant initiatives

This section includes an overview of existing reforms and initiatives that have involved ECRMs' stakeholders in the DRC as well as internationally. The authors recognise that a multitude of reforms, projects and initiatives have been taking place, however the following paragraphs do not intend to provide an extensive and comprehensive overview, but rather focus on those which are considered as most relevant to the analysis, based on their scope, objectives and actors involved. The objective to reflect on these initiatives is twofold. On one hand, when identifying and addressing investment opportunities, it is important to recognise existing efforts to address challenges, leverage the learning and successes of these initiatives and build on them for further effort, where appropriate. On the other end, it also helps framing the investment needs in synergy and complementarity with existing work.

3.4.4.1 Copper-cobalt specific regulatory reforms and initiatives

Over the past five to eight years important steps have been taken, and multiple initiatives implemented aiming for the professionalisation and formalisation of the DR Congolese ASM cobalt mining and trading sector. The DR Congolese government foremost has committed to addressing the ASM sector's governance challenges through the introduction of policy and legal frameworks. In recent years, the 2002 Code Minier was amended and supplemented to form the revised 2018 Code Minier notably changing key provisions related to the potential relationships between artisanal miners, industrial mining companies and local communities (ICG, 2021). One such provision imposes increased taxes on important minerals like cobalt and introduced a community development royalty set at 0.3%. The revised legislation further mandated that all artisanal miners (not only 3T but now also copper-cobalt miners) must be part of a cooperative to engage in legal mining within specifically designated ZEAs (Umpula et al, 2021). Other reforms provide artisanal miners and mining companies with important legal options for cooperation, for

instance where industrial miners are allowed to enter into subcontracting agreements with ASM cooperatives to profit from deposits covered by their licenses but that are not economically viable for exploitation through industrial methods (ICG, 2021).

Additionally, the DRC government has made attempts in recent years to act against the highly segmented ASM mineral trade by unauthorized comptoirs. In August 2016, the provincial government of Lualaba ordered the shutdown of all illegal comptoirs trading ASM mined cobalt and copper. However, the shutdown led to resistance when closures were initially attempted, and trading along the national route between Lubumbashi and Kolwezi persisted in the following years (Umpula and Bisil, 2023). Ultimately, in the summer of 2019, the FARDC (Armed Forces of the Democratic Republic of the Congo) demolished all unauthorised mineral trading houses concentrated in Mulungwishi and Kisanfu, amongst others (Mancini et al, 2020). While the FARDC's intervention curbed the open mineral trade to some degree, a significant portion of production shifted towards the existing mineral markets in Musompo and Likasi or continued informally at ASM sites or within private residences in Mulungwishi and Kisanfu (OECD 2019, p29).

In September 2023, the DRC government announced the establishment of the Musompo Trading Centre (MTC). The indoor mineral trading market, situated just outside of Kolwezi, aims to streamline taxation practices by mining authorities and promote transparency around the ASM mineral trade by means of channelling ASM minerals through a single formalised marketplace. To combat unfair pricing and illegal mining practices the market additionally houses mineral depots, well-equilibrated weighing bridges, and laboratories for the determination of mineral concentration.

3.4.4.1.1 The *Entreprise Générale du Cobalt* and ARECOMS

In November 2019, the DR Congolese prime minister issued two important decrees with the aim to enhance the formalisation of the ASM mining and trading sector. The first decree created a new body, the Authority for the Regulation and Control of Strategic Mineral Substances Markets (*Autorité de régulation et de contrôle des marchés de substances minérales stratégiques* - ARECOMS) to serve as the industry's regulatory authority, overseeing the production and export of strategic minerals, such as cobalt. The decree outlines that it is ARECOMS responsibility to conduct mine site inspections to ensure compliance with the DRC mining laws, e.g. around mine-site safety, and act against informal and illegal ASM mineral production. At the time of writing this report, ARECOMS had not become operational yet.

The second decree authorised Gécamines to establish a subsidiary called *Entreprise Générale du Cobalt* (EGC). EGC has been granted exclusive purchasing, processing, and marketing rights for artisanal cobalt in the DRC for a five-year period. One of the primary objectives of the EGC is to improve the business environment for artisanal cobalt production and guarantee that all artisanal cobalt mining operations adhere to the EGC Responsible Sourcing Standard, a set of operational requirements that was co-developed with support from EGC's private sector partner Trafigura, and introduced in March 2021 (EGC website, n.d.). The EGC standard stipulates ea., prohibitions of tunnelling for safety reasons; requirements around maximum pit-depth of 10m; as well as the provision of Personal Protective Equipment (PPE). Interestingly, both DRC public authorities as well as cooperatives highlighted that setting ESG related requirements for the artisanal mining sector is a task allocated by the DR Congolese government to the regulatory authority ARECOMS. Critique has also been voiced, for a large part by ASM mining cooperatives

and Congolese civil society around whether EGC will be able to offer artisanal miners a higher price than existing comptoirs currently offer them (IGC, 2021). EGC further intends to utilise its exclusive purchasing power to restrict artisanal mining activities to ZEAs, which will be subject to monitoring to ensure compliance with the EGC's new Responsible Sourcing Standard.

In November 2020, EGC announced an [agreement](#) with commodity trader Trafigura, US-based global NGO PACT and due diligence consultancy firm Kumi Consulting (IIED, 2021), known as the EGC-Trafigura partnership. With Trafigura pre-financing EGC's purchasing capacity with \$60 million, the partnership aimed to source from various ASM cobalt sources, amongst others the large Kasulu mine site within the city of Kolwezi, over which EGC claimed to hold a mineral trading monopoly. At these mine sites, ASM copper-cobalt production is to meet the requirements as set out in EGC's Responsible Sourcing Standard to further increase safety at the mine sites where the EGC-Trafigura partnership intends to operate, further invest is planned into machinery for topsoil tripping to facilitate artisanal ore excavation. As part of this partnership, PACT, is to implement socio-economic programs aimed at ea., enhancing health and safety standards, promoting human rights and offering support to cooperatives (Umpula et al, 2021). Although EGC was meant to start operations early 2020, the *Gécamines* subsidiary has been struggling to get operations up and running amongst others due to political tension over ownership and distribution of mineral trading revenues, but also due to difficulties to get its finances for mineral purchasing in order (ICG, 2021). Only recently in February 2024, after various years of negotiations with *Gécamines*, did the *Gécamines* and EGC sign an agreement granting EGC exclusive mineral trading rights to five mining areas in Lualaba and Haut-Katanga (Reuters, 2024). At the time of writing this profile, it is uncertain whether Trafigura is or will be involved, and what role they would play.

3.4.4.1.2 International responsible ASM cobalt initiatives

In addition to the development of EGC's responsible sourcing requirements, also the international community has made attempts to develop specific ASM cobalt sustainability requirements. In 2023, for instance the ASM Cobalt Normative Framework was published as an outcome of a collaborative effort involving multiple industry stakeholders (the Responsible Minerals Initiative (RMI), the Chinese Responsible Cobalt Initiative (RCI), the Fair Cobalt Alliance (FCA), the Global Battery alliance (GBA) and its Cobalt Action Partnership (CAP)). The objective of the ASM Cobalt Normative Framework is to pave the way for responsibly sourced ASM cobalt and to facilitate ASM miners' involvement in the expanding cobalt market (RMI, 2023) while following a progressive approach that enables investment into the professionalisation of ASM cobalt operations. The Framework was developed in conjunction with the DRC Minister of Mines, and its criteria are fully aligned with the legally binding requirements of the Certified Trading Chains (CTC) mineral certification system. As of 2023, RMI is preparing for the piloting of the ASM Framework at ASM mine sites in collaboration with a technical committee of the Congolese MoM (RMI, n.d.).

At provincial level, in the DRC, increased multi-stakeholder dialogue and collaboration has also been witnessed, at provincial level in the DRC. The IDAK multi-stakeholder dialogue brings together public authorities, private sector actors such as LSM mining companies as well as cooperatives and civil society organisations. Though its organization of regular discussion groups and conferences on key ASM and LSM



related issues, it has facilitated ongoing engagement between key stakeholders amongst others around potential forms of collaboration between ASM and LSM operations (IDAK, n.d.).

Within the German-Congolese development cooperation, the BGR supported its Congolese partners on various efforts related to responsible ASM sourcing. Some prominent examples include: (1) together with SAEMAPE, field mapping and data evaluation of all accessible ASM copper-cobalt mining and trading sites in the provinces of Haut-Katanga and Lualaba; these mapping exercises in the 2018-2021 period will be followed up in 2024-2027 through a dedicated cooperation with the national EITI secretariat, who also engaged in similar mapping activities in the past; (2) training of Congolese CTC auditors to allow higher local ownership in ASM assurance schemes; auditors were formally accredited by the FEC in March 2023; (3) conducting two CTC training audits on copper-cobalt ASM sites in late 2023 (sites of Kamilombe and Shabara); (4) assessment of environmental impacts of ASM sites (conducted for one mine in the copper-cobalt, 3T and gold sector each); (5) cooperation with SAEMAPE and SGN-C on the geological evaluation of ZEAs in southwestern Haut-Katanga (follow-up activities in Lualaba planned).

Training and capacity building projects have further enhanced cooperative and local mining authorities' capacity to manage occupational health and safety risks in the DRC's ASM copper-cobalt sector. As an illustration, Cobalt for Development (C4D) is a project implemented by GIZ's private sector business arm, the Deutsche Gesellschaft für Internationale Zusammenarbeit International Services (GIZ InS), since 2019 and exclusively funded by a cross-industry partnership including BASF, BMW, Samsung Electronics, Samsung SDI and Volkswagen Group. Collaborating with local artisanal mining cooperatives, government bodies, and civil society groups, the initiative provided technical trainings and coaching around the implementation of legal, safety, and environmental requirements to 14 ASM cooperatives and local mining authorities. Additionally, C4D assisted neighbouring villages in boosting economic and social welfare of both miners and the community more broadly (C4D, n.d.). While the project aimed to support ASM on an actual cobalt pilot mine site, they have not been able to identify a suitable site over the past five years. This illustrates the challenge mentioned above regarding the lack of viable ZEAs as a legal base for ASM in the DRC. This is a common challenge for many international partners seeking to engage in the DRC ASM cobalt sector.

In January 2018, the Trafigura Group signed a marketing agreement with Chemaf and Shalina Resources Ltd. The agreement included Trafigura's support in addressing social and environmental impacts as Chemaf aimed to mechanise cobalt extraction and had concerns about the impacts on ASM operators working within the Mutoshi concession and whose livelihood was linked to cobalt production. To support such endeavours, Trafigura engaged with PACT to implement formalisation activities and to support ASM organisations operating within a defined area of the concession to comply with Trafigura responsible sourcing expectations and the OECD due diligence guidance requirements. The initiative was labelled as the Mutoshi pilot and focused on capacity-building and improving socio-economic conditions for artisanal miners (AMs) and their families. The COMIAKOL co-operative was chosen as the AM partner, with around 5,000 AMs registered as members (de Silva, Strauss and Morisho, 2019). Despite having shown promising results and positive contribution to local economy, women's participation, ASM operations productivity, reduced operating costs and better working conditions including on health and safety indicators



throughout its implementation (de Silva, Strauss and Morisho, 2019), in 2020, the pilot project was closed as a measure to address risks linked to the COVID-19 pandemic (PACT, 2020).

In 2020, the Fair Cobalt Alliance (FCA) was launched as a multi-stakeholder action platform bringing together actors from across the entire cobalt mineral value chain (including OEMs, DRC based industrial mining companies as well as international and Congolese civil society organisations) to address the growing scrutiny on ASM of cobalt and the mining sector in the DRC (FCA, n.d.). The FCA collaborates closely with the CMDS cooperative at the ASM Kamilombe mine site close to Kolwezi, to address negative impacts associated with artisanal mineral production, including working conditions, unfair mineral pricing and child labour. Through continuous improvement planning, training and programme funding from downstream cobalt sourcing companies, the initiative works towards the professionalisation of the ASM cobalt mine site.

3.4.4.2 3T minerals

3.4.4.2.1 ICGLR RCM

The International Conference on the Great Lakes Region (ICGLR) Regional Certification Mechanism is one of six tools approved by the ICGLR's 12 Heads of State and is part of the Regional Initiative against the Illegal Exploitation of Natural Resources (RINR). It serves as a compulsory regional standard for certification of the 3Ts (tin, tantalum, tungsten) and gold sourced from or transiting across any ICGLR Member State. The RCM is in line with the requirements of the OECD Due Diligence Guidance, seeking to ensure minerals production has not supported conflict and that has not contributed to some of the worst forms of human rights abuses. The implementation of the RCM framework falls under the responsibility of each Member State, who should integrate it into national regulation, and it focuses on 3TG minerals (ICGLR, 2019). Such implementation from Member States foresees:

- Mine site inspections, by inspectors appointed by Member States, which will assign a status to the mine, based on the outcomes of the inspection. The 2019 revision of the RCM has defined four possible statuses. Blue sites, including any mine site not yet inspected or which has not received a new inspection within the last year. Green sites, those which have been inspected and meet all the RCM criteria in AnnexA2. Yellow sites, provisionally valid which is not fully compliant with the RCM criteria and which has six months to demonstrate progress and improvements. Red status, for all sites non-compliance with the RCM criteria (including following yellow status, and failing to demonstrate significant progress or address required improvements). (ICGLR, 2019).
- Chain of custody (CoC), including by using industry initiatives, ITSCI, Better Sourcing, etc. (Kickler and Franken, 2017)
- Third party audits which assure independent verification of conformance with RCM requirements of Exporters' supply chains, from mine to export. Based on outcomes of the audit, exporters are assigned a status, blue, green, yellow or red, as per mine sites. (ICGRL, 2019)

- ICGLR export certificate, which applies only to exporters with green, blue or yellow status, who can demonstrate that for each lot there is conformance with mine sites and CoC requirements. It is granted by Member States from which the material is exported. (ICGLR, 2019)
- ICGLR mineral database, which is supposed to host data of mine sites, CoC and exporters based on inspections and audits. (ICGLR, 2019)

The RCM applies both to the industrial and the ASM sector.

3.4.4.2.2 CTC

The CTC (Certified Trading Chain) was developed by experts from government departments of the Democratic Republic of the Congo (working group), with the support the Technical Cooperation and Mineral Resources departments of BGR, based on an early version adopted in Rwanda's 3T sector from 2008-2011. The CTC provides a standard against social, environmental and governance indicators, and compared to other mechanisms (RCM, ITSCI, etc.) aims at assessing responsible mineral production beyond conflict indicators (Kickler and Franken, 2017). The system first applied to cassiterite (tin), coltan (tantalum), wolframite (tungsten) and gold mined in the eastern Democratic Republic of Congo, more specifically in the regions of Katanga, Maniema, South and North Kivu (Sterbik et al., 2015). Between 2018 and 2020, the CTC was updated to include direct references of the OECD Due Diligence Guidance and the 2018 revised DRC Mining Code. At this stage the scope of the CTC was also expanded beyond 3TG to include copper-cobalt, galena and semi-precious stones produced by ASM operators (bgr.bund.de The revised CTC standard became adopted by the Congolese Ministry of Mines in 2020 (BGR 2021). 28 CTC ASM site audits were conducted in the 2011-2017 period (against the old standard) and 8 audits were conducted in 2020-2023 (against the new standard). These audits were implemented by international independent experts. Over the past three years, a group of Congolese CTC auditor trainees was trained in order to increase local ownership in independent ASM assurance processes. Several of these trainees were successfully accredited against the ICGLR RCM standard, and two of them additionally succeeded to pass accreditation against the CTC standard.

3.4.4.2.3 ITSCI

The ITRI Tin Supply Chain Initiative (ITSCI) is a voluntary industry initiative aimed at addressing risks of conflict financing and other major human rights abuses, applying the OECD Due Diligence Guidance as reference framework. Their work currently focuses in Burundi, the DRC, Rwanda and Uganda (ITSCI, 2024). It provides a system for traceability, through a tagging system and logbooks, and due diligence, by working with governments and civil society and providing expert field, data, risk management and auditing teams (ITSCI, 2024). Arguably the most widespread initiative in the 3T sector in the DRC, in the first quarter of 2023, ITSCI had monitored 1,413 pits (from active and inactive sites) and recorded a total of 267 incidents, of which only 45 were reported as closed (ITSCI, 2023). In terms of traceability, data collected is fed into an online database, but not available publicly.

3.4.4.2.4 Better Mining

In addition to ITSCI, also Better Mining (formerly Better Sourcing Program – BSP), provides product traceability and independent third-party assurance on ASM sites to identify and manage risks, in

alignment with the OECD Due Diligence Guidance. Their process involved data collection on site, digital traceability of minerals from pits to smelters and refiners, risk analysis with recommended corrective actions, and risk management and monitoring (RCS Global, 2022). In 2022, a total of 7 mines in the 3T, 12 in the copper-cobalt and 1 in the gold sector were involved in the program (RCS Global, 2022).

3.4.4.2.5 IPIS monitoring

A very important initiative in terms of data collection in the 3T (and gold) sector, is represented by the work of IPIS to collect data around the ASM, in particular in the Eastern regions of the DRC, providing a map of ASM sites and an open data dashboard providing key information on certain ASM sites (e.g. ITSCI certification, presence of armed groups, etc.) and incident monitoring solution, Kufatilia, a tool for Congolese civil society organisations to report and monitor incidents in Eastern DRC in a transparent, independent and participatory way (Matthysen et al, 2019). IPIS and BGR cooperate on data sharing and selected findings from BGR-supported ASM copper-cobalt mapping activities are integrated into IPIS' webmap.

3.4.5 Investment needs and opportunities

The previous sections outline that the challenges facing the DRC's ASM sector are many, multifaceted and complex. The sector experiences a lack of strong mineral sector governance as illustrated by high levels of informality, systemic corruption and ineffective state monitoring. Imbalanced power relations in ASM mineral supply chains result in unfair value distribution and a focus on quick returns rather than long-term investment into professionalisation of the ASM sector. Negative social and environmental impacts, including dangerous working conditions, child labour, violent confrontation with security forces and low revenues are significant risks at most ASM mine sites.

However, the existing literature and efforts also demonstrate that a multitude of institutional reforms, supply chain assurance systems and the establishment of ASM professionalisation initiatives over the past years (both in mining as well as mineral trading) have laid an important foundation to support the development of the ASM sector and greater integration of locally-led and internationally recognised standards.

Investments into the professionalisation of the artisanal mining and trading sectors fit very well with the objectives of the DRC Ministry of Mines, as outlined in its Strategic Plan for Mining Sector Development 2023-2027 (*Plan Stratégique de Développement du Secteur Minier (PDSM) 2023-2027*) (RDC Ministère Des Mines, 2023). The DRC Mineral Sector Strategy highlights for instance the necessity to 'normalise the artisanal mining sector and promote its development towards small-scale mining' through training, investment and 'the establishment of artisanal mine development plans' (Axe 5, slide 7 and related strategic orientations on slide 41). In addition, the analysis of the ASM sector included in the strategy recognises challenges related to access finance (Axe 5, slide 9).

Such investments also seem well-aligned with the objectives as stipulated in the EU-DRC Memorandum of Understanding (2023). The EU-DRC MoU sets out the intention for 'cooperation in the field of sustainable global value chains, including value chains for critical and strategic raw materials' (such as cobalt), which could take the form of 'the integration of sustainable value chains for raw materials,

including networking, joint project development (e.g. through joint ventures), the creation of new business models and the promotion and facilitation of links between trade and investment' (collaboration area 1), and 'cooperation to achieve sustainable and responsible production, supply and use of critical and strategic raw materials, in particular by strengthening governance, due diligence and traceability, cooperating in the fight against illegal international trafficking in raw materials and aligning with international environmental, social and governance (ESG) standards' (collaboration area 3).

The following pages look into how partnerships could support addressing the challenges in the ASM sector, while also exploring opportunities to achieve sustainable and responsible ASM mineral production through integrated sustainable mineral supply chains and broader collaboration. These recognise the importance of clear processes and preconditions to be met to incentivise partnerships, including improving the legal framework to facilitate potential ASM engagement (e.g. research on ZEAs), support access to formal financing mechanism, facilitate engagement of supply chain actors and invest on improved production methods and skills. The identified opportunities can be summarised in three core concepts:

- Continued focus on responsible mineral value chains, coupled with public and private investments to improve environmental and social mining practices and greater engagement of the European private enterprises as commercial partners.
- Investments in the professionalisation of the ASM sector, through more efficient production and processing and skills development, ultimately addressing the needs of miners for sustained livelihoods.
- Promotion of programs which address some of the systemic challenges of the sector, including access to formal financing and investments in broader economic ecosystems.

Any planned investment would advisably build upon existing sector knowledge and expertise through close collaboration with existing initiatives. Equally, the continuous engagement, from the international community, including the European Union and other stakeholders from the region, to support transparency, improved governance and responsible business conduct along minerals value chains remains pivotal to ensure the development of the ASM sector and increase the confidence of the European private sector to invest and create commercial partnerships with economic actors in the DRC.

3.4.5.1 Private sector partnerships towards responsible and professionalised ASM sector

3.4.5.1.1 Copper-cobalt

Many of the challenges that face the ASM sector today flow from the lack of economically viable, mineralised and well-accessible artisanal mining areas (ZEA) for ASM operators, combined with a highly fragmented and informal mineral trading sector. As a result of the ASM sector's licensing practices and the dispersed mineral trading set-up, very few of the involved actors seem to be in a position or incentivised to invest in the professionalisation of artisanal mining operations. This is because

- 1) cooperatives' investment capability is heavily impeded by a lack of long-term tenure security as well as lack of access to commercial banking services;



- 2) mineral traders seem to refrain from establishing long-term trading agreements with ASM mine sites, preferring instead to maintain more flexibility around mineral pricing and off-take volumes, and lastly;
- 3) industrial license owners are reluctant to invest into ASM development as association with ASM material forms a reputational and legal risk due to ASM's negative perception.

Longer-term private sector partnerships, involving local and international actors, could help overcome these challenges and trigger a shift in thinking and incentives around investment and hence the development of the ASM sector towards improved mining practices and greater benefits for mining communities. Greater integration of mineral supply chains based on stable and fair off-take agreements could encourage and deepen long-term business relationships between DRC-based mineral traders and specific artisanal mine sites. At the time of writing this profile, observations of commercial dynamics demonstrate a challenging reality for such off-take agreements to take place, including with EU companies. As a result, some of the ideas outlined in this section, should also be considered as an avenue to increase private sector confidence in engaging with commercial partners in the DRC, including ASM production, while also being able to address European regulatory requirements. Experience from the 3T sector in the north of the former Katanga province shows that mineral traders are willing in principle to invest in better mine site management and productivity, supporting ASM cooperatives to gradually transform into semi-mechanised small-scale operations (Diemel 2018, see case of MMR in Lubudi and Tangyanika). Practical investments might include more effective mine planning around geological data; mechanised topsoil/overburden removal to reduce manual labour; construction of washing ponds; and the provision of mechanised equipment such as ventilators (to ventilate mine shafts), jack hammers and winches (to facilitate tunnel entry); and generators. Such investments have the potential to significantly improve ASM mining practices; making mining safer, healthier and more economically rewarding for artisanal miners and cooperatives, under the conditions that these are supported by a favourable legal environment for the sector.

Long-term, predictable and market-based partnerships have the potential to provide the stability required to incentivise such investments. Partners like the EU have a great role to play in reinforcing the confidence of the private sector, on the back of the commitments to support more sustainable and responsible mineral value chains and related investments on some of the ASM systemic challenges mentioned in this document and seen as risks. In addition, the establishment of a dialogue with the European private sector should be considered. Such dialogue would serve to understand the perspectives and existing barriers of the private sector in engaging with enterprises in the DRC, including those linked to the ASM sector. The barriers to engage with ASM producers are characterised by practical limitations, such as, but not limited to, engaging with a fragmented sector involving many actors, being able to perform traceable payments through banking systems and challenges linked to logistics. The perceived and actual risks associated to the ASM sector also represent an important barrier, considering the potential reputational damage from of association to human rights impacts. The further down companies are in mineral value chains (e.g. component manufacturers, automotive companies, etc.), the more there will be concerns about the actual leverage these companies have on identified and known risks and challenges in the sector. Although, these limitations are largely known in the sector, the dialogues proposed in this profile should



be directed at identifying implementable actions to make commercial partnerships possible. Besides involvement of private sector companies along different stages of the value chain, government representatives, EGC, large-scale mining companies where appropriate, traders, industry associations and importantly representatives of ASM organisations should take part in the discussion. Based on the outcomes of such dialogue, concrete steps could be determined to enhance public and private sector investments in the DRC mineral value chains (e.g. trade financing, off-take agreements, investment in social and environmental improvements, investments in improved mining techniques etc.).

3.4.5.1.2 3T minerals

Over recent years, significant attention has been on the DRC's role as a major global cobalt producer. By comparison, there has been less focus on the 3T sector where most efforts have prioritised managing the risks of conflict and instability through due diligence programmes and initiatives. Reportedly, when having a choice, miners have also preferred to engage in the production of more profitable commodities, including gold (Personal communication with stakeholder, December 2023). As a result, the authors identified fewer existing assessments identifying key investments needs, and most of the stakeholders engaged have spoken of the specific opportunities for the 3Ts sector in less detail. However, when looking at investment needs in the 3T sector, it is important to consider existing efforts of formalising trade and implementing due diligence standards, including through the work of local civil society involved in risk monitoring in initiatives such as Kufatilia. Greater focus could be directed towards further development of the 3T sector, from the perspective of geological opportunities, enterprise development and socio-economic development in the affected provinces, within the limits of the conflict-related impacts where applicable. This would complement existing efforts on due diligence and traceability.

Based on the authors' experience of engaging with 3T supply chain actors, there is interest from investors and trading companies to consider engaging mineral producers in the DRC, including SMEs. Some of the barriers so far have been found in the perception of high risks, and therefore reputational stakes, and potentially limited information of the economic potential of artisanal or small-scale operations. At the same time, existing information on trade dynamics confirm that local transactions up to export still rely on many individuals engaged in ad-hoc agreements with exporters and financiers. As a result, partnerships with investors and trading companies, for example supported by third-parties at first, might generate benefits for the 3T sector. Such partnerships could be built on the basis of longer-term commercial commitments and bring required investment and support to ASM organisations to progressively improve mining practices and performance in line with recognised regulatory expectations, including those defined by the government. Investment and trading companies could also benefit from more stable business relationships, have better access to information on the basis of the partnership as opposed to compliance-driven dynamics.

Following the outcomes of technical studies, as described in the next section, ASM producers could be involved in initiatives to improve organisational and mining practices, to enhance their capability to engage with investors and/or longer-term commercial partners. Although formalisation, as in supporting compliance with regulatory requirements and sector standards, would be a component of these efforts, specific expertise should be sought to transfer mining extraction and improved processing techniques, ultimately improving minerals' output and resulting in increased returns for miners. These efforts should

clearly build on and complement existing initiatives from due diligence programmes. It should be considered to pair due diligence programmes with technical support which increases the legitimacy of ASM operations as economic actors and addresses the needs of miners, such as increased production and therefore revenues, security of tenure, safety, etc.

3.4.5.2 Technical assessments: geological studies, ZEAs establishment and economic viability of small-scale operations

3.4.5.2.1 Copper-cobalt

Central to the development of a responsible artisanal copper-cobalt mining and trading sector is the provision of tenure security for ASM operators. Targeted investments could be made in tangible areas such as geological research and stimulating the licensing of ZEAs. Potential areas for the testing and development of new well-mineralised ZEA's could be mapped through a geological exploration / drilling campaign in pre-defined areas throughout the Lualaba and Haut-Katanga provinces. Such a geological study is very much in line with the DRC government's Strategic Plan for Mining Sector Development, which aims to 'intensify geological and mining research and strengthen the development of geodata infrastructures' (Axe 2, slide 7) (*RDC Ministère Des Mines, 2023*). Although in theory, geological drilling campaigns could help provide a better geological understanding, it is important to stress that such drilling campaigns are highly capital intensive and there is a risk that newly found deposits are easily allocated to LSM companies instead. For that reason, it would make sense to drill only to a depth of about 30 m, which allows cheaper drilling techniques to be deployed (e.g., auger drilling), gives faster results, and takes into account that ASM are not allowed to dig in deeper underground workings anyway (even though they are doing that in tolerated sites such as Kamilombe). Prior to drilling, systematic surface exploration (soil sampling) needs to be conducted as well.

In contrast, a large number of industrial mining permits with known mineral deposits are currently inactive, and already operated by ASM cooperatives. Hence, prior to launching extensive geological exploration campaigns it could be considered to explore engagement with industrial permit holders first. In-country dialogue platforms such as IDAK have facilitated dialogue between ASM and industrial operators and explored the options of ASM operations on other industrial mining permits extensively. The outcomes of such dialogues could form an important starting point to build further engagement.

The current ZEA as defined by CAMI and further geological data available at SGN-C are a first base for evaluation ASM exploration. The data gathered on over 50 ASM mine sites in Haut-Katanga and Lualaba, during the joint mapping exercise conducted by the Congolese Ministry of Mines, in collaboration with BGR between 2019 and 2020, could also prove to be an additional basis for the selection of a suitable ASM mine site and related partnership with the industrial permit holder and ASM operator/ cooperative. It is important to note though that many industrial operators have demonstrated reluctance to become associated with ASM. Furthermore, based on conversations around ASM-LSM cooperation, such as those organised by IDAK, it seems that only very few industrial operators including Gécamines seem open at this point to discuss the option of ceding or leasing a part of their permit to ASM operators, or to purchase ASM material from ASM operations on their industrial permits. Nevertheless, industrial permits, amongst other those owned by Gécamines, are currently for large part inactive. By formalising artisanal mining

operations, industrial as well as ASM operators could benefit commercially from collaboration without necessarily permanently giving up rights to mineral deposits. The DRC government could guide such dialogue between ASM and industrial operators for instance by allowing EGC or other traders to purchase ASM material from industrial mine sites, and by authorising leasing, purchasing and ceding agreements between such. The recent announcement by Gécamines about the agreement with ECG on conceding five mining areas in Lualaba and Haut-Katanga (Reuters, 2024), provides an example of how agreements could be structured.

Any investments around geological exploration or the creation of new ASM mining zones should take place in the context of policy reform and strengthened mineral governance to ensure their security and long-term success. Close collaboration and agreement with the DRC government from the start, for instance through Ministry of Mines specific Technical Planning and Coordination Cell (Cellule Technique de la Coordination et Planification Minière – CTCPM) is indispensable for the successful design and implementation of any private sector partnership. The existing EU-DRC MoU, which outlines the intention for strengthened sector governance, and the facilitation of links between trade and investment could help start engagement and potential negotiation with industrial permit holders on equal and well-established terms.

3.4.5.2.2 3T minerals

Among the 3Ts minerals, the DRC in particular produces tin and tantalum, and it is estimated that the ASM sector currently contributes 30% of tin production (CTCPM, 2023). Geological assessments and seeking a more solid understanding of the economic potential should be considered. This would mean clarifying confirming the economic viability of 3T deposits and as a result support the artisanal sector towards further professionalisation and where applicable to small-scale mining operations. Investments in smelting facilities should also be considered based on the outcomes from assessments (Personal communication with stakeholder, December 2023). Ultimately, such assessment would:

- Increase the Government's, and other relevant stakeholders' understanding of the geological potential and the existing barriers to advance the development of the sector, including the specific challenges linked to transport and logistics, and the economic dimensions such as feasibility to introduce semi-mechanised or mechanised methods and likely impacts on job creation.
- Increase confidence of investors, including sourcing companies, who could see more opportunity to engage in longer-term commercial agreements, and invest in measures to support advancement of the sector, beyond a compliance-driven approach (e.g., engaging in programs to improve social and environmental impacts of mining).

3.4.5.3 Unblocking broader socio-economic development opportunities

A final reflection goes into the role the ASM sector plays and can play in the broader economy of the Congolese provinces where ASM takes place. Arguably, most initiatives targeting the challenges of the ASM sector, tend to look at those in isolation, while a stronger link to socio-economic development should be considered. This is important not only to address some of the systemic challenges affecting the sectors, but also to guarantee the sustainability of interventions and programmes. For example, weak local



economies, poverty and lack of basic services such as education and health, are not isolated to well-known risks of the sector, such as child labour and broadly poor working conditions. In practice, this could translate in programmes and support mechanisms which improve ASM operations' access to formal financial services and focus on the development opportunities on sustainable livelihoods. This would include addressing the impacts of the transition toward small-scale mining, including potential loss of employment opportunities for low-skilled workers (while creating a lower number of positions for higher-skilled workers), and therefore the need to consider alternative livelihoods, skill training opportunities and broader economic development.

3.4.5.3.1 Access to finance

The investment needs outlined in this document focus on advancing the current status quo of the ASM sector for key ECRMs produced in the DRC. Beyond these crucial funding requirements to unblock some of the known challenges, there remains an important opportunity to support more sustainable access to formal financing mechanisms for ASM actors. The lack of formal financing does represent one of the important barriers for improved practices by ASM operators, who often find themselves constrained in informal, and at times exploitative, financing arrangements. Access to formal financing services on the base of an ASM business planning process could result in improved production methods, more in line with social and environmental expectations, investment in formalisation and professionalisation and ultimately longer-lasting commercial relations with formal market actors. This would entail identifying relevant financial institutions, including building on some existing work of commercial banks in the DRC, to provide financial products to ASM organisations and individuals. In particular, the USAID's Zahabu Safi (Clean Gold) project has partnered with two commercial banks, namely Trust Merchant Bank (TMB) and Equity BCDC to reduce the barriers for the ASM sector to access formal financing services (USAID, 2022). Such a model should be further explored as a fundamental instrument to address enhance the economic and social development potential of the ASM sector.

3.4.5.3.2 Sustainable livelihoods

ASM remains an important source of employment and this important contribution should be factored in when promoting investments in the sector, including by improving mining methods, expanding from artisanal methods to semi-mechanised / mechanised ones. However, it must be recognised that increased mechanisation and transition to small-scale mineral production can led to a loss of job opportunities for low-skilled workers, as the mining activity becomes less labour-intensive while requiring more advanced skillsets. As a result, to avoid worsening the socio-economic situation of ASM communities, investments to improve the professionalisation of the sector, should be coupled with programmes which address the employment or other socio-economic impacts. This would potentially include strengthening the skills of some miners who would continue to be involved in the sector (e.g., learning how to operate excavators, drillers, processing equipment) (Personal communication with stakeholder, February 2024). On the other hand, it is important to recognise the need to diversify economic opportunities, and tackling the challenges linked to the ASM sector from a rural development perspective (Personal communication with stakeholder, February 2024). This would imply supporting initiatives that address broader socio-economic challenges, to address poverty by promoting formal economic sectors, including, but not limited to ASM, and by supporting the integration of miners and artisanal mineral trade into the wider local economy.



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3.5 Ethiopia

3.5.1 Introduction

Ethiopia is endowed with vast mineral resources, yet their exploitation remains limited. Mining makes a modest contribution to the nation's GDP - accounting for less than 1% in recent years (IGC, 2022) – predominantly from gold (IBRD & World Bank, 2014) – and 14% of total employment in 2019 (EITI, 2021).

Ethiopia's mineral endowment encompasses tantalum, niobium, phosphorus, graphite, platinum group elements (PGE), nickel, manganese, and lithium (all ECRM), as well as non-ECRM gold, iron, salt, potash, soda ash, and gemstones, among others. Gold and tantalum (tantalite) are minerals produced via ASM in variable quantities. According to the United States Geological Survey (USGS), Ethiopia produced 70 tonnes of tantalum concentrate and 7 tonnes of niobium concentrate in 2019 (USGS, 2019). Adola, in the Oromia region, hosts tantalum and niobium in its Kenticha Belt, which extends for over 100 kilometres and covers an area of more than 250 kilometres (see Fig. 1) (MoMP, n.d.a). While tantalite has historically been mined at Kenticha on a small scale by industrial companies, their production is currently suspended (AfDB, 2021), while ASM of tantalum continues.



Figure 13 Location of the Andola belt in Oromia region (MoMP, n.d.a).

In light of the global green energy transition, the Government of Ethiopia is considering the country's graphite and lithium reserves as promising avenues for future investment. The Moyale deposit, located in southern Ethiopia near the Kenyan border, hosts an estimated reserve of 460,000 tons of graphite.

Additionally, graphite-bearing belts have been identified in the Adola region, stretching over several kilometres. Currently, exploration efforts are in progress to better qualify and quantify the graphite reserves. On the lithium front, potential reserves are found in the salt brines of southern Ethiopia's marine strata and in saline springs linked to volcanic activity in the Ethiopian rift of Afar. To fully tap into Ethiopia's lithium potential, private sector involvement is considered essential by the Government of Ethiopia. This involvement would enable the infusion of necessary technology and expertise for exploration (MoMP, n.d.a).

Ethiopia also holds promise in increasing the production of PGEs and phosphorus, as well as several other critical minerals. PGE production is notably taking place at the Yubdo platinum deposit, where artisanal miners have long been active. As for phosphorus, significant reserves are believed to be concentrated in the Great Rift Valley region but are currently not being extracted (MoMP, n.d.a). Additionally, nickel, cobalt, and chromium deposits are reported in the Adola and Kenticha belts in Sidamo, and manganese has previously been mined at Enkafala in the Afar depression, although no exploration or mining activities of these minerals are currently reported (AfDB, 2021).

In 2014, the MoMP shared that 152 potential investors for the mining sector were registered and 250 licenses had been granted, the majority of which to foreign investors; 180 of those were active exploration licenses. It is unclear, at the time of writing this profile, whether these investments have come through since then (IBRD & World Bank, 2014). In the fiscal year 2018 – 2019, the MoMP issued no new licences for the exploration of extended critical raw materials (ECRM) in Ethiopia (EEITI, 2021). Challenges to increase the mining sector's contribution to Ethiopia's GDP include the pressing need for high-quality geodata, fostering a more competitive local private sector, and streamlining governmental policies for sector governance. Furthermore, several stakeholders across the government and private sector have called for a diversification of exploration activities beyond precious and base metals to include industrial and construction-related minerals to facilitate local private sector participation (IBRD & World Bank, 2014). The Ethiopian Ministry of Mines and Petroleum (MoMP) has therefore, in recent years, outlined ambitious plans to significantly boost the mining sector's contribution to the country's GDP and foreign currency earnings: the Ethiopian Growth and Transformation Plan II (GTP II) sets out how the country seeks to increase the mining sector's share of GDP to 10% by 2025 (World Bank, 2020; AfDB, 2021).

3.5.1.1 The ASM sector

The ASM sector¹³⁷⁶ plays a substantial role in Ethiopia's mining sector, contributing over 65% to foreign exchange earnings from the country's extractives industry in 2014 and indirectly supporting the livelihoods of more than 7.5 million people, according to a survey conducted by the Ethiopian Extractive Industries Transparency Initiative (EEITI) in 2016 (EEITI, 2016). ASM takes place in all regions of Ethiopia (IBRD & World Bank, 2014). The ASM sector provides direct employment to approximately 1.26 million individuals, with regions like the Southern Nations, Nationalities, and Peoples' Region or "Southern Region" (SNNPR) and Oromia as significant contributors to royalty collections, amounting to 13.7 million birr (approx. 225.3k euro based on exchange rate in April 2024) and 7.9 million birr (approx. 129.9k euro

¹³⁷⁶ In Ethiopia, the ASM sector is typically referred to as the ASSM (Artisanal and Special Small Scale Mining) sector.

based on exchange rate in April 2024), respectively, in 2014. However, the World Bank estimated in 2014 that only 19.5% of potential royalty was collected from ASM due to governance challenges (EEITI, 2016).

Gold stands out as the predominant commodity mined through ASM operations in Ethiopia – ASM production of gold has a long history in Ethiopia as it has allegedly been mined for over 6,000 years (EEITI, 2016). ASM gold had an estimated annual production in 2019 of 3,178kg, primarily sourced from Oromia, SNNPR, and Tigray (EEITI, 2021). Opal, a precious gemstone, is another significant mineral extracted through ASM, especially in the regions Amhara and Tigray. Ethiopia is also known for its deposits of tantalite, mainly mined by ASM operations in the Kenticha district (or “woreda”) of Oromia, albeit on a smaller scale compared to gold (see section 1.1.2) (EEITI, 2016; MoMP, n.d.b).

The demographic landscape of ASM participants in Ethiopia is dominated by men, with the majority falling within the age bracket of 18 to 45 years. Women's participation in ASM was estimated at 35% of the ASM workforce in 2016, although this number varies significantly across regions, with substantial engagement of women observed in Benishangul-Gumuz Region (70%), but considerably lower levels in Oromia (30%) as well as SNNPR, Amhara, and Tigray (less than 20%). Women in ASM in Ethiopia are mostly involved in activities such as sorting, processing, and trading of minerals. They also often work in open surface mines. Men, on the other hand, tend to work primarily in deeper holes and underground tunnels and generally dominate roles involving extraction and machinery operation. The diminishing availability of placer minerals and the shift towards deep rock mining have led to a decline in women's participation due to the physically demanding and dangerous nature of these activities. Migrant workers (i.e., defined by the Government of Ethiopia as anybody who works at the mine but who originally lived outside the woreda) form a substantial segment of the ASM workforce in Ethiopia, especially in regions like the Bero woreda in SNNPR (70%) and Shakiso woreda in Oromia (50%). These migrants typically engage in various roles ranging from manual labour to skilled operations, depending on their expertise (EEITI, 2016). It is also known that children participate in the ASM sector across the country, and particularly in Amhara (Pact, 2014). The International Growth Centre (IGC) (2022) reported that 8.5% of interviewed artisanal gold miners across several regions admitted that their children were participating in gold mining.

ASM serves as an essential income stream for a vast majority of ASM miners in Ethiopia, accounting for 74% of their total income on average. The average income of an individual ASM miner was estimated in 2016 at 8,000 – 10,000 birr per annum (approx. 130 – 165 euro based on exchange rate in April 2024); though this number varies considerably per mineral and location. Miners are generally not able to save money from their ASM activities. While agricultural activities and petty trade represent secondary income sources for mining households, their contribution pales in comparison to the dominant role played by mining. At the national level, 42% of miners have no other income streams aside from ASM, highlighting a significant dependency – which is particularly concerning given the rapidly depleting gold deposits (EEITI, 2016). In 2014, a study conducted by Pact highlighted how the majority of miners (63%) mine throughout the entire year (Pact, 2014).

3.5.1.2 Extended Critical Raw Materials and ASM

There is a general lack of detailed geological exploration and recorded production data for ASM of ECRM in the country. ASM miners operate with minimal government and external support. The absence of civil



society organisations (CSOs) supporting the ASM sector, including those involved in ECRM production, and limited government assistance reportedly pose challenges to the sector's sustainable development. Nonetheless, stakeholder interviews highlighted how the contribution of the ECRM ASM sector is significant and positively impacts local communities through job creation, livelihood enhancement, access to essential services, and infrastructure development – although quantitative information on the economic contributions of ECRM ASM is lacking. Respondents emphasised the role of ASM in supporting education and clean water access, particularly in the Oromia region – where the majority of ECRM are mined (Personal communication with stakeholders, April 2024).

The Kenticha region in the Oromia region serves as a significant centre for the ASM of tantalum and niobium, reportedly yielding an estimated annual tantalum-niobium concentrate production that contained 25 tonnes of tantalum and 14 tonnes of niobium (USGS, 2019). The ore, sourced from either alluvial or hard rock deposits, undergoes manual processing using methods such as washing and panning (Vasters & Schütte, 2023). Industrial tantalite mining operations at Kenticha reportedly ceased in December 2017 due to various factors, including declining prices and challenges associated with managing radioactive by-products. Despite this closure, ASM activities continued in the area, with artisanal miners capitalising on the opportunity presented by the suspension of industrial operations (Bekele, 2018).

The western Wellega zone in Oromia hosts ASM operations for PGE, specifically platinum, primarily at the Yubdo platinum deposit. With an estimated annual production of 10 kg, artisanal miners have taken over after the cessation of large-scale mining (LSM) operations. There is no LSM of PGE in Ethiopia (USGS, 2019). Handpicking techniques reportedly enhance the PGE content, and ore processing involves simple washing in sluice boxes and hand panning. Gold and platinum are often processed simultaneously. Geological reserves of PGE in the area are limited, hindering the ability of ASM to increase platinum production (Vasters & Schütte, 2023)

Lithium, which is found alongside the gemstones beryl and quartz, is also mined by ASM miners in the Oromia region. However, the precise quantity and quality of these deposits and production remain undocumented. Artisanal lithium mining is relatively new and is driven by the increasing international demand for the “white gold”. ASM miners reportedly utilise rudimentary methods for extraction, and the ores are then sold to registered suppliers and exporters, reportedly at low prices (Personal communication with stakeholders, April 2024). Lithium is also found on the Kenticha project of Abyssinian Metals (Abyssinian Metals, n.d.).

Government officials reported that no geological exploration has been conducted to determine the quantity, quality, and investment potential of ECRM ASM in Ethiopia (Personal communication with stakeholders, April 2024).

3.5.1.3 Governance and applicable regulation

The ASM sector in Ethiopia is governed by a series of proclamations and regulations. These include the Transaction of Precious Minerals Proclamation No. 651/2009 and Mining Operations Proclamation No. 678/2010 and its amendments under Proclamation No. 816/2013, as well as several others (EITI, 2016).



The legal frameworks establish the ownership of mineral resources as belonging to the state and the people and outline the procedures for licensing and regulating mining activities.

Table 1 provides an overview of the different types of mining licences available in Ethiopia. Artisanal mining licenses in Ethiopia are issued for a maximum period of two years, as per Proclamation No. 816/2013, with no option for renewal, with the aim of encouraging Ethiopians to view artisanal mining as a stepping stone to other ventures. These licenses provide exclusive rights to explore and mine within a designated area. ASM operators are obligated to adhere to environmental, health, and safety standards prescribed by relevant laws (EEITI, 2016). In order for ASM miners to formalise their operations, they need to submit a business plan and an Environmental Impact Assessment (EIA), after which they are required to submit annual reports and audits (Personal communication with stakeholders, April 2024).

Small- and large-scale licenses reportedly take precedence over artisanal licenses, whereby the licensing authority needs to give artisanal miners a 90 days' notice and the option of an alternative mining area (EEITI, 2016). Artisanal and special small-scale mining licences can only be transferred to other individuals through inheritance (EEITI, 2021). Transaction licenses are also available for the formal sale / trade of mineral products (EEITI, 2016; UNECA, n.d.).

Types of Mineral License	Duration	Remark
1. Artisan Mining	up to 2 years initial – Non renewable	Exclusive; Reserved for nationals; Regional States provide license
2. Special small-scale mining	Up to 10 years + renewable for 5 years	Exclusive
3. Small-scale mining	Up to 10 years initial + renewed for 5 yrs unlimitedly	Exclusive
4. Large-scale mining	up to 20 yrs initial + unlimited renewals of 10 years each	MoM Provides a large scale exclusive mining license

Figure 14 Types of Relevant Licenses in Mining (Proclamation No. 816/2013) in Ethiopia (EEITI, 2016).

Government bodies involved in governing the ASM sector include the Federal MoMP, Regional Mineral Development Agencies, Zonal Mine Offices, Woreda Mineral Development Offices, and Ward (“Kebele”) Managers (IGC, 2022; IBRD & World Bank, 2014; MoMP, n.d.b). These entities oversee various aspects such as licensing, monitoring performance, ensuring compliance, and providing essential services and support to ASM activities (IBRD & World Bank, 2014). ASM licences could be obtained from the regional state mine bureaus (at zonal or woreda level) (EEITI, 2021; EEITI, 2016).

The ASM sector in Ethiopia is predominantly informal, with about 94% of artisanal miners operating without having obtained all required licenses. Only approximately 6% are formally organised and licensed, falling into three main categories: mining cooperatives, small and micro enterprises (SMEs), and mining development groups. Cooperatives consist of members who have been mining for a long time, accumulating valuable Indigenous knowledge of ASM practices. SMEs are particularly prevalent in Oromia,

Benishangul-Gumuz, and SNNPR and are often composed of “landless and jobless youth” (EEITI, 2016). SMEs were established by the government with the aim of creating job opportunities. Mining development groups are specific to the Tigray region and share similarities with SMEs but are supported by government authorities. Past government policies encouraging youth involvement in mining, diminishing agricultural incomes due to climate change, and increased migration have contributed to the substantial growth in the number of artisanal miners. Despite the establishment of numerous of these ASM organisations, there is limited information on their functionality and success, and many have reportedly either disbanded or reverted to informal ASM practices (EEITI, 2016). An IGC (2022) research showed how the majority of artisanal gold miners continue to mine individually (64%), compared to 5% in mining cooperatives, 19% in SMEs, and 12% in mining development groups.

The Ethiopian Artisanal, Special Small-Scale Mining Strategy Roadmap (or “ASM Strategy Roadmap”) introduced by the MoMP in 2019, has guided the Ministry’s efforts to formalise and better manage the ASM sector in Ethiopia (EEITI, 2016; MoMP, 2019; MoMP, n.d.b; World Bank, 2020) (see Figure 1). The roadmap outlines key objectives such as strengthening governance, enhancing productivity, promoting value addition, and fostering environmentally and socially responsible practices. Additionally, the roadmap identifies four core thematic areas and two cross-cutting issues, namely, women in ASM and Indigenous knowledge, to guide the development of the ASM sector (MoMP, 2019; IGC, 2022). The ASM Strategy Roadmap also underscores the importance of promoting access to capital as part of its broader objective to increase efficiency, productivity, and competitiveness of local mineral producers at the ASM level (MoMP, 2019). According to stakeholders, the ASM Strategy Roadmap has shown positive results on higher numbers of registration and licensing of primarily artisanal and small-scale gold and gemstone miners — and increased in-country value addition of gemstones (cutting, polishing) (Personal communication with stakeholders, April 2024). A Gender Equality Working Group (GEWG) was established to improve gender equality in the Ethiopian ASM community, specifically focusing on developing a Gender Equality Strategy and integrating gender considerations throughout all of the MoMP’s policies, strategies, and programmes. The MoMP has also developed environmental management guidelines for the ASM sector to address the environmental impacts of the sector (MoMP, n.d.b).



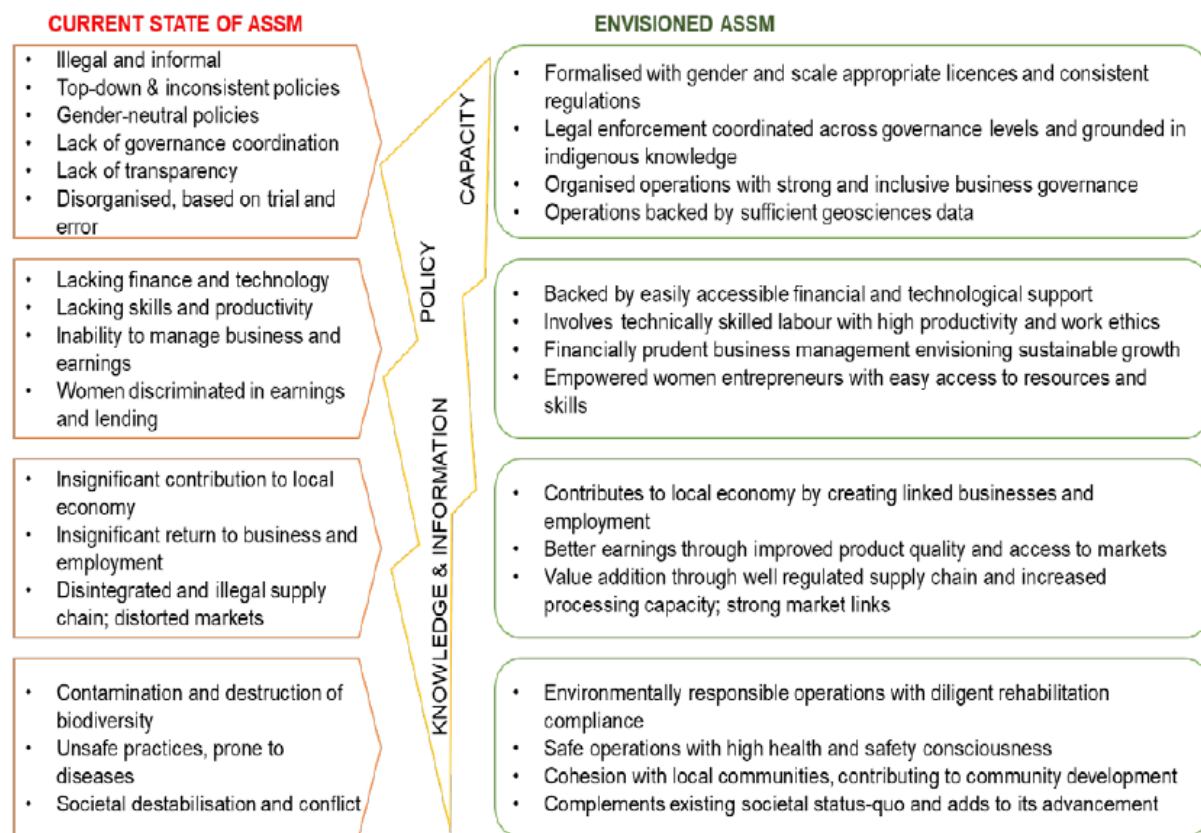


Figure 15 The pathway of the ASM Strategy Roadmap (MoMP, 2019).

The MoMP is reportedly in the process of developing a new ASM strategy that incorporates specific objectives with regard to critical minerals production. Such a strategy would involve regulating the trade of critical raw materials, supporting local job creation, and generally setting out the role of critical minerals in national development, in support of the Africa Mining Vision. The Government of Ethiopia also aims to invite international investors for partnerships to expand in-country value addition, with the purpose of maximising the benefits of the country’s critical raw materials’ exports (Personal communication with stakeholders, April 2024).

3.5.2 ASM mineral value chain

Limited information is available on the value chain of ASM minerals in Ethiopia; there is particularly little data about the flow of critical raw materials as literature tends to focus primarily on gold ASM. The authors will include learnings from studies on ASM gold value chains when these might be applicable to other commodities or for descriptive purposes to understand the ASM sector in Ethiopia.

Approximately one-third of gold miners reported using (semi-)mechanised mining machines, with variations observed across different mining groups. Notably, SMEs in the gold sector showed a particularly high demand for excavators, with 85% of respondents to a 2022 IGC study expressing the need for this equipment. Additionally, heavy-duty mining machines have been increasingly acquired over the last five years, indicating a rising trend in the use of machinery for ASM gold activities. Despite this, access to

machinery remains predominantly through renting, with over 87% of excavators used by mining development groups, obtained via rental services (IGC, 2022). According to local stakeholders, ASM miners in critical minerals are also able to hire equipment through several companies (e.g., A3S Renting of Machinery Equipment, RAH Construction Machinery Rental). Most of the equipment hiring companies are based in Addis Ababa (Personal communication with stakeholders, April 2024).

There is limited processing and value addition at the ASM level for ECRM in Ethiopia. Discussions with stakeholders revealed the absence of advanced processing facilities due to limited investment capital and processing centres. ZAF Pharmaceuticals, a registered exporter of tantalite, has established partnerships with artisanal miners in the region, further illustrating the involvement of ASM in tantalite production. ZAF Pharmaceuticals reportedly is involved in the crushing and washing of tantalite (Personal communication with stakeholders, April 2024).

Formal market linkages with ASM ECRM production exist mainly through certified exporters like ZAF Pharmaceuticals, which have agreements with ASM producers, and that export tantalite concentrate to various countries, including China, Malaysia, Singapore, Germany, and the United Kingdom. The transactions of mineral ores are monitored by regional authorities to collect payment of taxes (Personal communication with stakeholders, April 2024). However, much of the trade in ASM minerals remains informal, with only 39% of total production marketed through formal channels (EEITI, 2016). The National Bank of Ethiopia plays a significant role in the formal gold market through its centralised buying scheme (IBRD & World Bank, 2014), while the opal, tantalite, and other mineral markets are largely dominated by informal channels. ASM miners outside of gold reportedly have no access to pricing information or quality standards, and miners indicated that the benefits are often unfairly skewed towards the traders (EEITI, 2016).

Export of tantalite concentrates is primarily facilitated by certified export companies. Those companies need to conduct assaying at assaying laboratories outside of Ethiopia (e.g., in Rwanda and China) to determine quality and hence, value. Additionally, Chinese entities are involved in exporting raw tantalite ores to China. It is unclear to what extent this involves tantalite ore extracted through ASM operations. Export certification is issued by relevant regional entities and exports are inspected by customs. Although there are no costs involved for miners to apply for export certification, ASM operators generally lack the capital and awareness to obtain such certification (Personal communication with stakeholders, April 2024).

3.5.3 ASM sector challenges

The following challenges facing the Ethiopian ASM sector were found that, as a whole, may prohibit the potential supply of critical raw materials and the wider socio-economic development of the sector.

3.5.3.1 Barriers to formalisation and governance issues

Formalising the Ethiopian ASM sector reportedly presents various challenges. Firstly, the formalisation process for ASM miners is deemed arduous, resource-intensive, and overly complex (Personal communication with stakeholders, April 2024). Miners are required to navigate through a bureaucratic process that often takes them several years to work through, which imposes significant financial burdens



on miners (Personal communication with stakeholders, April 2024; MoMP, 2019). Stakeholders highlighted the difficulties miners often face in meeting the rigorous requirements for formalisation, such as submitting EIAs and business plans. The absence of clear guidelines and manuals for ASM operators to navigate the regulations and licensing requirements exacerbates uncertainties regarding their rights and obligations in the formalisation process (Pact Ethiopia, 2010; World Bank, 2020). Discrepancies in licensing requirements across different regions add another layer of complexity to the formalisation process (EEITI, 2016; IGC, 2022).

Secondly, transparency issues, particularly concerning license issuance, is reportedly exacerbating uncertainties within the sector and fosters an environment of distrust among stakeholders. Reports from various sources including the MoMP (2019) and the EEITI (2016) underscore the prevalence of opaque practices in license allocation, exacerbating disparities and fostering conflict. Notably, the overlap in mining areas due to poor licensing and delineation problems has led to conflicts between ASM gold miners and LSM gold companies (EEITI, 2016).

Thirdly, the limited institutional capacity to enforce regulations and provide essential support services hinders progress in formalisation efforts and perpetuates informality within the sector. This deficiency is evident at various levels of government, where government stakeholders demonstrate constrained resources to effectively implement and monitor regulatory frameworks (IGC, 2022). Moreover, governance coordination deficiencies across administrative levels exacerbate challenges, resulting in fragmented regulatory oversight and enforcement mechanisms. The lack of cohesive coordination fosters ambiguity and inconsistency in regulatory practices, undermining efforts to formalise the sector. Compounding these challenges is the rapid turnover of licensing officials, further disrupting continuity, and impeding the establishment of consistent regulatory procedures (MoMP, 2019; IGC, 2022).

3.5.3.2 Technical and operational challenges: equipment, knowledge, and infrastructure

Stakeholders highlight how ASM miners face technical and operational challenges to identify and effectively exploit critical mineral deposits, underscoring the need for capacity building and training initiatives. There reportedly is a shortage of technical expertise and geological data availability in critical minerals, hindering ASM operators' productivity and profitability. Furthermore, the absence of training programmes for ASM operators in critical minerals exacerbates these challenges, leaving many miners without the necessary skills to optimise their operations (MoMP, 2019; EEITI, 2016).

Additionally, a scarcity of available and accessible machinery and technology (see also section 1.3.3) that could be used to extract the critical minerals more efficiently further compounds these challenges, leaving miners reliant on rudimentary methods that are often inefficient, environmentally damaging, and affect the quality of the minerals produced – in turn negatively impacting the prices miners receive for the minerals (MoMP, 2019; EEITI, 2016; Personal communication with stakeholders, April 2024). Although some companies in urban centres like Addis Ababa offer equipment for hire, the limited capital and remote location of ASM sites presents challenges in accessing such services. This reliance on outdated methods not only compromises operational efficiency but also risks environmental damage and undermines the long-term sustainability of ASM activities (Personal communication with stakeholders, April 2024).

In parallel, limited in-country value addition, stemming from a dearth of appropriate technology and facilities as well as skilled professionals, further impedes the sector's progress (MoMP, 2019). Traditional processing methods prevail due to the lack of modern technology, hindering efficiency and productivity (MoMP, 2019; EEITI, 2016).

Furthermore, inadequate infrastructure, including poor road conditions, limited energy access, and few market centres, obstructs the supply chain of ASM products to processing facilities and formal markets, with critical minerals often leaving the country illicitly and in raw form. This lack of infrastructure not only restricts market access but also undermines economic diversification efforts and inhibits domestic value addition (EEITI, 2016; World Bank, 2020).

3.5.3.3 Limited access to finance

Funding mechanisms for the ASM sector in Ethiopia appear to be limited. The IGC (2022) report showed how artisanal gold miners often struggle to reach financial services of formal banks, microfinance institutions, and modern saving and credit associations. Miners indicated that this was primarily due to the general absence of lending institutions in mining areas as well as to the reluctance of formal financial institutions to provide loans to ASM operators, as their mining licences or land rights cannot be used for collateral purposes (IGC, 2022). This issue is particularly pronounced for ASM miners extracting ECRM, as the scarcity of geological data on critical raw materials' reserves renders financial institutions even more cautious in developing funding mechanisms for ASM miners. For instance, while the Commercial Bank of Ethiopia and the Ethiopian Development Bank extend financial services to ASM gold miners, similar support is not extended to ECRM miners. In the Oromia region, where ASM activities in ECRM are prominent, stakeholders emphasised the urgent need to strengthen miners access to financial capital to increase production. Such financial support is also essential to enable ASM operators to fulfil the requirements of export licenses, including obtaining identification; covering the costs of sending mineral samples to assaying laboratories; and enhancing their responsible mining practices and documenting compliance with international responsible sourcing standards (Personal communication with stakeholders, April 2024).

3.5.3.4 Limited access to formal markets

Market-related challenges, such as unreliable market prices and distance from formal traders, hinder ASM operators' ability to access fair market value for their minerals (MoMP, 2019; EEITI, 2016). The lack of (government) formal sourcing programmes and clear regulatory frameworks perpetuates market discrepancies, fostering informal trading practices, particularly in the tantalite sector (MoMP, 2019). ASM operators often struggle to access global market information and navigate market dynamics, leading to a reliance on informal markets that disadvantage miners (MoMP, 2019; EEITI, 2016).

For instance, ZAF Pharmaceuticals encountered difficulties in selling tantalite from ASM operations due to declining market prices (Personal communication with stakeholders, April 2024). Moreover, stakeholders and reports highlight the absence of standardisation and fair trading practices in mineral markets, particularly for tantalum and opal (EEITI, 2016; Personal communication with stakeholders, April

2024). This lack of regulatory oversight allows for market manipulation by informal traders, resulting in market volatility and a decline in sector trust.

3.5.3.5 Political instability and conflict

Political instability and conflict present significant challenges to the Ethiopian ASM sector, with particular intensity observed in the Oromia region, where all ASM operations of critical raw materials like tantalum, lithium and PGEs are concentrated. The marginalisation of the Oromia people has caused tensions, resulting in conflicts that directly impact ASM operations. Stakeholders underscore the vital role of peace and stability as prerequisites for enabling access to financing mechanisms, equipment, government monitoring and technical support. For instance, several ASM stakeholders reported delays in receiving financial support from the Commercial Bank of Ethiopia, attributing it to the security situation in conflict-affected regions. Increased insecurity has led financial institutions to hesitate in providing support, affecting ASM miners' ability to access necessary resources (Personal communication with stakeholders, April 2024).

3.5.3.6 Environmental and social impacts

The Ethiopian ASM sector is associated with several environmental and social challenges, often attributed to the absence of clear legal frameworks and enforcement practices (MoMP, 2019). Deforestation, soil erosion, and land degradation are often linked to ASM, particularly gold (EITI, 2016). Social issues, including gender-based violence and child labour, are prevalent, particularly in regions like Benishangul-Gumuz and Gambella (IGC, 2022). Child labour persists due to the need to supplement family income. Furthermore, health risks such as malaria, tuberculosis, and asthma are also often heightened in ASM operations (Pact, 2014). The use of hazardous chemicals contaminates water sources and air, posing additional health and environmental risks (World Bank, 2020). ASM operators lack capital and technical knowledge for proper rehabilitation processes, leading to the proliferation of abandoned pits, endangering human life and livestock. Water accumulation in these pits facilitates malaria outbreaks, adding to the health risks (World Bank, 2020). Additionally, these impacts complicate miners' ability to access formal markets, as they struggle to comply with responsible sourcing standards' requirements and formalise their operations, further hindering their integration into formal supply chains (MoMP, n.d.b; World Bank, 2020; EITI, 2016; MoMP, 2019).

3.5.4 Relevant initiatives and stakeholders

The following overview highlights key initiatives in the Ethiopian ASM sector, which are relevant to consider in the framework of potential investment opportunities. However, the number of examples is limited. Civil society initiatives have predominantly pursued broader community development goals, rather than specifically targeting ASM sector support (IBRD & World Bank, 2014). Notably, no ongoing initiatives were identified, even during stakeholder interviews (Personal communication with stakeholders, April 2024). Only a handful of initiatives have directly addressed ASM sector development:

Supporting the Ministry of Mines (SUMM) Project: Implemented by the Canadian International Resources and Development Institute (CIRDI), the SUMM Project aimed to enhance policies, practices,

and capacity in mineral sector public administration in Ethiopia. Funded by Global Affairs Canada, this six-year project (2016-2022) collaborated closely with the MoMP to support the formalisation of the ASM sector. The project focused on defining environmental and social performance requirements to ensure equitable benefits from Ethiopia's natural resources. Aligned with Ethiopia's GTP II and industry priorities, the SUMM Project piloted a National Artisanal, Special Small-Scale Mining Strategy, including the aforementioned ASM Strategy Roadmap (see section 1.1.3). A taskforce, composed of high-level members from the MoMP and the SUMM-CIRDI Project Officer, developed this strategy through three phases: baseline analysis, prioritisation, and stakeholder consultation. The strategy aimed to address youth unemployment, promote import substitution, and generate foreign currency by focusing on key commodities with sustainable value propositions for Ethiopia. The project also emphasises capacity development, partnership, and inclusion, laying the groundwork for future initiatives to formalise and develop the ASM sector in Ethiopia (World Bank, 2020).

United Nations Development Programme (UNDP) Ethiopia's "Strengthening Accountability and Transparency in the Extractive Sector for Inclusive Growth" programme: UNDP worked with the Government of Ethiopia on a programme that aimed to promote inclusive growth in the extractive sector (UNDP, 2019). This programme was implemented between 2014 – 2016. The programme supported the strengthening of accountability and transparency in the sector by implementing capacity-building activities with governmental institutions, CSOs, and local communities. Capacity-building was focused on a variety of topics, including skills development of artisanal miners, access to market information, environmental protection, fiscal management, and rights of Indigenous peoples (UNDP, 2014).

Japanese Social Development Fund: Support to Improve the Economic, Social, and Environmental Sustainability of Artisan Miners Project: The Government of Ethiopia, in collaboration with the Japanese Social Development Fund (JSDF), administered by the World Bank, initiated a project aimed at supporting ASM communities across selected regions of the country. The project focused on enhancing the economic, environmental, and social sustainability of ASM communities, particularly in rural areas. It aimed to significantly reduce poverty levels by increasing economic opportunities for these communities. Implemented across six Ethiopian regional states, i.e., Oromia, Tigray, SNNPR, Benishangul-Gumuz, Amhara, and Afar, the project comprised several components. These included conducting baseline assessments, developing environmental safeguard management frameworks, designing strategies for ASM cooperatives, and implementing monitoring and evaluation frameworks. Furthermore, the project emphasised capacity building among ASM communities, with a particular focus on women's socioeconomic empowerment. The NGO Pact provided training on economically and environmentally sustainable mining techniques, lapidary skills, and basic geological assessments. The project also addressed social infrastructure by improving health and safety conditions, including access to clean water, sanitation facilities, and healthcare services. The project closed in 2017 (World Bank, 2014; World Bank, 2018).

Africa Minerals Development Centre (AMDC): The AMDC is the leading institution that helps African Union Member States to fast-track alignment of their mineral sector development to the Africa Mining Vision, to achieve better developmental outcomes (African Union, n.d.). It is particularly focused on advising governments to promote in-country value addition. The Director of the AMDC indicated that it is



currently supporting the Government of Ethiopia with a review of its mining policies and regulations (Personal communication with stakeholders, April 2024). The AMDC is based in Addis Ababa. The UNDP is supporting the AMDC with technical and financial assistance and a package of services on managing extractive industries (UNDP, 2013). No further information was found on the previous or ongoing work of the AMDC with the Government of Ethiopia.

3.5.5 Investment needs and opportunities

The analysis carried out for the development of this profile and information collected confirm that, while there is clear potential for ECRMs production by the ASM sector in Ethiopia, limited assessments and support has taken place so far. In order to strengthen the production and improve the socioeconomic potential of the ECRM ASM sector in Ethiopia, several areas of intervention were identified. This section summarises our understanding of the main investment needs and opportunities.

3.5.5.1 Geological exploration of ECRMs

The lack of detailed geological exploration has significantly hindered ASM miners in Ethiopia from efficiently identifying and exploiting critical mineral deposits (Personal communication with stakeholders, April 2024). Miners face challenges in assessing both the quality and quantity of deposits, ultimately impacting their operational efficiency and profitability. Without geological information, miners tend to scramble for minerals, wasting not only their time and resources but also damaging the land (EEITI, 2016). Access to reliable geological data could enable miners to make informed decisions, optimise their operations, and enhance their competitiveness in both local and international markets. Investing in geological surveys and exploration initiatives therefore presents an opportunity for the Ethiopian ASM sector (AfDB, 2021). By conducting comprehensive assessments of critical mineral deposits, the sector can unlock potential for growth and development.

Collaboration among various stakeholders, including government agencies, industry players, and international partners, is essential for the success of such initiatives. The MoMP, alongside the Geological Survey of Ethiopia (GSE) and Regional Mining Offices, plays an important role in spearheading these exploration efforts (Personal communication with stakeholders, April 2024). The investment in geological exploration not only benefits ASM miners but could also attract potential investors interested in the sector's growth and development (AfDB, 2021).

3.5.5.2 Addressing formalisation barriers

The informal nature of ASM in Ethiopia limits their access to legal recognition, financial services, and market opportunities (AfDB, 2021). Formalisation is important to promote more responsible mining practices, enhance governance, and unlock the socio-economic potential of the ECRM ASM sector. However, the current formalisation barriers need to be addressed to ensure the regulatory environment aligns with the reality of ASM miners. Firstly, there is an opportunity to streamline regulatory frameworks and simplify licensing procedures, aligning them with the realities faced by ASM miners (EEITI, 2016). This could involve developing a uniform policy and regulatory framework at federal, regional, and local levels to improve regulatory effectiveness (AfDB, 2021).



Secondly, enhancing public support services is essential to support miners' formalisation. This includes initiatives such as raising awareness among ASM communities about their legal rights and obligations. For instance, appointing technical assistants at the local "kebele" level can provide grassroots support and ensure that mining communities are well-informed and supported (EITI, 2016).

Thirdly, building the capacity of government stakeholders is needed for effective implementation. Providing training and resources to regional and local authorities can improve coordination and enforcement of mining regulation. Additionally, organising documentations on mining and providing working manuals and guidelines for miners can enhance compliance and operational efficiency (IGC, 2022).

3.5.5.3 Skills development and professionalisation

Limited access to skills and business knowledge presents a significant barrier to the efficiency and growth potential of ECRM ASM operators in Ethiopia (Pact, 2014; IGC, 2022). The absence of adequate training and capacity-building initiatives has hindered technical competencies and stifled entrepreneurship within the sector. Investing in comprehensive training and capacity-building programmes is needed to address these challenges (AfDB, 2021). This is especially important in the ECRM ASM sector, as exploration, extraction, and processing of these minerals is relatively new in the country compared to gold and gemstone production, hence there is an absence of Indigenous knowledge. By implementing tailor-made training courses and skill development initiatives, the ECRM ASM sector can equip operators with the required expertise to enhance productivity and competitiveness.

There is an opportunity to collaborate with technical and vocational education institutions, industry associations, and development partners for the effective delivery of training modules tailored to the specific needs of ECRM ASM operators (AfDB, 2021). These partnerships can facilitate the design and implementation of targeted training programmes covering various aspects such as mining techniques, mineral processing, business management, and health and safety protocols. Furthermore, integrating entrepreneurship development components into training programmes could be beneficial for empowering ASM operators to establish and manage their businesses effectively (Pact, 2014). Moreover, addressing health and safety concerns, particularly regarding malaria and waterborne diseases, and providing access to protective devices and health inspection facilities are essential for the well-being of miners and the sustainability of the sector (IGC, 2022).

Additionally, limited access to (semi-)mechanised mining and processing equipment poses a significant challenge to operational efficiency and value addition within the ECRM ASM sector (Pact, 2014). Mechanisation could improve productivity, safety standards, and environmental sustainability. Investment in technology transfer programmes, equipment leasing schemes, and capacity-building initiatives is needed to facilitate the adoption of mechanisation technologies by ASM operators (AfDB, 2021). Collaboration among government agencies, industry stakeholders, financial institutions, and development partners is crucial to support the procurement, installation, and maintenance of mechanised equipment, thereby promoting professionalisation and sustainable development in the ASM sector (Personal communication with stakeholders, April 2024; EITI, 2016).



3.5.5.4 Facilitate market linkages, access to finance and value chain development

Limited access to markets and market information poses significant challenges for ECRM ASM operators in Ethiopia, hindering their ability to sell their products competitively (IGC, 2022). Addressing these market-related constraints is required to foster inclusive growth and economic development within the sector (Pact, 2014). Market linkages play a crucial role in connecting ASM operators with buyers and enabling them to access wider market networks. Developing market infrastructure, such as transportation and storage facilities, is needed to facilitate the efficient movement of goods from production sites to end consumers. Moreover, providing market information services, including pricing trends, demand forecasts, and export regulations, empowers ASM operators to make informed decisions and adapt to market dynamics.

Investment in market linkage programmes, market information systems, and value chain development initiatives is important to enhance market access for ASM operators and promote sustainable trade practices (AfDB, 2021). These initiatives can include capacity-building workshops, trade fairs, and matchmaking events that connect ASM operators with potential buyers and investors. Furthermore, value chain development efforts aim to strengthen collaboration between ASM operators, processors, and traders, thereby improving product quality, value addition, and market competitiveness. The ASM Strategy Roadmap sets out several potential interventions that could improve miners' access to formal markets. Although the strategy is not specific to ECRM ASM, but rather for the ASM sector as a whole, there is an opportunity to leverage these interventions to facilitate market linkages for the ECRM ASM sector as well. For instance, the roadmap explores how setting up trade centres at federal and woreda levels could support the streamlining of ASM supply chains. These trade centres would not only provide market access to ASM operators, but also offer other services such as marketing training, mineral aggregation and storage, and certification services to assure quality, standardisation, and branding. The National Bank of Ethiopia already provides such services for the ASM gold sector, (MoMP, 2019) and whether a similar role could be played to support ECRM ASM production should be explored.

Moreover, there is a need to improve ASM miners' access to finance to allow them to increase production and manage their environmental impacts by adopting more responsible mining practices, which requires tailoring financial products that accommodate the unique challenges of ASM operators in Ethiopia. This could include developing microfinancing opportunities, supporting existing village banking systems, establishing fund initiatives that could provide grants and government funds to ASM operators, and promoting the ASM sector as an investment opportunity for financial institutions by building knowledge and trust between mining stakeholders and banks (MoMP, 2019).

Furthermore, the absence of accredited assay laboratories in Ethiopia presents an obstacle to critical mineral testing and certification processes within the ASM sector. Currently, exporters must send mineral samples abroad for testing, impeding efficiency and increasing costs. Establishing internationally accredited assay laboratories locally is imperative to support access to formal markets for Ethiopia's ASM sector (Personal communication with stakeholders, April 2024). Collaboration among government agencies, private investors, and industry associations is necessary to fund and operationalise these assay laboratories.



3.5.5.5 Leveraging green energy strategies for sustainable ASM development

Ethiopia's green energy strategy, focused on hydroelectricity and facilitating the clean energy transition, presents an opportunity to address the lack of essential services for ASM operators (Personal communication with stakeholders, April 2024). Investment in leveraging green energy strategies can provide reliable energy sources to miners, like hydroelectricity and renewables. This includes extending electricity grids, promoting solar-powered equipment, and improving water access. Collaboration between government, energy providers, and ASM associations is needed for policy support, funding, and capacity-building.

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3.6 Madagascar

3.6.1 Introduction and ASM sector overview

Madagascar has one of the largest artisanal and small-scale mining (ASM) sectors globally. The exact contribution of ASM to the Gross Domestic Product (GDP) is challenging to measure due to the large number of informal miners and the unreliable data on the sector. Based on the limited data that is available, it is estimated that 450,000 to 500,000 people are directly involved in the ASM sector (Colins & Lawson, 2014), with women making up 50% of the artisanal mining labour force (Kuntala, 2018). Estimations suggest that the total number of individuals engaged both directly and indirectly in ASM in Madagascar is around three million as of 2021, with around 2,500,000 indirectly reliant on the sector. This accounts for around 10% of Madagascar's total population (Stoudmann et al, 2021), considering 29.61 million people in 2022 (World Bank, 2022).

The combination of drought conditions and poverty has significantly influenced the pursuit of alternative income sources from agriculture, leading to the expansion of Madagascar's ASM sector (Canavesio, 2014). ASM is the second biggest employer, after agriculture, and represents one of the main income providers for rural populations (Faure et al, 2015). Those involved in the ASM sector are categorised as either permanent workers or migratory/rush participants. In both cases, the sector has the potential to contribute to household incomes and reducing poverty (Ndagano & Schneck, 2021). However, despite making significant contributions to Madagascar's economy and local communities, artisanal mining is still associated with various adverse effects on health, safety, social cohesion, the environment, tax revenues, as well as issues of corruption and illicit trade, which will be discussed in more detail below (IIED, n.d.).

In 2021, a study was conducted on the ASM sector in the Alaotra region of eastern Madagascar. The study did not focus on specific minerals but instead examined the factors that motivate and attract rural individuals to engage in ASM. The study identified both push and pull factors influencing participation in mining activities. The most prominent push factor was the necessity to supplement household income by complementing their agricultural activities, while a strong pull factor was the influence of social connections, such as having friends or family members already involved in the mining sector. The study also found that many miners who migrate to the mining areas face challenges in sending their earnings back home as remittances or saving the money in other forms (Stoudmann et al, 2021).

The ASM sector mostly focuses on the extraction of gold, coloured gemstones, and mica (Crawford & Nikiema, 2015). Notably, due to the persistent informality of the sector, the revenue generated for the state has been negligible. In the last five years, there has been a high demand for minerals included in the extended critical raw materials (ECRMs) list, which has seen a rise in artisanal miners abandoning some of their regular activities to mine highly demanded substances, which include columbite-tantalite (coltan), manganese, malachite (copper), beryllium, chromite, spodumene and lepidolite (lithium-bearing minerals) (Ndagano & Schneck, 2021).

ASM sites in Madagascar range from mangrove and marine environments, like in the case of Antetazambato and Ambanja, to terrestrial areas. Mining activities in Madagascar often occur seasonally



or during production rushes when new mineral deposits are discovered, resulting in large numbers of people concentrating on these sites (Stoudmann et al, 2021).



Figure 16 Map of Madagascar, https://www.nationsonline.org/oneworld/map/madagascar_map.htm

3.6.1.1 Extended critical raw materials and ASM

Historically, Madagascar has primarily focused on extracting gold, coloured gemstones, and mica, which for many years generated the highest financial value for the ASM sector (Crawford & Nikiema, 2015). On the other hand, the highest revenues over the past 10 years for LSM have been nickel- cobalt from the Ambatovy mine (NS Energy, n.d.) as well as the heavy minerals, such as ilmenite, recovered by Rio Tinto's

operation (Rio Tino, n.d.). The concept of critical minerals and the just energy transition is a new one in Madagascar, which means that limited data is available under these themes. However, the government of Madagascar has shown interest in achieving net-zero emissions by 2050 and sustainable development goal 7 on sustainable energy for all, in line with the goals of the Paris Agreement on Climate Change (SDG7 Energy Compact of the Ministry of Energy and Hydrocarbons, 2022). With the renewed interest and high demand for ECRMs globally, there has been a rise in ASM activity around the extraction of minerals that fall under this group in Madagascar. Although there are many LSM-amendable deposits in Madagascar for critical minerals, such as graphite, it appears that the ASM sector is also involved in the production of some critical minerals. Based on stakeholder interviews and existing literature the main ECRM produced by the ASM sector in Madagascar include columbite-tantalite (coltan), manganese, copper, beryllium, chromite, as well as spodumene and lepidolite (Ndagano & Schneck, 2021, Vasters & Schutte, 2023).

It was observed that gemstone ASM producers would be attracted by critical minerals showing more demand locally, as will be seen later for lithium-bearing mica. In fact, gemstone production is considered less secure in terms of income generation. However, this would not apply to ASM gold miners, considering that gold is already a stable source of income and miners involved in the sector experience limited interest in transitioning to other commodities (Personal communication with stakeholder, November 2023).

Due to the limited available information, a full analysis of all these identified ECRMs has proven challenging. Therefore, the following section will be based on overall ASM sector knowledge, including some specific examples about lithium-bearing mica and coltan that emerged from existing literature and interviews with experts and sector stakeholders.

3.6.1.2 Applicable regulation and governance

Mining activities in Madagascar are regulated by the Mining Code N99-022, issued on August 19, 1999 and amended by N2005-025 on October 17, 2005, and its implementing decree N2006-910 of December 19, 2006 (Mining Code, 2005). On July 25, 2023, the New Mining Code, Law No. 2023/007 (the New Mining Code) was passed into law, which further proposes amendments to the 2005 Mining Code. The mining code has been under revision since 2008. This long period of revision is partly due to the constantly changing political environment in Madagascar and the different visions of consecutive regimes. Regimes have had different visions for the mining and minerals sector in Madagascar, thus leading to a cyclic revision of the draft mining code. Perpetual uncertainty means many investors, including gemstone dealers, are reticent to pursue opportunities, which is impacting the development of the sector (BTI, 2024).

The 2023 Mining Code makes many more provisions related to artisanal mining. The *Autorisation Minière d'Exploitation Artisanale* (AMEA) allows holders to carry out extraction activities or collection of mineral substances in return for a fee, fixed by regulation, to the Mining Cadastre Office - *Bureau du Cadastre Minier de Madagascar* (BCMM). The AMEAs are granted in specific zones defined as artisanal mining corridors, and they are valid for a period of six months and renewable only once for the same duration. It is expected that through the AMEAs, the government will be able to collect royalties from local authorities involved in artisanal mining. The Ministry also relies heavily on this initiative as a means of transferring knowledge and information to miners, even in the case of nomadic groups (BCMM, 2023). The

government in Madagascar realises that entry-level mining permits are too onerous and thus unattainable for most artisanal miners, so the AMEA plays a transitional role to then allow mining cooperatives to obtain a longer-term mining permit referred to as *Permis Réservés aux Exploitants Artisanaux* (PREA). The PREA is a mining permit reserved for artisanal miners, which allows the holder to prospect, research, and exploit the substances for which the permit has been granted, using artisanal techniques and, if possible, light mechanical equipment, also defined by the regulation. PREAs are valid for a period of eight years and can be renewed twice, each time for a period of four years. Only Malagasy nationals and legally created groups (e.g. cooperatives) can obtain a PREA (Law 2023-007). Artisanal miners in Madagascar are required to be organised into cooperatives or associations to operate legally and be considered in all legal actions. To be registered, the miner needs to have a bank account and apply formally through the Ministry of Mines. Once they have registered, the miner must further obtain a mining permit to operate legally (Personal communication with ASM expert, October - November 2023).

In 2022, the Ministry of Mines and Strategic Resources in Madagascar created the *zone d'encadrement*, or “mining supervision zones” (ZE) initiative (Adnews, 2022). According to the Director of Environmental Regulations and Safety for the Ministry of Mines, this initiative was created to assist the government with the process of formalising artisanal miners and containing mining rushes in hotspot regions. The creation of the initiative has helped the government bring together, at the municipal level, associations of small, local mining operations in order to provide them with administrative, managerial, environmental, and technical support (Adnews, 2022). As of 2023, ZEs are regulated by the 2023 Mining Code and are reserved for the supervision of artisanal miners (Mining Code, 2023, chapter VIII, section 3). ZE is defined in the 2023 Mining Code as an area dedicated to local miners (Mining Code, 2023, chapter VIII). The substances mined by ZEs are mainly gemstones but also include malachite, lithium ore, gold, beryllium, and fluorine.

Within the Malagasy government, two main departments are dedicated to monitoring and managing the ASM sector. The first department is the *Service d'Assistance aux Mines Artisanales* (SAMA), which manages and grants various administrative authorizations for mining activities as well as harmonising artisanal mining practises with current regulations. It is also the main department involved in the *Zone d'Encadrement* (EITI Madagascar, 2024). The second department is the *Direction de la Régulation Environnementale et de Sécurité* (DRES), which oversees the application of environmental and occupational safety regulations, monitors environmental performance, and helps update the environmental information system. To this end, DRES works in coordination with other bodies, such as the *Office National de l'Environnement*. However, in practice, this department has not been very involved in the ASM sector and has focused more on large-scale operations (EITI Madagascar, 2024).

Formalising activities in the mining sector has been the main interest of the Ministry of Mines; however, based on available information, the majority of these initiatives have not yet resulted in sustainable improvements. The Ministry of Mines, supported by different partners, has tried different initiatives to improve and better regulate the ASM sector. These include:

- Promoting the organisation of artisanal and small-scale miners into associations by training ASM miners in understanding the advantages of organising themselves in associations and cooperatives (IIED, n.d.);

- Supporting the registration of associations to be able to undertake formal activities and benefit from support from partners (Stoudmann, et al, 2021);
- Decentralising the mining bureau to increase accessibility to formalisation processes for ASM operators. The Administrative and Mining Bureau (BAM) was deployed in the main districts with intensive mining activities: Ilakaka, Moramanga, Maevatanana, and Morondava (Mumbi & Makoba, 2023);
- Supporting initiatives aimed at managing and monitoring the sector, such as (i) creating pilot ASM sites to help rehabilitate soil, control and prevent erosion, and eliminate the dangers posed by abandoned pits and shafts (IIED, n.d.); (ii) reforming the mining code to ensure community development, proper management, and rehabilitation of the environment; and (iii) increasing the capacity development of all government stakeholders so as to better implement and manage the SDDEMAPE (Ndagano & Schneck, 2021).

3.6.2 ASM mineral value chain

Artisanal miners can be categorised into two main groups: permanent miners and migratory/rush miners (Personal communication with ASM expert, October – November 2023) (Ndagano & Schneck, 2021). Permanent miners are typically located in areas with known mineral resources that, when applicable, are close to formal large-scale mining operations or historically rich deposits. Migratory or commodity-rush-driven miners are drawn from various regions across the country and engage in mining activities rapidly. Historically, mining rushes have focused on higher-value commodities like gold and coloured gemstones, including rubies (Ndagano & Schneck, 2021). They often move from one mining site to another, staying in an area for a few weeks to several months, and sometimes even settling permanently in a location after mining operations cease (Baker-Medard, 2012). More recently, it has been reported that these rush dynamics have affected lithium-bearing mica. (Personal communication with an ASM expert, August 2023).

The artisanal miners who operate without a permit in Madagascar adopt different organisational approaches. They sometimes work individually or with their families, often engaging in seasonal mining activities. Alternatively, they can be part of small mining enterprises that have connections to larger mineral traders. Artisanal miners operating formally work in cooperatives, where dozens of workers jointly hold a mining permit and collaborate on mining deposits. Despite these different organisational arrangements, artisanal miners often lack the agency to act as a collective to address the challenges they face related to trade, which include the presence of intermediary buyers (known as “collectors”) who control pricing and often exploit miners (Ndagano & Schneck, 2021). Based on information collected through stakeholder interviews, similar dynamics impact ECRMs produced in Madagascar.

Artisanal miners carry out very limited ore processing other than washing, sorting, and drying, which mostly occur on site. There are no processing plants, and mechanised extractive techniques are not used by artisanal miners when processing lithium-bearing mica or other ECRMs in Madagascar. The total ore production mined by artisanal miners is either exported to China or sold to collectors on the ground (Personal communication with ASM expert, October-November 2023).



The majority of artisanal miners in Madagascar encounter difficulties accessing formal financial channels and rely on “collectors” or buyers, to finance their mining activities. The collectors function as sponsors (locally defined as “*patron*”), often Chinese traders who finance artisanal miners, either through cash payments or by providing food and other necessities to support mining operations. In other instances, collectors would aggregate ore from different artisanal miners and pay based on the material produced without any prior arrangement. Although the substance might have originally been mined by individuals or organisations without a formal permit, once the material is registered in the collector’s name (if they have a permit), it enters the formal supply chain and cannot easily be traced back to its origin.

The trade of minerals is predominantly carried out by Malagasy men, who primarily sell them to foreign buyers based in larger mining towns and regional commercial centres that oversee the exportation of the minerals (Personal communication with ASM expert, October-November 2023). These buyers are also organised in networks and play a significant role in determining mineral prices. Most transactions occur informally at legal counters owned by foreign nationals (mainly Chinese, Thai, Sri Lankan, and to a lesser extent, West African) or local traders. Middlemen are commonly involved in facilitating these transactions (Ndagano & Schneck, 2021). Generally, almost all of the collectors operate with fixed pricing schemes, leaving artisanal miners with little bargaining power over the price of minerals. Prices are also dependent on factors such as the risks associated with the mineral, the international market, transportation costs, and local competition between buyers. For example, in the case of lithium-bearing mica, it was observed that local prices would largely respond to the lithium international market price.

Most minerals produced by artisanal miners in Madagascar are exported as unprocessed ore, as there is limited local consumption and value-added processing of commodities such as coltan and lithium-bearing mica. The minerals are transported to containers in the main ports and airports of Madagascar for export. Most of the minerals are exported from the ports of Toamasina and Toliara to China or India. Currently, China is the leading export destination. Reportedly, in the case of coltan, Chinese traders have offered better prices than other buyers (Personal communication with stakeholder, August-September 2023). Exports are managed either by Chinese nationals or Malagasy intermediaries. Many Chinese people have settled in Madagascar and gotten involved in the mining sector. They rely on connections in the local mining areas (Personal communication with ASM expert, October-November 2023). Once the minerals arrive in China, there are organisations or brokers who will take the containers of raw materials and sell them to factories throughout the country. There are factory owners in China who have set up partnerships with Chinese brokers, and these brokers have connections with exporters from Madagascar, as well as other African countries (Personal communication with ASM expert, October-November 2023).

3.6.3 ASM sector challenges

While the ASM sector represents a livelihood opportunity for many people and communities in Madagascar, several negative impacts associated with the sector have been reported in previous analyses and confirmed by stakeholders. Although existing literature mostly relies on what has been observed in the gold, gemstones, and mica value chains, the authors consider some of the challenges very relevant for the emerging involvement of ASM operators in lithium-bearing mica and potentially coltan and copper. The figure below summarises some of the impacts that the ASM sector in Madagascar is associated with, including negative ones such as adverse effects on health, safety, social cohesion, the environment,



taxation revenue, corruption, and illicit trade (Stoudmann et al, 2021). The following paragraphs outline some of the key challenges that deserve attention in the context of investing in the ASM sector for ECRMs, not only to increase production but also to enhance the potential for socio-economic development in mining communities. The impacts listed above the dotted line are positive ones, while those below the dotted line are negative impacts. The numbers at top represent percentage of mines associated with these impacts. White orange (miners) and blue (non-miners) indicate who is associated to certain impacts. Grey lines indicate that no association between mining activity and impacts could be identified.

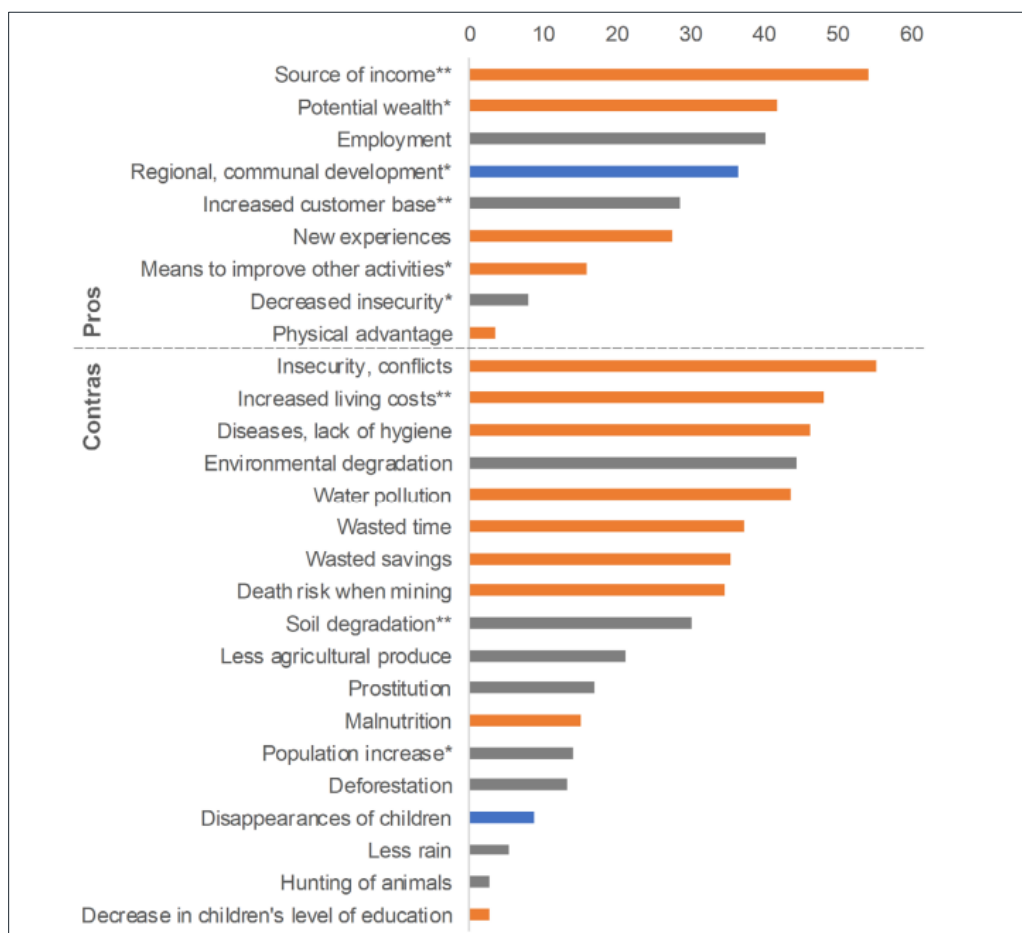


Figure 17 Identified impacts) of ASM in the Antanandava and Andreba Gare regions of Madagascar (Stoudmann et al, 2021).

3.6.3.1 Governance and barriers to formalisation

Reportedly, Madagascar’s weak governance and political instability have severely impacted the ASM sector. Corruption has also had a notable impact on Madagascar's mining sector, affecting its development, governance, and the overall economy (Transparency International, 2019). Administrative and financial requirements to obtain mining licenses represent a barrier to the formalisation of the sector, and as a result, the majority of people and organisations continue to operate informally. Given the informal nature of ASM operations existing beyond governmental oversight and the established regulatory framework, it is crucial for government bodies, mining experts, and international organisations

and financial institutions to deepen understandings of the systemic obstacles (such as corruption, cost, bureaucracy) hindering formalisation.

As illustrated by several previous analyses of the sector and stakeholders' interviews, the process associated with obtaining prospecting, exploration, and trading permits can be burdensome for artisanal miners considering the administrative and financial requirements (Baker-Medard, 2012), such as difficulty accessing government offices, delayed processes, and costs to compile documentation and obtain the permit (Personal Communication with ASM expert August-September 2023). Considering that the administrative process to obtain mining permits can be long, during that time, miners would nevertheless move to the mining area and operate informally. Reportedly, there have been instances showing that when miners finally received their permit, most of the resources had already been exploited. In other situations, when an inspection is carried out in that area, the miner/mining organisation that now holds the permit runs the risk of being blamed for any environmental damage that might have been caused by the miners without a mining permit who had produced in the area before (Personal communication with ASM expert, August 2023). In addition, the seasonal character of many ASM producers renders the bureaucratic procedures for obtaining permits even more financially unattainable for most individuals engaged in this field. These different cases illustrate how weak governance and barriers to formalisation exacerbate the informality of the sector on the one hand, or push individuals with financial means to operate as collectors and exporters, simply buying the ore from different miners rather than investing in mining permits (Personal communication with ASM expert, October-November 2023).

Furthermore, due to the to the predominantly informal and unregulated nature of the ASM sector, only a minimal portion of the generated revenue finds its way into state coffers in the form of taxes and royalties. Reportedly, the government has been lacking the necessary resources and expertise to effectively enforce mining regulations. (Stoudmann et al, 2021). The wide array of mining activities across different regions emphasises the necessity of localised data to inform regional management strategies, which can be implemented together with local authorities to take a 'bottom up' approach, in collaboration with policies defined at the national level, to formalise the sector (Ndagano & Schneck, 2021).

Finally, although specific areas designated for artisanal miners, known as ZEs as discussed above, there appear to be very few operational ZEs. To date, 205 ZEs have been granted since its creation, although it is unclear how many of these are actually operational. There is also limited information available about these ZEs and whether artisanal miners find these designated areas are mineral-rich and viable for ASM operations.

3.6.3.2 Lack of geological data

The *Office des Mines Nationales et des Industries Stratégiques* (OMNIS), Office of National Mines and Strategic Industries, oversees the collection and promotion of geological data. The latest geological data available is from 2012, reflecting a limited technical knowledge of the sector and still largely depending on general information from supply chain actors (Personal communication with ASM expert, October-November 2023). While there is knowledge of the lithium potential linked to pegmatites, it would be important to assess the actual economic potential to attract investments in mineral production and processing.



3.6.3.3 Limited access to equipment

Many artisanal and small-scale miners lack basic tools and equipment. Outdated or inadequate equipment increases the risk of accidents, injuries, and health hazards among miners. The absence of proper safety gear and tools contributes to unsafe working conditions. Improving access to proper equipment for artisanal and small-scale miners is vital for enhancing their safety, productivity, environmental sustainability, and overall socio-economic well-being (Personal communication with government stakeholder, September 2023).

3.6.3.4 Access to finance

Most artisanal miners in Madagascar struggle to access financing through formal channels and have become dependent on collectors to help finance their activities. The government does not provide much, if any, support to improve access to formal finance for the ASM sector in Madagascar. Most banks and financial institutions will not support artisanal miners as they deem it too risky due to lack of collateral. This is because the banks largely believe that artisanal miners do not have a steady income, which could assure repayment of debts. At the same time, there are enormous administrative difficulties when it comes to accessing formal financing mechanisms. This means that many of the artisanal miners are left with no choice but to self-fund themselves and partner up with collectors, many of whom are foreigners (Personal communication with government stakeholder, August- September 2023).

3.6.3.5 Environmental and socio-economic impacts

Many ASM operators conduct their activities with little consideration for environmental impact, and they rarely have plans for remediation or restoration, mainly due to their limited understanding of national environmental laws and policies and lack of finances for such efforts. In fact, most artisanal miners do not have the necessary funding or training to rehabilitate the site they have been mining (Personal communication with government stakeholder, September 2023). Historically, ASM activities have been reported in protected areas, and this remains an area to monitor to avoid adverse impacts (Cook & Healy, 2012). Protected, reserved, and prohibited zones are defined and regulated by the 2023 New Mining Code (Mining Code, 2023, Chapter I and VIII). In terms of the law, no exploration or mining work is allowed to be carried out in a protected area (Mining Code, 2023, Article 126 – 129). Nevertheless, protected areas have been targeted for mining activities, leading to conflicts between conservation priorities and livelihood interests (Ndagano & Schneck, 2021).

Damage to the environment in Madagascar due to mining activities is immense, such as overexploitation of natural resources, loss of biodiversity, damage to soils, and contamination of soil and water resources due to a lack of waste management (Ndagano & Schneck, 2021). After the mining rush, the mining community tends to leave the damaged areas without doing any form of reparation. This legacy of damaged land is common in many mining areas, and many shafts have caused fatalities among children, miners, and cattle (Stoudmann et al, 2021).

As for the environmental impacts commonly associated with the ASM sector, many negative impacts and socio-economic issues have been associated with ASM activities in Madagascar.



A major social risk of ASM in Madagascar is child labour. According to the U.S. Department of Labour, 47% of children between 5 and 17 years old were engaged in child labour in the mining and agriculture sectors, and about a third were in hazardous conditions (USDOL, 2022). UNICEF has estimated that more than 10,000 children are involved in the mica sector (UNICEF, 2022). Madagascar has signed and ratified international laws aimed at protecting children from the most severe forms of child labour, and it has implemented a national law to uphold these commitments. Despite these efforts, child labour continues to pose a significant challenge in the country (UNICEF, 2022).

Based on what has been observed in the gemstones and gold sector in Madagascar, poverty and a lack of employment opportunities are among the identified reasons that push people into exploiting mineral resources in protected areas, rice fields, farmland, forests, rivers, and any other area (Stoudmann et al, 2021). A mining rush is rarely predicted and is difficult to control for the local authorities or the affected community. Local communities in mining areas are often deeply affected by the massive influx of miners. The cost-of-living skyrockets, the available infrastructure is unable to accommodate a sudden rise in population, and children and teenagers leave school to engage in other activities requested by the miners, such as laundering, sex work, domestic work, small commerce, or others. During or after a mining rush, the overall livelihood of local communities is also disrupted. Farmers explore new pasture space far from the mining area, and new farmland has to be prepared to grow crops (Ndagano & Schneck, 2021).

Artisanal miners typically lack formal training and often work in hazardous health and safety conditions. There have been reports of several health and safety challenges faced by miners at mine sites in Madagascar. The most significant safety risks arise from rock and soil collapses in large open pits, shafts, and mining tunnels, which are commonly used techniques to access the ore. Miners often work in extremely wet conditions, whether underground, in pits, or while digging in rivers and ponds in search of minerals. Many of them operate in holes deeper than the 20-metre legal limit without proper materials, risking inadequate air supply and lung diseases, leading to potential fatalities or severe accidents. Furthermore, to manage ore processing, ASM workers in the country often continue their operations during the rainy season. This practice can result in slope instability problems and mining accidents because the clayey material surrounding the open pits tends to slide into the pit during wet conditions (Ndagano & Schneck, 2021).

Moreover, most mining sites in Madagascar lack basic sanitation facilities, with miners resorting to using rivers for all sanitary needs and drinking water. This results in microbiological pollution that contaminates rivers, impacting neighbouring populations that use the water for personal hygiene. The absence of proper sanitation and clean water exposes miners to health issues such as epidemic diseases, diarrhoea, cholera, dengue fever, and an increased risk of malaria. Additionally, miners face ergonomic problems from lifting and carrying heavy objects and suffer from dermatological issues due to poor personal hygiene. Despite these health risks, the informal nature of the mining sector hinders access to social protection systems like those provided by the [Caisse Nationale de Prévoyance Sociale \(CNAPS\)](#). Consequently, medical check-ups related to mining activities are often not documented in nearby health centres (Ndagano & Schneck, 2021).



3.6.4 Relevant initiatives

3.6.4.1 BMZ-funded Programme d'Appui à la Gestion de l'Environnement

Through the BMZ- and EU-funded *Programme d'Appui à la Gestion de l'Environnement* (PAGE), aimed at conserving and sustainably managing natural resources, technical assistance was provided to the Inter-Regional Directorate of Mines in Madagascar. This initiative is funded by the German Federal Ministry for Economic Cooperation and Development (BMZ), co-financed by the EU, implemented by GIZ, and supervised by Madagascar's Ministry of the Environment and Sustainable Development (GIZ, 2020). This support involved the development and implementation of: (i) a strategy paper on ASM, known as the SDDEMAPE; (ii) 'Health, Safety & Environment' manual to ensure artisanal miners comply with health, safety, and environmental standards in the ASM sector; and (iii) training courses for groups of women artisanal miners in the Sakaraha district, Atsimo Andrefana region (GIZ, 2020). The PAGE was launched in 2015 for an initial period of two years, but was then extended until mid-2020. Following this, BMZ commissioned a new programme, the PAGE II Environmental Programme, in July 2020, which run until 2023 (GIZ, 2021).

a) SDDEMAPE

The Strategy paper on ASM (SDDEMAPE), led by the Ministry of Mines under the PAGE programme, was developed between 2015 and 2020 through a process of multi-stakeholder dialogue which brought together key players at both the regional and national level. The development of SDDEMAPE fostered collaboration between the government, large and small-scale mining operators, and other stakeholders. A series of policy dialogues was conducted that aimed to identify right-based solutions to formalise the ASM sector to ensure that the sector was more inclusive and entailed responsible mining practises. Through the regional and national dialogues, stakeholders were able to work together to find collaborative solutions to the identified ASM challenges and how these solutions can be implemented. The objective of this strategy is to support the development of a national ASM organisation that is capable of lobbying the government, influencing the national mineral resource development policy, and enabling community engagement through dialogue with civil society and other stakeholder groups (GIZ, 2020).

One of the objectives of the SDDEMAPE is the development of a responsible ASM roadmap. This initiative is included in the action plan of the SDDEMAPE for the formalisation of artisanal miners through the implementation of the certification and traceability system. The aim of this initiative is the development of a label, "Fair-mined Malagasy" (FMG), which allows production to be certified from responsible operating sites and in line with the economic, social, and environmental criteria of Madagascar. In exchange for ensuring that the origin of their product can be well-traced and creating certifiable production chains, miners will be ensured a "favourable business environment". The goal of development certification for ASM operations is to enable improving the living conditions of artisanal miners through the elimination of violations of their fundamental rights and increasing their profit while preserving ecosystems and the unique biodiversity of Madagascar (GIZ, 2020).

b) Health, Safety & Environment manual

The 'Health, Safety & Environment' manual was designed specifically for artisanal miners in the Atsimo-Andrefana region of Madagascar. The idea behind the manual is to encourage artisanal miners to comply with health, safety, and environmental standards when mining, specifically in the Atismo-Andrefana region. In this region, a pilot mining group received training on the management of a mining association, the regulatory framework for mining, and the social and environmental standards applicable to mining activities (GIZ, 2020).

Furthermore, technical, financial, and material support was provided by the BMZ-funded programme PAGE to both mining and environmental associations for the restoration and reforestation of abandoned mine sites in the region. Since 2016, approximately 40 hectares of land have been rejuvenated across four pilot sites, now serving as areas for grazing and various agricultural activities in Ankiliabo, Bekily, Anjanakaro, and Tandandava. These project endeavours have significantly enhanced the capacity and organisation of artisanal miners in the Atsimo-Andrefana region, resulting in the formalisation of some of the miners in the region, who have formed a cooperative called “*Coopérative des groupements miniers du District de Sakaraha*” and are in the process of obtaining a permit (GIZ, 2020).

c) Women based training courses

The BMZ-funded programme PAGE set up gemmology training courses for a group of artisanal mining and women’s association partners of PAGE/GIZ in the Sakaraha district, Atsimo Andrefana region. The initiative is funded by the Government of Australia (DFAT) and the German Federal Ministry of Cooperation Economic and Development (BMZ) in partnership with the Ministry of Mines in Madagascar. Through the training, 325 people, including 150 women, were able to improve their knowledge and understanding of gemmology. The training courses were designed to help women in the ASM sector bring added value to their communities (GIZ, 2020).

3.6.4.2 OSCIE: Civil Society Organisation on Extractive Industries

The *Organisation de la Société Civile sur les Industries Extractives* (OSCIE), a civil society organisation on extractive industries, is one of the main organisations in Madagascar that works closely with various NGOs and INGOs, as well as numerous donors, to support ASM initiatives to support the Malagasy government in addressing the challenges of the ASM sectors. The OSCIE was created in 2016 and is still operating today. Some of the initiatives that OSCIE is involved in include (Personal Communication with stakeholder, August 2023):

- Undertaking research and investigating issues within the overall mining sector in Madagascar (specifically the ASM sector);
- Surveying the impact of projects (private or public);
- Helping develop procedures, mechanisms, and tools to promote good governance within the ASM sector;



- Advocating and lobbying for ASM actors by organising and participating in workshops and events that raise awareness around the ASM sector.

The OSCIE has also been heavily involved in child labour on mining sites in Madagascar. In collaboration with local authorities and national and international NGOs, the OSCIE launched the “*lutte contre le travail des enfants dans les sites aurifères de Betsiaka, district d’Ambilobe*” (fight against child labour in the gold mining sites of Betsiaka, Ambilobe district). The initiative is funded by the Canadian Fund for Local Initiatives (CFLI) and involves training and raising awareness among the local population of Ankarabe and its surrounding areas. There was also a workshop held in Antakarana in November 2023, which provided training on the rights and protection of children against forms of labour as required by international conventions ratified by Madagascar (Midi-madagasikara, 2023). The project focused on ASM gold supply chains.

OSCIE has been particularly vocal about ensuring that revenue is equally distributed between the central government and local communities in Madagascar. OSCIE also advocates for a more transparent process with regards to the granting of permits to ASM actors as well as for the distribution and management of resources within the mining sector. OSCIE is also aware of the problem with regards to illegally exporting natural resources and money laundering within Madagascar’s extractive industry. In an attempt to prevent this, OSCIE advocates for a more transparent process with regards to financial flows to be put in place and further tackles any abuse that may exist within the sector (Midi-madagasikara, 2023).

3.6.4.3 PACT

Pact, an international NGO with expertise in capacity development, public health, governance, the environment, energy, livelihoods, women’s empowerment, mining communities, microfinance, and more (PACT, 2024), has worked in Madagascar for more than 25 years. Pact is currently implementing a programme to combat child labour in the mica-producing communities in the Anôsy region supported by the U.S. Department of Labor (DOL). Pact’s efforts are increasing immediate and long-term resilience in vulnerable households by connecting children with educational services and adults with support to improve their livelihoods. The project is also promoting the formalisation of Madagascar’s mica sector, supporting civil society organisations and the media to improve public awareness around the issue of child labour in mining, and building the capacity of government officials to coordinate child protection measures in the mica supply chain, including establishing a code of conduct for mica mining (PACT, 2022).

3.6.4.4 The Responsible Mica Initiative

The Responsible MICA Initiative (RMI) is a coalition for action, engaging diverse stakeholders to contribute to the establishment of a fair, responsible, and sustainable mica supply chain that is free of child labour and provides responsible working conditions in the Indian regions of Bihar & Jharkhand (RMI, 2019). In 2022, RMI launched their activities in the Madagascar mica supply chain, and following a stakeholder meeting, they focused on setting up their operations in the country. In addition, they have worked on defining the organisation objectives in Madagascar, engaging the local stakeholders to implement responsible workspace standards, focusing on learnings from India, and raising awareness on mica production-related issues with the whole supply chain, including downstream companies (RMI, 2022).



3.6.4.5 World Bank funding

The World Bank has implemented numerous development credit agreements for funding and mineral resources governance projects, which aim to assist the Malagasy government in implementing strategies to help accelerate sustainable development and reduce poverty in Madagascar. The World Bank understands the importance of the mining sector for the country's economy and has therefore placed a lot of emphasis on the strengthening of governance and transparency in the management of mineral resources, with particular focus on the ASM sector. One of the main objectives seems to be a focus on promoting private investments and value-added in the mining sector (World Bank, 2024).

In 2023, Madagascar received USD 100 million in credit for a development policy operation geared towards supporting reforms that drive the country towards inclusive and resilient economic expansion, which includes improving the mining sector. Part of the operation will be to “help enhance the enabling investment environment and deepen structural reforms in critical infrastructure sectors including mining” (World Bank, 2023).

3.6.5 Investment needs and opportunities

The ASM sector remains an important economic contributor in Madagascar, and further attention and analysis into the dynamics of the production of ECRMs, such as lithium-bearing mica and coltan, could enhance the contribution of the sector. However, considering the relatively recent or marginal involvement of the ASM sector in the production of some ECRMs, the analysis presented in this profile has been based on publicly available resources, often focusing on other commodities and conversations with stakeholders, such as members of civil society and mining sector experts. As a result, the main investment needs and opportunities of the sector have been identified, and these can be summarised into the following categories:

- **Governance and responsible ASM production**, with a focus on strengthening national and local governance and managing social and environmental impacts.
- **Technical analysis and assistance**, including feasibility studies and improvements to mining techniques and processing facilities.
- **Fostering an environment that encourages formalisation** by prioritising initiatives that support artisanal and small-scale miners so that they are incentivised to comply with mining regulations and move towards formalising their operations.

3.6.5.1 Governance and responsible ASM production

The brief analysis presented in this document has highlighted some of the governance challenges linked to the implementation of ASM related regulations as well as the work of existing initiatives funded by organisations like BMZ and the World Bank. Considering the economic relevance of the ASM sector and the potential increased attention related to coltan and lithium-rich mica, continuous support into the strengthening of the Malagasy governance system is encouraged. In particular, this should also address



decentralisation and strengthening the capacity of local governments to monitor and support ASM organisations in the key production areas, often remote and further away from the central administration.

The other area that deserves continuous support, regards the social and environmental impacts which can derive from ASM activities, considering the poverty-driven nature of the sector, in the Malagasy context where many look at mining as a livelihood opportunity where agriculture does not represent a viable alternative or does not provide enough economic security. As per the challenges linked to governance, building on previous efforts is recommended, in particular the initiatives led by GIZ, PACT and the evolving work of the RMI, considering their existing work with mica supply chains and the potential relevance for lithium-rich mica. Finally, further support in these initiatives should maintain a systemic approach of key challenges, where an obvious example is the involvement of children in ASM operations. Funded programmes focusing on addressing the root causes of child labour, hence considering measures of social protection (UNICEF, 2022) and economic development to address poverty should be privileged and matched with the support towards the ASM and not only focused on regulating it. Such support is strongly linked to the next section, on encouraging formalisation by identifying clear incentives for miners.

3.6.5.2 Technical analysis

Although the needs and opportunities listed in this section represent pivotal actions for the development of the ASM sector, when it comes to ECRMs, further analysis and understanding of the economic potential should be considered as first step. This should include an analysis on the of lithium potential linked to pegmatites, to assess the economic feasibility of production and whether quantities are enough to invest in a processing centre. As a result of such analysis, a programme of technical assistance could be developed (Personal communication with stakeholder, November 2023).

3.6.5.3 Fostering an environment that encourages formalisation

Complementary to focusing on strengthening governance and improving performance when it comes to social and environmental standards, it is important to understand and address the barriers that prevent ASM actors from operating in compliance with regulatory requirements. Considering that the perceived and actual financial and administrative burden represent a disincentive for miners to formalise, initiatives that addresses these challenges should be prioritised. This should start by identifying the actual needs of miners and linking those to the benefits of operating formally by obtaining the required mining permits. This could include supporting data mechanisms that allow miners to access geological information; promoting training programmes; supporting access to equipment; and supporting access to finance mechanisms.

ASM operators largely rely on guesswork or trial and error to identify mineral deposits, as they have minimal guidance to steer their activities. Frequently, this leads to reduced outputs, financial losses, and heightened environmental harm. A better and more accessible system to map deposits and share geology data could guide ASM activities (Personal communication with stakeholder, August-September 2023). Benefits to artisanal and small-scale miners would include greater longevity and efficiency at sites, reduced environmental harm, and enhanced probability. It has also the potential to help these miners

when requesting bank loans or other support services, as they could propose geological information as collateral (although there is limited information proving that the banking sector would accept only this kind of information as collateral). Such benefits are likely to incentivise artisanal miners to be more in compliance with mining laws and regulations. As a result, supporting the office of National Mines and Strategic Industries, the department in charge of the promotion of geological data, would greatly benefit not only the ASM sector but the entire mining sector. An advanced geological data mechanism would help the government manage and mitigate possible mining rushes that have characterised the ASM sector. This would ultimately also benefit local authorities, who lack the capacity to control the risks associated with these rushes.

In addition, there is an opportunity to develop training programmes specifically designed for artisanal miners, focusing on their needs, challenges, and the local mining context, which address topics such as safety, proper handling of equipment, mining techniques, environmental conservation, and business management. The government department dedicated to assisting artisanal miners, *Service d'Assistance aux Mines Artisanales (SAMA)*, could be engaged, as a result of strengthening governance, in the sharing of advanced techniques and best practises as well as training that will help to enhance their efficiency and productivity. Technical training not only improves mining skills but also fosters an understanding of the advantages and stability that come with operating within the legal framework. This knowledge could become a driving force for artisanal miners to choose legality in their operations. The SAMA could also help facilitate knowledge sharing with the government and relevant stakeholders through discussions and trainings on how the ASM sector works and how to engage with the sector. Local artisanal mining groups and communities could further share their own perspectives and experiences with ECRM mining, allowing for a vertical flow of information rather than a top-down approach. Understanding how the sector operates as well as the challenges faced by these miners could help to ensure that future policies are aligned with local realities on the ground, which will further encourage compliance with regulations. For example, policies should consider the challenges associated with obtaining an AMEA and PREA because of financial and administrative hurdles.

Besides knowledge, artisanal miners in Madagascar, like in most of the analysed countries, need proper equipment to enhance their mining endeavours. With their reliance on rudimentary tools, these miners are often hindered from efficiently extracting resources from the earth. Acquiring better machinery and tools would not only amplify their output but also improve their working conditions, potentially reducing the risks associated with manual labour. However, the financial constraints and limited access to resources make obtaining such equipment a significant challenge for these miners, impeding their ability to maximise their potential in the mining industry. As a result, access to better equipment should be factored into the design of support programmes while maintaining a focus on the sustainability of introducing equipment and ensuring access beyond the duration of funded initiatives. This could entail support programmes through governments, collective purchasing or leasing models through cooperatives, partnerships with private entities, or the establishment of regional facilities where miners share equipment.

Finally, trade and financing dynamics are being identified as a key challenge for the ASM sector across the African continent. Madagascar is no exception, and the barriers to accessing formal financing also result

in ASM operators depending on prefinancing arrangements with buyers. Engaging with formal financing institutions should be sought in the framework of ensuring miners can engage with actors who would support the formalisation and improvement of mining techniques.

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3.7 Morocco

3.7.1 Overview of the mining sector

A multitude of materials are mined in Morocco such as phosphate, arsenic, baryte, cobalt, copper, fluorspar, manganese and silver (Perks, 2019; OHNYM, 2023) and the mining sector contributes to 8-10% of Moroccan GDP (OHNYM, 2023). It is also estimated that the mining sector (both large-scale and small-scale operations) employs around 40,000 people across the country with large-scale operations contributing to the development of regional infrastructure such as roads, electrification, and access to water (OHNYM, 2023). The mining sector is governed by the 1951 Mining code, which regulates the sector and was updated in 2015 by Dahir (law) no. 33-13 (Perks, 2019). The reform extended the mining code to all mineral substances used in Moroccan industry, the addition of an exploration authorisation mining title, introduction of a license that allows operation on tailings and slag heaps and provisions for environmental impact assessments and rehabilitation after mining activities (Bentaibi and Pape, 2021).

Mining has a longstanding history in Morocco both on an artisanal and industrial scale. In 1912, large manganese deposits were discovered after prospecting and mining research began in the Eastern High Atlas and mining operations began shortly after in 1922 (CADETAF, 2023a). The Tafilalet region (near the Eastern High Atlas region) was originally prohibited from exploration and mining research until a Dahir (law/ legislation) passed on 3rd August 1951 allowing for already existing mining regulations and legislation to be extended to the area. This legislation permitted semi-industrial operations to commence in Tafilalet, where native populations already exploited mineral resources in the area (CADETAF, 2023a). This was largely encouraged by private mining companies such as Moroccan Atlas Mining Company (SMAM), Ardar Mining Company, Haut Guir Company, Northern African Mining Company (CMAN), Penarroya Company, *Societe Miniere de l'Atlas Marocain* and *Societe des Mines d'Aouli* (CADETAF, 2023a).

Between 1950-1960, 65,680 tonnes of lead ore were extracted from Tafilalet (CADETAF, 2023a). During this time, lead, zinc, manganese, copper, and iron were in production by large-scale operations (CADETAF, 2023a). However, a combination of unfavourable international market conditions, low grade ores being extracted and independence in 1956, saw foreign companies leaving the Moroccan mining sector (CADETAF, 2023a). This did not curb mining activities in the region, with former workers and local communities continuing to extract lead and zinc ores by artisanal methods (CADETAF, 2023a). Artisanal mining during this period greatly contributed to economic and social development in the region but was not in compliance with mining regulations at the time (CADETAF, 2023a). This prompted a Dahir to be passed in 1960 (Dahir no. 1-60-019) to govern artisanal and small-scale operations and create the mining area of Tafilalet and Figuig (CADETAF, 2023a). The Dahir gave authorisation to artisanal and small-scale miners to exploit lead and zinc deposits for a period of ten years (CADETAF, 2023a). It also created the Central Purchasing and Development of the Mining Region of Tafilalet and Figuig (*Centrale d'Achat de Developpement de la Region Miniere du Tafilalet et de Figuig*, (CADETAF)), a public institution, to supervise mining activities and replicate the services provided by the departed intermediary traders (CADETAF, 2023a). Initially, baryte was not one of the minerals extracted by ASM in the area, but with growing demand, its existence in the region and the accessibility to extract the mineral, ASM producers were



encouraged to also extract baryte (CADETAF, 2023a). CADETAF refers both to an area in Morocco where artisanal mining activities occur and the governing body of such region.

The image below outlines how the designated area for artisanal and small-scale mining operations changed between 1960-1975.

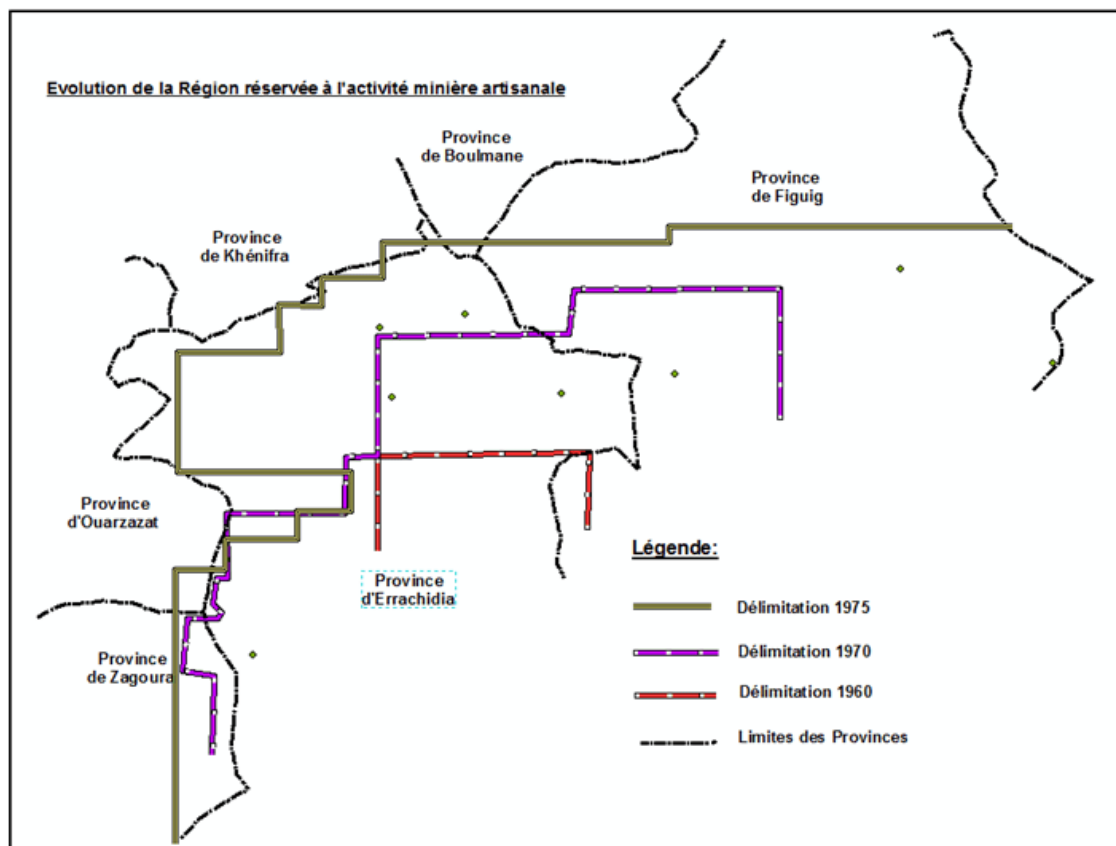


Figure 18 CADETAF region 1960-1975 (CADETAF, 2023a)

Today the designated CADETAF region is approximately 60,000 km² (CADETAF, 2023b). The region of Tafilalet has an estimated population of around 1.6 million people (2014), where almost 70% of the population lives in rural areas (City Population, 2020). As of 2014, the unemployment rate was 15.5% and the poverty rate 14.6% (Knoema, n.a.). Aside from artisanal and small-scale mining, the main economic activities engaged in are agriculture, animal husbandry and tourism (Personal communication with stakeholder, July 2023; CADETAF, 2023b).

Beyond the supervision of mining activities and providing markets for artisanal and small-scale miners, CADETAF is responsible for:

- Reporting to the Ministry of Energy, Mines, Water and Environment.
- Managing and providing technical support services to small-scale miners operating in the zone.
- Conducting research and exploration.

- Helping with commercialisation and developing production.
- Buying and transporting minerals produced by ASM operators in the zone via collection centres.
- Developing and maintaining the mineral market.

However, following a revision in legislation, CADETAF is in a transitional period. In May 2020, a new decree (Decree 2-18-442) which complements Law 74-15, was approved aiming to establish legal precedent for the opening up of the Tafilalet and Figuig region to national and foreign large-scale mining investment (Hatim, 2020). The former Minister of Energy, Mines and Environment, Aziz Rabbah, stated that the decree and following investments would allow traditional miners to protect their assets, develop their working methods and maintain their livelihoods mining in the region (Hatim, 2020). The former Minister also stated that the investments would help increase tax revenues in the region and create several thousand jobs (Hatim, 2020). Decree 2-18-442 divides the region into 2000 mining zones which are available for mining permits (Personal communication with stakeholder, August 2023) and creates mechanisms for companies and traditional miners to manage their relationships with one another and protect the rights of traditional miners by creating a board with representatives from investing companies and traditional miners (Hatim, 2020). Future investments in the region aim to promote development, increase industrialisation, conduct scientific research, and train human resources (Hatim, 2020). As a result, CADETAF has been undergoing a transformation as the new decree strengthens the role of the department (Hatim, 2020). Abderrahim Dinar, former Director of CADETAF, stated that the new decree allows for the region to open up to investors in a balanced manner and consider the lucrateness of potential investment in the mining sector and the interests of artisanal and small-scale miners that have been in operation for several decades in the region (Hatim, 2020).

3.7.1.1 The ASM sector

It is estimated that there are between 5,000 and 10,000 artisanal and small-scale miners operating in the country (UNECA, 2023) and producers are mainly men (Personal communication with stakeholder, August 2023). Women are rarely involved in the extraction of these materials, but some may be involved in the washing process of mineral ores (Personal communication with stakeholder, July 2023). Gold, silver, copper, iron ore, cobalt, uranium, manganese, fluorspar, phosphate, tantalite, pyrophyllite, talc, cement, tin, rare earth elements and diamonds are also said to be extracted by artisanal and small-scale miners (UNECA, 2023). However, only the extraction of baryte, lead and zinc ores by ASM producers is legal in Morocco (Dahir 1.16.131, Law no. 74-15). Almost all ASM operations occur in the Tafilalet region, where land is designated for artisanal and small-scale miners to extract baryte, zinc and lead (UNECA, 2023). If other actors want to conduct research or exploration for minerals in the Tafilalet region, ASM producers are given priority under the condition that they organise in a cooperative or enterprise model and can justify equivalent financial and technical capabilities to those interested in potential mining activities in the area (Dahir 1.16.131, Law no. 74-15, Article 8).

The table below highlights how much (in metric tonnes) baryte, lead and zinc is extracted by artisanal and small-scale miners in the Tafilalet and Figuig region.

Year	2014	2015	2016	2017	2018	2019	2020	2021
Baryte	649,217	751,997	298,618	472,102	516,391	538,360	331,744	548,623
Zinc	13,315	24,462	24,368	20,779	33,257	20,009	6,451	23,244
Lead	2,601	1,791	3,292	5,814	4,824	5,318	17,501	7,918

Table 57 CADETAF zone production of baryte, zinc and lead in (metric) tonnes (CADETAF, 2021)

Morocco is the third largest producer of baryte in the world (10%) and approximately 90% of baryte produced in Morocco is done so by artisanal and small-scale miners (USGS, 2023; Perks, 2019). It is estimated that 1,500 people extract baryte by ASM methods (Perks, 2019). Artisanal and small-scale miners produce approximately 400,000 – 600,000 tonnes of baryte annually, specifically from Erfoud, Taouz (Errachidia Province) (93%), Beni-Tadji, Bouanan (Figuig Province), Tazarine (Zagora Province), and Alnif (Tinghir Province) (CADETAF, 2021; CADETAF, 2023c). In these areas petroleum baryte and chemical baryte are produced (CADETAF, 2023c).

3.7.2 ASM mineral value chain

After baryte is mined by ASM producers, there is very little processing of the as-mined material, this could be attributed to the fact that miners have limited information about the characteristics of the baryte mined, may not know what processing methods to employ or do not have access to the right processing equipment.

As a result of limited processing, ore is sold to private enterprises who process and then export the material (Personal communication with stakeholder, August 2023). For metals such as lead and zinc, unprocessed run-of-mine ore is sold to enterprises in larger cities such as Rabat and Marrakech (Personal communication with stakeholder, August 2023). CADETAF, was once the main buyer of mined baryte in the region, but based on stakeholders' interviews, this is no longer the case (Personal communication with stakeholder, August 2023). The lack of processing by ASM producers can be attributed to several factors. One factor is the lack of processing facilities in the area, making it harder for miners to access processing capabilities. This is further compounded by the fact that the CADETAF zone is vast and most of the population live in rural areas so there would be additional costs for transporting ores from mine site to processing facility (Personal communication with stakeholder, geologist, July 2023). Another factor is miners not having the technical knowledge or equipment to engage in further processing of the ores mined (Personal communication with stakeholder, August 2023). Due to the lack of processing of as-mined materials, miners are limited to selling ores locally at a price up to three times less than if they sold processed materials (Personal communication with stakeholder, August 2023).

3.7.3 ASM sector challenges

There are several challenges faced by the artisanal and small-scale mining sector in Morocco. This section will focus on the challenges that inhibit the development of the sector, the potential to supply ECRMs through formal value chains and its opportunities to contribute to socio-economic development. For these

reasons, the challenges presented below should be considered when identifying and defining responsible investment avenues for critical raw material production in Morocco.

3.7.3.1 Processing capabilities

Once baryte ore has been mined by artisanal and small-scale miners, it undergoes some sort of processing, though this processing has limitations and specific requirements (Essalhi et. al, 2018). Methods employed include hand picking, crushing, screening, washing, jigging, using tables and spirals, and flotation (Essalhi et. al, 2018). First the mined material undergoes hand picking. This process requires miners to manually separate mined baryte ore from waste. This is achieved by considering both the colour and density of as-mined material and separators being able to determine quality of mined baryte (Essalhi et. al, 2018). Then the ore undergoes crushing and screening in preparation for a washing circuit where barite is separated from the fine fraction, such as subsoil and clay, which is subsequently discarded as waste (Essalhi et.al, 2018). Then the ore-bearing material undergoes jigging, which uses a jig and pulsating water to separate baryte from waste by gravity, the heavier baryte sinks to the bottom of the jig and is collected whilst the lighter waste stays at the top of the jig (Essalhi et. al, 2018). Similar to jigging, spirals and tables use gravitational methods to separate waste from the ore (Essalhi et. al, 2018). Flotation uses chemical methods to further separate waste from the baryte ore, where jigging and other methods were unable to sufficiently remove waste (Essalhi et. al, 2018). However, at an artisanal level, using spirals and tables and flotation methods may be more difficult to employ due to higher operational costs (Essalhi et. al, 2018). Once material is ready to sell, miners will often sell as-mined material to private enterprises, who then process it and sell it for export. As processing capabilities of ASM producers are limited, they often sell their material for prices up to three times less than the value they could ask for processed materials (Personal communication with stakeholder, August 2023), reducing their possibility to capture more value from their baryte production.

3.7.3.2 Financial capability of CADETAF/ Broad scope of CADETAF responsibilities

The public institution, CADETAF is responsible for a multitude of services in the region. These include regulation of the ASM sector, providing technical support services to artisanal and small-scale miners, conducting research and exploration, and developing the mineral market (Perks, 2019). Additionally, as outlined in Articles 14 and 22 of Law 74-15, CADETAF is supposed to function as an organisation that is part represented by artisanal and small-scale miners in the Board of Directors, a provider of equipment such as tools and explosives needed for mining activities and a guarantor of loans on behalf of miners. Moreover, the broad scope of responsibilities given to CADETAF means that there is limited capacity for the organisation to effectively carry out these tasks, impacting the management, support, and monitoring of ASM operations in the region (Perks, 2019). This is further complicated by financial constraints faced by CADETAF to service the whole area and all miners involved.

3.7.3.3 Underutilisation of mineral resources

Based on different sources, it is estimated that only 7-10% of the designated CADETAF region is being utilised by artisanal and small-scale miners (Perks, 2019). It has been reported that the near surface deposits have already been exploited by ASM producers, some areas in the zone face inactivity as miners



do not have the technical or financial means to develop deeper underground operations (Perks, 2019) (Personal communication with stakeholder, August 2023). Due to this fact, there have been ongoing conversations to open up the CADETAF region to larger-scale mining and investment (Perks, 2019). As the ASM sector is mainly occupying about 6,000 km² of the CADETAF area, the government has decided to open the remaining 54,000 km² to medium and larger-scale mining companies, prospecting and exploration (Perks, 2019). This would allow for medium and larger-scale companies to prospect and explore and identify other materials beyond zinc, lead and baryte already produced by artisanal and small-scale miners (Perks, 2019) (Personal communication with stakeholder, August 2023).

3.7.4 Relevant initiatives

An example of a donor project carried out in the Moroccan mining sector is the 54453 Eastern Anti-Atlas, Draa-Tafilalet, and CADETAF Geochemical Mapping Project (China.AidData, 2023a). This was a USD 3.64 million project funded by the China Ministry of Commerce and implemented by the China Geological Survey (China.AidData, 2023a). The project commenced in 2016 and aimed to explore and map Morocco's subsoil deposits of lead, zinc, copper, silver and other industrial minerals in the Eastern Anti-Atlas Mountain range, the Draa-Tafilalet and CADETAF zone, covering 7947 km² (China.AidData, 2023a). The project produced geochemical maps, notices and atlases that sought to “energise, improve and promote” the mining sector by providing mining investors with updated geological information of the area (BTP News, 2018; China.AidData, 2023a). The project was completed in 2018 and all final products were presented to the Ministry of Mines, Energy and Sustainable Development (BTP News, 2018). This project is just one amongst many funded by the China Ministry of Commerce and implemented by the China Geological Survey. Similar past projects include the 53451 Souss-Massa Geochemical Mapping Project (completed in 2015) (China.AidData, 2023b), 56450 Western High Atlas Geochemical Mapping Project (completed in 2017) (China.AidData, 2023c). At the time of writing this profile, there were three ongoing geological mapping projects occurring in Morocco. These projects include another surveying of the CADETAF area covering 26,000 km², surveying of Hassi Lahmer in the Fez-Meknes region covering 2,600 km² and again in the Souss-Massa region covering 1,950 km² (MEM, 2023).

3.7.5 Investment needs and opportunities

90% of the baryte produced in Morocco comes from artisanal and small-scale miners and ore grades are at 85%, demonstrating the potential for baryte production to be a sustainable livelihood for communities in the CADETAF region (Perks, 2019). Based on information collected from publicly available resources and conversations with stakeholders, such as government representatives and mining sector experts, the main investment needs and opportunities of the sector include:

- Creation and supporting the access to processing facilities to increase value addition.
- Technical assistance to provide all stakeholders of the sector with the knowledge, equipment and training needed to extract baryte more efficiently, operate under safe working conditions and ensure environmental management occurs in the ASM sector.



- Collaboration between the ASM actors and companies applying for licenses in the CADETAF area to ensure a smooth transition to the involvement of other economic actors and guarantee sustained livelihoods.
- Monitoring impacts and support to livelihood opportunities: Considering the changing dynamics of enterprises having access to CADETAF area for exploration and mineral production, the impacts on livelihoods and employment would need to be accounted for, managed and ideally minimised by specific programmes. The investment needs and opportunities elaborated below, address structural challenges of the ASM sector in Morocco which can be considered necessary for further development of the sector. Additionally, the suggestions below align with the Ministry of Energy, Mines and Environment's aims to ensure future investment in the region promote development.

Historically, CADETAF has governed and supported the ASM sector in the Tafilalet and Figuig region whether this has been through technical assistance to miners, access to equipment such as explosives and excavators, issuing mining permits, providing geological information, or developing and maintaining the mineral market. With part of the CADETAF region opening up to medium and larger-scale mining companies and investment, it is key that there is a balance between increased production of mineral resources by these mining companies and remained access to livelihoods for ASM producers. As a result, ways of coexistence or collaboration would need to be determined, with CADETAF potentially having a monitoring role. Moreover, with this longstanding history and the introduction of Decree 2-18-442 strengthening the role of the organisation in the region, CADETAF will be a key stakeholder to engage with regarding future investment opportunities of the ASM sector in Morocco. There are certainly opportunities that can be derived from increased investments in this area, for example ASM operations transitioning to small-medium scale operations, direct and indirect employment opportunities.

This would mean that in practice, given the development of the CADETAF area, ASM producers could evolve in the following ways:

- Work in alternative economic activities.
- Develop into mechanised / small / medium scale mining operations.
- Laws can be introduced to encourage ASM producers to form cooperatives and work alongside medium and larger-scale mining operations.

It is also crucial that future investment in the artisanal and small-scale sector align with CADETAF's and the Ministry of Energy, Mines and Sustainable Development's outlined roadmaps and objectives, that aim to promote development, increase industrialisation, conduct scientific research, and train human resources (Hatim, 2020).

3.7.5.1 Create and support access to processing facilities

The creation of processing facilities and training on processing methods would allow ASM producers to earn higher prices for baryte mined as they would be selling more concentrated baryte compounds. The processing that occurs at the ASM level does not need to be resource intensive or technologically



advanced. Creating and supporting access to processing facilities in Morocco could be actualised in multiple ways. The first avenue could be providing support and training to miners on simple gravimetric methods, crushing and grinding of as-mined material to form more concentrated baryte powders. As a result of this training, miners will be able to identify high ore quality and also ensures that value is added to the baryte value chain (Personal communication with stakeholder, August 2023). A second avenue to consider is creation of several well-positioned processing facilities across the CADETAF region, so that miners in more rural areas have access to processing facilities closer to them, reducing costs where transport is needed to haul ore from mine site to processing facility. Additionally, as other processing and beneficiation methods can be undertaken by artisanal and small-scale miners (crushing, grinding, screening, jigging, washing), opening these facilities would also allow for miners to have access to tables and spirals, equipment they would otherwise find difficult to rent/ access/ maintain due to their high operational costs.

3.7.5.2 Technical assistance

3.7.5.2.1 Access to geological information

As highlighted above, there has already been collaboration between the Moroccan Ministry of Energy, Mines and Development and the Chinese Geological Survey Agency for geological mapping of the CADETAF area and dissemination of this geological information, however this has only covered approximately 34,000km² of the 60,000 km² area (MEM, 2023a). It is worth noting that the Ministry of Energy Transition and Sustainable Development's (MEMSD) has outlined a National Roadmap for the mining sector in Morocco with hopes to have the CADETAF area (along with other mining areas in the country) fully covered in geological and geophysical maps by 2025 (MEM, 2023b). It is important that the information already collected and yet to be collected is not only for CADETAF's, other governmental organisations' and investors' use but is also accessible to ASM producers in form of training and guidance to support continued productivity. It is often the case that the lack of access to such information to governing bodies of the ASM sector, ASM producers and investors leads to policies and regulations that fail to integrate the realities of ASM producers and contribute to haphazard approaches to exploration and mining. It is also crucial that any investment into supporting the production and dissemination of geological information in the CADETAF region complements what has already been done.

3.7.5.2.2 Support in mining techniques

Moreover, the issue of ASM exploiting most near surface deposits can be remedied with the introduction of production methods such as tunnel structures to fully exploit mineral veins and water pumps to manage water inflow which blocks exploitation once mines are dug deeper (Personal communication with stakeholder, August 2023). With support from CADETAF and other enterprises, ASM producers can shift their focus from reducing costs of mining to improving techniques and value addition activities (Personal communication with stakeholder, August 2023). Such trainings and knowledge sharing to miners could be done through CADETAF, community-based mining organisations in the area and/ or other miners (potentially through cooperatives).

3.7.5.2.3 Support the transition to small-/medium-scale mining operations

Based on the information collected for this country profile, mineral deposits available for exploitation with artisanal methods are depleting, reinforcing the need for increased technical assistance whether in the form of improved mining techniques, access to equipment and access to geological information. To combat this growing challenge, artisanal miners could be supported to transition to small-/medium scale mining operations with increased levels of mechanisation. Avenues to ensure access to equipment (e.g. through financing mechanisms, supply chain linkages) could be explored and supported by technical assistance and training on how to use the equipment safely and effectively (Personal communication with stakeholders, August 2023).

An example of executing this specific investment opportunity is the New Bugarama Mine (NBM) in Rwanda. Between 2009-2021, Fairphone, tungsten smelter, Wolfram Bergbau und Hutten AG (WBH) and major shareholder of NBM, Speciality Metals Resources (SMR) co-funded the transition of tungsten miners to formalised artisanal and small-scale semi-mechanised mining operations at the New Bugarama Mine (Nkundibiza, Tufo and Jorns, 2021). The case study outlines that it required several years of cooperation and strategic investments to achieve continuous improvements. Some of the activities implemented included development of a mining master plan which is referred to in daily mining operations; introduction of equipment such as excavators, compressors, shaking tables to support mining operations and the development of modern tunnels which improve the accessibility and safety of underground work carried out by miners, these introductions also complemented the previously used methods by the miners (Nkundibiza, Tufo and Jorns, 2021). As a result, New Bugarama Mine saw that artisanal and small-scale miners produced more tungsten due to the introduction of equipment and modern mining techniques (Nkundibiza, Tufo and Jorns, 2021). Between 2012 – 2019, NBM tungsten production was between 179 and 216 tonnes per annum and in 2020, the mine produced 252 tonnes of tungsten concentrate (Nkundibiza, Tufo and Jorns, 2021). Other positive impacts included better terms of employment, working conditions and health and safety, better management of environmental impacts, water usage and waste management, the skill development of miners, job creation and socio-economic development of the surrounding area (Nkundibiza, Tufo and Jorns, 2021). Moreover, this project required community and stakeholder engagement including district authorities, sector authorities, village administrations, schools, healthcare providers, mining-affected communities, down and midstream actors and miners themselves. This specific case study attributes the success of this initiative to the national and regulatory enabling environment, collaboration with stakeholders and support and collaboration with supply chain partners (Nkundibiza, Tufo and Jorns, 2021). Along with other investment suggestions in this country profile, supporting the transition to small and medium-scale mining can be actualised.

3.7.5.3 Monitoring impacts and support on livelihood for ASM producers

Considering the opening access to other enterprises' investment in the CADETAF region, impacts on the livelihoods and opportunities for current ASM producers should be monitored. Should the involvement of larger mining operations together with the depletion of resources amenable to ASM exploitation result in less opportunities for artisanal producers, it would be important to invest in support programmes to develop alternative economic activities (Personal communication with stakeholder, August 2023). Many miners are already involved in other industries such as farming, animal husbandry and tourism (CADETAF,



2023c). However, more support is required to make other economic activities more sustainable as long-term livelihood sources. One way this could be achieved is by making sure that local populations have sufficient access to water and energy to support activities such as farming and animal husbandry. Moreover, as Morocco is a semi-arid country, water resource management is essential, especially as mining can be water intensive (Government of Canada, 2023). Training could also be provided to local populations on how to improve and optimise water and energy use (Personal communication with stakeholder, August 2023).

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3.8 Mozambique

3.8.1 Introduction and ASM sector overview

Artisanal and small-scale mining (ASM) in Mozambique is largely an informal sector, however it plays an important role in the local economy, especially in rural areas. It is estimated that 75% of people in Mozambique work in the informal economy (ILO, 2021). As a result, the ASM sector does not represent an exception, but the analysis of how it functions, and its challenges should be looked in the context of the broader informal economy. The same will apply to most countries in the African continent where ASM occurs.

The Government, through the Ministry of Mineral Resources and Energy (MIREME) and the National Directorate of Geology and Mines (DNGM), has integrated ASM into its poverty reduction strategy documents and is making efforts to operationalise the Strategy for the Development of Artisanal Mining, approved in 2017, through the creation of mining cooperatives and mining extension services (Tychsen, et al. 2022). In addition, MIREME, in coordination with the National Institute of Statistics (INE), carried out the first Census of Artisanal Miners of Mozambique (CEMAM) in 2021. The aim of the study was collecting statistical data about artisanal mining in the country, to obtain information on the number of artisanal miners, their location, predominant age groups, origins and nationalities, environmental aspects associated with ASM activity, form of organisation of mining communities and their contribution to local socio-economic development (MIREME, 2022).

Information collected in the context of the CEMAM shows that 806,957 people are directly involved in the sector from mining to trading (MIREME, 2022). As a result, it can be expected that many more depend directly or indirectly on the sector for their livelihood. More than half of the artisanal miners, 229,680 individuals, are engaged in the extraction of gold (about 59.3%), followed by construction stones (15.8%), precious and semi-precious stones (9.9%), sand (8.3%), clay (6.4%), coal (0.25%) and tantalite (0.07%). Of the ASM operators included in the survey, 75% describe mining as their principal source of income, followed by agriculture, which remains the main livelihood for 20.8% of people also involved in the ASM sector (MIREME, 2022). Previous research of the sector has already identified a link between the mining and agricultural sector as a strategy to diversify income and increase resilience in the case of events impacting agricultural production such as drought, flooding, or other climate related events (Mondlane et al., 2021). The CEMAM has tried to assess some of the socio-economic impacts of the ASM sector, and employment generation and improvements in housing conditions are the main advantages described by individuals involved in ASM (MIREME, 2022).

3.8.1.1 Extended critical raw materials and ASM

According to the CEMAM, among the extended critical raw materials list, only tantalite is being produced by the ASM sector in Mozambique. Tantalite occurs in the pegmatite region of Alto-Ligonha, in the Zambezia province. Among the 1577 mineral sites covered by the census, only 0.9% refer to tantalite extraction equalling a total of 14 sites, all located in the province of Zambezia in the districts in Alto-Molócue and Gilé. In addition, lithium and beryllium production and commercialisation at an artisanal level takes place in Mozambique (Personal communication with artisanal miners, February 2024),



however limited information is available on the production of these minerals and further analysis would be required. Generally, limited reliable and updated data is available on the production and trade of mineral products in artisanal mining.

In terms of strategic consideration of critical minerals, the Mozambican government is in the process of reclassifying the minerals, with a view to ascertaining the most strategic ones (Personal communication with stakeholders, November 2023 and February 2024).

3.8.1.2 Governance and applicable regulation

The legal instruments that regulate ASM's activity in Mozambique are the following:

- Law No. 20/2014, of 18 August, the Mining Law, which establishes the general principles on the rights and obligations related to the use of mineral resources, including mineral water;
- Decree No. 31/2015, of 31 December, Regulation of the Law and Mines, which establishes the rules for prospecting and exploration of minerals, development, mining and processing of mineral resources, as well as geological mapping and development of geological, metallurgical and scientific studies;
- Decree No. 20/2011, of 10 June, Regulation on the Commercialization of Mineral Products, applicable to national natural and legal persons;
- Decree No. 26/2004, of 20 August, Environmental Regulation for Mining Activity;
- Decree No. 25/2015, of 20 November, which approves the Regulation for the marketing of diamonds, precious metals and gems; and
- Law No. 20/97, of 1 October, which approves the Environmental Law, and establishes the legal bases of the environmental protection regime, prohibiting the production, the disposal in the soil and subsoil, of any toxic and polluting substances outside the legally established parameters.

There exist two types of mining permits for the ASM sector, the mining certificate (*certificado mineiro*), which applies to small-scale operations and the mining pass (*senha mineira*) which is reserved for artisanal mining activities and can only be obtained within designated areas (*areas designadas*). Both the mining certificate and the mining pass can be granted to individual Mozambican citizens or a legally recognised organisation. The mining certificate has a duration of 10 years, while the mining pass of 5 years. The designated areas are to be defined by the government and cannot overlap with other existing permits or requests for mining and exploration permits. This regulatory framework allows a clear distinction between artisanal activities and small-scale operations, which have introduced or are willing to introduce more advanced techniques.

Three more licenses apply for the processing and trading of minerals, whether they come from ASM production or not. These are the licenses for mineral treatment and processing (*licença de tratamento mineiro e licença de processamento*) and the trading license (*licença de comercialização*).



3.8.2 ASM mineral value chain

Limited literature is available on the ASM value chain of tantalite in Mozambique, however based on observations of trade dynamics at some mine sites and engagement with stakeholders, a simplified description of the value chain can be drawn, focusing on miners, traders, resellers and exporters.

Reportedly, the miners who mine tantalite get the lowest value of the commodity traded, having limited negotiation power and working through agreements under which the value of the sale of the mineral is shared equally among miners involved in the production. Generally, artisanal miners work in groups of up to 30 people, but some groups choose to reduce the number of participants and seek to work more intensively to secure a relatively higher income. The agreements are informal in nature and are based on relationships among family members and friends, and they do not have any written arrangement or contract. Tantalite is currently produced mainly when there is a request from a buyer, in practice depending on orders from dealers and traders (Personal communication with stakeholder, February 2024).

Traders (licit and illicit) sometimes act as intermediary dealers. These are both Mozambican citizens and foreigners, including from China, Tanzania and Malawi. Some of the traders support and invest in ASM operations by providing tools and equipment for extraction, such as boots, picks, gloves, shovels, nails, hammers and food, on the condition that they have exclusive access to the extracted tantalite at the price defined by them. These traders usually sell to the resellers who then dispatch the material to exporters or act as exporters themselves.

Exporters are the last actor in the tantalite value chain in Mozambique and reportedly, they are the ones who benefit the most from the trade and who are able to capture higher value (Personal communication with stakeholder, February 2024). Exporters are usually licensed operators. They are the ones who at the outset determine the final price they are willing to pay for tantalite. This is afterwards the base of which the order is transferred to ASM producers. Based on the number of intermediaries, as mentioned above, miners risk receiving the lowest share for the mineral production.

In Mozambique, no processing of tantalite takes place, which is exported mostly as tantalite concentrates produced by artisanal panning methods. Some stakeholders have reported that some tantalite might contain iron and uranium, which are separated by using a magnet and the unwanted materials are buried along the banks of the rivers (Personal communication with stakeholder, February 2024). At the time of writing this profile the authors could not assess how common or effective such practice is.

The main destination of tantalite exports is China, and potentially also Thailand and the US. No information is available about existing links with European buyers (Personal communication with stakeholder, February 2024).

3.8.3 ASM sector challenges

Based on information available and interviews with stakeholders, it can be expected that the major challenges associated with ASM production of tantalite are similar to those affecting the sector broadly. Nevertheless, this section will focus on those challenges, which are most relevant for the scope of this



analysis, and in particular the challenges, which prevent or could prevent development and investment in the sector.

3.8.3.1 Governance and barriers to formalisation

Despite the existence of a legal framework for the ASM sector, most actors continue to operate informally or illegally. As a result, many miners operate within designated areas but without a mining pass, or in areas which are not designated and without the mining pass or the mining certificate. Some miners would displace internally within Mozambique, which can lead to conflicts with residents or other miners over the same land. In one case, miners started operating in the former concession of a tantalite producing company, Tantalum Mineração. It was reported that this increased risks and negatively impacted the miners' safety (DW, 2017), showing a clear link between informal ASM activities and poor working conditions and mining practices.

The government, in the effort to support the formalisation of the ASM sector, has been encouraging miners to organise themselves in cooperatives, as an approach to manage and monitor the sector more effectively, and to be able to provide support to organised ASM groups. However, the administrative process to register and formalise cooperatives can be costly and burdensome for many ASM operators. In addition, also the costs and the process to obtain the mining pass can represent a barrier for miners to obtain the required permits. Such difficulties could refer to very basic lack of documentation, such as IDs, limited knowledge of the formal process, distance from administrative offices to submit the requests and documents, and perception of high administrative costs, which are sometimes exacerbated by local administrations, charging even higher fees. Similarly, small-scale mining operations face challenges in obtaining mining permits. Cases have been reported of small-scale operators who start the formalisation process and were held back in the licensing phase, which resulted in years of waiting for a permit (Personal communication with mining operators, February 2024). The present document does not intend to delve into the details of administrative challenges, however looking at these governance limitations is important to understand the context of informal ASM activities. Ultimately, the delays and perceived complex processes demotivate ASM organisations to operate formally, as the costs and difficulties outweigh the benefits of obtaining the required permits. Reportedly, miners feel that the government could more proactively support the development of the sector, for example by giving the opportunity to access tools and finance, beyond focusing on monitoring for revenues and tax's purpose (Personal communication with mining operators, February 2024). The Government's decentralization programme transformed the former Provincial Directorates of Mineral Resources and Energy (DIPREME) into departments within the provincial administration bodies, *Serviços Provinciais de Infra-estrutura* (SPI). As a result, assistance to miners suffered a significant reduction, combined with the lack of financial and human resources at provincial level.

According to CEMAM, 11.6% of mining operators were inspected by the National Institute of Miners, *Instituto Nacional de Minas* (INAMI). From the total inspections, 26% took place in the Zambezia province (MIREME, 2022), due to reported informal and illegal activities. The inspections focused on monitoring mining activities and providing advice on mining techniques and raising awareness on risks associated with illegal and unsafe mining activities. However, only a small percentage of these inspections addressed



tantalite producers, and the majority involved gold miners. Anyhow, it is worth noting that as a result of these inspections, progress was reported in the areas of organisational structures, reduction of conflicts among mining groups and residents, improvement of production and reduction of accidents. (MIREME, 2022). Although this represents a great example of how monitoring can bring positive outcomes, mining operators continue to feel support and control is limited, especially in the area of tantalite production (Personal communication with mining operators, February 2024).

3.8.3.2 Limited knowledge on mineral potential

Based on stakeholder interviews, supply chain actors like miners and traders experience lack of in-depth studies of the mineral potential in the Alto-Ligonha pegmatite region (Personal communication with mining operators and traders, February 2024). This includes lack of information about the geological potential, grades, radioactivity risks and related guidance on extraction and processing methods. At the same time, small-scale operations struggle to conduct prospecting and research studies, which require significant capital investment. Greater information on mineral occurrence would also help the government and other stakeholders to strengthen the support for tantalite production or highly demanded critical minerals, where knowledge is limited and little quantities are produced at the moment of writing this document. Although such exploration efforts are desirable to support ASM operations, the related costs and risks due to unknown results should be considered and specific investments would be needed.

3.8.3.3 Technical challenges: knowledge and tools

ASM individuals and organisations largely rely on skills built based on experience and transferred by others in the sector, however they often lack technical knowledge to operate safely and efficiently. As highlighted in the previous paragraphs, they might have limited knowledge about the geological potential of the areas where they operate and generally are not aware of the good practices to carry out ASM activities (Personal communication with mining operators, February 2024), including safety challenges linked to hard rock mining. Although the legislation requires ASM actors to have technical capacity to engage in mining, most of them work in poorly structured groups with lack of technical and commercial knowledge. The lack of knowledge in the tantalite supply chain in particular, puts miners at a disadvantage in the commercial relationships. This often results in limited means to improve their business practices, which contribute to poor working conditions and potentially adverse impacts in the communities where they operate (Personal communication with mining operators, February 2024). The CEMAM outlines limited usage of personal protective equipment (PPE) in the sector (MIREME, 2022). Another aspect of technical challenge for tantalite producers is the need to use appropriate equipment to access the mineral deposits found in hard rocks. For most small-scale operators (use of mechanised equipment would not be allowed for artisanal miners), acquiring such equipment (e.g. electric hammers, generators) remains challenging and they rely on traders to make such investments or provide the equipment.

3.8.3.4 Access to formal finance and markets

Although limited information is reported on the trade dynamics of tantalite, interviews with stakeholders, suggest that trade relations remain largely informal. In addition, traders represent the main financiers of



tantalite production in Mozambique. There are no other alternative funding mechanisms currently accessible to the ASM sector. Being informal is the main limiting factor to access the formal tantalite market and to get access to other sources of investment than traders. This applies to the tantalite sector in particular and likely to the entire ASM sector in general. This challenge speaks to similar dynamics observed in other countries. However, the analysis carried out for this profile focusses on the access to the market and investment of the tantalite sector, rather than for other commodities in the country. It remains largely dependent on traders' willingness to invest in ASM operations, and miners tend to produce when there is a request from a buyer, as there is no easy way of accessing the market.

3.8.3.5 Social and environmental challenges

Although reports specific to tantalite are limited, it can be expected that the ASM sector of Mozambique presents some of the common social and environmental challenges which characterise the sector more broadly, in particular exacerbated in the context of informal activities. This would include challenges linked to working conditions, including health and safety, environmental issues, as well as relations with communities and land disputes (Personal communication with stakeholder, February 2024, MIREME, 2022). More specifically the CEMAM identified that over 5000 children between the age of 5 and 14 are involved in the ASM sector as a whole, representing 2.2% of miners. Smaller percentage when it comes to mineral trading (MIREME, 2022). Reportedly, children engaged in mining activities have led to school dropouts (MIREME, 2022). Considering the limited number of people involved in tantalite mining at the time of writing this profile, the authors could not define whether the risk of child labour also applies to tantalite production.

Some of the environmental impacts, which are specific to tantalite production relate to contamination of rivers from the washing process. Such practices not only have an impact on the quality of the waters, but also affect nearby communities who depend on rivers for their daily consumption and use. Other issues like degradation of soils are linked to the lack of restoration of former sites, which are abandoned, and no control takes place to enforce rehabilitation activities.

3.8.4 Relevant initiatives

3.8.4.1 Mining Development Fund

The Mining Development Fund (*Fundo de Fomento Mineiro*) was intended to promote mining activities through the provision of technical and financial support to holders of small-scale and artisanal mining exploration permits. However, it was terminated in 2013 (Verdade, 2013). The initiative had limited success due to insufficient funds, compared to the needs to support the sector. For example, the fund was tested to buy ASM produced gold, but it was not enough to purchase all the production of the country (Personal communication with stakeholder, February 2024). Allegedly, other unofficial sources highlighted that the fund had been poorly managed. Nevertheless, should similar initiatives be considered for future implementation, an in-depth analysis should take place to identify learnings from previous experiences in Mozambique and build on those.

3.8.4.2 Nampula Annual Gem Fair

An initiative promoted by the Government called FAGENA was launched in 2016, which stands for the Annual Nampula Gem Fair. This initiative aims to promote geological-mining resources and geosciences and will include the exhibition, purchase and sale of gems, precious metals and jewellery objects. FAGENA, in addition to exhibiting products, services and work tools in the chain of use of mineral resources and creating partnerships, dissemination of recent scientific discoveries related to occurrences, the event will also exhibit the morphology and genesis of gems and precious metals and promotes sustainable forms of mining extraction and processing (FAGENA, 2024). Reportedly, also tantalite has been exhibited at the fair (Personal communication with stakeholder, February 2024), which is clearly an opportunity for tantalite producers considering the proximity of the tantalite producing areas to the city of Nampula. This initiative has the objective to support the development of the ASM sector and is part of the government's efforts to support formalisation.

3.8.4.3 Funded initiatives and development cooperation

Besides government led initiatives, there are other organisation and international cooperation projects which are worth mentioning.

Medicus Mundi, in collaboration with Centro Terra Viva, has been working with the ASM sector in the provinces of Cabo Delgado and Nampula to dignify the practices of artisanal miners and support improved environmental and overall mining practices (Medicus Mundi, 2024). In Cabo Delgado the projects work in 3 districts and in Nampula in the districts of Moma, Mogovolos and Murrupula. Reportedly, artisanal mining of tantalite takes place in the districts of Mogovolos and Murrupula (Personal communication with local government authorities, February 2024). These districts are located in the southern region of Nampula province and border the mining district of Gilé, in the pegmatitic region of Alto-Ligonha.

The German Federal Institute for Geosciences and Natural Resources, *Bundesanstalt für Geowissenschaften und Rohstoffe* (BGR), has also been supporting the government of Mozambique through technical cooperation projects focused at strengthening the technical and organizational capacities of MIREME and the associated institutions to improve the implementation of state instruments and competences (BGR, 2022). Since 2023 (until 2026) the BGR is running the project "*Cadeias de fornecimento responsáveis e produção sustentável no sector mineiro*", which among other activities tries to reduce mercury consumption in the ASM sector.

In 2022, the Government of Mozambique led a project funded by the MAGTAP programme and implemented by the Alliance for Responsible Mining (ARM) and Levin Sources, in collaboration with Genesis LDA. The project focused on the implementation of the government ASM Development Strategy of the government of Mozambique. The strategy, developed in 2017, serves to accompany artisanal and small-scale miners through a process of legalising and improving production through technical and organizational support. The backbone of this strategy is to help artisanal and small-scale miners organise themselves into cooperatives, or other legal entities, and support them through extension services. The term extension services, widely used in the agricultural sector, has been used to refer to technical support for ASM producers among a range of topics relevant to formalisation and the application of responsible



mining practices. The partners have implemented the strategy in three pilot areas in the provinces of Inhambane for clay, Tete for gold and Zambezia for precious and semi-precious gemstones and tantalite. In practice, the project supported cooperatives' formalisation and improvement of mining practices in the areas of cooperative organisation and legal compliance, environmental impacts, health and safety, hygiene and sanitation, improved processing practices, market analysis. Through this process, the implementing partners prepared a series of training materials and operational guides on the themes of support provided to cooperatives, which resulted in training delivered to government representatives, through methods of "learning by doing" based on their involvement during project implementation activities and through specific training sessions. At the end of the project, recommendations for the implementation of extension services to the ASM sector were developed, including terms of reference to identify funding partners to implement the proposed approach.

Finally, the Mozambican Association for the Promotion of Modern Cooperativism (AMPCM, which promotes the cooperativism movement, have started engaging with INAMI. Their work is relevant in the context of the government of Mozambique promoting the cooperative model as an organisational structure for artisanal miners. It should nevertheless be assessed on a case-by-case basis, whether the miners themselves recognise the cooperative model as the most adapt to their circumstances.

3.8.5 Investment needs and opportunities

Considering the information available on ECRM production in Mozambique, the investment needs and recommendations included in this section are two-fold. On one hand, the authors highlight the need to quantify the ECRM potential, to allow for more concrete strategic focus from the government and to outline more concrete investment opportunities in the mineral value chains, based on socio-economic and geological indicators. On the other hand, there are key areas that require further attention for the broader development of the ASM sector, and these could be relevant in the case of ECRM commodities, but also beyond for other minerals and considering the economic contributions of the sector, including employment generation. These areas look into governance and formalisation, extension services and access to formal financing mechanisms.

3.8.5.1 Study to quantify ECRM potential

The information available at the time of writing this profile, either through the existing literature like the recent CEMAM or based on stakeholders' engagement, remains limited with respect to the production of tantalite or other ECRMs. This significantly affects the ability to identify opportunities for investment, which would directly impact the production of tantalite at national level, beyond few examples of individual projects, which are identified in the Zambezia province. At the same time, the government of Mozambique have been in the process of defining which commodities to consider strategic (Personal communication with stakeholder, November 2023 and February 2024). A technical study to quantify the ECRM potential in the country, and the role the ASM sector could play in the production of such commodities, would be highly beneficial. First, it would inform the government itself, on the economic potential of mineral commodities, which are high in demand internationally, and therefore being able to prioritise policies and activities. Secondly, it might help attracting more stable investments for the development of the private sector, both nationally and internationally, with opportunities for the ASM

sector to engage with formal market actors and identify partners who are willing to engage in longer-term commercial agreements, less ad hoc and focused on immediate returns, due to high uncertainty of economic potential. Thirdly, better knowledge of the mineral and economic potential, would help define efforts to support the development expertise and skills in mining, extraction, and processing technologies, and potentially invest in processing centres to increase value of mineral commodities before they are exported.

3.8.5.2 Governance and formalisation

Considering the ASM development strategy, and the MAGTAP-funded programme to support the formalisation of the ASM sector, the government of Mozambique have gained experience and started making efforts to advance the ASM development agenda (Levin Sources, 2023), although availability of funds have hindered the sustainability of existing and past initiatives. For example, the Department of Artisanal and Small-Scale Mining (DEMAPE) is faced with challenges linked to insufficient financial and human resources to support artisanal and small-scale mining activities. These challenges seem to have been accentuated during the process of institutional decentralisation that led to the extinction of Provincial Directorate of Mineral Resources and Energy (DIPREME) at the provincial level and the allocation of its services to the level of Provincial Infrastructure Services (SPI) and District Economic Activities Services (SDAE). Therefore, DEMAPE must coordinate the mining extension activity and to this end, it must have human and financial resources capable of supporting this activity and guarantee that its plans are framed within the government's national programs. Based on stakeholders' interviews, propositions have been made to transform DEMAPE into a National Directorate or equivalent with patrimonial, administrative and financial autonomy (Personal communication with stakeholder, February 2024).

Addressing the governance and formalisation challenges would benefit the ASM sector at large, however, they would also be essential for the success of any investment to enhance ECRM production in Mozambique. Such efforts should be looked from the perspective of the broader functioning of the sector. In order to strengthen the implementation of the legal frameworks, practical aspects should be looked into, such as addressing existing gaps in the functioning of administrative processes, such as the delays in licensing or challenges and related blockages (including management of old permits, incomplete requests, etc.), and closing inconsistencies between national and local administrations. At the same time, the government has started efforts to raise awareness about formalisation, these activities could be furthered strengthened with greater attention to incentives for ASM operators, taking into account their needs, and broader socio-economic challenges described in the previous sections. In addition, the attribution of mining rights has important socio-environmental implications related to the stability of ASM activities, which may impact the formation of population clusters and allowing miners' families to settle. This could have additional impacts on existing residents of mining areas, and such dynamics would need to be monitored on a case-by-case basis to manage and prevent adverse impacts. Greater security related to mining licenses would also allow the creation of conditions and incentives to resolve some of the most pressing environmental impact problems such as sanitary conditions, housing, rehabilitation of areas, among other aspects considered priorities by miners, their families, and the community. More broadly, income generation from the mining sector, could see investment from mining communities in other areas



such as farming, children education, improved housing, food security and purchase of goods and services (Mondlane et al., 2021).

3.8.5.3 Extension services

The attention to extension services has been central during the implementation of the MAGTAP-funded programme throughout 2022. These are meant to address the needs of ASM organisations that require assistance on technical, financial, organizational, economic and many more aspects of running mining operations. Besides piloting the delivery of extension services throughout the project implementation (Levin Sources, 2023), two specific documents were developed, one focusing on recommendations to develop an extension services system and the other outlining terms of reference to identify funding for the implementation of the extension services system. The recommendations report provides an overview of the current extension services in Mozambique, by looking not only at the experience of the mining sector, but also by learnings from agriculture and fishing. It also outlines the preconditions, which make an extension services system viable, and finally delve into concrete proposals for the sustainability of such system. This entails considering the extension services, through a hybrid model, not only dependent on the government resources (human, financial, technical) but also relying on the work, involvement and expertise of other actors including civil society organisations, the private sector and educational institutions. In addition, it addresses the need to revise the funding model for extension services and consider a combination of state budgets, international funding and contribution from cooperatives and enterprises themselves, so that they can also pay for some services, based on savings and improved access to financing mechanisms.

Building on the recommendations' report, the terms of reference for the implementation of extension services put together an approach of making the system operational, through the involvement of the government and other actors as needed. Considering the efforts gone into the conceptualisation of the extension services approach, investments in the ASM sector should definitely consider the work done so far and building on existing learnings and thinking.

3.8.5.4 Financing mechanisms

Looking at the current context of available financing mechanisms for the ASM sector in Mozambique, confirms the experience of most other countries, where trade and financing relations are interconnected, often through informal agreements and activities. In particular, it has seen that tantalite producers largely work “on demand” once they receive an order from buyers, who would then finance the operations.

At the time of writing there is no evidence of the banking sector in Mozambique providing services to the ASM sector. The negative perception towards the ASM sector, as well as the financial sector's poor knowledge of the mining sector and the lack of articulate and reliable sources of information, make it very difficult for banks to assess the risks of ASM individuals and organisations. If the financial institution is unable to meet the due diligence requirements applicable to a potential customer, it may decide not to provide access to its services (such as opening a bank account), enter business relationships, or allow financial transactions to take place, and may even consider submitting a suspicious transaction report for certain customers. In this case, financial and banking entities may feel that the risk of working with the



artisanal mining sector is too high and put in place compliance and risk management processes that are difficult to address for artisanal operators.

As a result, the involvement of financing institutions with the ASM sector should take place in the form of a facilitated engagement to increase knowledge and improve the perception of the sector. At the same time, ASM organisations would benefit from trainings and awareness raising on requirements and advantages to seek formal financing.

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3.9 Nigeria

3.9.1 Introduction and ASM sector overview

Mining in Nigeria is a longstanding economic and traditional activity. There are records that mining activities in what is now known as Nigeria can be traced back as far as 900 BC, with tin mining in Jos, Plateau and clay mining by the Nok civilisation in 500 BC (Schneck, Ndagano and Olaniyi, 2021). Other mineral exploration and exploitation during this time include iron, copper, lead, zinc and gold (Schneck, Ndagano and Olaniyi, 2021). According to the Roadmap for the Growth and Development of the Nigerian Mining Industry (2016-2025), there are 44 commercially viable minerals found across Nigeria and seven materials (limestone, baryte, iron ore, bitumen, lead, zinc and gold) have been highlighted as strategic materials (OBG, 2024).

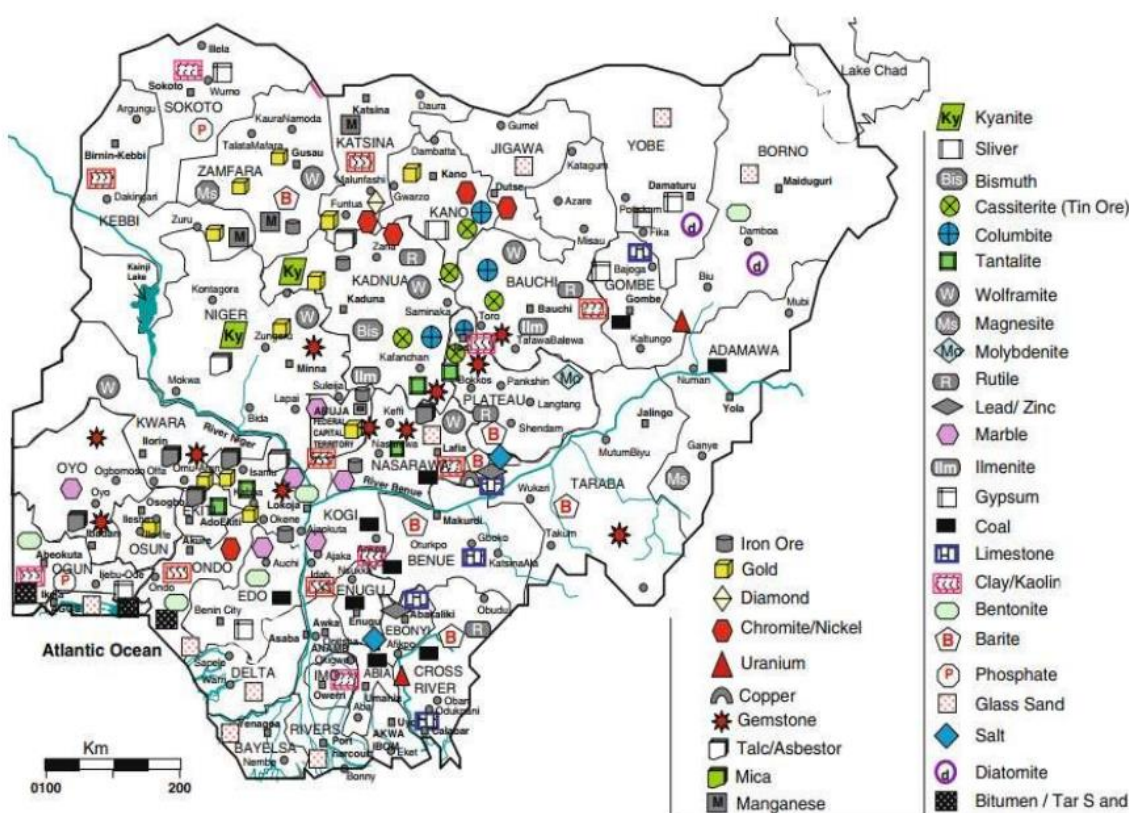


Figure 19 Distribution of minerals that can be found across the 36 states of Nigeria and the FCT (Okunlola, Feese and Nwapi, 2023)

Though Nigeria has a variety of mineral deposits in the country and an established mining history, mining does not contribute significantly to the country's GDP. In the 1960s and 70s, mining contributed approximately 4-5% to the Nigerian economy, however, a combination of factors occurring in the mid-20th century have led to its decline (PwC Nigeria, 2023). Factors include the discovery of oil and gas in 1956, the fall in global coal, iron and tin prices, The Nigerian Civil War (1967-1970) and the Nigerian Enterprise Promotion Decree in 1972 which saw the departure of foreign investors (Schneck, Ndagano

and Olaniyi, 2021). Today Nigeria's mining sector only contributes 0.23% to GDP and between 2018-2022, this figure averages to a 0.17% contribution to GDP (PwC Nigeria, 2023).

There is some large-scale mining occurring in Nigeria and is approximately 10% of all mining activities that occur in the country. The most commonly produced materials are limestone, granite, coal and laterite and other materials produced in lesser quantities include aluminium, iron ore, niobium and tantalum (Schneck, Ndagano and Olaniyi, 2021). In 2021, the first and largest gold mine was built in Osun state (southwest Nigeria) by Canadian-owned company Thor Exploration and produced 98,006 ounces and 84,609 ounces of processed gold in 2022 and 2023, respectively (Ajayi, 2021; Thor Exploration Ltd., 2024).

Artisanal and small-scale mining dominates mineral production in Nigeria, with an estimated 90% of all mining activity carried out by ASM producers (Schneck, Ndagano and Olaniyi, 2021). Materials most commonly mined by ASM include gold, tin, niobium, tantalum, lead, zinc, industrial minerals (baryte, coal, clay, feldspar, dolomite, gypsum, limestone, mica, sand, salt, etc.) and gemstones and are the most researched and geographically available in the country (Schneck, Ndagano and Olaniyi, 2021; Global Rights, 2022). It is estimated that between 400,000 and 500,000 people work in Nigeria's ASM sector and approximately 2 million people are directly and indirectly dependent on the sector (Schneck, Ndagano and Olaniyi, 2021). The artisanal and small-scale mining sector mostly consists of informal producers, and it is hard to determine how many producers actually engage in ASM activities due to their nomadic nature, lack of registration with mining cadastral offices, the widespread activity of ASM activities across the country, the fluctuating nature of sites and the seasonality of mining activities (Schneck, Ndagano and Olaniyi, 2021; Personal communication with stakeholder; civil society organisation, January 2024). Moreover, it is difficult for occupational health and safety and environmental regulations to be met as there is little record of those operating and where operations are (Schneck, Ndagano and Olaniyi, 2021). People engaging in ASM activities in Nigeria do so for a variety of reasons. Such examples include ASM as a traditional livelihood for indigenous populations, an alternative employment opportunity and a seasonal form of employment for farmers during the dry season or when mineral prices are favourable (Schneck, Ndagano and Olaniyi, 2021). Moreover, due to the nomadic nature of the ASM sector in Nigeria, there are a lot of migrant miners from neighbouring West African countries including Mali, Benin Republic, Cote d'Ivoire, Chad, Niger, Ghana and Senegal working in the mining sector (Schneck, Ndagano and Olaniyi, 2021).

Women participate in the sector in varying manners but as they face levels of marginalisation, they likely lack access to capital, lack equipment needed for more capital-intensive activities and face discrimination in the sector (Schneck, Ndagano and Olaniyi, 2021). There is no national level study determining female participation in the sector (Schneck, Ndagano and Olaniyi, 2021). Women often occupy roles such as pan carriers, processors of ore (crushing washing, rock-grinding) and providers of food and goods (Schneck, Ndagano and Olaniyi, 2021). Oftentimes women engaged in the sector have limited education, have families to support or may come from traditional or religious backgrounds that limit their participation in decision making or asserting formal rights (Schneck, Ndagano and Olaniyi, 2021).

The Nigerian Mining sector is governed by several laws, regulations and institutions. The overarching legislation is the Nigerian Minerals and Mining Act 2007 (NMMA), which repealed the 1999 Minerals and Mining Act. This legislation focuses on the regulation of the mining sector, establishes the licenses



required for reconnaissance, exploration, and exploitation of minerals within the country, outlines ownership of land and minerals and outlines the responsibilities of the Minister and Ministry of Mines and Steel Development (Minerals and Mining Act, 2007; Legal500, 2024). Moreover, the Act establishes that mineral rights and ownerships of mineral resources is decided by the Federal Government (Kedem, 2021). However, it has been reported that in November 2021, there were discussions by the Nigerian government to revise the NMMA, devolving the responsibility of mineral resources from the federal level to state level, this is largely in aims to reduce illegal, unlicensed and unregulated mining and ensure that mineral wealth is distributed at the local level, further incentivising state governments to abide by and enforce mining laws and regulations (Kedem, 2021).

Within the Minerals and Mining Act 2007, the Ministry of Minerals and Steel Development is required to provide extension services to the ASM sector including:

- Prospecting and exploration services for registered mining cooperatives, provision of mineral reserve evaluation;
- Provision and facilitation of mineral testing standards and determination of mineral grades;
- Assistance on mine design and planning;
- Teaching of mining skills and introduction to new mining technology, introduction of mineral processing technology;
- Provision of mining equipment and introduction of mineral processing technology skills;
- Provision of environmental impact assessment reports and guidelines on waste management, introduction of health and safety procedures and facilities at the mines;
- Hosting workshops updating miners about legal requirements, marketing, business skills and infrastructural support.

The Ministry of Mines and Steel Development, established in 1985, was the administrative body of Nigeria's mining sector and managed mineral resources in the country (Schneck, Ndagano and Olaniyi, 2021). However, in 2023, President Bola Ahmed Tinubu, split the Ministry into the Ministry of Steel Development and the Ministry of Solid Minerals Development (Dairo, 2023). The Ministry of Steel Development mainly focuses on the steel sector whilst the Ministry of Solid Minerals Development (MSMD) continues to oversee the regulation of the mineral sector, identification of mineral deposits and economic potential, management of mineral sales and issuing permits, licenses, leases and the collection of rents, fees and royalties (Dairo, 2023; MSMD, 2023). The MSMD also has 7 parastatal organisations including the Nigerian Geological Survey Agency (NGSA), the Nigerian Institute of Mining and Geosciences, the Mining Cadastre Office (MCO), the Council of Nigerian Mining Engineers and Geoscientists (COMEG), the National Raw Materials Exploration Agency (NSRMEA), the Nigerian Coal Corporation and the Nigerian Mining Corporation (MSMD, 2023).

Additionally, there is an Artisanal and Small-Scale Mining Department that organises, supports, regulates, promotes and supervises ASM in the country, the department aims to foster mineral wealth through

environmental and health and safety awareness, ensure the betterment of rural livelihoods and community well-being, facilitate improvement and efficiency of the ASM sector, promote access to finance and markets, facilitate formalisation of ASM and facilitate the coexistence of ASM, MSM and LSM operations within the country (MSMD, 2023). The ASM department responsibilities include:

- Registration of mining cooperatives and mineral buying centres
- Supervising ASM producers and organising them into manageable, registerable and legally identifiable groups
- Provision of extension services
- Promoting access to finance for ASM operators
- Facilitating coordination between the government, other countries and multilateral development agencies.

The 2016 Roadmap for Growth and Development of the Nigerian Mining Industry has also guided present-day policy, programmes and interventions in the mining sector. Due to the slow progress of the mining sector after the passing of the Minerals and Mining Act 2007, the then Ministry of Mines and Steel Development established a committee to ‘develop a roadmap for the sustainable development of the mining and metals sector in Nigeria’ (MMSD, 2016). The committee included stakeholders from the state government, the National Economic Council, Bain & Company, PricewaterhouseCoopers (PwC) and Deloitte (MMSD, 2016). The roadmap outlines ambitions for the mining sector to contribute 3% to the Nigerian economy by 2025 and action points are centred around developing mineral and steel potential, building institutions and governance of the mining sector, improving stakeholder engagement, attracting and promoting industry participants such as ASM producers, MSM and LSM companies, beneficiation and processing capacity, improving the quality and breadth of geo-scientific data and information and creation of an enabling environment dealing with social, technical and financial constraints (MMSD, 2016). The roadmap also provides an overview of the mining sector including mineral deposits, regulatory frameworks, licensing, production and revenues and industry institutions and participants; challenges faced in the sector, a proposed strategic framework and an implementation and action plan with ongoing, immediate-, short-, medium- and long-term action items (MMSD, 2016).

In June 2017, the roadmap was shared with development partners and donor agencies such as the World Bank, DFID (now FCDO), the Ford Foundation, UNIDO, UNDP, the Open Society Initiative for West Africa (OSIWA) and Australian and Canadian governments, to garner support for the roadmap and an opportunity for ‘partners and agencies to review, coordinate and synergise their programmes’ in line with the Nigerian governments ambitions for the sector (Onwuemenyi, 2017).

In order for ASM producers to be fully registered and recognised by law in Nigeria, miners are required to fulfil a number of requirements. Small-scale mining companies require a Reconnaissance Permit (RP) and Exploration License (EL). The RP requires the applicant to complete an RP form (Form 42), demonstrate technical and financial competence of the organisation, show receipt of payment for a NGN 10,000 application fee (USD 7.20 based on exchange rate in May 2024), a certification of registration or



incorporation and a description of the area intended to be worked on and the activities that will be undertaken (Tychsen et. al., 2011). The EL requires the applicant to complete an EL form (Form 42), demonstrate financial and technical competence, a detailed work programme and consent from landowners/ land occupiers (Tychsen et. al., 2011).

ASM operators on the other hand are required to have either a Small-Scale Mining Lease (SSML) or Quarrying Lease (QL) as well as a Water Use Permit (WUP). An SSML and QL are exclusive and require an SSML/QL form to be completed, a pre-feasibility study report, demonstration of technical and financial capability consent from landowners/ land occupiers, a certification of registration or incorporation, receipt of payment for a NGN 10,000/20,000 application fee (USD 7.20/ USD 14.40 based on exchange rate in May 2024) (SSML application/ QL application respectively) (Tychsen et. al., 2011). The WUP requires the applicant provide a copy of the mining title granted, a description of an area and water use plan, an agreement with those most affected by mining activities and a receipt of payment for a NGN 10,000 application fee (MCO, 2024). Whichever license/ permit form required can be collected from the Mining Cadastre Offices (MCOs), the ASM Department in Abuja or in State ASM and Mines Offices, however, completed forms must be submitted to the any of the MCOs in Abuja or any of the 6 MCOs in the geopolitical zones (north central, northwest, northeast, southwest, southeast and south south) (MCO, 2024). Being registered allows for ASM producers to access extension services such as training and support, secure tenure on their mining areas, access to financing and a voice with government officials (Tychsen et. al., 2011).

However, registration is made difficult for two reasons. Firstly, collecting a form from in-state ASM and Mine Offices may be far from mine sites making it difficult to access and secondly, requiring all applications to be submitted in Abuja (the Capital) makes it further inaccessible to producers in other parts of the country who are usually drawn to ASM as a poverty-driven activity (Personal communication with stakeholder, civil society organisation, January 2024). As a result, there are many operators that continue working without licenses as the process is cumbersome, financially burdensome and the documentation needed (e.g. coordinates of where they want to mine, environmental and social impact assessments) are hard to obtain (Personal communication, civil society organisation, November 2023).

3.9.1.1 Extended Critical Raw Materials

State	Mineral
Adamawa	Baryte
Abuja (FCT)	Tin, Tantalum, Copper
Bauchi	Tin, Niobium, Tungsten, Copper
Benue	Baryte
Cross River	Baryte, Tantalum, Lithium
Ebonyi	Baryte
Ekiti	Tantalum, Lithium
Kaduna	Tungsten

Kano	Tin, Copper, Tantalum, Tungsten
Kogi	Tantalum, Copper, Lithium
Kwara	Tin, Tantalum, Lithium
Niger	Tungsten, Copper
Nasarawa	Baryte, Tin, Niobium, Tantalum, Copper, Lithium
Osun	Niobium, Tantalum
Oyo	Tin, Tantalum, Lithium
Plateau	Baryte, Tin, Tantalum, Niobium, Tungsten
Taraba	Baryte
Zamfara	Copper, Baryte

Table 58 ECRMs and their locations by state (Ministry of Foreign Affairs NGN, 2024, FineLib, 2017, Anaeke, 2023a; NGSA, 2020a)

A plethora of extended critical raw materials are mined in Nigeria, these include tin, tantalum, niobium, tungsten, baryte, copper and lithium. It is estimated that approximately 80% of the minerals mined leave Nigeria unprocessed, as beneficiation and processing capabilities are lacking and the specialisation of the oil and gas sectors has led to underinvestment in the solid mineral sector (Personal communication, civil society organisation, November 2023).

In 2019, Nigeria produced 2,437 metric tonnes of cassiterite (tin) and 1,703 metric tonnes in 2020 with almost 2/3 of total production coming from Plateau state and Nigeria producing 2% of global tin (USGS, 2023). However, these production volumes may be subject to inconsistencies as there are discrepancies between NEITI statistics (Nigeria Extractive Industries Transparency Initiative) and national production statistics and mineral smuggling occurs in the country, skewing production values (Vasters and Schutte, 2023). Other places that produce tin in Nigeria include Abuja, Bauchi, Kano, Kwara, Nasarawa and Oyo states. Beneficiation of cassiterite by ASM producers is done using rudimentary methods of ground sluicing boxes and water pumps, causing lighter materials to float and denser materials, such as tin, niobium and iron tailings, are left behind (Ebikemefa, 2020).

The USGS estimates that Nigeria produced 1300 tons of niobium-tantalum concentrate in 2019, with a tantalum content of 260 tons, corresponding to 10% of global tantalum production (USGS, 2023). However, the lack of precise and consistent data on actual production in Nigeria suggests that available data should be considered as rough estimates. There is some level of beneficiation that occurs and involves washing machines, vibrating screens, jigs and magnetic separators (Guo, 2021). Niobium-tantalum concentrate is produced in Bauchi, Nasarawa, Osun and Plateau states.

It is not clear how much tungsten Nigeria produces at an ASM level, but it is estimated that 3,100 tonnes of tungsten was produced in 2019 (Vasters and Schutte, 2023) and it is unclear whether there is any beneficiation or processing capacity within the country. Tungsten is usually produced in Bauchi, Kaduna, Kano, Niger and Plateau states (FineLib, 2017a).

Baryte is a significant material for the Nigerian economy as it is a key material used during oil and gas exploration (petroleum being Nigeria's largest export) (Dairo, 2021). As a result, the MMSD has launched the initiative 'Made-in-Nigeria Baryte', to promote domestic production and develop the baryte value chain (Dairo, 2021). Though there are significant baryte reserves in the country, amounting to 15 million metric tonnes, Nigeria imports approximately NGN 5 billion worth of processed baryte from China, the Netherlands, Morocco, Egypt and India (Dairo, 2021; Isaac, 2021). It is estimated that Nigeria produces an average of 10,000 metric tonnes of baryte each year and production takes place in Adamawa, Benue, Cross River, Ebonyi, Nasarawa, Plateau, Taraba and Zamfara states (Isaac, 2021).

It is not clear how much copper is produced at an ASM level in Nigeria, but it is estimated that 30 tonnes of copper was produced in 2019 (Vasters and Schutte, 2023). Copper production occurs in Abuja, Bauchi, Kano, Kogi, Niger, Nasarawa and Zamfara states (FineLib, 2017b). It is unclear whether there is any beneficiation or processing capacity in the country.

In June 2022, deposits of high-grade lithium were found in Kogi, Nasarawa, Kwara, Oyo, Ekiti, Cross River and Plateau states (Amans, Essien and Samson, 2023). According to stakeholder interviews, lithium concentrate is not a newly mined commodity, but with increasing demand for lithium, ASM producers have increased their production (Personal communication, geologist, August 2023). There is no established market for lithium and no value addition activities within the country, resulting in ASM producers selling as-mined lithium to local buyers or offtakers (Personal communication, geologist, August 2023). Not only have ASM producers increased their activity due to rising demand, the Ministry of Solid Minerals and the Solid Mineral Development Fund have stressed the importance of 'intentional policies to control the exploration, exportation, mining and production of lithium mining in Nigeria' (Sumaina, 2023). Lithium has not only become an increasingly strategic mineral for the mining sector with emphasis placed on investors to develop processing facilities and battery manufacturing facilities in country to retain value along the value chain, but it is also seen as an opportunity to use lithium products such as batteries in the national market of renewable energy infrastructure to combat energy insecurity and diversify from oil dependent energy sources. (Okamgba, 2024; Nwaobi and Nzene, 2023; Personal communication with stakeholder; government institution, February 2024).

3.9.2 ASM mineral value chain

There is limited public information about who artisanal and small-scale miners sell their products to and the differentiation in production methods for each ECRM, but according to information collected from stakeholder interviews, Plateau state is reportedly a mineral trading hub for most as-mined materials in Nigeria and the process of buying and selling materials is largely uninstitutionalised (Personal communication, civil society organisation, November 2023). Mineral supply is largely determined by market dynamics and market availability (Global Rights, 2022). As minerals such as lead, zinc, tin, gold, tantalum, niobium and gemstones have had steady strong demand from mineral traders, they continue to be profitable to extract by ASM producers, in a way allowing for middlemen to commission miners to extract the minerals they demand (Global Rights, 2022; Personal communication with stakeholder, civil society organisation, January 2024). Traders then sell as-mined minerals bought from ASM producers to companies in the country, though it is not specified whether this is to domestic or international companies (Personal communication with stakeholder, civil society organisation, January 2024).

The NMMA and the 2016-2025 Roadmap outline the need for mineral buying centres and therefore funding, due to the limited funding the MMSD receives and inter-governmental engagement, to harmonise the activities of state-managed and federal-managed mineral buying centres is required (KPMG, 2023). The MMSD has begun to re-establish mineral buying centres in each of the six geopolitical zones with hopes that they will curb informal mining, smuggling of unprocessed minerals and provide ASM producers with market access and fair prices for their mined material (KPMG, 2023). The reestablishment of these centres also hopes to deal with issues of leakages through porous borders and capture accurate data about mineral production, tax revenue and royalties (KPMG, 2023). Moreover, there it has been highlighted that there is no specific timeline for the completion of these mineral buying centres, however, in order for the Nigerian mining sector to contribute to its goal of 5% of GDP and for mining to provide social and economic development opportunities, providing ASM producers with market access will be priority (KPMG, 2023).

Reportedly, at the time of writing this profile, efforts to reestablish the buying centres have largely focused on Plateau state and recently Niger state, rather than expanding this idea to other parts of the country and efforts have solely focused on opening the buying centres rather than providing proper access to markets, combatting issues relating to corruption and creating awareness about their existence (Personal communication, civil society organisation, November 2023).

3.9.3 ASM sector challenges

3.9.3.1 Centralised governance

Due to Nigeria's history of civil war and ethnic diversity, the Constitution outlines 68 items on the Exhaustive List in which the concentration of power lies with the federal government to ensure national cohesion, of which mining is one of them (Okojie, 2013). However, this has caused tension between federal, state and local government in the mining sector. It has been reported that some state governments feel they should have the power to give mining titles, register miners and earn larger revenues from mineral production in state and without these responsibilities, the state governments have limited roles regarding mining in their jurisdictions (Vanguard, 2023; Personal communication with stakeholder, civil society organisation, January 2024;). It has also been reported that this fragmentation has led to inconsistent implementation and inadequate alignment on laws, policies and strategies set by the federal government, the double taxation of mineral production and state officials trying to undermine decisions made by the MCO by utilising their authority provided by the Land Use Act (Okunlola and Fesese, 2023; Personal communication with stakeholder, civil society organisation, November 2023). Not only does this have implications for the regulatory and legal framework of the mining sector, it also has implications for ASM producers, as they are required to engage with varying actors within local, state and federal levels, and the process of registration is not streamlined, is cumbersome and can be expensive due to travel required and disjointed practices.

3.9.3.2 Geological information

Having adequate, accessible and reliable geological data can vastly improve the activities of ASM producers in Nigeria (Okunlola and Feese, 2023). Geological data is important for becoming a formalised

mining operator and knowing where mineral deposits are located, especially for an ASM sector is quite nomadic. Having access to geological information also means that occupational safety, environmental and social harms can be minimised. The MSMD has implemented several programmes and initiatives to map the geochemical, geophysical and geological mineral deposits of the mining sector (e.g. NIMEPP), but this has largely focused on producing this knowledge for the benefit of medium and large-scale mining companies (Adekoya, 2022). Without further dissemination to ASM producers, it will be difficult to increase production of minerals and the efficiency and effectiveness of the sector (Personal communication with stakeholders, government institution, February 2024; mining engineer, September 2023).

3.9.3.3 Financial capacity

For artisanal and small-scale miners to increase their output and productivity, some form of financing is required, this can be especially difficult to secure as traditional banks view ASM as a high-risk industry due to their informality and lack of collateral (Global Rights, 2022). In some cases, banks, such as the Bank of Industry (BOI) will lend to ASM producers in order to improve their processes through equipment leasing and hire-purchase facilities through the Artisanal Miners Intervention Fund (Okwe, 2020; BOI, 2023). However, they are usually met with high interest rates and unattainable requirements to account for the high risks associated with the sector (Personal communication with stakeholder, civil society organisation, November 2023; Global Rights, 2022). The application process occurs in two stages, the initial documentation phase, and the loan application phase (BOI, 2023). In the initial documentation phase, miners are required to provide a valid mining license, business plan, a one-year bank statement of the business and outstanding liabilities to other banks and individuals, amongst other requirements, as well as open account with the Bank of Industry (BOI, 2023). Once that documentation has been approved, applicants are required to provide collateral such as a bank guarantee from a commercial bank, lease agreement or legal mortgage, a three-year audited financial account, feasibility report and quotations for raw material quantity and amount and supply of items, amongst other requirements (BOI, 2023). Community banks and microfinance institutions have also been known to provide loans to artisanal and small-scale miners, however, these funds are limited and do not meet all the needs of the borrower or are limited to how many people can be services (Personal communication with stakeholder, civil society organisation, November 2023). The financial capacity of ASM producers also needs to be considered in the process of formalisation, it was estimated that in order to apply for a Small-Scale Mining License an artisanal miner would have to have approximately NGN 150,000 (USD 361 at the time of publication), not including transportation costs (Global Rights, 2022). Access to finance is further complicated being a woman in the Nigerian mining sector (Global Rights, 2022).

3.9.3.4 Legal knowledge and awareness

Some ASM producers are unaware of the legal requirements they must uphold in order to continue operations in line with federal regulations. This can be due to a multitude of factors including a lack of regulatory measures in place to ensure that legislation is upheld, conflation between local land regulation, cultural rites and federal registration and the requirements of obtaining a SSML being too steep, so there



is less incentive for ASM producers to formalise (Schneck, Ndagano and Olaniyi, 2021; Global Rights, 2022).

3.9.3.5 Access to formal markets

There are issues with access to formal markets with some reasons being miners are unaware of their existence, mineral buying centres being too far for ASM producers to reach and distrust of the centres due to corruption (Personal communication with stakeholders, civil society organisations, November 2024; January 2024). This has resulted in many ASM producers engaging with mineral traders and receiving unfair prices for their as-mined minerals (Global Rights, 2022; Personal communication with stakeholder, civil society organisation, January 2024). Moreover, the lack of formal markets makes the Nigerian mining sector susceptible to leakages such as smuggling, loss of tax revenue for the government and a lack of data on mineral production and pricing. ASM producers selling gold seem to have a more formalised market structure, where a Gold Durbar in Kano is used as a regional gold marketplace, increasing investment in the gold value chain and increasing access to data (MSMD, 2022). In addition, there are several government initiatives such as the Presidential Artisanal Gold Mining Development Initiative and the National Gold Purchase Programme, to support formalised market access for gold producers, however, other minerals produced do not have this level of market access (Schneck, Ndagano and Olaniyi, 2021).

3.9.3.6 Banditry and Conflict Affected and High Risk Areas (CAHRAs)

There is a lot of insecurity in the northwest of the Nigeria and states such as Zamfara, Yobe, Borno, Adamawa and Kaduna have been listed as CAHRAs by the European Union (Schneck, Ndagano and Olaniyi, 2021). There have been links made to mineral production acting as a means to further armed conflict and for armed forces to gain capital and access to mineral resources (Onuoha and Ojewale, 2024). It has also been reported that some sponsors of ASM producers fund banditry to displace mining-affected communities and/ or to gain control of mine fields (Okunlola and Feese, 2023). Moreover, to curb banditry and reduce ongoing violence in Zamfara state, the federal government banned ASM operations in 2019 and 2023 to ensure that destructive activities come to an end, effective safety measures are put in place and foreign operators were also called to leave the country (Tukur, 2019; Anichwueze, 2023). The same has been done by the state governments of Borno and Kebbi in 2023 to curb insecurity in the regions and protect miners and host communities (Premium Times and Agency Report, 2023; Agberebi, 2023). The Kebbi state government acknowledged that this ban was out of the remit of state powers, but felt that given the current security situation, it was necessary to do so (Agberebi, 2023).

3.9.3.7 Environmental and social challenges

With improper environmental remediation and inadequate regulatory frameworks, artisanal and small-scale mining can lead to detrimental social and environmental impacts. Due to rising gold prices in 2010, there was an increase in artisanal and small-scale gold mining activities in Zamfara state (CDC, 2024). These activities were unsafe and unregulated and led to mass lead poisoning causing the death of over 400 children in the first 6 months, brain damage and physical disabilities in children, cases of infertility and miscarriages in women, soil and water pollution (Akintowu, 2022; Human Rights Watch, 2011). A

similar incident was recorded in Niger state in 2015 (Okunlola and Feese, 2023). This area in Zamfara has since undergone environmental and health remediation and safer mining standards have been introduced, but this instance demonstrates the need for effective and efficient regulation and remediation mechanisms within the mining sector (Akinwotu, 2022). Other environmental impacts from tin mining activities include environmental degradation, abandoned mine sites, erosion, animal contamination, water and soil pollution, deforestation, competition for land access between ASM and farmers and land and food insecurity (Dickson et. al., 2017; Global Rights, 2022). Other social challenges faced in the ASM sector are instances of gendered child labour (ILO, 2023). In a study conducted by the ILO, it was found that male children working in ASGM in Niger state were more likely to carry out physically demanding jobs such as digging, transportation of gold ore from mine site to washing streams and packing as-mined ore, female children often washed gold ore in streams, sold food and water at the mining site and transportation of gold ore from mine site to washing streams (ILO, 2023). Moreover, organisations such as Women In Mining Nigeria (WIMIN), highlight the gender inequalities and injustices faced by women involved in the mining sector, focusing on equity, protection, governance and policy dialogue to ensure women are included in the mining sector and have opportunities for social and economic development (WIMNg, 2023).

3.9.4 Relevant initiatives

In line with the government's push to increase production, capacity and investment in the Nigerian mining sector, there have been several government and donor-funded projects implemented in Nigeria. The below projects and initiatives showcase what has currently been implemented and can provide guidance for future investments focusing on ECRM production in Nigeria.

3.9.4.1 Solid Mineral Development Fund (SMDF)

The Solid Mineral Development Fund is a sovereign fund and was established by the Nigerian Government during the passing of the 2007 Minerals and Mining Act (Ango et. al., 2019). The Fund aims to 'drive and catalyse private sector-led investments in Nigeria's mining sector' and disburses funds across three funds, SMDF Growth, SMDF Opportunities and SMDF Responsible Mining, along all stages of the mining lifecycle (SMDF, 2023a). Under SMDF Responsible Mining, the fund prioritises the formalisation of ASM producers, assisting them with legal recognition, training and resources and ensuring fair trade principles for local communities through transparent supply chains and 'minerals sourced ethically and free from conflict' (SMDF, 2023b). The Solid Minerals Development Fund also partners with various stakeholders, donor agencies and financial institutions. For example, the SMDF has partnered with the African Finance Corporation (AFC) to derisk the Nigerian mining sector and increase industrialisation of ASM producers and the Nigerian Artisanal and Small-Scale Miners Financing Support Fund, in collaboration with the SMDF, The Nigerian Bank of Industry (BOI) and MMSD, through the Artisanal Miners Intervention Fund, has created a NGN 5 billion (more than 3 million USD based on exchange rate in May 2024) fund to support artisanal and small-scale mining operations, with artisanal miners allowed to access loans between NGN 100,000 (about 65 USD based on exchange rate in May 2024) and NGN 10 million (about 6,500 USD based on exchange rate in May 2024) and small-scale miners accessing between NGN 10 million (about 6,500

USD based on exchange rate in May 2024) and NGN 100 million (about 65,000 based on exchange rate in May 2024) (Idowu, Oyewole and Adeagbo, 2024).

3.9.4.2 Mineral Sector Support for Economic Diversification Project for Nigeria (MinDiver)

A World Bank-funded project of USD 150 million implemented by the Ministry of Mines and Steel Development, it began in 2017 and is set to end in May 2024 (World Bank, 2024). The project aims to increase the mining sector's contribution to GDP through two components, these include; (i) strengthening the capacity of the Government as a regulator and facilitator by strengthening mining governance, transparency accountability and administration, strengthening geological knowledge and technical assistance regarding education, environment, health and social performance; and (ii) enhancing the attractiveness and competitiveness of the mining sector for investors through formalisation of ASM, value addition and access to finance (World Bank, 2024).

3.9.4.3 Presidential Artisanal Gold Mining Development Initiative (PAGMI)

The Presidential Artisanal Gold Mining Development Initiative (PAGMI) was established by the then President, Muhammadu Buhari, in 2019 following estimates that over USD 3 billion worth of gold was smuggled out of Nigeria between 2012 and 2018 and incidents of lead poisoning killing 700 people between 2010 and 2016 in Zamfara and Kebbi states (The State House, 2020). The project is budgeted at NGN 20 billion and includes a variety of stakeholders including the Presidency, Nigeria Sovereign Investment Authority, the Solid Minerals Development Fund and the Ministry of Mines and Steel (NSIA, 2022). The project aims to develop the gold sector in Nigeria through formalisation and integration of ASGM activities into Nigeria's legal, institutional and economic framework (The State House, 2020). Components of PAGMI include providing better access to formal mineral markets through the National Gold Purchase Programme, deploying safer and more efficient mining and processing technologies and the development of a gold mining strategy that integrates social, environmental, economic commercial, health and safety and technical concerns (The State House Abuja, OBG, 2020). The project is first being piloted in Kebbi and Osun states and will then be expanded into Kaduna, Zamfara and Niger states (The State House Abuja, 2020). Although this initiative focuses on gold, considering some of the common challenges of the ASM sector, activities from PAGMI and learning could be applied to more commodities.

3.9.4.4 National Integrated Mineral Exploration Project (NIMEP)

The National Integrated Mineral Exploration Project (NIMEP) aims to generate remote sensing, geological, geochemical and geophysical data about mineral resources in Nigeria, focusing on deposits of gold, lead, copper, silver, platinum group metals, nickel, chromium, cobalt, tin, rare earth elements, tantalum, niobium, lithium, zinc, baryte and iron to encourage investment in the Nigerian mining sector for the development of local industries, import substitution, increase employment and distribute mineral wealth along the value chain (NGSA, 2020b). The project is still ongoing and is split into six phases, in which phase one has been completed and phase two is underway (NGSA, 2020b). The project is overseen by the Nigerian Geological Survey agency, funded by the Natural Resources Fund and implemented by five private companies and three technical consultants including Rapidlinks Resource Ltd, Juggernaut Industries Ltd, Geo Kooy Environmental Services Ltd, Dapmat Drilling/ MECON Engineering Services Ltd,



National Steel Raw Materials Exploration Agency (NSRMEA), Geo Exploration/ Geowitch Ltd, Phronesis Oil and Gas Tek Ltd and AG Vision Ltd (NGSA, 2020b).

3.9.4.5 Gender specific initiatives

3.9.4.5.1 Mainstreaming Gender in the Nigerian Solid Mineral Sector in Ebonyi and Edo states

This project was funded by the Ford Foundation and implemented by Women in Mining Nigeria (WIMIN) from November 2021 to October 2022 (WIMNg, 2022a). The project aimed to better understand and address issues of gender inequality in Nigeria's mining sector in Ebonyi and Edo states and explore ways the sector can empower women working in the sector, promote gender equality, increase women's participation in the sector and ensure contributions to social and economic development (WIMNg, 2022a).

3.9.4.5.2 Mainstreaming Gender and Gender Justice in the Nigerian Solid Mineral Sector in Osun, Taraba and Plateau states

This project was funded by the Open Society Initiative for West Africa (OSIWA) from August 2021 to October 2022) and implemented by WIMIN (WIMNg, 2022b). The project aimed to identify the prevalence and forms of gender inequality and injustice present in the Nigerian mining sector in Osun, Taraba and Plateau states (WIMNg, 2022b). Some objectives of the project include improving the capabilities and opportunities of women in the mining sector and increasing the participation of women and women groups within the sector (WIMNg, 2022b).

3.9.5 Investment opportunities

The Nigerian ASM sector has the potential to contribute to future ECRM production of tin, tungsten, copper, tantalum, niobium, lithium and baryte (which is one of seven outlined strategic materials). Moreover, the Mining Roadmap 2016 has outlined key aims and objectives the Ministry of Solid Minerals wishes to achieve and should be considered for future engagement in the Nigerian mining sector. The five investment opportunities listed below are crucial for both the effective and efficient development of ECRM production and the general ASM sector in Nigeria. Importantly, these needs address structural challenges faced by the ASM sector, which can be considered preconditions for further development of the sector. Investment will also require the collaboration between government at all levels, the private sector, civil society organisation, mining-affected communities, donor agencies and domestic and international financial institutions. The following investment recommendations have been informed through publicly available resources, the 2016-2025 Mining Roadmap and conversations with stakeholders from civil society organisations, geologists and governmental institutions. The main investment needs and opportunities of the sector include:

- Support for federal, state, and local governments through the harmonisation of taxes, responsibilities and review of Minerals and Mining Act.
- Technical assistance (financial, technical, geological). By improving the technological, financial and geological capacity of ASM producers, production of ECRMs can increase and environmental, social and health and safety harms can be reduced.



- Support to mineral beneficiation and processing sites as aligned in the 2016 Mining Roadmap

3.9.5.1 Support for federal, state and local government collaboration

One of the barriers facing the Nigerian mining sector is the fragmentation in policies, regulations and the demarcation of responsibilities between local, state and federal governments. This causes problems for miners but also makes processes difficult to oversee as everything has to go through the federal government before decisions can be made. Moreover, it has also been reported that the lack of funding, human resources and needed equipment to the Ministry of Solid Minerals, inhabits its ability to maintain the initiatives and programmes started (MSMD, 2022; Personal communication with stakeholder, civil society organisation, January 2024). There is therefore great need for support and funding to the MSMD to enhance collaboration between local, state and federal government and to ensure that the mandates of the federal government through departments and agencies such as the Mines Inspectorate Department, the Mines Environmental Compliance Department and the Mining Cadastral Office has presence and impact at the state and local levels where mining activities actually occur (Sijuwade, 2024). This can be achieved through utilising already established initiatives such as the Mineral Resources and Environmental Management Committee, the Federal-State Regulatory Dialogue on Compliance and Enforcement and the National Council for Mining and Mineral Resources Development (Okunlola and Feese, 2023). Other methods to promote collaboration include revisiting the NMMA 2007 (which the Nigerian government has already established as necessary), create a stakeholder dialogue involving local, state and federal government, private sector companies, civil society organisations and mining-affected communities and the formulation of a national strategy which takes into account the 2016-2025 Roadmap, new ambitions for the mining sector and increased involvement of local and state ministers and departments (Okunlola and Feese, 2023).

3.9.5.2 Technical assistance (financial, technological, geological, and legal)

Initiatives such as the Solid Minerals Development Fund demonstrate already established mechanisms that can fuel financial, geological and technological assistance in the ASM sector. As already outlined, the Fund can be used as a means for ASM producers to have access to credit/ finance, where traditional financial institutions may not be feasible, used to fund technical training, apprenticeships, support for infrastructural development and maintenance (Okunlola and Feese, 2023). Moreover, it is key that the results from established geological mapping projects such as NIMEP are disbursed amongst ASM producers less haphazard exploration and provide ASM with knowledge about where minerals are found and who has entitlement to land. Another facet of technical assistance needed is making ASM producers aware of the legal requirements of being registered and the benefits they are entitled to being registered. This is made easier by mining legislation and regulation being more streamlined and the requirements needed of ASM producers meeting the realities of those working in the sector.

3.9.5.3 Support to mineral beneficiation and processing sites

The Minister of Solid Minerals stated in October 2023, that the mining sector would ‘do everything possible to discourage the carting away of solid minerals without value addition’ (Shemang and Kaledzi,



2023). The MMSD has also been developing six mineral processing clusters in the across Nigeria, a lead-zinc processing cluster in Ebonyi state; a baryte processing plant in Cross Rivers state; a kaolin processing cluster in Bauchi state; a gold processing cluster in Kogi state; a jewellery centre in Oyo state and a gold souk in Kano state (PwC Nigeria, 2023). The development of these processing sites should take into account ASM producers to become accessible as services or selling point. This could encourage ASM producers to sell through formal channels and support tracking and monitoring of mineral production volumes (Personal communication with stakeholder, February 2024).

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3.10 Republic of Congo

3.10.1 Introduction and ASM sector overview

The ASM sector in the Republic of Congo is dominated by gold mining, sometimes associated with diamonds. Diamond mining is not as developed as neighbouring countries like the Democratic Republic of Congo (DRC), Angola and the Central African Republic (CAR). Although diamond potential production (300,000 carats/year) seem possible according to the geological background, the effective production remains limited to 50,000 carats/year, according to the USGS (USGS, 2022). The latest census of the ASM sector was done in 2014 as part of a UNDP programme (PNUD, 2012), which indicated a population of over 5,000 active miners, however the census took place before the drastic increase of the gold price. It can be expected that the higher gold prices have increased participation in the sector in more recent years. The National Action Plan (NAP), performed for the mercury emissions assessment and validated in 2019 (Mpan et al., 2019), based its results on the same data, despite the fact that the mining population may have increased drastically, as in the rest of the African continent over the same period. Most of the produced gold is of alluvial or eluvial type, either in the live beds of streams or on adjacent terraces of the streams. Mining is mostly manual, with generally limited tools, low processing capacity (1-2 m³ per day) and low production. The NAP, as well as other studies confirm that artisanal miners seldom use mercury to separate the gold.

The ASM sector operates mostly informally, with less than 200 artisanal miners holding a mining card at the time of writing this profile. 10% of the ASM population is made of foreign miners coming from neighbouring countries, but quite often settled in the Republic of Congo, and ASM remains an essential economic activity for local communities. Endemic inaction of the mining administration at local level, highlighted and condemned by civil society (OCDH, 2023), make it difficult to change the current status of “uncontrolled ASM”, unless a real strategy is implemented, and the legal framework revised to correspond to the real situation.

Besides the community-based artisanal mining, in the last decade the Republic of Congo has seen the uncontrolled development of small-scale mechanised operations mostly performed by foreign operators (mainly Chinese) on mining permits held by nationals. According to the current official journal statistics, the awarded perimeters for gold doubled in 5 years, going from 12,000 to a total of 37,000 km² for ECRM (excluding gold/diamonds), thus evidencing the current dynamics in the sector. It is estimated that the small-scale, mechanised operations produce as much gold as the artisanal mining operations. Given the high demand on ECRM rising in Africa, a similar trend could be observed for these commodities. It is indeed observed an increase in small-scale operation licences.

The mining history of the Republic of Congo shows that copper and lead were first extracted before the 20th century and that these operations were already mechanised. Later, cassiterite (tin), wolframite (tungsten) and coltan (tantalum) were exploited by small companies (Banque Mondiale, 2012). Current production of ECRM by artisanal miners seems limited probably because of the little local demand for such products. In the Republic of Congo, industrial metals are often named “*polymétaux*”, which may include copper, cobalt, nickel, zinc and lead. Most of the polymetallic orebodies have been mined so far

by one industrial company named SOREMI. There might also be some artisanal and semi-mechanised projects, as proved by the sporadic invasion of the SOREMI operations in 2023, which lead to producing but also stealing part of the ore. The government promptly took action to prohibit ASM production within the perimeter of SOREMI (Les dépêches de Brazzaville, 2023). The period 2019-2023 also saw the increase of exploration permits awarded for quartz mining, with a total surface of almost 3,500 km², as a potential source of silica.

However, no official statistics of ASM production are available for these commodities. In a recent note, the *Bureau de Recherche Géologique et Minière* (BRGM), or French Geological Survey (Callec & Théveniaut, 2022) mentions some prospects of alluvial coltan in the Chaillu Massif, as well as in the Sangha and Cuvette-Ouest Departments, already prospected by a few small to mid-size companies. Chrome might also be present in the same areas associated with the presence of nickel, gold and other platinoids. They also mention the presence of tin-tungsten prospects in the Mayombe and Cuvette-Ouest areas. However, none of these metals (except gold) are known to be extracted by artisanal miners even though some of the locations of these prospects coincide with the ASM gold operations, including mechanised research permits.

The figure below outlines the small-scale mining authorisations awarded in the Republic of Congo over the period 2019-2023, showing a steady interest for some commodities. Copper, zinc and lead, which are often found in the same geological environment are often referred to as “polymetals”. These have had the highest number of new permits in the recent years, but there has been also growing attention towards cassiterite (tin) and coltan (tantalum). We will distinguish here operations focusing only on copper and others as polymetals.

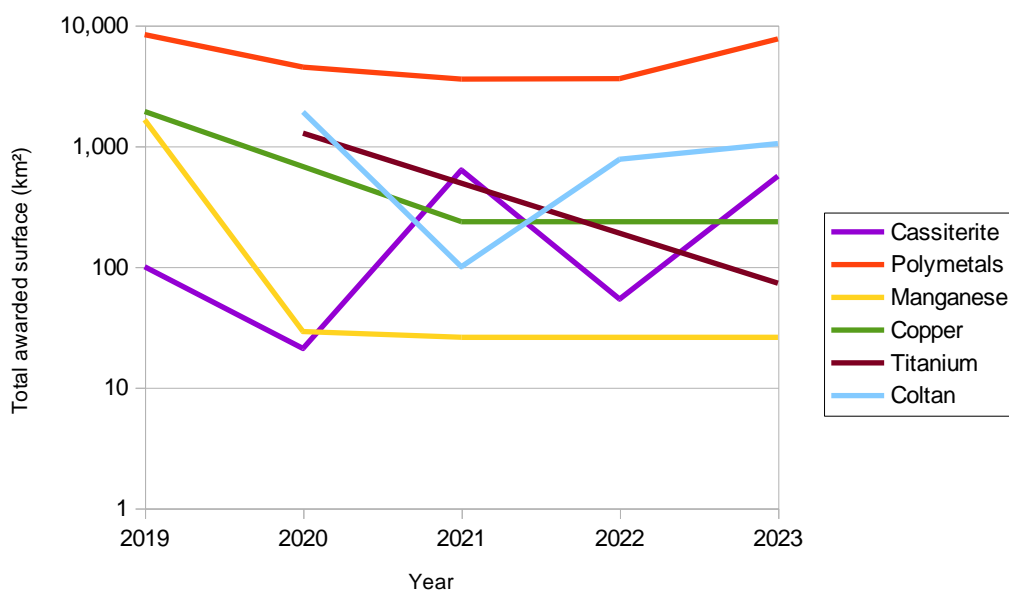


Figure 20 Total awarded surface of small-scale mining authorisations for ECRM related commodities in the recent year in the Republic of Congo. Data compiled from: *Journal Officiel de la République du Congo* (2019-2023).

3.10.1.1 Regulatory framework and governance

The current mining code (2005) provides three types of mining permits: the artisanal mining authorisation that corresponds to the mining card, the mining authorisation, corresponding to small-scale mining projects, and the mining permit, for industrial projects. In addition, the exploration permit allows to obtain exclusive rights on a given area for a limited time. Looking at the awarded type of titles (Table 1), we see that most of the surface is in the exploration phase, but we also see a lot of small-scale projects. Artisanal mining authorisations are almost non-existent, partly because it does not award significant rights (no guarantee on a perimeter), but also because it remains a challenge to obtain it for individual miners and small teams of informal workers.

Mining titles	Cassiterite	Polymetals ¹³⁷⁷	Manganese	Copper	Titanium	Coltan
Artisanal	6 %	0 %	0 %	0 %	0 %	0 %
Small-scale	33 %	13 %	20 %	0 %	0 %	63 %
Industrial	22 %	10 %	0 %	0 %	14 %	11 %
Prospection	39 %	59 %	40 %	100 %	86 %	26 %
Research	0 %	18 %	40 %	0 %	0 %	0 %

Table 59 Mining titles awarded during the period 2019-2023, Data compiled from : Journal Officiel de la République du Congo (2029-2023)

Based on the requirements of the mining code, some reflections can be drawn from the titles' distribution displayed in the table. Small-scale mining authorisation ("*de petite mine*") does not require environmental and social impact assessments and is not very expensive to obtain yet provides extended operation possibilities on perimeters up to 100 km². Most titles are either held by foreign companies or by nationals that look for operators with financial and technical capacity. The artisanal mining authorisation is not attractive because it does not grant an effective perimeter but only allows to mine in specified areas that are for most of them yet to be defined.

3.10.2 ASM mineral value chain

The polymetals industry is led by the company SOREMI, which in 2021 produced 10,900 tons of copper and 10,600 tons of zinc, according to the latest EITI report (EITI-Congo, 2023). In addition, the EITI report shows in 2021 that five metals purchase houses which declared production between 7 and 34 tons of copper each (and 57 tons of zinc for one of them) (EITI Congo, 2023), supporting the assumption that there are smaller-scale producers of polymetals that sell part of their production on the domestic market. Other minerals with ASM potential such as coltan and manganese do not appear in the reported production statistics. Data compiled from the International Trade Centre (2024) database between 2021

¹³⁷⁷ Referring to Cu, Zn and Pb only.

and 2023 confirms the exports of zinc, copper, lead, tin and very little niobium-tantalum to China, but only in form of concentrates, in the same order of magnitude as the reported exports in the EITI document, besides the industrial exports of copper cathodes that has been ongoing for a few years. Tungsten ore concentrates were also exported in 2022. SOREMI, an industrial mining company set up a processing plant in 2016 for copper, zinc and lead (Vasters & Schutte, 2023). Besides this, most of the ECRM are currently exported as concentrates, with little or no transformation and added value. The commercialisation of these products is done with specialised trading posts.

From recent observation, the gold ASM supply chain is quite organised but almost entirely informal. Most of the gold is bought in the vicinity of the mining site or the nearest village. The gold price at the mine site can reach 75% of the international price. A second aggregator collects the gold from bigger producers and from first buyers, but also quite often finances the mining operation. Exporters are located in the main exit routes: Pointe Noire, Brazzaville and Ouésso, the capital city of the Sangha Department, at the North of the country, along the border of Cameroon. In Brazzaville and Pointe Noire, jewellers, many of them are of Senegalese origin, play an important role in the supply chain. They provide gold for their peers and export the rest to Dubai.

In the case of ECRM produced by ASM, given the location of potential sources and the logistics challenges linked to the remoteness of mining areas, the favoured place of export should be Pointe-Noire, the major port open to the Atlantic Ocean, where most traders have their offices. Based on observation, it is expected that the ECRM supply chain based on ASM extraction would be organised on a similar basis as the gold supply chain, with financing of the activity and control of the supply chain by traders and exporters.

3.10.3 ASM sector challenges

The ECRM production by the ASM sector is not very developed, and it probably develops under the umbrella of larger market players or with the support of large-scale operations that produce copper, zinc, lead and tin and that have longer history as business activity in the country. Based on information in figure and table above the mining title activity also shows that new and smaller actors are entering into the ASM sector, with a mechanised approach for the ore extraction and processing. Such a modest development could be enhanced but several challenges inhibit ASM activity and its development in a manner that reduces social and environmental impacts. Based on information and analysis available, this section summarises the main challenges which would need addressing to enhance the ASM contribution of ECRMs production.

3.10.3.1 Formalisation and government capacity

Governance of the ASM sector remains weak and suffers from pervasive corruption by many administrative officers at all levels, a problem that would require an in-depth review of the existing structures and awareness raising among public officers.

In addition, based on the experience of the ASM gold sector, the main challenge remains the capacity to support formalisation of the miners. Beyond the mining authorisation cards, ASM operators need an easier access to small-scale mining authorisations and broader support to legalise their activity. Based on

observation of sector dynamics, the management of the sites is often done by village chiefs whose authority is quite respected by the local population. In addition, the informal status makes ASM actors depend on larger operators or on potential buyers for financing of the projects. It also makes them dependent on other local actors, which can create power-imbalance.

As seen above, the artisanal mining authorisation does not provide significant rights to the individual miners and does not secure their mining areas. Moreover, artisanal miners face the challenge to organise themselves in formalised groups, whether association cooperatives or small and medium size enterprises. Larger scale operations, as seen in the gold sector, are rather excluding artisanal miners from their areas to replace them, basing their legitimacy on the possession of small-scale mining authorisations. Field observation for artisanal gold mining also show that conditions enabling the ASM activity are mostly provided by gold aggregators, themselves mostly informal and part of an informal supply chain. The process to obtain an artisanal mining card is also cumbersome. It requires for instance the precise marking-out of the mining site on a map and the corresponding area.

Reportedly, the mining sector is poorly monitored by the mining and environmental administrations, despite the existence of departmental representations in the country (DW, 2023). Unfortunately, these institutions are characterised by very limited human resources and logistics capacity. It has been observed that only when complaints are raised by local communities then the authorities organise joint control missions and take action against non-compliant operators when issues are significant (Nzikou-Massala, 2020). The mining administration is heavily centralised, all mining authorisation and monitoring decisions are being made at the headquarters in Brazzaville. Significant and long-term environmental and socioeconomic impacts caused by artisanal but also mechanised operations are being observed in remote areas (Mimba et al., 2023; Watha-Ndoudy et al., 2022).

The Government does not consider ASM as a priority for the economic development despite the design and implementation of a national wide program supporting the artisanal economic activities, including financial support called *Fond d'Impulsion de Garantie et d'Accompagnement* (FIGA) (figa.cg).

3.10.3.2 Operational challenges: equipment and skills

Artisanal miners in the Republic of Congo broadly lack access to appropriate extraction and processing techniques, and more generally to good mining practices. Artisanal producers largely depend on their financiers who also provide small tools and equipment, but with very limited capacity to invest in tools which would bring greater improvements in mining techniques and outputs. Knowledge of mining methods are also mainly rudimentary.

As observed in the gold sector, artisanal miners are generally seen as risks to manage for the mechanised operators, which generally opt for the eviction of artisanal producers from their perimeter, sometimes with the support of armed forces (Hérait, 2018). This has mostly been observed in the case of Chinese operations, who generally do not intend to stay more than a few months in the same place. In other cases, when national operators plan to remain in the area or have views on multiple title in the same area, they accept the cohabitation with artisanal miners, under the authority of the traditional chiefs.



Artisanal miners face several challenges to access to better operational conditions. The legal aspect is key as they would need to apply for a formal exploitation authorisation (small-scale) that would provide a secured perimeter, which includes several prerequisites such as the creation of a legal entity, the initial exploration that has been performed, a viability study, a mine plan and an environmental impact assessment. Enabling conditions would also include access to formal and accessible financial services and, to a large extent, available techniques that allow for improved mining processes. A few individuals have proposed technical support to artisanal miners such as Mr Malolet (Malolet, 2018), but with very limited follow up and support by authorities in charge of the sector. Such approach should be complemented with training and capacity building on technical, health and safety and environmental aspects.

3.10.3.3 Environmental impacts of ASM operations

The artisanal and the mechanised small-scale mining sector, which is quickly expanding, takes place mostly in forested areas, including protected areas in some instances, generating large negative environmental impacts that also degrade the access to essential resources for local communities such as forest resources, water, etc. (Brainforest, 2017). The major concerns relate to the long-term deforestation of large areas, the increase of turbidity in the streams and consequently loss of biodiversity. The remoteness of the mining site and the lack of infrastructures (roads, communication, health services) facilitate such poorly controlled expansion, but also increases the cost and capacity to develop proper small and mid-scale mining projects. The challenge for the mining administration is to support the expansion and diversification of small projects with appropriate techniques while mitigating social and environmental impacts.

3.10.4 Relevant initiatives and stakeholders

There are very few organisations that support the ASM sector in the country. Active since 2014, the UNDP programme, “Stratégie de développement du secteur minier artisanal and République du Congo”, is currently planning a census of artisanal miners updating a dataset that was first created in 2014. It also focuses more on the ASM sector production of so-called “development minerals” (construction materials), in the framework of a new partnership with the ACP-EU program (phase 3) on this topic. Other programmes largely focus on gold mining, such as the PlanetGold project (2022-2027), focusing on mercury-free artisanal and small-scale gold mining and aiming at reducing and eliminating mercury emissions in the ore processing steps. Other NGOs involved in the sector (Brainforest, Ligue des Droits de l’Homme) would mostly focus on environmental and social impacts of the ASM, particularly the mechanised mining. This represents an opportunity to liaise with existing initiatives who have already engaged mining communities.

3.10.5 Investment needs and opportunities

3.10.5.1 Governance strengthening, formalisation and responsible mining

Improvement of the governance would require strengthening of the cooperation between the mining and environmental administration at central and departmental levels, with formal agreements and the joint implementation of more systematic field visits and monitoring efforts. This should include investing

resources to empower and provide training of mining department officers, so that they are equipped with tools and methods to provide inclusive support to miners, and promote the creation of associations and cooperatives, which barely exist today. Any initiative supporting the ECRM production by ASM individuals, groups, enterprises or cooperatives should be linked and build on the national strategy supporting small/medium and artisanal activities.

Existing initiatives have been focusing more on construction materials which are important for the local and national market. However, a project promoting the ASM responsible production and export of ECRM may learn from the experience of the UNDP program, probably one of the most experienced actors on ASM in the Republic of Congo, who has not focused exclusively on gold mining. Such project may primarily focus on governance of the sector, itself being supported by the concrete commitment of the Government on the strategic approach. Artisanal miners sorely lack access to adapted and efficient mining techniques, access to financial services adapted to their capacities. Artisanal activity, but also small and medium scale projects also need awareness raising and support for implementing best environmental techniques, which could rely on some actors of the civil society.

3.10.5.2 ASM contribution analysis to foster investment

The recent spread of ASM activity in the SOREMI permit (French.China.org, 2023) shows that ASM production is expanding without any guidance. Very little is also known about the actors of the value chain for ECRM. A few trading entities are registered and actually export annually a few tons of ECRM, but no information is collected regarding the trade dynamics, legal aspects and the conditions of production regarding human rights. Taking the example on the artisanal gold supply chain, the high degree of informality tells us that there is also poor control of the export and that traders may have the capacity to underreport their exports, deliberately practice low purchase prices that are often set in financing agreements. From such considerations, it appears that building a responsible ECRM supply chain based on ASM production would require solid strategic commitment and support from authorities governing the sector and efforts towards training programmes on a wide range of subjects, and a mid to long term view. Such program may be also supported by the industrial production of polymetals, as they may benefit from additional supply for their own markets, by promoting fair purchase agreements with ASM groups.

The potential for in-country added value of ASM-related ECRM commodities should also be tackled, as most minerals are currently exported as raw oxides, with some concentration process to achieve minimum international market standards. The only refinery is currently operated by SOREMI for copper (capacity of 20,000 tons/year) and zinc (capacity of 25,000 tons/year), which may be extended to Lead (Adiac-Congo, 2021). SOREMI's plant could be a good asset for fostering the production of ECRM ores by ASM entities as recent publications show that they only exported around 11,000 tons of copper cathodes in 2021 (EITI-Congo, 2023). Based on publicly available information and observations of sector dynamics in the country, the Government does not seem to encourage ASM production of ECRM. Despite the declaration of the Minister of Mines after the incident a SOREMI's facility in 2023, no improvement has been made about the situation of artisanal miners. Assessment of potential, quality and capacity to add value to the production may be a key parameter for evaluating the viability of expanded ASM-related

value chains. The existing industry should be involved in such process and express its potential interest in processing production from ASM entities.

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3.11 Rwanda

3.11.1 Introduction and ASM sector overview

Rwanda is one of the countries in the Central Africa's Great Lakes Region and, according to the map; Rwanda is located in the Karagwe-Ankole Belt (KAB: Rwanda, Burundi, Maniema and Kivu in the DRC) and close to the Kibara Belt (KIB: Katanga in the DRC), two segments rich in minerals that are critically needed

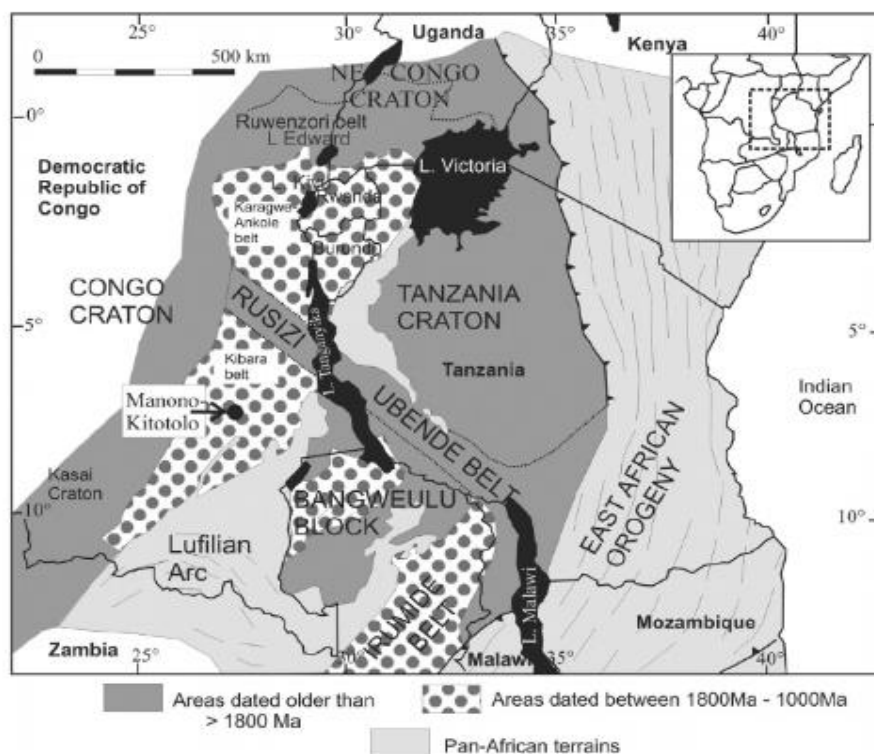


Figure 21 Regional tectonic setting of the Kibara belt (KIB) and the Karagwe-Ankole belt (KAB) in the Central Africa's region, Dewaele & Al, 2015

by the current market due to evolving trends in both technology and energy transition (Dewaele & Al, 2015). The Belgians started the mineral extraction of tin in the 1930s, followed by tungsten in the 1940s and tantalum after the 2nd WW.

Tantalum, tin and tungsten (3Ts) have been found in different places across the country. Several Belgian mining companies invested in Rwanda, including MINETAÏN from 1930, SOMUKI from 1934, GEORWANDA from 1945 and COREM from 1948 up to 1973, when the Government of Rwanda (GoR) of the time

entered into the SOMIRWA joint venture with MINETAÏN/SOMUKI. However, SOMIRWA fell bankrupt in 1985 due to an international tin crisis. This led the GoR to establish COOPIMAR in 1988, as a mining cooperative to support artisanal mining before re-launching SOMIRWA in another structure named REDEMI. In 2007 REDEMI was liquidated after poor performance and the mining sector was privatized (RMB, 2024). Since 2007, reforms have been undertaken where the government resolved to oversee and regulate the mining sector, and mining operations shifted to the hands of independent mining companies and cooperatives. The reforms included the creation of the Rwanda Geology and Mines Authority / l'Office de la Géologie et des Mines au Rwanda (OGMR) in 2007 (Law n° 25/2007 of 27/06/2007). It was replaced by the Rwanda Natural Resources Authority (RNRA) / Geology and Mining Department (GMD) in 2011 (Law n° 25/2007 of 27/06/2007) and the current Rwanda Mines, Petroleum and Gas Board (RMB) in 2017 (Law n° 07/2017 of 03/02/2017). Reforms also included the enactment of the 2008 mining law (Law N° 37 /2008 of 11/08/2008), the 2009 mining policy (MINIRENA, 2009) and subsequent amendments of the

mining law in 2014 (Law N° 13/2014 of 20/05/2014) and 2018 (Law N° 58/2018 of 13/08/2018). The latest reforms envisaged the modernization of mining and formalization of the Artisanal and Small-Scale Mining (ASM) in order not only to meet mining, health and safety standards, but also to increase the production. Within the same context, the establishment of RMB in 2017 coincided with a seven (7) year National Strategy for Transformation (NST1) which aimed at upscaling the annual production from USD 373 million in 2017 to USD 1.5 billion in 2024 (GoR, 2017).

Minerals found in Rwanda that are part of the European Union (EU)'s Extended Critical Raw Material (ECRM) list include beryllium, lithium, niobium, tin, tantalum and tungsten (3T). Rwanda is among the largest producers of tantalum worldwide (European Commission, 2020). It also produces gemstones which include amethyst, sapphire, tourmaline, as well as amphibolite, granites, quartzite, volcanic rocks, vermiculite, diatomite, talcum, gypsum, limestone, kaolin, clay, sand and gravel (RDB, 2024). Table 1 with mineral exports in 2023, indicates that the 3Ts present the highest production and exports level. Note that part of the exports includes minerals smelted in Rwanda with concentrates imported from different countries across Africa (Sabiiti, 2023).

S/N	Products	Quarter 1		Quarter 2		Quarter 3		Quarter 4	
		Qty. /Kg	USD	Qty. /Kg	USD	Qty. /Kg	USD	Qty. /Kg	USD
1	Cassiterite	1,000,349	16,738,017	1,144,155	18,813,001	1,150,375	19,057,370	1,293,608	19,684,687
2	Coltan	475,784	24,312,195	587,015	27,814,838	538,996	23,286,803	468,577	18,902,087
3	Wolfram	572,700	7,959,410	635,435	8,488,659	654,327	8,415,960	639,987	7,888,633
4	Gold	3,080	190,283,652	4,696	302,692,884	3,000	188,013,808	3,158	202,617,566
5	Others	3,873,286	8,187,425	4,267,237	4,559,463	3,169,840	3,049,253	3,775,389	3,896,615
Total		5,925,199	247,480,699	6,638,538	362,368,845	5,516,538	241,823,194	6,180,719	252,989,588

Table 60 Mineral exports for 20203, Promary data collected from RMB, February 2024

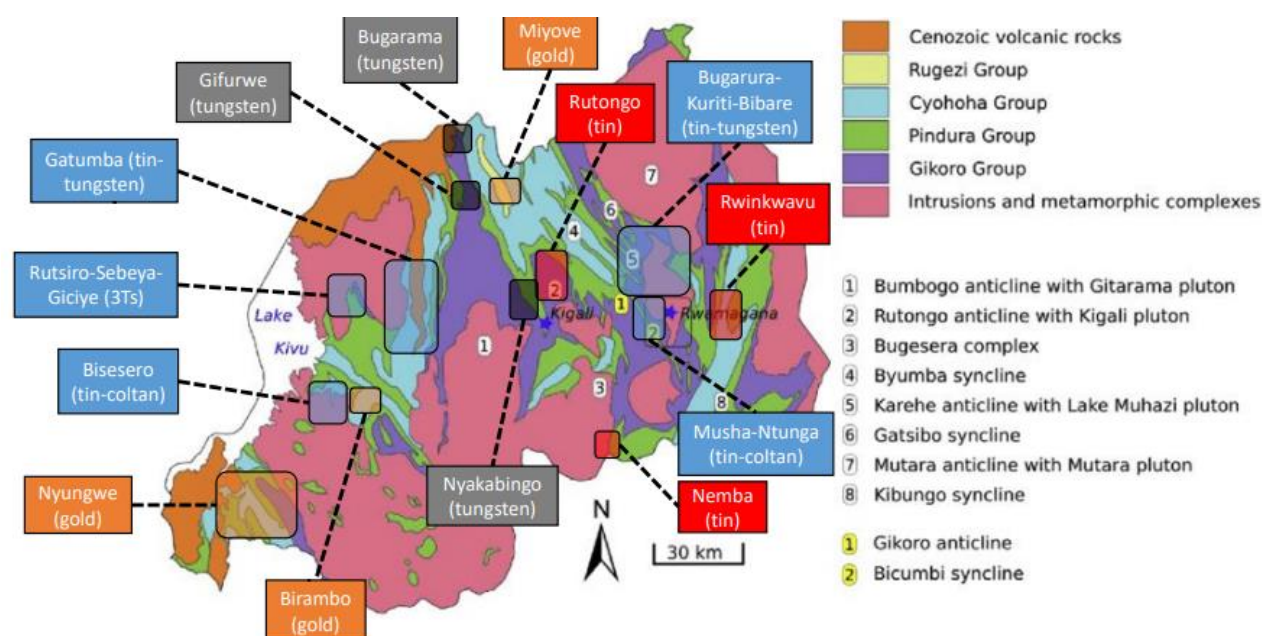


Figure 22 Main 3TGs location in Rwanda, RMB 2024

The minerals sector in Rwanda is heavily dependent on ASM production. The sector employs around 65,000 people, with about 170,000 family members who directly depend on the mining sector (Barreto & AI, 2018). The reforms undertaken since 2007 have positioned the mining sector as the second-largest source of revenue in the country, after the tourism sector and ahead of coffee, tea and other exports from Rwanda (RDB, 2024). In 2017, the sector generated \$373.4 million of foreign exchange with a target to increase such value to \$1.5 billion by 2024 (RDB, 2024). The data published by RMB in February 2024 shows that in 2023, the country had a turnover of more than \$1.1 billion, showing a growth of 43% from 2022. RMB attributes this growth to increased value addition, continued professionalisation, greater investment in mechanisation and the strategic implementation of sustainable and responsible mining practices (RMB, 2024). Though the Gross Domestic Product (GDP) contribution remains low, the mining reforms also enabled it to raise from 1% in 2007 to 3% in 2022 superseding the historical Rwanda's cash crops and foreign currency earners, which were coffee and tea (NISR, 2022).

Given its strong relationship with donors since 1994, the Rwandan government has developed a strong grip on the production of its economic data. However, there have also been allegations, particularly during periods of heightened tension with the DRC, of minerals and other natural resources such as coffee, crossing the border illicitly from the DRC and entering Rwandan supply chains. This is encouraged by low export tax rates from Rwanda as compared to the DRC and facilitated by porous borders and downstream markets being wary of buying from the DRC.

In an effort to increase transparency and combat these allegations, since 2011 Rwanda has focused on tracing the 3TG supply chains from mine site to export. The traceability of Rwanda's minerals and their certification before export, is expected to be done in accordance with international recognised standards and regulatory requirements with a view to allowing it to trade transparently under these schemes. They

include the 2010 United States (US) Dodd-Frank Act Section 1502, a US law requiring all US companies to declare whether the 3TGs in their supply chain originate from the Democratic Republic of Congo (DRC) or neighbouring countries which include Rwanda (US-SEC, 2017), and the Organisation for Economic Co-operation and Development (OECD)'s Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (OECD, 2016). Rwanda implements these standards through the International Conference on the Great Lakes Region (ICGLR)'s Regional Certification Mechanism (RCM), harmonized with the OECD Due Diligence Guidance (ICGLR, 2012). The ICGLR itself was created to bring long term peace to the region after the war in the DRC from 1997 - 2003 which dragged in neighbouring countries including Rwanda. It is widely recognised that regional parties to the conflict benefited in different ways from access to minerals produced in the DRC and the genesis of the RCM was to increase the transparency of the mineral trade in the region and make it more viable to downstream responsible markets.

The ICGLR's RCM also considers the European Union (EU)'s 2017 Conflict Minerals Regulation which came into full force across the EU on 1 January 2021 (European Commission, 2023). The German Federal Institute for Geosciences and Natural Resources, *Bundesanstalt für Geowissenschaften und Rohstoffe* (BGR) has also contributed to the mineral transparency in the Great Lakes region through its Certified Trading Chains (CTC) approach, implemented as pilots with national partners in Rwanda from 2009 to 2011 and in the DRC between 2009 and 2016, but in adapted form (BGR, 2023). BGR also supports the ICGLR in the integration of new technical audit tools (e.g. checklists and templates) for the implementation of the RCM. This includes the Analytical Fingerprinting Tool (AFP) in order to verify the information of the mineral exporters with regard to the origin of the minerals (Schütte & Al, 2018). Implementation of the 3TG mineral due diligence and traceability, except for the ICGLR third party audits, is done through the ITSCI programme implemented by Pact World now handing over to KUMBUKA AFRIKA (Pact World, 2023) and RCS Global Group which entered the Rwanda's 3TG traceability market with the Better Sourcing Programme in 2016 (RDB, 2024). These initiatives were integrated in Rwanda's mining regime through the 2012 regulations on regional certification mechanism for minerals (GoR, 2012) and through some of the provisions in the mining law coming into force (GoR, 2018). Although some of the ECRM minerals mined in Rwanda are not part of the 3TG list, especially beryllium and lithium; their value chain also remains locally monitored through measures taken for the fight against illegal mining which is associated with child labour and environmental degradation, as well as the prevention of mineral smuggling.

3.11.1.1 Regulatory environment

On the basis of prospection studies done by the Government which involved bulk sampling to know the potentiality of mineral deposits in various areas, RMB issues four years renewable exploration licenses to successful bidders. Once explorations prove that the mineral deposits in assigned blocks are economically viable, three types of mining licenses exist based on the size of the operations. These are large-scale mines, medium-scale mines and small-scale mines. ASM producers would operate under the small-scale mining license, also reflecting the will of the government to support transition from artisanal to small-scale operations.

S/N	Types of licensed mines	Mining block size	License duration	License owners
1	Large-scale mine	100 ha – 400 ha	15 years, renewable	Either a foreigner or a Rwandan
2	Medium-scale mine	50 ha – 100 ha	10 years renewable	Up to 60% foreigners, 40% Rwandans
3	Small-scale mine	50 ha maximum	5 years renewable	Only Rwandans

Table 61 Three types of mining licenses in Rwanda, RMB 2019

Importantly, environmental matters are taken into consideration during license application, mines operations and after the mine closure. In the first instance, an Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) are part of the application package. After the application approval and before starting mineral exploitation activities, the license holder pays an environmental rehabilitation guarantee managed by FONERWA to be used to rehabilitate the mine if the license holder abandons it or does not meet environmental requirements.

At trading level, a mineral trading license is issued for a period of five years renewable to either Rwandan or foreigners' citizens or organisations. Usually, enterprises willing to reprocess the tailings or to invest in mineral smelting and refineries acquire a mineral processing license covering a period of seven years renewable (RMB, 2019).

3.11.2 ASM mineral value chain

Due to the Rwanda's sloping landscape and the narrow sizes of mineral veins in some areas, ASM extraction activities are done through underground mining technique, with very minimal surface mining (RMB, 2024). Miners use more traditional manual tools such as pickaxes, hammers and shovels (ANRC, 2021). Considering the remote location of mine sites, the majority of ASM operators do not have access to on-grid electricity and cannot use electrical digging tools, for example jackhammers. The use of hand torches fixed to the helmets is the most common method to illuminate the tunnels. Only a few mines use electrical bulbs in the tunnels and rechargeable head-lamps (Pact World, 2023). Tunnels in fragile rocks are mainly protected using timbering techniques, and dewatering processes are done manually or by using low quality diesel engine driven water pumps. Through the ASM formalisation process, mostly intensified by the 2017 health and safety reforms (RMB, 2017). The mineral extraction and preliminarily ore washing is done by mining license holders or through sub-contractors who oversee mine sites or tunnels, extract and wash minerals, sell them through the license holders who keep a previously agreed percentage on either the gross production or net income.

At ASM mine sites, washing of ore is done using ground sluices and hand panning techniques (Rupert & Paul, 2014). Ground sluicing, using water allows valuable minerals to settle out and be separated from the gangue. Hand panning, on a medium-sized pan with water, involves separating the valuable minerals like the 3Ts or gold, from the gangue materials due to their difference in density. More mechanised methods include shaking tables to separate tailings from concentrates, which help to increase the mineral concentrate grade during processing after the rub of mine ore has been crushed. In addition to gravity separation, magnetic separation is also used in Rwanda in case of mixed ores such as tin and tantalum. The magnetic separator will use the difference in magnetic susceptibility to separate the minerals.

Moreover, this method is also used to remove metals such as iron from the concentrate. Afterwards, minerals are sold to mineral dealers holding mineral trading licenses, to export the concentrates (RMB, 2024). Other players in the value chain include mineral transporters of concentrates, to move the material from ASM mine sites to the selling stations (locally known as “comptoirs”). Such comptoirs are owned by mineral trading license holders, who are mostly located in the capital city, Kigali.

In terms of processing, three companies are active in Rwanda: Bugesera Mining and Trading Company for tantalum, Luna Smelter for tin and Gasabo Gold refinery for gold (Sabiiti, 2023). These processing plants are currently producing less than the nameplate production capacity because they are not able to source enough minerals from own mines or to buy it from other mining that choose to export the concentrates by themselves. This is particularly exacerbated by the pre-financing system that dominates capital provision to mining activities. Therefore, most minerals are exported as concentrates to pay back loans, leaving local smelters in a position of not having sufficient concentrates to process. For example, The Luna Smelter receives only between 100 to 120 tons of the 400 tons of tin produced per month in Rwanda, whereas the company has the capacity to process much more, between 360 tons and 720 tons per month based on how many furnaces are operated. These leads processing companies to search for agreements to import minerals from different countries across Africa (Sabiiti, 2023).

ECRM products from Rwanda are sold to different markets in the world, some in European countries, and others in Asian countries. RMB has accessible data on mineral trade, including buyers, sellers and country of destination. Based on the authors knowledge, such data is not disaggregated by type of mineral producer, so it is not possible to distinguish trade related to ASM, but ASM production is included in the overall figures.

Data from 2022, show that Rwanda exported minerals to eight European countries: Austria, Belgium, Germany, Luxemburg, Netherlands, Poland, Spain and Turkey (RMB,2022). Most of the minerals do not go through the smelting processes, except for tin processed by Luna Smelter. All others are exported as concentrates, following mineral processing..Given the MoU signed with the EU in February 2024, that includes the matters of mineral processing and investment in value chains as areas of collaboration, it is expected that local smelting and refining may increase as well as the linkages of the Rwanda’s mineral exports to the European market (European Commission, 2024) may be strengthened.

Outside of Europe, China and Hong Kong remain key destinations of Rwanda’s mineral exports. Singapore and United Arab Emirates (UAE) also emerge as important export destinations with several active traders. Other destinations of the Rwanda’s mineral exports in 2022 included India, Japan, Taiwan, Thailand and United States of America (USA) (RMB, 2022). Although the authors were not able to access specific export quantities based on destinations, it is assumed that these destinations receive quite less minerals compared to the European market, China, Hong Kong, Singapore and UAE.

3.11.3 ASM sector challenges

3.11.3.1 Technical challenges

Although the interviewed geologists and mining engineers believe that Rwanda might present fewer technical challenges compared to other countries, some did emerge from research done for this profile.



For instance, the limited access to funding and investments described below can result in limited availability of exploration reports and therefore little information on mineral deposits. The hilly Rwandan landscapes translates in terrain and topography challenges, which complicate the extraction processes and hence increase operational costs. The sloped landscape characterising many of the mines in Rwanda, makes it difficult to safely store the tailings after the ore washing. In the past, ASM operators used to channel the tailings in rivers, but the strengthening of environmental laws has discouraged such bad practices (RMB, 2021). Additionally, in some areas, there is a challenge of overburden covering the mineralised veins. When the overburden is thick and difficult to remove, underground mining is required that increases the cost and difficulty of accessing and extracting minerals from the mineralised veins. Although artisanal mining is characterised as manual activity using only rudimentary tools, a tendency to the mechanization of mining activities is conceivable, In Rwanda it is part of the formalisation efforts to introduce some more advanced basic tools and equipment: however these are still largely missing in the Rwanda's ASM sector. This is due to the fact there are no locally manufactured mining tools and equipment and there are limited funds for the sector.

Finally, ASM in Rwanda often lacks skilled labour as geology and mining education at all levels is still new and the first graduates only joined the labour force in the early 2020s (RMB, 2021). Many ASM operators therefore lack basic technical skills related to operational tasks (drilling, blasting, digging, processing, etc) and to mineral value addition.

3.11.3.2 Infrastructure challenges

The ASM sector presents infrastructural challenges related to the remoteness of the mine site's location. Most ASM mine sites have no or limited access to on-grid electricity as a source of energy to illuminate tunnels and use extracting tools and equipment like jackhammers, drilling machines and compressors, as well as processing tools like rock crushers, jigs and magnetic separators (Pact World, 2023). There are limited accessible roads to reach mine sites. Moreover, especially in the eastern part of Rwanda characterised by a savannah landscape, water scarcity makes the washing of the ore more difficult.

3.11.3.3 Social and environmental challenges

Most ASM workers are casual labourers who are paid based on their production. They are mostly paid in cash rather than through financial institutions, and without written contracts and social security coverage for occupational hazards, including accidents, illnesses, and deaths (Kagina, 2022). Though there are no reported cases of child labour in licensed concessions, illegal miners in abandoned sites were found to allow young workers which has been contributing to school dropouts and child delinquencies (Ntwari, 2015). The participation of women in ASM remains low due to gender stereotypes considering mining as an activity for men. In some mines the physical and social environment is unfriendly to women, with inaccessible underground tunnels and mine shafts, lack of gender sensitive infrastructure including separate change and hygiene facilities, and alternative placements for pregnant and breastfeeding women. The low level of integration of women in the mining workforce also affects women in their communities surrounding the mines, as their decision-making power is weakened by their poor

contribution to the households' earnings and economies (Nsanziimana, Nkundibiza & Mwambarangwe, 2020).

Despite the efforts invested by RMB and other stakeholders, environmental challenges are still present in Rwanda's ASM. Some are linked to illegal mining, which takes place in protected areas like parks and forests, without meeting any environmental standards and consequently degrading the environment. Some of the impacts are linked to deforestation, washing the mineral ores in rivers and channelling the tailings into rivers (Muhire, 2021). Within licensed areas, there are also cases of soil degradation and landscape change. The use of trees to protect some tunnels through timbering systems also contributes to the deforestation of some areas and further soil erosion (Byizigiro, Biryabarema & Rwanyirizi, 2020). In order to enhance the protection of the environment by mining companies, RMB started taking action. This included the cancellation of mining licenses of 13 ASM companies in November 2023 and 7 companies in January 2024 for having failed to meet safety and environmental standards among other breaches (Sabiiti, 2024).

3.11.3.4 Access to finance and funding mechanisms

It is argued, including by RMB, that lack of financial resources and investment remains the major challenge of the mining sector and in particular for ASM operators (CNBC Africa, 2022). While international mining companies operating in Rwanda, may get funds from their countries of origin and international investors, they represent less than 10% of 150 active companies and cooperatives across the country (Sabiiti, 2023) and there are no formal and direct funding mechanisms for local ASM companies and cooperatives (GoR, 2022). According to the RMA's executive secretariat, the investment approaches used so far are led by the "pre-financing approach" whereby some international mineral traders lend money to local traders who in turn lend the money to mine operators, usually with excessive interest rates. The repayment is done based on the production sold to the local exporters who also deduct some amounts labelled as processing and treatment costs. Such a dynamic negatively impacts the revenues of local supply chain actors, as only a smaller proportion of the mineral value is retained by them.

Another informal, but widely known, funding approach consists of securing loans from local banks, presenting other projects than mining and thereafter divert the money into mining. There are several limitations that prevent commercial banks from engaging in mining operations. These banks cannot issue loans without securities through collateral, and mineral licenses, concessions and the assets therein, are not accepted as collateral. Moreover, most commercial banks are not familiar with mining businesses and do not have the right resources to assess mining projects and, for example mineral economics. Furthermore, local banks' trading loan products mean that after issuing loans, they start receiving payments and interests within a very short period, as they issue commercial loans not investment loans. This is in contrast to investment loans products which are not available in country. Consequently, limited access to finance results in limited adherence and investments on environmental, safety and health (SHE) standards, as well as other socio-economic challenges, as they rather prioritise to increase the production with the limited funding available.

This issue was debated in the Rwanda's Parliament on 10 January 2024 when RMB's CEO discussed this challenge and potential solutions. She indicated that there is a lack of domestic financing tailored to the



mining sector's needs, giving foreign companies an advantage as they have access to better financing instruments abroad. So far, RMB and stakeholders have not found effective solutions, however they are advocating for a funding system which would increase the Rwandan banking system's trust in mining, including ASM, so that it can provide mine operators with finance (Ntirenganya, 2024).

3.11.4 Relevant initiatives and stakeholders

RMB collaborates with different groups of stakeholders, including other governmental institutions, organisations from the private sector, civil society, and development partners.

Governmental stakeholders include the Rwanda Environmental Management Authority (REMA) which intervenes for the approval and monitoring of environmental and social impact assessments (EIA) for any mining licence type where these are required; the Rwanda Green Fund (FONERWA) which manages the environmental rehabilitation guarantee deposited by mining licence holders; the Ministry of Interior through the Rwanda National Police (RNP) and the Ministry of Defence through the Rwanda Defence Force (RDF) which contributes to the transportation, storage and use of explosive materials; the Ministry of Local Government (MINALOC) through districts for the approval and implementation of mineral license holders' Corporate Social Responsibility (CSR) activities and through the Local Administrative Entities Development Agency (LODA) which manages the mineral revenues sharing scheme, requiring of 10% mining revenues to be allocated back to communities in the mining neighbourhood. In addition, RMB has various mining services providers including geological and mining engineering consultants, laboratory analysis service providers dominated by Alex Stewart International Rwanda, EIA experts and most importantly the 3T and gold traceability and certification services provided by the International Tin Research Initiative (ITRI)'s Tin Supply Chain Initiative (ITSCI) implemented by Pact World (USA's), since 2010, but transitioned to KUMBUKA AFRIKA since 2013 (Pact World, 2023) and by RCS Global Group's formerly Better Sourcing Programme (BSP) which came in as another similar services provider, since 2016 (RDB, 2024). RMB also benefit from technical and financial assistance from development partners, mainly the German Agency for International Cooperation (GIZ), the German Federal Institute for Geosciences and Natural Resources (BGR), the UK's Foreign, Commonwealth and Development Office (FCDO) the former Department for International Development (DfID), as well as the European Union (EU). Importantly, on 19th February 2024, the EU and the government of Rwanda signed a Memorandum of Understanding (MoU) to nurture sustainable and resilient value chains for critical raw materials. The MoU prioritises five areas of intervention focusing on the value chains and economic diversification; sustainable and responsible production; improvements on the investment climate; research, innovation and value addition; as well as capacity building (European Commission, 2024).

Finally, other key civil society organisations are also active in Rwanda. The Rwanda Extractive Workers Union (REWU) working for the protection of the mining workforce and child labour prevention as a trade-union. The Rwanda Women In/And Mining Organization (WIAMO) promoting gender equality and social inclusion. In terms of private sector organisations, mining operators are represented by the Rwanda Mining Association (RMA) and its women's wing – Rwanda Women In Mining Association (RWIMA).



3.11.5 Investment needs and opportunities

Considering the information available about the progress and persisting challenges for ASM organisations and individuals in Rwanda, several investment needs and opportunities were identified. The ideas shared in this section aim at addressing some systemic challenges, but also provide concrete ideas based on the experience of stakeholders in the sector and available data. More generally, there will be a continued need for stakeholders and the investment community to dedicate efforts and funding to support responsible mining, including through the governance of the sector.

3.11.5.1 Exploration and mining of untapped deposits

Rwanda has mineral deposits that remain untapped, and this could include more critical minerals. The Rwandan government should continue its efforts to create an enabling environment to encourage companies to invest in maximising these deposits, including encouraging international firms to collaborate with local companies and cooperatives. Before the privatisation of mining companies in 2006-2007, most mining activities were done in the large concessions, belonging to the government. With the 2008 mining law and 2009 mining policy, which replaced the 1967 mining code, Rwanda introduced a mineral prospecting license consisting of “carrying out superficial or profound investigations in a bid to discover and provide information on the unusual nature of the soil, indications or concentrations of mineral or fossil substances”¹³⁷⁸. The “prospecting license” holders were supposed to do bulk sampling and detect the existence of minerals in given areas, before applying for mineral “research licenses” equivalent to the current mineral exploration license. This would allow them to estimate mineral deposits and their economic viability, before applying for a “mining exploitation license”, today known as mining license¹³⁷⁹. With the 2018 revision of the mining law, the prospecting license is no longer part of mineral licensing process in Rwanda. Most small scale and medium scale ASM mines have not undergone deep explorations. Although mining skills – both formal and informal - being built in communities, illegal mining cases are also keep increasing, especially on sites which have not undergone official explorations and have never been assigned to license holders. In November 2023, Rwanda’s parliament urged the executive to conduct explorations across the country for potential mineral reserves that remain formally untapped, and which fuel illegal mining (Parliament, 2023). However, exploration activities require large investments to the extent that the Government cannot immediately cover the whole national territory. It is for this reason that the GoR chose to invest in exploration works in Prospective Target Areas (PTA) to generate good primary geology data to be used by mineral exploration companies (RMB, 2023). With the 2015 investment code, the GoR therefore introduced incentives to attract mineral exploration investments with a package for exploration companies to carry forward losses or expenses incurred for a 10 –year period (African Mining Market, 2020).

Mining activities themselves are carried out more confidently when there are reliable exploration reports, embodying sufficient geological information, the quantity and quality of minerals in the deposits and economic viability of the mine. Exploration reports also help to prepare bankable projects and then tackle the investment issue. Thus, there are still mining exploration-related investment opportunities for all

¹³⁷⁸ Article 2 (20°) of the Law N° 37/2008 of 11/08/2008 on mining and quarry exploitation.

¹³⁷⁹ Article 23 of the Law N° 37/2008 of 11/08/2008 on mining and quarry exploitation.



ECRM products. For example, at the beginning of 2024, Rio Tinto, a UK-listed international mining company, entered the Rwanda's mining sector for lithium exploration, and there are many more opportunities for such big companies (Kagina, 2024). Any investor who showcases technical and financial capabilities to invest in either exploration or mineral exploitation can approach the GoR through RMB and could be granted a license. There are also "joint ventures and partnership opportunities with local companies that lack access to financing and equipment to boost their productivity" (RMB, 2023). License holders are allowed to sell minerals extracted during exploration to support ongoing activities. There is full assurance that at the end of the exploration, once the mine is found to be economically viable; it is awarded to the same mining company through another type of permit – mining license. Currently, most ASM operators lack sufficient investments but are open to partnerships and, there are vacant mines ready to be awarded to those investors who are technically and financially capable. Partnerships between international and local companies should be encouraged.

3.11.5.2 Skills development and organisation of the available skilled labour

Since 1930 when mining operations started in Rwanda, there have been few education institutions addressing the skill needs of the mining sector. The GoR introduced a School of Mining and Geology (SMG) within the University of Rwanda, at a bachelor's level; and a Mining Engineering Department (MED) in the Rwanda Polytechnic (RP) / Integrated Polytechnic Regional Centre (IPRC) of Kigali and the Rutongo School of Mining (RSM), for mining technicians around 2010. Training has for long relied on senior technical experts such as engineers and geologists to train younger professionals once they enter the mining sector as workers. They need to keep skills and competences updated, not only with respect to field technical skills but also broader research and consultancy skills in the areas of geology, mining engineering, metallurgy, and others. This represents an opportunity for universities, other education institutions and industry regulators to develop training curricula. Additionally, the establishment of a professional body should be considered, supporting professionalisation, sharing of regulatory expectations and ethical conduct guidance, while ultimately supporting capacity building, skills transfer and knowledge management.

3.11.5.3 Better access to tools and equipment through local manufacturing

The GoR started reforms in 2017 to modernise ASM operations and increase production. This involves shifting from the traditional use of mining and preliminary processing tools and equipment to the introduction of modernised ones, towards at least a semi-mechanised mining. Except for manual tools like chisels, pickaxes and shovels that are locally made, all other tools are imported, mainly from China. The boosting local production of mine railways, mine carts, electrical jackhammers, compressors, underground rechargeable lighting solutions, jigs, crushers, magnetic separators and others represents an opportunity to support development of a local mining services sector as well as the professionalisation of the ASM sector and the introduction of semi-mechanised methods. Additionally, commodities like lithium, beryllium, tungsten and tantalum are mined from hard rocks that requires the use of blasting materials to dislodge the ore or the mineral deposit from the main body of the rocks. Blasting requires dynamites, nitrates, electric detonators, detonating relays, and detonating cords. However, there are no companies manufacturing blasting materials in Rwanda. They are mainly imported from Tanzania, Kenya and Zambia



and involve many expenses due to import formalities including being escorted by defence forces of the involved countries. Most of these explosive materials have short expiry dates, affected by the long and complicated import processes, and consequently, the time may lapse before the use of some of the explosives. This translates into an opportunity to locally manufacture explosives and carry out studies about environment-friendly blasting tools, to ease drilling and blasting activities in the Rwanda's mining within the ASM professionalisation journey.

3.11.5.4 Contribution to improved HSE practices

After the adoption of the 2017 mining safety standards (RMB, 2017) requiring mining companies to recruit environmental officers, mining engineers and geologists (RMB, 2021); outcomes from quarterly mines inspections have shown good progress on health, safety and environmental (HSE) performance. However, due to low investments, some ASM mines have not managed to meet standards until the cancellation of their licenses (Sabiiti, 2024). RMA leadership, as an umbrella of mining companies, supports the idea that mining should meet HSE standards to operate more sustainably. Therefore, improving mining practices remains important and this requires more skilled labour and tools. For instance, Personal Protective Equipment (PPE) available on the Rwandan market is common to all blue-collar jobs. Therefore, investors can target making PPE that is specific to the mining sector, gender sensitive and covering all labour divisions – drilling, blasting, digging, timbering, ore transportation, ore preliminary field processing, PPE for staff working with smelting plants and those against noise and air pollution. There is also a need to invest in tunnels ventilation equipment and lighting solutions for underground mining, for mine workers' safety and health. The traditional ASM tunnels support through timbering, which contributes to the deforestation, also needs to be improved and necessitates further study and investments.

3.11.5.5 Processing and value addition

With regards to mineral value addition, relying on artisanal methods presents clear limitations. Reportedly, minerals processed through ground sluicing and hand panning resulted recovery rates between 30% and 40%, as opposed to the possibility to recover between 60% and 99.99% by using more advanced methods (Sabiiti, 2023). Therefore, processing and value addition represents a clear investment opportunity in Rwanda. Considering its strategic location in Central Africa, the GoR has a vision to make Rwanda “a mineral value-addition hub” in the region. In addition to the mineral ores that are locally produced, and which are mostly exported as raw mineral concentrates; Rwanda has the ambition to source mineral concentrates from other countries, for them to be smelted and refined in Rwanda. Investments could consider more facilities to process materials that are not yet locally smelted, such as tungsten and beryllium and could strength the technical and financial capacities of the existing smelting companies.

3.11.5.6 Supporting the development of investment loan products and mining guarantee fund

Considering that the banking sector in Rwanda only provides trading loan products, not applicable to the mining sector, there is an opportunity to support local banks to introduce investment loan products. Such support could come from public funding with the cooperation and commitment of few commercial banks also willing to invest time and expertise to develop such products. On the other hand, commercial banks



and other actors involved could receive support expertise to work with the mining sector, including with ASM operators. ASM operators would also require training to present projects, prepare loans applications and manage funds. In parallel, a mining guarantee fund should be considered. Given that ASM operators do not possess collaterals with the needed value for mining projects, the mining guarantee fund would serve as a collateral that can safeguard the funds loaned by a bank. A similar approach exists with the Business Development Fund (BDF) in Rwanda where the fund covers between 50% and 70% of the collateral requested by a bank, for women's and youth's projects which do not include the mining industry. The BDF is meant to apply to all sectors (e.g. agriculture, livestock) for women and youth, and it was locally reported that the initiative has had a lot of success.

Finally, an improved financing environment for the ASM sector should also consider the existing dynamics of subcontracting agreements between mining license holders and ASM operators. In absence of a formal and economic lending system, some mine operators work with sub-contractors as a form of collective investment where parts of a given concession are assigned to small sub-contractors who bring in low investment, which contributes to the overall mining operations and helps developments which otherwise would not be possible if investments relied only on the license holder. Given that this approach has helped ASM to continue their activities and earn an income; investors, with support from the regulator, should consider contributing to the formalisation of the sub-contracting system for more funds to be injected therein and for other mining aspects including ESG not to be left behind.

3.11.5.7 Gender and community development considerations

Gender and community development considerations in relation to mining investments, are associated with women's participation in mining, child labour, corporate social responsibility (CSR) and economic diversification. Rwanda has adopted a five years (2022-2027) gender strategy designed for the mining sector. The management of "Women In And Mining Organisation" (WIAMO) support a review of such strategy, considering its mid-term mark and that limited activities were implemented. The activities were allocated into 5 pillars, including ending gender stereotypes, the gender-mainstreaming of tools and structures, women's capacity building and career development, assurance of a women's friendly physical environment and women's socio-economic empowerment (RMB, 2022). The implementation of these activities which are also linked to the occupational health and safety (OHS) and ESG, does not only benefit women, but also other actors including fellow male mine workers, households and children in the surrounding communities, as well as the increase of the mineral production. Therefore, RMB's stakeholders including GIZ which funded its development, are encouraged to further support the implementation of the strategy.

Rwanda's mining legislation requires mineral license holders to contribute to communities through CSR activities. In addition the GoR also reinvests 10% of mineral taxes revenues to communities, based on approach adopted in 2016 and known as mineral revenues sharing scheme (Tashobya, 2016). The mineral revenue sharing scheme and CSR activities have benefitted communities in the areas of transport, markets development, education and health infrastructure among othes. By December 2023, the GoR had already spent RWF 2 billion to support communities as part of the mineral revenue sharing scheme (Bahati, 2024). However, there is no benchmark for mineral license holders to know how much they should spend on CSR



activities. It would be useful and efficient to have a system to monitor and learn from CSR investments and how these, together with the mineral revenue sharing scheme contribute the economic diversification in mining communities, either directly or indirectly. Investing effectively in CSR opportunities could ultimately mean that mining could represent an economic opportunity, not a threat to communities' socio-economic life.

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3.12 Tanzania

3.12.1 Introduction and overview of the mining sector

A plethora of raw materials are mined in Tanzania by either industrial and artisanal and small-scale miners, these include gold, silver, copper, diamonds, nickel, cobalt, platinum group metals (platinum, palladium and rhodium), precious and semi-precious stones and industrial minerals (limestone, soda ash, graphite, gypsum salt, phosphate, sand) (UNECA, 2024; International Trade Association, 2022).

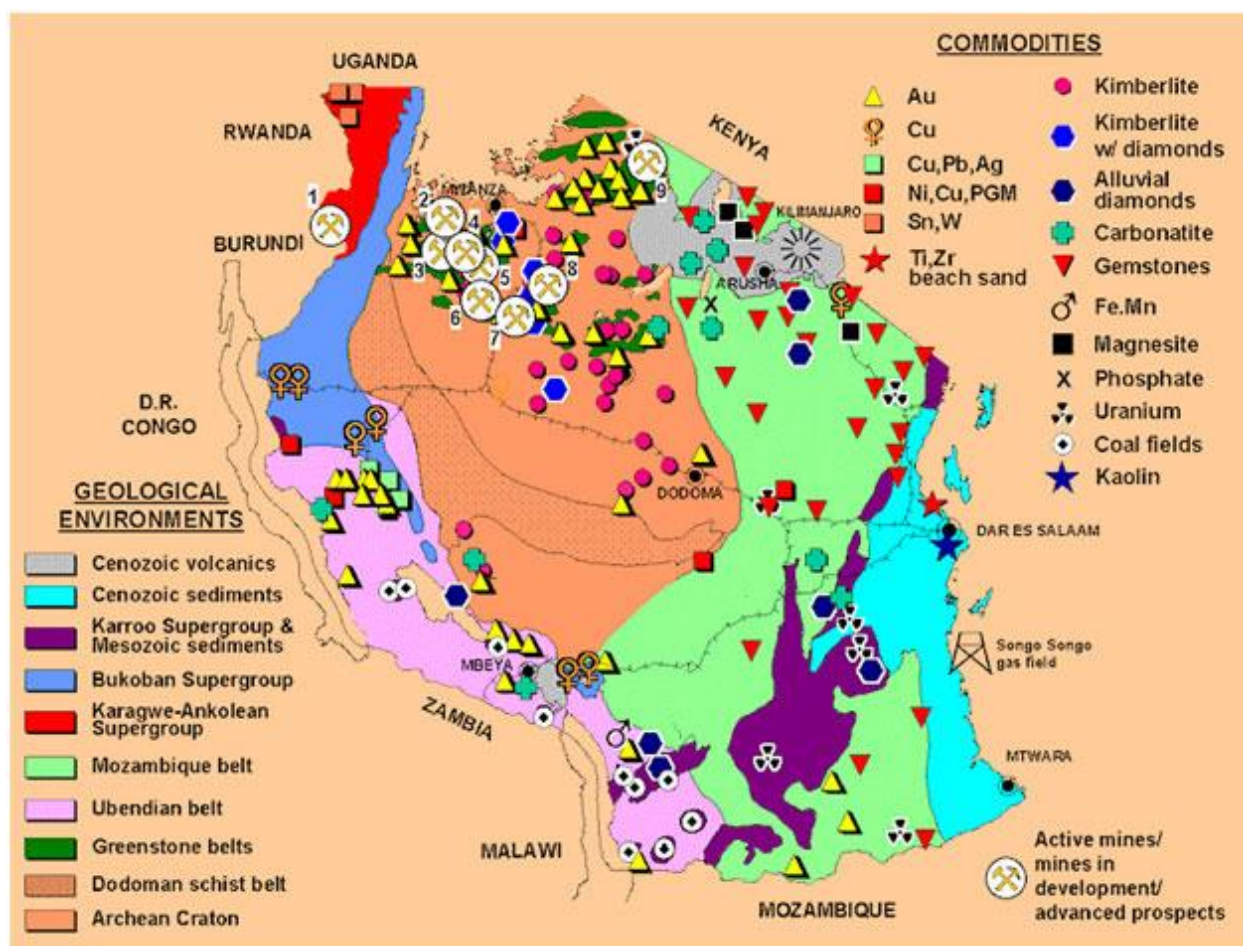


Figure 23 Geological map and mineral occurrences in Tanzania¹³⁸⁰ (The High Commission of the United Republic of Tanzania – New Delhi, 2018)

As a whole, the mining sector contributed to 3.5% of GDP in 2015 (Gerig et. al., 2020) and minerals contributed to 40.9% of total exports in 2020 (Cowling, 2024). Moreover, Tanzania is one of the highest recipients of foreign direct investment (FDI) in East Africa, receiving USD 18.5 billion in 2015, of which 45.9% was concentrated on the country's mining and quarrying sectors (Schoneveld et. al., 2018). Tanzania is the 4th largest gold producer in Africa after South Africa, Ghana and Mali (International Trade Administration, 2022).

¹³⁸⁰ This map is partially incomplete and outdated as it does not include graphite occurrences in Tanzania

Mineral	2016	2017	2018
Gold	45.9	43.5	39.3
Silver	42,534	40,964	43,725
Copper	17,400	15,800	10,000

Table 62 Mineral production in metric tonnes (The Global Economy, 2024)

3.13.1.1 Artisanal and small-scale mining

It is estimated that 1.5 million people operate in the Tanzanian mining sector including miners, financiers and service providers and the sector is largely informal (UNECA, 2024). According to the 2021 Baseline Survey on ASM, the materials most commonly extracted by ASM were gold (58% ASM engagement), development minerals (limestone, sand, gypsum) (24%), coloured gemstones (12%), diamonds (2%) and salt (2%) , copper (2%) (Gerig et. al., 2020; Mutagwaba et. al., 2018). Since this baseline was conducted over 10 years ago, these figures may have changed to include more/ less of the ECRMs discussed below. In 2014, it was estimated that artisanal and small-scale mining production was valued at USD 123 million, whereas medium- and large-scale mining production was valued at USD 1,915.8 million (Gerig et. al., 2020).

Women reportedly represent between 20-30% of the artisanal and small-scale workforce and depending on the mineral extracted and area of extraction, their involvement in the sector varies (Gerig et. al., 2020). Women participate in a wide range of activities such as mineral processing, transporting material and providing food and services around the mining sites (Gerig et. al., 2020). Access to capital, equipment and technical skills and low wages are a general challenge faced by workers in the artisanal and small-scale mining sector, but women working in the sector tend to face these challenges at a disproportional rate due to cultural beliefs, traditions, and discriminatory practices (Gerig et. al., 2020).

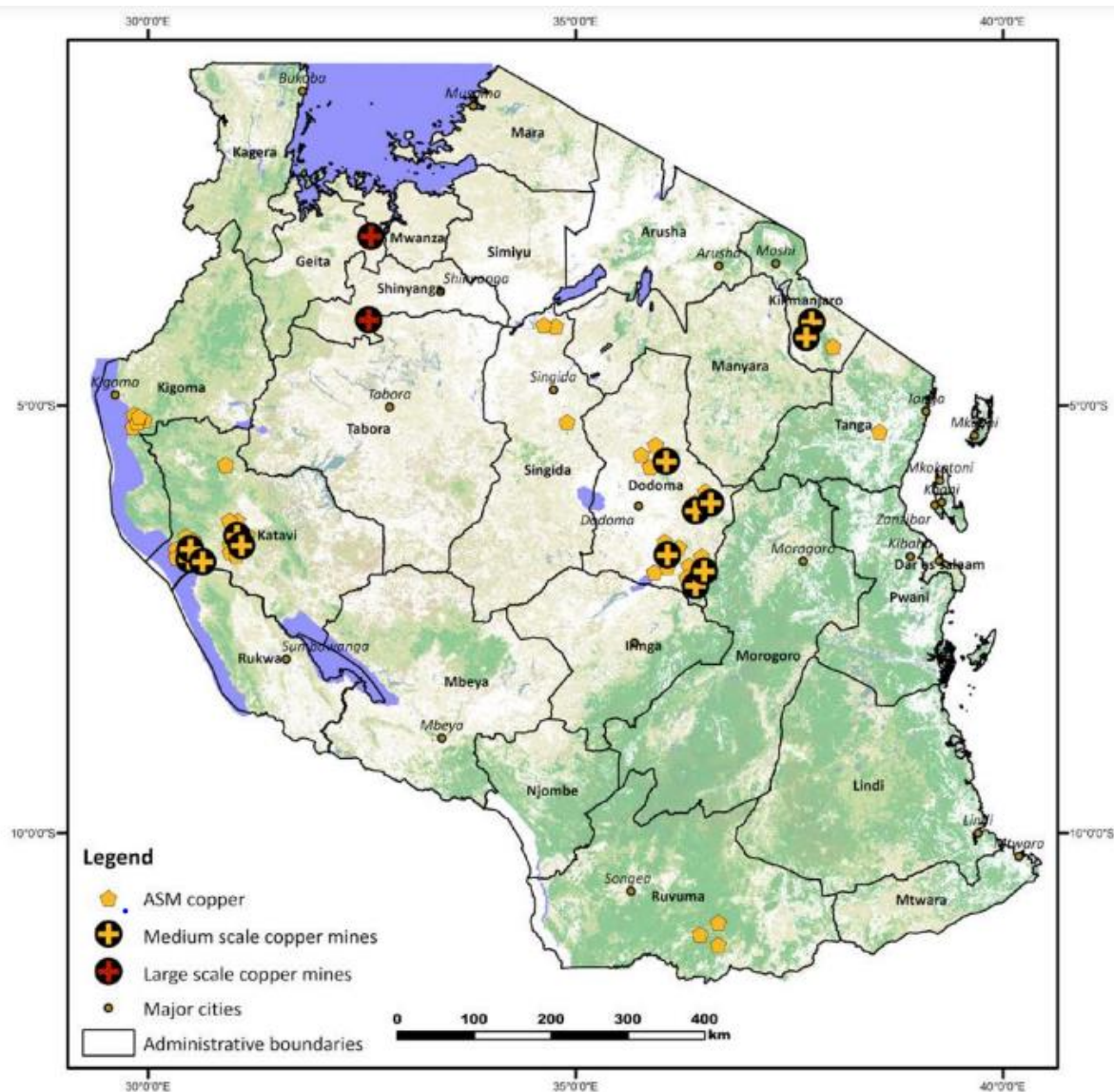
The Tanzanian ASM sector is organised in a three-tier organisational structure involving primary mining license holders, pit owners and workers and diggers (Gerig et. al., 2020). Primary license holders are those that hold the license to prospect and mine specific areas of land up to five hectares of land (Gerig et.al., 2020). They often act as financiers and subcontract pit owners to manage mining activities of the designated area. The pit owners then employ diggers and workers on the designated area and provide them with equipment to work on the mine site. The revenues generated are distributed through Production Sharing Agreements (PSAs) in which primary license holders take 30% and are in charge of paying governmental fees, 40% is given to the pit owner and the remaining 30% is distributed amongst miners (Gerig et. al., 2020).

Production of materials by artisanal and small-scale miners and the number of miners working is dependent on the season (Gerig et. al., 2020). Materials such as salt can only be produced in the dry season whereas materials such as gold can be produced year-round (Gerig et. al., 2020). Gold is the most profitable mineral to extract for ASM workers in Tanzania (Gerig et. al. 2020). Miners also supplement mining activities with income from other economic activities such as pasturing and agriculture (Personal communication with stakeholder, civil society organisation, August 2023).

3.12.1.2 Extended Critical Raw Materials and ASM

There are several materials mined by artisanal and small-scale miners at various volumes that are also included in the EU's extended critical raw materials list, these include copper, tin, tantalum and tungsten (Personal communication with stakeholder, civil society organisation, September 2023). Materials such as tungsten, tantalum and copper are mined as by-products alongside tin and gold (Personal communication with stakeholder, civil society organisation, September 2023). ASM has a longstanding history in Tanzania and between 1987 and 1997, 95% of all mineral production was done so by artisanal and small-scale miners (Wachenfeld and Kimotho, 2016). However, in recent years, ASM production has largely focused on gold and gemstones. According to stakeholder interviews, though ASM producers have always mined the other materials there has been little push by government to promote the production of these materials until the rising and more recent discourse surrounding 'critical raw materials' (Personal communication with stakeholder, civil society organisation, September 2023). Moreover, ASM production is largely dependent on what is traditionally mined and popular (e.g. gold and gemstones) so if other materials are mined, it will largely depend on whether there is local knowledge about the extraction of these materials and whether miners have access to favourable markets (Personal communication with stakeholder, civil society organisation, September 2023).

Tin has a long history of being mined by artisanal and small-scale producers in Tanzania and mining activity is concentrated in the Lake Victoria Gold Fields, Kagera region, Eastern App Mountains, ParayHills, Kalambo region and Panga region. (Personal communication with stakeholder, civil society organisation, September 2023). Tantalum is mined alongside tin and ASM activities are focused in the south and southwestern parts of Tanzania around Lake Tanganika and Lake Nyasa and in the Karagwe area (Personal communication with stakeholder, civil society organisation, August 2023; civil society organisation, September 2023). Tungsten is also mined alongside tin and tantalum, with mining activities focused in Kabanga, Ngara and in the Kagera region (Personal communication with stakeholders, civil society organisation, September 2023; civil society organisation, August 2023). There is little information about how much of each of these minerals is produced by ASM and where and who as-mined material is sold to. It was reported that the minerals extracted were smuggled into neighbouring countries (Mikomangwa, 2020). However, as of 2020, it has been reported that Tanzania will be able to export tin, tantalum and tungsten due to export requirements being met and certificates of origin being issued in Tanzania, making it the fifth eligible nation in the Great Lakes Region to do so after Rwanda, Democratic Republic of Congo, Burundi and Uganda (Mikomangwa, 2020; IMPACT, 2024).



Source: Authors' representation based on field research and MEM (2017)

Note: Large-scale mines depicted in the figure only produce copper as a by-product. In contrast, copper mining is (officially) the core business of all depicted medium-scale mines.

Figure 24 Copper Mining Sites in Tanzania (Schoneveld et. al, 2018)

Copper mining by artisanal and small-scale producers is a relatively new development in the Tanzanian mining sector and it was estimated in 2011 that 2% of ASM producers extracted copper (Mutagwaba et. al., 2018). Between 2006 - 2012, there was a rise in copper mining which saw copper ore and concentrates exports increase from 0 metric tonnes to 37,134 metric tonnes (Schoneveld et. al., 2019). This activity has not only been attributed to the activities of large-scale mining companies (who produce copper as a by-product at some gold mines) but also to those of artisanal and small-scale mining (Schoneveld et. al., 2018). There were attempts to mine copper at an industrial level by German and British companies in the 1930s and 1950s, respectively, but this yielded little results due to the poor grade of the copper ores mined (Schoneveld et. al., 2018). However, the 2010s saw a growing demand for copper, mainly fuelled

by China's industrial development, and prompted Chinese companies to explore opportunities regarding sourcing copper from Tanzania (Schoneveld et. al., 2018). In this period, miners, usually PML holders, familiar with local occurrences of copper deposits began to invest in copper extraction and between 2011 and 2013, there were more than 3,000 primary mining license applications for copper extraction (Schoneveld et. al., 2018). Actual ASM activities began to emerge in the Katavi, Singida, Dodoma, Morogoro, Kigoma, Tanga, Kilimanjaro and Ruvuma regions (Schoneveld et. al., 2018). This process was largely facilitated by intermediaries or brokers who could link Chinese buyers with suppliers (Schoneveld et. al., 2018). However, the grade of the copper extracted was not considered high enough to make export economically viable due to the low volumes that were being produced, with the concentration of copper ores rarely exceeding 15% (Schoneveld et. al., 2018). To improve productivity and meet demand, Chinese buyers began to finance PML holders and provide equipment to allow for deeper mining (Schoneveld et. al., 2018). Nevertheless, this investment into copper extraction at the artisanal and small-scale level was short lived once world copper prices fell in 2014, causing many Chinese buyers to leave the sector, abandoning equipment and supply agreements (Schoneveld et. al., 2018). This departure led to a dramatic decrease in copper production, which can be seen in the fact that only 1,325 metric tonnes of copper was exported out of Tanzania in 2015 (Schoneveld, et. al., 2018). In a report written by Schoneveld et. al. (2018), it is argued that the copper sector (at the time the research was conducted) would have benefited from government support to ensure the commercial viability of the sector, allowing for buyers to be in direct relationships with suppliers, established markets to be realised and better enforcement of due diligence procedures.

3.12.1.3 Applicable regulations and governance

The Tanzanian mining sector is governed by several laws and institutions. The overarching legislation is the Mining Act (which was amended in 2017) and states that “all minerals found with the land, rivers, streams, watercourses, territorial sea, continental shelf and exclusive economic zone are the property of the United Republic, entrusted to the President for the benefit of the people of Tanzania” (Kimario et al., 2023). Under this act, mineral rights can be granted to individuals or companies and to prospect minerals or engage in mining activities, one must have the correct license which includes a prospecting license, primary mining license, mining license or special mining license (Kimario et al., 2023). A brief description of each license is outlined below:

- **Prospecting License:** allows the holder to explore a specific prospecting area for a maximum of nine years and at the end of this period the land returns to the government (Kimario et al., 2023).
- **Primary Mining License:** This license is typically held by those wishing to work on a small-scale basis and allows them to prospect and mine a specific area and is exclusively available to Tanzanian citizens (Kimario et al., 2023).
- **Mining License:** This license allows for the holder to exclusively mine a specific mining area for minerals outlined in the license. Usually, this license is issued for medium-scale mining operations that aim to invest between USD 100,000 – USD 100 million in capital (Kimario et al., 2023).

- **Special Mining License:** This license is specifically targeted at large-scale mining operations that aim to invest over USD 100 million in capital and the rights are exclusive to the holder in a specific mining area (East African Law Chambers, 2023). Where there is a year limit on the mining license, special mining license holders can operate in the area until the end of life of the ore body (Kimario et al., 2023).

Specific to Mining licenses and Special Mining licenses under the Mining Regulations, (Government Notice No. 574 of 2022), it is required that that the state is a participant and beneficiary of mining operations carried out by these license holders. This is to ensure that the mining activities carried out by medium- and large-scale companies also benefit the Tanzanian people (Kimario et al., 2023). This can be attributed to rising resource nationalism attitudes of the Tanzanian government in 2017, with beliefs that the country did not receive a fair share from its extractive industry especially as the industry is largely controlled by foreign companies (Schoneveld et. al., 2018). In line with these attitudes, the Natural Wealth and Resources (Permanent Sovereignty) Act, 2017, was also issued and states that the people of Tanzania have ownership over natural resources and wealth in the country, allows the National Assembly to secure agreements on behalf of Tanzanians for extraction, exploitation, acquisition and/ or use of natural resources, grants the National Assembly the power to review all arrangements and agreements made in regard to natural resource extraction, amongst many other stipulations (Schoneveld et. al., 2018). In this time period, the President also issued a temporary ban on the exportation of mineral ores and concentrates to promote investment in domestic processing capabilities (Schoneveld et. al., 2018). However, this ban caused tensions between large-scale mining companies and the government as it was perceived to be against the General Agreement on Tariffs and Trade (GATT) Tanzania signed with the World Trade Organisation (WTO) and other bilateral investment agreements Tanzania was a part of (Schoneveld et. al., 2018).

The main governing body of the mining sector in Tanzania is the Ministry of Minerals and has five institutions under it, The Mining Commission, The Geological Survey of Tanzania (GST), The State Mining Corporation (STAMICO), Tanzania Extractive Industries Transparency Initiative (TEITI) and the Tanzania Gemmological Centre (TGC) (Government of Tanzania, 2024). In 2017, the functions of the Ministry of Minerals were revised and expanded to also account for the changes made in regulatory framework of the minerals sector (the Written Laws (Miscellaneous Amendments) Act, 2017) (Ministry of Minerals, 2024).

A combination of legislation guides ASM operations in the country, these include the Mining Act 2010 (amended in 2017), the Natural Wealth and Resources Act 2017, various Land Legislation (The Land Act 1999, The Village Land Act 1999, the National Land Use Planning Act 2007 and Village Planning and Regulations 2007), the Environmental Management Act 2004 and the Occupational Health and Safety Act (Mutagwaba et. al., 2018). These legislations outline mineral and mining rights, ownership and control of natural resources, land rights and how to deal with land disputes, environmental management of mine sites and regulations for health and safety at mine sites (Mutagwaba et. al., 2018). There are several government institutions that regulate the ASM sector at the ministry, agency, regional, district and village levels, these include the Ministry of Minerals, Ministry of Water and Irrigation (MWI), Resident mine offices, Commissioner's Offices and village governments (Mutagwaba et. al., 2018).

3.12.2 ASM sector challenges

There are several challenges faced by the artisanal and small-scale mining sector in Tanzania that have persisted since independence in 1961. For this reason, this section will highlight some of the challenges the sector faces as a whole that prohibit the potential supply of critical raw materials and socio-economic development of the sector. The challenges listed below should be considered when identifying and defining possible investment needs and opportunities of the ASM sector in Tanzania in relation to ECRM production.

3.12.2.1 Formalisation and differentiation between artisanal and small-scale mining

The government of Tanzania has made significant strides in improving the operating and regulatory environment for ASM. However, while the Mining Act 2010 allows the Minister of Energy and Mines to set aside dedicated areas for artisanal and small-scale mining, the distinction between artisanal and small-scale mining is still unclear (Weldegiorgis and Buxton, 2017). The lack of clarity has impeded the government's efforts to formalize the ASM sector as a whole as formalisation efforts are focused on Primary Mining License holders, who are typically small-scale miners, at the exclusion of artisanal miners (Kinyondo and Huggins, 2021). Moreover, formalisation in Tanzania has been undermined by the fact that projects either funded by donor agencies and/or by the government fail to recognise the complex nature of organisational structures in the ASM sector and the differing priorities between artisanal miners on the one hand and small-scale miners on the other. Furthermore, some of these projects assume that all ASM (both that hold, and those that do not hold, a PML) "are entrepreneurs and are therefore keen to scale up their operations and formalise" (Kiyondo and Huggins, 2021). However, studies undertaken in Tanzania show that some artisanal miners prefer to continue operating at this scale and to remain informal to avoid paying fees, taxes and royalties (Kinyondo and Huggins, 2021).

3.12.2.2 Limitations of top-down technical approaches

In recent years, the Government of Tanzania, alongside varying partners, have made substantial investments in the ASM sector. Such investments include building seven mineral processing demonstration centres with support from the World Bank, establishing two gold demonstration mines (in Rwamgasa and Tarime) with the support of the Multi-Stakeholder Partnership Initiative (MSPI) on ASM-LSM Coexistence, among others (Merket, 2019; Mutagwaba et. al., 2018). However, many of these top-down interventions have only benefitted a handful of people who are typically well-connected, live in urban areas, and are part of economically and politically elite. The skewed benefits of these interventions are further exacerbated by high levels of information asymmetry in the sector (Merket, 2019). Furthermore, these approaches fail to recognise the "heterogenous and amorphous nature of ASM" and thereby miss the opportunity to mobilise sufficient resources to reduce bureaucracy in licencing procedures, enhance information dissemination, and to the extent possible, translate critical information, such as that in the Online Mining Cadastre Transactional Portal, to widely used local languages (Merket, 2019).

Recently, there has been increasing direct engagement at the mining level between foreign companies and artisanal and small-scale mining producers in Tanzania concerning gold and copper production. This

activity has been argued as an avenue for foreign companies to navigate the high costs and risks associated with setting up new mining operations and difficulties in accessing mining titles (Schoneveld et. al., 2017). Though the motivations for this engagement can be contested, foreign company involvement allows for capital, expertise and modern technology to become available to ASM producers and has the potential to contribute to the resolution of ASM performance challenges as well as address ASM technical and technological needs (Schoneveld et. al, 2017).

3.12.2.3 Financial constraints and obtaining mining licences

Many financing institutions consider the ASM sector too risky for them to engage with. As a result, access to credit for ASM producers from formal institutions such as banks remains a big challenge. This is because of several factors, among them: (i) lack of a Primary Mining Licence (PML) which gives miners in Tanzania the legal right to mine; (ii) lack of proof of the anticipated lifespan of mining activities resulting from lack of geological data and/or difficulty for ASM producers to acquire such data; and (iii) lack of other forms of collateral (Pedersen et al, 2021). Closely linked to the above constraints is the inability of artisanal and small-scale miners to afford the necessary mining equipment to enhance their efficiency and increase their output (personal communication with stakeholder, civil society organisation, August 2023).

3.12.2.4 Social and environmental impacts

There are a multitude of social and environmental issues that have been associated with ASM operations in Tanzania for many years. These include failing to adhere to health and safety standards, land conflicts, use of child labour, environmental degradation, harmful mining practices (e.g., the use of mercury in gold processing), exploitative practices, unsustainable production, lack of sanitary facilities on site, dust and noise pollution, deforestation, land degradation, among other concerns (Kinyondo and Huggins, 2021; Schoneveld et al, 2017; Merket, 2019). Since most ASM operations are informal, take place outside legal frameworks and in a weak regulatory environment, the consequences faced by ASM producers that fail to comply are minimal (Merket, 2019). Furthermore, as ASM is typically conducted without prior geological or hydrological surveys due to financial, technological, and other constraints, changes in the hydrological regime can often involve risks for miners as pits may flood unexpectedly (especially during the rainy season) causing adverse impacts (Kinyondo and Huggins, 2021).

3.12.3 Relevant initiatives

Though investment in the Tanzanian artisanal and small-scale sector has been focused largely on gold and gemstone production, the below projects demonstrate that there have been previous initiatives focused on supporting the ASM sector and could be possible sources of guidance for future investments focusing on ECRM production in Tanzania.

Sustainable Management of Mineral Resources Project (SMMRP): This was a USD 75 million World Bank-funded project implemented by the Tanzania Extractive Industries Transparency Initiative (World Bank, 2019). The project was conducted between 2009 – 2018 and was implemented in two phases (World Bank, 2019). The overall aim of the project was to strengthen the Government of Tanzania’s capacity in managing the socioeconomic impacts of large and small-scale mining in the country and to encourage



investment from both local and international private companies (World Bank, 2019). The project was implemented through three main components: (i) improving the benefits of mining for Tanzania and Tanzanians by implementing a national ASM development strategy, strengthening links between the mineral sector and local economy and skills development; (ii) strengthening governance and transparency in the mining sector; and (iii) stimulation of mineral sector investment by strengthening the capacity of the Geological Survey of Tanzania, strategic assessment of STAMICO and strengthening mineral resource promotion (World Bank, 2024)

GEOMAP Tanzania: Between 2013 and 2015 under the Sustainable Management of Mineral Resources Project (funded by the World Bank), various implementing agencies such as the International Geoscience Services (IGS), the Council for Geoscience Pretoria, the University of Dar es Salaam and others partnered with the Geological Survey of Tanzania (GST) to provide technical assistance to GST such as training, support to staff, institutional and capacity strengthening (IGS, 2022). The project produced various geological, geophysical and geochemical maps, as well as technical reports covering geology, geophysics, geochemistry and mineral potential (IGS, 2022). The project also included acquiring new instruments and renovating laboratories to upgrade GST's technical and analytical capabilities (IGS, 2022).

Lake Victoria 2030 Programme: This project is being implemented by The Impact Facility (TIF) and encompasses all their work across Kenya, Uganda and Tanzania (TIF, 2024). Lake Victoria 2030 specifically focuses on securing investment for small-scale gold mines, targeting higher productivity and more efficient processing technologies (TIF, 2024). The investments in the sector aim to provide miners with transparent and market-based financing options (TIF, n.d.). The project has a multitude of financiers such as private grants from the EPRM, Dutch Government and private trusts (TIF, 2024). Moreover, there is the potential for the programme to expand its gold-centred scope to other minerals over time mined in the region (TIF, 2024).

Mapping artisanal and small-scale mining in northwest Tanzania: This project was conducted between 2017 and 2019 by the International Peace Information Service (IPIS) and funded by the Belgian Development Corporation (IPIS, 2024). The project aimed to improve understanding about the nature, scope and impact of the ASM sector in Tanzania and to inform governmental, non-governmental and businesses about their approaches towards policy and practice in the sector (IPIS, 2024). By using a widespread mobile survey focused on the Geita, Shinyanga, Mara and Kigoma regions, IPIS was able to collect information about the socio-economic and human rights impacts of mining and launch a stakeholder engagement platform for communities living and working in mining areas to report incidents and answer mobile surveys (IPIS, 2024).

Multi-Stakeholder Partnership Initiative on Large-Scale Mining and Small-Scale Mining Coexistence: This initiative began in 2013 and ended in 2018 and sought to bring together representatives from the Government of Tanzania, the Small-Scale Miners' Federation, the Tanzania Women Miners' Association (TAWOMA), the World Bank, AngloGold Ashanti and Acacia Mining (Elliot, 2016). The aim of this collaboration was to reduce environmental degradation caused by ASM producers, improve working conditions and income for ASM producers, as well as improve relations between artisanal miners and industrial mining companies. In addition, large-scale mining companies provided technical assistance centring mining, geology, metallurgy and health and safety to village cooperatives and artisanal mining

associations (Elliot, 2016). Part of this initiative was to establish Centres of Excellence and Demonstration Centres across the country to ‘catalyse the technical, financial, environmental and social transformation of ASM’ (World Bank, 2015). The Demonstration sites also aimed to upgrade existing processing technology with environmentally-sound processing techniques and provide ASM operators with experience working with such technology for mining exploration, mineral value addition activities, mineral trading and processing (World Bank, 2015).

3.12.4 Investment needs and opportunities

The ASM sector has the potential to contribute to future ECRM production however the government policy has largely been focusing on securing large-scale mining investments and ASGM. Ideally, with strategic focus from the government, few investment needs can be identified, which would ensure that the ASM sector can contribute to ECRM production efficiently, effectively and with social and environmental harms accounted for. These set of investment opportunities have been suggested based on information collated from publicly available resources and conversations with stakeholders, such as civil society organisations and mining sector experts. The main investment needs and opportunities of the sector include:

- **Establishing and strengthening mineral trading centres** to increase transparency and provide market access for ASM producers.
- **Support to in country smelting and processing capacity** to promote and support value addition within Tanzania.
- **Technical assistance** including access to geological information, supporting mining techniques and supporting access to finance mechanisms to provide all stakeholders within the sector with the knowledge, expertise and equipment required to produce critical raw materials and ensure a reduction in social and environmental harms efficiently and effectively.
- **Partnership between ASM producers and medium scale producing companies for copper** as a route to formal markets, access to processing facilities and to encourage cooperation between the two operations.

The investment needs listed above, besides being applicable to the ASM sector in Tanzania more generally, try to focus specifically on opportunities related to copper, tin, tungsten, and tantalum industries. These should also be looked into from a regional perspective, given that some of Tanzania’s neighbouring countries are also producers of 3T, for example Rwanda and Burundi. Importantly, these needs also address structural challenges of the ASM sector, which can be considered preconditions for further development of the sector.

3.12.4.1 Establishing and strengthening mineral trading centres

As of end of October 2019, Tanzania had 28 operational trading centres across the country established by the government dealing with the trade of gold, diamonds, gemstones and tin (Materu, 2019). These trading centres aimed to curb tax evasion, illegal exports of minerals from the country, formalise the

mineral trading system as well as optimise mineral benefits for both LSM operators and ASM producers (Materu, 2021; Evans, 2019). These hubs have not only bridged the gap between ASM and dealers but have let ASM producers know where they can sell their product and receive fair prices (Materu, 2021). In addition, the presence of the trading centres has facilitated the collection of data and thus eased monitoring, regulation, and support to artisanal and small-scale miners by the government. In this instance, there is an opportunity to leverage this success by supporting the efficient and effective management of these centres and establishing whether there is need/demand to create more trading centres. Furthermore, there is a need to create awareness among miners about these centres to curb illegal transportation of minerals and ensure that miners receive fair prices for their mined material (Materu, 2021). For materials such as tantalum, copper and tungsten that have underdeveloped local markets, mineral trading centres could provide clear avenues and market linkages to sell minerals mined and collect data on overall outputs and those involved in extraction (Personal communication with stakeholder, civil society organisation, September 2023).

3.12.4.2 Support to in country smelting and processing capacity

The Government of Tanzania has expressed its desire to support value addition of minerals on various occasions. By 2020, it had built two model gold smelters in Lwamgasa and Katente (International Trade Administration, 2020), and there is potential for such investment to be extended to copper production. As highlighted in the AfricaMaVal D7.1 Fact Sheet on processing capability (Stoltnow et. al., 2024), copper extracted by ASM producers is of high-grade quality and with investment of central copper leaching plants in Dar-Es-Salaam, Morogoro, Dodoma, Mbeya and Kigoma, it is possible that 75,000 metric tonnes of copper ore are produced (including from ASM producers) and in-country processing produces 10,000 tonnes of copper at a 15% copper concentration (BGR, 2024). It will be crucial that future mineral processing and smelting operations incorporate mineral production from artisanal and small-scale miners as it is in line with the Government of Tanzania's mineral and ASM policies. It also ensures that ASM producers still have access to income generating activities, have access to formal markets and can benefit from ESG standards required from potential processing facilities such as occupational health and safety standards and environmental regulations.

3.12.4.3 Technical assistance: access to geological information, support in mining techniques and supporting access to finance mechanisms

The issues of lack of access to geological information, lack of technical skills and lack of financial mechanisms are all interlinked. Mining activities at an artisanal level can happen haphazardly as some artisanal and small-scale miners “mine without knowing what is in the ground” (Pedersen et. al., 2021). This is usually due to the fact that they lack the technical ability or financial capabilities to do proper exploration and without concrete information about mineral occurrences, it is hard for bank loans to be approved (Pedersen et. al., 2021). Moreover, Pedersen et. al. (2019) argues that in the last two decades that government policy regarding the ASM sector has largely focused on rights and redistribution and attention and projects have diverted away from support programmes for the sector. Therefore, it is important to ensure that a combination of technical, financial and geological assistance is provided. It is key that geological information is available and accessible not only to government for policy formulation



and the private sector for investment purposes but also to ASM producers to increase productivity, provide income opportunities and reduce adverse social and environmental impacts (Personal communication with stakeholder, civil society organisation, September 2023). There is also potential for the work conducted under GEOMAP Tanzania to be expanded to other areas, include other minerals and disseminate the findings to ASM producers, providing avenues for knowledge sharing and training. With the increased access to geological information, this can provide an avenue for financing mechanisms and de-risk investment for ASM operations.

3.12.4.4 Partnership between ASM and industrial producers

The collaboration between ASM producers and industrial producing companies is not new in the Tanzanian mining sector and establishment of these partnerships can be a mutually beneficial endeavour. As seen through previous examples of gold and copper, there is history of collaboration between ASM and MSM/LSM. Moreover, this collaboration can also be seen in the limestone sector in the coastal regions in Tanga (Personal communication with stakeholder, civil society organisation, August 2023). Future collaborations between ASM producers and industrial mining companies will need to be facilitated by the government and civil society to ensure that formal contracts are signed and upheld, benefits of mineral earnings are distributed, and clear markets are outlined for mineral buying and selling. Moreover, partnership between ASM and MSM/LSM has more than economic benefits, it can also provide social and environmental benefits. For example, MSM/LSM companies may gain social license to operate in certain areas where ASM also takes place, proper mechanisms to manage conflict and access to less economically viable deposits. On the other hand, ASM producers can gain access to processing facilities, training and more secure markets. With demands for critical minerals growing and Tanzania's resource nationalistic policies in place, it will be key for the ASM sector and producers to be involved in emerging copper markets.

Specifically in the case of copper, medium-scale mining companies have formed partnerships with primary license holders and through varying scales of investment focusing on technological and technical assistance and environmental and occupational health and safety requirements, have been able to increase mineral production. Pedersen et. al (2019) argues that this model has allowed for development of dormant and underutilised claims, provided rural employment opportunities and allow for better monitoring of PML. However, the authors also point out that there is regulatory and legal ambiguity regarding these partnerships and may lend themselves to only benefiting expatriate investors and domestic elites (Pedersen et. al., 2019).

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3.13 Uganda

3.13.1 Introduction and the ASM sector

Despite the presence of more than 50 mineral types, most of the mineral resources in Uganda remain unexploited (UNECA, 2024). During the financial year 2022-2023 the mining sector contributed to 2.2% of the country GDP, based on data from the Uganda Bureau of Statistics (Nyakabwa and Wepukhulu, 2023).

The commodities mostly associated with the Uganda ASM sector are gold and development minerals. Development minerals identified in Uganda include 1) construction materials like sand, limestone, marble, kaolin, clay gypsum and different types of stone aggregate and dimension stone: 2) industrial minerals, such as salt, bentonite, diatomite, zeolites, talc, mica and fluor spar; and 3) agro-minerals, such as phosphates, vermiculite, lime and potassium-rich volcanic rocks such as (Hinton et al., 2018). Historically, gold production has had the most strategic importance, and in 2019 the Government of Uganda published a national action plan on ASM gold in Uganda, guided by the Minamata convention on Mercury (NEMA, 2019). The ASM sector is also responsible for 83% of development minerals production (salt, ceramics, cement, lime products, gypsum and others), resulting in a major source of rural and peri-urban employment (Hinton et al., 2018).

The ASM sector in Uganda is largely informal (Barreto et al., 2018), and as a result both licenced and unlicenced miners contribute to mineral production (UNECA, 2024), although limited information is recorded on such contribution. In fact, in most instances ASM production might be excluded by formal statistics (Barreto et al., 2018). To frame this in the broader economy, in 2017, nearly 90% of people in Uganda were engaged in informal employment (World Bank, 2024), confirming that the ASM sector is one of the many economic activities in Uganda characterised by informality.

It was estimated that about 300,000 are directly employed within the ASM sector in Uganda, with about 45% involved in gold (40,000 miners) and clay and bricks production (93,000 miners) (Barreto et al., 2018). Reportedly, tin production has been contributing to economic growth in the Western region of Uganda (Personal communication with ASM representative, February 2024). Before the ban established by the government prohibiting the export of unprocessed minerals, mining communities experienced increased cash flow and local economic progress and development (Personal communication with ASM representative, February 2024). However, at the time of writing there haven't been studies that quantified the economic contributions of ASM critical raw materials in Uganda.

ECRMs that reportedly are produced by ASM include tantalum, tungsten, tin (3T) and lithium. These are mostly identified in the Southwestern Uganda as indicated by the figure below.





Figure 25 Map of Uganda with regions

The ASM production of 3Ts is common in the districts of Ntungamo, Isingiro, Kisoro, Kabale, Kikagati, Kigezi, and Rubanda (Vasters and Schutte, 2023). Although limited literature is available on the occurrence of ECRMs in Uganda, stakeholders' interviews indicate some evidence of the ASM sector involvement in the production of these commodities. In the district of Ntungamo there is one active lithium exploration licence owned by a company who has been collaborating with artisanal miners already operating in the area (Personal communication with stakeholder, February 2024). It was reported that before the ban, some ASM production of nickel took place, and that there is current potential for arsenic, copper, rare earth elements, cobalt, iron ore, manganese, and bauxite in ASM gold tailings, which requires sampling and laboratory testing. However, the quantity and quality of critical minerals in ASGM tailings was yet to be determined, and at the time of writing this profile, no sampling or exploration had taken place.

Limited literature and analysis exist on the dynamics of ECRMs production in Uganda by the ASM sector, as opposed to commodities like gold and development minerals. As a result, this country profile has relied on public information as relevant, and potentially applicable to ECRMs value chains, and stakeholders' interviews.

3.13.1.1 Regulatory environment

In 2022, a revised mining law was introduced in Uganda, which includes specific requirements for the ASM sector. The act, among its objectives, aims at supporting the formalisation of the artisanal and small-scale sector (The mining and minerals act, 2022). The mining and minerals act differentiates between artisanal and small-scale mining licence, according to specific thresholds defined by the act, which are defined based on capital investment.

Item	Licence	Capital Investment in Currency Points
1.	Large scale mining licence	Exceeding nineteen million, four hundred and ten thousand (19,410,000) Currency Points
2.	Medium scale mining licence	Fifty eight thousand, two hundred and thirty (58,230) Currency Points to nineteen million, four hundred and ten thousand (19,410,000) Currency Points
3.	Small scale mining licence	Exceeding nineteen thousand four hundred and ten (19,410) Currency Points to nine hundred seventy thousand and five hundred (970,500) Currency Points
4.	Artisanal mining licence	Not exceeding nineteen thousand, four hundred and ten (19,410) Currency Points

Figure 26 Threshold for mining licences, (The mining and minerals act, 2022)

Artisanal mining is defined as rudimentary mineral extraction and processing, which is done by individuals or a group, it can be continued or seasonal, activities are done at a single site or multiple ones, using mainly manual labour and tools and producing mineral products which are primarily sold to mineral traders, local artists and craftsmen and builders acting within the national economy (The mining and minerals act, 2022). Artisanal mining operations should not exceed ten meters depth (The mining and minerals act, 2022). The Minister, in collaboration with other Directorates and local governments, can designate certain areas for artisanal mining of mineral commodities, when economic and technical factors do not allow greater scale production by either large, medium or small mining operations (The mining and minerals act, 2022). The mining and minerals act 2022, defines in detail who can apply to obtain an artisanal mining licence and which documents and requirements apply. Only Ugandan individuals and/ or cooperatives or associations, joint ventures and enterprises registered in Uganda can apply to obtain an artisanal mining licence (The mining and minerals act, 2022). Among the documentations needed for application, artisanal miners or organisation should indicate the area where they wish to operate, a mining plan based on the regulation requirements and a certificate of social and environmental impact assessments (The mining and minerals act, 2022). Requirements in line with law related to acquisitions of

land are also included, and artisanal miners should obtain a land lease or other rights to use a given land for artisanal mining operations (The mining and minerals act, 2022). Once granted, the artisanal mining licence is valid for a period of three years and it can be renewed, following a request, for two years at each renewal (The mining and minerals act, 2022). Like for the artisanal mining licence, the small-scale one can only be requested by and granted to Ugandan individuals and/ or cooperatives or associations, joint ventures and enterprises registered in Uganda renewal (The mining and minerals act, 2022). The duration of the licence is of maximum five years and can be renewed for more three years each time (The mining and minerals act, 2022). Other licences, including exploration and large-scale licences cannot be granted where artisanal mining or small-scale mining licences exist (The mining and minerals act, 2022).

In 2021, before the revision of mining legislation, the Africa Centre for Energy and Mineral Policy (ACEMP) started the biometric registration of ASM operators (UG Mining Digest, 2021). Reportedly, several individuals and organisations have been involved in this process, however the authors could not identify any assessment on the impacts of biometric registration on formalisation.

3.13.2 ASM mineral value chain

Limited information is recorded on the ECRMs value chains in Uganda, and anecdotally these value chains lack structured organisation and most ASM operators do not hold mining licences. (Personal communication with stakeholder, February 2024). The stages of ASM mineral value chains include mineral production, rudimentary processing and trading. Several actors are involved, and these include ASM individuals and organisations, licenced companies who might collaborate with ASM operations to produce minerals commodities, middlemen / sponsors, and buyers, many unlicensed (Personal communication with stakeholder, February 2024). Miners usually would have limited access to capital, and they depend on middlemen, usually Ugandans, or unlicensed buyers to finance mining operations. Reportedly, unlicensed buyers / middlemen in Uganda sell to Rwandan companies and individuals (Personal communication with stakeholder, February 2024). Buyers / middlemen are the ones determining the price of ECRMs produced by ASM operators, at risks of exploitation of those involved.

In 2021, the Ministry of Trade, Industry and Cooperatives has introduced a ban of unprocessed raw materials, to encourage value addition activities nationally, before mineral commodities are exported (AllAfrica, 2021). Although formal trade has stopped during the ban, illicit trade and smuggling of raw materials, including ECRMs has continued, based on the demand of illicit buyers (Personal communication with stakeholder, February 2024).

At the time of writing this document, Woodcross Resources, a tin mining company in Uganda, launched its refining operations, the first in Uganda (ITA, 2024). Although public sources do not yet detail how Woodcross Resources will or is engaging ASM producers to source tin, reportedly the refining project is seen as an opportunity to support the formalisation of artisanal operations towards more professionalised small-scale activities (ITA, 2024) (Personal communication with stakeholder, February 2024). Woodcross Resources has been improving the safety of mining pits and providing PPE and other tools to ASM individuals and organisations with whom they started collaborating (Personal communication with stakeholders, February 2024). In addition, Woodcross Resources is in the process of becoming fully compliant against the Responsible Minerals Initiative (RMI) Responsible Minerals Assurance Process



(RMAP) and it has been introducing responsible mineral sourcing standards and procedures, including tagging, tracking, chain of custody requirements and audits in line with the ICGLR Regional Certification Mechanism (Woodcross Resources, 2024) (Personal communication with stakeholders, February 2024).

A company called K13R Minerals Ltd has been mining tungsten and adding value and increasing mineral concentration up to 68% (Personal communication with stakeholders, February 2024). Limited information is available on this processing activity and to which extent tungsten is also sourced from ASM operations or whether cooperation might exist like in the case of Woodcross Resources.

Besides the very recent cases of Woodcross Resources and the reported activity of K13R Minerals Ltd, there is no further processing facility of ECRMs in Uganda and most processing still takes place through traditional and artisanal methods, which do not meet the requirements of the export ban on unprocessed materials. Access to energy infrastructure still represents a limitation in terms of accelerating the development of processing facilities in the country (Personal communication with stakeholder, February 2024).

Based on information available, there are no existing direct linkages between ASM producers and European entities at the time of writing this profile. The sector formally depressed because of the ban, but before 2021 the most common market linkages for ECRMs included Rwanda, India and China.

3.13.3 ASM sector challenges

Despite the limited literature on ECRMs specific challenges of the ASM sector, stakeholders interviewed have indicated which issues majorly affect the development of the ASM sector to further contribute to the production of ECRMs.

3.13.3.1 Governance, law implementation and mining rights

Based on the recently revised mining regulation, including provisions for ASM operations, policies are in place to guide the governance and functioning of the ASM sector, however, challenges remain with respect to its implementation (Personal communication with stakeholder, November 2023). These challenges include limited actions to ensure the law is put into practice, difficulties from ASM organisations and individuals to comply with requirements and ensuring fair access to mining rights.

On the governance side, besides availability of resources, at national and local level, to support the implementation of mining and minerals act 2022, the existing system has lacked enough interagency collaboration to tackle the broad challenges of the ASM sector, beyond the perspective of the Ministry of Mines (Personal communication with stakeholder, November 2023).

When it comes to the capacity of ASM individuals and organisations to comply with the applicable laws, several challenges have been identified who inhibit effective formalisation. Individuals involved in the ASM sector have highlighted that the process for obtaining mining licences is lengthy and makes it difficult to comply with regulatory requirements (Personal communication with stakeholders, February 2024). Generally, the licencing process also increases the financial burden for ASM operators, making it even harder to comply. The mining and minerals act 2022 has several requirements which should accompany both the artisanal and small-scale mining licences. For example, most ASM operators cannot afford the

costs associated to environmental impacts assessments (Personal communication with stakeholder, November 2023), as well as costs linked to land access (Personal communication with stakeholder, February 2024). Despite the potential of ECRMs in Uganda, obtaining licences has been described as challenging and burdensome (Personal communication with stakeholders, February 2024). This ultimately calls for attention on implementing mining regulations in a balanced manner, ensuring compliance with key requirements, including those linked to social and environmental impacts while guaranteeing access to mining rights to ASM operators (Personal communication with stakeholder, November 2023), considering the economic opportunity the sector represents for many communities and for the country in terms of minerals production.

3.13.3.2 Access to funding

Limited access to funding has negative impacts in the ASM sector in Uganda. On one hand it limits formalisation as described above and on the other hand leaves gaps in technical advancements and limits mining practices improvements.

Although formalisation is often considered important for increasing access to formal financing mechanisms, the experience of most ASM operators demonstrates that funding is also a precondition to comply with regulatory requirements and improve mining practices in line with environmental and social norms. In the case of Uganda, the mining and minerals act 2022, includes several requirements which for ASM operators, characterised by low capital activities, translate into a financial burden. Social and environmental assessments, business and mining plans would likely require external expertise or high-skilled labour who come at a cost which is rarely considered viable, especially for artisanal operations.

In addition, buyers and middlemen are the main sources of funding for ASM operators and based on current dynamics investments on improved mining practices, equipment and tools have been minimal (Personal communication with stakeholder, February 2024). Reportedly, take-off agreements are done on fixed price basis, presenting limitations with respect to investment in mining operations and present risks of unfair value distribution to ASM operators when international prices increase (Personal communication with stakeholders, February 2024). These dynamics ultimately reemphasise the limitations of trading and financing relations which are focus on specific transactions, rather than looking at longer-term investment on mining which could support formalisation of the sector and improvements of mining practice.

At the time of writing this report, there is no financial mechanism from commercial banks addressing the ASM sector. Reportedly, Centenary Bank has been working on de-risking ASM and developing suitable financial products for individuals and organisations in the sector (Personal communication with stakeholder, January 2024). The Bank has facilitated trainings on financial literacy (The Independent, 2013), and ASM gold organisations in Kassanda and Buhweju were among the participants of this initiative (Personal communication with stakeholder, January 2024). Nevertheless, receiving services from formal financial institutions remains challenging for ASM operators, considering risks of accounts being frozen following unjustified payments, strict requirements to prove origin of cash received from gold sales and low exchange rates when performing transactions in different currencies (Personal communication with stakeholder, January 2024). Despite an appeal from artisanal miners targeting financial institutions to develop opportunities for affordable loans (Odyek, 2023), limited progress has been recorded (Personal



communication with stakeholder, January 2024). Banks could also play a role to support cash transactions and reduce the risks for ASM individuals to carry large sums of money. The use of mobile money could also present an opportunity to develop products for the sector.

Saving groups and Credit Cooperatives (SACCOS) represent the only alternative for ASM operators to borrow funds.

3.13.3.3 Operational challenges: equipment, knowledge, and infrastructure

ASM operators involved in tin and tungsten production continue to rely on rudimentary methods for production and processing (Personal communication with stakeholders, February 2024). Availability of skilled labour, technical capacity, working capital, access to mine sites, transport and electricity can be identified as the most pressing operational challenges (Personal communication with stakeholders, February 2024). For instance, in the case of mineral commodities found in hard rock, artisanal and manual tools are not sufficient or efficient. Furthermore, the underground character of mining, requiring shafts that are supported by timber, drilling and use of explosive continues to rely on basic knowledge and skills, and would benefit from further training to support more efficient production but also to ensure health and safety measures are put in place (Personal communication with stakeholders, February 2024). Given the low production of ECRMs currently reported, it can be assumed that operational challenges also affect mineral production inhibiting further development of ECRMs value chains.

Importantly, ASM operators report limited knowledge on the scope of ECRMs deposits, both in terms of quantity and quality resulting in uncertainty with respect to economic potential and concrete investment needs (Personal communication with stakeholder, February 2024).

3.13.3.4 Social impacts

Many of the risks associated to the ASM sector in Uganda build on the greater analysis and literature available for gold and development minerals. However, engagement with stakeholders allowed to identify some specific impacts which have been reported in relation to ECRMs production specifically.

Health and safety remain a concern for ASM producers, in particular in relation to sanitation and hygiene, safety measures, occurrence of accidents and injuries and overall access to health centres and support. In many instances there are no health infrastructure and centres in the proximity of ASM sites, making treatment of injuries and assistance for accidents difficult (Personal communication with stakeholder, February 2024). Broader health risks include tuberculosis and respiratory diseases due to exposure to dusts at mine sites. These impacts also apply to women and the children they usually take to the mine site while they work, resulting in exposure to unsafe pits, dust, and noise (Personal communication with stakeholder, February 2024). Use of PPE is not common at ASM sites. This poses great risks to those involved in the ASM sector, as the limited ability to take care of injuries and accidents can push people out of the sector, practically taking away individuals and families' livelihoods. Other reported risks include child labour, violence, including gender-based violence, and increased instances of HIV and sexually transmitted illnesses (STIs).



Reportedly, artisanal miners and especially vulnerable groups including women, involved in the production of ECRMs were disproportionately affected and pushed out of the supply value chain by the ban on the export of raw materials, in a period where uncertainty with respect to mineral production and trade increase, while smuggling dynamics resisted (Personal communication with stakeholder, February 2024).

3.13.4 Relevant initiatives and stakeholders

Although programmes and initiatives have been taken place in Uganda in relation to gold, there has not been any initiative focusing in particular to the production of ECRMs (Personal communication with stakeholder, February 2024). However, the following associations of miners were identified, and these could be potential partners and key stakeholders to involve in initiatives to support ECRMs ASM value chains.

- Katango Miners Association – focusing on tungsten production.
- Miners' associations in the western region: Ntungamo, Isingiro and Kabale.
- Uganda Association of Artisanal and Small-Scale Miners Limited (UGAASM), reportedly compromising mostly gold miners.

In addition, the Africa Centre for Energy and Mineral Policy (ACEMP) and UGAASM, have been holding an annual conference focusing on knowledge transfer, awareness raising, and bringing multi-stakeholders for face-face discussions. The 5th Annual Great Lakes Mining and Energy Transition Mkutano was held on 31 January to 1 February 2024 at Hotel Africana

3.13.5 Investment needs and opportunities

The analysis carried out for the development of this profile and information collected confirm that while there is clear potential for ECRMs production by the ASM sector in Uganda, limited assessments and support mechanisms have taken place so far. Reportedly, the Chamber of Mines and Petroleum intended to mobilise funds and support for the ASM sector to produce and process critical minerals in Uganda up to higher purity levels and ensure more competitive prices (Personal communication with stakeholder, February 2024). Several areas of intervention have been identified (UCMP, 2023), however there is limited information available on the implementation of such efforts.

This section will try to summarise the authors understanding of main investment needs and opportunities. Despite the opportunities outlined below, structural challenges such as smuggling and illicit trade of minerals also deserve attention (Personal communication with stakeholder February 2024) to improve the operating environment of ASM organisations and increase sustainability of support initiatives and investments.

3.13.5.1 Governance and financing mechanisms

The challenges section highlights how the implementation of the regulatory framework is lacking behind and resulting in an ASM sector which continues to operate largely informally. As a result, funds should be



dedicated to strengthening the governance and law implementation, at national as well as regional / district level as appropriate. This would include reserving resources for mapping ASM sites producing ECRMs, or with potential to produce, and empowering the local government (environmental officers, mineral policy officers, Directorate of Geological Survey and Mines (DGS), UCMP) to accompany and monitor ASM activities. Possible initiatives include regular visits and training for ASM (Personal communication with stakeholder, February 2023).

The existing limitations for miners to meet licencing requirements should also receive further attention. This would include looking at models for improving access to formal financing mechanisms by institutions like commercial banks, and to the extent possible build on previous efforts like the example provided for Centenary Bank. Nevertheless, the involvement of commercial banks should be coupled with governmental or internationally funded facilitation to ensure the current gaps are filled. Such financial support would also result crucial for the rehabilitation of abandoned mine sites (Personal communication with stakeholders, February 2024).

Such efforts should build on DSGM strategy on formalisation and training on mining best practices, including health and safety, environmental management, and access to international markets through the implementation of due diligence requirements in line with the ICGLR RCM (AI Africa, 2023). This would represent an important element of improved governance to ensure social impacts are addressed, management and mitigated.

3.13.5.2 Equipment and skills development

The need for professional equipment and strengthen skills and knowledge on mining practices represents a common area requiring investments to advance the development of the ASM sector, moving beyond rudimentary practices and professionalising mining techniques and organisational practices.

When it comes to mining equipment, especially suitable for hard rock that contains tin and tungsten, the most pressing needs relate to underground excavation and ore processing techniques. Particular attention should be deserved to increasing productivity so to improve the economic sustainability of mining operations and reducing the dependency on government support, funded initiatives, and traders' ad hoc funding.

Complementary to improved equipment and tools, efforts should go into increasing skills and knowledge on mining techniques and ensuring availability of experts, e.g. geologists, metallurgists, health, and safety officers to support ASM operations. Such improvements should aim at collaborative and inclusive approaches, where all relevant stakeholders are involved, and knowledge transfer is done in a participatory manner. This could include different methods such as conferences, round tables among ASM stakeholders (including miners), regulators (Personal communication with stakeholder, February 2024).

3.14.5.3 Partnerships and investments

Promoting partnerships with ASM organisations represents an avenue to generate investment opportunities for the ASM. Reportedly, three companies producing tin, tungsten and lithium have



developed approaches to collaborate with ASMs and supporting operational improvements including the construction of better mining shafts, providing PPE and other requirement inputs (Personal communication with stakeholder, February 2024).

Such type of partnerships could be further developed and promoted to not only advance financing of basic PPE and mining inputs, but to consider skills development, integration of ASM production in processing projects and support investments in infrastructures such as roads and access to electricity.

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3.14 Zambia

3.14.1 Introduction and overview of the mining sector

Over the past century, Zambia's mining industry has served as one of the primary drivers of its economy. In 2023, the mining and quarrying sector accounted for approximately 14% of the Gross Domestic Product (GDP) based on data from the third quarter of the year (Zambia Statistics Agency, 2023). It was estimated that the mining sector provides employment to around 59,371 people, ranking it fifth on the country's top sector employment index (Pearce et al, 2023).

Zambia possesses abundant mineral resources, such as copper, cobalt, manganese, lead-zinc, precious stones, coal, lithium as well as industrial minerals, which include dimension stones, limestone, aggregates, dolomites, and various types of sand such as silica sand. Additionally, the country is home to deposits of tin and gold (Siwale, 2018). After the Democratic Republic of Congo (DRC), Zambia is Africa's second-largest copper producer (ZEITI, 2023). The mining industry in Zambia can be divided into two main categories: the copper mining sector, predominantly controlled by multinational corporations, and the non-copper mining sector, characterised by a combination of large companies and artisanal and small-scale mining (ASM) organisations (Kalikeka & Nsenduluka, 2023). Copper and cobalt mining in Zambia is largely done industrially, while mining of other minerals such as manganese and lithium appears to involve mainly the ASM sector (Ministry of Mines and Minerals Development, Republic of Zambia, 2022). Based on available information, lithium is mined by artisanal miners particularly in the southern belt of Zambia and from deposits in Luapula province (Muchiya, 2023 and Personal Communication with stakeholders, August-December 2023). The ASM sector involvement in lithium mining is reportedly recent (Transparency International Australia, 2023). As a result, limited information is currently available on the ASM sector dynamics specific to lithium mining which provided limitations to a detailed analysis of lithium ASM value chains.

Mining activities in Zambia are carried out by 12 major large-scale mines, a substantial number of medium-scale operations, over 400 small-scale mining operations, and an unspecified amount of both informal and illegal miners and registered artisanal miners, whose estimated population in 2023 surpassed 500,000 (UNECA, 2024).



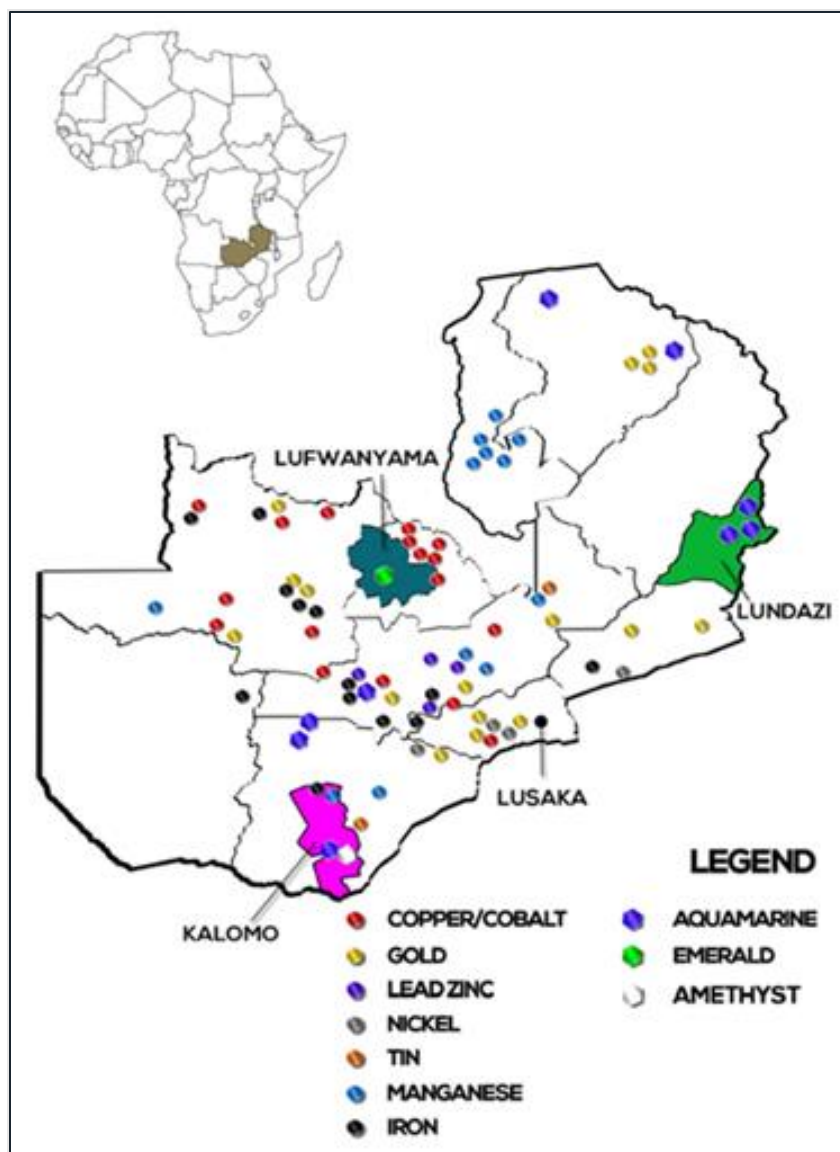


Figure 27 Minerals and gemstones found in Zambia (Siwale, 2019).

3.14.1.1 The ASM sector

While most mining operations to date have been undertaken by large-scale mining (LSM) companies in Zambia, an increasing amount of ASM organisations are participating in mineral exploration (Wanda, 2022). The overall ASM sector sustains the livelihoods of over half a million individuals (both directly and indirectly), and among this group, 41% are women (Pearce et al, 2023). ASM activities are presently focused on manganese, and other materials such as gold, gemstones, and lead-zinc (Vasters & Schütte 2023). Some are also involved in the production of copper-cobalt. Owing to the increasing popularity of electric vehicles in various markets across the globe, the demand for manganese, a crucial ingredient in the manufacturing of lithium-ion batteries, has surged significantly in Zambia.

Historically, the ASM sector was dominated by the extraction of gemstones. However, lately, there has been a growing involvement of ASM in the extraction of manganese and copper-cobalt. By the end of December 2022, the Ministry of Mines and Minerals Development in Zambia had issued around 579 mining licenses to the ASM sector (the authors were unable to verify for which minerals exactly) (Musukwa et al, 2023). However, a review of the census report of Development Minerals in Zambia, conducted by the Ministry of Mines and Minerals Development with the support of the African Caribbean and Pacific Countries- European Union (ACP-EU) Development Minerals Program, revealed that a vast majority of artisanal miners continue to operate informally and were either unaware that their mining activities required a valid license or did not know how to obtain such a license (Musukwa et al, 2023).

Within the Copperbelt province of Zambia, individuals engaged in mining activities without proper legal permits are often colloquially known as "Jerabos" (jail boys). However, it is important to note that locals sometimes use the term "Jerabo" to encompass not only unlicensed ASM but also copper thieves, gangs, or notorious illegal copper dealers operating within established mines like Konkola Copper Mines' (KCM) Nchanga Mine on the Copperbelt. This usage distinguishes those involved in illegal copper-related activities from unlicensed miners following different practises (Mutelo, 2023).

Over the years, the government has made several attempts to formalise specific ASM subsectors, beginning with the gemstone industry and more recently focusing on the gold sector (Personal communication with stakeholder, November 2023). The gemstone sector, especially emerald and amethyst, as well as the gold sector have assumed a significant role in Zambia, bringing much needed investment into the country and seen as a way to help transform the country's economic landscape (Pearce et al, 2023). The focus on formalising the ASM sector is as a consequence of the Government's strategy to legitimise and empower artisanal miners, aiming to increase their effectiveness. Despite such efforts, for some commodities, such as manganese mining, most actors continue to operate predominantly in an informal or illegal manner (Siwale, 2019).

Similarly to the dynamics of many countries where the ASM sector is present, in Zambia artisanal miners are frequently motivated by poverty, the economic opportunities of the sector and they operate in rural regions. While the income from the ASM sector is often modest, it does contribute to day-to-day subsistence (Tychsen et al, 2018).

3.14.1.2 Extended Critical Raw Materials and ASM

Most of the manganese mining is undertaken by the ASM sector and while artisanal miners mine copper and cobalt, these minerals are predominately mined by formalised, LSM operators (Transparency International, 2023). ASM manganese mining primarily centres around the Mansa manganese district in Luapula Province, with other manganese deposits and ore processing (beneficiation) occurring in Central Province, specifically in Serenje and Mkushi (Vasters & Schütte, 2023). Manganese deposits are also found in other provinces of Zambia, notably in Central Province, where they are linked to mineralised layers within metamorphosed sedimentary rocks (Banda, 2022). Overall Manganese production in Zambia has been on the rise in the last decade (Transparency International, 2023). However, despite Zambia's abundant manganese reserves, it appears that the country has not yet fully capitalised on this resource to achieve higher levels of economic growth. This is because of the many challenges that surround the

manganese mining sector that result in it being underdeveloped (Muchiya, 2023). For example, most of the manganese ore is mined in the Luapula Province by artisanal miners, where very low levels of voltage of power is supplied to the region. This means that much of the manganese ore needs to be exported for processing (Steenkamp, 2023).

Artisanal and small-scale miners extract manganese from manganese ore in the form of manganese oxide (also known as pyrolusite) or iron ores (Banda, 2022).

The production of manganese in Zambia has been consistently on the rise. Despite experiencing a decline in 2019 and 2020, manganese production has doubled over the course of ten years, going from around 65,000 metric tonnes in 2012 to surpassing 130,000 metric tonnes in 2021 (Transparency International, 2023).

The Zambian manganese deposits are alluring prospects for local ASM operators due to their substantial ore grades, typically between 40% and 70%, with an average manganese content of around 50% and their shallow mineralisation depths (Vasters & Schütte, 2023).

Copper mining in Zambia is found in various regions within the Zambian Copperbelt, specifically encompassing Copperbelt Province, North-Western Province, and the Central Zambian Basin (Vasters & Schütte, 2023). ASM activities in the copper-cobalt subsector are focused on the country's main historical copper-cobalt mining zones in the Copperbelt Province. In this region, there is a co-existence of industrial copper-cobalt mining alongside ASM operations. Artisanal miners work on slags related to copper smelting and in abandoned or temporarily disused industrial mines (Vasters & Schütte, 2023). Additionally, small quantities of copper ore, likely with very low cobalt concentrations, mined by ASM in the southern Katanga Province of the DRC, are reportedly sold discreetly in Zambia and blended into the local copper supply chains (Vasters & Schütte, 2023).

The role of ASM activities in Zambia's copper production is anticipated to be quite minimal compared to industrial or LSM copper production (Personal communication with stakeholder, December 2023). However, the national production data lacks a breakdown between LSM and ASM activities, creating challenges in assessing the specific contribution of the ASM sector to the overall national mineral production (Musukwa et al, 2023).

Based on the information available and considering the scope of this profile, the analysis of the involvement of ASM in Zambia in ECRMs will focus on manganese and copper-cobalt where specific data is identified.

3.14.1.3 Applicable regulations and governance

ASM activities in Zambia align with other significant aspects of the mining sector in the sense that there is a generally appropriate ASM policy, legal, and regulatory framework in place. The Zambian government has tried to provide a policy environment that attempts to organise and properly regulate the mining sector (Personal communication with stakeholder, December 2023). The Mining sector is regulated by a number of different legal instruments. The primary law governing the mining sector in Zambia is the Mines and Minerals Development Act, of 2015 of the Laws of Zambia, as read together with the Mines and

Minerals Development (Amendment) Act, 2016 and the Mines and Minerals Development (Amendment) Act, 2022 (Jalasi et al, 2023).

The different legal instruments in Zambia include ASM provisions, which provide an opportunity for miners to operate legitimately under clearly defined regulations (Banda, 2022). A legal permit, known as an Artisanal Mining Licence (AML), enables artisanal or small-scale miners to legally explore and extract minerals in designated areas in Zambia. Under Zambia's Mines and Minerals Development Act, the AML helps regulate the ASM sector, aiming to promote responsible and sustainable practises. This licence covers various activities such as mineral extraction, ore processing, and the sale of mined products (M&J Consultants, 2023). An ASM applicant cannot be granted an AML for radioactive minerals. The Mines and Minerals (Amendment) Act, 2022 further imposes an obligation on all artisanal miners that have an artisanal mining right to pay mineral royalty taxes (Jalasi et al, 2023).

Importantly, the Government of Zambia acknowledged the significance of the ASM sector through the establishment of the 2013 Mineral Resources Development Policy (Tychsen et al, 2018). This policy recognises the need for the government to develop the ASM sector through various measures, which include:

- promoting the adoption of suitable, affordable, and safe technologies by increasing government backing for the compilation and dissemination of information regarding appropriate technologies. This includes providing extension services and demonstrating various technologies;
- enhancing the capabilities of Regional Mining Offices to provide technical extension services to the ASM sector;
- collaborating with ASM associations to streamline the formalisation of illegal mining activities conducted by the ASM sector;
- disseminating information to raise awareness about occupational health and safety as well as environmental risks. Additionally, provide guidelines for ensuring occupational health and safety within ASM operations;
- enhancing the flow of information within the mining sector to sensitise and raise awareness, particularly among ASM workers and rural communities, about the available opportunities and the regulations governing the ASM sector; and
- facilitating ASM workers' access to financial resources for advancing the development of the ASM sector (Mineral Resource Development Policy, 2013).

In addition, in 2022, the Ministry of Mines and Development implemented the 2022 National Mineral Resource Development Policy (MRDP) (Personal communication with stakeholder, December 2023). The MRDP integrates emerging and evolving local Zambian issues, as well as international factors, that impact mineral resource development within the nation. One of the main objectives of the MRDP is to support the advancement and expansion of the ASM sector to bolster its role in fostering economic development and generating wealth (Mulikelela, 2022). Through this policy, the government intends to formalise the

ASM sector and further encourage the formation of cooperatives in copper, manganese, gemstone, gold, and industrial mineral exploration to enhance its socio-economic benefits (Mulenga, 2023).

In 2022, the Ministry of Mines in Zambia imposed a 30-day suspension on the issuance of mining licenses, including those licenses for artisanal and small-scale miners, in an attempt to clean up the mining system and determine where the corruption was taking place (Anyango, 2022). The Ministry of Mines commissioned an audit in response to public concerns regarding transparency issues and misconduct within Zambia's licensing system. Preliminary results from the process audit validated the government's concerns, indicating that certain LSM companies possess an excessive number of mining licenses, often utilising either a single entity or multiple companies with identical beneficial owners. The audit exposed instances where certain companies possess up to 50 licenses, which were being used for speculation purposes and often not even engaging in mining activities. Furthermore, it identified cases where some of these companies were not registered with Zambia's PACRA, potentially indicating non-compliance with tax obligations. In response, the Zambian government implemented an order limiting the number of mining rights that a single set of beneficial owners can hold simultaneously (Mfula, 2022).

In the 2023 National Budget, 50 million Zambian Kwacha (which is equivalent to almost US \$2 million, based on exchange rate in April 2024) was designated for the ASM sector to address the sector's informalities and associated deficiencies (Mulikelela, 2022). Through these funds, the Zambian government pledged to assist participants in the ASM sector in obtaining essential equipment and training to enhance their production capabilities and facilitate access to affordable capital (PMRC, 2022). In the 2023 national budget, the Zambian Government further put forth a proposal to modify the taxation system for the ASM sector. Effective 2023, the Zambian government replaced the corporate income tax (CIT) regime with a presumptive tax for ASM. The standard applicable CIT rate on taxable income was 30% (Kalikeka & Nsenduluka, 2023). As of 2023, individuals involved in ASM are no longer required or mandated to register for CIT. Instead, any person holding a mining license and engaged in artisanal or small-scale mining, with an annual turnover of K800,000 (which is around US \$30,000) or less, are obliged to register and account for the tax under the presumptive tax on ASM. The presumptive tax will be based on the gross turnover less mineral royalty payments at the applicable turnover tax rate (Zambian Revenue Authority, 2023). This measure aims to simplify the tax system for individuals holding licenses for artisanal and small-scale mining, in the hope of improving their adherence to tax regulations (Kalikeka & Nsenduluka, 2023).

The 8th National Development Plan (2022-2026), linked to Zambia's economic blueprint Vision 2030, which seeks to catalyse the country's response to development challenges, situates mining at the centre of the realisation of the four strategic development areas of this plan, namely: (i) economic transformation and job creation; (ii) human and social development; (iii) environmental sustainability; and (iv) a good governance environment. More specifically, through this plan, the Zambian government outlines the need to promote the establishment of cooperatives among artisanal and small-scale miners and facilitate their access to essential services, aiming to enhance productivity. This includes providing connections to value chains and creating opportunities for young people, men, and women within communities to engage in mining value chains in a more organised and systematic manner (Ministry of Finance and Planning, 2022).



In the past, the Ministry of Mines in Zambia has been responsible for policy formulation and implementation as well as regulation of the mining sector. The broad scope of responsibilities has at times constrained the capacity of the Ministry of Mines by hindering their ability to fully tackle issues related to criminality and lawlessness (Kapekele, 2023). The government “has therefore created a Mining Commission to serve as an independent regulator for the mining industry, with the goal of improving monitoring, reporting, and enforcement of license conditions and regulatory requirements” (Mulenga, 2023). The creation of a Mining Commission has occasioned a separation of power and functions between the Ministry of Mines and the Minerals Commission. In this new structure, the Ministry of Mines is solely responsible for policy formulation, while the Minerals Commission is charged with policy implementation and regulation (Personal communication with stakeholder, December 2023). At present, the Mining Commission, which is supposed to be decentralised, is only present in two out of the ten provinces in Zambia. The government is currently in the process of establishing the Minerals Commission in the remaining eight provinces (Personal communication stakeholder, December 2023). This will enable mining authorities to improve the implementation of the regulation and allow for more in-depth evaluation and reporting on mineral resource development (Mulenga, 2023).

Lastly, the government is focused on monitoring all ASM operations across the country and ensuring that they are fully formalised and compliant with the mining legal framework. The government is therefore in the process of formulating an ASM strategy. However, at the time of doing research for this profile, the authors concluded that the ASM strategy was still in development there was limited public information available about the process, stakeholders involved and what the ASM strategy it will entail. Through an interview with a stakeholder, it was apparent that the ASM strategy would introduce pilot projects dedicated to supporting the ASM sector. For example, the strategy may introduce gold marketing centres, where artisanal miners can take their mines gold to an aggregator who will semi-process the gold and sell it to the central bank. The central bank will be tasked with selling the gold both on the local and international markets. This process will start with gold and will eventually be applied to other commodities, including applicable ECRMs (Personal communication with stakeholder, December 2023).

3.14.2 ASM mineral value chain

The ASM sector is made up of individuals working independently, in cooperatives, or as part of various legal associations and enterprises. In specific regions, artisanal mining has been a longstanding practice passed down through generations, occasionally serving as a seasonal venture to supplement agriculture-dependent livelihoods. The commencement of a large-scale mining operation can also rapidly draw ASM workers to the vicinity, as the presence of such a mine signifies the availability of minerals in the area (Tychsen et al, 2018). Instances of substantial fluctuations in commodity prices, mining closures, or other economic disruptions can result in a swift influx of numerous artisanal and small-scale miners into an area, often leading to environmental challenges and tensions within local communities. ASM operations usually encompass activities carried out within areas ranging from 3.34 to 6.68 hectares under the Artisanal Mining Licence, as well as those conducted under the Small-Scale Mining Right, which spans from 10.02 to 400.8 hectares. (Tychsen et al, 2018).

According to existing reports and analysis, the trade of minerals such as manganese, but also copper, produced by ASM operators, remains largely informal. Limited processing takes place and ASM operators

sell to traders (both licensed and unlicensed), who respectively sell to industrial mining companies, mainly Chinese (AMDC, 2017). In other reported instances, the material is sold to storage warehouses, for example in the towns of Chingola and Kitwe, some of which are equipped with weighing scales and equipment for mineral analysis and processing. (Mutelo, 2023). There is also a large amount of copper ore (and some manganese ore) that is mined by artisanal miners and sold to intermediaries, which is subsequently smuggled out of Zambia. Both Zambian and Chinese criminal networks are known to be involved in illicit copper mining, particularly in the country's eastern regions (Africa Organised Crime Index, 2023). Reportedly, individuals involved in politics might also interfere with manganese trade hindering formal and legally compliant supply chains (Banda, 2022). Such trading dynamics can result in exploitative behaviour towards miners who hold the least negotiation power of prices (Musukwa et al, 2023).

The costs associated with road transport to seaports, like Durban in South Africa, are notably high in Zambia. Consequently, companies, particularly those from China, have been expanding their in-country smelting capabilities and have been investing in smelting projects (Vasters & Schütte, 2023). For example, there have been reports of a Chinese company building a manganese smelter in the central province of Zambia, which will cost around US \$15 million and will be the largest manganese smelter in the country (Shanghai Nonferrous Metals Network, 2019). The same company has shared plans of sourcing the manganese production from the local small-scale or artisanal miners and provide them with mining equipment to improve their mining capacity to ensure a constant flow of supply (Shanghai Nonferrous Metals Network, 2019).

Additionally, in 2022, Zambia and the DRC initiated collaborative efforts to formulate a shared plan for a specialised economic zone centred around lithium-ion batteries, potentially encompassing the processing of manganese into cathode precursor materials (Personal communication with stakeholder, December 2023). However, as of December 2023, the precursor plant was still in the planning and development phase, and public information about this project was limited (Olan'g & Scurfield, 2023) at the time of writing this profile.

At present, Zambia primarily exports its manganese as ores and concentrates to be used as feedstock in smelting operations overseas. Most of the manganese in Zambia is exported to China, India, and South Africa (Tychsen et al, 2018). Between 2017 and 2021, Zambia had an annual average manganese ore export of approximately 200,000 tonnes, with China being the primary trading partner, typically acquiring around 50% or more of Zambia's manganese ore. This level of exports marks a significant rise when compared to the period from 2012 to 2016, during which Zambia's annual manganese ore exports were around 50,000 tonnes or even less (Vasters & Schütte, 2023). In 2021, Zambia is said to have exported manganese ore worth US \$ 34 million, positioning it as the twelfth-largest exporter globally (Transparency International, 2023). Most of the manganese ore is exported legally (through the authorised processes). However, based on the information available, this does not mean that what is being exported has been fully traded through licenced operators.



3.14.3 ASM sector challenges

Limited access to geological and mining data has acted as a barrier to the progress of the ASM sector in Zambia (Personal communication with stakeholder, December 2023). While heightened market demand of manganese could help strengthen Zambia's ASM sector and boost the country's economy in general, its potential has not yet been met. Many of Zambia's artisanal manganese miners have limited access to geological data. Many artisanal and small-scale miners are working in areas where they feel like they do not have enough geological knowledge (Hintermair, 2023) because they do not have sufficient mineral exploration capacity as a result of lack of access to upfront capital and lack of equipment and technical expertise. Lacking access to geological data, miners engaged in Zambia's ASM sector frequently find themselves with limited guidance for their operations, resorting to guesswork or trial and error. This commonly leads to diminished productivity, financial losses, and heightened environmental harm (Tyachsen et al, 2018). There is therefore a dire need to increase the mineral exploration capacity of artisanal miners.

3.14.3.1 Governance and resource constraints

Despite the government initiatives outlined in the introductory sections, the government of Zambia continues to face limitations in properly monitoring the ASM sector and enforcing its regulations, including to prevent illegal mining activity. Such challenges include limited resources and capacity (human, financial, infrastructures, technical skills), lack of decentralisation, which is however planned through the mining commissions (Musukwa, 2023). Reportedly, only a small proportion of licenced companies in the mining sector comply with required taxes and fees (Personal communication with stakeholder, September 2023). More broadly, greater attention is recognised towards attracting large-scale investments, with the risk of leaving behind the need of the ASM sector (Musukwa et al, 2023).

3.14.3.2 Operational challenges: equipment, skills, processing and infrastructure

Despite the Government's endeavours to bolster and advance the ASM sector, a significant proportion of ASM workers in Zambia, lack the means to afford the necessary equipment for efficient exploration and mining. Instead, many of these miners are compelled to rely on basic tools and techniques like pickaxes and shovels to access mineral resources. Utilisation of insufficient mining and mineral processing methods likewise leads to diminished productivity and recovery rates of minerals. A recent study on the ASM potential for manganese production, which sought to understand key challenges through a survey, has identified several operational challenges for ASM manganese producers. These include gaps in terms of equipment to exploit orebodies, skills and knowledge with respect to more efficient mining methods and better practices and availability of processing facilities, considering that existing processing techniques are inefficient (Banda, 2022). Inefficient mining practices, on methods, equipment and techniques, result in reduced earnings, and greater difficulty to attract investments in mining and processing machinery (Tyachsen et al, 2018). Reportedly, artisanal and small-scale miners in Zambia have voiced their concerns about the fact that the tools accessible to them are either not sufficiently portable for effective on-site use, too costly, or excessively manual (Akibate, 2022).



In addition, besides challenges linked to operations at mining and processing sites, the availability of adequate infrastructure poses further limitations to the development and investments in the sector. These include challenges linked to poor road infrastructure and limited access to electricity (Banda, 2022),

3.14.3.3 Access to formal financing mechanisms

Accessing formal financing services is a significant challenge for ASM operators in Zambia. This is because the ASM sector is associated with legal, geological, social and operational risks which impact their financing profile. Due to the informal and often unregulated nature of ASM activities, there are significant uncertainties surrounding factors such as production consistency, revenue stability, and compliance with legal and environmental standards. It appears that many of the financial institutions consider the risk of the ASM sector too high with regard to their own risk appetite, especially when compared to other clients. There is therefore a need to support the de-risking in the ASM sector.

At the same time, it has been seen that lack of financing also prevents formalisation, which would require some initial capital to address the administrative processes and improvements of operational practices, such as initial capital to increase the mineral exploration capacity of artisanal miners. Such capital is rarely available to the ASM sector (Musukwa et al, 2023), impacting its development and professionalisation. Informal miners often lack the necessary bankable projects and essential documentation and business information (ACP-EU, 2017). Often the informal finance arrangements for these artisanal miners lock them into unfavourable agreements, which results in them owing substantial amounts of mineral production to lenders and becoming intertwined with illicit financial flows or trapped in a perpetual debt cycle (Planet Gold, 2020).

3.14.3.4 Environmental and social impacts

Considering that most artisanal mining in Zambia occurs informally and with the use of basic tools and methods, risks and impacts to people and the environment have been observed in the sector. Unregulated ASM practises result in detrimental consequences, including inadequate health and safety protocols, the engagement of child labour, and the pollution or contamination of water systems (Tychsen et al, 2018).

As highlighted in previous sections, the majority of manganese mining is undertaken by the ASM sector. The manganese extraction techniques employed by artisanal miners that operate illegally raise concerns of potential environmental and social impacts (Transparency International, 2023). For example, the process of blasting, loading, hauling, dumping, and manually sorting ore generates hazardous manganese dust that poses a risk to miners. The effects of manganese are observed in the respiratory system and the brain. Inhalation of high levels of manganese dust can result in lung inflammation, marked by symptoms like hallucinations, memory impairment, and nerve damage. Manganese exposure is also linked to Parkinson's disease (a progressive nervous system disorder impacting movement), lung embolism (obstruction of the pulmonary artery), and bronchitis. Manganese-induced syndrome often exhibits symptoms like muscle tremors, reduced motor skills, difficulty walking, slowed movement, speech difficulties, and occasionally psychiatric issues and insomnia. Employing wet processes, such as wet drilling, moistening crushed material, dampening stockpiles, pre-soaking material before loading,

watering haul roads, and donning suitable personal protective gear like work suits and respiratory equipment, can mitigate the risk of manganese dust exposure (Tychsen et al, 2018).

In addition, over a century of copper mining and smelting activities in Zambia have left behind extensive tailings and slag dumps, which are of economic interest to artisanal miners. Additionally, artisanal miners are mining at abandoned open pits and temporarily inactive industrial mines, with slags being particularly valuable from an economic perspective (Vasters & Schütte, 2023). While these mining sites are of great economic interest to artisanal miners, they have frequently resulted in severe environmental damage and safety risks. In the Copperbelt Province of Zambia, unauthorised copper-cobalt mining activities by artisanal and small-scale miners frequently result in deforestation, soil degradation, and extensive damage to the land. Illegal miners engage in digging substantial pits, trenches, tunnels, and ditches, causing significant harm to the environment and adversely affecting the lives of local residents, many of whom rely on the land for agriculture. In the process of digging these pits, topsoil is removed, and a variety of plant species are cleared for surface mining activities. When unauthorised miners reclaim mineral deposits on former mining legacy sites in the Copperbelt, the rehabilitation process is frequently disrupted as the levelled ground is excavated again, causing a delay in vegetation growth (Mutelo, 2023).

Specific impacts on women and children have also been observed; however, attribution to specific commodities would require further analysis. Cases of gender-based violence (GBV), labour exploitation, and child labour have been reported (Pearce et al, 2023).

3.14.4 Relevant initiatives and stakeholders

The present section summarises key initiatives relevant to the ASM sector in the context of identifying investment needs and opportunities. Serves as a contextual overview to identify initiatives to learn from, build on, or relevant stakeholders to engage in for the development of the ASM sector. However, it does not intend to outline an exhaustive list of programmes. In addition, it is important to note that the EU and Zambia have signed a memorandum of understanding in October 2023 to formalise the strategic partnership on critical raw material value chains (EU, 2023).

3.14.4.1 ACP-EU Development Mineral Programme

The ACP-EU Development Mineral Programme was launched in 2014 as a collaborative effort involving the African, Caribbean, and Pacific (ACP) Group of States, coordinated by the ACP Secretariat, funded by the European Commission and United Nations Development Programme (UNDP), and executed by UNDP in partnership with the Ministry of Mines and Minerals Development in Zambia (UNDP, 2017). While this initiative has largely focused on development minerals, the ACP-EU Development Mineral Programme could represent an interesting model to review and analyse in further detail, which is beyond the scope of this profile, to identify learnings and opportunities to leverage the initiative in relation to ECRMs in Zambia.

The primary objective of the programme was to support sustainable and inclusive development within the industrial minerals, construction materials, dimension stones, and semi-precious stone sectors. This support involves enhancing the capacities of key stakeholders, including regulatory bodies, local



governments, small-scale mining enterprises, construction companies, mining and quarrying associations, training institutions, universities, civil society organisations, and community groups (UNDP, 2017).

The ACP-EU Development Minerals Programme was carried out on both regional and national scales.

The ACP-EU Development Minerals Programme has also collaborated with private financial institutions to help them better understand the ASM sector and revise their perceptions of the associated risks. This initiative tries to actively empower artisanal miners economically by building their capacity and confidence to freely make their mining claims, share ideas and perspectives, and enhance their productivity in ASM (Pearce et al, 2023). Additionally, the programme promoted the development of new loan products using innovative approaches such as mobile banking and guarantee schemes that eliminate the requirement for upfront capital. Furthermore, the programme has assisted newly formalised mining entities in crafting business plans, calculating geological reserves, and preparing them to access such financial resources. As part of its efforts, the ACP-EU Development Minerals Programme also provides small grants to programme alumni, serving as a modest step towards enabling them to independently access private financing (UNDP, 2017).

The ACP-EU Development Mineral Programme launched a three-year capacity-building initiative in 2016 with a budget of €13.1 million that operated between 2016-2018. The initiative focused on providing training and outreach services to ASM workers involved in development minerals in Zambia while also securing more inclusive financial support from private-sector sources. It also helped deliver specialised technical extension services to ASM workers, with a specific focus on imparting knowledge about environmental concerns, adherence to regulatory requirements, and the implementation of sound mining practises in their operations (Tychsen et al, 2018). The ACP-EU Development Minerals Programme visited Zambia's southern, Copperbelt, and eastern provinces and met with cooperatives and artisanal miners to engage with them, discuss their processes, understand their concerns, and extract suggestions and innovative ideas for growth within the sector (Akibate, 2022).

In 2023, the ACP-EU Development Minerals Programme was renewed. In its next phase, the initiative will focus on enhancing the earnings and competitiveness of artisanal and small-scale mining and mineral processing enterprises (ASMEs). It aims to promote more inclusive and sustainable development in minerals value chains, while also encouraging the production of low-carbon materials and building resilience to climate shocks (UNDP, 2023).

3.14.4.2 The 8th National Development Plan

The Eighth National Development Plan (8NDP) outlines Zambia's strategic trajectory regarding development priorities and implementation strategies for the period 2022–2026 (Personal communication with stakeholder December 2023). It succeeds the Seventh National Development Plan (7NDP), which was executed between 2017 and 2021. The 7NDP saw the Zambian government place significant importance on advancing the growth of the ASM sector in Zambia (Tychsen et al, 2018). It was seen as a key strategy for fostering job opportunities and broadening economic activity. Programmes designed to execute this strategy included: (i) making geological information more accessible to ASM workers; (ii) reinforcing safety standards and environmental measures within ASM operations; (iii)



enhancing the skills of ASM workers; (iv) advancing mineral processing technology; (v) empowering ASM workers; and (vi) developing market linkages (Tychsen et al, 2018).

The 8NDP represents the fourth instalment in the series of National Development Plans (NDPs) working towards the realisation of the national Vision 2030, in which Zambians aim for the country to achieve middle-income prosperity. Notably, there is a focus on attaining economic transformation through advancements in industrialization and economic diversification for sustained growth driven by various sectors, such as the mining sector (Ministry of Finance and National Planning, 2022).

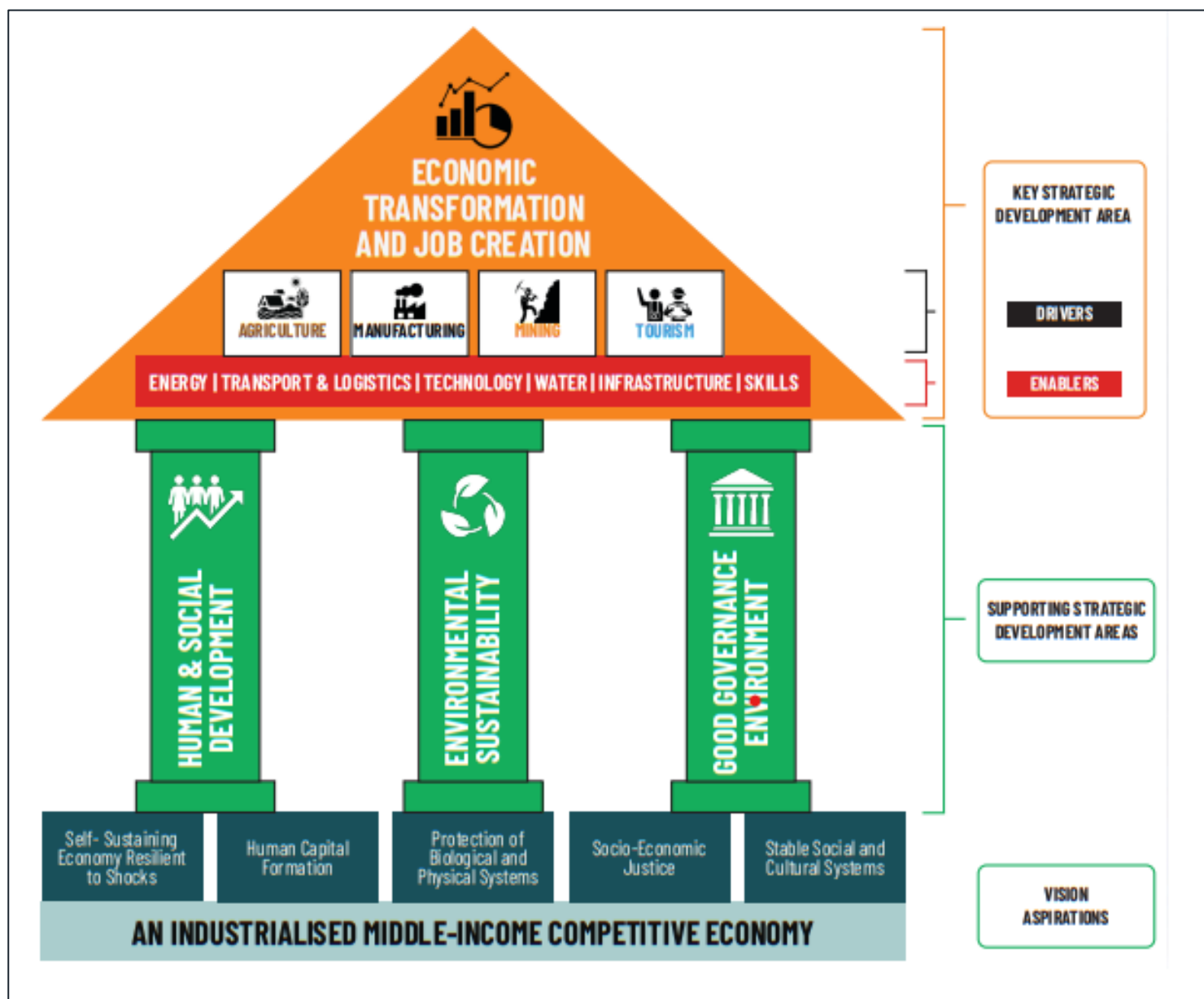


Figure 28 situates the 8NDP in Vision 2030 (Ministry of Finance and National Planning, 2022).

The 8NDP sets out the strategies that the government will implement to create an industrialised and diversified economy. One of the strategies is to “promote traditional and nontraditional minerals”. To access regional and global markets as well as value chains, Zambia aims to promote local beneficiation and the value addition of minerals. This objective will be achieved through the formulation of a national supplier development policy designed to boost local value-added and involve local stakeholders in the mining supply chain. A crucial aspect of this approach involves fostering both domestic and foreign direct investments in the manufacturing of batteries, electric vehicles, and renewable energies (Ministry of Finance and National Planning, 2022).

The government will also actively promote the establishment of cooperatives among artisanal and small-scale miners. Additionally, efforts will be made to facilitate their access to support services, foster increased productivity, and establish connections to value chains. This initiative aims to create formalised and structured opportunities for youth, men, and women at the community level to participate in mining value chains (Ministry of Finance and National Planning, 2022).

3.14.4.3 ASM Associations in Zambia

In Zambia, various small-scale mining associations are present in every province, town, or district where ASM activities take place, with the primary goal of safeguarding the interests and well-being of the ASM sector. These associations include: (i) Zambia Chamber of Mines (ZCM); (ii) Federation of Small-Scale Mining Association of Zambia (FSSMAZ); (iii) Small-Scale Miners Association of Zambia (SSMAZ); (iv) Association of Zambia Mineral Exploration Companies (AZMEC); and (v) Association of Zambian Women in Mining (AZWIM). These associations represent key stakeholders in engaging the ASM sector, and those that are most relevant to ECRMs are briefly described in the next paragraphs.



Figure 29 Mining associations in Zambia (Mandhu, 2020)

3.14.4.3.1 **Zambian Chamber of Mines (ZCM)**

The ZCM was originally established in September 1942 but was re-established in 2000. It is officially registered as an association for mining and related companies, catering to both large and small enterprises. However, its primary focus is on advocating for the concerns and interests of large-scale mines, with comparatively less emphasis on supporting small-scale mining operations (Siwale, 2018). Joining the Chamber is optional and involves four membership categories: Class A, Class B, Class C, and Associate members. The categorization is determined by the type of mining licence held by a specific mine or miner, as outlined in the Mines and Minerals Development Act of 2015. These licences encompass exploration licences, mining licences, and mineral processing licences, reflecting whether the operation is categorised as large-scale or small-scale mining (Mandhu, 2020).

3.14.4.3.2 **Federation of small-scale mining Associations of Zambia (FSSMAZ)**

The Federation of Small-Scale Mining Associations of Zambia (FSSMAZ) was officially registered with the Registrar of Societies in 2008. FSSMAZ is an umbrella body that serves as the overarching organisation for all Small-Scale Mining Associations operating within Zambia. Within its structure, there are 16 affiliated member Associations, each representing the 10 provinces of Zambia (Personal communication stakeholder, August 2023). The federation's affairs are overseen by an elected executive committee, consisting of representatives from all 16 Associations. These committee members are elected every three years during the general conference (ZIMEC, 2024).

In 2020, the federation represented around three thousand members spanning all provinces in Zambia and has an additional 25,000 more members who derive benefits from the small-scale mines, particularly through job opportunities (Mandhu, 2020). FSSMAZ is advocating for the government to establish a

comprehensive ASM strategy with the aim of enabling ASM to make a more substantial contribution to the nation's economy. While the government has taken significant steps in addressing certain challenges, such as reducing mining-related taxes from 15% to 6%, there is still a pressing need for further measures to fully harness the potential of artisanal mining (Anyango, 2021).

3.14.4.3.3 Small-scale Miners Association of Zambia (SSMAZ)

The Small-scale Miners Association of Zambia (SSMAZ) is the general association that deals with small-scale mining in Zambia. SSMAZ comprises small-scale miners located across Zambia in all different provinces. Its objectives include providing education, training, demonstrations, and monitoring of small-scale mining activities in Zambia. The primary focus is on enhancing occupational safety and health within these mines (Mandhu, 2020).

3.14.4.3.4 Association of Zambian Women in Mining (AZWIM)

The Association of Zambian Women in Mining (AZWIM) focuses exclusively on small-scale mining for women. The association is exclusively led and run by women. AZWIM members aspire, within the next couple of years, to enhance the capabilities of other mining associations, enabling them to actively engage and communicate with the government and international donors. Simultaneously, the association aims to expand its membership to advocate for education and emphasise the advantages of formalising the ASM sector (Mandhu, 2020).

3.14.4.4 The DRC-Zambia Special Economic Zone on Batteries

Zambia and the DRC have entered into a landmark cooperation agreement aimed at promoting the growth of the lithium-ion battery value chain for the electric vehicle and clean energy sectors. This agreement is expected to provide a framework for bilateral collaboration in advancing the battery value chain initiative and enhancing the partnership between Zambia and the DRC (UNECA, 2022). Through this agreement, Zambia and the DRC have signed MOUs to establish a special economic zone (split in two zones in each country, but with cross-border cooperation) to refine locally mined battery metals into battery-grade chemicals and subsequently produce battery cathode precursor active materials (Personal communication with stakeholder, December 2023). The DRC and Zambian government plan to preferentially source the required metals (nickel, manganese, cobalt, lithium) from local mine production in both countries. The concept received political support by the EU and the United States for associated infrastructure development.

The Zambian government aims to source all the required nickel, manganese, and cobalt from Zambia. Considering the role of the ASM sector in the production of manganese, the battery plant may increase the strategic importance of the ASM sector and foster investment and attention to some of the structural challenges faced by ASM organisations. This will be particularly important to ensure that the manganese value chain actors in Zambia operate sustainably and in response to buyers' ESG requirements. (Olan'g & Scurfield, 2023).

3.14.5 Investment needs and opportunities

The brief analysis presented in this profile highlights a two-fold context in the Zambian ASM sector. On one side, there is some record of previous initiatives, both governmental and internationally funded, and the engagement of several stakeholders, including the many associations that represent miners' interests. On the other side, though, initiatives and understanding of the ECRMs specific context, such as the manganese value chains, are still nascent and would benefit from further attention and support to enhance the potential of the ASM sector to contribute to ECRMs production and socio-economic development. At the same time, continuous attention and support for the more structural challenges linked to the ASM sector should continue to be considered priorities. The following areas of investment have been identified:

- **Supporting government ambitions and formalisation** and addressing key structural challenges of the sector which are pivotal for enabling socio-economic development and attracting investment.
- Access to **geological data** to focus mining efforts in areas with greater potential.
- **Professionalisation and operational improvements**, as they have been analysed in the manganese value chain. Inadequate mining practises and techniques impact the efficiency of the sector and its socio-economic potential as a livelihood for miners and a contributor to the national economy.
- **Responsible mining** practices, as a complementary measure to formalisation and professionalisation of the sector and to account for existing environmental, social, and governance impacts as well as risks.
- **Promoting partnerships and access to finance** between ASM operators and value chain actors, including traders, and other investors. Looking at longer term commercial partnerships.
- **Trading hubs**, to facilitate fair pricing and market access for ASM.

3.14.5.1 Supporting government ambitions and formalisation

Challenges related to under-resourced decentralisation and administrative and financial constraints for ASM operators to comply with regulatory requirements represent clear inhibitors for the development of the ASM sector. Although ambitions in the government exist for the development of the mining sector, these efforts demand for financial investments. Concretely, this requires funding and resources at the government level, ideally in combination with international donors and the private sector, to invest in partnerships with ASM operators as described later. This would build on the government commitments as outlined in the National Development Plan and in the ASM strategy the government is currently developing (Personal communication with stakeholder, December 2023). Support should be foreseen to ensure that government action focuses on ECRMs like manganese in addition to commodities like gold, which have received greater attention so far. In addition, learnings from initiatives like the ACP-EU Development Mineral Programme should be considered, and work done so far could provide the basis to expand the scope towards ECRMs produced in Zambia by the ASM sector, such as manganese and copper-cobalt. In particular, the ACP-EU Development Mineral Programme started working with financial

institutions to help address perceptions of the ASM sector, and continuing similar engagement would be crucial for the development of ECRM value chains. Further engagement could focus on facilitating access to financing services, potentially with the support of public funding, to help manage the risks of the financial sector to tap into the ASM market. Initiatives to support formalisation would look at the existing barriers to formalisation and try to address them, not only to fix current regulatory gaps but also to ensure the requirements can be sustainably implemented by ASM operators. Addressing existing knowledge gaps in formalisation procedures and administrative and financial burdens should be a priority, complementary to supporting the resources of the government to play a role in the monitoring and management of the sector at the national and provincial levels.

Importantly, the government should recognise the unique characteristics of artisanal mining and tailor policies to suit the scale and nature of these operations, offering a framework that is both accessible and protective. Simplifying licencing procedures, reducing bureaucratic hurdles, and providing clear guidelines can help formalise artisanal mining activities, ensure legal recognition, and promote responsible practises. In addition, it is important to recognise the existing challenges for the government to effectively manage the ASM sector. This partially relates to the uncomplete decentralisation process and by limited human resources, financial support, and infrastructure. The government is currently represented only in two out of the eight provinces in Zambia. However, it has been reported that the government is in the process of establishing the Minerals Commission, which will expand its presence across the remaining provinces and in turn enable mining authorities to have better control over the ASM sector (Personal communication with stakeholder, December 2023). Once the Minerals Commissions have been established, it is necessary that funds are allocated to the different mining authorities in the various provinces so that there is proper oversight. Mining officials need to be able to travel to mine sites to conduct inspections and cannot only rely on desk reviews of quarterly reports. To help address issues related to capacity and the improvement of resources, partnerships with organisations (local and international NGOs, industry associations, education institutions, mining experts, etc.) that could assist in the in the knowledge transfer of mining officials through workshops and trainings should be considered.

Efforts and progress made on formalisation and structural challenges should be considered in the framework of other targeted investment and intervention areas described in the following paragraphs.

3.14.5.2 Facilitate access to geological data

The Government of Zambia is aware that limited access to geological information inhibits the development of the mining sector, and it is putting measures in place to address this challenge, particularly in response to the growing demand for critical minerals. To meet its objectives of scaling up the production of critical minerals, which includes producing 3 million metric tonnes of copper by 2032, and attracting targeted investments, the government, in its budget speech of 2024 expressed its intention to initiate a countrywide geological survey in 2024 (Jalasi et al, 2024). According to available reports at the time of writing this profile, the Minister of Mines and Minerals Development, Hon Paul C. Kabuswe, was allocated a total of K198 million (which is about US \$7.3 million) to undertake in 2024 a high resolution countrywide geological ariel survey in Copperbelt, Lusaka, Northwestern, Southern, and Western Provinces as well as parts of Central Provinces. It is hoped that the survey will bring within two years an



increase in available geological information and in turn help to increase investment in the mining sector. It should be noted that never before has so much money in Zambia been invested in a geological survey (Kayamba, 2024). However, once the survey is completed, it will be important that the government make deliberate efforts to make this data accessible to ASM involved in the mining of ECRMs to point them to appropriate locations for ASM, thereby eliminating guesswork, enhancing productivity, and limiting environmental degradation. The many existing miners' associations could play a crucial role in supporting the sharing of information in partnership with technical assistance partners.

By the time of writing this profile, there were reports that the geological survey had commenced, although there is limited information available on its progress and outcomes (Energy Capital and Power, 2024). The author therefore has little knowledge about what the geological survey will entail and the extent of detail it will go into, including if it will include exploration activities or if it would only compile basic information which might however be used for planning follow up exploration. Nevertheless, for the survey to truly benefit local ASM sectors, it should help to increase the mineral exploration capacity of artisanal miners. This could be done by introducing an exploration program that could happen at different scales, for example from regional sampling and other methods in order to identify prospective zones, to local detailed sampling and perhaps drilling to outline the size of individual ore bodies and define bankable mineral resources. This would in particular require access to upfront capital as exploration is expensive and does not yield results immediately. Exploration for the benefit of ASM operations would also probably require a government permit or even before the issue if permits come into question, it could be conducted by the Zambian government itself as was the case in the DRC.

More generally, better knowledge about the ASM sector in relation to ECRMs production, actual and potential, should be promoted. More and better data, ideally by supporting local and national researchers and media, would help the government as well as industry and development partners to support investments.

3.14.5.3 Professionalisation and operational improvements

The analysis of the ASM manganese value chain, authored by Webby Banda for the Centre for Trade Policy and Development, provides survey-based results on key challenges that need addressing in terms of improving the effectiveness of ASM operations (Banda, 2022). Many of these results were confirmed through stakeholders' interviews done for the development of this profile.

Building on the need to increase access to geological information and as discussed above, limited exploration capacity was reported as a key limitation for ASM operators who lack funds to invest in exploration activities (Personal communication with stakeholder, October 2023). This would require either public funding to assess the viability of mining areas through ASM methods or commercial partners willing to provide initial funding. Promotion of organisation in entities like cooperatives should also be considered as an avenue to work with the ASM sector. Cooperatives or equivalent organisational models would play a role in concentrating processing facilities, facilitate engagement with financing institutions and market actors (Persona communication with stakeholder, October, 2023). The concept has certainly been explored in the sector and in different countries, confirming the potential opportunities of improving mining practices and supporting formalisation. Nevertheless, the implementation of such models remains



context specific, and the identification of suitable organisational model should be taken into account when designing programmes to support the sector and in the development and implementation of policies. At the level of mineral production and processing, investments should address the current gaps in mining equipment as well as support knowledge development on improved extraction and processing techniques. This would ultimately address the need to support ASM operators to increase their economic viability (Musukwa et al, 2023), and their legitimacy to be recognised as economic operators, generating income for those involved and contributing to mineral production. With plans to invest in regional processing and manufacturing plants, ensuring professional ASM production will also be critical to the efficiency of the whole local supply chain.

3.14.5.4 Responsible mining practices

Formalisation and professionalisation initiatives should all include a component aiming at reducing, managing and mitigating reported impacts, including health and safety, child labour, GBV and environmental impacts. Miners' associations and other civil society organisations are potential partners and could provide opportunities to build on existing work and expertise. It would be important that government, civil society and other relevant actors to jointly discuss approaches to promote improved production methods and measures to improve the social and environmental performance of the ASM business. This could develop into technical training programs for the ASM communities (Personal communication with stakeholders, August – October 2023). This is particularly relevant to ASM miners involved in manganese production because of the dangerous consequences that come with mining and processing manganese. Specialised training would equip miners with a comprehensive understanding of the environmental, social, and health impacts associated with manganese mining activities. Miners would learn about effective mitigation measures to reduce environmental degradation, soil and water contamination, and deforestation caused by mining operations.

Additionally, the training would address the potential health risks to miners and nearby communities, emphasising the importance of personal protective equipment and safe working practises. By imparting knowledge on the broader implications of manganese mining, including its economic and social aspects, the training would empower miners to make informed decisions that balance resource extraction with environmental and community well-being. Collaboration between governmental bodies, environmental experts, and mining associations is crucial to developing and implementing effective technical training programmes tailored to the specific challenges of artisanal manganese mining, thereby promoting a more sustainable and responsible industry.

3.14.5.5 Promoting partnerships and access to finance

In recognition of the multifaceted challenges of the ASM sector, the private sector, including traders, smelting and refining companies, downstream producers but also commercial banks, has a role to play in supporting formalisation, professionalisation, and improved mining practises (both operational and with respect to environmental, social and governance indicators). Although government support and actions remain pivotal to addressing some of the structural challenges discussed, the involvement of the private sector could generate benefits in terms of long-term and more sustainable solutions. In practice, this



should be looked at from the perspective of trading and investment to close the existing funding gaps. Such partnerships could involve the government, investors, and ASM operators (Banda, 2022) or simply supply chain actors like traders and processing companies working through longer-term agreements. Traders and processing companies could be involved in supporting improvements of mining practices through investments in mining equipment but also by providing directly or supporting access to technical knowledge and services. Such type of support could be defined as part of the commercial agreements, where off taking and sourcing of minerals is accompanied by technical and financial support. This would imply greater preparation from ASM operators to engage with formal buyers, to ensure they can address documentation and other requirements. Equally, it would be expected that traders and investors understand the dynamics of the sector and are willing to engage in support of the formalisation process.

In addition, considering the challenges highlighted with respect to access to finance for ASM operators, learnings could be drawn from the experience in the DRC of engaging commercial banks through the USAID's Zahabu Safi (Clean Gold) project which involved TMB and Equity Bank (Global Communities, 2022). A first step would be to work with financial institutions in Zambia to understand similarities and differences between the two countries and promote pilots with one or several financial institutions. Financial institutions such as commercial banks could contribute by firstly investing time and expertise to develop services and products suitable for the ASM sector. Government and development financing institutions could also play a supporting role by de-risking the involvement of the commercial financial sector.

3.14.5.6 Trading hubs

Most artisanal miners lack access to accurate and up-to-date market information, making them more susceptible to exploitation by traders who possess better knowledge of prevailing market prices. These miners often have little or no trust in the accuracy of purity and weight measurements conducted by traders. Addressing the exploitation of artisanal miners in Zambia requires comprehensive efforts, including the implementation of structured and regulated access to market (Musukwa, 2023), providing financial education, and strengthening regulatory frameworks to protect the rights of artisanal miners in their transactions with traders. Collaborative initiatives involving government bodies, civil society, and industry stakeholders are essential to create a more equitable and sustainable trading environment for artisanal miners. Market hubs for ASM should be considered as a way to promote fairer access to market for ASM operators (Banda, 2022). These hubs would function as trading centres where various stakeholders can engage with ASM in the buying and selling of manganese and potentially other ECRMs thereby fostering a more organised and transparent marketplace. By consolidating trading activities, these hubs would provide a conducive environment for fair negotiations, ensuring that artisanal miners receive equitable compensation for their production. Moreover, trading hubs can facilitate access to critical market information, empowering ASM operators with valuable insights into pricing trends and demand dynamics. This, in turn, would enable miners to make informed decisions, mitigating the risk of exploitation. Collaborative initiatives involving government agencies, civil society, and the private sector are crucial for the successful establishment and operation of trading hubs, ultimately contributing to the formalisation, professionalisation, and sustainable development of the ASM sector. When establishing these centres, it would be important to consider location. The sites for these hubs should be accessible to



ASM, including those in rural areas, taking into account various transportation constraints such as the availability of appropriate trucks and the financial aspects of fuel and rental services. There must also be engagement with stakeholders involved in the ASM sector to guarantee that the establishment of these hubs are inclusive. This would ensure that the hubs are purposefully designed to fulfil various functions necessary for the ASM sector, including processing, trading, training, and disseminating information. It should be noted that while trading hubs can help the ASM sector, simply creating these hubs on their own would not necessarily guarantee that artisanal miners would be free from exploitation and related issues. For example, “centre de négoce” or mineral trading centres for 3TG have been set up in the DRC for more than a decade which have not been free from problems. These mineral trading centres have experienced numerous difficulties including becoming operational, resource constraints, conflicts arising from artisanal miners' unauthorised use of private concessions, as well as security risks (Matthysen & Montejano, 2013).

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3.15 Zimbabwe

3.15.1 Introduction and overview of the mining sector

Zimbabwe produces a wide range of metals and minerals such as platinum group metals, gold, diamonds, ferrochrome, coal, iron ore, nickel, copper, granite, graphite, and base metals (African Minerals Development Centre, 2017). The mining industry contributes between 12%-16% to the country's nominal GDP (African Minerals Development Centre, 2017). Currently, the Artisanal and Small-Scale Mining (ASM) sector is estimated to employ at least 1.5 million people in Zimbabwe (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). The ASM sector in Zimbabwe is largely informal with a small proportion of miners registered, organised and recognised. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023) The minerals commonly exploited by artisanal and small-scale miners include gold, chromium, semi-precious stones, industrial minerals, tin and tantalum (Mlambo, Mamina and Masiya, 2019). Artisanal and small-scale mining has a long history in Zimbabwe and dates back to the 13th century with the mining of gold (Zimbabwe Economic Policy Analysis and Research Unit (ZEPARU), 2016). Minerals exploited during the pre-colonial period (before 1890) included chromium, copper, iron, emeralds, industrial minerals, tantalum, tin, and gold, with copper, gold and iron being crucial to economic development in Zimbabwe's early history (Mlambo, 2016).

Gold is the main mineral produced by ASM in Zimbabwe and contributes largely to the overall national output of gold, with small-scale production surpassing large-scale production over the last 20 years. In 2004 and 2005, gold produced by ASM contributed 60% and 50% respectively to overall gold production in the country (African Minerals Development Centre, 2017) and in 2018, gold ASM contributed towards 65% of total gold revenue (Mlambo, Mamina and Masiya, 2019). According to the Zimbabwe Miners Federation, gold mining accounted for 70% of ASM activities in 2013 (Mlambo, Mamina and Masiya, 2019). Moreover, artisanal, small-scale gold mining (ASGM) is a livelihood source for approximately 7.1% of the Zimbabwean labour force and indirectly benefits more than 1 million people, demonstrating the importance of ASGM to local development and income generation (Mlambo, Mamina and Masiya, 2019). After gold, chromium is a large contributor to ASM activities in Zimbabwe. Between 1990-1999, 40% of chrome produced was done so by ASM (Mlambo, Mamina and Masiya, 2019) and in 2016, 1% of global chromium was produced by artisanal and small-scale miners (Daimler and Levin Sources, 2021). In Zimbabwe, most of the chromium claims are owned by the large-scale company, Zimbabwe Mining and Smelting Company (ZIMASCO) and Zimbabwe Alloys Company, however, between 2000-2015, majority of the chromium produced was by artisanal and small-scale miners. Miners are able to work on the land owned by the companies and sell what is produced for smelting (ZEPARU, 2016). Following a government ban on raw chromium exports to promote value addition within Zimbabwe in 2011, demand for chromium produced by ASM fell between 2011-2015 (ZEPARU, 2016). The ban was later lifted in 2015, which allowed artisanal and small-scale miners sell chromium stockpiles and resume mining activities.

ASM activities are strongly linked to economic stability in Zimbabwe. Between the early 20th century and 1988, the ASM sector declined (Mlambo, Mamina and Masiya, 2019). This can be attributed to the fact

that people had access to alternative livelihoods. When the country was faced with drought, land reform and public sector layoffs in the 1990s, the ASM sector started to grow again (Mlambo, Mamina and Masiya, 2019). Once economic recession hit Zimbabwe between 2000-2008, there was once again an increase in ASM activities (Mlambo, Mamina and Masiya, 2019).

3.15.1.1 The ASM sector in Zimbabwe

In the colonial period (1890-1980), mining became more industrialised with the introduction of water pumps, development of roads and railways, the use of mining equipment, explosives and better ventilation methods and lighting, though it was still done on a small-scale basis (Mlambo, 2016). Additionally, ownership structures changed with mines largely owned and controlled by colonial powers. During this period, the government was largely involved in the mining industry under the various departments of the Ministry of Mines (Mlambo, 2016). Government assistance included advisory support and plant hire schemes to artisanal and small-scale miners, frequent monitoring of health and safety standards and disbursement of mining equipment (Mlambo, 2016).

Following independence in 1980, the Government of Zimbabwe aimed to restructure the mining sector, this included introducing and amending existing legislation to regulate, govern and support the mining sector, the main legislation includes the Mines and Minerals Act (1961) which has been amended several times since its passing, the Zimbabwe Mining Development Act (1983), the Minerals Marketing Corporation of Zimbabwe Act (1983), the Indigenisation and Economic Empowerment Act (2008), and the Sovereign Wealth Fund Act (2014) (Mlambo, 2016).

The Mines and Minerals Act was passed in 1961 and since then has been amended several times (the latest amendment being 1996) (Mlambo, Mamina and Masiya, 2019). It is the key legislation that regulates acquisition of mining rights in Zimbabwe and applies to all minerals produced in the country. If companies/ individuals want to mine, explore, or prospect any mineral resources in Zimbabwe, a mining title, permit, or license is required. Some licenses include ordinary and exclusive prospecting licenses, mining and special mining leases and special grants. Therefore, without a license it is illegal to mine, explore or prospect any mineral resources.

Under the Zimbabwe Mining Development Corporation (ZMDC) Act (1983), the Zimbabwean government established the government-owned Zimbabwean Mining Development Corporation (ZMDC, 2022). The aim of the corporation is to invest in the Zimbabwean mining industry on behalf of the state. As outlined in the act, this can be achieved through mining development projects, exploration, encouraging the formation of mining cooperatives and assisting those employed in the mining industry (ZMDC, 2022).

The Minerals Marketing Corporation of Zimbabwe (MMCZ) Act was also passed in 1983. The Act outlines that the MMCZ, a government parastatal, is the sole marketing and selling agent of all minerals produced in Zimbabwe except from gold and silver (which is sold via Fidelity Printers and Refinery) (Mlambo, 2018). The Act also outlines that the corporation can encourage local beneficiation of minerals and investigate marketing conditions within or outside of Zimbabwe. The MMCZ does not act as an actual marketplace for buying and selling minerals, it overlooks and facilitates the selling process of minerals so that royalties (of 0.875%) can be collected on behalf of the government (Personal communication with stakeholder, Mineral

Economist in Zimbabwe, April 2023). The MMCZ keeps a database of buyers and sellers for minerals produced in Zimbabwe. When sellers want to sell their minerals, they can access the database and locate a buyer, negotiate the transaction terms which are then approved by the MMCZ. Once this has been approved, a Sales agreement is drafted by the MMCZ which formalises the seller-buyer relationship (Mlambo, 2018).

The Indigenisation and Economic Empowerment Act (2008) was created in aims to address inequalities that stemmed from the colonial era. The Act states that all foreign companies should have 51% local ownership by Indigenous Zimbabweans (Mlambo, 2016). In a mining company, whether indigenous or foreign, Employee Share Ownership Trusts (ESOTs) and Community Share Ownership Trusts (CSOTs) should receive 10% ownership each from the mining company whilst the government receives the remaining 31% ownership (Mlambo, 2016). This is due to the belief that all members of the Zimbabwean population should benefit from the wealth mineral resources can provide. In theory, the dividends paid into the CSOTs are for community social development and are determined by the community themselves and having the government involved in the mining operations is to ensure increased revenue for the government (Mlambo, 2016).

The Sovereign Wealth Fund Act aims to ensure investments are made for the benefit of Zimbabwe's future generations and is populated by 25% of all royalties placed on mineral exports (Mlambo, 2016). The fund aims to ensure long-term benefits of the current mineral resources are actualised and can contribute to long-term economic and social development (Mlambo, 2016).

Not only were the legislations passed key to transforming the mining sector post-independence, the formation of the Zimbabwe Miners' Federation (ZMF) by the Ministry of Mines and Mining Development in 2003 was important for the mining sector, specifically the ASM sector. The ZMF represents artisanal and small-scale miners and aims to empower miners and contribute to the growth and development of the sector (Mining Zimbabwe, 2022). Other objectives of the organisation include support, empowerment and recognition of artisanal and small-scale miners, creation of partnerships to enable miners to access finance and credit for their mining operations, lobbying the government to enact policies that benefit and protect artisanal and small-scale miners and supporting the formalisation process of the sector (Mining Zimbabwe, 2022). The Zimbabwe Miners' Federation partners with stakeholders ranging from a wide range of actors in government, investment, mining services, suppliers, and tertiary training institutions (Mining Zimbabwe, 2022). The organisation is also affiliated with 60 associations at district and provincial levels to ensure socio-economic development of the sector and promote a safe and sustainable environment for mineral extraction (Mining Zimbabwe, 2022).

Though these legislations and associations were crucial steps for developing the mining sector at the time, the post-independent mining sector in Zimbabwe faces several issues.

One issue faced post-independence was the side-lining of artisanal enterprises to focus on developing large-scale mining projects and ensuring higher revenues for the state (Mlambo, Mamina and Masiya, 2019). Prohibitive Licencing and taxation requirements were introduced that alienated artisanal miners (Mlambo, Mamina and Masiya, 2019) and most of the assistance given in the colonial period stopped or was scaled down after 1980, especially in the late 1990s, due to budgetary constraints faced by the

government (Mlambo, 2016). Moreover, there has not been effective policy implemented to support the legislation passed. Though ASM is a large contributor to output of minerals in Zimbabwe and employs at least 7.1% of the population (2017), there is no special recognition for artisanal and small-scale miners in the Mines and Minerals Act, which often leads them to be criminalised (Mlambo, Mamina and Masiya, 2019). There have since been efforts by the Government of Zimbabwe to decriminalise the sector due to realisations of how important the sector is to economic development but without legislation to support policies introduced, decriminalising the sector proves to be difficult (Mlambo, Mamina and Masiya, 2019).

Moreover, formalisation of the ASM sector has been a long-standing process of the Ministry of Mines and Mining Development but has been slow to implement. It was estimated in 2019 that there were more than 20,000 formal small-scale miners and 350,000 informal small-scale miners working in the sector (Mlambo, Mamina and Masiya, 2019). Some issues faced with the formalisation process have included failure of the government to understand the ASM sector is not homogenous with differing levels of formalisation, knowledge and access to markets, implementing a top-down approach that fails to consider the wants and needs of miners, the opacity of the sector where the formal and informal sections of the sector work parallel to one another, the conflictual nature between ASM activities and large-scale mining activities and the process of formalisation leaving out key stakeholders such as civil society organisations, community-based organisations and community leaders, who work and live closely with artisanal and small-scale miners. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023).

Lastly, mine ownership went unchanged with almost 80% of the mining sector still controlled by foreign countries in 1988 (Mlambo, 2016). Though there is legislation in place that states Indigenous communities should have a stake in large-scale mines and governments should be able to collect revenues from mineral production, this has been hard to achieve in reality, especially as foreign interests have taken precedence in the sector aided by local elites (Mlambo, 2016). For example, most exploration for lithium has been conducted by Australian, Chinese, and South African companies and has resulted in artisanal and small-scale miners being unable to access land for prospecting and mining. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). It has been reported that once artisanal and small-scale miners have discovered lithium deposits in certain areas of Zimbabwe, the government then designates mining activities to large-scale mining companies, excluding ASM from further operations. Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023).

3.15.1.2 Extended Critical Raw Materials and ASM

Though both government policy and the ASM sector have largely focused on gold production in the last 30 years, Critical Raw Materials (CRMs) are also produced in Zimbabwe by ASM, these materials include tin, tantalum (and associated niobium), and lithium. Tin and tantalum (and therefore niobium) have long-standing artisanal mining histories in the country, having been mined through pre-colonial and colonial eras, and in post-independence. Lithium is a more recently extracted mineral by ASM and has seen an increase in large-scale exploration and mining projects after large reserves of lithium have been found (Mlambo, Mamina and Masiya, 2019).

Tantalum is a by-product of tin, and both were mined on a large-scale basis in Zimbabwe. One of these mines includes the Kamativi mine, one of the largest tin mines in the country (PorterGeo, 2023). The mine began operation in 1936 and closed down in 1994 due to low tin prices and low grades of tin produced (Galileo Resources, 2022). In the mine's history, it produced 37,000 tonnes of tin and 3,000 tonnes of tantalum ore from pegmatites as tantalum is a by-product of tin (Galileo Resources, 2022). Alongside the large-scale extraction of tin and tantalum, these minerals were also extracted by ASM. Since the closure of the Kamativi mine, there has been little tin mined by artisanal and small-scale miners. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). However, after the closure of the mine and unlike the trajectory faced by tin, there was steady extraction of tantalum by ASM. Between 1990-1999, 100% of tantalite produced was done so by artisanal small-scale miners (Mlambo, Mamina and Masiya, 2019). Tantalum production continued to rise into the early 2000s and reached its peak in 2003 (Mlambo and Mugoni, 2011). After 2003, there was a drastic fall in tantalum production and very minimal production at the large-scale level onwards (Mlambo and Mugoni, 2011). However, it is hard to determine how much ASM contributed to overall tantalum production beyond 2004 as artisanal activities went largely unrecorded during this time (Mlambo and Mugoni, 2011). Several factors may contribute to the decreased ASM production of tantalum such as the increased prices and exploration of gold, the lack of exploration of tantalum and low prices faced and the closure of tin mines in the country. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). Niobium is also an associated mineral of tantalum and found as columbite-tantalite. It was mined alongside tantalum and would therefore follow the same production trends; however, focus has largely been on tantalum production. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023).

Over the last few years, the demand for lithium has risen as it has become a key component in the manufacture of lithium-ion batteries needed in electric vehicles. Zimbabwe is one of many countries in the world with lithium reserves, among the top ten producers of lithium in the world (USGS 2023), and so far, the only country in Africa with significant lithium reserves and production (Mutondoro, Midzi, Bore and Chiremba, 2023). Though Zimbabwe has been mining lithium since 1950, the country has been undergoing a 'lithium rush', which has seen an influx of domestic and international companies from Australia, China, South Africa, and other countries investing in lithium exploration and mining projects (Mutondoro, Midzi, Bore and Chiremba, 2023). In the process of exploration, Bikita and Kamativi mines that formerly extracted tin and tantalum have been identified as sources for future lithium supply (Goodenough, Deady and Shaw, 2021). The lithium rush has also extended to the ASM sector and has seen a large proportion of artisanal miners move to lithium mining. (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). Before the rush, lithium was not an attractive mineral for the artisanal and small-scale sector, as knowledge about the mineral is localised to communities surrounding large-scale lithium mines (Personal communication with stakeholder, civil society organisation, April 2023). However, with rising prices and demand in 2022, lithium extraction is of more interest to the sector (Mambo, 2022; Personal communication with stakeholders, Mineral Economist in Zimbabwe, civil society organisation, April 2023). It was reported that in areas such as Mberengwa, Mutoko, Chiredzi and Bikita, there is recorded activity of artisanal and small-scale lithium mining (Mutondoro, Midzi, Bore and Chiremba, 2023). In Mberengwa, miners were operating from the

Sandawana Mine, which was traditionally an emerald mine and has been in existence since 1955. In a brief outlining mining projects and opportunities for investments by the Zimbabwe Mining Development Corporation, Sandawana Mine was identified as having reserves of lithium, tin, tantalum, chrome, gold, and other minerals (Mutondoro, Midzi, Bore and Chiremba, 2023). It was reported that at least 5000 artisanal and small-scale miners in Mberengwa have been extracting lithium mostly from shallow open cast mines, with few miners using shallow unsupported underground mining methods (Mutondoro, Midzi, Bore and Chiremba, 2023).

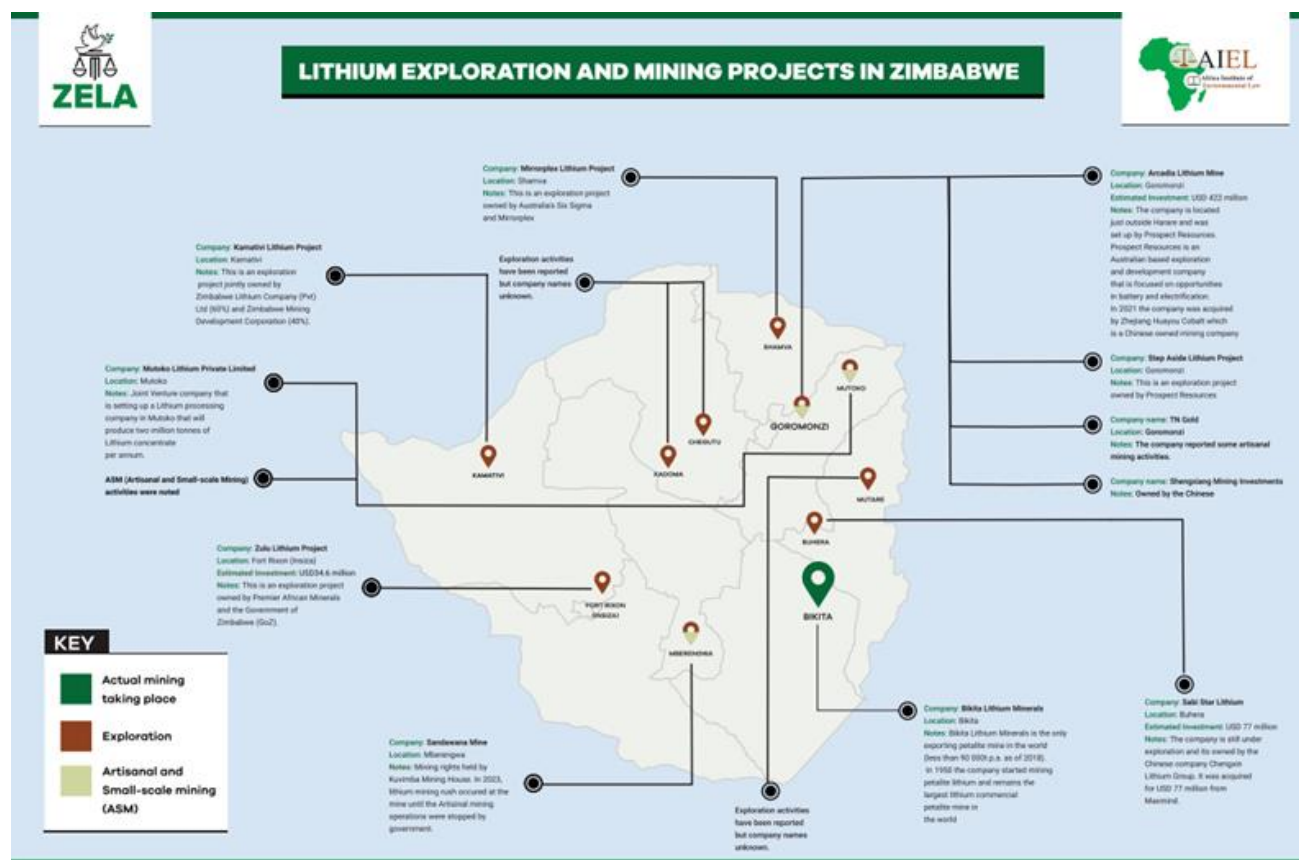


Figure 30 : Map of current lithium projects in Zimbabwe (Mutondoro, Midzi, Bore and Chiremba, 2023)

3.15.2 ASM mineral value chain

The value chains of lithium, tin, tantalum, and niobium become less transparent after mining. Though tin and tantalum-niobium have been long produced in Zimbabwe, there is little reporting about the current levels of beneficiation and refining, who engages in this process or about the production levels from these value chain tiers (Personal communication with stakeholder, civil society organisation, June 2023). This is further exacerbated by the fact that production of tin and tantalum-niobium by large-scale mining companies has reduced greatly since 2003 (Mlambo and Mugoni, 2011). Much like tin and tantalum-niobium, the level of beneficiation and refining of raw lithium is unclear, specifically for ASM produced lithium. This can be attributed to the fact that though LSM production in Zimbabwe has had a longstanding history in the country, with the increased demand for lithium, the material can be considered one of new interest for the government of Zimbabwe, resulting in limited understanding of the sector, policy required

to regulate and monitor the sector and the capacity for value addition (Personal communication with stakeholder, civil society organisation, June 2023). In addition, in large-scale operations such as Bikita Minerals it has been identified 10,000 tonnes of lithium oxide are produced per month, with upcoming plans to increase refining capabilities by optimising old plants and building new refining plants by mid-July 2023 (Bikita Minerals, 2023). There is also a lot of exploration occurring in the Zimbabwean lithium industry from large-scale companies such as Sabi Star, Arcadia, and Premier African Minerals, with hopes to beneficiate and refine lithium in country.

In efforts to retain value from minerals mined in Zimbabwe, the Ministry of Mines and Mining Development have an upcoming Value Addition and Beneficiation Strategy. As part of this strategy, exporting raw lithium ore and base minerals was banned in December 2022 and is still ongoing, though exporting permits can still be granted by the Minister under their discretion (Mutondoro, Midzi, Bore and Chiremba, 2023). Under this strategy, new mining companies investing in the Zimbabwean mining sector will have to dedicate part of their investment into building beneficiation and refining plants. These type of announcements and policy ideas have been argued to be politically motivated rather than based on feasibility studies and economic research (Personal communication with stakeholder, civil society organisation, June 2023). It has been argued that due to the lack of knowledge and understanding about the current levels of beneficiation and refining, what capacity the country holds, how much such investments would cost, and the equipment needed, announcements made about value addition in the mineral sector will rarely have the intended impact desired (Personal communication with stakeholder, civil society organisation, June 2023). Moreover, announcements such as the lithium and base metals ban have occurred previously in the Zimbabwean diamond and platinum sectors, resulting in very little change of Zimbabwe solely extracting the materials to developing processing opportunities (Personal communication with stakeholder, civil society organisation, June 2023). Not only has the ban been criticised as a knee-jerk reaction to a new industry in Zimbabwe, but Southern African Resource Watch has also criticised the policy for disproportionately affecting artisanal and small-scale miners by criminalising them and affecting their livelihoods (Nyoni, 2023).

3.15.3 Major challenges of the ASM sector

There are several challenges faced by the artisanal and small-scale sector in Zimbabwe that have persisted post-independence in 1980. This section, rather than analysing the challenges of the ASM sector at large, focuses on those which inhibit the development of the sector, the potential to supply ECRMs through formal value chains and its opportunities to contribute to socio-economic development. As a result, these are the challenges which should be considered when identifying and defining responsible investment avenues. The challenges will focus on those that are also particularly relevant for the ECRM, with examples/ notes which address specific commodities.

3.15.3.1 Governance

A key issue the Zimbabwean mining sector has faced is the long-standing history of state-assisted corruption. This includes a lack of accountability and transparency of mining production and revenues, tax evasion, illicit financial flows and government officials using mining revenues for personal and political enrichment (Church and Crawford, 2018). It also consists of members of the Zanu-PF (the ruling party)

being shareholders, board members and chairmen of mining companies, including ASM entities, and even affording these companies exclusive government incentives (Environmental Justice Atlas, 2020). This context affects the governance of the mining sector, and even more so, the ASM sector which lacks the necessary governance system to ensure the sector is sustainable and contributes to long-term economic and social development (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023).

Considering the lack of strong governance, the ASM sector in Zimbabwe is largely informal and efforts to formalise the sector have proved difficult as policies have failed to consider the needs and wants of miners, as well as seeing formalisation only as an opportunity to generate revenue rather than improve access to markets, mining technology and contribution to social and economic development (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). There is also a lack of transparency in the sector as there is no reliable data surrounding how much lithium, tantalum and tin the ASM sector actually produces, making it even more difficult for initiatives to be designed with the ASM sector in mind. ASM miners also lack effective representation as bodies such as the Zimbabwe Miners' Federation (ZMF) have been subject to elite capture and have reportedly stood for the interests of politicians rather than the miners they are meant to represent. In addition, a recent corruption case has involved its president, Henrietta Rushwaya, who has been convicted for trying to smuggle 6 kg of gold to Dubai (The Herald, 2023). The weak governance of the sector also affects miners as there is no clear policy for the ASM sector to outline how miners in the country are meant to operate, who they can legally sell their product to or a clear understanding of resources available for them to mine. Additionally, the allocated funds from the mining sector are not consistently disbursed to local and provincial authorities, these funds are meant to ensure communities benefit from the natural resources and are able to develop social services and infrastructure (Mutondoro, Midzi, Bore and Chiremba, 2023).

3.15.3.2 Access to finance

Access to formal financing is a large issue faced by artisanal and small-scale miners and so is financial literacy. In Zimbabwe, miners have to meet several requirements before mining can begin and most artisanal and small-scale miners cannot afford the licenses and authorisations needed, some of which include approved prospectors, environmental impact assessments, a license to buy and keep explosives and a mining license to name a few (Matsiwira, Mabvure and Sifile, 2021). In the ASM gold sector, several mechanisms have been developed to aid gold miners access better finance options, this has included a Ministry of Mines Mining Industry Loan Fund, funding from financial institutions and the creation of the Shamva Mining Centre (Matsiwira, Mabvure and Sifile, 2021). Many of these finance mechanisms were successful in the beginning but varying factors such as changing of leadership, a lack of collateral from small scale-miners and a lack of transparency have seen these mechanisms fail to have long-term prosperity (Matsiwira, Mabvure and Sifile, 2021). As recently as February 2023, the Finance and Economic Development Minister, Professor Mthuli Ncube, launched a \$10 million loan facility targeted at artisanal and small-scale gold miners, in efforts to increase production (Machivenyika, 2023). The loan aims to close the funding gap, generate increased productivity in the ASGM sector and finance value addition projects. The funds will be disbursed by the Zimbabwe Mining Development Corporation and Banc ABC on behalf of the government (Machivenyika, 2023). It is unclear what finance mechanisms are available to non-gold



miners besides bank loans from financial institutions, this is something that could be understood further speaking to miners who regularly extract tin, tantalum, niobium, and lithium, as there is no existing analysis of ECRM ASM financing. However, based on available information, it can be assumed that ASM producers rely on prefinancing from traders and offtakers (e.g. from China, South Africa, and India).

3.15.3.3 Environmental and social impacts

Artisanal and small-scale mining can generate and be linked to negative environmental and social impacts especially when there are a lack of systems in place to oversee environmental impacts management, access to geographical information, mine planning and little consideration for surrounding communities as is the case in Zimbabwe (ZEPARU, 2016; Mutondoro, Midzi, Bore and Chiremba, 2023). Negative impacts are further exacerbated in context of the informality of the sector, a limited regulatory environment and lacking legitimacy of the sector. Oftentimes, extraction of minerals by the ASM sector in Zimbabwe happen haphazardly and, in a trial-and-error manner as miners react quickly to favourable prices and increased demand. Coupled with the fact that miners only have access to very basic equipment, miners will abandon deposits prematurely if they encounter hard rock, water or are not producing minerals quickly enough, leaving behind waste rock and open pits (Mutondoro, Midzi, Bore and Chiremba, 2023). As a result, surrounding communities are left to rehabilitate the environmental degradation left by mining activities. ASM activities in Mberengwa and Mutoko have also contributed to deforestation, destruction of ecosystems, poor waste management, pressure on water resources, open pits, and pollution. This has further negative impacts on local communities by affecting their agricultural livelihoods, access to water, community health and safety and as seen at the Sandawana mine site in Mberengwa, disruption of education where ASM activities take place near schools (Mutondoro, Midzi, Bore and Chiremba, 2023). The extent and details of specific impacts in the ASM sector for tin, tantalum, niobium, and lithium in particular is underreported, as most analysis and efforts in the sector have looked at gold production.

3.15.3.4 Access to markets and price information

Allegedly, many ASM producers do not have access to formal markets and do not know the value of the minerals they extract (Personal communication with stakeholder, Mineral Economist in Zimbabwe, April 2023). Additionally, the lack of access to formal markets increases the susceptibility of the sector to informal, and reportedly even illicit, trading, financing and involvement in smuggling, dynamics which have already been seen in the gold and diamonds industries. It is estimated by the Zimbabwean government that the mineral sector as a whole has lost \$1.8 billion in mineral earnings due to smuggling, illicit financial flows and tax evasion and avoidance (Personal communication with stakeholder civil society organisation, June 2023; Nyoni, 2023). The leakages in the sector have multiplier effects such as the loss of government revenues which further prevent reinvestment in local communities. As lithium is a fairly new material mined by ASM and there is a lack of knowledge about market prices and access to markets, this makes it easier for ASM producers to rely on forms of informal financing and be involved in informal and reportedly illicit trading and smuggling. The recent ban on unprocessed lithium exports, is believed to have exacerbated the phenomenon. Oftentimes miners will sell to buyers from China, South Africa and India below market price and will receive immediate cash payment from the buyers (Mutondoro, Midzi,



Bore and Chiremba, 2023). These buyers often base their prices on estimates of lithium content produced rather than analysing the lithium content presented to them. It is reported that in more rural areas, a miner will be offered \$100-\$150 per tonne depending on the grade and lithium percentage content, whereas a local or foreign buyer in Harare would buy lithium at a price of \$300 per tonne (Mutondoro, Midzi, Bore and Chiremba, 2023). In order to monitor and organise lithium mining and prevent illicit financial flows, in Mberengwa, the Zimbabwe Miners' Federation has facilitated the sale of lithium from artisanal miners to Kuvimba Mining House (owners of Sandawana mine), preventing others from buying lithium in the area (Mutondoro, Midzi, Bore and Chiremba, 2023). However, it has been reported that this has been an unfavourable move for artisanal miners as this makes the transaction process even longer (Mutondoro, Midzi, Bore and Chiremba, 2023). The need for immediate cash is key to artisanal miners as the funds received from immediate pay contribute towards daily allowances for food during the working day and other costs incurred during mining (Mutondoro, Midzi, Bore and Chiremba, 2023).

3.15.4 Relevant initiatives

Most of the donor-funded projects implemented and undergoing implementation in Zimbabwe have centred the gold sector. The projects highlighted below illustrate some of the current donors engaged in the artisanal and small-scale sector as well as some of the thematic areas that can be considered for donor engagement in critical raw material production:

Global Opportunities for Long-Term Development of the Artisanal and Small-Scale Gold Mining Sector in Zimbabwe – GEF planetGOLD Zimbabwe: This project aims to reduce the negative and environmental impacts caused by artisanal and small-scale miners using mercury for extraction of gold (Global Environment Facility, 2023). The project focuses on formalisation, access to finance and markets, knowledge management and mercury free technology to lessen the impacts of ASGM and change attitudes around mercury use. This project commenced in December 2022 and is to span 5 years (Global Environment Facility, 2023).

COVID and Artisanal and Small-Scale Mining Global Survey – Delve: A series of surveys were conducted across several countries (in which Zimbabwe was included) in 2020 and 2022 to assess the impacts COVID-19 had on artisanal and small-scale miners (Delve, 2023a). Research areas include health and safety, food security, gender dynamics, security, service delivery and government engagement, mineral supply chains, economic shocks, and future priorities (Delve, 2023a).

Artisanal and small-scale mining mapping in the Runde Rural District of Zimbabwe – Delve: A study was conducted and published in 2019 by Delve and the Zimbabwe Environmental Law Association (ZELA) to gather information about the nature, ownership, operations and impacts of the ASGM sector in Runde, Zimbabwe (Delve, 2023b). The study was conducted in hopes to aid the decision making of the Runde Rural District Council, Environmental Management Agency, and the government (Delve, 2023b).

Zimbabwe Accountability and Artisanal Mining Programme – Foreign, Commonwealth and Development Office (FCDO) and Pact: This project aimed to increase cooperation between small-scale and industrial gold miners and formalised production and trade (Pact, 2023). The project was focused on gold mining sites in Shurugwi, Gwanda and Keke and looked to improve operational, environmental and safety standards in the areas (Pact, 2023). This project was largely grounded on a 2014 baseline study



conducted by Pact about mercury use in ASGM. During the project, Pact collaborated with the Zimbabwean government to inform policymaking and increase the contribution of gold to the economy and development (Pact, 2023).

3.15.5 Investment needs and opportunities

The ASM sector in Zimbabwe has the potential to contribute to ECRM production but has been side lined as the focus of government policy and legislation have been on large-scale mining projects and gold production. As a result, there is a gap between the realities faced by non-gold artisanal and small-scale miners and government policy and legislation developed for the ASM sector. Based on information collected from publicly available resources and conversations with stakeholders, such as members of civil society and mining sector experts, investment needs and opportunities that would allow the sector to further contribute to minerals production, while benefitting from socio-economic development brought by critical minerals value chains include:

- **Baseline study of ECRM production:** to develop technical knowledge about the opportunities linked to ASM production of tin, tantalum, niobium and lithium.
- **Strategic recognition and improved governance:** to support improved sector governance, from recognised and legitimate strategic relevance of the sector for the Zimbabwean economy, to definition of the appropriate governance measures to support development of the ASM sector (especially considering the role the sector is playing for lithium). This should also include extension services to ASM producers about organisational structures, knowledge sharing and mining practices.
- **Foster legitimacy, inclusion and technical assistance:** to define support services to ASM producers about organisational structures, technical knowledge, access to formal markets, access to financing etc.
- **Create and support access to processing facilities for lithium production by:**
 - Value addition investments on centralised processing facilities
 - Cooperation between ASM and LSM as a route to formal markets and accessing processing facilities.

These investment needs listed above, besides being applicable to the ASM sector in Zimbabwe as a whole, try to focus in particular on opportunities related to lithium, tin, and tantalum-niobium industries. Importantly, these needs also address structural challenges of the ASM sector, which can be considered preconditions for further development of the sector (e.g., governance, legitimisation, access to knowledge, markets, and finance).

3.15.5.1 Baseline study of the ASM sector for ECRM production

The information available about the current production and potential for tin, tantalum, niobium and lithium in Zimbabwe is limited, including geological data, what equipment is currently being used to mine these materials and how much the ASM sector produces, mapping of where mining and trading takes



place (for example as done with IPIS in the Runde rural district for gold and chromium production: <https://ipisresearch.be/project/mapping-artisanal-mining-sites-runde-district-zimbabwe/>). A baseline study of the ASM sector and the minerals of interest would fill knowledge gaps and would represent a form of investment in the sector to support its governance. Access to this information would first allow the government to understand the sector and develop effective policies and supporting legislation to advance and oversee the ASM sector. It could also clarify and quantify the potential of the sector to contribute to the production of ECRMs, in particular lithium, considering the known reserves and current production volumes in Zimbabwe. This could help the government identify how strategic these ECRM commodities can be for the country itself and not only from the perspective of buying countries and entities. If transferred to miners as well, access to this information would help further understanding of what minerals they are looking for, how minerals are mined, and how to safely extract these minerals, especially for newer minerals such as lithium that are highly-knowledge demanding.

3.15.5.2 Formalisation, technical assistance, and knowledge sharing

Improved governance alone will have limited effects if it is not coupled with support to the ASM sector focused on increasing its legitimacy, inclusion in formal markets and improvement of mining techniques which address miners' interest of increasing mineral recovery and therefore income, while accounting for social, governance and environmental impacts.

Formalisation is a common approach aimed to improve governance and organisation of the ASM sector which is often viewed as lacking structure and rules. However, in the case of Zimbabwe, formalisation has been a long-time process that has been implemented by the Ministry of Mines and Mining Development that has yielded slow results. This can be attributed to the fact that the varying levels of formality in the sector have not been considered and the top-down approach formerly taken has left out key stakeholders such as civil society and community-based organisations and the miners themselves from the conversation about what formalisation may look like to them and how formalisation would benefit them in the long-run. To make formalisation more effective, it would be pivotal to define strategies which include miners' perspective, and the lithium rush situation proves how lack of consideration of the ASM sector can result in negative impacts for its integration in formal markets. For example, efforts to formalise the sector should consider integration of challenges which are most important to ASM producers themselves, such as addressing challenges of access to land and obtaining mining permits through processes which are not prohibitive and burdensome, support technical knowledge of recovery of material (considering lithium which is a relatively new mineral for ASM producers), and provide transparent information about markets and pricing.

Building on the above, knowledge sharing is another investment need of the ASM sector in Zimbabwe and should be considered as a fundamental element for enduring formalisation and sector development efforts. Thematic areas would include technical knowledge about lithium mining and processing, as well as for the other ECRMs in Zimbabwe, organisational structures, and management, for example for cooperatives and small ASM enterprises, reducing mining and processing related hazards, access to markets tools and methods to ensure pricing is fair and value is equitably distributed. This would involve various stakeholders such as civil society organisations, community-based organisation, government

actors and the private sector. The ASM sector needs to be well represented and understood, organisations like the Zimbabwe Miners' Federation could facilitate discussions and trainings on how the ASM sector works and how to engage with the sector that prevents further criminalisation and ensures that future policies are in line with realities faced by miners. Additionally, knowledge that is localised to communities familiar with lithium, tin, tantalum, or niobium could be disbursed in areas where mining of these materials is fairly recent or to miners new to mining these materials, allowing for a vertical flow of information rather than a top-down disbursement of information.

3.15.5.3 Developing and supporting access to finance mechanisms

Financing mechanisms have largely focused on ASGM, and it is evident that a lack of access to finance is a large hindrance to ASM production generally. Miners need access to finance to rent/ buy better machinery, purchase mining licenses and other permits and pay operating costs when waiting for their sales to be finalised. There is the opportunity to develop and support access to financing mechanisms, perhaps informed by past solutions from the gold industry more tailored to tin, tantalum, niobium, and lithium. There is limited information available on the financing mechanisms available to ASM producers of these ECRMs in Zimbabwe. Based on experience in gold and other countries, it can be assumed that financing is still linked to supply chain actors whose prefinancing supports the commodity production in the first place. So, providing alternatives to informal financing in Zimbabwe, also means understanding the motivations behind current financing relationships and what kind of incentives are needed for ASM producers to consider formal financing mechanisms. As mentioned previously, financing mechanisms can include the expansion of the Ministry of Mines Mining Industry Loan Fund to non-gold materials and inclusion of the newly created Shamva Mining Centre in the disbursement of finance to artisanal and small-scale miners extracting ECRMs (Matsiwira, Mabvure and Sifile, 2021). There is also the opportunity to expand other financing mechanisms such as the \$10 million loan facility announced in February 2023 and disbursed by Zimbabwe Mining Development Corporation and Banc ABC on behalf of the government, to also provide finance to miners extracting tin, tantalum, niobium and lithium (Machivenyika, 2023). In a stakeholder interview, it was recommended that financing the ASM sector should be the responsibility of the government as ASM is a direct livelihood for many people and therefore has a large political economy benefit for the government to support the sector, but also the government benefits from the low costs and therefore cheaper minerals they are able to obtain. During the interview, it was highlighted that though the government may be fiscally restricted, they can develop partnerships with local financiers which guarantees a level of security for private companies involved. It was also recommended that these government programmes remain apolitical to avoid disruption if political leaders/ parties change after elections, which has been seen in financing mechanisms in the gold sector (Personal communication with stakeholder, civil society organisation, June 2023). As a result, engagement with governments, blended finance, and development funding, should be considered to develop a mechanism which would address the ASM sector financing challenges.

3.15.5.4 Access to markets and pricing information

For minerals such as gold, there are clear formal markets such as Fidelity Printers and Refinery for miners to sell their gold to. For other minerals, this pathway is not as clear and it deserves further analysis, to



map out existing commercial relationships and related incentives. It cannot be assumed that ASM producers would automatically prefer formal markets to informal ones, and the dynamics of existing trade relationships should be properly understood. Allegedly, lacking access to formal markets and pricing information often leads to artisanal and small-scale miners selling their minerals through informal markets and having less negotiating power over prices. As indicated above, often traders buy lithium ore based on estimated content, rather than exact calculations. An avenue to support access to formal market could be to find ways to develop the work and role of existing organisations such as the Minerals and Marketing Corporation of Zimbabwe and the Zimbabwe Miners Federation in sharing knowledge about how tin, tantalum-niobium and lithium ores should be priced, making access to the MMCZ buyers database easier and developing formal markets for these minerals, for example, by cooperating with large-scale lithium companies to buy lithium ore from miners. The former investment opportunities coupled with geological information about where minerals are extracted and a baseline study to identify where and what ASM activity is focused on, will provide those in more remote areas access to markets and fair price information that are available to those nearer Harare (Mutondoro, Midzi, Bore and Chiremba, 2023).

3.15.5.5 Investment needs specific to tin, tantalum and niobium

3.15.5.5.1 Define actual opportunities for tin, tantalum and niobium mining by ASM

There is historical production of tin, tantalum, and niobium in Zimbabwe by ASM. With the rise of gold prices and gold exploration in the early 2000s, tin, tantalum and niobium production were neglected in favour of ASGM. With the rising prices and increased demand for lithium, the former materials are at risk of being further neglected. The extraction of these materials already occurs by ASM but there is little information recorded about how much is produced, who as-mined material is sold to, or the price miners are selling at. Though it may no longer be economically viable for large-scale mining companies to extract tin, tantalum and niobium, initiatives and investment opportunities could be created for ASM to extract these minerals. This could include exploration data about where the mineral can be found, involving the Mineral Marketing Corporation of Zimbabwe (MMCZ) in ways to ensure miners have access to formal markets, providing workshops on pricing and supporting key stakeholders and government to develop policies that include tin, tantalum, and niobium ASM. It is ultimately about recognising the livelihood potential and economic value creation by ASM production of tin, tantalum, and niobium. The current operating context for the ASM sector in Zimbabwe, mainly focused on the commodities which have the highest value and demand (historically gold, and now lithium). A baseline study, as outlined above, could help provide insights on the socio-economic potential of tin, tantalum, and niobium ASM production.

3.15.5.6 Investment needs specific to lithium

3.15.5.6.1 Create and support access to processing facilities for lithium production

Considering the governments interest of increasing value retention in the country and ensuring the ASM sector is not left behind and excluded from formal value chains, measures should be considered to create and enhance access to processing facilities. This could happen through two avenues: 1) investments in centralised processing facilities accessing to ASM producers and 2) fostering collaboration between LSM and ASM entities.

3.15.5.6.2 Centralised processing facilities

The government motivation to ban exports of unprocessed lithium (implemented in December 2022) is to promote value retention and addition to the lithium industry in Zimbabwe. By curbing the export of unprocessed lithium (and other base metals), the government hopes to reduce the illicit trade and smuggling of lithium as well as generate revenue (Mutondoro, Midzi, Bore and Chiremba, 2023). Interviews with stakeholders hinted at the fact that the policy was developed with meaningful purpose to ensure that the benefits of lithium production are optimised in Zimbabwe. However, it was made clear that the policy was implemented as a knee-jerk reaction to the lithium rush with no consideration of the realities currently faced in Zimbabwe, given there are no processing facilities in the country (Personal communication with stakeholder, civil society organisation, May 2023). This is further shown by the Finance and Economic Development Minister, Professor Mthuli Ncube, announcing in February 2023, after the ban had been stated and enacted, that the government was ready to invest \$20 million in developing processing and lithium battery manufacturing facilities in Zimbabwe, along with ‘a myriad of tax incentives right across the board in mining and industry’ (Tome, 2023). It was contested by stakeholders that ASM actors failed to be engaged in the development of the policy with no consideration of how they can contribute to the lithium rush seen in Zimbabwe and that a general lack of understanding about the ASM sector and how it operates further contributed to the exclusion of the ASM sector (Personal communication with stakeholder civil society organisation, May 2023). Taking the example of the gold and chromium sectors in Zimbabwe, where some processing plants exist, are centralised, and artisanal and small-scale miners have access to processing facilities, the same could be developed for commodities like lithium, where ASM producers could buy services of lithium beneficiation and refining, resulting in the ability to sell a commodity which has higher value. Part of the \$20 million allocated for development of processing facilities could be specifically dedicated to ASM processing of lithium and ensuring that international companies interested in working in Zimbabwe’s lithium sector are also collaborating with ASM producers in the area, ensuring that the government’s aim of value addition is met as well as artisanal and small-scale miners having better economic opportunities. Additionally, mapping of the current and forthcoming processing facilities would be needed to take stock of where in the country processing facilities can and will be found and how this aligns with the areas in which lithium is mined by artisanal and small-scale miners. For this to be realised, the following considerations would apply:

- Acquiring beneficiation and refining services run by processing entities, would infer that ASM producers have financial means to do so, as this would likely occur before they have received payment for the commodity produced. As a result, these solutions, without parallel considerations of access to and availability of financing mechanisms to miners, might have limited positive impacts on ASM communities.
- Locations of such processing facilities would need to be reachable from producers also in rural areas (considering all transportation limitations, from availability of suitable trucks and financing for fuel and renting services)
- Guaranteeing opportunities for employment and necessity to support knowledge development in processing techniques as well as management of environmental and social impacts.



3.15.5.6.3 Collaboration between ASM and LSM

Historically, there has been a conflictual relationship between ASM and LSM in Zimbabwe, however, there is an opportunity for large-scale mining companies to engage with the ASM sector to increase lithium production but also promote safer mining conditions and reduction of social and environmental impacts caused by mining activities. Collaboration between the two could include providing the ASM sector with greater knowledge about extracting lithium, which is a technically challenging mineral and allowing artisanal and small-scale miners access to land to extract less economically viable ores and hard to access ores by LSM operations. The ore obtained by ASM could then be sold to large-scale companies as a route for miners to access formal markets, through agreements based on fair prices and also prevent leakage in the sector (Personal communication with stakeholder civil society organisation, May 2023). Sales of ASM produced ore to LSM companies could also represent an alternative solution to develop lithium processing facilities for the ASM sector, as they would in fact be able to make use of those built by industrial mines. Moreover, engagement between the ASM sector and large-scale operations ensures that local communities are benefitting from the production of natural resources around them, whether this be through access to employment opportunities directly through mining and processing or indirectly through services provided to miners, access to knowledge or infrastructure investment projects. All these avenues, assume that LSM companies are incentivised to engage with ASM actors. Some of the recognised motivations for LSM companies to engage include, minimising security risks related to ASM operating in their area, managing reputational risks derived from ASM adverse impacts wrongly attributed to LSM operations overall addressing pressure on voluntary corporate commitments and accountability towards local impacts and community engagement and development (Wall, 2010). However, only by engaging the specific LSM companies, these incentives can be detailed to the context of lithium production in Zimbabwe in order to define an approach to address the identified challenges.

There have been examples of ASM-LSM cooperation in the past, such include Dalny Gold mine, Redwing mine and ZIMASCO and Zimalloys tribute agreements (Mlambo, Masiya and Mamina, 2019). In these instances, artisanal and small-scale miners are allowed to work on portions of mining concessions owned by the LSM company under 'tributary' arrangements (Mlambo, Masiya and Mamina, 2019). This cooperation has included technical and financial support, training, access to unutilised claims, processing of old dumps and use of processing plant facilities (Mlambo, Masiya and Mamina, 2019). Though these tributary arrangements may only be seen as beneficial to artisanal and small-scale miners, large scale companies benefit by having lower costs of production, minimising the conflictual relationship between ASM producers, LSM companies and local communities and given government rebates (Personal communication with stakeholder civil society organisation, June 2023). These arrangements between large-scale companies and artisanal and small-scale miners have worked in the past, but issues surrounding responsibility of environmental management, transparency and power imbalance between actors have meant that the initial benefits realised have not been sustained in the long term (Personal communication with stakeholder civil society organisation, June 2023) (Mlambo, Masiya and Mamina, 2019).

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3.16 Conclusion on ASM country profiles

The ASM sector in the countries analysed continues to mostly operate in the informal economy, alongside other sectors (e.g. agriculture, vendors of diverse goods), but nevertheless contributing to livelihoods and employment, especially in rural economies. The economic opportunity linked to the sector continues to represent one of the key drivers, although not the only one, for individuals to engage in the ASM sector. Most value chains are characterised by the presence of many actors, often operating informally, including foreign individuals and companies (many from Asian countries like China) involved in mineral trade and frequently also in prefinancing of ASM operations. The analysis in most countries highlights how these prefinancing arrangements often tie ASM producers into informal value chains, uncertainty due to ad hoc and short-term informal agreements and, in some instances, to exploitative practices over unfair mineral prices.

While many of the challenges of the ASM sector, including in relation to ECRM production, depend on the specific national and local economy, regulatory environment and geological potential, we also found thematic commonalities across the countries analysed. These include the limited implementation of regulatory frameworks, equitable access to mining rights for ASM producers, access to formal financing mechanisms, rudimentary mining practices, operational limitations because of poor infrastructure (e.g. roads and transport, limited access to energy) and a broad range of environmental and social impacts, such as insufficient waste management, gender-based violence and poor working and health and safety conditions.

The research identified that initiatives and programmes working with ASM communities exist in most of the African countries analysed. These include a mixture of national civil society organisations, international NGOs and development partners, and government led initiatives. These all represent potential partners for further programming and support addressing the ASM sector. In some instances, initiatives are no longer active, but could provide useful learnings while programmes which are currently being implemented represent an opportunity for collaboration, for example to expand the scope of intervention. Many initiatives have focused on gold or gemstones and given the increasing participation of ASM operators in the production of ECRM, at least in some countries, these programmes could be replicated or expanded to address the broader ASM community.

As per the challenges the authors identified several areas which would require further efforts and investment to support the development of the ASM sector for ECRM. Governance and implementation of regulations remains crucial to improve the operating environment of ASM producers and facilitate access to formal markets. It is also important to recognise the strategic role and the socio-economic contribution of the ASM sector which should at the same time be the foundation of policies and support their implementation. This should be complemented by technical assistance including through programmes and services to share knowledge of improved mining practices, geological and baseline studies and facilitate access to equipment through local hubs, procurement strategies and national production. Efforts could also contribute to the transition from rudimentary and artisanal mining practices to small-scale operations. Access to formal finance could also help to address many of the challenges identified in the country profiles. To maximise the potential for long-term sustainability, programmes aiming to facilitate



access to financial services for ASM operators should wherever possible engage formal financial institutions, in particular commercial banks. Very few financial institutions target ASM as a priority market because of the sector's high perceived risk profile. External support could play a useful role to better understand the characteristics and potential of ASM and help to identify the most appropriate financing mechanisms to support the sector. Finally, continuous efforts to promote and support the implementation of responsible mining practices to mitigate the adverse impacts associated with many ASM value chains should remain a priority. These programmes should be based on the good understanding of the specific ECRM supply chain dynamics, to acknowledge and build on existing relations among ASM producers and other actors, the role of the government and other stakeholders, and identify clear incentives for ASM producers to ensure they can engage in more responsible mining practices, based on their most pressing needs. These are likely to include securing a livelihood for themselves and their families, improving mineral production and revenues and increasing options for access to finance to invest in mining activities, as well as other sectors in the local economy, therefore contributing to wider local socio-economic development.



4 Annex

4.1 Authorship of Task 7.4

Country	Authors	Reviewers
Algeria	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Angola	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Benin	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Botswana	Georg Kahle	Selleen Sewpershad, Philip Schütte
Burkina Faso	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Burundi	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Cabo Verde	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Cameroon	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Central African Republic	Georg Kahle	Selleen Sewpershad, Malte Stoltnow, Konstantin Kühnel
Chad	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Comoros	Georg Kahle	Selleen Sewpershad, Malte Stoltnow, Konstantin Kühnel
Cote d'Ivoire	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Dem. Rep. Congo	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Djibouti	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Egypt	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Equatorial Guinea	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Eritrea	Georg Kahle	Selleen Sewpershad, Malte Stoltnow, Konstantin Kühnel
Eswatini (Swaziland)	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Ethiopia	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Gabon	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Gambia	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Ghana	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Guinea	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Guinea-Bissau	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Kenya	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Lesotho	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Liberia	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Libya	Georg Kahle	Selleen Sewpershad, Malte Stoltnow, Konstantin Kühnel
Madagascar	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Malawi	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Mali	Georg Kahle	Selleen Sewpershad, Malte Stoltnow, Konstantin Kühnel

Mauritania	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Mauritius	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Morocco	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Mozambique	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Drobe
Namibia	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Niger	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Nigeria	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Rep. Of the Congo	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Rwanda	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Senegal	Carolina Harbs, Selleen Sewpershad	Philip Schütte
Seychelles	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Sierra Leone	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Somalia	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
South Africa	Carolina Harbs, Selleen Sewpershad	Philip Schütte
South Sudan	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Sudan	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Tanzania	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Togo	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Tunisia	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Uganda	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Western Sahara (Morocco)	Georg Kahle	Selleen Sewpershad, Malte Stoltnow
Zambia	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Philip Schütte
Zimbabwe	Georg Kahle, Selleen Sewpershad	Selleen Sewpershad, Malte Stoltnow
Contributors from other Work Packages		
Country	Work Package	Contributors
Dem. Rep. Congo, Gabon, Madagascar, Morocco, Mozambique, Namibia, Senegal, South Africa, Tanzania, Zimbabwe	WP4 - Report on mining regimes with respect to the ESG objectives	AWIMA
Gabon, Madagascar, Senegal	WP9 - Case Studies, Macroeconomics	BRGM
Madagascar	WP9 - Case Studies, Legal and Tax Regime	BRGM

4.2 Authorship of Task 7.5

Country	Researchers and authors
Burundi	Aline Providence Nkundibiza
Cameroon	Rebecca Pein
Côte d'Ivoire	Nabilah Kesington
DRC	Jose Diemel, Rebecca Pein, Dhanis Rukan, Rosanna Tufo
Ethiopia	Jara Bakx, Josephine Singo
Madagascar	Herizo Tsiverisoa Harimalala, Rebecca Pein, Rosanna Tufo
Morocco	Nabilah Kesington, Rosanna Tufo
Mozambique	Nelson Henrique Candieiro, Rosanna Tufo
Nigeria	Nabilah Kesington
Republic of Congo	Yves Bertran Alvarez
Rwanda	Aline Providence Nkundibiza
Tanzania	Elizabeth Kariuki, Nabilah Kesington,
Uganda	Josephine Singo, Rosanna Tufo
Zambia	Elizabeth Kariuki, Rebecca Pein, Rosanna Tufo
Zimbabwe	Nabilah Kesington, Rosanna Tufo
Internal reviewers	
Task 7.5 lead	Rosanna Tufo,
DRC and Zambia	Holger Grundel
Rwanda	Rachel Brass
External reviewers	
Burundi, Cameroon, Côte d'Ivoire, the Democratic Republic of Congo, Ethiopia, Madagascar, Morocco, Nigeria, Republic of Congo, Tanzania, Zambia and Zimbabwe	Philip Schütte
Mozambique	Malte Drobe
Uganda and Rwanda	Jürgen Vasters