



WHERE IS THE **MONEY?**

*Taxation and the state of Africa Mining
Vision domestication in Ghana (ECOWAS),
Tanzania (EAC) and Zambia (SADC)*



Acknowledgements

POLICY BRIEF 2017:

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Taxation and the state of Africa Mining Vision implementation in Ghana (ECOWAS), Tanzania (EAC) and Zambia (SADC).

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About Us

The Tax Justice Network-Africa (TJN-A) is a Pan-African organisation and a member of the Global Alliance for Tax Justice (GATJ). Our vision is ***'A new Africa where tax justice prevails to contribute to an equitable, inclusive and sustainable development.'***

In line with our mandate, TJN-A's mission is ***'To spearhead tax justice in Africa's development by enabling citizens and institutions to promote equitable tax systems through research, capacity building, and policy influencing.'***

Tax Justice Network Africa presently has 31 members in 16 countries across Africa. The members act as focal points for tax justice work in their countries and often lead national tax platforms that bring together several organisations interested or active in the tax justice campaign.

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Executive Summary

In February 2009, African governments adopted the *Africa Mining Vision*¹ (AMV) as the continental framework to promote mineral resource-based development and structural transformation.

As the strongest expression of Africa's aspiration to shift from 'norm-taker' to 'norm-setter' for its mining sector, the AMV represents a paradigm shift: away from commodity export dependency towards improving Africa's industrial base through enhanced local beneficiation and value addition of minerals. As a strategy, the AMV goes beyond improving mineral regimes as a standalone to establish how mineral sectors can better contribute to local, national and regional economic development.

The reform agenda highlights the critical importance and value of mineral taxes for development and improving fiscal benefits of mining. It is within this context *Tax Justice Network –Africa (TJN-A)*² undertook a three country and Regional Economic Community (RECs) study to measure progress towards domesticating the AMV. Three historically mining countries selected for the case studies are Ghana, a member of

the *Economic Community of West African States (ECOWAS)*³, Tanzania a member of the *East Africa Community (EAC)*⁴ and Zambia a member of the Southern African Development Community (SADC).

The studies found all three countries have made tangible progress towards aligning national laws, systems and frameworks to the Vision. With the exception of West Africa, very little progress has been achieved in the EAC and SADC towards domesticating the continental vision at the sub-regional level. Implementation of the AMV is, thus, slow and uneven. Awareness about the AMV is also very low in all three sub-regions, the studies found.

Introduction

African countries recorded impressive growth rates between 2002-2008 and 2011-2014. At the height of this trend, six of the world's 10 fastest economies were African.⁵ Most of these were commodity dependent economies such as Angola and Ghana, although other factors such as macro-economic stability, improving business environments and greater connectivity facilitated non-commodity growth in countries such as Ethiopia and Rwanda.

³ <http://www.ecowas.int/>

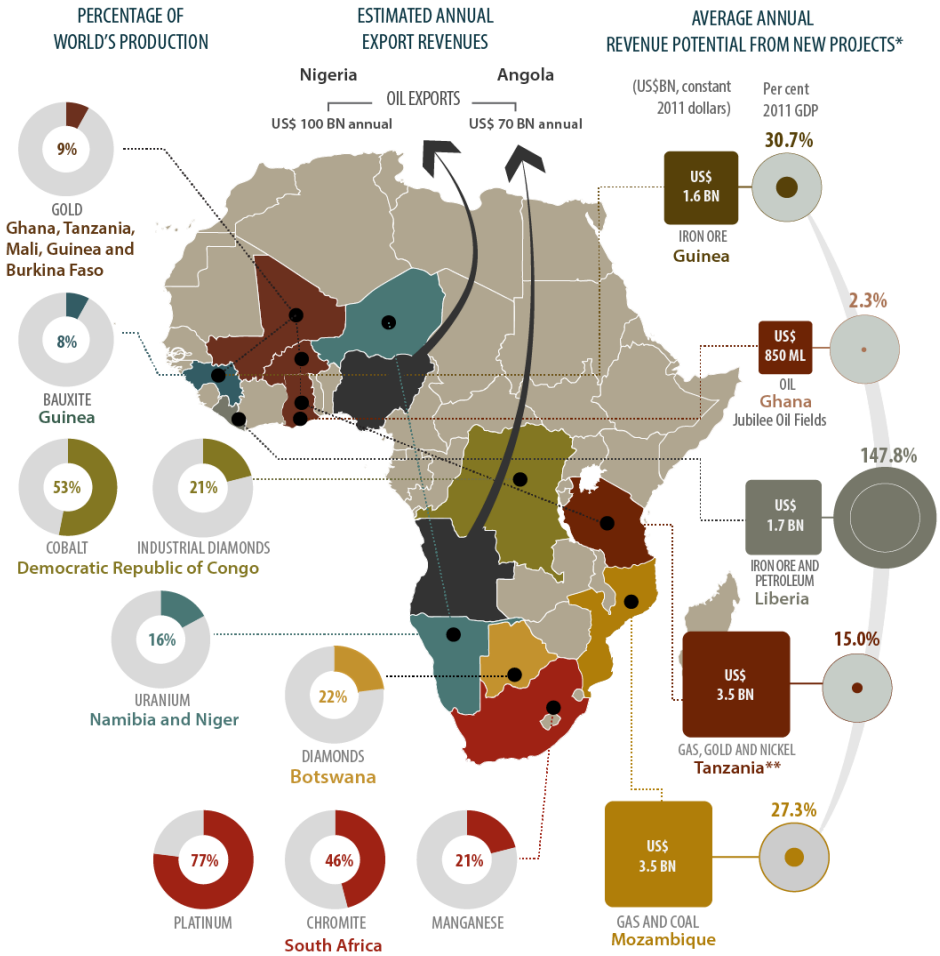
⁴ <http://www.eac.int/>

⁵ Regional Economic Outlook. Sub-Saharan Africa: *Fostering Durable and Inclusive Growth*. Washington, D.C.: International Monetary Fund,

¹ <http://www.africaminingvision.org/reports.html>

² <http://www.taxjusticeafrica.net/en/home/>

MAPPING AFRICA'S MINERAL WEALTH: SELECTED COUNTRIES AND COMMODITIES



Sources:

Raw Materials Data, IntierraRMG, 2013
 World Bank, Africa Pulse October 2012, Volume 6
 IMF, Fiscal Regimes for Extractive Industries: Design and Implementation, 2012
 U.S. Geological Survey, Mineral commodity summaries 2013

*Estimates are intended to show order of magnitude. Revenue projections are highly sensitive to assumptions about prices, phasing of production, and underlying production and capital costs

**Data represents annual revenue at peak production

The economic growth across Africa fuelled the upbeat narrative of an “Africa Rising”. Indeed, the continent ranks in the top two in global reserves of bauxite, chromite, cobalt, industrial diamond, manganese, phosphate rock, platinum-group metals, soda ash, vermiculite and zirconium. Africa sits on 30 per cent of the world’s natural resources, and with two-thirds of coltan deposits – from which electronic microchips are made.⁶

In fact, all of Africa’s top five exports are mineral-related. The continent is the leading producer of platinum and gold. One country, South Africa, stands out as the world’s leading producer of chromite and ferrochromium, gold, palladium, platinum, and vanadium and the world’s second ranked producer of manganese and ferromanganese, rutile, and zircon.⁷

But mining has largely not benefited Africans. The weakness of fiscal regimes and public agencies governing the mining sector in many African countries present difficulties for economies to effectively tax the sector, leading to lower revenues. The problem of low revenues from the mining sector is further exacerbated by the extensive and aggressive use

of tax avoidance, transfer mispricing and anonymous company ownership schemes by many Multinational Corporations (MNCs) to maximise their global profits at the expense of Africa’s socio-economic development.

The Africa Union/Economic Commission for Africa High Level Panel on Illicit Financial Flows from Africa⁸ estimates that US\$50 billion⁹ is lost through Illicit Financial Flows (IFFs) each year, due to mostly aggressive tax planning schemes by MNCs. The Panel further observed that the extractive industry is the largest channel of illicit transfer of financial resources out of the continent.

In addition, there has been widespread questioning and disquiet among the citizenry throughout the continent over the manner, specifically the mining regime, in which commonly owned mineral resources are developed: how the benefits and burdens associated with the extraction of these resources are shared among key stakeholders. This was borne out of persistent struggles by ordinary people and especially those in mining affected

6 UNECA (2015), Controlling Africa’s natural resources needs knowledge and good governance <http://www.uneca.org/stories/controlling-africa%E2%80%99s-natural-resources-needs-knowledge-and-good-governance>
7 African Development Bank (2007), Ch 3, pp. 63 [https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/\(D\)%20AfricanBank%202007%20Ch3.pdf](https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/(D)%20AfricanBank%202007%20Ch3.pdf)

8 African leaders also adopted a “special declaration” at their 24th summit as an expression of their resolve to tackle the huge scale of illicit financial flows from the continent to address Africa’s under-development. The AU High Level Panel on Illicit Financial Flows from Africa was chaired by the former South African President, Thabo Mbeki.

9 In real terms, the US\$50 billion lost annually to could fund the construction of 500 modern hospitals across Africa. This breaks down to about nine (9) hospitals in each of Africa’s 54 states in just one year. Availability of such health infrastructure could literally transform the quality of life of the average Africa.

communities against challenges they encounter as a result of widespread mining activities occasioned by liberalised regimes adopted in the 1980s and 1990s as part of Structural Adjustment Programmes (SAPs).

In response to the continued loss of benefits from the sector that African governments adopted the **Africa Mining Vision** in 2009. The Vision's ultimate strategic goal is to use Africa's mineral resources to promote equitable and broad-based socio-economic development throughout the continent¹⁰.

The AMV has nine pillars covering the entire mineral value chain. One of the nine pillars is the **Fiscal Regime and Revenue Management**¹¹ which is geared towards revenue from mining and the efficient management of such revenues. It is against this backdrop that seven years after African governments adopted the AMV, Tax Justice Network-Africa (TJN-A) undertook these three country and Regional Economic Community (RECs)

¹⁰ As the product of African inter-governmental process, it signals a concern by African states to submit to a collectively self-defined regime, rather than externally determined frameworks. Hence, the AMV's goal is to create a "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". The AMV, thus, signals a paradigm shift in the role of minerals in African economies. The Vision and its Action Plan embody key reform demands that CSOs and various social constituencies had been making in respect of the mining regimes prevailing across Africa and the overall direction of national development strategies.

¹¹ The other clusters/work streams are: Geological and mineral information systems; building human and institutional systems; artisanal and small-scale mining; mineral sector governance; research and development; linkages, investment and diversification; environment and social issues; and mobilising mining and infrastructure development.

studies on the **Fiscal Regime and Revenue Management** pillar.

The case studies measured progress made at domesticating the AMV's fiscal regime and revenue management pillar in Ghana, Tanzania and Zambia and their respective economic communities – i.e. ECOWAS, EAC and SADC.

Methodology

The three country and REC studies assessed the extent to which Ghana, Tanzania and Zambia and their respective REC have domesticated key provisions¹² of the AMV on **fiscal regime and revenue management**. The study also identified existing gaps insofar as the implementation of the key AMV strategies is concerned. Similarly, the study aimed to develop a scorecard measuring the implementation of AMV fiscal regime and revenue management strategies by these countries and RECs.

The AMV Action Plan, adopted in 2011, was used as a yardstick in assessing the extent and gaps in AMV implementation by Ghana, Tanzania and Zambia. Data used in the assessments were gathered through literature review of policy documents,

¹² Key features of AMV-compliant fiscal regime and revenue management framework include the following: obtain or collect 'adequate' share of mineral revenues; utilise in an 'equitable' manner; the fiscal regime and revenue management framework must be 'efficient and transparent'; and the framework must also catalyse 'social, physical and knowledge infrastructure development'.

legislation and statistics on revenue management and fiscal regime. The studies also relied on primary data from key stakeholders through interviews. Fieldwork generated data and information using a number of complementary methods.

The studies were largely restricted to the AMV Action Plan when it comes to comparison. This means that comparing the ideological orientation of the AMV with that of the countries or RECs was not factored in as these are generally subjective measures.

Thus, even though there are political economy issues inherent in the introduction of the AMV, the studies were restricted to measurable indicators as specified in the AMV Action Plan. Political economy issues such as whether market liberalisation and foreign capital are good or not for the countries were not part of the studies' focus, even though these could be the reason why some measures were not introduced.

The studies also generated scorecards, which measure on a scale ranging from zero to five (*where zero refers the weakest level of compliance and five means the strongest level of compliance with the AMV*)¹³, the extent to which the regimes in Ghana,

Tanzania and Zambia are compliant with AMV provisions.

¹³ Five (5) means fully compliant with the AMV and zero (0) refers to least aligned to the AMV.

Findings

The findings below cover both country and regional economic communities.

Country level findings

- The studies found that all three countries have put in place some mining fiscal regimes and systems to ensure they improve their national capacity to physically **audit mineral production and exports**. This is, generally, implemented by well-trained inspectors. This is consistent with the AMV aspirations.
- Secondly, all three countries have also instituted programmes intended to build **capacity** and enhance skills of public officials in negotiating fiscal regimes and effectively monitoring compliance with taxation laws. Tanzania, in particular, has benefited from capacity building programmes that are directly related to the AMV as some of these were actually coordinated by the African Minerals Development Centre (AMDC), an institution established under the African Union Commission to spearhead AMV compliance.
- Since July 2010, Tanzania has instituted “**ring fencing**” in the country’s mining sector, where

losses incurred in one mine cannot be used to offset profits of another mine, even if both mines are part of the same legal entity. The purpose of this measure is to maximise taxes payable by mining companies. This can also help a country to measure the benefits accruing from a specific mine.

- Meanwhile, the studies also found that **thin capitalisation**, a concept which refers to the situation where due to special relationship between lender and borrower, usually debt is higher than what would normally be expected, remains a major challenge in the three countries and sub-regions. Mining companies report most of their investment as debt (rather than equity) and thus make substantial provision (of mining revenues) to service debts. This eventually result in lower profits, if any, being declared for taxation purposes.
- The studies found all three countries have signed a number of **Bilateral Investment Treaties** (BITs) with a host of countries. However, **these treaties are riddled with loopholes** which need to be addressed to ensure that Ghana, Tanzania and Zambia realise their full potential in mobilising revenue as per the AMV objectives.
- Another significant challenge faced by the three economies is

developing **systems to evaluate components of their tax regimes safeguard against leakages, losses and tax avoidance and evasion.**

These countries continue to lose significant resources through IFFs, the studies found. Thus, the AMV recommendations to African countries to put in place adequate systems to curb IFFs are yet to be fully adopted.

- Under the **Revenue Use and Management**, the AMV enjoins African countries invest income from mining in socio-economic activities and projects that support broad-based sustainable development as well as make provision for future generations and post-mining economies. However, the studies found Zambia is yet to put in place strategies for investing windfall earnings and mineral rent into special funds such a Sovereign Wealth Funds (SWF) or Stabilisation and Infrastructure Funds. Ghana and Tanzania have fully functional SWFs in oil and gas sectors. In addition to the SWF, Ghana has established a Stabilisation Fund, used mostly, for infrastructure purposes. However, there is no such sovereign and stabilisation funds for minerals, which are also finite resources like oil and gas. While there are other methods of contributing to the future welfare of citizens and

future generations that could be taking place, sovereign and stabilisation funds are yardsticks used by the AMV.

- Zambia has also failed to ensure, through policy and legislation, that there are some rent **distribution systems for allocating part of mineral revenue to communities near mining operations and local authorities** as the AMV recommends. Both Ghana and Tanzania have, however, tried to ensure that such a system is in place, through a levy in Tanzania and a share of the royalties in Ghana. Thus, Ghana and Tanzania have taken many more steps towards meeting the AMV's aspirations.

Regional level findings

There have not been many achievements as far as domesticating the AMV in the three RECs is concerned. The AMV expects action in three critical areas at the regional level. The first of these is a review of the fiscal environment to come up with guidelines for optimising mining sector revenue. The second is mineral taxation guidelines for implementation at the RECs and national levels (these have also not been developed). Thirdly, the AMV urges typical

financial models for mineral projects for member states to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels. None of the three sub-regions examined has managed to fulfil this provision in the AMV. The fourth expectation under the AMV is for RECs to compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national levels. Currently there are efforts being made along these lines, although these are yet to be finalised.

- West African countries have since the adoption of AMV developed and adopted the ECOWAS Mining Directive and in 2012 the ECOWAS Minerals Development Policy (along with its implementation plan, which is similar to the AMV's Action Plan). In relation to fiscal regimes, both the AMV and the ECOWAS Minerals Development Policy (EMDP) carry similar aspirations and expectations. Like the AMV, the EMDP envisions the exploitation of minerals as a key component of an industrialisation driven structural transformation strategy of the ECOWAS region

A host of countries in all the three

RECs have **undertaken reviews of their fiscal regimes and mining laws and frameworks**. For example, in West Africa major mining economies including Burkina Faso¹⁴, Mali, Guinea, Liberia and Sierra Leone have undertaken reviews to improve their ability to raise more resources from their mineral wealth. But both SADC and EAC currently do not have strategies that can be regarded as meeting the AMV aspirations.

Conclusion and Recommendations

Fiscal regimes and to a lesser extent revenue management frameworks in Ghana, Tanzania and Zambia have all changed remarkably following the adoption of the AMV (and the ECOWAS Mining Directive – in the case of Ghana).

The three countries have seen a significant rise in tax revenues since the review of fiscal regimes in mining laws post-2009. While the increases in tax revenues mobilised could be due to other factors, the fact that these

¹⁴ In Burkina Faso, a new mining code was adopted in 2015. This new code abolished a previous 10 per cent tax break on profits made by mining companies allowing tax collection agencies to take the full amount of 27.5% per cent. Further, companies with industrial mining license will pay 1 per cent of monthly turnover excluding taxes or 1 per cent of the value of extracted minerals into a local development fund and the government will add 20 per cent of its mining revenue collections into the fund. This puts Burkina Faso ahead of other countries in the region with regards to the development of a rent distribution system that allocates substantial part of mineral revenue to communities near mining areas and local authorities as required by the AMV. The new law has also introduced a 20 per cent Capital Gains Tax on the transfer of mining titles. However, transfers of licenses to local companies are exempt from the CGT.

coincided with the period when more tax reforms in the mining sector were introduced point to the impact of the tax measures. This is consistent with the AMV Action Plan of reviewing mineral regimes to optimise revenues.

However the numerous BITs and DTAs riddled with gaps need to be revisited to ensure that these mineral endowed countries realise their full potential to optimally raise revenue as per the AMV objectives to fund broad-based development.

Finally, the AMV is suffering from poor visibility as many citizens, citizen groups and public officials are not even aware of efforts by the African Union, Economic Commission for Africa and some regional communities are doing to promote progressive reforms of mining regimes across the continent.

Recommendations

National recommendations

To enhance compliance with the AMV, the studies make the following recommendations at the country and regional levels.

- **Enhance capacity of state agencies**

State departments and agencies must be oriented (by regional and continental bodies) to view the

state machinery as developmental vehicle to support AMV. Further, there is need to increase their capacity (personnel, expertise and technology) to enable them to better monitor, audit and verify mining sector production data and revenues. Capacity building should be structured in a way that takes into account the structural shift in the mining regime and frameworks as envisaged by the AMV, where resources need to benefit the country even more.

- **AMDC and public awareness**

Continental agencies responsible for the coordination of AMV implementation activities, in particular the African Minerals Development Centre (AMDC), must seriously consider supporting public awareness engagements and campaigns to raise the pressure on state agencies as well as respond to threats by mining companies. This must be well planned and executed to ensure that all key social and economic constituencies in each country and across the continent are engaged in an on-going process.

Citizens and citizen groups in these countries must increase their level of awareness of the AMV agenda and further collaborate to establish influential platforms to support the implementation of the AMV.

All three countries should continue to utilise the AMDC in other areas on mining sector revenue, including the capacity to negotiate mineral concessions, as well as, the best regimes with respect to BITS and DTAs to ensure that they attain optimal mining regimes as envisaged under the AMV.

- **DTA**

Double Tax Agreements already signed should be revisited to prevent further revenue leakages. On the other hand, any new DTAs should be designed to ensure that tax liability in these countries are not unnecessarily eliminated as the mining resources are being extracted. Ghana, Tanzania and Zambia need to develop robust systems to curb Illicit Financial Flows from their mining sectors as per the AMV recommendations. These countries are also encouraged not to ratify any DTA or BITS if they are not in line with AMV aspirations.

- **Sovereign Wealth Fund**

Ghana and Tanzania have Sovereign Wealth Funds for the oil and gas sector but none for minerals. The rationale for the oil and gas sector is equally applicable to the minerals. There is, therefore, a need for these countries including Zambia to establish sovereign wealth funds for key minerals and metals to ensure that future generations can also

benefit from the resources even after they are depleted.

Zambia needs to tighten its policy and legislations to ensure that the rent distribution system allocates part of mineral revenue to communities near mining operations/communities affected by mining. Finally, all three countries, require additional mechanisms to ensure that mining sector revenue management capacities are enhanced.

- **Thin Capitalisation**

African countries need to design specific rules and strengthen where these rules already exist to discourage *thin capitalisation* by ensuring that debt-to-equity ratio meet a specific ratio in order for the company to be allowed to deduct interest expenses. The rule will help minimise the instance of losing revenues through thin capitalisation.

Regional level recommendations

At the regional level, there is need for a review of the fiscal environment to come up with guidelines for optimising mining sector revenue. SADC Secretariat should also develop mineral taxation guidelines for implementation at the national level.

Typical models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels as per the AMV recommendations.

Lastly, all three sub-regions EAC, ECOWAS and SADC, need to enhance efforts and compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national levels.



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