FISCAL POLICY NOTES ON MINING

IN LIBERIA, GHANA, UGANDA AND ZAMBIA

An Africa Mining Vision Minerals Governance Framework Assessment

January 2023

TAX JUSTICE NETWORK AFRICA

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This report should be cited as follows: Mtwalo Msoni and Mukupa Nsenduluka, "Fiscal Policy Notes on Mining in Liberia, Ghana, Uganda, and Zambia, Tax Justice Network Africa (2023).

The report reflects validated findings of research data compiled before September 2022.

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Acknowledgements

This report was produced by Tax Justice Network Africa and the Stop the Bleeding Campaign with support from the Oxfam Pan Africa Program. The authors wish to recognize the editorial reviews by Mr. Felix Otiato and Ms. Bezawit Mekonnen.

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ACRONYMS

AEOI	Automatic Exchange of Information
AG	Auditor General
AMGF	African Minerals Governance Framework
AMV	African Mining Vision
APT	Additional Profit Tax
ARINEA	Asset Recovery Inter-Agency Network for East Africa
ARINSA	Asset Recovery Inter-Agency Network for Southern Africa
ASYCUDA	Automated System for Customs Data
ATAF	African Tax Administrative Forum
AUCPCC	African Union Convention on Preventing and Combating Corruption
BEPS	Base Erosion and Profit Shifting
BIT	Bilateral Investment Treaty
BLEU	Belgium Luxemburg Economic Union
BVD	Bureau Van Dijk
CGT	Capital Gains Tax
CIT	Corporate Income Tax
CMV	Country Mining Vision
COMESA	Common Market for Eastern and Southern Africa
DGSM	Directorate of Geological Surveys and Mines
DRMS	Domestic Revenue Mobilization Strategy
DTA	Double Tax Agreement
EAAACA	East African Association of Anti-Corruption Authorities
EBITDA	Earnings Before Interest Tax Depreciation and Amortization
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EOIR	Exchange of Information on Request
ESAAMLG	Eastern and Southern Africa Anti-Money Laundering Group
ETR	Effective Tax Rate
FQM	First Quantum Minerals
FY	Fiscal Year
GDP	Gross Domestic Product
GEITI	Ghana Extractive Industries Transparency Initiative
GHC	Ghana Cedi
GRA	Ghana Revenue Authority
IA	Investment Agreements
ICAR	International Centre for Asset Recovery
IFF	Illicit Financial Flows

IGF	Inter-Governmental Forum
IMF	International Monitory Fund
ITAB	Independent Tax Appeals Board
LEITI	Liberia Extractive Industries Transparency Initiative
LME	London Metal Exchange
LRA	Liberia Revenue Authority
MDA	Mineral Development Agreements
MMDA	Municipal District Assemblies
MNE	Multinational Enterprise
MVCMP	Mineral Value Chain Monitoring Project
NACAP	National Anti-Corruption Action Plan
NEMA	National Environmental Management Agency
OECD	Organization for Economic Co-operation and Development
PACRA	Patents and Companies Registration Agency
PAYE	Pay as You Earn
PIT	Personal Income Tax
PPAD	Pro-Poor Agenda for Prosperity
PTT	Property Transfer Tax
ROI	Return on Investment
RRT	Resource Rent Tax
SAFAC	Southern African Forum against Corruption
TADAT	Tax Administrative Diagnostic Assessment Tool
TJNA	Tax Justice Network Africa
UAE	United Arab Emirates
UGX	Uganda Shilling
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
URA	Uganda Revenue Authority
VAT	Value Added Tax
VPT	Variable Profit Tax
WT	Windfall Tax
ZEITI	Zambia Extractive Industries Transparency Initiative
ZRA	Zambia Revenue Authority

A. INTRODUCTION

There is no doubt that the value of Africa's subsoil assets far exceeds the cost of the continent's robust development aspirations[1], as outlined in Agenda 2063. While there remains low intensity of exploration of subsoil assets, known reserves are about $45,000 per square kilometer[2]. However, translating mineral wealth into overall economic development and enriching the lives of citizens remains a paradox for many resource-rich African countries.[3]

The African Mining Vision (AMV) was adopted by African Heads of State in 2009 to provide solutions to the paradox of translating mineral wealth into economic development. A Country Mining Vision (CMV) Guidebook was developed in 2014 to further guide countries on how to align their policy, legal and regulatory frameworks to the provisions of the AMV. Further, an African Minerals Resource Governance Framework (AMGF) was formulated in 2017 to plug the glaring gaps in monitoring the implementation of the AMV and the CMV.

As identified in the AMGF and with regard to mineral resource taxation and revenue management, two key challenges face African countries. First, how to design and balance the revenue-sharing arrangements between the host country and investors. Secondly, how to collect and manage the revenue for optimal public benefit. The AMGF provides 48 guiding questions that help to assess fiscal regime design and a further 48 guiding questions to help countries assess revenue management. This policy note appraises the 48 assessment questions for fiscal regime design in Liberia, Uganda, Ghana, and Zambia. It further draws from publicly available data in the four countries in 2022.

This policy note assesses the different fiscal regimes based on the AMGF framework using a traffic light evaluation system, in which colour codes are assigned to different levels of progress made by the country on a particular assessment question. Four colour codes are used to signify progress made, with red signifying insignificant progress, yellow signifying slight progress, light green signifying satisfactory progress, and dark green signifying extremely satisfactory progress. The key below illustrates the colour code used and their accompanying interpretations. The colour codes represent the authors' interpretation of progress made on each of the assessments based

[1] African Union, Agenda 2063: The Africa We Want
[2] Collier and Laroche 2015, Harnessing Natural Resources for Inclusive Growth, pp2. Data interpreted from World Bank, The Changing Wealth of Nations dataset
[3] Economic Commission for Africa (2018) African Minerals Governance Framework

on data made available from the country studies as at September 2022. As such, codes are subject to adjustments as legislation and policies change and when some of the provisions in the current law are implemented.

Insignificant Progress	
Slight Progress	
Satisfactory Progress	
Extremely Satisfactory Progress	

B. ASSESSMENT OF COUNTRIES FISCAL REGIMES AGAINST THE AFRICA MINERALS GOVERNANCE FRAMEWORK (AMGF)

i) Assessment of Fiscal Regimes

No.	Table 1. Assessment questions - fiscal regime	Liberia	Uganda	Zambia	Ghana
1	What are the policy objectives of the country's fiscal regime?				
2	What are the policy objectives of the country's fiscal regime for the mineral sector?				
3	Do the legislation and regulations provide for the mineral sector's fiscal regime?				
4&6	What are the mechanisms or tools of the mineral sector's fiscal regime?				
5	How flexible and progressive is the mineral sector's fiscal regime?				

1. **The assessment found that in all four countries, fiscal and policy objectives center around attempting to reduce fiscal deficits to sustainable levels while supporting Domestic Revenue Mobilization (DRM) for growth. All these objectives are extremely satisfactory and in line with the provisions of the AMV. The aspirations of the AMV for fiscal regimes is for a country to balance between ensuring an optimal share of revenues while being able to return investments in the extractive sector.**

   a. In Liberia, fiscal policy, as outlined in the Pro-Poor Agenda for Prosperity and Development (PPAD), aims at raising domestic revenue from slightly more than 12% to between 15.2% and possibly 18% of Gross Domestic Product (GDP) without the economic distortions that can undesirably effect stabilization and growth.[4]

   b. In Uganda, the Domestic Revenue Mobilisation Strategy (DRMS) provides the overall policy objective of the country's fiscal regime. It aims at reducing debt reliance and

[4] Republic of Liberia, 2018, Pro-Poor Agenda for Prosperity and Development (PAPD) pp94

keeping debt at sustainable levels[5], with a sharp focus on having the country more responsible for its development. The core policy objective is to "improve revenue collection, lifting Uganda's tax-to-GDP ratio to between 16%-18%"[6]

c. In Zambia, the "New Dawn Government", which took office in August 2021, has a fiscal policy agenda of progressively reducing fiscal deficits to sustainable levels while supporting growth that generates jobs and reduces poverty.[7] The objective is to make domestic revenue at 21% of the GDP.[8]

d. Ghana's fiscal regime is based on the broad fiscal policy objective of restoring and sustaining macroeconomic stability with a focus on fiscal consolidation and debt sustainability. The Ghanian Government targets a debt-to-GDP ratio of 20% by 2023.[9]

2. All four countries assessed seek to optimize revenue from the extractive sector while attracting investments, which is extremely satisfactory. However, Zambia does not explicitly state this in its Mines and Minerals Development Policy of 2013, nor does it include specific fiscal policy direction for extractives in its policy framework.

a. Liberia's Mineral Policy of 2010, which stands out as one that domesticates the aspirations of the AMV includes in it, aspirations for a mining fiscal regime as quoted; *"the Government of Liberia recognizes the need to devise a fiscal regime that assures the country of fair value for its mineral resources while offering sufficient incentives that will ensure fair and reasonable return to mining investors. Such a regime should allow the investor to recover exploration and development outlays in a timely manner, achieve an acceptable rate of return commensurate with the risk and meet financial obligations to creditors and suppliers. The government shall institute a well-designed fiscal regime that encourages investment, optimizes economic linkages, exemplifies transparency, and captures reasonable and sustained revenue for the Liberian people*."[10] Liberia's aspirations for the natural resource sector fiscal policy are also stated in its 2018-2022 DRMS. The plan states that "*Liberia will endeavour to reap more revenue from our natural resources sector for the benefit of Liberians while encouraging private investment."*

b. In Uganda, the DRMS aims "*to bolster the taxation of the extractives sector to meet the changing conditions in the mining industry and address the potentially complementary interests of government and business.*" Uganda's Mining and Minerals Policy of 2018 makes a direct reference to the implementation of the AMV. In terms of DRM, the

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[5] Republic of Uganda, July 2020, National Planning Authority Third National Development Plan(NDPIII) 2020/21-2024/2025

[6] Uganda Domestic Revenue Mobilization Strategy, 2019/20-2023/24 at. Pg 35

[7] Republic of Zambia, 2022, Budget speech, pp 32.

[8] Ibid pg.32.

[9] Government of Ghana 2021, The Budget Statement and Economic Policy of the Government of Ghana for the 2022 Financial Year

[10] Republic of Liberia 2010 Mineral Policy of Liberia see page

policy strategy is to, among others, "*develop and implement a stable, transparent, predictable and competitive fiscal regime to optimize collection and management of mineral revenues.*" [11]

c. At the time of the data collection, Zambia's Minerals Development Policy of 2013 did not include provisions on the country's policy direction on mining fiscal framework. Parliamentary statements justifying tax reform changes in 2015[12] and 2019 suggest that government seeks an effective fiscal regime for the mining sector to ensure that Zambians benefit from the mineral wealth the country is richly endowed with.[13]

d. In Ghana, The Minerals and Mining Policy of 2014 has a section on fiscal policy for the mining sector, which seeks to "*optimize the fiscal benefits generated by the country's non-renewable resources*"[14]. Though there is no further elaboration of what "optimal fiscal benefits" in these circumstances mean, the policy quickly conditioned this objective upon seeking "*a fair balance between generating revenues and attracting sustainable investment in the mining sector.*" It further recognizes "*the particular risks and economic characteristics of mineral operations*" as it seeks to capture "*an adequate share of the value of the mineral resource for the country.*" [15]

3. The assessment showed that different pieces of legislation and regulations provide for the taxation of the mining sector. In all four countries assessed, key provisions are detailed in the legal framework responsible for Mining and Minerals Development and legal frameworks responsible for the taxation of revenue and income. However, some of the fiscal terms are specified in Mining Development Agreements (MDAs) in Liberia[16] and Investment Agreements (IAs) in Ghana. [17]

a. In Liberia, key legal frameworks providing for the mineral sector's fiscal regime are the Mines and Minerals Law of 2000, Liberia Revenue Code of 2000, as amended in 2011.[18] Regulations governing exploration under a mineral exploration license[19] fiscal terms are also specified in MDAs.

b. In Uganda, the fiscal regime applicable to mining is found in the Mining Act of 2003, The Mining Amendment Act, 2021[20], and the regulations made thereunder. In addition to this, the mining sector is subject to the Income Tax Act cap. 340, Value Added Tax cap. 349, and the Public Finance Management Act, 2015.

c. In Zambia, the fiscal regime of the mining sector is mainly guided by the Mines and Minerals Development Act of 2015 and its subsequent amendment of 2016, The Mines

[11] Mining and Mineral Policy for Uganda 2018
[12] As reported by Lusaka times
[13] Republic of Zambia 2018 , Budget Speech 2019
[14] Republic of Ghana 2014, Minerals and Mining Policy of Ghana pp. 37 available at
[15] Ibid pp. 37
[16] Liberia Extractive Industries Transparency Initiative 2021 EITI Report FY 2018/2019 pp.85
[17] Republic of Ghana Ministry of Finance 2019, GEITI report 2017& 2018
[18] Republic of Liberia, 2011, Amended Liberia Revenue Code
[19] Republic of Liberia, 2010, Liberia Exploration Regulations
[20] Republic of Uganda 2021, Mining Amendment Act of 2021

and Minerals regulation of 2016, Income Tax Act (Chapter 323 of the laws of Zambia), Value Added Tax Act (Chapter 331 of the laws of Zambia) and Property Transfer Act.[21]

d. In Ghana, key legal frameworks include Minerals and Mining Act, 2006 (Act 703), Minerals and Mining (Amendment) Act 2015 (Act 900), Minerals and Mining (Licensing) Regulations 2012 (L.I 2176), Minerals and Mining (Ground Rent) Regulations 2018 (L.I 2357), The Internal Revenue Act 2000 (Act 592) – repealed, and the Income Tax Act 2015 (Act 896).[22] Fiscal terms are also specified in individual IAs.

4. **All four countries make use of concessionary systems that are a mix of royalties, taxes, state participation, and fees as tools for the mineral sector fiscal regime. In all four countries, these are almost exhaustive of the direct and indirect taxes for the mining sector listed in the CMV Guidebook [23]. It is important to note that only Zambia, of the four countries included in the assessment, does not have a Capital Gains Tax (CGT). Considering the potential of mineral asset appreciation, CGT is a must-have.**

    a. Liberia's fiscal tools for the mining sector include Corporate Income tax (CIT), Withholding Taxes on (interest, dividends, and royalties), CGT, Pay as You Earn (PAYE), Mineral Royalties, Surface Rentals, and License Fee Application and Processing Fees.

    b. In Uganda, the range of revenue-generating fiscal tools applicable to the extractive industries include CIT, withholding taxes on dividends, interest and professional fees, royalties, CGT, several forms of fees, and other non-tax revenues such as rents and leases.[24]

    c. In Zambia, revenue streams include license/application fees, area charges, export permit fees, payments to environmental protection fund, Personal Income Tax (PIT), CIT, Withholding Taxes, Property Transfer Tax (PPT), Export Levy, Import Value Added Tax (VAT), Import/Customs Duty, Excise Duty on Electricity, Property Rates, Annual Business Fees, Ground Rent and Dividends.[25] Zambia, however, doesn't have a CGT.

    d. In Ghana, mineral revenue streams include mineral right fees, royalty, CIT, withholding tax, PAYE, VAT, import duty, CGT and stamp duty, customs processing fee, destination inspection fee, management and technology services, registration fees, gift tax, dividend tax, interest tax, commission tax, rent tax, penalties, airport tax, environmental permitting fees and processing fees, dividends, ground rents, and property rates.

[21] Zambia Extractive Industries Transparency Initiative 2021, Zambia EITI Report 2019 https://eiti.org/sites/default/files/attachments/zeiti_report_2019.pdf/

[22] Ministry of Finance 2019, Ghana Extractive Industries Transparency Initiative (GHEITI) available at https://eiti.org/sites/default/files/attachments/final_2017_and_2018_mining_reportab.pdf/

[23] African Minerals Development Centre, 2014, Country Mining Vision Guidebook pp. 59

[24] Income Tax Act (as amended), Excise Duty Act 2014, Stamp Duty Act 2014, Value Added Tax Cap 2015, Mining Act 2003, Mining Regulations 2011 (as amended).

[25] Zambia Extractive Industries Transparency Initiative 2021, Zambia EITI Report 2019 https://eiti.org/sites/default/files/attachments/zeiti_report_2019.pdf/ pp83

5. **Considering the mix of the fiscal policy instruments in place (predominantly production and profit taxes), it can be deduced that fiscal regimes in all four countries have a limited scope of accounting for changing and varying circumstances (flexibility). In the four countries, flexibility is only there as far as mineral royalty liabilities are a function of mineral production and mineral sales. Only Zambia and Ghana provide further flexibility in the form of royalty payments for copper mining and for some gold projects with stabilization clauses in their Investment Agreements respectively.**

   Only the Liberian tax regime, to some extent, allows for an increasing government share of profits as the profitability of a mining project increases (progressivity) through a Surtax. However, although this is provided for, there remain huge challenges with the collection of profit-based taxes (see 8a). Zambia and Ghana no longer have forms of surtax in resource rent/excess profit taxes.

   a. In Liberia, as stated in Section 704 of the Liberia Revenue Code as in Amended 2010, royalties are a fixed rate payment at the time of shipment on the commercial value of mineral at 4.5%, 3%, and 5% for iron ore, gold and other base metals and commercial diamonds respectively. Liberia's fiscal regime provides for a surtax on income from High-Yield Projects as defined in Sections 730 to 732 of the Liberia Revenue Code. Specifically, positive net accumulated cash flow is taxed at 20% and deductible from gross income for the tax period. This applies when the pre-tax rate of return/yield is 22.5%. However, it is important to note that in some resource contracts, no surtax is applicable.

   b. In Uganda, Section 98 (1) of the Mining Act, 2003 stipulates that all minerals obtained or mined while prospecting, exploration, mining, or mineral beneficiation operations shall be subject to the payment of royalties. The payment constitutes a percentage of the gross value of the minerals and is based on the latest price on the London Metal Exchange (LME) or any other exchange or market known to the Commissioner, DGSM.[26] Secondly, the rates of royalties applicable vary from one mineral commodity to another.[27] Precious Metals/Stone and Base Metals attract a royalty payment of 5%, while coal, peat, vermiculite, kaolin, limestone, gypsum, marble, granite, pozzolanic-materials and salt have a fixed rate per tonne.

   c. In Zambia, while royalty rates are fixed at 8% for Cobalt, 5% for Base Metals and Industrial Minerals, and 6% for Precious Minerals/Gemstones, it is noted that royalty rates for copper (the dominantly mined metal) is charged at a sliding scale of 5.5% to 10%, depending on the price of the commodity on the LME. This allows for more flexibility to changing circumstances in the extractive sector. With regard to progressivity, there have been on-and-off attempts (2008-2015 and 2015-2016) to implement a Variable Profits Tax (VPT). In both attempts, the tax collected zero revenue and was therefore scrapped. Similarly, in 2008 Zambia imposed a Windfall Tax (WT) that was removed from subsequent regimes. The windfall tax worked by changing the tax rate as the copper price changed, attempting to capture some of the windfall profits. Its tax base was the sales revenue of the company.

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[26] Regulation 72, Mining Regulations 2004 (as amended) by Mining (Amendment) Regulations, S I No. 64 of 2011
[27] Third Schedule Mining Regulations 2004 (as amended) by Mining (Amendment) Regulations, S I No. 64 of 2011

d. Mineral royalties in Ghana are fixed at 5% of the gross market value of mineral sales (except for some companies that have stability clauses locked in IAs). For companies with stability/IAs, the royalty rate is a sliding scale of 3% to 5% on gross revenue based on gold prices. These investment agreements carry varying sliding scales. For example, in the event of the gold price reaching $1,750, Goldfields would pay royalties at 4.0%, AngloGold Ashanti would pay at 4.5%, whilst others would pay 5%.[28] Additional Profit taxes were abolished from the law with the passing of Act 703 in 2006. In 2012, attempts were made to re-introduce a windfall tax of 10% in the mining sector, but the mining industry resisted this.

On fiscal regime, it's recommended that:

- Zambia considers defining policy objectives for the mining sector explicitly in its development plans and Mines and Minerals Development Policy, which is overdue for a review process. It is recommended that policy intentions of the fiscal regime governing mining be included in the formulation of the new policy.
- Zambia considers adding a CGT to its tax instruments to benefit from definite capital gains on mining assets.
- Uganda, Zambia, and Ghana consider excess profit taxes as ways to guarantee progressivity. In place of this, well-designed sliding royalties be considered and extended to more commodities. If carefully and well implemented, a sliding royalty like the one used for copper in Zambia can be a proxy for flexibility and progressivity as envisaged in the AMV. However, technically, increasing royalty rates increases mining cut-off grades.[29]

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[28] Republic of Ghana Ministry of Finance 2019, GEITI report 2017 & 2018 pp.20

[29] Banda and Besa 2019 Cut-off grade optimisation encompassing mineral royalty

ii) Assessment of Fiscal Regime and Revenue Maximization

Table 2. Assessment questions - fiscal regime

No	Table 2. Assessment questions - fiscal regime	Liberia	Uganda	Zambia	Ghana
6	What are the various revenue collection streams in the mineral sector (e.g., tax and royalties)?	Included in assessment of 4.			
7	Do these streams allow for optimal and maximum revenue collection?				
8	What are the gaps in the fiscal instruments that undermine revenue maximization?				
9	What are the institutionalized processes, procedures, and policy measures to identify and tackle the gaps in the fiscal instruments that undermine revenue maximization?				
10	Are there any ring-fencing provisions for tax liabilities?				

6. Responses to this question have been included in the assessment of question 4.

7. From the AMV perspective, the need to rethink the combination of tax tools for the mining sector and their performance was born out of African governments' inability to collect significant additional revenue and resource rents in mineral commodity booms. Essentially, the Effective Tax Rate (ETR) did not change significantly, even with high commodity prices. With regards to revenue during commodity price booms, although the royalties and CIT are functions of price, the Country Mining Vision Guidebook guides countries to consider the introduction of a Resource Rent Tax (RRT) or Additional Profit Tax (APT) based on Return on Investment (ROI) that is greater than the ROI that is needed to attract investment into the economy. These are guided to be more progressive instruments for purposes of optimization of revenue. [30]

The assessment finds that only Liberia has further legislated a surtax, positioning itself for optimal and maximum revenue collection in mineral commodity booms beyond Mineral Royalty and CIT. Tools for purposes of revenue optimization are limited to royalties and CIT for the other countries assessed given that efforts to legislate and implement CIT have been met with challenges as noted in the assessment of question 5 on flexibility and progressivity of fiscal regimes. For example, in Zambia, a Variable Profit Tax (VPT) introduced twice in the last decade collected no revenues. Table 3 on fiscal objective and tax instruments ideal for revenue mobilization summarizes the revenue tools most ideal for different policy objectives.

[30] See page 61 of the Country Mining Vision Handbook.

Table 3. Fiscal objectives and tax instruments ideal for revenue mobilization

	Royalties	Sliding Royalties	Resource Rent Tax/ Variable Profit Tax	Corporate Income Tax	State participation
Secure the collection of revenues early in the project life					
Maximize/Optimize the governments take of revenues in the project's lifecycle			Liberia	Liberia, Zambia Uganda and Ghana	
Ensure adequate incentives for exploration and possible future projects.			Liberia	Liberia, Zambia Uganda, Ghana	
Ensure visible share of revenues with commodity price increases		Zambia, Ghana			
Maintain strategic ownership an interest					Liberia, Zambia Uganda, Ghana
Minimization of administrative burden and risk	Liberia, Zambia Uganda, Ghana				

8. Evidence shows that all the four countries assessed are faced with challenges in collecting revenues using the various fiscal tools they have in place. The most common challenge that exists among the countries relates to the vulnerability of CIT due to cost inflation/manipulation, the provision of incentives on tax instruments, abuse of tax treaties, inability to adequately monitor declared production and verify sales, corruption, and broader administrative capacity gaps.

Liberia has a relatively rich natural resource base, abundant iron ore, rubber, rubberwood, gold, diamonds, and a large share of sectors based on natural resources value addition, GDP, and exports. However, Liberia collects minimal public revenues from these activities. CIT, subsequently, the Surtax is the weakest link in the chain of tax instruments. Although Liberia has a CIT rate of 25%, it is extremely low, yielding at 1.45% of GDP, way less than the Sub-Saharan African countries' average.[31]

Liberia Mineral Policy 2010-page 9

"Mineral deposits often embody "resource rents", also known as, "differential rents", which are profits in excess of the normal rate of return, arising from the particular above average nature of the deposit (grade, yield, location, etc.), as well as "windfall rents" arising from excess demand over supply. Such excess rents need to be equitably shared between the asset owner (Liberia) and the asset exploiter. The new Liberia revenue code (LRC) caters for this in a transparent and equitable manner through the "resource rent tax", however the threshold and rate of this tax will be adjusted, in consultation with the minister of finance, to ensure a fair return to the investor"

[31] USAID (2017). Benchmarking the Tax System in Liberia

Liberia's CIT productivity is 0.06, with the main source of leakage attributed to not devoting enough attention to the enforcement of applicable tax legislation and non-transparent tax exemptions related to the natural resource sectors.[32] This makes the fiscal framework vulnerable to base erosion and profit shifting.

To contextualize this, most of the natural resource revenues in Liberia come from licenses and payroll taxes in terms of tax instruments. The largest contribution of 27% comes from licenses and various sectoral and administrative fees, with the second largest being taxes on wages at 26.8%. Ordinary taxes (including CIT, excise taxes, and various resource taxes) are third with 21.3%, while royalties contribute only 11.6% of natural resource revenues.[33]

"In Liberia, a mining multinational enterprise sold all production via a related party in a low tax jurisdiction. In its sales contract, the company made quality adjustments (as is standard practice) but then also applied additional discounts on the price for marketing and other costs that were not explained or justified. These adjustments and fees reduced the value of shipments by more than 10%, transferring about $500 million in profits offshore over several years".

International Monetary Fund 2020 Tax Avoidance in Sub-Saharan Africa's Mining Sector (p 26-27)

b. In Uganda, corruption and political interference[34], institutional weaknesses[35], the informal ASM sector, tax treaty abuse, as well as tax evasion and avoidance are identified as the main weaknesses for mineral revenue collection[36]. The Directorate of Geological Surveys and Mines (DGSM), an institution that is responsible for the collection of all non-tax payments such as royalties, rents, leases, and fees, has reported institutional weaknesses that significantly undermine optimisation of mining revenues.

   A report by the Office of the Auditor General (AG) in 2015 reveals that as of September 30, 2015, the DGSM had failed to collect a total revenue of UGX 4.4 billion (approximately $1,200,000) from mining companies.[37] Of this, the amount of uncollected royalties was the highest at 68.2%.[38] Given that there was no evidence of attempts by the Directorate to

[32] Ibid

[33] World Bank (2019), Domestic Revenue Mobilization Policy Notes

[34] Global Witness, Undermined: How Corruption, Mismanagement & Political Influence is Undermining Investment in Uganda's Mining Sector and Threatening People and the Environment, June 2017 pg. 29. See also L. Pasculli (2020). Foreign Investments, the Rule of Corrupted Law and Transnational Systemic Corruption in Uganda's Mineral Sector. In: R. Leal-Arcas (ed.) International Trade, Investment and the Rule of Law. Chisinau: Eliva Press. 84-109, 2020. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3786197/

[35] Ibid

[36] TJNA 2020, Country Mining Vision Assessment for Uganda.

[37] Regulation, Monitoring and Promotion of the Mining Sector by Ministry of Energy and Mineral Development, OAG Report, December 2015 Pg. 21

[38] Ibid

collect these revenues, the report concluded that " by failing to collect the mineral fees that fell due and imposing a 2% penalty on the outstanding royalties, there is a risk that these funds may never be recovered. This is revenue that could have been utilised to further develop and promote the minerals sector"[39].

c. In Zambia, 11 changes to the fiscal regime governing the mining sector were implemented due to recurrent challenges faced by the Zambia Revenue Authority to collect CIT. In 2015, the Minister of Finance at the time justified changes to the mining fiscal regimes, attempting to make the CIT rate 0% and royalty rates 8% or 20%. The Minister's justification for this was that, at the time, there were only two mining companies paying a substantial amount of CIT, resulting in Zambians not benefiting as much from their resources.[40] This was consistent with responses given by the Zambia Revenue Authority to a UN Base Erosion and Profit Shifting (BEPS) questionnaire in 2014, which

"A mining company (Company X), had on several occasion been involved in suspected profit shifting by reducing their taxes and inflating costs. In one of the incidents, company K was paid ZMW 7,000,000 by the mining company for works valued at less than ZMW 100,000. Company K thereafter subcontracted Company XYZ to conduct the works. In another incident out of a total contract of $ 2,723,460.25 paid to Company K by the mining company, they paid the local Company XYZ $ 265,820.55 for executing the same contract. This all meant to erode the tax base."
Zambian Finance Intelligence Centre report of 2016

stated that the most common practices of base erosion and profit shifting included tax treaty abuse, especially through treaty shopping, profit shifting through high-interest rates on loans, management and consultancy fee deductions as well as the avoidance of permanent establishment creation by tailoring activities and contracts in such a way that the activities would not necessitate the creation of a permanent establishment[41]. Zambia's Mopani Copper Mines is a well-publicized example of mineral under-pricing between related parties, with the company being ordered to pay an additional $13 million in tax in 2020.[42]

d. In the case of Ghana, lack of optimization of the extractive revenue over the past decades is associated with abusive transfer pricing, thin capitalization, tax planning in the case of sliding royalties, illegal exploitation of mineral resources/smuggling, poor negotiated terms in the existing development agreement and stabilization clauses.[43] This is also consistent with the responses from the Ghana Revenue Authority in 2014 to a UN BEPS questionnaire highlighting the country's vulnerability to base erosion via interest rate deductions and transfer pricing. As an example of this vulnerability, in Ghana, one multinational enterprise parent company advanced all funds for the development of a project to the local subsidiary as interest-bearing debt. It further decided that no dividends would be paid from the subsidiary until the entire debt had been repaid. This eliminated dividend revenue and dividend withholding tax. Even with

[39] Ibid
[40] See Lusaka Times 2015, available at https://www.lusakatimes.com/2015/02/26/two-mining-companies-paying-tax-previous-tax-regime-chikwanda/
[41] https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_CommentsZambia_BEPS.pdf/
[42] See Zambia vs Mopani Copper Mines Plc., May 2020, Supreme Court of Zambia, Case No 2017/24
[43] Africa Centre for Energy Policy (2015), The Extent and Nature of illicit Flows in Ghana's Extractive Sector

interest limitation rules that hindered some interest deductions for CIT, the company was still better off characterizing cashflows as interest than dividends.[44]

The change of rules for mineral royalty payments for gold to 5% was motivated by the fact that mining companies seemed to use tax planning techniques to pay royalties at 3%. Indeed, if poorly managed, sliding-scale royalty encourages tax planning strategies to avoid falling into a higher royalty bracket.[45] As noted in 5(d), some companies still benefit from sliding scale royalties.

The ability of Ghana to maximise domestic revenue has also been largely affected by stabilisation clauses and IAs between the government and some mining companies. In Ghana, Stability Agreements are initiated with companies to ensure fiscal stability for up to 15 years, while IAs are made when a company makes an investment of more than US$500 million under sections 48 and 49 of Act 703. For example, companies with Stability Agreements pay a royalty rate of 3% or 3.6%, and if their operations are in forest reserves, corporate taxes of between 30% to 32%. Mentioned in the 2019 Chamber of Mines Annual Report on the Performance of the Mining Sector is that improved revenue from mining from GH₵2.36B in 2018 to GH₵4.02B in 2019 was attributed to improved production and price of gold, as well as the expiration of the Stability Agreement between the Government of Ghana and AngloGold Ashanti Iduapriem Limited."[46]

9. The assessment found that in all four countries, the Auditor General's office plays a role in being the ultimate institution that identifies the gaps in the fiscal instruments and institutions entrusted to collect them. All four countries have, over the decade, progressively been working on transfer pricing rules to deal with CIT collection challenges. The Extractive Industries Transparency Initiative (EITI) has also played an active role in ensuring that payments correspond to what should have been paid in Ghana and Liberia. The Liberia EITI Act of 2009 Section 4.1(b) mandates audits and investigations on payments. Zambia, through the Mineral Value Chain Monitoring Project (MVCMP), physically audits all minerals produced and exported by the big mining companies allowing for correct payments of royalties and, subsequently, the right declaration of sales volume.

a. Complementing the work of the Auditor General (AG) to identify revenue collection gaps, the Liberia EITI law of 2009 provides for "appropriate audits and/or investigations of the payments and revenues data submitted pursuant to Section 4.1(b) hereof in order to determine that the payments made, and revenues received correspond with what ought to have been paid and/or received"[47]. Liberia authorities introduced transfer pricing into the tax legislation that should help mitigate some of the risks to tax base erosion if implemented properly. The Official Gazette of the Government of Liberia, dated 11 November 2016, promulgated the

[44] International Monetary Fund 2020 Tax Avoidance in Sub Saharan Africa's Mining Sector see page 26
[45] IGF (2020), Tax incentives in mining, minimizing risks to revenue
[46] Ghana Chamber of Mines 2020, Performance of the Mining Industry in 2019
[47] LEITI Act of 2009 page 7 part e, available at https://eiti.org/sites/default/files/attachments/liberia_2009_act_leiti.pdf/

Liberia Income Tax Transfer Pricing Regulations, which introduced the arm's length principle.[48]

b. In Uganda, the AGs Office has been keen on exposing weaknesses between the URA and DGSM in collecting mining revenue. According to the FY2019/2020 report of the AG, an estimated UGX 102.7 million was lost during the year. The loss was attributed to the exportation of 10,273 tonnes of vermiculite worth UGX 8.3 billion without securing export permits from the DGSM, as is required by law.[49] According to the same report, minerals worth UGX 26.3 billion (approx. $7.2 million) were exported out of the country without the requisite permits in the period between FY 2017/18 and FY2019/20.[50]

c. In Zambia, in addition to efforts of the AGs Office[51], some of the persistent challenges of revenue maximization have been dealt with through periodic cost audits by the revenue authority, the establishment of a transfer pricing unit[52], evolving transfer pricing rules[53] as well as with the implementation of the Mineral Value Chain Monitoring Project (MVCMP). This project focuses on the physical flow of minerals from mining the ores through processing into concentrates, refined products, and exporting, with the goal of designing and developing a multi-purpose and multi-stakeholder scheme for monitoring the country's mineral resources throughout the value chain. Its objective is to provide accurate and reliable data and information on the mining sector relevant for effective policymaking and improving tax administration and mining sector oversight. In 2020, the Zambia Revenue Authority reported that the scheme notably collected additional revenue amounting to ZMW 15.8 million from under-declarations unearthed by its' data centre[54]

d. In Ghana, good steps forward were made in 2012 by setting up a team to review and renegotiate Stability Agreements that the government had signed with some mining companies to ensure that the country derived maximum benefits from its resources. However, the outcome of the renegotiations remains unclear. A transfer pricing team was also established within Ghana Revenue Authority, which conducts audits into suspected transfer pricing incidents. The Transfer Pricing Unit in 2016 initiated the setting up of a transfer pricing comparable database with the help of Bureau Van Dijk (BVD). The database provides benchmarks for some types of

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[48] Liberia Domestic Revenue Mobilization Policy Notes bullet 24, available at https://documents1.worldbank.org/curated/en/746951560140991207/pdf/Liberia-Domestic-Revenue-Mobilization-Policy-Notes.pdf/

[49] Annual Report of the Auditor General on the Financial Statements of the GOU for the Financial Year Ended 30th June 2020, Central Government and Statutory Corporations pg.80

[50] *Ibid*

[51] See Zambia's Auditor generals report of 2015

[52] See Zambia Country Presentation on Transfer Pricing available at https://www.un.org/esa/ffd/wp-content/uploads/2016/11/2106TP_Zambia_CountryPresentation-en.pdf/

[53] Readhead 2017 Special Rules for Commodity Sale: Zambia Use of the Sixith Method available at https://resourcegovernance.org/sites/default/files/documents/special-rules-for-commodity-sales-zambia-sixth-method.pdf/

[54] Zambia Revenue Authority Performance Speech 2020 available at https://www.zra.org.zm/wp-content/uploads/2020/01/ZAMBIA-REVENUE-AUTHORITY-2019-PERFORMANCE-SPEECH-BY-THE-COMMISSIONER-GENERAL.pdf/

deductible expenditures, such as management fees and interest payments on related party loans.

10. Uganda, Zambia, and most recently, Ghana developed explicit legal provisions for the separation of a company's operations for the purposes of calculating taxes. If well implemented, these legal provisions limit the ability of companies to use costs from one operation to offset taxable profits in another. Liberia does not provide for ringfencing explicitly in its legal framework.

a. In Liberia, gross income is considered revenues resulting from production and other operations carried out under the project's mining license. The Liberia revenue code allows for deductions of costs to include all expenditures incurred during the tax period wholly, exclusively, and necessarily in connection with project operations (including non-capital operating costs but excluding capital costs except to the extent of the annual allowance for depreciation). This doesn't explicitly imply ringfencing.

b. Section 89 of Uganda's Income Tax Act provides for ringfencing, and these ringfencing requirements were introduced in 2015. It is an arrangement where the different mining areas that are held by an investor are considered separate, with costs and revenue disaggregated when determining the taxable profits for each mining area.[55]

c. In Zambia, the then Mines and Minerals Act of 2008 followed amendments to the Income Tax Act to provide for ringfencing provisions.[56] In practice, the provision avoids potential tax liabilities related to other mines owned by the same firm being offset against those of new mines, thus avoiding tax and reducing revenues.[57]

d. In Ghana, a new law, the Income Tax Law 2015, reviewed the ringfencing provisions for the mining sector stating explicitly the meaning of the ambiguous terms to prevent ringfencing. Extractive entities are no longer permitted to deduct expenses incurred in one mining area against revenue derived from another mining area. The law provides that costs in one concession area will not be allowed to be set off against revenues from another (belonging to the same company) in determining chargeable income for tax purposes. However, the implementation of this provision is still under discussion.[58]

From the assessment, key recommendations are:

- To ensure optimization, Zambia, Uganda, and Ghana should consider consultatively developing forms of VPT. The countries should also upscale deliberate steps to prevent cost manipulation and other weaknesses in profit tax collection. This is also necessary if Liberia's Surtax is to be effectively enforced for increased revenue.

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[55] Section 89, Income Tax Act.
[56] Zambia Revenue Authority Practice Notes, available at https://www.zra.org.zm/wp-content/uploads/2020/01/practicenotes2008.pdf/
[57] Zambia Wining Winfall Tax WIDER Working Paper 2018/51, available at https://www.wider.unu.edu/sites/default/files/Publications/Working-paper/PDF/wp2018-51.pdf/
[58]Source: Minerals Commission, February 2021: http://www.mincom.gov.gh/fiscal-regime-for-mining

- We recommend that all four countries work on their physical ability to audit minerals from production to export. Zambia shares a good example of how this can be done through the MVCMP, which needs to be extended to reach more mining projects.

- Liberia needs to revisit and appropriately provide for legislation to guard against ringfencing of tax liabilities.

iii) Corruption and Revenue Maximization.

Table 4: Assessment questions – Corruption and revenue Maximization

No	Table 4: Assessment questions – Corruption and revenue Maximization	Liberia	Uganda	Zambia	Ghana
11	Does the country have policies, laws, and institutions to combat corruption in the mineral sector? If so, how effective are these?				
12	Are there dedicated institutions to expedite corruption cases relating to the mining industry?				
13	Are there laws and systems to protect whistle-blowers				
14	Are there mechanisms for the cross-border harmonization of anti-corruption policies, laws, and systems?				

11. All the four countries assessed have laws and institutions to enforce anticorruption provisions. However, enforcement remains challenging across the countries. The laws and institutions dedicated to combatting corruption are not specifically for the mining sector, as their mandate stretches across all sectors. Key factors to note:

a. Although not specific to the mining sector, the Liberian Anti-Corruption Commission Act of 2008 guides the operation of the Liberia Anti-Corruption Commission, an institution dedicated to fighting corruption across different sectors. The Liberia Extractive Industries Transparency Initiative (LEITI) Act of

2009 provides for transparency and accountability in the mining sector but has no specific provisions speaking to addressing corruption.

Overall, the institutions dedicated to dealing with corruption in Liberia include the General Auditing Commission, the Public Procurement and Concession Commission (PPCC), the LEITI, and the Liberia Anti-Corruption Commission.

A weak judiciary and inadequate enforcement of laws are known to compromise Liberia's efforts to fight corruption. Despite a few notable positive actions, there is minimal progress in addressing corruption in the country.[59] Corruption within the tax administration set-up is rampant and particularly problematic compared to other countries. 62% of citizens in Liberia who are tax compliant reported having to pay bribes compared to the global average of 15%.[60]

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In 2016, a grand jury indicted top government officials on charges of bribery for conspiring to amend key laws to enable a London-listed company, Sable Mining SBLM.L, to get rights to one of the world's richest iron ore deposits. Leaked documents alleged that over US$950,000 was used to pay off top government officials and their relatives (Global Witness). However, after the end of a month-long trial, Judge Gbeneweleh ruled that the prosecution had not proven its case beyond a reasonable doubt.

b. Uganda has a plethora of anti-corruption laws and policies which generally apply with equal force to the extractives sector. These include the Anti-Corruption Act, Leadership Code Act 2002, Inspectorate of Government Act 2002, Whistle Blower Protection Act, 2010, and the Access to Information Act, 2005. The laws criminalise the offence of corruption, provide for wealth declaration and access to information, among others. More critically, the laws create several specialised anti-corruption institutions such as the Inspectorate of Government, Leadership Code Tribunal, Directorate of Ethics and Integrity, Financial Intelligence Authority, Office of the Auditor General, Director of Public Prosecutions, and the Anti-Corruption Division of the High Court. The challenge is that, overall, the anti-corruption laws are poorly enforced, and the work of the institutions is interfered with. As a result, corruption is common, especially by high-ranking officials and those that are politically connected, and often involves large amounts of money. [61] There are reported cases of institutionalised corruption at the DGSM where officials have been implicated in crimes such as bribery, extortion, and deceit.

[59] U4, Liberia Overview of Corruption and Anti-corruption https://www.u4.no/publications/liberia-overview-of-corruption-and-anti-corruption/

[60] U4, Liberia Overview of Corruption and Anti-corruption available at https://www.u4.no/publications/liberia-overview-of-corruption-and-anti-corruption/

[61] Anti-Corruption, Stolen Asset Recovery and Civil Society in Uganda available at https://cifar.eu/wp-content/uploads/2022/04/Uganda-2022.pdf/

c. Zambia's anti-corruption laws include the Anti-corruption Commission Act (2010), the Forfeiture of Proceeds of Crime Act (2010), the Public Interest Disclosure (Protection of Whistle-blowers) Act (2010), the Plea-Bargaining Act (2010), the Amendment to the Prohibition and Prevention of Money Laundering Act (2010), The Financial Intelligence Act (2010), and the National Prosecution Authority Act (2010). While Zambia does have several anti-corruption laws, it lacks adequate regulations on facilitation payments and access to information. A weak judicial system has been a key factor in undermining the country's fight against corruption as well as efforts toward asset recovery. Attempts to seize and forfeit assets have been slow, with the backlog of cases increasing.[62]

d. For Ghana, while there is no singular piece of legislation to tackle corruption, the criminal code criminalizes corruption in the form of active and passive bribery, extortion, wilful exploitation of public office, use of public office for private gain, and bribery of foreign public official. Under section 239 of Ghana's criminal code, corruption is defined as "corruption of a public officer," and subsequent clauses define various forms of corruption, including bribery and extortion. However, according to legal experts, this definition needs modernizing as it does not include corporate or private bribery offences, and bribery between citizens is not currently outlawed in Ghana[63]. The country also has an Anti-Money Laundering Act 2008, which criminalizes money laundering. The Public Procurement Act (663) of 2003, the Financial Administration Act (654) of 2003, and the Internal Audit Agency Act (658) of 2003 promote public sector accountability and seek to combat corruption. A National Anti-Corruption Action Plan (NACAP) was passed in 2014, which aims to improve the prevention, investigation, and prosecution of corruption by strengthening several state agencies and putting a premium on public awareness of corruption.

   The anti-corruption legal framework faces challenges in implementation.[64] A United Nations report released in February 2015 highlighted the government's inability to implement its anti-corruption policies and effectively prosecute offenders.[65]

[62] Anti-Corruption, Stolen Asset Recovery and Civil Society in Zambia available at https://cifar.eu/wp-content/uploads/2022/04/Zambia-2022.pdf/
[63] U4 Anti-Corruption Helpdesk Overview of corruption and anti-corruption in Ghana https://knowledgehub.transparency.org/assets/uploads/helpdesk/overview-of-corruption-and-anti-corruption-in-ghana-2018.pdf/
[64] Bertelsmann Stiftung 2018 Ghana Country Report
[65] Freedom House. 2016. Freedom in the World: Ghana

12. All the four countries assessed do not have dedicated institutions to expedite corruption related to the mining sector.

13. Liberia does not have a whistle-blower protection law. In Uganda, Zambia, and Ghana, Whistle-blower protection Acts exist, but the implementation of provisions and actual protection of whistle-blowers remain a challenge.

a. In Liberia, the enactment of a Whistle-blower Protection Act has stalled, with lack of political will by the legislature cited as the reason for its stagnation.[66]

b. Uganda has a Whistle-blowers Protection Act, 2010, and the Access to Information Act, 2005. Although there presently exists a law for the protection of whistle-blowers, the protection offered is restricted to the time the disclosure of information, that is, whistleblowing is made. Current protection is therefore restricted to informers. If the matter proceeds to court, no similar protection is offered to persons who offer to testify against an accused person. In the absence of such protection, there is reluctance for people to testify and provide critical information relating to properties owned by, or otherwise associated with, the accused.[67]

c. Zambia's Public Interest Disclosure Act provides legal protection for civil servants or private sector employees reporting corruption cases, but the law does not adequately protect whistle-blowers. Although the Public Interest Disclosure (Protection of Whistle-blowers) Act is supposed to complement the Anti-corruption Commission Act of 2012 by protecting whistle-blowers, Section 13 (3) of the Act imposes criminal liability on a person who makes a public interest disclosure that is malicious, frivolous, vexatious, or made in bad faith or where the disclosure was made for pecuniary gain. This discourages whistle-blowers as the penalty can be a payment of a fine or even imprisonment.[68]

d. In 2006, Ghana passed Whistle-blower Act to protect witnesses in corruption cases from prosecution once they came forward with pertinent information. However, it's rarely implemented, as potential informants fear losing their well-paid jobs.

14. **All four countries assessed have signed onto treaties and standards meant to be domesticated to assist in fighting corruption. All four countries are also members of the EITI.**

a. In terms of international commitments, Liberia participates in the Extractive Industry Transparency Initiative (EITI) and is a signatory to the Economic Committee of West African States (ECOWAS) Protocol on the Fight against

[66] U4, Liberia Overview of Corruption and Anti-corruption https://www.u4.no/publications/liberia-overview-of-corruption-and-anti-corruption/

[67] Office of the DPP, Performance Report 2018.

[68] Ndulo. 2014. Anti-corruption Legal Framework in Zambia. Available at: http://saipar.org/wp-content/uploads/2013/09/Ndulo_Review-of-the-Anti-corruption-Legal-Framework1.pdf/

Corruption, the African Union Convention on Preventing and Combating Corruption (AUCPCC), and the UN Convention against Corruption (UNCAC).

b. Uganda is a State Party to the United Nations Convention Against Corruption (UNCAC) and the African Union Convention on Preventing and Combating Corruption (AUPCC). Uganda is also a member of several regional and international anti-corruption institutional arrangements. This includes the Asset Recovery Inter Agency Network for East Africa (ARIN-EA) and the East African Association of Anti-Corruption Authorities (EAAACA). The country is also one of the eighteen member countries of the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), a regional body formed to help countries to implement standards designed to combat money laundering and terrorism financing. The Financial Intelligence Unit is also a member of the Egmont Group of Financial Intelligence Units[69].

c. Zambia is a member of several networks on corruption. These include the Asset Recovery Interagency Network for Southern Africa (ARINSA), the Southern African Forum against Corruption (SAFAC), and the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG). In 2021, the Zambian Anti-Corruption Commission signed a Memorandum of Understanding with the International Centre for Asset Recovery (ICAR) that will enable the two institutions to work together to implement strategies aimed at enhancing the fight against corruption in Zambia.

d. Ghana signed the United Nations Convention against Corruption in 2004 and ratified it in 2007. Similarly, the country signed the African Union Convention on Preventing and Combating Corruption in October 2003, and it was ratified by parliament in June 2007.

From the assessment, it's recommended that

- All four countries must consider institutionalizing a dedicated institution to handle corruption cases in their extractive sectors, which have proven to be prevalent.
- Ghana needs to revisit and modernize what is considered corruption in Article 239 of its criminal code.
- Liberia needs to consider enacting Whistle-blowers Act as this process has stalled for a long time and is undermining the fight against corruption and IFFs. Whistle-blower Acts in Zambia, Ghana, and Uganda equally need to be strengthened and enforced to guarantee the protection of whistle-blowers and witnesses.

[69] See Anti-Corruption, Stolen Asset Recovery and Civil Society in Uganda 2022, pp8 available at https://cifar.eu/wp-content/uploads/2022/04/Uganda-2022.pdf/

iv) Harmonization of tax instruments

Table 5 Assessment questions – Harmonization of tax instruments

No	Table 5 Assessment questions – Harmonization of tax instruments	Liberia	Uganda	Zambia	Ghana
15	Are there policy and legal instruments that provide for a uniform tax foundation?				
16	Are there policy or legislative reasons for the existence or the lack of a uniform tax foundation?	Not applicable across countries			
17	Are there discrepancies between local and central government tax regimes?				

15. As noted in the assessment question 3, each country's tax regime for the mining sector is primarily defined by the Act governing mineral extraction and its income tax/revenue code. Deviations from prescribed tax rates are because of MDA, contracts, stabilization agreements, Double Tax Agreements (DTA), and Incentives.

16. This is not applicable as there exists a uniform tax foundation across all four countries

17. Payments made to local governments are well-defined in Uganda, Zambia, and Ghana. There are no payments made at the subnational level in Liberia.

a. Mining companies make no direct payments to subnational government agencies in Liberia. All payments are made directly to the Liberian Revenue Authority (LRA) Consolidated Fund.

b. In Uganda, depending on the area of operation, local government authorities may levy, charge, and collect fees, taxes, and rents.

c. In Zambia, property taxes are payable to the local authorities by all mining companies which own properties as defined in the Property Rating Act. Annual Business fees are operating fees paid to the local authorities where the extractive companies operate.

d. In Ghana, the Local Governance Act, 2016 (Act 936) empowers Metropolitan, Municipal, and District Assemblies (MMDAs) to administer and collect property rates with respect to mining companies operating in their jurisdictional areas.

From the assessment, it's recommended that:

- Liberia needs to consider decentralising its tax collection to guarantee payments to subnational agencies, which are usually better placed to evaluate liabilities relating to fees, fines, and rates.

v) Fiscal Regimes and Investment

Table 6 Assessment questions – Fiscal Regimes and Investment

No	Table 6 Assessment questions – Fiscal Regimes and Investment	Liberia	Uganda	Zambia	Ghana
18	How does the design of fiscal regimes encourage investment?				
19	What types of incentives are offered to (foreign and local) investors and why?				
20	Which laws provide for these incentives, if any?				
21	How do fiscal incentives for investment in the minerals sector support national development?	Inconclusive			
22	Are there any economic analyses, including a cost-benefit analysis of mineral sector investment and incentives? How frequent are these analyses?				
23	Do the benefits of these incentives outweigh the costs and, if so, how?	Inconclusive			
24	Does the country have templates for the negotiation of bilateral investment treaties and double taxation agreements?				
25	Has the country signed and/or revised any bilateral investment treaties with fiscal provisions?				
26	What are these fiscal provisions and how do they enhance/erode the tax base of the country?				
27	What are the key tax provisions in these bilateral investment treaties and double taxation agreements?	Included in 26			

18. All four countries assessed offer incentives to the mining sector to attract investments. These are both targeted at capital investments and income attained from the investments. An assessment of question 23 on whether incentives outweigh the costs is inconclusive as there is little evidence that some of the incentives have led to actual investments, with incentives on income tax particularly perceived as redundant.

a. Section 17 of the Liberia Revenue Code, as amended in 2020, provides for stability of the fiscal regime for the mining sector when entering into an agreement. Essentially, the Government of Liberia is permitted to accept a clause stabilizing the following aspects of taxation to the terms under code provisions for a period not to exceed 15 years from the effective date of the agreement: (1) The income tax rate; (2) The rate of royalty; (3) The special rule for extended net operating loss carry forward; (4) The special rule for depreciation and other cost recovery; (5) The rate for withholding of tax on payments among others.

Several investment incentives are also provided for in the new investment activities under the Liberia Revenue Code of 2000 (amended in 2011). Apart from carry forward losses and allowable depreciation, certified firms are eligible for special investment incentives for a period of five years if their investments exceed $1,000,000 or, in the case of a business with 100% Liberian ownership, the capital invested exceeds $500,000. For large investments exceeding $10 million, the tax incentives could go up to 15 years. To be eligible, firms need to inject new investments and operate in 15 priority areas, which may be applicable to the extractive sector.

b. From an income tax perspective, as provided for in the Uganda Income Tax Act, mining companies are allowed 100% depreciation with respect to all exploration expenditures of a capital nature.[70] Mining companies are also allowed to carry forward losses arising from operations in their licence areas.[71] Similarly, contributions made to an approved rehabilitation fund by mining companies are deductible.[72] In addition to the above, extractive companies are exempted from payment of Value Added Tax (VAT) on supplies that are solely and exclusively for mining petroleum operations.[73] Mining companies are also entitled to recover all input VAT on imported plants, equipment, machinery, and supplies incurred during the development phase. There is also a zero-rated VAT on exports of imported minerals.

c. Zambia's Income Tax Act guarantees input tax claims for ten years on pre-production expenditure for exploration companies in the mining sector. Any mining company holding a mining license carrying on the mining of base metals is taxed at a CIT of 30%, a 5% reduction from the stand CIT rate of 35%. Dividends paid by a mining company holding a mining license and carrying on mining operations is taxed at 0%. Zambia also guarantees a 25% mining deduction on capital expenditure on buildings, railway lines, equipment, shaft sinking, or any similar works. Zambia further offers duty-free importation of capital equipment and utility vehicles.

The Zambia Development Agency Act (2006) and its subsequent amendments also provides for incentives for investors, with locals having to invest $ 50,000 or its equivalent to qualify for incentives in accordance with the Act.

d. In Ghana, incentives are provided in the Income Tax Decree, 1975 (as amended), Free Zones Act, 1995, Article 504, Income Tax (Amendment) Act, 1998, Article 551, Ghana Investment Promotion Centre Act of 1994, Internal Revenue Act 2000 (Act 592) and Income Tax Law 2015. The Minerals and Mining Act, 2006 (Act 703) includes provisions for an agreement between the government and mining companies to stabilize some fiscal decisions for a period not exceeding 15 years. In a stability agreement, the mining lease holder is protected from adversely being affected by subsequent changes to:

i. The level of and payment of customs or other duties relating to the entry of materials, goods, equipment, and any other inputs necessary to the mining operations.

ii. The level of and payment of royalties, taxes, fees, and other fiscal imposts.

iii. Laws relating to exchange control, transfer of capital, and dividend remittance.

Specific incentives in the mining sector include;

i. Losses in each financial year may be carried forward for a period not exceeding five years.
ii. Capitalization of all pre-production expenses approved by the authorities when the holder starts development of commercial mining.
iii. Exemptions from import duties on plant and equipment.

[70] Section 89, Income Tax Act, cap 340.
[71] *Ibid.*
[72] *Ibid*
[73] Section 24 (5), Value Added Tax Act (as amended)

iv. Exemption of non-Ghanaian staff from payments of income tax relating to furnishing accommodation at a mine.
v. Immigration quota for expatriate personnel free from any tax imposed by the government for the transfer of foreign currency outside of Ghana.
vi. Exemption from the selective alien employment under the selective alien employment decree.
vii. Retention of a proportion of revenue in foreign currency account for use in acquiring essential equipment and spare parts required for mining operations which would otherwise not be readily available without the use of such earnings.
viii. Depreciation of 75% of the capital expenditure incurred in the first year of investment and 50% of the declining balance in subsequent years.
ix. Investment allowance of 5% in the first year. Expenditure on exploration and development may be capitalized in accordance with the regulated amortization provision for tax relief.

19. As assessed in question 18, investments across the mining sector in all four countries are the same for foreigners and locals. However, the qualifying threshold for locals is lower compared to foreign investors in all four countries.

20. In terms of laws, incentives are provided for primarily by the income tax/revenue code, and the codes providing for this are stated above in 18a, 18b, 18c, and 18d. However, some incentives are specified in development agreements/contracts and stability agreements, as is the case of Liberia and Ghana

21. In all the four countries assessed, it's inconclusive to conclude that fiscal incentives for investment in the minerals sector support national development as there are no direct efforts by the governments to track the extent to which development can be attributed to the provision of the set incentives. However, the rationale behind the provision of incentives in the countries is to attract investments and stimulate job creation.

22. All four countries assessed do not conduct economic analyses, including a cost-benefit analysis of mineral sector investment and incentives. However, of the four countries, Uganda is the only country that attempts to include some form of analysis in its tax expenditure reports. Zambia attempted to estimate revenue losses from the provision of tax incentives for the mining sector in its 2022 National budget. The assessment further found that Liberia and Ghana have not made concrete attempts at this.

23. This is inconclusive as there are no cost-benefit analyses conducted and existing for all four countries.

24 The assessment found Uganda, Zambia, and Ghana have models for Bilateral Investment Treaties (BITs), while Liberia does not have one. Models for Double Taxation Agreement (DTA) negotiation are said to exist in Ghana and Uganda (although they have not been made public).

a. Although Liberia has five existing BITs, there is no evidence of a uniform model from which the country negotiates its treaties. There is no set model for the negotiation of DTA, but reference in drafting the DTAs is made to the United Nations, Organisation for Economic Co-operation and Development (OECD), and the African Tax Administration Forum (ATAF) model.

b. Uganda has a bilateral treaty model, which was developed in 2003.[74] The treaty aims at strengthening cooperation by creating favourable conditions for investments on the basis that promoting these investments would enable the stimulation of transfers of capital and technology in the interest of their economic development. It is unclear if a model exists for the negotiation of tax treaties, but it's reported that a policy is being developed. It's worth noting that most DTAs Uganda has negotiated borrow from the UN and OECD models. Uganda has also actively participated in the formulation of the East Africa Community (EAC) model and the Common Market of Eastern and Southern Africa (COMESA) model.[75]

c. Zambia has an existing model for BIT locally known as the Investment Promotion and Protection Agreements (IPPAs), whose text was formulated in 2010[76]. Most of the DTAs Zambia has entered are known to use the OECD model, with the UN, COMESA, and Southern Africa Development Community (SADC) models also being considered more recently.[77]

d. Ghana has a BIT model used as a template for negotiations, which was developed in 2008.[78] The model is built to include protection of investments of contracting parties to ensure that investments of nationals are protected. The model also makes provisions for national treatment and most-favoured nation, which, according to the template, means that nationals will not be favoured more than the contracting party. The country also has a DTA model which guides treaties with other nations. The model was drawn from a combination of the OECD and UN models to reflect the fiscal policies of Ghana.

25. The assessment found that all four countries have several DTAs and BITs in force, as described below:

a. Liberia has existing bilateral investment treaties with France (in force 1982), Switzerland (in force 1964), and Germany (in force 1967). Liberia also signed a BIT with the United Arab Emirates in 2019, but it's not yet in force. [79]

Liberia also has DTAs with Germany and Sweden. The DTAs do not provide for a reduction in the Withholding Tax (WHT) rate and only provide for relief against foreign tax credits. A treaty with Canada has been signed but is not yet in effect, while double taxation treaties relating to shipping and aircraft income are in force with New Zealand and the United States.

It's also reported that treaties with Morocco and the United Arab Emirates have been signed but have not yet come into force. Treaties with Qatar and Turkey are also currently being negotiated.

b. Uganda has signed onto 17 BITs and treaties with France, Denmark, Netherlands, United Kingdom, Switzerland, and Germany and they are currently in force. Treaties with the UAE, Belgium-Luxemburg Economic Union (BLEU), China, Zimbabwe, Nigeria, Cuba, Eritrea, South Africa, and Egypt were signed but not enforced, while treaties with Netherlands and Italy were terminated.

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[74] Uganda Model Treaty
[75] Hearson and Kangave, 2016, A review of Uganda's Tax aTreaties and Recommendations for Action
[76] ZIPAR, Zambia's Bilateral Investment Treaties Review and Evaluation
[77] PMRC Policy Analysis: Zambia Double Taxation Agreements
[78] BIT 2008 Model available at
[79] Liberia page of the International Investment Agreement Navigator

So far, Uganda has DTAs with the Netherlands, United Kingdom, Mauritius, Denmark, Belgium, Norway, India, Zambia, Italy, and South Africa.

c. Zambia's BITs that are currently in force include Switzerland, Germany, France, Netherlands, Italy, Mauritius, Turkey, and UAE. The country also has existing treaties with Morocco, the United Kingdom, Finland, Belgium-Luxembourg Economic Union (BLEU), Ghana, Egypt, Cuba, and China that are not yet in force.[80] Zambia also currently has 22 DTA in force with Botswana, Canada, China, Denmark, Finland, Germany, India, Italy, Japan, Seychelles, Sweden, the United Kingdom (recently revised), South Africa, France, Tanzania, Uganda, Kenya, Romania, Ireland, Netherlands, Norway, and Switzerland (recently revised). [81]Zambia recently cancelled its DTA with Mauritius.

d. Ghana has BITs with China, Denmark, Germany, Malaysia, the Netherlands, Switzerland, and the United Kingdom. Ghana also has DTAs with Belgium, France, Germany, Italy, Mauritius, the Netherlands, South Africa, Switzerland, and the United Kingdom.[82]

26. While BITs contain protective clauses on taxation, on average, DTAs contain rules on how to treat the taxation of income from immovable property; business profits, profits of associated enterprises and transfer pricing; dividends; interest payments; royalties; capital gains tax (CGT); income derived from professional and independent services among others. These are, on average, contained in Articles 6-21 of the DTAs. The main risk with eroding the tax base arises from reduced tax rates, which create incentives for treaty shopping, round-tripping, and base eroding payments. It's been noted that most of the vulnerability is on WHT rates for dividends, interest, and royalties. This can be pointed out as a vulnerability in Ghana, Uganda, and Zambia as the incentive to shop for treaties and create artificial establishments exists. It's important to note from the table below that while the relevant double tax treaties in Liberia do not provide for a reduction in the WHT rate, they only provide for relief against foreign tax credits.

Source: IMF Tax Avoidance in Sub-Sahara Africa's Mining Sector

Table 7: Lowest Treaty Rate for Dividends Interest and Royalties

The table shows the lowest withholding tax rates for dividends, interest, and royalties by each of the four countries assessed. The dividend rates are for direct investments with >10% ownership. Green shaded rates indicate treaty rates are equal to legislated rates, Orange shaded areas indicate reduced rates. The red-shaded area indicates zero rates to treaty partners.

	Dividends Lowest Treaty Rate	Interest Lowest Treaty Rate	Royalties Lowest Treaty Rate
Liberia	15%	20%	20%
Uganda	0%	10%	10%
Zambia	0%	5%	5%
Ghana	10%	0%	8%

27. The key provisions are discussed in 26.

From the assessment, it's recommended that:

[80] Zambia page of the International Investment Agreement Navigator
[81] Zambia Page on tax treaties explorer
[82] Ibid Ghana page

- All four countries consider institutionalizing a process to conduct cost-benefit analyses of tax incentives, and fiscal terms in BITs and DTAs.
- All countries consider cancelling and renegotiating harmful BITs and DTAs, using concrete cost-benefit analyses conducted to avert risks of treaty shopping abuse and round-tripping investments.
- All four countries must consider revisiting existing models for negotiating BITs and DTAs and consider models that push the home-grown solutions and agenda, such as the ATAF models, which can be considered for this purpose.

Table 8: Assessment questions – Customs, duties, and tariffs

No	Table 8 Assessment questions – Customs, duties, and tariffs	Liberia	Uganda	Zambia	Ghana
28	Are there adequate policies and regulations that will enable customs and excise duty agencies to maximize revenue collection from the mining sector?				
29	Are the customs and excise duty agencies equipped to efficiently and effectively assess and collect tariffs from the mining sector?				
30	What technology does the customs use in the assessment and collection of duties or tariffs?				
31	Is there a mechanism for cross-border cooperation on customs?				

28. All four countries assessed have got detailed provisions for customs and exercise duty in their legal framework. The revenue authorities in all four countries have a dedicated customs unit for the execution of customs and duties.

a. Liberia's Revenue Code and its subsequent amendments on custom rules are the principal legislative framework governing the collection of customs and excise duty in Liberia. [83]

b. Uganda follows the East African Community Customs Management Act 2004, which is implemented by the Uganda Revenue Authority (URA).

c. Customs and excise duty collection are primarily regulated by the Customs and Excise Act Chapter 322 of the Laws of Zambia and its subsequent amendments. The execution of the provisions of the Act is the responsibility of the Zambia Revenue Authority (ZRA), which has a dedicated customs services division.

d. Ghana's Customs Act 2015 (Act 891) and Excise Duty Act 2014 (Act 878) are the principal legislative frameworks governing excise duty and customs collection. The GRA has a Customs Division in its Operations Division that is also a paramilitary organization that forms part of the country's national security architecture. The Customs Division has a mining operations department.

29. From the assessment, we learn that Zambia and Ghana have made progress in ensuring efficiency in executing duties and tariffs due to the mining sector by physically monitoring elements essential to evaluating the tax rates due. Although, as illustrated in the case of ZRA and FQM[84], physical inspection is important in cases where tax exemptions are provided. It is

[83] Liberia Revenue Authority Customs
[84] Story available at Reuters

unclear if Liberia has adequate capacity to execute customs duties for the mining sector, while Uganda is reported to be moderately equipped.

a. LRA has a dedicated customs department dedicated to collecting tariffs, but it remains unclear whether it is well equipped for this purpose.

b. URA, which is responsible for the collection and administration of revenues, including those realized from customs, duties, and tariffs, is also moderately equipped to assess and collect tariffs from the extractive industries.

It's also important to note that the East African Community Customs Management Act of 2004 exempts all machinery and inputs imported by licensed mining companies and their sub-contractors for direct and exclusive use in mining exploration and development from import duty.

c. While Zambia exempts duty payable in respect of plant, machinery, or equipment as provided under Section 97 of the Mines and Minerals Act, in practice, when not well monitored, exemptions are prone to corruption and abuse. In 2018, ZRA reported tax avoidance schemes by First Quantum Minerals (FQM). The scheme involved the mining giants wrongly classifying some imported goods as mining machinery over a five-year period to avoid tax payments and benefit from incentives. ZRA fined the mining giants $7.65 billion, inclusive of penalties and interest. Although the mining firm questioned the basis of the calculation of the fine, what was certain is that FQM had been involved in a tax avoidance for which the mining firm accepted and settled an undeclared fine[85].

On the export of commodities, ZRA announced in 2017 that all mineral exports would undergo Fluorescence XRF X-ray scans before exiting Zambia as part of the MVCMP. The idea was to confirm the quality of minerals being exported in response to mining companies falsifying mineral content declarations.[86]

d. The Customs Division of the Ghana Revenue Authority has its staff at the various mines to observe the smelting process (in the case of gold mining), observe and record the weighing process, the package and seal boxes for shipment and play the role of accompanying packages to the port or airport for shipment. This is done to ensure the correct declaration of exports.

[85] Story available at Reuters

[86] Lusaka Times (2017), ZRA X-ray mineral exports exit Zambia

30. Liberia, Zambia, and Uganda make use of the Automated System for Customs Data (ASYCUDA) which is a computerized system designed by the United Nations Conference on Trade and Development (UNCTAD) to administer a country's customs. Ghana implements the integrated UNIPASS/Integrated Customs Management System (ICUMS)

31. All four countries are currently making use of regional treaties on customs, and domestic customs legislation is drawn from regional cooperation frameworks

a. Liberia signed to adopt the Common External Tariff (CET) and is currently in the process of domesticating it. The CET is the single tariff rate agreed to by all member states of the Economic Community of West African States (ECOWAS).

b. Uganda is part of the East African Community Customs Union and therefore uses the same legislation applicable to all East African Countries with respect to Customs matters.

c. Zambia belongs to the 21-member Common Market for Eastern and Southern Africa (COMESA), which allows for preferential tariff duties among member states. Zambia also belongs to the 16-member Southern African Development Community (SADC), which established a Free Trade Area in 2008. The establishment of a single market through the merged Tripartite Free Trade Area (COMESA, EAC, and SADC) was formally launched in June 2015. Zambia ratified and deposited Instruments of the African Tripartite Free Trade Area Agreement with COMESA

d. As a member of ECOWAS since 1994, Ghana has been fully implementing the Common External Tariff (CET).

From the assessment, it's recommended that:

Key lessons from Zambia and Ghana of physically inspecting minerals before export and using technologies like the XRF Fluorescence scanning of commodities due for export be considered and improved upon as they can be key to correct valuation of commodities.

vi) Fiscal Administration

Table 9 Assessment questions – Fiscal Administration

No	Table 9 Assessment questions – Fiscal Administration	Liberia	Uganda	Zambia	Ghana
32	Are there dedicated national and local units/agencies/departments to assess and collect revenue from the mineral sector?				
33	Do the national and local tax agencies have adequate operational capacity (e.g., staff, training, legal mandate, and financial resources)?				
34	Are there mechanisms for assessing capacity gaps in the assessment and collection of taxes?				
35	What mechanisms are in place for validation of the tax liability of minerals companies?				
36	Are there any reviews of tax terms provided in contracts/permits/ licences that are subject to legislative approval?				
37	Is there an effective tax tribunal with the capacity to handle tax-related disputes?				

32. The assessment found that all four countries have defined units/agencies and departments dedicated to the collection of all the different tax and non-tax instruments that are liable for payment by mining companies. The revenue authorities in the various countries are responsible for the collection of most of the revenue payments due.

a. In Liberia, all payments are made to the Liberia Revenue Authority.

b. In Uganda, Environmental Impact Assessment (EIA) fees are collected by the National Environmental Management Agency (NEMA). Custom Stamp Duty, Value Added Tax (VAT), Income Tax, Withholding Tax, and Pay As You Earn (PAYE) are collected by the URA. License fees (application-renewal-transfer), annual mineral rents, and royalties are collected by the Directorate of Geological Surveys and Mines (DSGM).

c. In Zambia, the Ministry of Mines and Minerals Development collects licence fees, area charges, valuation fees, Environmental Protection Fund contributions, fines, and charges. The ZRA collects PAYE, VAT, mineral royalty, Corporate Income Tax (CIT), import/customs duty, withholding tax, excise duty, and property transfer tax. Local councils collect annual business fees and property rates. Ministry of Finance collects dividends from government shares, while the Ministry of Lands collects ground rates, registration fees, and title fees.

d. The Domestic Tax Revenue Division within the GRA collects CIT, mineral royalties, Capital Gains Tax (CGT), stamp duty, import duty, VAT, PAYE, withholding tax, customs processing fees, destination inspection fees, management and technical services, registration fees, other royalties, gift tax, dividend tax, interest tax, commission tax, rent tax, airport tax and penalties accruable to the state. It also assesses the correctness of payments. The Office of the Administration of Stool Lands collects stool land revenue, ground rent, and part of royalty payments. The Minerals Commission receives mining operating leases and mineral rights licenses (reconnaissance, exploration, and mining lease fees). Also, the Non-Tax Revenue Authority within the Ministry of Finance receives dividends from mining industries on behalf of the government. District assemblies collect the property rate whereas the Environmental Protection Agency (EPA) receives environmental permitting and processing fees.

33. Country assessment reports suggest that these four countries do not have adequate operational capacity.

a. When the Liberia Revenue Authority (LRA) was established in 2013, it immediately began implementing a wide range of measures to improve tax compliance and reduce revenue leakages. Some of these measures included introducing a desk audit system for large taxpayers and educating taxpayers through capacity-building workshops with support from its development partners. Despite the investment made over the years, the LRA today still needs more investment to develop systems and procedures for optimal tax collection, as well as investing in the automation of tax collection techniques and training for staff.[87]

[87] USAID (2017), Benchmarking The Tax System in Liberia

b. In Uganda, a case in point for lack of capacity and institutional inefficiency with the DGSM revealed itself in the 2015 -2016 Auditor General's report, where two mining companies were found to have defaulted annual fee payments amounting to $ 18,946.80.[88] It was further reported that the Concessionaire for Kilembe mines was in default of payment of annual concession fees amounting to $1,760,000.[89] This was in addition to the failure to meet the minimum capital requirements of $ 175 million. At the same time, tonnes of copper were discovered at the company's premises, yet they had not secured any export permits from the DGSM.[90] The other defaults highlighted in the report relate to unpaid annual mineral rents worth $6,230 (UGX 22,960,000).[91]

c. The ZRA still has challenges with administrative capacity, and this can be confirmed by its radical shifts from profit-based to revenue-based tax instruments in recent years. A 2015 ministerial statement by the Minister of Finance in parliament [92] noted that the ZRA submission has some challenges with collecting profit-based taxes[93]. Worth pointing out also is that the administrative challenges are not only attributed to profit-based taxes but revenue-based taxes as well. In the past decade, inadequate monitoring mechanisms have resulted in a significant backlog in tax revenue collection from the mining sector. The basic explanation for the backlog is the lack of adequate implementation of legislative provisions. For example, the 2015 Auditor General's Report reported that of the 9,643,800 kg of various minerals exported in the year, only 3,402,172 kg of various minerals were exported with export permits. Therefore, unauthorized 6,241,628 kg were not charged mineral royalties.

d. Several challenges have been identified in the operational capacity of Ghana's tax agencies, and these undermine its operational capacity and effectiveness. Challenges include:

- Segmentation of taxpayers and ineffective monitoring of the large informal sector.
- Inability to harmonize related tax laws.
- Centralization of authority.
- Inconsistencies in tax procedures leading to use of discretion.
- Poor internal communication systems.
- Inadequate and fragmented automation.
- Inadequate IT skills among staff.
- Insufficient management information systems.
- Ageing workforce.
- Poor performance management framework.

34. The four countries assessed are currently using the Tax Administrative Diagnostic Assessment Tool (TADAT) to assess their capacities in the assessment and collection of taxes. TADAT is a diagnostic tool developed by the IMF to assess the appropriateness of key components of tax administration. It focuses on nine key performance outcome areas covering tax administration functions, processes, and institutions. These areas include integrity of

[88] Annual Report of the Auditor General on the Financial Statements of the GOU for the Financial Year Ended 30th June 2020, Central Government and Statutory Corporations, pg. 214.
[89] Ibid, pg. 411 and 435
[90] Ibid, pg. 442.
[91] Ibid.
[92] https://www.lusakatimes.com/2015/02/26/two-mining-companies-paying-tax-previous-tax-regime-chikwanda/
[93] https://www.un.org/esa/ffd/wp-content/uploads/2014/09/20140923_CommentsZambia_BEPS.pdf/

registered taxpayers base, effective risk management, supporting voluntary compliance, timely filing of tax declarations, timely payment of taxes, accurate reporting in declarations, effective tax dispute resolution, efficient revenue management, accountability, and transparency [94] [95] [96].

35. The assessment found that in all four countries, the legal framework allows the revenue authority to verify the tax liability due to the mining company. The validation of tax liabilities is performed at the point of payment of taxes by mining companies. Taxes are only audited if authorities sense any misinformation. In some instances, this may entail auditing the mining project.

Of the four countries, Zambia is the most established and well-organized in terms of the physical inspection of mining operations from extraction to export, as described in assessment question 9 above on institutionalised processes and procedures. Zambia is also reported to have intensified mining sector forensic audits in 2019.

Following a detailed review of selected taxpayers' VAT returns and import declarations, assessments of more than ZMW 10.4 billion (approximately $55,558,4047) had been raised against erring payments in the mining industry, of which ZMW 364.2 million (approximately $19,455,128) was collected as at the end of 2019.[97]

36. In all four countries, changes to fiscal terms in contracts/permits/ and licenses are subject to parliamentary approval. As noted in part 3, while Zambia and Uganda make use of uniform fiscal terms for mining license/permit holders, Liberia and Ghana make use of Mining Development Agreements and Investment Agreements respectively. MDAs and IAs are subject to parliamentary approval. For instance, in April 2022, Liberia's house of representatives rejected the third amendment of the $800 million MDA between the Liberian government and steel giant ArcelorMittal.[98]

37. All four countries included in the assessment have tax dispute tribunals

a. Liberia has a Tax Court and Tax Division of the Circuit Courts, which have exclusive jurisdiction to review final administrative determinations of assessments of taxes, license fees, and other imports, valuations made for tax purposes, and denials of claims for refund by the Republic of Liberia or and political sub-divisions or agencies in keeping with the revenue and finance Law.[99]

b. In Uganda, the tax tribunal was set up by an Act of Parliament as a specialized court to provide the taxpayer with easily accessible, efficient, and independent arbitration in tax disputes with URA.

c. For Zambia, a Tax Appeals Tribunal was created by the Tax Appeals Tribunal Act No. 23 of 2015 and mandated to hear and determine appeals from decisions of the Commissioner-General under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act, and other tax legislation.[100]

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[94] Ghana Revenue Authority 3rd Strategic Plan 2019-2021

[95] Uganda Performance Assessment Report
[96] ZRA (2022)
[97] Iibid
[98] All Africa Reports 2022 Liberia: House of Reps reject ArcelorMittal $800m development agreement
[99] The Judiciary, Republic of Liberia
[100] Zambia Revenue Authority, The Dispute Resolution Process

d. Ghana established an Independent Tax Appeals Board (ITAB) to hear and pronounce final verdicts on tax decisions made by the Commissioner-General. Before ITAB, a dissatisfied taxpayer sought redress of tax disputes directly through the law courts. However, upon the establishment of ITAB, a dissatisfied taxpayer may lodge a direct complaint to the tax agency within 30 days of the decision taken by the tax agency.

From the assessment, it's recommended that:

- In all four countries, governments consistently increase support to their revenue authorities to ensure they can cope with the ever-increasing sophisticated methods of tax evasion and avoidance. Quality staffing is especially key in closely monitoring mineral production to exports and to avoid corruption pitfalls.
- Forensic audits be instituted as part of the means of validation of tax liabilities by companies. These have proved to collect considerable additional revenues in Zambia.

Fiscal Regime and Illicit Financial Flows

Table 10 Assessment questions – Fiscal Regime and Illicit Financial Flows

No	Table 10 Assessment questions – Fiscal Regime and Illicit Financial Flows	Liberia	Uganda	Zambia	Ghana
38	Does the country have a definition of illicit financial flows?				
39	Does the country have the capacity to identify and assess illicit financial flows?				
40	What policy and legal measures has the country implemented aimed at combating illicit financial flows?				
41	Are there arm's-length provisions on transfer pricing in the mineral sector?				
42	Are there dedicated units or departments to monitor transfer pricing and other forms of illicit financial flows within the national tax administration?				
43	If not, do authorities have the skills and capacities needed to deal with the intricacies of transfer pricing?	Not applicable			
44	How does the country assess its progress in combating illicit financial flows?				
45	Is the country a member of any regional/international forum to combat illicit financial flows from the mineral sector?				
46	How has the country's membership of these forums been helpful in combating illicit financial flows from the mineral sector?				
47	Are there regulations on thin capitalization? If any, how effective are they?				
48	Does the law provide a declaration of beneficial ownership of a mineral's entity?				

38. None of the four countries has a national definition of what constitutes Illicit Financial Flows (IFFs).

39. All four countries assessed have been actively using Global Finance Integrity and Mbeki Panel data to reference IFFs status. The Ghana Statistical Service announced in March 2022 that it had initiated a process of measuring how much the country has lost through IFFs from 2000 to

2021.[101] It is expected that Zambia will initiate such a process as well, given that both countries are part of a pilot support project to measure IFFs by the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Economic Commission of Africa (UNECA).[102]

40. All four countries have been implementing evolving laws and policies to deal with IFFs. The assessment shows that there have been mixed efforts to curb IFFs, with most of the focus being on transfer pricing, as discussed in 9c. Zambia adds innovation by also physically monitoring minerals from production to export.

a. In Liberia, authorities strengthened transfer pricing rules and related documentation requirements. These documentation provisions place a stronger emphasis on Multinational Enterprises (MNE) identifying related party transactions and explaining how those transactions are comparable with what arm's length parties would have done. This helps the authorities assess MNE risks and ensures companies understand how they must be able to explain their transactions. The authorities promoted this reform as providing greater clarity and certainty to business taxpayers.[103]

b. Several steps have been taken to mitigate against IFFs risks in Uganda's extractives sector. In 2009, the Income Tax Act was amended to make it mandatory for mining and petroleum companies to account for all transactions on arm's length basis.[104] The amendment was followed up by the passing of the Transfer Pricing Regulations in 2011 and the establishment of a specialised international tax unit to deal with the taxation of the extractives sector and transfer pricing at the URA.[105] Under the Regulations, the documentation of transactions between associated entities is mandatory.[106]

c. ZRA has embraced the OECD transfer pricing international standards, the arm's length principle. In April 2018, the Zambian government, through the Ministry of Finance, released the Income Tax Transfer Pricing Amendment Regulations 2018 to govern transactions between related parties. Zambia also revised the penalties for not adhering to transfer pricing from ten thousand penalty units to eighty thousand penalty units (ZMW 3,000/$175) to ZMW 24,000,000/$140000). The penalty of ZMW 3,000 ($175) was not punitive enough to compel the companies to comply with documentation rules. Section 65 of the Income Tax Act was amended to allow assessments in transfer pricing cases to be made beyond the period of 6 years but not exceeding ten years. Transfer pricing audits generally take longer than normal audits because of their complex nature and the need to gather information about the persons transacting.

In a memorandum issued after the cabinet meeting of 22 June 2020, the Zambian government announced that the Double Taxation Agreement (DTA) between the Government of the Republic of Zambia and the Government of the Republic of Mauritius would be terminated with effect from 31 December 2020. The treaty came into force on 15 June 2012, and it covered income from a number of specific sources, such as business

101 All Africa 2022, Ghana: GSS to Quantify Illicit Financial Flows Lost to Ghana

102 UNCTAD 2022, Testing new guidelines for measuring illicit financial flows in Africa and Asia

103 WorldBank (2019), Liberia, Domestic Revenue Mobilization Policy Notes
104 Section 89 I (2), Income Tax Act cap 340 (as amended). Also see Income Tax (Amendment) Act, 2009.
105 Income Tax (Transfer Pricing) Regulations, 2011.
106 *Id*, Regulation 8.

income, dividends, interest, and royalties. In the Cabinet statement, the government noted that Zambia did not retain taxing rights to tax dividends, interest, and royalties arising in Zambia and payable to residents of Mauritius.

Zambia also introduced requirements for Country-by-Country reporting effective 1st January 2021.[107]

Efforts to physically audit production to export are considered one of the key initiatives by the Zambian government to combat IFFs.

d. IFFs in the Ghanaian extractive industry stem from corruption, illegal exploitation of mineral resources, Galamsey (illegal artisanal mining), resource smuggling, thin capitalization manipulations, and tax evasion through illegal deals like transfer pricing by mining companies. Policies outlined to combat the menace include streamlining customs operations, implementing transparency and governance initiatives, working towards effective anti-money laundering regulations, and financial oversight. Specifically, the policies include the integration of the main revenue agencies (Internal Revenue Authority, VAT,) under GRA, the Computerized Ghana Custom Management System (GCMS), the signing of the World Trade Organization's customs evaluation agreement, and the banning of illegal mining. A transfer pricing team has been established within GRA, which conducts audits into suspected transfer pricing incidences as guided in the GRA act 89, sections 31 to 34.

41. Assessment is not applicable because in all four countries assessed, there are arm's length provisions for transfer pricing in the mining sector.

42. The assessment found that the Revenue Authorities in the four countries have dedicated units to monitor transfer pricing and deal with IFFs.

a. The LRA has an established desk audit system for large taxpayers. It also has a dedicated Natural Resources Unit.

b. Uganda currently has an international tax unit, reported to have 11 staff compromising as at the end of 2021. The unit deals with transfer pricing related cases.

c. The ZRA is the main institution mandated to monitor transfer pricing and IFFs. In 2006, the ZRA established a transfer pricing unit. The Large Taxpayers office is also tasked with the responsibility of monitoring compliance with big extractive companies.

d. The GRA is the main institution liable to the responsibility of monitoring transfer pricing and other forms of IFFs. The Transfer Pricing Unit under GRA reviews transfer pricing audits, however, only when there is a disagreement between the taxpayer and the unit on transactions. Plans are also underway to allocate transfer pricing staff to various sectors including the extractive industry. There is also the Mining Desk at the Large Taxpayers Office within GRA. The Mining Desk is the focal point at the GRA for all mining companies as well as the interface between GRA and the Minerals Commission.

43. The assessment found that all four countries have dedicated transfer pricing units

44. All four countries seemed to rely on peer-reviewed reports through Financial Action Task Force(s) (mostly focusing on money laundering and terrorist financing) to evaluate progress

[107] MNE Tax (2021), Zambia introduces country-by-country reporting

against laid recommendations. Zambia and Liberia are members of the OECD BEPS inclusive framework and benefit from progress reports made on set recommendations to curb BEPS.

Ghana and Liberia are members of the Inter-Governmental Action Group against money laundering in West Africa (GIABA), while Zambia and Uganda are members of the Eastern and Southern Africa Anti-Money Laundering Group.

45. The assessment found that all four countries are members of several initiatives aimed at helping curb IFFs. Zambia falls short of committing to implementing Automatic Exchange of Information and is also not a part of the Mutual Administrative Assistance for Tax Matters. On the other hand, Ghana and Uganda are not part of the OECD inclusive framework.

a. Adding to memberships mentioned in 14 and 44, Liberia is a Member of the OECD BEPS Inclusive Framework and is also a member of the Inter-governmental Forum for Mining and Metals (IGF). The country is also an active member of the African Tax Administrative Forum (ATAF) and is committed to its treaties. Liberia is also signed onto the Convention on Mutual Administrative Assistance in Tax Matters. Liberia is a member of the Global Forum for exchange of Information on request (EOIR) and Committed to Automatic Exchange of Information (AEOI)[108]

b. Adding to memberships mentioned in 14 and 44, Uganda is an active member of the ATAF, and it's both a recipient of capacity support and is committed to its treaties. Uganda is also signed onto the Convention on Mutual Administrative Assistance in Tax Matters. Uganda is a member of the Global Forum for exchange of Information on request (EOIR) and Committed to Automatic Exchange of Information (AEOI)[109]

c. Adding to memberships mentioned in 14 and 44, Zambia is a Member of the OECD BEPS Inclusive Framework and is also a member of the Inter-Governmental Forum of Mining and Metals (IGF). The country is also an active member of ATAF.

d. Ghana is a member of the IGF and an active member of ATAF. Ghana also signed onto the Convention on Mutual Administrative Assistance in Tax Matters. Ghana is a member of the Global Forum for Exchange of Information on Request (EOIR) and is committed to the Automatic Exchange of Information (AEOI).[110]

46. All the four countries have benefited from being part of global efforts to curb IFFs. Some of the benefits include:

a. By signing onto the amended OECD Convention on Mutual Administrative Assistance in Tax Matters, which provides a comprehensive multilateral framework for the exchange of information and assistance in tax collection, Liberia managed to undertake its first transfer pricing audits in 2019.
b. Through the OECD Convention on Mutual Administrative Assistance in Tax Matters, Uganda is reported to be benefiting from administrative assistance in tax matters: exchange of information on request, spontaneous exchange, automatic exchange, tax examinations abroad, simultaneous tax examinations, and assistance in tax collection.[111]

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[108] OECD 2022 Convention on Mutual Administrative Assistance in Tax Matters
[109] Ibid
[110] OECD 2022 Convention on Mutual Administrative Assistance in Tax Matters
[111] OECD, (2015)Uganda Country Page

c. Added to the numerous capacity building support, ATAF, IGF, and OECD, helped Zambia improve its methodology for valuing manganese ore. The institutions also worked with Zambia to revise their transfer pricing rules to prevent the profits from the sale of base or precious metals from being shifted overseas to low-tax jurisdictions. They further aided in transfer pricing risk assessment and on ZRA audit cases.[112]

d. The Petroleum Commission described the increase in Amerada Hess Ghana's royalty rate from 2 to 3 percent because of Ghana EITI's advocacy[113]. Ghana has also benefited from technical support from the OECD, including workshop training, provision of transfer pricing experts and tax advice for the 2012 transfer pricing regulation.

   Ghana signed the Convention on Mutual Administrative Assistance in Tax Matters, a multilateral agreement developed jointly by the Council of Europe and the OECD. It has led to transnational tax cooperation and exchange of information and to counter cross-border tax evasion, and ensures compliance with national tax laws. With the support of ATAF, Ghana's transfer pricing unit is liaising with South Africa, Kenya, and Tanzania for the exchange of expertise and knowledge. Tax transparency through the Automatic Exchange of Information and access to comparable information have also been supported by Global Forum.

47. The assessment found that thin capitalization rules in Uganda and Zambia limit interest deductibility to 30% of the Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA). Ghana maintains a debt and equity ratio of 3:1. Liberia does not have thin capitalization rules but limits interest payable. A notable concern is that the rules allow for indefinite carry forward of disallowed interest.

a. There are no thin capitalization rules applicable in Liberia. However, the amount of interest payable, which exceeds the total interest income receivable and 50% of taxable income, is not deductible. In relation to mining, the interest which was disallowed may be carried forward indefinitely., Interest may be re-characterized as dividends[114]

b. In Uganda, the interest can be claimed as a deduction by a company that is part of a group is restricted to 30% of the taxable EBITDA. A person who, upon request by the Commissioner, fails to provide records in respect of transfer pricing within 30 days after the request is liable to a penal tax equivalent to UGX 50 million.[115]

c. In Zambia, interest deductibility is limited to 30% of a company's tax EBITDA. This limitation applies to gross interest arising from loans that are both revenue and capital in nature.[116]

[112] BEPS in Mining Case Study 2020
[113] NRGI 2016 Transfer Pricing in the extractive sector in Ghana

[114] KPMG Liberia Fiscal Guide 2017/2018
[115] KPMG Uganda Fiscal Guide 2019
[116] EY (2021) Zambian Government issues 2021 Tax Amendment Acts and Regulations

d. In Ghana, the interest expenses and foreign exchange currency losses incurred on related-party debt in which 50% or more of the underlying ownership or control is held by an exempt person, either alone or together with an associate, are not allowed as a deduction in arriving at the chargeable income of the entity if the entity is thinly capitalized. An entity controlled by an exempt person is deemed to be thinly capitalized if its debt-to-equity ratio exceeds the ratio of 3:1.

48. Considering all the four countries are EITI Implementing Countries, each of them has initiated the process of making a publicly available Beneficial Ownership (BO) register. Ghana and Zambia have a publicly available register having legislated new Companies Acts that mandate companies to disclose BO information.

a. LEITI Act of 2009 mandates the country to meet EITI standards and objectives. By implication, the legislation supports the setting up of a Beneficial Ownership register. Liberia first launched its first pilot Beneficial Ownership (BO) Report in 2015, and it included 49 extractive companies. A BO road map has been developed designed to guide Liberia's efforts to fully implement the beneficial ownership disclosure requirements under the 2019 EITI Standard (Requirement 2.5 (C).[117]

b. Uganda is new to the EITI and published its first report in 2022. With regards to implementing the B.O requirements of the EITI standard, the MSG, with support from the European Union Delegation in Uganda, is in the process of procuring a consultant to undertake a beneficial ownership legal and institutional review and support the MSG in drafting a clear roadmap for BO implementation[118]

c. The Zambia Companies Act 2017 includes, amongst other issues, beneficial ownership disclosure requirements. The new Act provides for the disclosure of beneficial owners and the creation of a register of beneficial owners that will be kept at the Patents and Companies Registration Agency (PACRA). The BO Register is accessible to the public upon request, physically and electronically, through the PACRA website and after paying ZMW 90 (approximately $4.8) fees.[119]

d. In Ghana, the Companies Act 2019 (Article 992) provides for the disclosure of beneficial ownership information. The Act requires the identification of members and beneficial owners of companies, including those who are politically exposed persons, and the registration of these relationships in the Central Register kept by the Registrar of Companies. The Central Register is a database maintained in both Electronic and Manual formats by the Registrar of Companies. The Register is available for public viewing. [120]

From the assessment, it's recommended that:

- All four countries consider scoping and defining what is included as IFFs.
- Liberia and Uganda, like Ghana and soon Zambia, begin processes of developing Government staff capacity to deliver on measurements of IFFs.

[117] Liberia Extractive Industries Transparency Initiative 2021 EITI Report FY 2018/2019
[118] Uganda Extractive Industries Transparency Initiative 2019/2020
[119] Zambia Extractive Industries Transparency Initiative Report of 2019
[120] Republic of Ghana Ministry of Finance 2019, GEITI report 2017& 2018

- We recommend that all four countries develop clear roadmaps of how they intend to combat IFFs, as this would form a basis on which countries can self-assess progress in dealing with IFFs.

- Liberia needs to revisit its proxy thin capitalization rules, which may be used as means of tax avoidance.
- Liberia and Uganda consider expediting ongoing processes in legislating and implementing beneficial ownership registers.

C. LESSONS LEARNT AND CONCLUSION

The rationale behind the development of an African Minerals Governance Framework (AMGF), on which these policy notes were developed, was to deepen the commitment of African countries to implement the AMV. The AMGF is a monitoring tool developed for the purpose of determining progress in realizing the AMV's transformative agenda. For revenue collection, this transformative agenda entails optimising revenue collection from mineral extraction while ensuring that the sector competitively attracts investments.

While countries may have conflicting objectives for fiscal policy, the AMV's ambitious agenda is skewed towards making effective use of a mix of tax instruments, with a bias on profit-based taxes to optimise revenue collection. It also suggests tools that can be used to seal the tax loopholes that result in revenue leakages. Furthermore, the AMV places emphasis on the need for countries to review their tax incentives and tax treaties with the objective of revising redundant provisions that undermine effective tax collection yet not attracting the intended investments into the sector. Emphasis is also placed on ensuring that countries make progress in fighting corruption and eliminating the risks of IFFs from the sector.

Having assessed the four countries (Liberia, Uganda, Zambia, and Ghana) against the AMGF, the assessment proves that the mix of measures highlighted in the AMV needs to be implemented holistically with a coordinated approach for the ambitious targets to be met. For instance, while Liberia closely followed the AMV aspirations on policy commitments and has the right fiscal instruments for optimal collection, the assessment exposes that it has a poorly performing fiscal regime, with the main source of revenue leakage attributed to the weak enforcement of policies and laws. The assessment further finds that the fiscal regime is also vulnerable to profit shifting. Corporate income tax revenues in Liberia are very low, yielding only 1.45% of GDP. This is mainly attributed to the non-transparent tax exemptions related to the mining sector.

This assessment shows that strong institutions, proactive monitoring, and investment in competent and dedicated human capital remain necessary for effective revenue collection even when a country opts for simple and easy fiscal instruments. In Uganda, for instance, the policy objective on mineral revenue collection is attaining *"a stable, transparent, predictable, and competitive fiscal regime to optimize collection and management of mineral revenues."* Uganda has

worked to achieve this by implementing a simple fiscal regime., which offers fixed royalty rates per tonne for some commodities. Although Uganda has a less complex fiscal regime, a weak monitoring, and enforcement system by DGSM has undermined [121]optimal tax revenue collection from the mining sector.

Alternative approaches to optimizing tax revenue collection have also been noted across different countries. For instance, after failed attempts at Variable Profit Tax implementation, Zambia introduced sliding mineral royalty rates for copper with the objective of optimizing mining revenue amid changing contextual circumstances. The successful implementation of the sliding royalty scale has been attributed to the Mineral Value Chain Monitoring Project (MVCMP), which physically monitors copper from extraction to exportation. The MVCMP proves to be a good lesson for other countries on how to collect accurate data on production volumes, mineral grades, and sale values.

Transparency matters for optimal tax collection as it creates a platform for dialogue and engagement on fiscal regime issues in resource-rich countries. Lessons can be drawn from Ghana's effort toward mineral sector transparency through EITI reporting, which currently challenges incentives on royalty payments guaranteed in Stabilization Clauses in Investment Agreements. EITI advocacy efforts have also been said to lead to an increase in Amerada Hess Ghana's royalty rate from 2% to 3%. All four countries assessed are EITI implementing countries and have benefitted from meaningful dialogue on fiscal regimes following EITI disclosures.

In a nutshell, the one-size-fits-all fiscal regimes for the mining sector do not exist even within the context of the AMV. However, the AMGF does form a sound basis upon which revenue optimisation can be assessed and realized. The tool, however, is not comprehensive enough to diagnose country mining fiscal regimes, as noted from inconclusive results to some of the assessment questions. From the lessons drawn in the country assessments, it's recommended that the tool undergoes continuous review and updating to make it comprehensively useful and fit for purpose.

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