



# EXTRACTIVE REVENUE POLICY OPTIONS FOR AFRICA

Lessons from the FTM Reports of Kenya  
and Mozambique



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# Summary

Africa's vast natural resource wealth offers significant opportunities for financing sustainable development, yet fiscal deficits and rising public debt constrain many governments. Despite holding 30 percent of the world's mineral reserves, the African continent struggles to translate resource wealth into equitable socio-economic gains for its citizens. Weak tax frameworks, generous tax incentives, aggressive tax avoidance, and illicit financial flows (IFFs) undermine revenue generation, contributing to persistent poverty and inequality.

African Centre for Tax and Economic Studies (ACTES), on behalf of Oxfam, carried out a Fair Tax Monitor (FTM) synthesis for Kenya and Mozambique reports focusing on the extractive sectors and with recommendations that extend to many countries in the sub-Saharan Africa. The synthesis study reviewed FTM reports for Kenya and Mozambique; reviewed relevant literature on fair and equitable taxation for Africa's extractive sector; and leveraged insights from key informants and subject experts through questionnaires and meetings.

## Key Findings

Despite comprehensive legislation governing the extractives industry (EI) in Kenya and Mozambique, weak enforcement and arbitrary issuance of incentives continue to drain potential revenues. The challenges are expounded by aggressive tax planning, IFFs and tax avoidance strategies by multinational companies (MNCs) in the extractive sector. Faced with corruption, shortage of resources, and capacity constraints, governments and local communities, particularly those near extraction sites, are at a disadvantage.

Revenue-sharing frameworks exist in both countries, but there is little transparency regarding how funds are transferred, allocated, and ultimately used, making it difficult to track whether revenues benefit intended communities. There is also slow or incomplete adherence to international best practices and expert recommendations in managing the sector. In both Kenya and Mozambique, there is also no clear consideration or prioritisation of women and children in EI revenue management and contracting. Current laws do not address implicit biases or the differentiated social and

economic impacts experienced by these groups, thereby overlooking gender-specific inequalities in outcomes.

The community development agreements (CDAs) are now common across the region due to increased community demand for benefits and stronger government regulations. Yet communities have little or no negotiating power due to asymmetry of information and lack of technical capacity.

## Recommendations

The report recommends widespread use of variable royalties, and a mixture of fiscal regimes with different bases to reduce negative consequences of aggressive tax planning by mining companies and more broadly other actors in EI .

Authorities should improve transparency by disclosing and publishing contracts, revenues to central government, revenues to extractive communities, and account for all the funds used at all government levels.

Earmarking of revenues at source may also avoid potential funds disbursement delays and money not being sent to communities. With persistent expenditure pressures, central governments tend to prioritize other sectors and the corporate world, leaving communities helpless. Earmarking specific revenues to mining communities may reduce the burden that communities face from companies and counter the lack of political will from central government to allocate the funds to local governments.

Governments should also create beneficial ownership registries for all companies in the extractive industry, mandating legal disclosure of their beneficial ownership.

Similarly, the African Union in their review of the African Mining Vision (AMV) Action Plan and the Review of the Africa Minerals Governance Framework (AMGF) should make it a legally binding instrument for all stakeholders in the industry and in the region.

Additionally, the AU and its member states should strengthen their engagement and participation in international tax processes (most notably, the United Nations Framework Convention on International Tax Cooperation) to enhance transparency in reporting and information exchange. Engaging in international tax cooperation will

help countries stay abreast of global trends and ensure that their tax policies remain competitive and equitable.

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## LIST OF ABBREVIATIONS

AfDB	Africa Development Bank
AfNRMIC	African Natural Resources Management and Investment Centre
AFRODAD	African Forum and Network on Debt and Development
AMGF	Africa Minerals Governance Framework
AMV	African Mining Vision
ASM	Artisanal Small-scale Mining
ATAF	Africa Tax Administration Forum
BEPS	base erosion and profit shifting
CDAs	Community Development Agreements
DTA	Double Tax Agreements
ECA	Economic Commission for Africa
EI	Extractives Industry
EITI	Extractive Industries Transparency Initiative
FTM	Fair Tax Monitor
GDP	Gross Domestic Product
IFFs	Illicit Financial Flows
IGF	Intergovernmental Forum
IMF	International Monetary Fund
MNC	Multinational Companies
NEPAD	New Partnership for Africa's Development
OECD	The Organization for Economic Cooperation and Development
PWYP	Publish What You Pay
SSA	sub-Saharan Africa
TJNA	Tax Justice Network Africa

# 1. Introduction

Fiscal deficits and rising debts are significantly limiting the amount of financing available for sustainable development in Africa. Currently, the continent faces the biggest funding gap for achieving the Sustainable Development Goals among all regions. In 2025, Africa's average fiscal deficit was approximated at 5.1 percent of GDP while public debt was estimated to be 65 percent of GDP in the same year (African Development Bank Group, 2025). Natural resources have potential to advance equitable and inclusive economies in Africa through financing expenditure pressures and rising debt servicing as the continent is home to about 30 percent of the world's mineral reserves, 10 percent of the world's oil, and 8 percent of the world's natural gas (UNEP, 2025). Yet, historically, this wealth has not benefited local populations. Instead, MNCs and other select interest groups take advantage of weak tax and governance systems to engage in tax avoidance, transfer mispricing, and other strategies to shift profits out of the continent—often leveraging tax havens or inequitable contracts (Ngabirano & UN OSAA, 2022). In these cases, the tax system perpetuates inequality, injustice, and poverty.

Several institutions such as Extractive Industries Transparency Initiative (EITI), Publish What You Pay, Transparency International, and the New Partnership for Africa's Development (NEPAD) have made significant strides in promoting transparency and accountability in the extractive sector. These institutions have contributed to establishing frameworks and mechanisms to ensure that revenues from natural resources are disclosed and that corruption is minimized in this sector. Despite these efforts, challenges remain as ATAF (2023) noted that most initiatives are not adequately addressing the underlying issues including IFFs, corruption, and inequitable contracts. Oxfam has also been pushing for improvements in the tax system that meet human rights and tax justice standards across Africa. Among others, Oxfam uses the FTM reports to assess fiscal policies and tax systems to advocate for fairness and equity. This report consolidates findings of FTMs of Kenya (2022) and Mozambique (2023), with a special focus on extractive industries.

## 1.1 Problem Statement

Kenya and Mozambique just like many countries in Sub Saharan Africa are accumulating a lot of public debt amidst rising expenditure pressures. Kenya's debt stock reached 68 percent of GDP in June 2021 and rose further to 70.8 percent of GDP as of June 2023, with a debt servicing to revenue ratio standing above

50 percent (Kenya FTM 2022; Kenya National Treasury MTDMS 2024). Over the years, Kenya has resorted to inequitable means of raising tax revenues such as digital services taxes, and using excise taxes outside the Pigouvian objectives, despite offering harmful tax incentives, exemptions, and under-taxing wealth. Mozambique, a country rich in natural resources such as coal, gas, and minerals, started borrowing against resource deposits before extraction began. The country's debt levels had reached 102 percent of GDP in 2021 and slowly declined to 93.9 percent as of end 2023 (Mozambique FTM 2023; IMF Staff Report Article IV Mozambique 2024). Much as the tax system in Mozambique has increased in progressivity over the years, with increasing dependence on direct taxes, the lack of fairness in spending is more pronounced in the dominant extractive industry, where vulnerable people and communities are not fully benefitting from resource extraction.

Across the continent, there is a pattern of low government take from the mineral sector and low-community engagement and benefit (World Bank 2014, Lundstøl 2018). While the extractive sector contributes a huge share of export earnings in countries like Ghana (92 percent), Botswana (92 percent), Democratic Republic of Congo (93 percent), and Zambia (75 percent), there is no corresponding increase in share of tax revenues realised by governments from the sector and poverty levels remain high (ActionAid 2020). High IFFs and tax concessions counter equality and redistributive potential of tax systems (Nicolaou-Manias and Traore 2024). Most governments offer generous tax incentives to firms in the sector and most MNCs engage in aggressive tax planning and lobbying resulting in lower tax obligations which are yielding minimal positive economic impact on host nations. Tragically, the communities located near these extractive resources are disproportionately affected. As effective tax rates for the poor (or generally tax burden) tend to be disproportionately high, these communities often suffer from inadequate social services, including health and education, compared to the rich.

Considering these challenges, the FTM reports are a basis for advocating for improved fairness of the tax systems in countries and ensuring that gains from the extractive industry are equitably distributed among the population, especially areas where the industry operates. The FTM is crucial as it helps to understand the structure, challenges, and implications of a tax system on vulnerable people and communities and helps in formulation of policies and programs to promote fairness and equity of tax systems. This synthesis report combines findings from the FTM reports for Kenya and Mozambique, published in November 2022, and July 2023, respectively, as well as other literature relating to extractive revenues management.

## 1.2 Objectives and Scope

The main objective of the synthesis report is to provide a review of the status of extractive sector revenue mobilisation and realisation of rights in Africa. This objective is achieved through a set of reports and activities which include literature review focusing on findings in FTM reports for Kenya and Mozambique; findings from interviews with key stakeholders; and literature review from other relevant publications. Furthermore, in addressing the main objective, the report covers human rights issues and inclusion in relation to taxation of extractive sectors in the region, particularly revenue sharing. Regressive tax policies, which unfortunately are common in both developed and developing countries, are a cause for worry in efforts to ensure adherence to human rights and tax justice. Furthermore, profit shifting (where extractive industry companies shift their profits to other jurisdictions with very low tax rates), denies the host nations the much-needed tax revenue. It is therefore important for tax systems to advance fairness, equality, and justice across individuals and nations.

## 2 Background/Context

Extractives are a major source of revenues for resource rich countries in Africa with over 15 countries in the continent defined as resource intensive. The mining sector is particularly important in sub-Saharan Africa (SSA) as it hosts 10 of the 15 globally recognized mining-intensive economies (Albertin et al. 2021). Several SSA countries have untapped mining resources consisting of at least 30 percent of global mineral reserves (Albertin et al. 2021; Martin 2008). Instead of translating wealth into societal benefits, the extractive industries have failed to redistribute wealth equitably or improve livelihoods, with governments often neglecting pro-poor spending. The region's vast mineral wealth exists side by side with pervasive poverty (IMF 2021, Obeng Kwesi - PWYP). The proceeds from these resources rarely reach communities and vulnerable groups like women and children. For example, Mozambique discovered 180 trillion cubic feet of liquefied natural gas (LNG) in the Ruvuma Basin, expected to generate up to USD 500 billion by 2045, but concerns remain that the benefits may not trickle down to improve livelihoods or overall development (Hasley, Bridle, Vazi & Geddes 2023). Other scholars also found evidence of resource curse for the EI in SSA where EI tax revenues negatively correlate with non-EI tax revenues thus showing some sort of trade off (Mawejje Joseph 2019). Unfortunately, women are on the receiving end of these regressive tax systems and resource misallocation. Governments are failing to fully utilise the basic functions of taxation which include raising adequate revenues for service provision, redistribution of wealth to enhance equity in society, reinforcing social contracts, and correcting negative externalities.

One of the significant obstacles to equitable distribution of EI wealth is the prevalence of IFFs. Countries like Kenya lose approximately USD 565 million annually through IFFs, while Mozambique's annual losses exceed 2.2 percent of its GDP- well above the African average loss of 0.7 percent (Kenya FTM 2022; Mozambique FTM 2023). MNCs dominance worsens transfer pricing abuses and other tax planning schemes in EI (AfNRMIC-AfDB 2023). They exploit tax administration systems and negotiate favourable contracts that override national tax and mining laws, diminishing share of government revenues (IMF, 2021; African Union, 2020). For Instance, Tanzania EI faces loopholes in EI taxation which include tax laws that are favourable to MNCs instead of the host nation, worsening IFFs, unfavourable tax incentives and exemptions (Inspire Consultants Limited 2020). SSA governments try to attract reputable EI firms by allowing for clauses that make it difficult to change contracts. Most MNCs, who dominate the EI in SSA, also engage in aggressive tax planning

and tax avoidance schemes that render most governments at the losing end (IMF 2021, African Union 2020). These have resulted to systematic failures to share resources in an equitable manner that guarantees the interests of current and future generations, the poor and those that are most affected by extractive activities. Corporate tax avoidance costs the continent as much as US\$730 million per year hence undermining governments' ability to provide quality critical services to the citizens (Nsenduluka and Phoya 2024).

Moreover, economies in the region also compete to attract MNCs, in the process exposing themselves to these aggressive tax planning and transfer mispricing. These competitions result in a race to the bottom where countries end up collectively worse off and the MNCs benefit more. For instance, governments in SSA have used tax breaks to attract MNCs but these tax breaks undermine the revenue base- developing countries fear that without such incentives, the MNCs may go to another country (IMF, World Bank, UN, OECD, 2011). While the prevalence of tax incentives are often justified as tools for attracting foreign direct investments and stimulating economic growth evidence suggests that they may not always deliver the desired outcomes (TJNA, 2026). In the long-run, the tax breaks come at the cost of achieving SDGs (Masiya, Hall, Murray, Etter-Phoya, Hannah, & O'Hare 2024). Despite having fiscal instruments such as mineral royalty rates that are broadly comparable to international norms, EI tax collections in many Sub-Saharan African countries remain low. United Nations. (2021) shows that mineral-rich countries often collect substantially less than their potential revenues, in some cases even less than half.

Transparency mostly in tax incentives also remains a challenge for most countries in the region as MNCs have powers to dictate terms of mining agreements. The FTM report for Mozambique reveals that access to information remains a challenge. There are instances where the central government and local government report different numbers for the same expenditure or revenue transaction, signalling challenges in reconciliation and data access. For instance, in Uganda, local governments are kept in the dark on royalty sharing formular and schemes (Ngabirano and Mugenyi 2023). Furthermore, tax administrations are weak and face significant human and financial resources to effectively enforce existing regulations and laws for the EI. Even in cases where the right tax tools are in place, there is a significant gap between tax policy and tax implementation in SSA. Studies have shown that capacity of tax administrations and vulnerability of fiscal authorities to MNCs pressure may explain some of the existing gaps. Ngabirano (2022) found that the effectiveness of the extractive industries fiscal regimes in Mozambique, Tanzania and Uganda is greatly undermined by the inherent weaknesses in the regimes themselves, poor enforcement due to capacity

constraints, and stabilisation clauses which limit pursuance of revenue mobilisation reforms.

The Organization for Economic Cooperation and Development (OECD) has been leading on a long-term process to address challenges in international corporate taxation through the so-called “base erosion and profit shifting” (BEPS) project, but it has been observed that most African countries had little say in these discussions (Hirschel-Burns 2022). Yet African countries are highly affected by MNCs profit shifting who are mostly from OECD countries. Not surprisingly, a significant amount of profit shifting persists because agreed solutions have been insufficient to African interests and needs. DTAs are also considered a double sword with unintended consequences. While DTAs are designed to attract investment and prevent unfair taxation, they can simultaneously disadvantage the host nations through, among others, limiting ability of countries to gain from transfer of mining rights, payment of royalties, and exercise of taxing powers (Danish and Daniel Uribe, 2020).

Over the years, countries have embarked on several reforms to improve EI taxation and revenues. Albertin et al (2021) reported that the Kenya government introduced a limitation of benefits article into the tax treaty policy while governments of Burkina Faso, Cameroon, Côte d’Ivoire, Gabon, Mauritius, Nigeria, Senegal, and South Africa have all signed agreements to limit treaty benefits and, in the process, strengthen protections against treaty shopping. On a community level, efforts to include local development requirements in mining contracts have gained momentum, but the implementation of these provisions remains challenging. There is little evidence to suggest that these requirements achieve their intended goals, and resource-sharing agreements often fail to benefit communities (Schwartz et al. 2021).

There are wide and valid concerns that fairness, equity and reciprocity are pervasive among African taxpayers. Ideally, a fair tax system is consistent and comprehensive without loopholes or discrimination, balances the rights, and privileges of people and companies (Odd-Helge Fjeldstad et al 2017). Tax policies including provision of tax incentives like tax exemptions should be assessed or effected based on their effectiveness in supporting vulnerable people and communities, and policy makers should put in place policies that efficiently target the poor (Diouf Awa 2024).

It is against this extensive background that Oxfam embarked on the synthesis study to assess the fairness and equitability of EI taxation in Kenya and Mozambique and develop best practices and recommendations that extends to other countries in the region. The subsequent sections comprise methodology, key findings and analysis, recommendations, and conclusion.

# 3 Methodology/Approach

In the development of the report, we used both primary and secondary sources of information. Firstly, we drew findings from the existing FTM reports for Kenya and Mozambique. We supplemented these findings by other recent literature and reports on extractive sector drawn from institutions like Oxfam, Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), ATAF, TJNA, Action Aid, AFRODAD, UN ECA, and Open Society Foundation. We also used strategic documents like Agenda 2063, AMV (2009), and The Program for Infrastructure Development in Africa (PIDA). Secondly, we conducted Key Informant Interviews involving experts in the field from different countries in Africa including Kenya and Mozambique. We also interviewed experts from Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Mining Malawi, and Tax Justice Network Africa (TJNA). The questionnaires drew from a list of investigative questions that informed the analytical approach that we used to discuss the findings. Thirdly throughout the synthesis, literature review, and analysis, we identified common themes and developed insights that we used to inform policy and advocacy.

# 4 Key findings

This section discusses the main findings that were drawn from a combination of the synthesis of Mozambique and Kenya FTM reports, and surveys of key informants in Kenya, Mozambique, and other African countries. The findings are based on key investigative questions, legal analysis, and analytical framework that addresses the themes: (1) revenue mobilization and revenue-sharing mechanisms, (2) transparency and accountability, and (3) the implications of global tax reforms.

The study critically analysed the themes while referring to the key international and regional instruments on mining, including the Africa Mining Vision and Agenda 2063, as well as instruments addressing the intersection of mining, human rights, and tax justice.

## 4.1 Revenue mobilisation and sharing mechanism

According to the AMV, it is crucial for countries to adopt transparent and equitable tax policies and legal frameworks to ensure that they receive fair revenue from their natural resources and ultimately ensure that the benefits of natural resource extraction are equitably distributed among all stakeholders, including local communities (Africa Union 2016). The AMV advocates for improved regulatory frameworks and better alignment with international standards to prevent revenue loss through tax evasion and avoidance strategies (Oxfam, 2017). Furthermore, it also calls for “*a sustainable and well-governed minerals sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities*” (Africa Union, 2016). This section presents findings of the review of whether Mozambique, Kenya and other African countries incorporate these recommendations on revenue mobilisation and revenue sharing in their legal and regulatory frameworks.

### 4.1.1 Mozambique

According to Mozambique 2021 EITI Report (2021), the country lacks a comprehensive legal framework for beneficial ownership, leading to significant gaps in their tax regime. One respondent interviewed observed that although the country does not have an official extractive industry policy, it has in place a framework that is

composed of specific legislation and institutions that regulate the mining sector and the hydrocarbon sector separately. They further indicated that in addition to the general tax regime, the taxation of oil & gas and mining operations in Mozambique is governed by the Specific Regime of Tax and Fiscal Benefits (Fair Tax Monitor Mozambique, 2023). The regime is structured to ensure a steady influx of tax revenue for the government and provides for a combination of both production-based revenue-raising mechanisms and profit-based taxes. Le (2016) asserts that government of Mozambique still has some way to go in enhancing transfer pricing regulations and imposing fines on multinational companies engaging in tax abuses. Yet the tax burden on the corporate sector is relatively high, and the system's complexity and multiple schemes contribute to revenue leakage.

Furthermore, post-2009 fiscal incentives have also been overly generous, leading to significant revenue losses (Fair Tax Monitor Mozambique, 2023). Most of the provisions of the DTAs that Mozambique has with the tax havens follow an unfair model from the OECD that favours the residence country for tax rights, at the expense of the countries where the economic activity takes place. Reduced rates of withholding taxes (for dividends, interest, and royalties), no withholding taxes on service fees, unfavourable definitions of "permanent establishment", and capital gains tax avoidance through offshore indirect transfers are some of the main clauses of the DTAs that multinational companies use to lower their taxes. Although the Code of Tax Incentives provides a structured legal basis for granting incentives, Mozambique does not conduct cost-benefit evaluations before granting these incentives, nor does it publish the total revenue lost due to tax incentives in the extractive sector (at aggregated and disaggregated levels) (Fair Tax Monitor Mozambique, 2023)

On revenue sharing with local governments, Mozambique lacks a comprehensive legal framework to guide the distribution of natural resource revenues. The beneficial ownership gaps observed by the 2021 EITI Report prevent local communities from benefiting from resource extraction. After civil society advocacy, the government increased the percentage of mining revenues allocated to producing regions from 2.75% to 10% in 2013. However, the distribution of this 10% remains unclear, leaving further gaps in revenue sharing. Furthermore, citizen participation is weak, particularly for marginalized groups such as women and youth, and local communities have limited influence on revenue use, exacerbating inequality in benefit distribution.

In Mozambique, several gaps were observed in revenue mobilization. First, a significant number of the contracts in the oil and gas sector for example were signed long before the approval of the Specific Regime of Tax and Fiscal Benefits and contain provisions that hinder revenue collection. Second, other revenue

leaks in the form of restricted DTAs and tax abuses constrain resource mobilization in the extractives, and they result from the lack of a strong institutional framework. Third, there is no assessment of the economic impact and fiscal sustainability of tax incentives. Addressing these gaps will require stronger governance and clearer mechanisms for community involvement in the decision-making processes.

#### 4.1.2 Kenya

According to Maina (2019), Kenya has implemented a legal framework that addresses many international tax risk areas, including arm's length pricing, transfer pricing rules, ring-fencing rules, and thin capitalization rules. However, challenges such as inadequate auditing capacity, lack of quality comparable data, and exploitation of debt-to-equity ratios persist. From the key informant discussion, it was learnt that Kenya is not a member Extractives Industry Transparency Initiative. EITI is a body that seeks to establish a global standard for the good governance of oil, gas and mineral resources, thereby losing out on alignment to some of the international best practices.

Kenya's legal framework for revenue sharing is more defined, with clear provisions for community consultation and revenue allocation to subnational governments and communities affected by mining. Kenyan law promotes transparency in consultations and mandates a share of extractive revenue for these communities. However, enforcement is inconsistent, and penalties for non-compliance are rare. Companies such as Base Titanium have engaged communities through forums and CDAs, but community involvement is often superficial, with limited influence over decision-making and a lack of transparency in contracts between the government and mining companies.

Kenya's efforts align partially with international frameworks such as the EITI and Natural Resource Charter, which promote transparency and equitable distribution of revenues. However, the inconsistent enforcement of the law and superficial community engagement are major gaps when compared to more robust frameworks like those in Norway or Canada, where communities are deeply involved in decision-making and benefit-sharing. For example, in Norway, the government has set up a sovereign wealth fund that ensures that revenues from natural resources are transparently managed and benefit the entire population. Canada provides strong legal frameworks that include indigenous communities in resource development projects, ensuring their rights and revenue sharing from natural resource extraction. Kenya needs to strengthen enforcement and ensure genuine community participation to fully align with these global best practices.

From the interviews with the experts, we learnt that several gaps

exist in Kenya concerning revenue mobilization. First, there is ambiguity in ASM definition making it difficult to distinguish artisanal mining and small-scale mining based on the mining act. Second, the online system used for licensing application is not user friendly. Some of the miners lack the technical knowhow to use computers while others are not literate in reading and writing. Third, there are fraudulent officials that grant favours for their own gain through corruption and bribery. Lastly, the framework guiding the acquisition of licenses is weak which derails dispute resolution efforts.

### **4.1.3 Revenue mobilisation and sharing in other African countries**

The study explored if there are other countries in Africa that have better frameworks in securing fair and progressive resource taxation. In that regard, the key informants cited Zambia as having implemented recent reforms, and Tanzania for the Minerals Audit Agency that is adequately resourced to audit across the mineral value chain. Overall, it was noted that countries with progressive fiscal regime such as variable royalties guarantee increased revenues for countries when prices/demand go up, for example, Mauritania, South Africa, and Zambia. In addition, other key informants also noted that Ghana and New Papua Guinea have a well-structured extractives sector. Nevertheless, one respondent noted that the current fiscal regime applied to mining and the hydrocarbon sector in Mozambique is recognized as progressive, as it allows the government to collect more and more revenue over the production cycle. It was also observed that generally, several countries struggle to properly design a dual system (based on CIT and royalties) that should ensure revenue generation at all phases of the process.

In Malawi, it was noted that the majority of companies with prospective large-scale mining projects seek to enter mining development agreements, where the risk is that the fiscal regime, outlined in the Taxation Amendment Act, is varied. This results in a less than fair government take. One of the challenges is that the line ministries for mining and finance have different objectives; while the Ministry of Mining seeks to increase the number of projects, the Ministry of Finance seeks to maximise revenue where few projects with fair tax regimes/agreements would be preferable over a large number with zero- to low-tax regimes.

In the case of Malawi, some gaps were noted in the monitoring and contract negotiation. One key informant noted with concern, that political interference in contract negotiation and licence issuance may result in unnecessary tax incentives being awarded, resulting in further revenue losses. On revenue sharing, the Mines and Minerals Act of Malawi mandates that companies spend at least 0.45% of gross sales revenue on community development

agreements, but this only applies to large-scale mining license holders, and there are no operational agreements. Furthermore, all mining revenue is directed to the consolidated account, with no specific mechanisms to ensure local communities benefit directly from resource extraction.

Malawi's framework is relatively new and lacks the comprehensive elements seen in international examples like EITI where community involvement and direct benefit-sharing are central. The absence of operational agreements and the channelling of all revenues to the consolidated account contrasts sharply with international best practices, which advocate for local communities to benefit directly from resource revenues. To address these gaps, Malawi must implement stronger frameworks.

On the other hand, Ghana's legal framework offers a clearer structure for oil revenue allocation, prioritizing sectors like agriculture, infrastructure, and education. However, despite provisions for compensation, there is no specific earmarking of revenue for coastal communities affected by extractive activities. Civil society has actively advocated for greater transparency and equitable distribution, with efforts such as the 30% campaign aimed at increasing the share of revenues for affected communities.

Ghana's framework for oil revenue distribution demonstrates progress toward international best practices, with clear prioritization of sectors like agriculture and infrastructure. However, the lack of specific provisions for directly affected communities shows a gap when compared to international standards such as the EITI or Natural Resource Charter, which emphasize the need for direct compensation to communities. Enhancing transparency and incorporating more specific provisions for affected populations would help close these gaps.

## 4.2 Transparency and Accountability

We examine existing frameworks on transparency and accountability, reflecting on the issues on information -on community awareness of the provisions, and understanding of how funds are allocated. We also discuss the involvement of civil society in promoting transparency and accountability in the mining sector.

### 4.2.1 Existing provisions on transparency and accountability

Mozambique and Kenya possess a fairly long-standing history in natural resource governance, but they still struggle with the issues of transparency and accountability. Many companies in the

extractive sector still do not disclose publicly relevant information, including fiscal, environmental information, and local content programmes (CDD, Oxfam, & TJNA 2023). The AMV and Agenda 2063 call for a strong governance framework to ensure transparency and the participation of all stakeholders in deriving benefits from natural resources. Kenya and Mozambique both show gaps in areas such as disclosed information and stakeholder engagement. In the 2021 EITI Report indicated that Mozambique does not have a comprehensive beneficial ownership legal framework, hence suffers from high transparency challenges and losses of revenues. In Kenya, although there exist frameworks and documented laws within the country, especially for the artisanal and small-scale mining, stakeholder engagement is poor and there is no accountability (EITI 2021; AMV 2016). For instance, Section 119 subsection (4) of the Kenya Mining Act 2016 (Amended in 2023) states *“The Cabinet Secretary shall publish on the ministry website, annually, records, reports, mineral agreements and any other relevant information.”* However, the implementation is not consistently and uniformly applied across all extractive companies. The FTM reports for the two countries also reveal key gaps in accountability such as: minimal community participation in decision-making processes, weak reporting mechanisms, and wanting enforcement of existing laws. The FTM for Mozambique further highlights transparency challenges in the mineral sector by citing a study that rated Mozambique 21 out of 100 in the level of transparency, and went further to indicate that some companies do not have websites where the public can obtain basic information about operations, that can be compared to the EITI reports.

#### **4.2.2 Availability of information, community awareness, and understanding of fund allocation**

A significant number of corporations operating in the extractive sector in Mozambique are still not providing information of public interest. Similarly, accountability is a challenge as one key informant observed that *“extractive communities tend to operate in an enclave, protected by local elites”*. The key informants in Kenya, while applauding the efforts that the government of Kenya has made in public reporting of tax expenditures including publication of annual tax expenditure reports, note that mining contracts between the government and multinational mining companies are not made public. In addition, the key informants note that there is limited information on the licenced Small-Scale miners and ASMs.

Some of the main gaps identified by key stakeholders included lack of formalization of the extractives sector and absence of legal backing to enforce contract disclosures and public reporting by investors. The situation for Malawi is not very different. Through the Malawi EITI process, far more information is available.

However, this captures very few companies, and information on ASM, gold production and exports is very limited or non-existent. Further, information on licence issuance and contract negotiation remains limited. These issues limit the share of mining revenues that are distributed equitably and obstruct the realization of the aspirations of Agenda 2063 to foster inclusive growth and development sustainably.

In West Africa, Ghana does have formal institutional mechanisms like the Minerals Income Investment Fund and Mineral Development Fund with mandates that include accountability and transparency, and these institutions publish information about their mandates and objectives publicly. In Ghana, with the permission and approval of the government, some companies such as Tullow Oil have published two petroleum agreements for operations in Ghana on its website (Munilla & Brophy 2018). A similar trend has been observed in Liberia, on the backheels of the Liberian Extractive Industry Transparency Initiative (LEITI). These efforts ensure that the community is aware and involved in the process and understands how the funds are allocated.

### 4.2.3 Involvement of civil society

The civil society remain an important catalyst in the quest for transparency and accountability, alongside mechanisms such as EITI. Yet the CSOs in Mozambique have bemoaned the lack of transparency and stakeholder involvement in granting of tax incentives, especially for the mineral sector. The Fair Tax Monitor for Kenya recognized the role of civil society in engagement with the Ministry of Finance to promote transparency and accountability. However, the FTM called for the enactment of the Public Participation Act to be enacted with specific focus on public finance engagement in order to provide more clarity on grey areas and increase participation of the civil society and general public. There is little involvement of civil society in mining issues but there has been past success in the intervention of poor implementation of some potentially abusive DTAs. Hence, the FTM called for the government to increase involvement of the CSOs in tax and public finance issues, through the enactment of “inclusive business associations, taxpayer associations, and partnerships between government and civil society organisations” (The Kenya FTM 2022, pg.82).

## 4.3 Implications of Global Tax Reforms

The recent global tax reforms, most notably the OECD/G20 Inclusive Framework’s Pillar Two global minimum tax, are reshaping the international corporate tax landscape, with important

but uneven implications for extractive revenues in Mozambique and Kenya. These reforms aim to reduce base erosion and profit shifting by MNCs, by ensuring that taxes are paid where economic activities occur. In principle, this could reduce aggressive profit shifting by extractive companies to low-tax jurisdictions and increase overall tax take from the sector. However, for resource-rich, capital-importing countries such as Mozambique and Kenya, the revenue gains from the global minimum tax are neither automatic nor guaranteed. Moreover, extractive industries already operate under complex fiscal regimes, including royalties, production-sharing agreements, cost recovery provisions, and tax incentives that may interact unpredictably with global minimum tax rules. While the IMF (2021) and UNCTAD (2021) highlight that while global tax reforms could modestly reduce profit shifting in the extractives sector, they also impose significant administrative and technical burdens on developing countries with limited tax administration capacity, potentially undermining net revenue gains. (OECD 2021; Christensen et al. 2020).

Against this backdrop, the ongoing UN Framework Convention on International Tax Cooperation represents a critical opportunity to address structural weaknesses in the global tax system that directly affect extractive revenues. Unlike the OECD-led process, the UN tax convention seeks to rebalance taxing rights in favour of source countries, opening the door for international tax agreements that move beyond the arm's length principle that facilitates profit shifting in extractives, and reduce the constraints imposed by bilateral tax treaties that limit withholding taxes on royalties, interest, and service payments (Global Alliance for Tax Justice [GATJ], 2025). For Mozambique and Kenya, a stronger source-based and unitary approach to taxing multinational extractive companies could significantly enhance domestic resource mobilisation, reduce reliance on regressive indirect taxes, and strengthen fiscal sovereignty over natural resource wealth.

# 5 Policy Recommendations

Several recommendations arise from the legal and policy analysis of the Fair Tax Monitors of Kenya and Mozambique. Some prescriptions were offered during the stakeholder discussions as possible solutions to the main points and challenges that key informants noted in the two countries, as well as other countries in Africa. We hereby present the key policy recommendations in line with the themes discussed in the results section.

## 5.1 Enhancing Fair Revenue from Natural Resources

There is significant room for improvement in increasing natural resource revenues such as,

- Revisiting existing DTAs so that they align with the UN Model Double Taxation Convention is one way to mitigate against revenue losses.
- Ensuring taxation of capital gains when one company acquires a licence from another offshore.
- Government agencies should build technical and financial capacity needed to monitor production at the mine and verify exports, as this is not done consistently.

Overall, it was noted that countries with progressive fiscal regime such as variable royalties guarantee increased revenues for countries even in cases with volatile prices and/or demand. Related to this, having a mixture of fiscal regimes with different bases may help reduce negative consequences of aggressive tax planning by mining companies. For instance, countries should have a mixture of profit-based taxes, production-based taxes, fixed fees and minimize incentives on imported goods and services meant for the extractive sector.

## 5.2 Improving Revenue-Sharing Mechanisms

There were varying degrees of success of the legal and regulatory framework in prescribing and promoting transparent and equitable revenue sharing.

- Where the legal framework is strong, for instance Kenya, there are gaps in enforcing community engagement and consultation. In that regard, customizing the African mining Vision in line with

Kenya and the needs of other countries could help address some gaps.

- In Mozambique, the government should strengthen and increase mechanisms of accountability at the local level by creating mechanisms (such as a strong judiciary and clear mechanisms for the community to seek redress in cases of violations) to fight co-optation and partisanship in local bodies involved in the management and allocation of revenue-sharing transfers.
- There is also need to increase local involvement through awareness of the revenue-sharing regime and involving local stakeholders, especially marginalized groups like women and youth, in planning and implementation.
- Governments should also consider earmarking specific revenues to go directly to communities or related community development projects in the mining regions. For example, a share of royalties at source can be clearly earmarked towards specific communities or projects.
- In addition, detaching the revenue-sharing transfers from the regular budget implementation rules may avoid potential delays, allow local governments to consider strategic planning and the pursuit of larger-scale projects that contribute to sustainable development in these regions.
- African governments should create beneficial ownership registries for all companies involved in mining prospecting and petroleum exploration and production, mandating legal disclosure of their beneficial ownership.
- Additionally, the African Union in the review of the AMV should make it a legally binding instrument for all stakeholders in the industry and in the region.

## 5.3 Ensuring Transparency and Accountability

- From the findings, there is a need to improve legal frameworks to bring them up to international best practices, as currently applied by countries like Ghana, and Liberia.
- Building institutional capacity for better monitoring, reporting, and enforcement, along with ensuring greater community participation, will be key in enhancing transparency and accountability in both Mozambique and Kenya.
- Better still, establishment of an independent mechanism for the monitoring and reporting of the industry's impact on the environment, communities, and human rights will be key.
- Closer to the communities are local governments that are short on technical capacity, proper legal frameworks as well as human resources in order to efficiently administer taxes.

- The government of Mozambique is urged to permit local governments to use 10% of natural-resource royalties for strategic, large-scale development projects by exempting this allocation from standard budget rules (CDD, Oxfam, TJNA, 2023).
- To improve transparency, the government should implement registration of EI's beneficial owners as stated under revenue-sharing mechanisms.
- As in other sectors of the economy, Mozambique faces a significant challenge in disclosing the beneficial owners in the extractive industry. This absence of ownership transparency within the extractive industry makes companies in the sector susceptible to corruption, money laundering, and illicit financial flows.

## 5.4 Adapting domestic tax systems to global tax reforms

To adapt to the changing global tax landscape, Mozambique and Kenya should consider several critical reforms:

- Strengthening legal and institutional frameworks to align with international tax standards is essential.
- Build the capacity of tax administrations through targeted training and investment in technology is crucial to enforce the global minimum tax and curb profit shifting.
- Engaging in international tax cooperation, as suggested by UNCTAD (2021), including the ongoing UN Framework Convention on International Tax Cooperation process, will help these countries stay abreast of global trends and ensure that their tax policies remain competitive and equitable.

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