



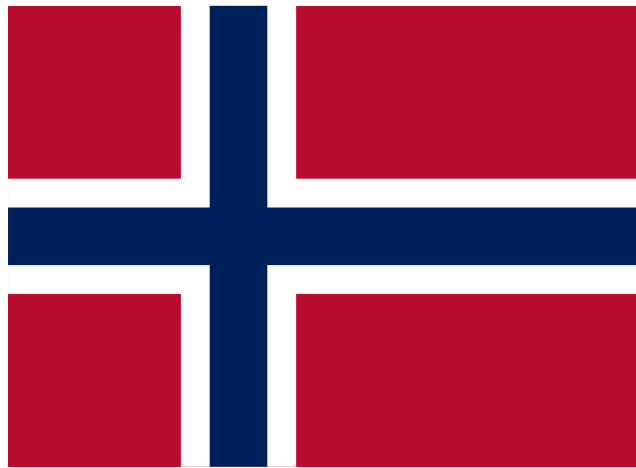
UGANDA'S MINING LEGAL REGIME

ADDRESSING ILLICIT FINANCIAL FLOWS (IFFs)
RISKS AND REVENUE LOSS IN THE MINERAL
SUPPLY CHAIN

RESEARCH REPORT
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DISCLAIMER

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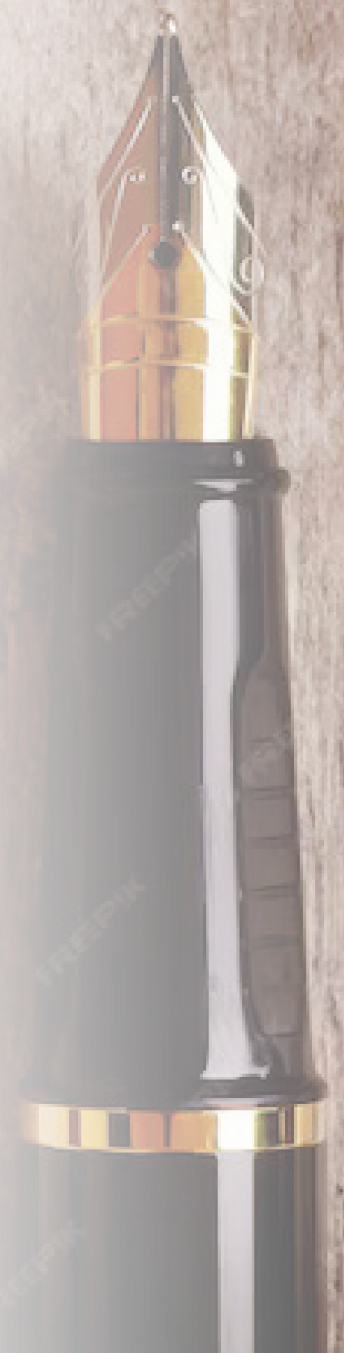


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ACRONYMS AND ABBREVIATIONS

ACODE	Advocates Coalition for Development and Environment
AfDB	African Development Bank Group
ASM	Artisanal and Small-scale Mining
AU	African Union
BEPS	Base Erosion and Profit Shifting
BITs	Bilateral Investment Treaties
CoC	Chain of Custody
DGSM	Directorate of Geological Survey and Mines
DRM	Domestic Revenue Mobilization
DRMS	Domestic Revenue Mobilization Strategy
DTAs	Double Taxation Avoidance Agreements
DTTs	Double Taxation Treaties
ECA	United Nations Economic Commission for Africa
EDM	Exploration-Discovery-Mining
EIAs	Environmental Impact Assessments
EITI	Extractives Industry Transparency Initiative
FIA	Financial Intelligence Authority
FY	Financial Year
GDP	Gross Domestic Product
GFI	Global Financial Integrity
ICGLR	International Conference on the Great Lakes Region
IFFs	Illicit Financial Flows
ILO	International Labour Organization
IMF	International Monetary Fund

ISER	Initiative for Social and Economic Rights
KYC	Know Your Customer/Client
MDAs	Ministries Departments and Agencies
MEMD	Ministry of Energy and Mineral Development
MNCs	Multinational Corporations
MoFPED	Ministry of Finance, Planning and Economic Development
NDP III	Third National Development Plan
NPA	National Planning Authority
OAG	Office of the Auditor General
OECD	Organisation for Economic Co-operation and Development
RGI	Resource Governance Index
RINR	Regional Initiative Against the Illegal Exploitation of Natural Resources
SMMRP	Sustainable Management of Mineral Resources Project
TNCs	Transnational Corporations
UCMP	Uganda Chamber of Mines and Petroleum
UGEITI	Uganda Extractives Industry Transparency Initiative
UNCAC	United Nations Convention against Corruption
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission on Africa
UNFCCC	United Nations Framework Convention on Climate Change
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
URA	Uganda Revenue Authority
VAT	Value Added Tax

1 | INTRODUCTION

Uganda's rich mineral endowment holds immense potential for economic development. However, illicit financial flows (IFFs) risks threaten to undermine this potential by diverting revenue away from critical national priorities. IFFs can occur at various stages of the mineral supply chain, from licensing and exploration to production and exportation. These illicit flows not only deprive the government of the much-needed domestic revenue but also hinder transparency and accountability within the sector. While the mining sector has in the past contributed significantly to Uganda's economy reaching a peak of up to 30% of export revenue in the 1950s and 1960; the contribution has in the last few years declined to 2.2% of the country's GDP (Nyakabwa & Wepukhulu, 2023). This decline is partly attributed to illicit financial flows. As domestic revenue mobilization becomes increasingly important for Uganda's long-term development, curbing illicit financial flows in the mining sector remains central to realising this goal. This briefing paper examines Uganda's current mining legal regime and its effectiveness in addressing IFFs risks along the mineral supply chain. It also identifies key strengths, and gaps in the existing mining legal regime, and proposes recommendations for strengthening the legal and regulatory safeguards. By plugging these leaks in the system, Uganda's mineral wealth will translate into tangible benefits for its citizens thus achieving economic development.

2 | BACKGROUND AND CONTEXT

Globally, minerals have been used to promote industrialisation and other economic development prospects. A country's natural resource endowments have the potential to boost economic growth, contribute to poverty reduction and address inequality. However, vulnerability to IFFs makes it hard for the majority of developing countries to fully realise the economic potential of their natural resources. In Uganda, mining has a long history, dating



back centuries. Uganda is endowed with a wealth of minerals, including gold, cobalt, copper, tin, tantalum, tungsten, iron ore, natural graphite, limestone, marble, rare earth elements and other precious and developmental minerals (MEMD, 2018). Recent years have seen a surge in exploration activity, fueled by rising global demand for these minerals. However, concerns about IFFs within the mining supply chain have also grown (ICGLR, 2022). This raises concerns about the sector's ability to contribute meaningfully to Uganda's economic development.

Illicit financial flows are multidimensional and transnational in nature. According to Global Financial Integrity, IFFs refer to illegal movements of money or capital from one country to another. This movement is classified as an illicit flow when funds are illegally earned, transferred, and/or utilised across an international border (GFI, 2015). According to the Economic Development in Africa Report 2020, Africa loses about USD 88.6 billion (3.7 per cent of its GDP) annually in illicit financial flows (UNCTAD, 2020). The UNCTAD–UNODC Task Force identified four main categories of activities that can lead to IFFs and they include;-

Tax and commercial practices: This category includes illegal practices such as tariff, duty and revenue offences, tax evasion, tax avoidance, corporate offences and market manipulation, but also practices that are legal but may be considered illicit. Tax-avoidance practices, including transfer mispricing, debt shifting, relocation of intellectual property, tax treaty shopping, tax deferral, changes in corporate structure or economic residence and other profit-shifting schemes can also be characterised as IFFs. When these activities directly or indirectly generate flows crossing country borders, they generate IFFs (UNCTAD, 2020). On the other hand, tax abuse practices include both tax evasion and tax avoidance where anonymous shell firms registered in tax havens are used by corporations and powerful individuals to evade and/or avoid taxes (FEMNET, 2017).



IFFs from corruption: According to the United Nations Convention against Corruption (UNCAC), corruption comprises bribery, embezzlement and misappropriation (in both the public and private sectors); trading in influence; abuse of functions; illicit enrichment; money- laundering; concealment; and obstruction of justice. When these acts, directly or indirectly, generate cross-border flows, they are counted as IFFs (UNCAC, 2020). Corruption facilitates the acquisition of mineral rights and concessions by incompetent rent-seeking mining companies. It also provides government officials with illicit finances which are transferred to offshore tax havens.



IFFs from illegal markets: These include domestic and international trade in illicit goods and services. Such processes entail some kind of criminal organization to make money. They include all forms of trafficking in both commodities and services, including the smuggling of minerals. In addition to handling the illicit revenue from these activities, cross-border flows from the transnational trade in illicit commodities and services give rise to IFFs (UNODC & UNCTAD, 2020). The mining sector is prone to organized crime and money laundering. The capital intensity of exploration, feasibility studies, and acquisition of heavy mining equipment for mineral



development attracts the illegal movement of money or capital from one country to another.

Theft-type activities and terrorism: These are non-productive activities that entail a forced, involuntary and illicit transfer of economic resources between two actors. Such activities include theft, extortion, illicit enrichment and kidnapping. Also, the financing of terrorism or crime involves the illicit, voluntary transfer of funds between two actors with the purpose of funding criminal or terrorist actions. When the related financial flows cross a country's borders, these activities constitute IFFs (UNODC & UNCTAD, 2020).



Empirical data from various reports show that extractive industries frequently play a significant role in illicit financial flows.¹ This is largely due to deliberate manipulation of natural resource value, concealment of the quantity or quality of resources extracted, and manipulation of input prices to artificially lower revenues in the country of origin with the difference in value being deposited in overseas bank accounts (Akina Mama wa Afrika, 2020). Africa lost approximately USD 40 billion as a result of illicit financial flows in the extractives sector, where gold accounted for 77%, diamonds 12%, platinum 6%, and other extractive commodities 5%. These IFFs were mainly from under-invoicing export of extractive commodities (UNCTAD, 2020).

In Uganda's mining sector, IFFs are mainly from tax evasion, tax avoidance, corruption, thin capitalization, double taxation treaty shopping and trade misinvoicing. The Auditor General's reports have consistently highlighted flaws in the mining revenue collecting process. For example, in the FY 2019/2020, an estimated 10,273 tonnes of vermiculite valued at Shs 8.3 billion were exported without the export permits required by law from the Directorate of Geological Survey and Mines, resulting in a revenue loss of Shs 102.7 million (OAG, 2020). Similarly, between FY 2017/18 and FY 2019/20, minerals valued at Shs 26.3 billion (about USD 7.2 million) were exported from Uganda without the necessary authorization. Despite several reforms in the tax administration and the current Domestic Revenue Mobilization Strategy, the country's revenue collection efforts have remained low. The government continues to heavily rely on domestic and external borrowing to finance its budget. Uganda's public debt stood at Shs. 80.8 trillion, equivalent to USD 21.7 Billion as of the end of December 2022 (MoFPED, 2023). According to the debt sustainability analysis report for FY 2022/23, the debt-to-GDP ratio is projected to increase to 49.2 % from 46.9 percent in June 2023 (MoFPED, 2023).

1 Philippe Le Billon (2011), *Extractive sectors and illicit financial flows: What role for revenue governance initiatives?* Bergen: Chr. Michelsen Institute; Lemaître, S (2019), *Illicit financial flows within the extractive industries sector: a glance at how legal requirements can be manipulated and diverted*. *Crime Law Soc Change* 71, 107–128; Igbatayo S.A (2019) *Combating Illicit Financial Flows from Africa's Extractive Industries and Implications for Good Governance* Africa Development, CODESRIA

Uganda's Mineral Supply Chain



The OECD defines the mineral supply chain as “the process of bringing a raw mineral to the consumer market involving multiple actors from extraction, transport, handling, trading, processing, smelting, refining and alloying, manufacturing to the sale of the final product.” (OECD, 2016). Uganda’s mineral supply chain encompasses all the stages involved in getting minerals from the ground to the final consumer. It typically includes prospecting, exploration, mining, development, exploitation, research and beneficiation which includes processes such as processing, smelting, refining, and trading of mineral substances.² The supply chain involves various activities, organisations, actors, technology, information, resources and services relating to moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers (OECD, 2016). With over 50 different types of minerals, Uganda ranks among African countries with the largest number of minerals (MEMD, 2015). For the majority of these minerals, however, the potential for viable exploitation has not yet been established (UNECA, 2023).

Although the mining sector in Uganda has registered progress, it has also faced challenges relating to inadequate regulatory frameworks, poor infrastructure, investment climate, environmental concerns, global market trends, low funding to relevant MDAs, institutional capacity to manage the mineral resources, and value addition (Saferworld, 2017). The mining sector is largely informal and dominated by artisanal and small-scale miners. These miners largely use rudimentary tools to extract minerals and are often involved in illegal mining. The economic potential of the mineral deposits is under-explored and therefore primarily regarded as a “green field” (UCMP, 2023). These challenges have created vulnerabilities and illicit financial flows in Uganda’s mineral supply chain.

Illicit Financial Flows and Domestic Revenue Mobilisation



Domestic revenue mobilization has emerged as a central focus of the agenda for sustainable development. It describes the method by which a nation locally raises financial resources to meet its demands for public service delivery and development. Mobilising domestic revenues from natural resources is central to achieving the country’s long-term development priorities. Domestic revenue mobilization and IFFs are closely linked because IFFs hinder government efforts to mobilize domestic revenue (World Bank, 2017). Domestic revenue comprises both tax and non-tax revenue. DRM has become a common theme in Uganda’s annual budget speeches focused on reducing public debt and donor dependency. Uganda’s revenue mobilisation efficiency, as measured by the World Bank’s Africa Country Policy and Institutional Assessment, has stayed steady at 3.5 out of 6.³ In the budget speech for FY 2023–2024, Uganda’s tax-to-GDP ratio currently stands at 13.9%. A country’s tax revenue in relation to the size of its economy, as determined by its gross domestic product, is expressed as the tax-to-GDP ratio. Put simply, it shows how much a nation’s economic

² Section 2 of the Mining and Minerals Act, Cap. 159

³ According to the World Bank’s Africa Country Policy and Institutional Assessment (CPIA), 1=Low and 6 =High

output contributes to its tax collection. A low tax-to-GDP ratio suggests that fewer actors are contributing to the nation's tax income and that a sizeable portion of the economy is untaxed (PWC, 2023). Compared with other countries, Uganda's tax revenue to GDP is still below the Sub-Saharan Africa average of approximately 16 per cent (Lwanga, Lakuma, Sserunjogi, & Shinyekwa, 2018). Low tax revenue as a result of illicit flows forces the government to rely on domestic and external borrowing to finance its National Development Plan and provide public goods and services (ISER, 2022).

The lack of a comprehensive chain of custody and mineral traceability system across the supply chain continues to undermine the country's tracking of mineral production and subsequent revenue mobilisation initiatives while facilitating illicit financial flows in the sector. The gold trade in Uganda is characterised by mineral smuggling, tax evasion and under-declarations (The Daily Monitor, 2021). For example, gold production statistics from the Uganda Revenue Authority (URA) for the FY 2023/24 recorded 46,551 Kgs of gold imports (URA, 2024). This gold was reportedly imported from Tanzania, Mozambique, Ghana, Burkina Faso, Mali, South Africa, Cameroon and Kenya. In contrast, FY 2021-22 statistics reveal that only 7,202 Kgs of gold out of the 30,664 Kgs of exported gold were imported gold (UGEITI, 2024). There is no clear statistics of the gold produced and mined in Uganda. Such discrepancies underscore the existential threat posed by illicit mineral trade and financial flows on the domestic revenue mobilisation efforts of the country.

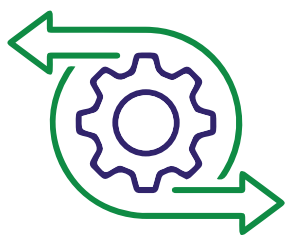
The amount of revenue generated by the mining sector hinges on three key factors: fiscal regimes, mining company practices, and the structure of mineral value chains. A strong fiscal regime, which includes well-designed legislation, effective policies, and competent administration, is crucial for any modern state. It allows for efficient tax collection and minimises tax evasion. However, weak fiscal regimes create vulnerabilities that mining companies can exploit through sophisticated tax avoidance schemes along the mineral supply chain. This often leads to IFFs across borders, significantly reducing the government's ability to collect revenue. In contrast, good governance fosters a virtuous cycle. When all three elements – fiscal regimes, mining companies, and mineral supply chain – operate within a transparent and accountable framework, they reinforce each other—this cooperation results in increased domestic revenue mobilization for the nation (UNECA, 2017). Beyond direct revenue loss, IFFs have broader detrimental effects. They deplete a country's foreign exchange reserves, hinder investments, and ultimately exacerbate poverty and inequality (AFDB, 2016).



The Mining Legal Regime

The mineral sector's legal, regulatory, and institutional framework is governed by the 1995 Constitution [as amended in 2005], the Mining and Mineral Policy (2018), the Mining and Minerals Act, Cap.159, and the attendant Regulations. Other relevant laws include; The East African Community Customs Management Act, 2004; Public Finance Management Act, Cap. 171; Income Tax Act, Cap. 338; The International Conference on the Great Lakes Region (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Act, Cap. 188; The Companies Act, Cap.106 among others (UGEITI, 2023). However, this research report focuses on the Mining and Minerals Act, Cap. 159, and the Income Tax Act, Cap. 338.

3 | METHODOLOGY



The development of this research report employed a two-pronged approach to gather comprehensive data. A thorough review of relevant academic literature, official documents, reports, and publications from reputable sources formed the foundation for this paper. This review focused on a comprehensive understanding of the mining sector, its historical development, international best practices in mineral resource management, existing policies, regulations and IFFs related to Uganda's mining supply chain. To complement the document analysis and gain practical insights, semi-structured interviews were conducted with key stakeholders in the mining sector. These stakeholders included representatives from relevant Ministries, Departments, and Agencies responsible for mining and revenue collection; civil society organisations and advocacy groups working on transparency and accountability issues in the mining sector; and mining companies and industry associations. The interviews gathered qualitative data on stakeholder perspectives regarding the adequacy of the current mining legal regime in addressing IFFs risks and revenue loss within Uganda's mineral supply chain.



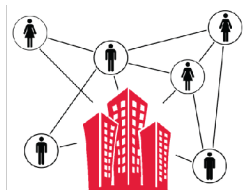
4 | ENABLERS OF ILLICIT FINANCIAL FLOWS IN UGANDA'S MINERAL SUPPLY CHAIN

Uganda continues to lose substantial revenue through illicit financial flows. These flows originate from various sources ranging from tax and commercial activities to corruption such as tax avoidance, abusive profit-shifting, transfer-pricing, trade mis-invoicing, and bribery, among others as highlighted below:

Informal mining: Almost 90 percent of mineral production in Uganda remains dominated by artisanal and small-scale mining operations and involves over 200,000 Ugandans (Crawford, Disney, & Harris, 2015). The informality in the mining sector negatively impacts law enforcement, and operations monitoring, and eventually encourages illicit mining activities that are a source of leakage of mineral revenue (MEMD, 2015).



Beneficial ownership: While the Mining and Minerals Act, Cap. 159 provides for beneficial ownership disclosure⁴ in the mining sector, the enforcement is still a challenge. The failure to disclose beneficial ownership results in IFFs and makes it easier for rent-seeking companies and individuals to obtain, move, store, and raise money illegally and to be successful in their illegal efforts (UNECA, 2017). Beneficial ownership also provides a cover for politically exposed persons (PEPs) to facilitate illicit financial flows in the mineral sector by using their positions to influence the award and acquisition of mineral rights and concessions, to launder money, and provide protection of their peers and shareholders from criminal liability against non-compliance by manipulating and by-passing national anti-corruption and anti-money laundering, transparency and accountability initiatives and systems.



Corruption: Corruption is one of the greatest hurdles to Uganda's short- and long-term development. Despite significant investments and efforts to combat corruption in Uganda, the results of anti-corruption measures remain minimal at best, and corruption continues to impose broad-based costs on society (Fazekas, Adam, & Nikulina, 2021). Cases of institutionalised corruption in the mining sector in Uganda have been widely documented. In some mining institutions, government officials have been implicated in crimes such as bribery, extortion, and deceit (Msoni & Nsenduluka, 2023). Corruption leads to cases such as failure to conduct due diligence before granting mining lease holders licenses, where compliance with established application standards may result in the omission of certain papers and information from the application (OAG, 2015). Cases of government officials in the mineral sector doubling as consultants and employees of mining companies under their supervision are widespread in the mineral sector (Global Witness, 2017). Furthermore, corruption has been identified as a key incentive for tax avoidance among citizens and companies in Uganda. (Fazekas, Adam, & Nikulina, 2021).



4 See Section 283 Mining and Minerals Act 2022

Inadequate funding for regulatory bodies: Inadequate funding Directorate of Geological Surveys and Mines(DGSM) and other relevant MDAs prevent these key stakeholders from carrying out their roles effectively which leads to additional risk factors. DGSM has on several occasions indicated that the department is understaffed. This has increased non-performing licenses that are not properly monitored, the inability of the department to independently assess mineral production, and incomplete appraisal of mining projects. As a result, the country cannot fully benefit from its minerals. (OAG, 2015).



Weaknesses in the legal regime: Limitations in the mining fiscal regime, gaps in the legal and regulatory framework in the mining sector, and weak administrative capacity pose significant challenges to ensuring compliance in the mining sector. In Uganda for example gold trade has come under fire for lack of adequate oversight and regulation. Gold traffickers in the region have used the country as a hub to smuggle gold from mines in the Eastern Democratic Republic of Congo which is controlled by militants and illicit organisations (NTU, 2022).



Tax incentives and exemptions: Multinational companies in the mining sector normally enjoy special exemptions, which may account for significant lost revenues for the government. Governments throughout the world employ tax incentives as a common strategy to draw in investment and foster economic expansion. However, there is evidence to suggest that they may do more harm than good and are not producing the claimed advantages, raising doubts about their usefulness in Uganda (Mesa, 2023). For example, It is estimated that Uganda lost tax income due to Corporate Income Tax and customs tax benefits totalling around 2,411 billion Uganda Shilling (roughly 652 million USD) between the fiscal years 2014/15 to 2017/18. (Eissa, Manwaring, Ntungire , & Rauschendorfer, 2021). According to URA, multinational corporations are the main source of Uganda's yearly loss of Shs 160 billion in unpaid corporate income tax resulting from tax incentives(Ndagire, 2023).



Abuse of Trade-Free Zones: Special zones appear in many forms, some are called export processing zones, special economic zones or free trade zones. They are established to promote value-addition chains, and encourage export and or domestic processing and refining of commodities, in this case, they apply to the domestic refining and processing of mineral commodities. These are prone to tax abuse even though the intention is to incentivize mineral value addition. It is difficult to ensure that trade-free zones are free from abusive transfer pricing manipulations by sophisticated mining companies. The special zones also risk violating World Trade Organisation rules through the provision of subsidies or direct tax exemptions (Mullins 2010). Abuse of free zones is common in the gold refining and processing sector in Uganda. Several gold refining companies have had their areas of operation gazetted as free zones to benefit from tax holidays and exemptions. This has resulted in a significant loss of revenues to the country. A developer of a free zone area is granted exemptions from taxes and duties on all export processing zone imported inputs that are for the exclusive use in the development and production output of business enterprise including machinery and equipment, spare parts, raw materials and intermediate goods (Ojiambo 2022) subject to the limitation on goods specified in the East African Customs Act. This allows mining companies to overprice the mining equipment in the process of

facilitating illicit financial flows. Once designated as free zones, these areas become secure and free less accountable to government agencies such as Uganda Revenue Authority and the Ministry of Energy and Mineral Development.

Mineral data base management limitations: While Uganda has made progress in mapping its geological, geophysical, and geochemical features and even made the information public as required by law, the lack of a forward-looking approach towards data management limits governments' ability to track, analyse and monitor resource flows which negatively affects DRM (UNECA, 2017). There is also lack of a transparent data accessibility framework to guide mineral investment. Such transparency and accessibility is critical in shortening the mineral exploration-discovery-mining (EDM) cycle from the estimated period of 10-13 years (Ding, 2024). It counters corruption, enables timely mineral data sharing, creates confidence and attracts investment in the country's mineral sector.



Double Taxation Agreements(DTAs): Uganda has models for DTAs with the Netherlands, United Kingdom, Mauritius, Denmark, Belgium, Norway, India, Zambia, Italy, and South Africa (Msoni & Nsenduluka, 2023). It has been observed that DTAs affect taxing rights with regard to several payment kinds, including commission payments, sales of shares, financial derivatives, and service payments. This leads to tax base erosion and profit shifting, minimises domestic revenue mobilisation capacity and significantly limits the legal framework enabling DRM (UNECA, 2017).



In the case of Uganda, critics have focused particularly (but not exclusively) on the Netherlands treaty and pointed to the absence of an article permitting the imposition of withholding tax on technical fees the ability to reduce or even eliminate withholding tax on dividends and the limitation on Uganda's right to tax gains arising from indirect disposals of property and rights located in Uganda. In response to these criticisms, Uganda announced a review of its approach to double tax treaties in June 2014 and no new treaties have come into force since the Netherlands treaty (in force since 2006). It should also be noted that the Netherlands has acknowledged that some of the treaties it has concluded with developing countries may be amended to provide more equitable treatment for the counterparties. (Cristal Advocates, 2019)

Bilateral Investment Treaties (BITs): Uganda has signed onto 17 BITs with France, Denmark, Netherlands, United Kingdom, Switzerland, and Germany and they are currently in force. Treaties with the UAE, Belgium-Luxemburg Economic Union, China, Zimbabwe, Nigeria, Cuba, Eritrea, South Africa, and Egypt were signed but not enforced. In contrast, treaties with the Netherlands and Italy were terminated (Msoni & Nsenduluka, 2023). While the BITs are aimed at attracting foreign direct investment it's been noted that they are a major constraint to policy space for domestic revenue mobilisation (UNECA, 2017).



5 | TYPES OF ILLICIT FINANCIAL FLOWS ALONG THE MINERAL SUPPLY CHAIN IN UGANDA

Illicit financial flows can happen at any point within the mineral supply chain involving a wide range of actors including government officials, non-state groups, buyers, sellers, transporters, processing facilities, mine operators, and exporters (OECD, 2016). To best understand the Ugandan context, this research report adopted the International Conference on the Great Lakes Region (ICGLR) classification contained in the Handbook on Illicit Financial Flows in the Mineral Sector to categorize IFFs within the mineral supply chain as highlighted below.

Illegal mineral exploitation

One of the most common sources of IFFs in the mining sector is illegal mineral exploitation.



It normally occurs at the exploration/ exploitation stage of the mineral supply chain in the form of mining or exploration without a license, mining or exploration outside of the concession area, or mining with an exploration license (ICGLR, 2022). Illegal mining activities result in underreporting production thereby undermining tax collections. In addition, illegal miners and artisanal and small-scale miners sell the minerals to intermediaries who then smuggle them across the country's porous borders (Chamisa, 2020). Illegal mining and under declaration in Uganda have resulted in significant financial losses for the government.

Gold is among the major minerals that are mined illegally (Newvision, 2022). Other minerals include limestone, gemstones, wolfram, kaolin, vermiculite, marble, rare earth minerals, nickel and tantalite, among others (Wadero, 2022).

Tax evasion and avoidance

The other major source of illicit financial flows in the mining sector is tax avoidance and evasion.



Tax avoidance occurs during negotiations, where companies try to be granted maximum if not all tax concessions stipulated in the tax and mining laws. Some even negotiate for customized arrangements such as stabilization clauses that will see them not paying taxes for long periods. In addition, the government enters into contracts with subsidiaries whose parent companies are incorporated in tax havens and who usually contract experts from those tax havens

to provide management and consultancy fees. Such subsidiaries are also always heavily indebted leading to issues of thin capitalisation. All these complicated setups lead to funds being siphoned from the country to tax havens. Further, these setups create room for tax avoidance practices as outlined below (ICGLR, 2022).

- **Trade misinvoicing:** This is the act of the deliberate manipulation of the value of a trade transaction by falsifying, among others, the price, quantity, quality, and/or country of origin of a good or service by at least one party to the transaction (GFI, 2020). In Uganda, trade misinvoicing is the most significant area of illicit financial flows that can be estimated using publicly available data. According to the Global Financial Integrity study, between 2006 and 2015, trade mis-invoicing accounted

for around 18% of total Ugandan trade. In essence, from 2006 to 2015, there was a possibility for over- and under-invoicing of imports of around USD 4.9 billion, while there was a potential for mis-invoicing of exports of roughly USD 1.7 billion (GFI, 2018). Gold as an import and export was identified as being vulnerable to trade misinvoicing in Uganda (Mugenyi , Atukunda , Ssemakula, Ssuuna , & Okiira, 2023).

- **Abusive transfer pricing:** This is another aspect of the under-collection of taxes in Uganda which stems from abusive transfer pricing by Multi-National Corporations(MNCs) and their subsidiaries. Abusive transfer pricing refers to the manipulation of prices charged by different arms of the same MNCs to each other for goods, services, and financing, which can artificially reduce the taxable income in high-tax jurisdictions and artificially inflate the taxable income reported in low-tax jurisdictions (GFI, 2018). MNCs in Uganda contribute over 30 % of the tax revenue collected by URA annually. In the FY 2019/2020, these contributed almost 40% of the total revenue for the year. It's against this background that the transfer pricing regulations in Uganda came into effect on 1 July 2011 (Transfer Pricing Regulations, 2011), and are based on the OECD model hence the adoption of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (CPA, 2022).
- • **Transfer mispricing:** This is a term used to describe the practice of selling or buying goods or services between two related parties at a price that is either inflated or deflated. This practice is often used to allocate profits to a lower-tax jurisdiction, which reduces tax rates on taxable profits and incomes, and tax obligations. Multinational enterprises may arrange intracompany transactions in a way that appears to incur losses in high-tax jurisdictions, increasing allowable deductions for tax purposes, while appearing to earn profits in low- or no-tax jurisdictions (GFI/ SEATIN, 2023).

Tax evasion is the process by which a person, through fraud, unlawfully pays less tax than the law mandates (UNICRI, 2016). The mining sector is exacerbated by the widespread informality of the artisanal and small-scale mining sector. When miners operate informally and therefore without licenses and registration with the government, they typically do not declare their production, and revenues and hence do not pay taxes. Multi-national corporations may also underreport their production levels and therefore pay less taxes. Another tax evasion practice related to the mineral sector is value-added tax (VAT) fraud, which can occur when certain products are tax-exempt (ICGLR, 2022). VAT and tax fraud are more specifically linked to the intentional falsification or omission of information to limit the amount of tax liability (UNICRI, 2016).

Case One

Many mining companies do not declare the minerals and evade taxes. In the financial year 2010/2011, the Government recovered sh5.4b from Kasese Cobalt Company for unpaid royalties between 2004 and 2009. Investigations started when an employee informed the Police that they were underquoting invoices for mineral exports, specifically cobalt metal, copper and nickel hydroxide, to pay lower royalties.

Case Two

The 2016/2017 financial year audit investigation by the Auditor General revealed that mining companies reported to the energy ministry only 16kg as the amount of gold they exported. But records at URA for the same year, according to the report, showed that the amount of gold exported from Uganda was 8,691kg in the same period. The Auditor General's report also indicated that sh35b worth of mining royalties for the 2015/16 financial year were not paid by companies. The report further indicated that the firms had not paid USD 1,760,000 (sh6.4b) worth of concession fees as of June 2016. This makes a total loss of revenue of 41.4b in one financial year.

Smuggling and informal trade

The smuggling of minerals across borders and informal trade within a country are important sources of illicit financial flows. Smuggling between countries occurs across land borders, on water and through airports, to disguise the origin of minerals or benefit from lower taxes in the destination country. Informal trade can also happen in-country not to declare minerals to the authorities and therefore avoid paying taxes. Factors that encourage the smuggling of minerals are costly trading licenses, export permits or export taxes (ICGLR, 2022) and lack of a national chain of custody (CoC) or mineral traceability system. For example, gold refineries in Uganda rely on the Know Your Customer/Client (KYC) system, an opaque system that only records the particulars of the holder of the mineral commodity without disclosing the source mine and all the key actors along the supply chain. The KYC system ignores the ICGLR-regional certification mechanism requirement for the accompanying documentation such as, the certificates of origin from the mineral country of origin. This loophole exacerbates illicit cross-border mineral trade and illicit financial flows. In Uganda, smuggling across borders appears to be a significant problem and responsible government agencies lack sufficient resources to inspect mine sites and verify self-declarations by mining companies (Global Witness, 2017). There has been a significant increase in illegal and informal gold mining activities in Uganda and smuggling from neighbouring countries. These activities are conducted by both local and foreign nationals (from neighbouring countries) which finally results in the illicit dealing and smuggling of gold across borders with the proceeds likely to be laundered through the Ugandan financial system. The porous borders and the proximity to countries with illegal traffic of gold and other precious stones encourage smuggling to or through Uganda, which makes it easy for cross-border trading that goes unlicensed and unrecorded (FIA, 2017).

Corruption and bribery

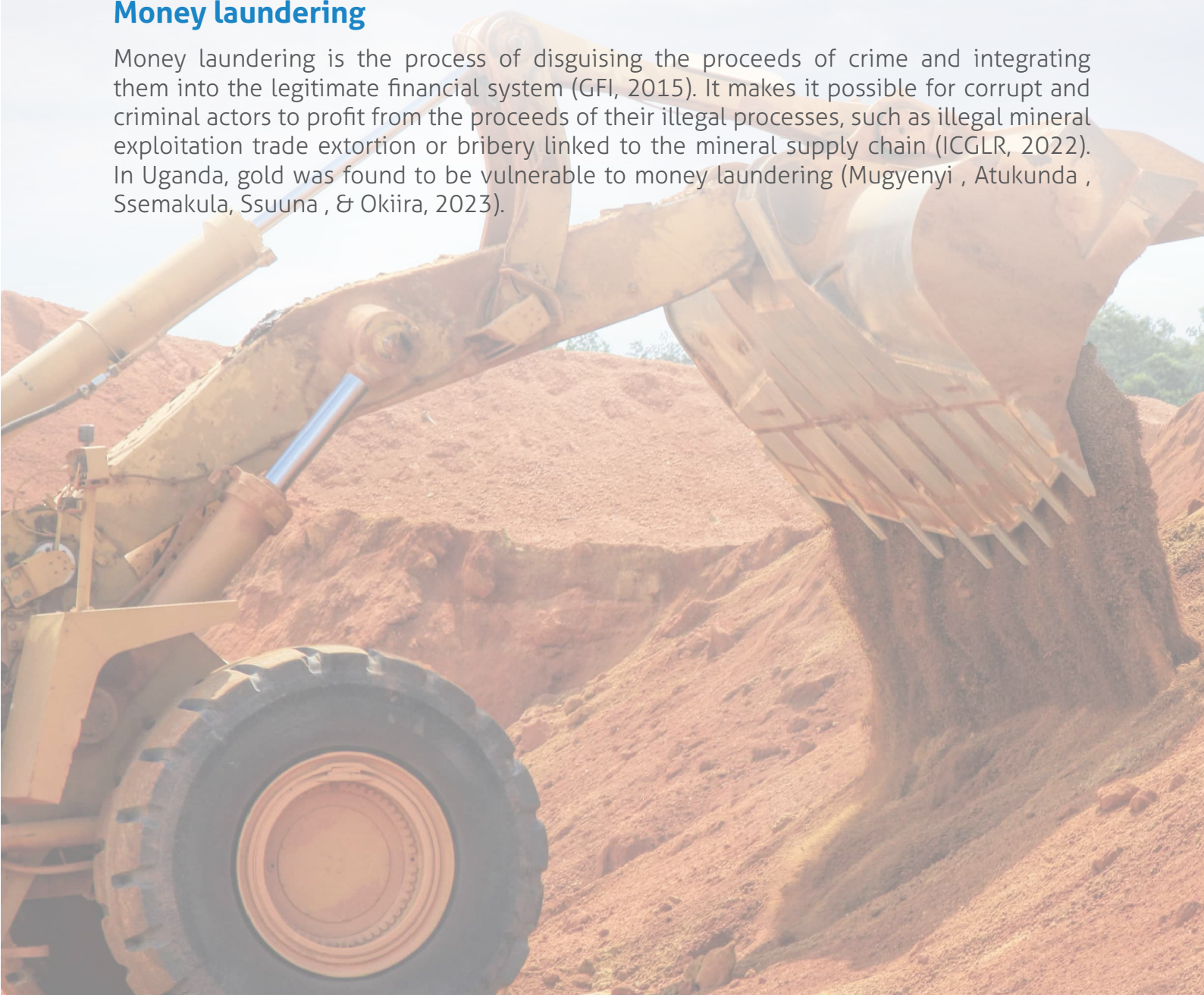
The Uganda Anti-Corruption Act, Cap. 116 defines corruption in terms of various manifestations such as bribery, solicitations, extortion, embezzlement, diversion of public resources, causing financial loss, false/fraudulent accounting, forgery, illicit enrichment, influence peddling/conflict of interest, nepotism, favouritism, etc.⁵ Corruption and bribery happen across all stages of the mineral supply chain for example licensing can be through informal payments for licensing and facilitation payments. Under exploration/ exploitation can happen through bribery to ignore illegal mineral exploitation, extortion and informal taxation; under trading through bribery to ignore informal trade extortion and informal

5 The Uganda Anti-Corruption Act, Cap. 116

taxation; under transportation through extortion and informal taxation (including at roadblocks); and under export through bribery to ignore smuggling (ICGLR, 2022). Despite the Government of Uganda establishing several anti-corruption and other agencies with relevant mandates to check IFFs, issues of corruption persist. It is reported that the country is estimated to lose over Shs 500 billion (USD 146.3 million) annually through corruption according to the 2016 Auditor General's report (OAG, 2016). According to the report on the cost of corruption by the Inspectorate of Government, corruption in the natural resource sector results in the loss of a considerable portion of natural resource income. For example, the estimated cost of corruption in contract royalties was estimated to be Shs. 868 billion per year. Instances of corruption cited included a lack of openness and fair competition, which creates incentives for corporations to make unauthorised payments in exchange for access to natural resources and better operating circumstances. Through corruption and collusion, companies may get unfair advantages to extract resources, preferential tax treatment, and royalty reductions (Fazekas, Adam, & Nikulina, 2021). Corruption is a key facilitator of IFFs as it compromises set systems and hinders the implementation of laws and policies (Global Witness, 2017).

Money laundering

Money laundering is the process of disguising the proceeds of crime and integrating them into the legitimate financial system (GFI, 2015). It makes it possible for corrupt and criminal actors to profit from the proceeds of their illegal processes, such as illegal mineral exploitation trade extortion or bribery linked to the mineral supply chain (ICGLR, 2022). In Uganda, gold was found to be vulnerable to money laundering (Mugenyi, Atukunda, Ssemakula, Ssuuna, & Okiira, 2023).



6 | THE MINING LEGAL REGIME AND HOW IT ADDRESSES IFFS AND DOMESTIC REVENUE LOSSES ALONG THE MINERAL SUPPLY CHAIN

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
Licensing	<p>In Uganda, the allocation of licenses in the mineral supply chain is based on national laws and policies. One important tool for protecting the mining sector against IFFs is a good regulatory environment.¹ The Mining and Minerals Act, Cap. 159, provides for several licenses along the mineral supply chain such as prospecting licence, exploration licence, retention licence, large-scale mining licence, medium-scale mining licence, small-scale mining licence, artisanal mining licence, mineral processing licence, mineral smelting licence, mineral refining licence, mineral dealer licence. The Act provides for an open, transparent and competitive process of licensing. IFFs under licensing include; tax avoidance and evasion through favourable tax treatment for Multi-National Corporations (e.g. tax incentives, tax holidays or preferential clauses in mining contracts) and corruption and bribery through informal facilitation payments for licensing.</p>	
	<p>The Mining and Minerals Act, Cap. 159 ("the Act") promotes transparency in licensing through beneficial ownership information requirements for companies applying for mineral rights and throughout out duration of such rights to promote transparency.²</p> <p>The Act provides for the formalisation of artisanal and small-scale mining and envisages the extension of incentives by the minister responsible for finance, as a measure to promote the formalisation.³</p>	<ul style="list-style-type: none"> • Stringent licensing requirements stifling the formalisation of artisanal and small-scale mining i.e. capital investment thresholds,⁴ and licence application and renewal fees.⁵ • The Act is silent on how artisanal and small-scale miners can access the tax incentives envisaged under the Act.⁶ • While the Act provides that the Minister shall develop or cause to be developed a model mineral agreement to guide future agreements,⁷ the minister is yet to do the same. • While the regulations provide for evaluation criteria for licences upstream, the regulations are silent on evaluation criteria for licences in downstream mining operations i.e. value addition and beneficiation, trading and export.

1 UNECA. (2017). *Impact of Illicit Financial Flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa*. Addis Ababa, Ethiopia: United Nations Economic Commission on Africa

2 Section 283

3 Section 194 of the Mining and Minerals Act, Cap. 159

4 Section 84 and Schedule 3 of the Mining and Minerals Act, Cap. 159

5 Schedule 2 to the Regulations

6 Section 194 of the Mining and Minerals Act, Cap. 159

7 Section 29 of the Mining and Minerals Act, Cap. 159

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
	<p>The Act prescribes prosecutable offences for illegal mining without a license⁸, without a valid mineral right or license,⁹ aiding operations carried out without a license /valid license,¹⁰ operating outside of the concession area¹¹ and corrupt activities by mining companies and public officers.¹²</p> <p>The Act and, the Mining and Minerals (Licensing) Regulations, 2023 (“the Licensing Regulations”) prohibit unauthorised transfer or lease of mining¹³ and beneficiation licences¹⁴, to curb capital gains tax evasion.</p> <p>As a safeguard against abuse of royalty waiver, the Act subjects royalty waiver to cabinet approval.¹⁵</p> <p>To address the tax-related IFFs above, the Act provides that tax administration of royalties, taxes or charges imposed under it, shall be subject to the tax laws of Uganda such as; the Income Tax Act, cap. 338¹⁶, the Income Tax (Transfer Pricing) Regulations, 2011¹⁷ and the Convention on Mutual Administrative Assistance in Tax Matters (Implementation) Act, Cap. 335 which provides the legal mechanism for the exchange of information mechanisms to tackle tax-related IFFs.</p>	
Exploration/ Exploitation	Exploration and Exploitation remain the most transaction-intensive stages in the mineral supply chain. Exploration involves subsoil research and analysis to identify possible commercial deposits, while Exploitation focuses on developing mines to extract these valuable resources. ¹⁸ IFFs under exploration/exploitation include; Illegal mineral exploitation through mining or exploration without a license, mining or exploration outside of the concession area, or mining with an exploration license. Tax avoidance and evasion through non or misreporting of production f quantity, value or quality, abuse of tax exemption or royalty waiver from payment of royalties and mineral samples, which are major sources of loss of mineral revenue at the exploration stage. The other sources of IFFs are corruption through bribery to ignore illegal mineral exploitation, extortion and informal taxation and laundering proceeds of illegal mineral exploitaton.	

8 Section 10 (1), (3) (a), and (b) of the Mining and Minerals Act, Cap. 159

9 Section 252 (1) (a) (b) of the Mining and Minerals Act, Cap. 159

10 Sections 11 and 252 (1) (c) of the Mining and Minerals Act, Cap. 159

11 Section 252 (2) of the Mining and Minerals Act, Cap. 159

12 Section 284 of the Mining and Minerals Act, Cap. 159

13 Section 156 of the Mining and Minerals Act, Cap. 159 and Regulation 53

14 Section 131 of the Mining and Minerals Act, Cap. 159

15 Section 183 of the Mining and Minerals Act, Cap. 159

16 Sections 181 and 191 of the Act; Section 25 of the Income Tax (Amendment) Act, 2018 which repeals thin capitalisation rules and caps interest deduction at 30 % of earnings before interest, tax, depreciation and amortization.

17 Section 193 of the Mining and Minerals Act, Cap. 159

18 UNECA. (2017). Impact of Illicit Financial Flows on Domestic Resource Mobilization: Optimizing Revenues from the Mineral Sector in Africa. Addis Ababa, Ethiopia: United Nations

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
	<p>To address issues related to tax evasion or avoidance through non or misreporting of production, quantity, value, or quality, the Mining and Minerals Act, Cap. 159¹⁹, is subject to the tax laws of Uganda. The Act and regulations prescribe; clear and simple tax-related working obligations and prosecutable tax-related offences such as intentionally or negligently providing the Mining Cadastre with false or misleading records of the license holder's exploration operations.²⁰ Defrauding or conspiring to defraud the Government of royalties.²¹ Giving false information in connection with among others, a return.²² The Act designates persons responsible for compliance.²³ The Act provides for administrative measures for tax non-compliance.²⁴</p> <p>The Act provides for prosecutable offences and sanctions in relation to exploration without a licence²⁵ or a valid licence.²⁶ Corruption and bribery to ignore illegal mineral exploitation.²⁷ Aiding or assisting illegal prospectors or operators,²⁸ exploration outside of the concession area,²⁹ and laundering of proceeds of illegally exploited minerals.³⁰</p>	<p>Delay in developing regulations that prescribe the manner in which local governments shall monitor and regulate the exploitation of minerals in collaboration with the Directorate.³¹</p>

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19 Sections 181 and 191 of the Mining and Minerals Act, Cap. 159

20 Sec. 50 (3) (a) – (i) & (5) of the Mining and Minerals Act, Cap. 159

21 Section 257 of the Mining and Minerals Act, Cap. 159

22 Regulation 99 (1)

23 Section 181 (3), Sec. 19 (c) of the Mining and Minerals Act, Cap. 159

24 Section 50 (2), Regulation 94 & Schedule 2 of the Regulations

25 Section 10 (1) (a) & (b) of the Mining and Minerals Act, Cap. 159

26 Section 252 (1) (a) of the Mining and Minerals Act, Cap. 159

27 Section 267 (1), (3) & (4) of the Mining and Minerals Act, Cap. 159

28 Section 11 & 252 (1) (c) of the Mining and Minerals Act, Cap. 159

29 Section 252 (2) of the Mining and Minerals Act, Cap. 159

30 Section 259 of the Mining and Minerals Act, Cap. 159

31 Section 27 of the Mining and Minerals Act, Cap. 159

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
	<p>The law domesticates the 2010 International Conference on the Great Lakes Region (ICGLR) Regional Initiative Against the Illegal Exploitation of Natural Resources (RINR) and the ICGLR (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Act, 2018, and related regulations that provide for the implementation of a mineral traceability and certification scheme to eliminate mineral smuggling and illegal exploitation of designated conflict minerals.</p> <p>To deal with money laundering, Uganda has an Anti-Money Laundering Act, Cap. 118 in place that draws on the Financial Action Task Force standards.</p>	<p>The ICGLR framework require assessments, audits and reports to be done by operators which are prohibitively expensive for operators who resort to non-compliance.³²</p>
Trading	<p>The Mining and Minerals Act, Cap. 159 provides for mineral trading operations. IFFs under trading include tax avoidance and evasion through trade mis invoicing, transfer pricing, and transfer mispricing. Smuggling and informal trade through the on-declaration of trade to authorities, and mixing of legally and illegally sourced minerals, corruption through bribery to allow informal trade, extortion, and informal taxation, and money laundering through laundering of the proceeds of illegal mineral trade.</p>	
	<p>Part VII of the Mining and Minerals Act, Cap. 159 ("the Act") provides the licensing regime for trading in minerals across the mineral supply chain.</p> <p>The Act prescribes prosecutable offences to combat trade-related IFFs,³³ trading in minerals without a licence³⁴ or valid licence³⁵, and laundering of proceeds of illegally exploited minerals.³⁶ Furthermore, the Act provides for the registration of mineral service providers for easy monitoring.</p> <p>The Mining and Minerals Act, Cap. 159 /regulations address IFFs related to smuggling and informal trade by providing for fines for non-declaration of trade to authorities and mixing of legally and illegally sourced minerals.³⁷</p> <p>To combat abusive transfer pricing practices between mining companies and associates, the Act provides that transactions shall be subject to the <i>arms' length principle</i> under the Income Tax (Transfer Pricing) Regulations, 2011.³⁸ The Regulations prescribe prosecutable offences and penalties in relation to transfer pricing.</p>	<ul style="list-style-type: none"> • With no/insufficient regulations on the valuation of minerals/samples thereof, mineral dealers practice price discrimination hence revenue loss. • No regulation of royalty payable by mineral dealers in line with sec. 142 which provides for the liability of mineral dealers for royalties.

³² Interviews with operators

³³ Section 260 (1), (2), (3), (4), (7) of the Mining and Minerals Act, Cap. 159

³⁴ Section 121 (1) of the Mining and Minerals Act, Cap. 159

³⁵ Sec. 252 (1) (b) & (3) of the Mining and Minerals Act, Cap. 159

³⁶ Section 259 of the Mining and Minerals Act, Cap. 159

³⁷ Section 259 of the Mining and Minerals Act, Cap. 159

³⁸ Section 193 of the Mining and Minerals Act, Cap. 159

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
	<p>Uganda also became a signatory to the Convention on Mutual Administrative Assistance in September 2016, which enables the Government to send and request information. The information facilitates audits and investigations to combat abusive transfer pricing, tax abuse, base erosion and profit shifting by Multi-National Corporations.</p> <p>The licensing regulations provide for anti-money laundering measures requiring licence holders to register with the Financial Intelligence Authority prior to the purchase or sale of precious minerals.³⁹</p> <p>To make trade mis-invoicing illegal, Section 65(6) of the Value Added Tax Act, Cap. 344, Section 15A (6) of the Excise Duty Act, Cap. 336 and Section 50 of the Tax Procedures Code Act, Cap. 343 impose Penal Taxes for making false and misleading statements. Furthermore, in the TPCA amendments for the financial year 2022/23, the penalty for making false or misleading statements was increased from Shs 4M to Shs 110M as a deterrent measure to improve voluntary compliance.⁴⁰</p> <p>To deal with money laundering, Uganda has an Anti-Money Laundering Act, Cap. 118 in place that draws on the Financial Action Task Force standards.</p>	
Transporting	<p>One of the mineral operations in the Mining and Minerals Act, Cap. 159 is transportation. Under transportation, IFFs include smuggling and informal trade through the concealment of minerals amongst other materials and the mixing of legally and illegally sourced minerals; corruption and bribery through extortion and informal taxation especially at exit and border points.</p>	
	<p>The Act designates the Directorate of Geological Survey and Mines (DGSM) to register service providers such as transporters.⁴¹ The licensing regulations restrict the movement of minerals under a movement permit.⁴²</p> <p>The Act prescribes prosecutable offences in relation to transportation as an aid to illegal mining operations across the supply chain.⁴³</p> <p>The licensing regulations provide for the minister's discretionary power to require mining operators to install and operate weighbridges at locations where mining operations are being undertaken.⁴⁴</p>	<p>While the Act envisages regulations for the manner in which DGSM shall register transporters, the licensing regulations are silent on the same.</p>

39 Regulation 106

40 URA. (2022, July 15). Uganda Revenue Authority steps up Fight Against Illicit Financial Flows to Curb Revenue Leakages. Retrieved from The Taxman: <https://thetaxman.ura.go.ug/?p=1659>

41 Section 154 of the Mining and Minerals Act, Cap. 159

42 Regulation 86

43 Section 258 and 260 of the Mining and Minerals Act, Cap. 159

44 Regulations 29 (4), 35(4), 42(4),49(3)

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
Processing	<p>The Mining and Minerals Act, Cap. 159 provides for mineral beneficiation which includes the processing, smelting, refining, cutting, blasting or polishing of minerals. IFFs under processing include tax avoidance and evasion through misreporting of quantity, value, or quality; smuggling and informal trade through the mixing of legally and illegally sourced minerals.</p>	
	<p>The Mining and Minerals Act, Cap. 159 promote in-country value addition and beneficiation of minerals.</p> <p>Part VI of the Act sets out the licensing regime for mineral processing, prescribing tax obligations.</p> <p>To mitigate tax avoidance and evasion through misreporting of quantity, value, or quality, the Act imposes tax obligations and prosecutable tax-related offences in mineral processing.</p> <p>To Combat money laundering in the processing of precious minerals, the licensing regulations provide for mandatory registration of processing licence holders with the Financial Intelligence Authority.⁴⁵</p>	<p>While the presidential directive⁴⁶ puts a total ban on unprocessed mineral exports, the Mining and Minerals Act, Cap. 159, imposes an export levy of 10% for unprocessed mineral exports.</p> <p>The Mining and Minerals Act, Cap. 159 does not define the terms; "processed minerals" and "unprocessed minerals", which therefore brings ambiguity in the treatment of such cases.⁴⁷</p>
Export	<p>IFFs under Export include; tax avoidance and evasion through: misreporting of quantity, value, or quality. IFFs under export also include smuggling and informal trade through smuggling across borders, partial declaration of exports, and mixing of legally & illegally sourced minerals; corruption and bribery through bribery to ignore smuggling; and money laundering through smuggling of minerals for money laundering.</p>	
	<p>The Mining and Minerals Act, Cap. 159 prescribes prosecutable offences and sanctions in relation to non-compliance with tax-related and certification requirements for the export of minerals.⁴⁸</p> <p>The Mining and Minerals Act, Cap. 159 subjects the export of minerals not from Uganda to requirements under other written laws including among others, the certificate of origin issued under the ICGLR Act.⁴⁹</p> <p>The Mining and Minerals Act, Cap. 159 prescribes a prosecutable offence for laundering proceeds of illegally exploited minerals through export to conceal mineral origin.⁵⁰</p>	<p>While the Act imposes an obligation on export permit holders to export minerals at purity levels prescribed by regulations,⁵¹ the licensing regulations do not prescribe purity levels for minerals to be exported under mineral processing, smelting and refining licenses.</p> <p>The licensing regulations do not prescribe application fees for an export permit for designated minerals or other minerals.⁵²</p>

45 Regulation 106

46 <https://ucmp.ug/wp-content/uploads/2023/08/14.pdf>

47 Auditor General's Report FY 2022/2023

48 See Section 150 (5), Regulation 100

49 Section 150 (4) of the Mining and Minerals Act, Cap. 159

50 Section 259 of the Mining and Minerals Act, Cap. 159

51 Section 127 (b) of the Mining and Minerals Act, Cap. 159

52 Schedule 2 Paragraph 27 of the Regulations

Supply Chain	How the mining legal regime addresses IFFs and domestic revenue losses along the mineral supply chain	Gaps in the mining legal regime in addressing IFFs and domestic revenue losses along the mineral supply chain
	<p>To deal with money laundering, Uganda has an Anti-Money Laundering Act, Cap. 118 in place that draws on the Financial Action Task Force standards.</p>	<p>Lack of regulations on the export levy of some minerals. According to the Auditor General's Report FY2022/2023, a review of URA systems (ASYCUDA) revealed that 22 mineral categories exported other than Gold, were exported without any tax assessment and payment of the resultant taxes. URA attributed the occurrence to a lack of enabling Law to facilitate the collection of export levies for some minerals.⁵³</p>



7 | CHALLENGES IN IMPLEMENTING UGANDA'S MINERAL LEGAL REGIME IN ADDRESSING IFFS

Weak enforcement and coordination: Limited coordination between government agencies along the mineral supply chain creates vulnerabilities exploited for IFFs. This leads to issues such as disjointed data management which allows under-reporting of production and manipulation of royalty collection figures. Various Auditor General's reports highlight significant revenue losses due to this factor. Additionally, unaddressed expired licenses enable continued operation by unauthorized companies, facilitating royalty arrears and potentially funnelling profits illegally. This undermines transparency and creates opportunities for siphoning revenue out of the country (Mugerwa, 2015). For example, the Auditor General's Report 2015 noted instances where the government lost Shs 60 billion in undeclared royalties from the mining sector due to a lack of coordination among key stakeholders, the Ministry of Energy and Mineral Development collected Shs10.5 billion from royalties, although reports from the Customs and Excise Department of URA indicated government should have collected Shs70.1 billion.

Resource constraints: Underfunding of relevant ministries, departments, and agencies along the mineral supply chain limits their capacity to effectively monitor and enforce the law. This translates into a lack of proper inspections, allowing for activities such as illegal mining and smuggling to flourish. Such activities are sources of IFFs by diverting resources from legitimate channels. Limited resources also restrict the development of robust data collection and management systems, further hindering efforts to track mineral flows and identify potential leakages (Kiggundu, 2020).

Infrastructure bottlenecks: Poor infrastructure discourages investments in processing plants as part of the mineral supply chain, especially in resource-rich areas with limited infrastructure. This incentivizes the export of raw materials, creating opportunities for undervaluing exports and manipulating trade invoices - a common illicit financial flow tactic. Furthermore, underdeveloped transportation networks make it easier to smuggle minerals across borders, further facilitating IFFs (MEMD, 2015).

Ineffective monitoring and compliance: Slack inspections and weak monitoring systems allow for unlicensed and illegal mining activities. This not only deprives the government of revenue but also creates channels for laundering profits from illegal mining through legitimate businesses. Furthermore, weak enforcement allows for potential environmental and social violations, which can create reputational risks and discourage responsible investment, ultimately impeding the sector's potential to contribute legitimately to the economy (OAG, 2015).

Inadequate regional cooperation: Addressing IFFs requires cooperation and coordination in Uganda with other countries. Limited cooperation, including challenges in sharing information, coordinating enforcement actions, and harmonizing regulatory standards, can hinder efforts to combat cross-border illicit activities and promote transparency along the mineral supply chain. This makes it harder to address cross-border smuggling and harmonize regulations, creating vulnerabilities for exploitation by those seeking to engage

in IFFs (UNODC, 2023). For example, there is limited dialogue and partnership between the East African Countries and the International Conference on the Great Lakes Region (ICGLR) Member States on how they can position themselves to maximise benefits from their mineral resources and the Regional Initiative Against the Illegal Exploitation of Natural Resources Protocol.¹



1 The Great Lakes Mining and Energy Transition Conference 2024 that took place in Kampala Uganda from 31st January to 1st February 2024

8 | CONCLUSION

The mineral sector holds immense potential for driving growth, creating employment opportunities, generating income, and promoting local development. Uganda's mining sector boasts a rich history and holds significant economic potential. However, to ensure the sustainability and transparency of the mining industry, the government must play a pivotal role in providing the necessary context for national sustainable development priorities and challenges. By implementing the recommendations highlighted above, Uganda can create a more transparent and accountable mineral supply chain, minimizing opportunities for IFFs and maximizing the sector's contribution to national development. The government can bolster the performance of the mining sector and promote a more transparent, responsible and environmentally conscious approach to mining practices.

9 | RECOMMENDATIONS

Tackling IFFs in Uganda's mining supply chain requires coordination among different key stakeholders as discussed below.

The Minister responsible For Mineral Development should

- Prioritize the development of comprehensive regulations to among others, provide clarity on processed minerals and unprocessed minerals to eliminate ambiguity and ensure consistent application for effective implementation of the Mining and Minerals Act, Cap. 159.
- Expedite the development of a model mineral agreement to standardize future mining contracts, promoting transparency and fairness in negotiations.

The Ministry of Energy and Mineral Development should

- Conduct consultations with artisanal miners to ensure the law is practical and facilitate their formalization within the mining sector.
- Enable data sharing and coordination among stakeholders by establishing a centralized real-time data-sharing system among stakeholders (Ministry of Energy and Mineral Development, Uganda Revenue Authority, Directorate of Geological Survey and Mines) for mineral production, licensing, and revenue collection. This platform should utilize common software to facilitate information exchange on the volume of mineral production, imports, exports, royalties, and permits. This will improve transparency and allow for easier identification of discrepancies.

The Directorate of Geological Survey and Mines should

- Implement stricter verification procedures during license applications. This ensures licenses are granted only to competent, financially sound companies committed to

responsible mining practices.

- Closely monitor licensee operations and take prompt action against those who violate the terms and conditions of their licenses. The Ministry should establish clear and efficient procedures for license renewals to avoid delays and discourage informality.
- Fast track the implementation of the Regional Certification Mechanism, a standard for certification of the 3Ts (tin, tantalum, tungsten) and gold sourced from or transiting across an ICGLR member states by (i) Rolling out the ICGLR certificate by conducting mine site inspections and third-party exporters' chain of custody audits in conformity with the requirements of the national regulations and the ICGLR mine site standard. (ii) Supporting the implementation of traceability and due diligence for conflict minerals starting from the mine site to export. (iii) Providing the local mining cooperatives, miners associations, women, and youth in Uganda with capacity building and technical guidance to implement the traceability and due diligence systems. (iv) Develop an incentive-based model, increasing access to credit to increase compliance with mineral traceability standards.

The Ministry of Finance Planning and Economic Development should

- Provide adequate resources to the Directorate of Geological Survey and Mines to effectively monitor mining activity and enforce regulations. The Directorate of Geological Survey and Mines should conduct regular on-site inspections at mining sites to ensure compliance with environmental and social regulations. Utilize technology like satellite imagery to monitor mining activity. Develop a risk-based approach to identify high-risk areas and allocate resources accordingly for inspections based on data analysis and intelligence gathering and publish inspection reports, hold violators accountable with clear penalties for non-compliance. This will minimize tax avoidance, under-declaration of royalties, and non-compliance by mining companies.
- Prioritize strategic infrastructure development projects (roads, power grids) in mineral-rich areas to improve accessibility and attract credible investors for processing plants. Government can explore Public-Private Partnerships with the private sector to co-finance infrastructure development and data management systems in resource-rich areas.
- Conduct a cost-benefit analysis of all the tax incentives that are currently in place to identify which ones are detrimental to Uganda's ability to mobilise domestic revenue.

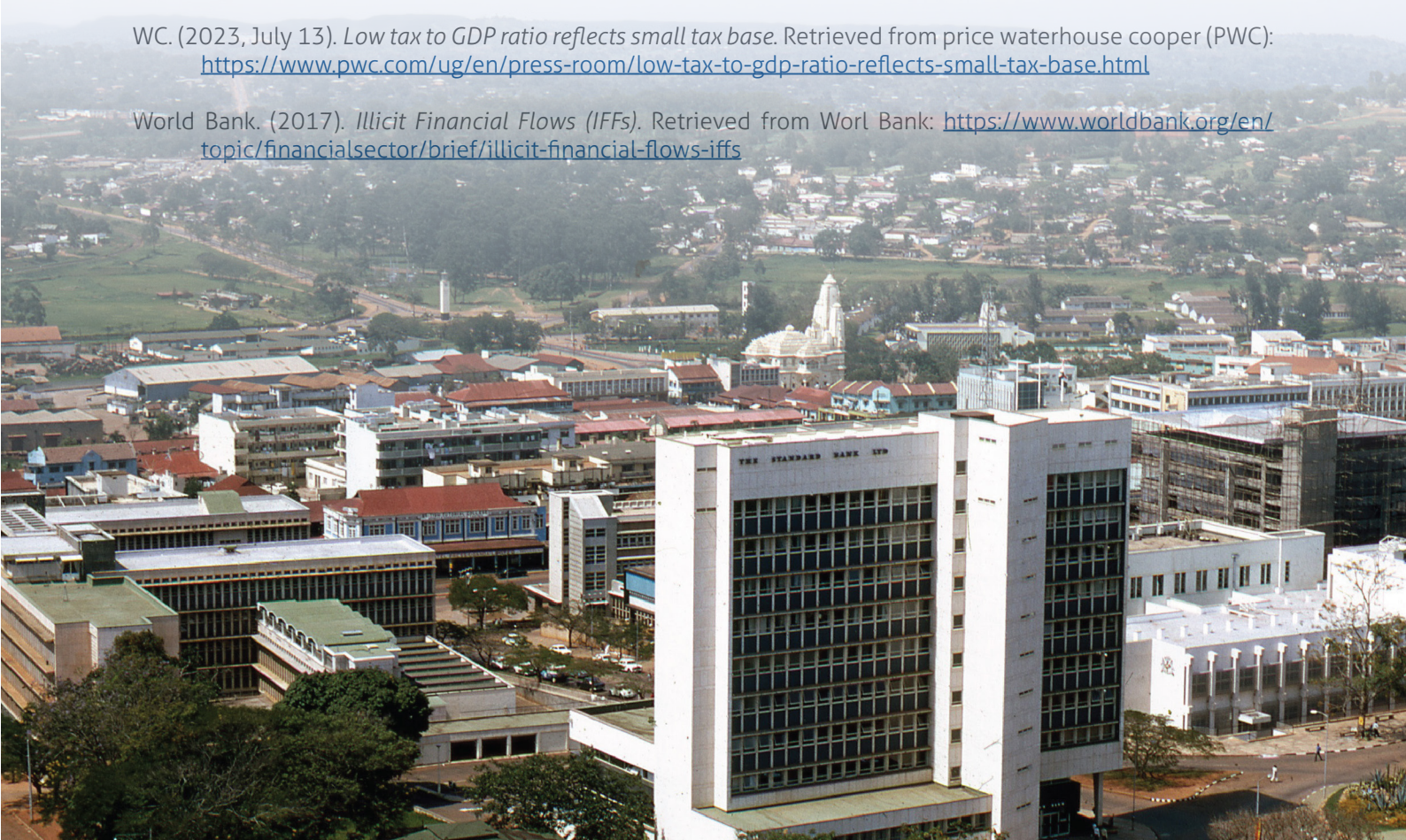
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

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Global Financial Integrity (GFI) is a Washington, DC-based think tank focused on illicit financial flows, corruption, illicit trade and money laundering.

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