

NEW EU LAW-REGULATION ON CONFLICT MINERALS – SIGNIFICANCE AND IMPACT ON AFRICA’S MINERAL SECTOR, ASM AND INTEGRATION PROCESSES

**A Presentation on the Regional Effort to curb illicit exploitation of
Minerals in Africa: The six tools of the ICGLR Regional Initiative
to fight against the Illegal Exploitation of Natural Resources.**

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Overview

2



1. Introduction
2. Governance of RINR
3. Status of Implementation against the Six Tools of the RINR
4. Exploring strategies to fast track mineral certification
5. RCM implementation costs and financing mechanisms
6. Conclusion

Introduction

3



- **The International Conference on the Great Lakes Region (ICGLR)** is an inter-governmental organisation of the countries in the African Great Lakes Region.
- **Founding members:** Angola, Burundi, Central African Republic, Republic of Congo, Democratic Republic of Congo, Kenya, **Uganda**, Rwanda, Sudan, Tanzania and Zambia.
- In 2012, the Republic of South Sudan joined the organisation composed nowadays of twelve Member States.
- Member states adopted the Pact on Security, Stability and Development in the Great Lakes Region in Nairobi on 15th December 2006.
- The Pact is composed of ten protocols which are legally binding for all the signatory parties of the treaty. Link: <http://www.icglr.org/index.php/en/the-pact>
- **Today's presentation focusses on the Protocol Against the Illegal Exploitation of Natural Resources (RINR).**

Governance of RINR

4



- RINR was primarily established to track the chain of custody of four designated minerals, namely cassiterite (tin), wolframite (tungsten), coltan (columbite-tantalum) and gold, also referred to as the 3TG or 'conflict minerals'.
- In September 2009, the ICGLR constituted a Regional Steering Committee, comprising technical experts from all Member States, charged with the steering of all activities within the RINR. The Regional Committee decisions are approved by the Regional Inter-Ministerial Committee as well as the ICGLR Summit.
- The principal approach is the setup of a regional certification system for the 3TG. The supply chains of these minerals will be audited and certified in the framework of the ICGLR Regional Certification Mechanism (RCM) which is the core tool of the Initiative.

Governance of RINR

5



The Six Tools of the RINR

- i. Regional Certification Mechanism (RCM) – *Core Tool*;
- ii. Harmonization of National Legislation - *Domestication of the legal provisions of the Protocol into the national legislation such as the Mining Act 2003 in Uganda*;
- iii. Regional Database on Mineral Flows - *to document production and trade of 3TG minerals in the Great Lakes Region* ;
- iv. Formalization of Artisanal Mining Sector;
- v. Promotion of the Extractive Industry Transparency Initiative (EITI);
and
- vi. Whistle blowing mechanism.

Implementation against the Six Tools of the RINR.

6



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Tool 1 – RCM Guiding Principles

7



- a. **Transparency** i.e. data on mineral flows would be made public as it enhances the role of civil society as an oversight body;
- b. **The burden of proof** falls primarily on exporters and secondly on the government, which means that responsibility to follow procedures and sanctions for non-compliance both fall on mining companies and mineral traders;
- c. **Mandatory third party audits**, which implies the recruitment of auditors by the ICGLR Audit committee which includes representatives from government, industry and Non-Governmental Organizations (NGOs *as is Uganda's case*) and that would issue substantive, automatic penalties for noncompliance;
- d. **Adapt existing current systems** as much as possible and not to reinvent the wheel if credible systems are already in place; and
- e. **Design for adaptability**, so that the mechanism stays present with time and incorporates relevant and best practice standards as much as possible.

Tool 1 - RCM Four Principal Elements

8



1. Implementation of the RCM relies on four main system elements:
 - a. Chain of custody tracking from mine site (*source*) to export;
 - b. Regional tracking of mineral flows via ICGLR database;
 - c. Regular independent 3rd party audits; and
 - d. An Independent Mineral Chain Auditor (IMCA).
2. The ICGLR - RCM Manual, sets out the standards and procedures for chain of custody systems and certification in-region

Element 1 - Chain of custody tracking from approved/validated mine site (*source*) to export

9



1. Mine site inspection/approval.–

- a. Responsibility of Government prior to export
- b. The Ministry of Energy (“ the Ministry”) has and continues to physically inspect each active mine site Quarterly to:
 - i. check for conflict, human rights (MUST)
 - ii. address working conditions, environment (MAY)
- c. The Ministry has developed and reviewed with relevant stakeholders a Mine Site Inspection Manual based on the Regional Certification Manual
- d. The ministry has trained government inspectors (Mines, Customs, Police, Labour, Environment) to use the Mine Site Inspection Template

Element 1 - Chain of custody tracking from approved/validated mine site (*source*) to export

10



2. Chain of Custody (CoC) tracking from mine site to export (upstream) .
 - a. Role of government before export.
 - b. Includes tracing national production, minerals imported and then re-exported, review the chain of custody of documents before export with a view to establishing that minerals can be tracked from mine site to exporter (producer countries) or border post to exporting countries (reprocessing countries)
 - c. Can be outsourced to private sector/NGOs - But must still meet ICGLR standards for mineral tracking, transparency, data sharing. An ICGLR Model Memorandum of Understanding (MoU) between Ministry Responsible for Minerals of a Member State (MEMD) and Traceability Service Provider (e.g. iTSCi) is in place.

Element 1 - Chain of custody tracking from approved/validated mine site (*source*) to export

11



- c. However, ITSCi has private arrangements with some producers and exporters (e.g. APRU) and is yet to sign such an MoU with the Ministry/Government.
 - d. Mineral Chain Auditor inspects systems for ICGLR compliance - Done prior to systems going live.
3. Issuing ICGLR regional certificates to mineral exports that have the appropriate chain of custody documents
- a. Certificate serves as sole proof of compliance throughout region
 - b. The Ministry is drafting Terms of Reference (ToR) for procurement of consultancy services to design and produce secure certificates as specified in the ICGLR standards subject to signing of the enabling laws and regulations for the implementation of RCM

Element 1 - Chain of custody tracking from approved/validated mine site (*source*) to export

12



- e. The Ministry has updated Mineral Export procedures implemented by the DGSM in preparation for the introduction of ICGLR Export Certification for 3TG; and
- f. These are being applied to African Panther (U) Ltd – Kikagati Tin Mine, Krone (U) Ltd. Nyamuliro Wolfram Mine. 3T Mining (Wampewo-Wolfram) and African Gold Refinery, Simba Gold Refinery, etc – Gold.

Element 2 - Regional tracking of mineral flows via ICGLR database

13



1. The regional database is hosted at the ICGLR Secretariat in Bujumbura, Burundi.–
 - a. Data on regional mineral flows is transmitted by Uganda to ICGLR on a monthly basis as required.
 - b. The Secretariat is supposed to analyse data for each Member State (MS)/Service Provider to determine if exports equal legal imports
 - c. In case of imbalance, MS given a chance to explain and correct. If this is not done, MS/Service Provider will be declared non-compliant
 - d. All data and analyses is stored on publicly accessible database

Element 3 - Regular independent 3rd party audits

14



1. Conducted independently of government, industry and civil society.
 - a. this 'dual –key system' ensures that participants have to prove that they follow proper chain of custody and also pass regular third party audits in order to acquire the ICGLR certificate.
 - b. All exporters (comptoires/processors) must submit to and pass regular audits by independent third party auditors - *those failing audits will be declared non-compliant.*
2. Audit Committee is composed of representatives of government, industry and civil society. Responsible for accrediting, commissioning of and setting ToRs for auditors
 - a. Current composition: 3 government, 2 industry, 2 civil society
 - b. Industry – FEC, ITRI
 - c. Civil Society
 - i. International NGOs (PAC, GW, IPIS, etc)
 - ii. National NGOs (CENADEP, OGP, etc) – *Uganda's Member Status*

Element 4 - Independent Mineral Chain Auditor (IMCA)

15



- a. The IMCA will monitor the full mineral chain for discrepancies and anomalies arising from data collected in system
- b. The IMCA has authority and resources to initiate investigations at their own discretion
- c. The IMCA is appointed by the ICGLR Executive Secretary from a candidates list submitted by the Steering Committee
- d. The IMCA is the last line of defence
 - i. Can react to unforeseen situations
 - ii. close loopholes that were not foreseen when system created

Tool 2 – Harmonization of National Legislation

16



- a. In September 2015, Cabinet approved the domestication of the provisions of the Pact and associated protocols as part of an “omnibus bill”.
- b. In this respect a new law “The International Conference on the Great Lakes Region (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Act 2017” was passed and in accordance with section 7 of this Act and by proviso to section 121 of the Mining Act, 2003, The Prevention of Illegal Exploitation and Illicit Trade in Designated Minerals Regulations, 2019 have been drafted with the Financial Support from IMPACT and await approval and gazetting to be implemented.

Tool 3 – Regional Database on Mineral Flows

17



- a. Establishment of the “Uganda-ICGLR Mineral Tracking and Certification Unit” , MTCU based at DGSM.
- b. The Ministry is reviewing the current national mine site database (including location and status), the mineral tracking database, the national database of exporters (including location, ownership and status, record of third party audits)
- c. The Ministry in consultation with the Technical Unit of the ICGLR Secretariat and Technical Assistance Partners – IMPACT and The Federal Institute for Geosciences and Natural Resources (BGR) has established a functional MTCU after signing a Financial and/or Technical Assistance MoU with IMPACT and BGR.

Tool 4 – Formalization of Artisanal Mining Sector

18



- a. ToR for ASM Consultancy finalized. Expected output being strategies to do the following
 - i. ASM Mapping with object of potential zoning
 - ii. Registration and cooperatives being formed - *ongoing*
 - iii. Beneficiation centers for skilling ASMs – *under construction*
 - iv. Revising mining laws and regulations governing ASM to curb illegal mining and trade - *Ongoing*
 - v. Licensees tasked to sign MoUs with organized groups and
 - vi. Mineral Processors legislated

Tool 5 – Promotion of the Extractive Industry Transparency Initiative (EITI)

19



1. Included in the principles embodied in the revised oil and mineral policies as a strategic objective of government to be harmonized with national legislation.
2. Current practices promote transparency and good governance; Computerized online cadaster, publication of royalties for equitable sharing of these revenues.
3. With this backdrop, Uganda has incorporated this action in the New Mining and Mineral Policy 2018 and the Mining and Mineral Bill 2019, in Consultation with MoFPED. Progressively a decision was taken by Uganda's Cabinet on January 28 to formally join the Extractive Industries Transparency Initiative (EITI) in order to strengthen the government's efforts of ensuring overall transparency in the minerals and petroleum sector, strengthen tax

Tool 6 – Whistle blowing mechanism

20



1. Aims at capitalising on the knowledge of individuals witnessing or participating in illicit mineral activities.
2. A web-based platform at the ICGLR provides a possibility to anonymously report such confidential information which would then be followed up by the IMCA.
3. Enabling and protective laws are in application in Uganda to facilitate and protect whistleblowing mechanisms.

Exploring strategies to fast track mineral certification

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21



Strategies to fast track implementation of RCM in Uganda

22



1. Eliminate the monopoly of both traceability and auditing by one traceability service provider (ITRI), and invite more traceability schemes, e.g., Better Sourcing Programme (BSP) and Geotraceability to the region. These service providers are progressively gaining ground; international support is, therefore required so that they can adequately compete with other existing monopoly schemes.
2. optimal coordination of the multiple donors with a multiplicity of interventions at various levels within the RINR.
3. Fast track the establishment of institutional and operational structures. There is lack of technical and human resources in the Ministry that are specifically dedicated to RINR.
4. Fast track procedures for the Assent to “The International Conference on the Great Lakes Region (Implementation of the Pact on Security, Stability and Development in the Great Lakes Region) Bill, 2016, to domesticate the Regional Certification Mechanism (RCM) Protocol.

Strategies to fast track implementation of RCM in Uganda

23



5. Acceptance of some private traceability schemes, notably the International Tin Research Institute (ITRI), to recognize the significant role of the ICGLR in overseeing and providing guidance on RCM implementation, in line with the international requirements (e.g., UN Guiding Principles on Business and Human Rights; OECD Due Diligence Guidance, US Dodd Frank Act, EU Regulation on Conflict Minerals, etc)
6. Delinking traceability service providers from the ICGLR auditing system to avoid duplication of audits resulting into high costs for compliance to RCM by mineral exporters.
7. Increasing ownership of the fight against illegal exploitation of natural resources by ICGLR Member States.
8. Strengthening partnerships among all stakeholders for positive and compatible synergies instead of competing efforts.

RCM implementation costs and financing mechanisms

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24



Financing implementation of RCM

25



1. The updated/regionally harmonised phase - in (first three years) consolidated implementation cost per annum for the ICGLR - RCM - Uganda Chapter is estimated to be **USD 1.1 million including personell and non personell costs.**
2. Currently the Ministry has based its budget estimates 2017/18 on the initial regional cost analysis by the ICGLR Consultant of approx. USD 680 thousand p.a. This has since been updated during the RINR Regional Steering Committee validation Meetings.
3. The fiscal framework for the full implementation of RCM is as follows:
 - a. **Establishment of the requisite infrastructure at DGSM-Entebbe to implement the ICGLR-RCM.** The Government of Uganda has considered the possibility of financing this traceability program using its own resources.

Financing implementation of RCM

26



- b. By providing the appropriate number of trained staff and equipment resources. They are required to operate the MTCU on the ground, verify data collected on site and input of data into a suitable data management system. Procurement for some of these items is underway.
- c. However other options being explored include donor funding, if necessary. Such funding could include supplementary **Financial and Technical Assistance - (MoU) with BGR or other development partner to establish the Certification Unit.**
- d. The Principal Budget and other relevant logistics (human, physical, material or otherwise) for the on ground activities are expected to be borne by the contracted Traceability Service Provider with whom GoU has signed an MoU under the ICGLR guidelines.
- e. The Traceability Service Provider will submit a financial quarterly report, clearly outlining the breakdown of all revenues and expenses.

Conclusion

27



- a. The ICGLR- RINR is supported by Member States and the International Community
- b. The RCM is the standard for mineral certification recognized by all MS Governments
- c. The ICGLR Certificate allows an individual or entity to:
 - i. To export 3TG minerals from the Great Lakes Region legally
 - ii. To source 3TG minerals from the Great lakes Region responsibly and in comformity with international requirements.
 - iii. MS and communities to enjoy benefits accruing from ASM