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Handbook on **Illicit Financial Flows** In the Mineral Sector

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CONTENTS



Abbreviations and Acronyms	6
About this handbook	7
<hr/>	
1. Introduction and Context	8
<hr/>	
2. Illicit Financial Flow Risks Along Mineral Value Chains	10
2.1 Illegal Mineral Exploitation	12
2.2 Tax Avoidance and Evasion	12
2.3 Smuggling and Informal Trade	14
2.4 Corruption and Bribery	14
2.5 Money Laundering	15
<hr/>	
3. Measures to Tackle IFF Risks	17
3.1 Formalisation	17
3.2 Governance	19
3.3 Anti-Corruption	22
3.4 Data and technology	23
3.5 Contracts and Agreements	24
3.6 International Cooperation	25
<hr/>	
4. Tax Harmonisation	28
<hr/>	
5. Conclusion	30
<hr/>	
6. Bibliography	32
<hr/>	
7. Imprint	35



**International Conference on the Great Lakes Region
Handbook on Illicit Financial Flows in the Mineral Sector**

ABBREVIATIONS & ACRONYMS



3Ts	Tin, tantalum, tungsten
AMATM	Agreement on Mutual Assistance in Tax Matters
ASM	Artisanal and small-scale mining
ATAF	African Tax Administration Forum
AU	African Union
BEPS	Base erosion and profit shifting
CBCR	Country-by-country reporting
EITI	Extractive Industries Transparency Initiative
FACTI Panel	High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda
FATF	Financial Action Taskforce
ICGLR	International Conference on the Great Lakes Region
IFF	Illicit financial flows
MLI	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
MNC	Multinational corporation
OECD	Organisation for economic cooperation and development
RCM	Regional Certification Mechanism
RINR	Regional Initiative against the illegal exploitation of Natural Resources
SDGs	Sustainable Development Goals
UNECA	United Nations Economic Commission for Africa
VAT	Value added tax
WTO	World Trade Organization



ABOUT THIS HANDBOOK

The purpose of this handbook is to complement the existing instruments and efforts of the ICGLR and its Member States to develop responsible mineral supply chains in the Great Lakes Region. It thereby focuses on risks related to illicit financial flows and makes recommendations on what ICGLR Member States and the ICGLR Secretariat can do to prevent and address them.

The handbook also can provide guidance to civil society, donors and international organisations and experts working in the Great Lakes Region, harmonising their reporting and work on IFF in mineral supply chains.

The handbook is a living document and will be updated on a regular basis. The ICGLR Secretariat will assume the role of asking member states what is and is not working and collate best practices of implementing the recommendations into national laws.

1. INTRODUCTION AND CONTEXT

The International Conference on the Great Lakes Region's (ICGLR) mission is to promote peace, security, and development in the African Great Lakes Region (GLR). For this reason, the ICGLR launched the Regional Initiative against the illegal exploitation of Natural Resources (RINR) in 2010. One of the biggest obstacles for the RINR to achieve its goals of responsible mineral sectors which contribute to social and economic development in the region and do not fuel conflict is the issue of illicit financial flows (IFF).

Addressing illicit financial flows must be crucial for any responsible mineral supply chain programme. They undermine development, exacerbate inequalities, fuel criminal economies, contribute to the financing of armed groups, deprive governments of revenue for public services, and advantage multinational corporations (MNCs) over the domestic private sector. The Great Lakes Region's mineral wealth has the potential to make an important contribution to domestic resource mobilisation and socio-economic development, if IFF risks are prevented and tackled adequately. Given that minerals are traded across borders, it is crucial to take a regional approach.

The ICGLR is uniquely placed to undertake such efforts, given its existing work and leadership on responsible mineral supply chains. The tools of the RINR already do a lot to prevent and tackle IFF and related risks. The six tools are:

- 1. The Regional Certification Mechanism (RCM):** the RCM sets the rules for the chain of custody systems of 3Ts (tin, tantalum, tungsten) and gold in the Great Lakes Region. The RCM is intended to prevent non-state armed groups and public or private security forces from interfering illegally at any point along the supply chain or committing serious human rights abuses related to the supply chains of minerals. However, the RCM does not explicitly address all illicit financial flows (IFF) – where in the certification process they might occur and how Member States could tackle them individually and in collaboration with each other.
- 2. The harmonisation of national legislation:** The Member States must harmonise their legal frameworks with the Protocol against the Illegal Exploitation of Natural Resources and the frameworks of other Member States. Given that IFF often cross borders, a harmonised approach is also crucial in the fight against IFF, particularly in fiscal policies.
- 3. The Regional Mineral Database and Member State Mineral Databases:** The Member States are meant to maintain databases with information on the mine site and exporter certification status and Chain of Custody information. This information is intended to be transferred to the Regional Mineral Database to track all mineral flows in the region. The databases can also be leveraged in the fight against IFF.

- 4. Formalisation of artisanal mining:** ICGLR Member States are committed to formalising artisanal and small-scale mining (ASM) as part of their efforts to control the illegal exploitation and trade of minerals and prevent conflict and human rights violations linked to the sector. Formalisation is also an important factor in the fight against IFF.
- 5. The Extractive Industries Transparency Initiative (EITI):** the EITI is an international standard promoting transparency of payments made by the oil, gas and mining sector companies to governments and how this revenue is used. It has particular value in efforts against IFF because it prevents embezzlement and promotes transparency.
- 6. The whistleblowing mechanism:** a whistleblowing mechanism is a tool through which anyone can anonymously and securely report information on violations of the RCM to the ICGLR Secretariat. This could relate to conflict or human rights violations, fraud, smuggling, corruption and bribery.

The purpose of this handbook is to outline the main IFF risks related to mineral sectors across the Great Lakes Region and make recommendations on further measures that can be undertaken by member states and the ICGLR as a whole. The handbook is mainly addressed to ICGLR Member States, their various government agencies and the ICGLR Secretariat. Its objective is to guide the ICGLR in integrating concerns about IFF into its existing efforts for responsible mineral supply chains and giving member state governments a starting point for tackling IFF in a harmonised manner. The handbook can also be helpful for civil society, the private sector and international organisations working in the mineral sector in the Great Lakes Region.

This handbook uses the widely accepted definition of IFF as “money that is illegally earned, transferred or utilised.”¹ The handbook adopts a broad understanding of illicit, including legal practices that are widely considered immoral. Despite this it is important to acknowledge that not everything informal is illegal.² The handbook is further interested in both domestic and international illicit financial flows. The practices falling under the IFF definition in this handbook are illegal mineral exploitation, tax avoidance, tax evasion, smuggling, corruption and money laundering.

ICGLR's efforts to tackle IFF fit well with current international trends. **The Sustainable Development Goal (SDG) target 16.4** is to « [b]y 2030, significantly reduce illicit financial flows and arms flow, strengthen the recovery and return of stolen assets and combat all forms of organised crime.» This target also addresses all the other SDGs as IFF undermine efforts to strengthen domestic revenue mobilisation, central to financing the SDGs.³ In the **Addis Ababa Action Agenda** on financing of development 2015, governments confirmed their commitment to combatting corruption and illicit financial flows. The related **Addis Tax Initiative** aims at improving technical cooperation on tax information, domestic resource mobilisation and the participation of developing countries in global tax policymaking. Through its **Africa Mining Vision**, the **African Union** is calling for fiscal regimes that create equitable outcomes. Also with participation of the African Union, the **AU/UNECA High-Level Panel on Illicit Financial Flows** was established with a view to promote African countries' ability to mobilise their resources for development. The Panel published their report in 2015, highlighting several areas of tackling a broad range of IFF and can serve as a further guide for the ICGLR Member States in developing their anti-IFF strategy. **The High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel)** provided recommendations on combating tax evasion and avoidance, money laundering and corruption.

1. African Union/United Nations Economic Commission for Africa Conference of Ministers of Finance, Planning and Economic Development 2015
2. OECD 2018
3. Miyadzazi 2019

2. ILLICIT FINANCIAL FLOW RISKS ALONG MINERAL VALUE CHAINS







Illicit financial flows can occur at various points along the mineral supply chain. This handbook focuses on the value chain from the point of extraction to the point of export. Different actors are potentially involved in the illicit financial flows: mine site operators, buyers and sellers, transporters, processors, exporters, government officials and non-state actors. Illicit financial flows often cross borders. They are facilitated by weak policy coherence within and between countries as well as inadequate and unequal monitoring and enforcement capacity.⁴

The special case of gold

Gold has particular characteristics which make it more vulnerable to be linked to illicit financial flows. ICGLR Member States are advised to take these specificities into account when designing strategies to tackle IFF. Gold is anonymous, difficult to trace back to its point of extraction, easily concealed and smuggled. It also has a stable value, and its weight, quality and value can be easily determined, which makes it often a more secure asset than national currencies. Gold can be used as a currency and means of payment across the world, therefore lending itself to money laundering and avoidance of currency exchange and repatriation regulations.

- ▶ **For more information, please refer to 'Money laundering/terrorist financing risks and vulnerabilities associated with gold' (2015) and 'Follow the Money: Financial Flows linked to Artisanal and Small Scale Gold Mining' (2017).**

ILLICIT FINANCIAL FLOWS ALONG THE MINERAL SUPPLY CHAIN

	 LICENSING	 EXPLORATION/ EXPLOITATION	 TRADING	 TRANSPORTING	 PROCESSING	 EXPORT
▶ ILLEGAL MINERAL EXPLOITATION		<ul style="list-style-type: none"> ▶ Mining or exploration without a license ▶ Mining or exploration outside of concession area ▶ Mining with an exploration license ▶ Cooperation with armed groups or security forces 				
▶ TAX AVOIDANCE AND EVASION	<ul style="list-style-type: none"> ▶ Favourable tax treatment for MNCs (e.g. tax incentives, tax holidays or preferential clauses in mining contracts) 	<ul style="list-style-type: none"> ▶ Non or misreporting of production ▶ Misreporting of quantity, value or quality 	<ul style="list-style-type: none"> ▶ Trade mis-invoicing ▶ Transfer pricing ▶ Transfer mispricing ▶ VAT fraud 		<ul style="list-style-type: none"> ▶ Misreporting of quantity, value or quality 	<ul style="list-style-type: none"> ▶ Misreporting of quantity, value or quality
▶ SMUGGLING & INFORMAL TRADE			<ul style="list-style-type: none"> ▶ Non-declaration of trade to authorities ▶ Mixing of legally and illegally sourced minerals 	<ul style="list-style-type: none"> ▶ Concealment of mineral amongst other material ▶ Mixing of legally and illegally sourced minerals 	<ul style="list-style-type: none"> ▶ Mixing of legally and illegally sourced minerals 	<ul style="list-style-type: none"> ▶ Smuggling across borders ▶ Partial declaration of exports ▶ Mixing of legally and illegally sourced minerals
▶ CORRUPTION AND BRIBERY	<ul style="list-style-type: none"> ▶ Informal payments for licensing ▶ Facilitation payments 	<ul style="list-style-type: none"> ▶ Bribery to ignore illegal mineral exploitation ▶ Extortion and informal taxation 	<ul style="list-style-type: none"> ▶ Bribery to ignore informal trade ▶ Extortion and informal taxation 	<ul style="list-style-type: none"> ▶ Extortion and informal taxation (including at roadblocks) 		<ul style="list-style-type: none"> ▶ Bribery to ignore smuggling
▶ MONEY LAUNDERING		<ul style="list-style-type: none"> ▶ Laundering of the proceeds of illegal mineral exploitation 	<ul style="list-style-type: none"> ▶ Laundering of the proceeds of illegal mineral trade 			<ul style="list-style-type: none"> ▶ Smuggling of gold for money laundering purposes



2.1 Illegal Mineral Exploitation

Illegal mineral exploitation is one of the common sources of IFF in the mineral sector. It can occur in different ways. First, miners or mining companies might operate without a license. Second, they might have a license but operate outside their assigned concession area. Or third, they might not respect certain contractual clauses of their license, for example when large quantities of minerals are extracted under an exploration license.⁵

Illicit financial flows occur in relation to illegal mineral exploitation because the authorities do not monitor and regulate mineral extraction and trade. The government typically cannot obtain its share of fees or taxes and informal trade and smuggling are high risks.⁶

The ICGLR's Protocol Against the Illegal Exploitation of Natural Resources tackles this issue. It foresees preventive measures, criminalisation of and sanctions against those responsible, measures against the laundering of proceeds stemming from illegal extraction, provisions on seizure and confiscation of those proceeds and mutual assistance on investigations, prosecutions, seizures and confiscation.⁷

Importantly, as established in the ICGLR's ASM Gold Strategy, actors being informal does not necessarily make them illegal.⁸ The ICGLR and its Member States are following the OECD's measure on ASM's legitimacy:

Legitimate [ASM] refers, among others, to artisanal and small-scale mining that is consistent with applicable laws. When the applicable legal framework is not enforced, or in the absence of such a framework, the assessment of the legitimacy of artisanal and small-scale mining will take into account the good faith efforts of artisanal and small-scale miners and enterprises to operate within the applicable legal framework (where it exists) as well as their engagement in opportunities for formalisation as they become available (bearing in mind that in most cases, artisanal and small-scale miners have very limited or no capacity, technical ability or sufficient financial resources to do so).⁹



2.2 Tax Avoidance and Evasion

The majority of illicit financial flows are tax avoidance and tax evasion.¹⁰ Their level of legality distinguishes the two.

Tax avoidance comprises tax planning practices that go against the spirit but not the letter of the law and are therefore not illegal. According to the FACTI Panel, tax avoidance is “[t]he legal practice of seeking to minimise a tax bill by taking advantage of a loophole or exception to tax regulations or adopting an unintended interpretation of the tax code.”¹¹ Despite not being illegal, tax avoidance is typically included in a broad definition of illicit financial flows, given its adverse effects on public funds.¹²

Tax avoidance includes many different techniques and components. It often involves multinational corporations shifting their profits to low-tax jurisdictions, typically through subsidiaries, to avoid paying tax in host and home countries. It can also involve an artificial inflation of costs and expenditures to reduce taxable earnings.¹³ The main tax avoidance practices fall under what the OECD calls ‘base erosion and profit shifting’ (BEPS):¹⁴

5. Le Billon 2011
6. UNCTAD 2020
7. ICGLR Protocol Against the Illegal Exploitation of Natural Resources 2006
8. ICGLR ASM Gold Strategy 2019
9. OECD Due Diligence Guidance Supplement on Gold
10. Kukutschka et.al. 2019
11. FACTI Panel 2021
12. Le Billon 2011
13. Le Billon 2011
14. Kukutschka et.al. 2019

- ▶ **Trade mis-invoicing:** According to Global Financial Integrity, trade mis-invoicing is the largest source of illicit financial flows. It involves the misdeclaration of value, quality (e.g. purity), volume (e.g. weight) or type of the traded good (e.g. mineral type), with the aim of avoiding taxes, tariff or trade regulations and reducing direct and indirect taxes. It can also include manipulated invoices.¹⁵
- ▶ **Transfer pricing:** Transfer pricing is done by multinational corporations. It describes the practice of two related entities trading with each other at prices that do not reflect market prices, to shift profits to low-tax jurisdictions.¹⁶ Transfer pricing often occurs in so-called intra-group services, such as marketing, management, financing or procurement. One of the main underlying issues is that local tax authorities lack the knowledge and capacity to detect these practices.
- ▶ **Transfer mispricing:** This involves the over or under-invoicing of trade transactions to reduce taxable income. Trading partners use false transfer prices and over or under-invoice upon import or export.¹⁷

Companies can avoid taxes by negotiating fiscal and contractual terms with the host government that are beneficial to the company.¹⁸ They might be given lower tax rates, tax incentives or stability clauses. These issues are challenging to tackle as contracts often lack transparency.¹⁹ Other times, companies abuse tax incentives such as tax holidays.²⁰ Companies can also use differences in tax treaties to their advantage, through so-called treaty-shopping, when they choose to conduct a transaction in a place with more favourable tax treaties.²¹ These risks exist because countries often give excessive tax breaks and other incentives to companies in the hope of attracting investment. MNCs frequently make promises regarding their economic contribution to the country, without being held to account for fulfilling those promises. These tax incentives, if abused, can be a source for IFF. An underlying issue of contract negotiation between companies and governments is that government ministries sometimes do not collaborate sufficiently, for example when tax authorities are not involved in the process.²²

Tax evasion is the illegal concealment of taxable income and is defined by the FACTI Panel as “[a]ctions by a taxpayer to escape a tax liability by concealing from the revenue authority the income on which the tax liability has arisen.”²³ It involves a taxpayer escaping a tax payment that is legally foreseen.²⁴

Tax evasion in relation to the mining sector is exacerbated by the widespread informality of the artisanal and small-scale mining (ASM) sector. When miners operate informally and therefore without licenses and registration with the government, they typically do not declare their production and revenues. They often do not pay taxes that the government would normally be entitled to.²⁵ Importantly this does not mean that informal ASM miners do not pay any taxes. They are often subject to many informal taxes and fees paid to various state and non-state actors. However, this income will not benefit the wider population but just a narrow group of actors. Also, MNCs may underreport their production levels and therefore pay less taxes, particularly in production-based royalty tax regimes. They may also report lower ore and mineral quality or value in order to reduce taxes in value-based royalty regimes.²⁶

15. Kukutschka et.al. 2019; WCO 2018; African Tax Administration Forum (ATAF) 2021

16. Kukutschka et.al. 2019

17. Signé et.al. 2020

18. Le Billon 2011

19. Miyandazi 2019

20. African Union/United Nations Economic Commission for Africa Conference of Ministers of Finance, Planning and Economic Development 2015

21. Kukutschka et.al. 2019

22. African Tax Administration Forum (ATAF) 2021

23. FACTI Panel 2021

24. Kukutschka et.al. 2019 -

25. Le Billon 2011

26. African Tax Administration Forum (ATAF) 2021

Another tax evasion practice related to the mineral sector is value added tax (VAT) fraud, which can occur when certain products are tax exempt. This is for example the case in certain places for second-hand gold products – e.g. jewellery – in which case illegally mined or smuggled gold can be presented as recycled gold to benefit from tax benefits fraudulently.²⁷

Tax avoidance and evasion are facilitated by informal money transfer systems that operate outside of the formal banking sector as well as traditional banking sectors not conducting adequate due diligence on their clients and the transactions they facilitate. Tax avoidance and evasion mean that governments and local communities miss out on the benefits from mineral wealth.



2.3 Smuggling and Informal Trade

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. Minerals can be concealed amongst other material such as timber or disguised as a different type of mineral.

Factors that encourage the smuggling of minerals are costly trading licenses, export permits or export taxes.²⁸ Miners or traders might avoid these costs by transporting and trading materials illegally across borders.²⁹ The problem is particularly pronounced when tax rates differ starkly between neighbouring countries.³⁰ Also in-country informal trade can be incentivised by certain fiscal regimes, namely double taxation at provincial and national levels. Mineral smugglers can often pay higher prices for material than formal buyers as they are not subject to the same tax burden and compliance costs.³¹ There are also cases of exporters having a license to export minerals but only declaring a part of their trade transactions while exporting the rest informally. This allows them to be considered formal by the authorities and avoid scrutiny while still being able to avoid taxes on the majority of their exports.

Barriers to effective control of the smuggling of minerals include a lack of capacity and customs and border officials' will to control people or vehicles crossing borders or to enforce rules.³² Some customs agencies lack the technology to carry out effective searches. Further, people without luggage are often not searched.³³ Long and porous borders additionally make border enforcement a difficult task.³⁴ Smuggling activities, particularly larger ones and those involving airports, can also involve collusion between border officials, political actors and criminal actors, mainly in bribes.³⁵

Gold is particularly vulnerable to smuggling given its anonymity and how easy it is to transport and to conceal – for example in the form of jewellery or other objects.³⁶ It can also be used as a non-traceable currency when buying or selling goods. This is popular with traders because it allows them to avoid taxes, currency exchange costs and banking and currency repatriation regulations.³⁷

27. Hunter et al. 2021
28. Blore and Smillie 2011
29. Blore and Smillie 2011
30. OECD 2018
31. Hunter et al. 2021
32. Hunter et al. 2021
33. Hunter et al. 2021
34. OECD 2018
35. Hunter et al. 2021
36. Hunter et al. 2021
37. Hunter et al. 2021; ARM 2016



2.4 Corruption and Bribery

Many IFF risks are linked to each other. In particular corruption plays an important role in facilitating and enabling other IFF, as it weakens enforcement and institutions.³⁸ Corruption can include bribe-taking, facilitation payments and kickbacks, extortion, and embezzlement of public resources.³⁹ Corruption leads to natural resource wealth not benefitting the wider population but only an elite circle of actors.

Bribery and facilitation payments can facilitate illegal resource exploitation and trade by leading to government officials turning a blind eye to illegal mining activity or the smuggling of minerals, or facilitating access to licensing and other services.⁴⁰ Bribery can also enable tax evasion and avoidance if officials are paid to ignore their tax collection duties, accept bribes to grant more beneficial fiscal terms to companies or individuals⁴¹ or allow companies to circumvent existing tax and royalty payment provisions.⁴² Extortion can happen when governmental or non-state actors illegally demand money or minerals from supply chain actors, with informal actors like artisanal and small-scale miners particularly vulnerable to this kind of exploitation.⁴³

Low-level or petty corruption can arise out of livelihood needs. When public officials do not receive high enough or regular salaries, they become more prone to accept illegal payments from non-state actors.⁴⁴ Other factors creating an enabling environment for corruption and bribery are a lax regulatory system with low repercussions or impunity for corrupt acts as well as the absence of a functioning whistleblowing system through which corruption can be reported confidentially.



2.5 Money Laundering

Money laundering is the “processing of (...) criminal proceeds to disguise their illegal origin.”⁴⁵ It allows corrupt and criminal actors to benefit from the proceeds of their illegal activities, such as illegal mineral exploitation or trade or extortion or bribery linked to the mineral supply chain. Money laundering includes typically three phases: the placement or pre-wash phase involves the money being deposited in a bank, smuggled across a border or placed in a legitimate business enterprise – often divided into less suspicious sums of money. The layering or main wash phase happens when the money is circulated nationally or internationally through various entities and channels in order to disguise its illegal origin. The third phase is the reintegration phase, during which the money is placed permanently in bonds, real estate, luxury assets or business enterprises.⁴⁶ Offshore bank accounts and shell companies lend themselves to this purpose.

The gold sector is at particular risk when it comes to money laundering. Gold lends itself to be used for money laundering purposes, given that it is a financial vehicle and can be used in place of cash. It also has a stable value and is easily transformed and interchangeable as well as easily smuggled. It offers anonymity as it is impossible to trace the gold's origin based on its characteristics. These characteristics make gold more valuable and can lead buyers to be ready to pay prices higher than the market standard for the mineral.

38. African Union/United Nations Economic Commission for Africa Conference of Ministers of Finance, Planning and Economic Development 2015

39. Kukutschka et.al. 2019

40. Le Billion 2011; African Tax Administration Forum (ATAF) 2021

41. Le Billion 2011

42. African Union/United Nations Economic Commission for Africa Conference of Ministers of Finance, Planning and Economic Development 2015; Blore and Smillie 2011

43. UNECA 2013; Hunter et.al. 2021

44. OECD 2018

45. FATF, in Kukutschka et.al. 2019, 17

46. Kukutschka et.al. 2019; FATF : FAQ Money Laundering

The international context: Tax havens

Tax havens or offshore financial centres are jurisdictions characterised by a combination of tax regulation, low or zero tax rates and secrecy provisions which allow for anonymity of its users. While also being used for legitimate purposes, tax havens can offer a safe haven and loopholes for those who want to hide their money, reduce their taxes, and escape law enforcement and revenue authorities.

We cannot understand illicit financial flows without understanding the role of tax havens in the global economy and any measures against IFF will need to be accompanied by an international effort to better regulate tax havens. The international community has undertaken efforts to bring more transparency to tax havens and ensure they cannot easily be abused for financial crime and tax avoidance. Some of these efforts relevant to the ICGLR are discussed in chapter 3.6 on international cooperation.



3. MEASURES TO TACKLE IFF RISKS

This handbook provides general guidance on IFF risks in mineral supply chains to inform ICGLR regional and Member State approaches to tackle IFFs. Any action must be based on factual information on the specific situation and further research. The following recommendations are general and refer to the mineral sector only. The ICGLR Secretariat will provide support to member states for the domestic application of the recommendations of this handbook.

The ICGLR, through its **RINR** and the six tools, already undertakes measures to combat and prevent IFFs, as do the Member States. While this handbook does not cover the existing efforts undertaken by Member States, a situational analysis of past and present measures against IFF should be carried out. Such an analysis would allow Member States to learn from each other's good practices as well as challenges. The below sections describe various further steps that the ICGLR and its Member States can undertake to tackle IFF in mineral supply chains. Reference will be made to the existing tools and how they can be leveraged.



Gender mainstreaming

The ICGLR is committed to mainstreaming gender, women and children dimensions into its work. This also applies to this handbook and the work on illicit financial flows. Women and children are both involved in the activities related to IFF as well as victims of their consequences.

Member states should, in their translation of this handbook's recommendations into national policy and legislation, take into account the ICGLR Regional Gender Policy to ensure a gender-sensitive approach.

3.1 Formalisation

Addressing the widespread informality in the artisanal and small-scale mining sector must be part of any successful strategy to tackle illicit financial flows. Informality and dependence on the mineral sector for their livelihood makes actors along the supply chain more vulnerable to exploitation and getting entangled in criminal economies.

Recommendation A.1: Create regulatory conditions for the formalisation of the ASM sector.

Governments need to create attractive conditions for formalisation to bring these actors into the formal economy.⁴⁷ The Member States must review and revise their legal frameworks and make formalisation accessible and affordable. Regionally, Member States should harmonise their formalisation approaches through sharing of good practices and information.⁴⁸ This corresponds to the goal of the second tool of the RINR, the harmonisation of national legislations. Member States should refer to the ICGLR ASM Formalisation Guide in their formalisation efforts.

Recommendation A.2: Promote financial inclusion of supply chain actors.

Another important part of formalisation in preventing illicit financial flows is financial inclusion. Many actors do not have access to the formal financial system and bank accounts, which contributes to an environment where illicit financial flows thrive.⁴⁹ This is because transactions are largely conducted with cash or through informal money transfer systems, therefore not being monitored or regulated by the government.⁵⁰ Therefore, governments should work with financial sector firms to promote solutions for including more minor actors and the informal sector into the formal financial system. The ICGLR ASM Gold Strategy suggested the ICGLR engage directly with the banking and financial services sector to incentivise them to make credit more accessible.

Recommendation A.3: Promote local value addition and government purchasing.

Part of formalisation efforts to combat IFF is local value addition and government purchasing. Incentives can be given to the large-scale mining sector to establish local processing centres and refineries which can also benefit the ASM sector. Such processing centres and refineries can help capture more local mineral production and value and prevent it from being smuggled out of the country or region. These facilities could also be regional and shared between countries, as suggested in the ICGLR ASM Gold Strategy.

The establishment of government trading centres further could lead to more formalised and legal trade. It is crucial for their viability that these state purchasing centres pay competitive prices, offer other benefits and pay suppliers quickly. This is to compete with informal or illicit actors. Lessons can be learned from prior attempts as documented by the World Gold Council (2021)⁵¹ and RCS Global/IIED (2016)⁵² or from the mineral trading centres in Tanzania.

Recommendation A.4: Review and simplify the fiscal regime for the ASM sector.

To incentivise more mineral producers, traders and exporters to use legal supply chains for mineral trade, the fiscal regime for the artisanal and small-scale sector should be simplified and adapted to its specific realities. This means avoiding taxation at various supply chain steps and government agencies and making compliance easier. It also includes preventing duplication between the national and regional level and between different agencies and ministries. Attention must be paid to existing customary and other informal taxation systems. One-stop-shop tax payments can be put in place, which, combined with a digitalisation of tax payments, simplifies compliance for taxpayers and monitoring by the authorities. It should also be clarified which taxes are legal and which are not, to make ASM actors less vulnerable to illegal taxation. On the government side, there needs to be a

47. OECD 2018
48. ICGLR ASM Formalization Guide 2017
49. UNECA 2013
50. OECD 2018
51. World Gold Council 2021
52. RCS Global 2016

better understanding of informal taxation and who benefits from it – as those actors are likely barriers to formalisation efforts. To ensure that supply chain actors pay tax voluntarily, governments need to make the impacts of the taxes visible, through redistribution to the mining regions and good revenue management.

Recommendation A.5: Provide capacity building for supply chain actors.

Issues around tax evasion and avoidance, corruption, bribery and money laundering are complex and can be difficult to understand for miners, dealers and other supply chain actors. They might not always be aware of what is legal and what is illegal. In particular informal actors are vulnerable to extortion and getting involved in activities that contravene the law. Member states should therefore provide capacity building to miners and actors along the supply chain, with a focus on the informal sector.

3.2 Governance

Some of the main barriers to tackling IFF are limited state authority and presence, a lack of border enforcement, and limited capacity, resources or political will.⁵³ The following recommendations target the governance side of addressing IFF.

Recommendation B.1: Develop a holistic approach to tackling IFF.

A comprehensive approach means addressing the different types of IFF together. The fight against IFF needs to be holistic, given how closely linked the different IFF risks are. This can mean coordinating strategies to tackle different IFF risks and linking them to a more comprehensive strategy on taxation, law enforcement, crime prevention etc. IFF should be combatted in relation to each other, through a phased, multi-party policy coordination effort.⁵⁴

Recommendation B.2: Develop a whole-of-government approach to tackling IFF.

One of the most important measures to tackle IFF is political will and leadership by the national government, including a comprehensive whole-of-government approach comprising the executive and legislative arms. Further, given that many government departments are affected and must play a role in the fight against IFF, a multi-agency approach is recommended. Law enforcement, customs, trade and export, mining, revenue, anti-corruption and financial intelligence authorities often lack cooperation and do not coherently work aside each other. Common inter-agency objectives, improved communication and joint approaches can lead to better outcomes.⁵⁵ This can include an inter-agency coordination mechanism and written agreements and memoranda. Customs and tax authorities, in particular, should improve their capacity, cooperation and coordination with a joint approach to risk management, compliance and audits.⁵⁶ There should further be fora for policymakers and government agencies to discuss IFF with non-state actors such as banks.

The cooperation should also cross borders. Given that weak policy coherence across the Great Lakes Region enables illicit financial flows, ICGLR Member States are called to implement joint or complementary policies and approaches across policy areas⁵⁷, in line with harmonisation of national legislations. This can include fiscal harmonisation (see chapter 4) as well as a harmonisation of mineral prices, considering that tax and price differentials incentivise fraudulent activity and smuggling.

53. OECD 2018

54. Kukutschka et al. 2019

55. Kukutschka et al. 2019

56. WCO 2018

57. OECD 2018

States are also advised to build networks among customs officials, anti-corruption and other law enforcement officials between countries and exchange on IFF issues and good practices of combatting them between tax authorities.⁵⁸ The ICGLR, its Inter-Ministerial Committee, the ICGLR Summit and National Coordinators can play an important role in this collaboration.

Recommendation B.3: Exchange information nationally, regionally and internationally.

Cooperation includes the exchange of information and data between authorities. Agreements or memoranda should be drawn up to govern this information exchange, including privacy and data confidentiality provisions.⁵⁹ Sharing information on trade transactions in real time can help to detect IFF.⁶⁰ Also international information exchange and cooperation can be of benefit, notably with actors such as INTERPOL. **The World Trade Organization (WTO) Trade Facilitation Agreement** (Art. 12) can provide a basis for the exchange of customs information.⁶¹ Information collection and sharing should be digitised to facilitate real-time exchanges.

Recommendation B.4: Ensure effective use of the Member State Mineral Databases and the Regional Mineral Database for monitoring and enforcement.

The system around the Regional Certification Mechanism includes a Regional Mineral Database (RMD) maintained by the ICGLR and Member State Mineral Databases which feed information to the regional database to allow for regional tracking of mineral flows. The databases contain information on mine site certification status, Chain of Custody tracking and export certificates according to the provisions of the RCM. It includes information on production, purchases, sales and exports from all Member States and supply chain actors. The RMD will allow the Member States to detect anomalies found during inspections and third-party audits and follow up on them with further investigations or information exchange. This handbook reiterates the recommendation from the ICGLR ASM Gold Strategy that export certificates and unique identifiers must be uploaded to the Databases in real-time to ensure that gold trafficking actors cannot misuse the system.⁶²

Recommendation B.5: Develop a clear legal and regulatory framework addressing all types of IFF.

Legislation and policies need to underpin any measures against IFF. For example, policies and legislation need to address transfer pricing, tax evasion and trade mispricing, as well as taxpayer information confidentiality which can be a barrier to information sharing. **The African Tax Administration Forum (ATAF)** has a **tool on transfer pricing legislation** which can be used as a model by the ICGLR Member States and provides expertise and assistance in matters related to tax policy. Laws need to clearly state which actions are illegal and the repercussions perpetrators face.

Regulatory efforts should be harmonised within the Great Lakes Region, with governments exchanging about best practices, as foreseen already by the second tool of the RINR (Harmonisation of national legislation). To monitor progress in the combat against IFF the ICGLR could create a reporting mechanism that assesses the impact of measures undertaken in different Member States and regionally. This monitoring effort can feed into changed strategies and peer learning.

All the while any approach to strengthening the regulatory framework needs to ensure that laws are designed in such a way that they encourage compliance. Member states need to remain particularly

58. FACTI 2021

59. FACTI 2021

60. WCO 2018

61. OECD 2018

62. ICGLR Strategy for Artisanal and Small-Scale Gold 2019

mindful of the specificities of the informal sector. Creating too many barriers to complying with the law can have a counter-productive effect and push informal actors further into informality.

Recommendation B.6: Strengthen customs monitoring and investigation capacities.

Monitoring and enforcement need to be strengthened focusing on major transit points, border crossings and airports, and aggregators such as large traders and exporters. This includes increasing the resources of law enforcement agencies, tax, customs and border control police and improving investigation knowledge and methods. **The WCO Technology Network (TeN)** can help customs authorities to find adequate technologies for border management. The ICGLR ASM Gold Strategy recommended the development of a support facility for customs officials to identify smuggling cases. As a first step, Member States should work together to define the terms of reference of such a support facility and identify international and national partners.

Custom controls are one particularly important part of monitoring trade that needs to be improved. Customs need to be given the mandate and sufficient budget to conduct checks on the true value of traded goods compared against invoices and recorded payments.⁶³ They also can use special scanners to help detect mineral concealment. In order to do customs control properly, the government needs the knowledge on how to value minerals properly. Based on independent lab results, governments can set up mineral export certification programs where a government authority or government-mandated third party determines the correct quality and quantity of mineral exports for duty and taxation purposes.

Finally, as suggested in the ICGLR ASM Gold Strategy, the ICGLR and customs authorities should engage service providers such as airport staff and other transport and postal service providers to train them in identifying suspicious activity and cargo and know which procedures to follow if illicit material is detected.

Recommendation B.7: Strengthen tax audit capacities.

In order to detect and investigate tax avoidance and evasion practices, tax authorities need to strengthen their tax audit capacities and the resources dedicated to this area. Some countries have for example successfully established dedicated transfer pricing units within their revenue authorities, committed to auditing, investigations and tax collection from MNCs. The OECD's **Tax Inspectors without Borders** initiative offers practical support to improve tax audit capacities. Peer training in the region is another way to enhance capacity, bringing together government officials and ICGLR representatives to exchange on best practices.

Recommendation B.8: Strengthen financial intelligence units.

Financial intelligence units (FIU) play a crucial role in the fight against illicit financial flows, mainly through their reporting function. They primarily are there to receive, analyse and deal with reports of suspicious transactions filed by private sector actors. They therefore fulfil an intermediary role between the private sector and law enforcement agencies. Each ICGLR member state should establish an FIU as foreseen by the FATF Standards and provide them with adequate resources to perform their functions. FIU personnel should be trained in the specific illicit financial flow risks emanating from the mining sector.

63. WCO 2018

3.3 Anti-Corruption

Recommendation C.1: Adopt strong legislation on corruption, bribery and money laundering.

Countries must adopt clear legislation on corruption, bribery, embezzlement, extortion and money laundering when it comes to anti-corruption measures. Countries can also include anti-money laundering clauses into the Mining Codes. For the case of money laundering the law should further include a wide range of criminal offences as predicate offences.⁶⁴ Any corruption or money laundering acts must be criminalised to create clear disincentives for potential perpetrators. Strong legislation can also go along with the establishment of dedicated government authorities that are in charge of tackling money laundering and terrorism financing.

The Regional Certification Mechanism's provisions already tackle aspects of bribery, illegal taxation and extortion of money or minerals along the mineral supply chain. The RCM through its red status criteria prohibits the illegal taxation or extortion through non-state armed groups of upstream actors, transportation routes, points of access to mine sites, trading points, or intermediaries, export companies and international traders. This is examined during the third-party audits in the form of an examination of transportation routes and barriers where illegal payments might be requested. It also prohibits mine site owners or operators making payments to illegal or criminal organisations or to political parties or organisations which contravene the state's laws. Yellow status criteria include the illegal taxation or extortion along the mineral supply chain through public or private security forces. They also cover the extraction of disproportionate and unauthorised taxation or other payments from mine sites through government officials. And finally, they tackle bribery to misrepresent the origin of minerals or taxes, fees and royalties paid.

Recommendation C.2: Hold financial institutions, other businesses and professionals to strong transparency standards.

An important part of anti-corruption efforts is the reporting of suspicious activity. Financial institutions should be required to conduct due diligence on customers and identify beneficial owners of companies who open accounts with them.⁶⁵ Financial institutions, other businesses and professionals must be obliged to report suspicious transactions and clients to authorities.⁶⁶ Law enforcement and monetary regulatory authorities as well as financial intelligence units can work together with financial institutions to establish the required systems and mechanisms for this purpose – for example, financial transaction reporting, customer identification, and record keeping.⁶⁷

Government authorities can follow good international practice and establish a register of companies including beneficial ownership information, namely information about the person who ultimately controls or owns a legal entity. In particular, company ownership secrecy can lead to criminal activities and their culprits remaining undetected, as corporate vehicles lend themselves to hiding and laundering money. Transparency of beneficial ownership information can be a valuable tool to prevent anonymous companies from being used for IFF. Knowing who the beneficial owner of a corporate vehicle is can help detect suspicious activity and help authorities investigate cases of financial crime. The Financial Action Task Force has a [Guidance on Transparency and Beneficial Ownership](#) and a document on [best practices on beneficial ownership for legal persons](#).

64. Kukutschka et al. 2019

65. Kukutschka et al. 2019

66. Kukutschka et al. 2019; African Union/United Nations Economic Commission for Africa Conference of Ministers of Finance, Planning and Economic Development 2015

67. FATF: FAQ Money Laundering

Recommendation C.3: Establish anonymous and robust whistleblowing mechanisms.

ICGLR Member States should establish strong and anonymous whistleblowing mechanisms, ideally in a harmonised manner following certain standards and guidelines. The ICGLR Whistleblowing Mechanism can also serve the purpose of members of the public anonymously reporting illicit financial flows or corrupt behaviour to the authorities.⁶⁸ There needs to be a system for ensuring adequate follow-up of such allegations, namely authorities from law enforcement and financial intelligence. More in general, governments should protect the right of individuals, organisations and the media to independently seek information and report on corruption and illicit financial flows without fear of retaliation.⁶⁹ The ICGLR Secretariat should encourage further discussions around this matter.

Recommendation C.4: Establish systems and procedures for the tracing, freezing and repatriation of stolen assets.

The tracing, freezing and repatriation of stolen assets resulting from IFF related to the mineral sector helps to leverage funds for sustainable development and undermines incentives for engaging in IFF. ICGLR Member States need to give their investigative agencies the authority to trace, seize and confiscate assets derived from criminal activity.⁷⁰ They also need to build their capacity for making effective asset recovery requests to countries the assets might have been transferred to. Support for this can come from the World Bank's and UNODC's **Stolen Asset Recovery Initiative (StAR)**, which provides legal and technical assistance to countries.

3.4 Data and technology

Recommendation D.1: Conduct an analysis of the specific IFF risks in the respective country or region.

While there are general recommendations on tackling IFF as outlined in this handbook, interventions should always be adapted to the country or local level based on a political economy analysis of the actors behind and flows of IFF.⁷¹ It is important to understand who benefits from the status quo to develop an adequate strategy. **The OECD Toolkit** can be used for a self-assessment on IFF risks and their scale and impacts, allowing governments to prioritise which IFF to tackle.

Recommendation D.2: Use the Member State Mineral Databases and the Regional Mineral Database to collect data relevant to detecting and tracking IFF.

The collection of data can be very valuable in the fight against IFF. It is important to have updated data on production, revenue payments, taxable income, trade transactions etc. The ICGLR Regional Mineral Database and Member State Mineral Databases can be used for this purpose. To collect and monitor this data however, government authorities need to be given the means and be trained to collect and verify such data. The data collection will need adequate accompaniment and support.

Through the adequate use of the Databases, governments can detect suspicious declarations if they do not correspond to the valuation benchmarking, using the most recently available world market pricing information.

68. Baker et al. 2015

69. FACTI 2021

70. FATF: FAQ Money Laundering

71. OECD 2018

The database prices would be compared to declared prices and allow customs authorities to seek further clarification and conduct audits if discrepancies exist. The RMD stores information on exporters and their compliance status with the RCM. This information could be complemented with a record of their compliance in the past, including irregularities, misdeclarations and penalties. Transactions of high-risk operators can be monitored with more rigour.⁷²

Beyond monitoring individual trade transactions, customs should also analyse aggregate import and export data to gain an overview of the main minerals, the leading countries of origin and the main importers, which combined with data on the respective duties for these imports paints a picture of the main potential sources of revenue as well as risks like misdeclaration of value, quality, type or origin.⁷³

Recommendation D.3: Deploy technology solutions to tackle IFF.

ICGLR Member States should seek to leverage technology solutions in their efforts against IFF. In a first step, existing paper-based solutions should be digitised to allow for better data collection and analysis as well as information exchange between authorities and countries. Secondly, member states and the ICGLR Secretariat should explore different technology solutions which could help in the detection, disruption and deterrence of illicit financial flows – such as blockchain technology, databases, scanners, artificial intelligence and machine learning.

3.5 Contracts and Agreements

A big step towards tackling tax avoidance is the proper management of mining and tax contracts and agreements.

Recommendation E.1: Negotiate mining contracts based on general principles that protect the interests of the country and communities.

Mining contracts should be based on general rules instead of being negotiated from scratch on a case-by-case basis. They should be based on the general goal that the country should benefit from higher mineral prices as they rise. It is important for countries to develop the capacity and expertise as well as resources to negotiate contracts to the benefit of the country. Inter-agency discussions should generally take place before a contract is signed, as different agencies have different expertise. The **GIZ CONNEX Support Unit** and **the African Legal Support Facility** provide support in this regard. The IISD has developed a **handbook on mining contract negotiations** and the IGF and OECD have published a **practice note on tax incentives in mining**.

Governments should ensure that the provisions in mining contracts do not only benefit the country as a whole and the central government, but in particular also the communities in and around mining areas. Communities can benefit in various ways. One of them is the redistribution of tax income to the regions and communities where mining takes place, for social spending in areas such as health, education or environment. Another option is to put in place local content requirements, to ensure communities benefit from local employment and procurement. Mining companies should also be required to invest a certain amount of their income or profits in social or environmental projects in the areas they operate in. The companies should thereby be held to high standards of community relationships and development. They can follow guidelines such as the ICMM Community Development Toolkit which

72. WCO 2018
73. WCO 2018

stipulates five good practice principles: adopt a strategic and long-term approach; ensure consultation and participation of local communities in all stages of the project; work in partnership with private, governmental, NGO and community organisations; strengthen capacity of local communities, NGOs and government; monitor, measure and evaluate the projects, and communicate about progress.⁷⁴ With all these efforts, governments must ensure that the spending corresponds to the needs and wishes of the community and that the money is well and transparently managed.

Studies have shown that tax incentives are not always the most important consideration for foreign investors.⁷⁵ This is particularly applicable to the mining sector as it involved immovable resources. Governments must conduct cost-benefit analyses of tax incentives – also in comparison with other measures attracting investment, a process which involves various government agencies. Governments should thereby calculate the costs of incentives as well as the expected income from tax and royalties. They should also account for fluctuations in commodity prices and potential windfall profits and have a plan on how to react to those to ensure the country benefits.⁷⁶ If a government decides to offer incentives they should be limited, easy to administer and unambiguous, as well as reviewed on a regular basis.

Recommendation E.2: Monitor the fulfilment of mining contracts.

Governments not only need to know what they want a mining contract to look like but also how to monitor its fulfilment. The latter can be done through a monitoring and evaluation system on MNC contracts which keeps track of clauses and obligations and allows to keep track of whether these are being adhered to by the investor. The monitoring should also include a view of the effects of tax incentives, if applicable. This will allow to determine whether they had their intended benefits and whether the costs do not exceed what was initially estimated. Mining company contracts should be published, in full and without parts of it being redacted. This can help civil society and other non-governmental actors to also monitor the fulfilment of obligations.

Recommendation E.3: Review tax treaties where necessary.

In terms of inter-country agreements, countries can renegotiate or cancel their tax treaties with home countries of MNCs and purchasing countries of minerals, with the aim of securing more taxation rights and preventing abuse. They should also ensure that double taxation agreements do not enable IFFs through favourable provisions.

ATAF has developed an **African Model Tax Agreement** (Model Agreement for the avoidance of double taxation and the prevention of fiscal evasion) based on the OECD and UN models and adapted to the specific challenges of African countries. It is important that governments review their double taxation agreements, especially those with countries that might be the destination of IFF.

3.6 International Cooperation

National efforts should be aligned vertically with international and regional initiatives and standards. This is also important considering that the factors enabling IFF in the mineral sector do not only lie in the upstream countries but extend to transit and destination countries as well as financial centres. Engagement and cooperation with these countries is of high importance for tackling IFF. As part of that engagement, there are various international standards and agreements that ICGLR Member States

74. ICMM 2012
75. UNIDO 2011; World Bank 2009
76. Mann 2015

can join and work with to help their fight against IFF in mineral supply chains. Some Member States already engage or comply with the below standards and can share their experiences with others in the Great Lakes Region.

The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and Common Reporting Standard

Under the Common Reporting Standard, countries agree to automatically exchange information on financial accounts of non-residents with the non-residents' home countries, in an effort to prevent and detect tax evasion. In particular exchange of information with offshore financial centres or tax havens which might be the destination of illicit funds is important.

Exchange of information comes with challenges regarding the collection and effective use of the data. This makes capacity building and technical support a crucial part of this approach. Being part of the Global Forum allows countries to receive support in their exchange of information efforts and be part of a global network of countries committed to combatting offshore tax evasion. In 2014, the Global Forum launched the so-called **Africa Initiative** under which it offers training seminars for officials in countries on the African continent.

ATAF has developed the **Agreement on Mutual Assistance in Tax Matters (AMATM)**, creating a framework for exchange of information on the African continent. It includes joint examinations of taxpayers and provides capacity for less resourced countries.

The Financial Action Taskforce (FATF) Recommendations

The FATF Recommendations are targeted at money laundering and the financing of terrorism. They represent the main globally accepted standard on these issues. ICGLR Member States should join FATF respectively the regional body, the Task Force on Money Laundering in Central Africa (Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale (GABAC)), a body of the Economic and Monetary Community of Central Africa and implement the FATF Recommendations. In their efforts against money laundering and terrorist financing, ICGLR Member States can refer to the activities of GABAC and seek an active exchange and collaboration with the body.

The Egmont Group of Financial Intelligence Units

The Egmont Group facilitates the exchange of financial intelligence and expertise between Financial Intelligence Units across countries, to combat money laundering, financing of terrorism and predicate offences.

The OECD Base Erosion and Profit Shifting (BEPS) project

The BEPS project aims at realigning taxation with economic substance and strengthening global coherence in corporate taxation to combat base erosion and profit shifting practices. It includes 15 actions to combat tax avoidance and improve corporate tax transparency.

The **Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting** (Multilateral Instrument, MLI) ensures that countries implement the BEPS minimum standards, transposing them into bilateral tax treaties: countering harmful tax practices (e.g. preferential tax regimes) through improved transparency; preventing tax treaty abuse by adopting minimum standards; establishing country-by-country reporting (CBCR) to improve tax transparency; and improving timeliness, efficacy and efficiency of the dispute resolution process. Joining the **Inclusive Framework on Base Erosion and Profit Shifting** would allow ICGLR Member States to receive assistance in implementing BEPS minimum standards.

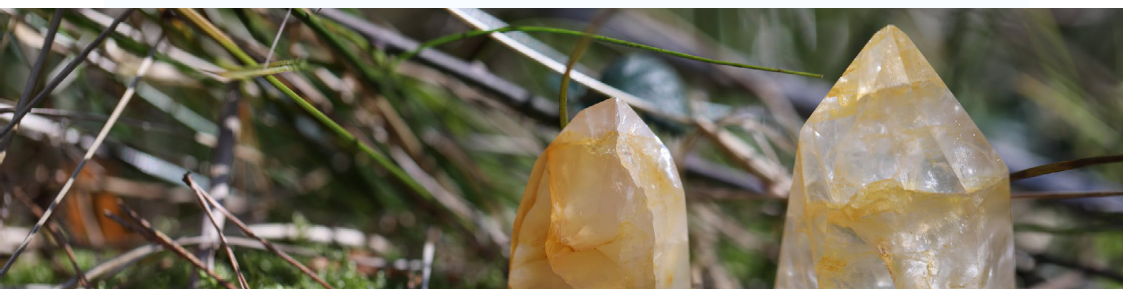
The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) has a **BEPS programme** which provides advice and training to governments on BEPS-related issues.

The Extractive Industries Transparency Initiative (EITI)

The EITI is one of the six tools of the RINR and a great transparency and accountability mechanism in the mining sector. Implementing countries of the EITI are required to disclose information on all steps of governing revenues from the mining, oil and gas sectors, from contracting and licensing to revenue collection and spending. Companies must disclose their payments to government authorities and governments must disclose how they use these revenues.⁷⁷ The system is designed as a gradual improvement process, incentivising progress over time through gradual scores and indicators instead of a pass/fail system.

The EITI is useful for getting countries to collect this data and bring it into the public domain. This helps with oversight and to prevent and detect potential and actual IFF. The EITI acts as a deterrent to IFF by highlighting the vulnerabilities related to financial flows. The RCM already requires supply chain actors to provide information on all taxes, fees and royalties paid to the government for extraction, trade, transport or processing of the minerals for the Chain of Custody tracking.

A number of ICGLR Member States are already compliant with the EITI or in the process of achieving compliance: The Republic of Congo, the Democratic Republic of Congo, Tanzania and Zambia. All Member States should actively participate in the ICGLR Peer-Learning Platform on the EITI. Its purpose is to share experiences and best practices and become implementing countries of the EITI. Further, the EITI can facilitate training for governments on various aspect of good mining sector revenue governance, for example by providing the technical skills of how to read financial statements.



77. Kukutschka et al. 2019

4. TAX HARMONISATION

Fiscal harmonisation aims at preventing and disincentivising the smuggling of minerals and maximising domestic resource mobilisation. Tax harmonisation as a solution to cross-border smuggling was already included in the Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region. The harmonisation of national legislation of ICGLR Member States was adopted as one of six tools of the RINR. The commitment to fiscal harmonisation is now anchored in the Regional Certification Mechanism (RCM), calling for the ICGLR Regional Committee to “[f]acilitate the discussion of Member States to harmonize tax and fee structures to help reduce the incentives for smuggling” and “[w]ork with Member States to reduce inconsistencies within the various regional Member State frameworks.” The ICGLR ASM Gold Strategy called for a study on fiscal disharmony in the Great Lakes Region to further inform the ICGLR’s engagement with Member States on fiscal harmonisation. This study should also include information on the various taxes and tax rates in the Member States, to better understand the discrepancies which encourage smuggling.

Tax harmonisation approaches combine three key issues: an equalisation of tax rates; a harmonisation of how to define the tax base; and a uniform application of the rules.⁷⁸ It can include common administrative issues such as definitions and exemptions. The uniform application of rules is of particular importance because tax competition can also stem from a lax application of tax rules and weak enforcement. Tax harmonisation can help with removing incentives for smuggling of minerals and it increases domestic revenue collection.

One important consideration is at which point of the supply chain the taxes should be levied. At the point of export, it is easier administratively as there are less actors, but this has to be assessed on a case-by-case basis. In its approach to tax harmonisation, the ICGLR should conduct a study on how much revenue is lost to the smuggling of minerals and how smuggling facilitates money laundering and the financing of terrorism and conflict. This would provide motivation to countries to harmonise their taxes. In a next step Member States should meet to jointly discuss various scenarios for harmonisation and establish a plan for next steps.

ICGLR Member States could also establish a digital tax database with information about the Member States’ respective tax structures. This would provide information based on which the countries could establish inconsistencies and possible entry points for harmonisation. Further, they could develop regional tax guidelines as a common standard for tax design. These guidelines could follow the model of the ECOWAS Supplementary Act which establishes rules on the taxation of income, capital and inheritance and measures to prevent double taxation, combat tax evasion and capital flight, remove trade and investment barriers and facilitate revenue mobilisation.⁷⁹

Countries can also collaborate on developing tax incentives that actually encourage investment as opposed to those that just serve tax minimisation. ICGLR Member States could establish a common Code of Conduct in this regard and have periodic meetings between finance ministers to discuss proposals. The Africa High-Level Panel suggested regional and subregional standards on tax incentives to put an end to the race to the bottom.

78. Quak 2018
79. Quak 2018

Tax harmonisation in the mining sector can also include a common approach to tax treaties in terms of their coverage of the mining sector. Following the example of the EAC, the ICGLR Member States could adopt a joint tax treaty policy and a model tax treaty for issues related to the mining sector. These would set out common principles for tax treaties regarding the mining sector agreed upon with non-ICGLR countries and cover areas such as scope, elimination of double taxation, non-discrimination and exchange of information. The IGF has developed a draft [handbook on tax treaty practice in mining countries](#) which can serve as guidance in this regard.

For tax harmonisation to be a viable option, it is important for countries to understand that recent studies⁸⁰ have shown that tax is not one of the main decisive factors for company investments. Concerns about investment attraction should therefore not be a reason to resist tax harmonisation. Further, national tax regimes can be very complex and demanding when government agencies do not coordinate their approaches and attempt to tax the mining sector on their own accord. Complex and burdensome tax systems often disincentivise compliance because certain actors would try to avoid paying tax altogether.

Despite its potential benefits, regional tax harmonisation is difficult to achieve. A first challenge is that certain countries depend heavily on tax income, including from the minerals sector, while others have other income sources to complement taxes, such as exports. Progress in this area will require a long-term view and coordination between Member States.



5. CONCLUSION

This handbook has provided a concise overview of the main IFF risks related to mineral supply chains that the ICGLR and its Member States must aim to tackle in their efforts to achieve truly responsible mineral value chains. These IFF risks fall into the categories illegal mineral exploitation, tax avoidance and evasion, smuggling and informal trade, corruption and bribery, and money laundering. IFF undermine development, deprive communities and the state of revenues and can fuel organised crime and conflict. The ICGLR and its Member States are already undertaking numerous measures to tackle IFF, amongst others through the six tools of the RINR. The handbook provides a number of additional recommendations which broadly group into the sections formalisation, governance, anti-corruption, data, contracts and agreements, and international cooperation. The below summary table provides an overview of these recommendations. It is important that any measures need to at the same time be adapted to the specific country situation and harmonised as far as possible across the region.



SUMMARY TABLE OF RECOMMENDATIONS	
A. Formalisation	
A.1:	Create regulatory conditions for the formalisation of the ASM sector.
A.2:	Promote financial inclusion of supply chain actors.
A.3:	Promote local value addition and government purchasing.
A.4:	Review and simplify the fiscal regime for the ASM sector.
B. Governance	
B.1:	Develop a holistic approach to tackling IFF.
B.2:	Develop a whole-of-government approach to tackling IFF.
B.3:	Exchange information nationally, regionally and internationally.
B.4:	Ensure effective use of the Member State Mineral Databases and the Regional Mineral Database for monitoring and enforcement.
B.5:	Develop a clear legal and regulatory framework addressing all types of IFF.
B.6:	Strengthen customs monitoring and investigation capacities.
B.7:	Strengthen tax audit capacities.
B.8:	Strengthen financial intelligence units.
C. Anti-Corruption	
C.1:	Adopt strong legislation on corruption, bribery and money laundering.
C.2:	Hold financial institutions, other businesses and professionals to strong transparency standards.
C.3:	Establish anonymous and robust whistleblowing mechanisms.
C.4:	Establish systems and procedures for the tracing, freezing and repatriation of stolen assets.
D. Data	
D.1:	Conduct an analysis of the specific IFF risks in the respective country or region.
D.2:	Use the Member State Mineral Databases and the Regional Mineral Database to collect data relevant to detecting and tracking IFF.
D.3:	Deploy technology solutions to tackle IFF.
E. Contracts and Agreements	
E.1:	Negotiate mining contracts based on general principles that protect the interests of the country and communities.
E.2:	Monitor the fulfilment of mining contracts.
E.3:	Review tax treaties where necessary.
F. International Cooperation	
F.1:	Consider joining or implementing international standards on IFF and taxation.

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