Policies and Plans on Critical Minerals and their Effectiveness in eSwatini

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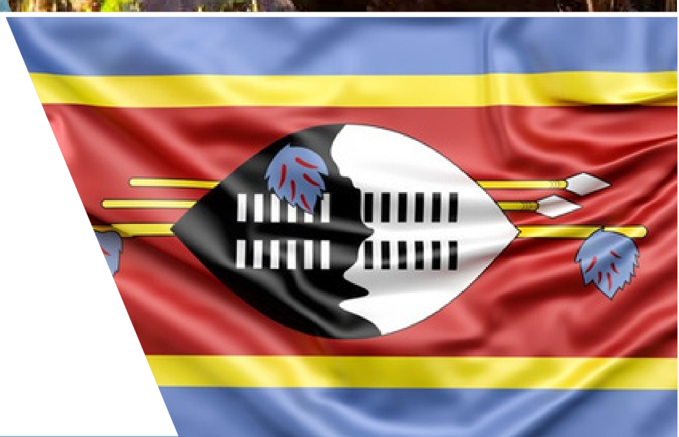

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Table of Contents

EXECUTIVE SUMMARY

The minerals industrial complex in eSwatini (previously called Swaziland) remains shrouded in secrecy and lack of transparency and accountability. It is characterised by an opaque understanding of how public mineral resources ultimately benefit the national economic development agenda. Historically, the country's mining code was guided by a colonial legal framework – the Mining Act (1958), which largely benefitted settler-colonial masters under British rule and the royal Dlamini dynasty that has ruled the country post-independence. Consequently, the current stratification of the legal mining architecture, both in terms of the Mines and Minerals Act (2011) and the national Constitution Act (2005) vests mining rights in the office and person of the King and Ingwenyama purportedly in trust for the nation. All other policy and legal instruments are aligned to this overarching stratification. This legal structure represents a problematic architecture that raises serious policy questions around critical energy transition minerals (CETMs; hereinafter critical minerals), mining governance, ownership, participation and the general regulation of the mining industry of the country. This policy brief examines the critical minerals sector of eSwatini and spotlights the current policy configurations, gaps and recommendations in the context of the just energy transition and the country's nationally determined commitments (NDCs).

INTRODUCTION

Mining in eSwatini currently involves minerals including coal, silica, gold, diamonds, quarry stones, green chert, and kaolin. There is also a presence of tin, copper, manganese, and nickel which are not presently being mined purportedly due to their low quality or small quantities that would not make economic sense to extract. According to the African Development Bank (AfDB), mining contributes 2% to the country's gross domestic product (GDP). Mining is currently taking place in Lufafa (gold), Dvokolwako (diamonds), Maloma (coal), and Ngwenya (green chert). Green chert is exclusively exported to China where it is used for a variety of purposes in construction, tool making, and religious purposes such as the making of statues. The Mpaka coal mine is also expected to open in 2024. Coal remains the largest mining enterprise in the country. In 2023, new minerals (Orogenic gold, Iron ore, Magmatic N-Cu-PGE sulphide, and Cretaceous kimberlite-associated diamonds, also see: Figure 1 below) were discovered in eSwatini and prospecting for more is currently being done with a report expected to be released in 2024. At the time of this study, this report had not yet been finalised and released publicly.

A geoscience mapping exercise whose phase two is currently underway in the eastern half of the country (covering the Lubombo and Shiselweni regions) is seen as potentially game-changing in the minerals and energy sectors for the country and its economy. The first phase of this exercise covered the Hhohho and Manzini regions and gold, iron ore, diamond, and copper-nickel-platinum group elements were discovered. However, the quantities of these minerals have not been revealed publicly, hence it is not possible to understand the true scale of the resources available. The country has issued six mining and prospecting licences for minerals concerns including coal, gold, green chert and diamonds.

However, with the political and governance template resting securely with the King there are serious policy questions regarding whether the mining sector really benefits the people of eSwatini, or it is merely part of the basket of enterprises that serve to enrich the King and his circle of political elites. Recently, the "Swazi Secret Leaks" exposed major corruption including grand scale money laundering practices centred around mining in the country. This has raised the need for a deeper focus on the mining sector and a problematisation and critical examination of the King's centrality and role in the industry within the context of the country's economic development imperatives.

CONTEXT

Global Context

Globally, critical minerals have emerged as essential to modern technological advancement and industries driving the rapid transition to cleaner energy, progressive manufacturing, and digitalization. These minerals, including lithium, cobalt, rare earth elements (REEs), and nickel, are important for producing renewable energy technologies such as wind turbines, solar panels, and electric vehicle (EV) batteries. For example, lithium and cobalt are essential for battery storage systems, while REEs are key ingredients of magnets used in wind turbines and EVs. The criticality of minerals is derived from the global demand they derive as driven by the changing energy requirements for a post fossil fuels-based economy. The pivot toward critical minerals reflects global efforts to decisively deal with climate change, enhance energy security, and drive more sustainable economic development. However, according to the World Bank (2017) the supply chains for many of these critical minerals are concentrated in a limited number of countries, creating geopolitical vulnerabilities and raising concerns about the ethical sourcing and environmental sustainability (US Geological Survey, 2023) .

The growing demand for critical minerals is driven by the global transition from fossil fuels to low-carbon energy systems. Governments and industries are prioritizing these minerals to meet international commitments, such as those outlined in the Paris Agreement, which aims to limit global warming to 1.5°C. Additionally, the need for energy independence has accelerated efforts to secure diversified and resilient supply chains. Investments in mining, recycling, and alternative material technologies are critical to addressing potential shortages and mitigating the environmental impacts of extraction. For example, the European Union (EU) and the United States of America (USA) have implemented policies to reduce reliance on imports, foster domestic production, and promote circular economies (European Commission, 2020), (International Energy Agency, 2021). The strategic importance of critical minerals has placed them at the forefront of global economic and security agendas.

Eswatini Historical Context

The mining and extractive industry of eSwatini is very small as the country's economy is not largely driven by mineral resources. Consequently, the body of scholarly literature in this field is underdeveloped. According to Simelane and Vilakati (2017) , the country has historically mined mainly iron ore and coal. In the pre-colonial period mining was focused largely on iron ore, which was used for the production of tools and weapons. With European infiltration and the beginning of colonialism, mining expanded to other minerals including asbestos, tin and coal, but was still not well-developed at the level of extraction when juxtaposed with other countries across Southern Africa (Jones, 2019) . According to Shabangu (2020) , asbestos mining was stopped in the early 1990s because of health concerns around exposure to it, and the huge environmental damages it had, which are existent to date. Mamba and Khumalo (2018) assert that mining could potentially boost state revenues and promote infrastructure development, especially in rural areas. They note, however, that this would require huge investments and government support. Dlamini et al., (2021) argue that with the absence of comprehensive policies, the mining sector is unlikely to result in long-term positive gains similar to those in other mineral-rich countries.

Geological Exploration and the Critical Minerals Potential

A 2006 report titled 'Mineral Resources of Swaziland' and produced by the Geological Survey and Mines Department shows the spectrum of available minerals across the country including coal, iron ore, gold and diamonds. This report excludes recently discovered minerals, including the platinum group of metals (PMGs) already alluded to in this study (see Figure 1 below). These new minerals are yet to be fully determined in terms of both quality and quantity. However, the country has recently joined the Critical Minerals Africa (2024) as it seeks to lure investors for its critical minerals, expand prospecting capacity and leverage its minerals sector more robustly. The country's geology suggests the presence of minerals such as nickel, manganese, and chromite, which are essential for renewable energy technologies and electric vehicle manufacturing. Eswatini's proximity to the Barberton Greenstone Belt and other mineral-rich formations also hints at possible occurrences of lithium and rare earth elements (REEs), crucial for battery storage and wind turbine production. However, the development of these resources is constrained by limited investment in geological surveys, regulatory frameworks, and infrastructure, which are needed to fully assess and exploit their potential. Strategic initiatives to explore and sustainably develop these minerals could position Eswatini as a contributor to regional and global green energy value chains (Government of Eswatini, 2019). As alluded above, a second (2024) geoscience mapping report is yet to be released. It is anticipated that it may reveal the extent and quantities of critical minerals in eSwatini. Figure 1 below shows the magnetic data of the Northwestern parts of the country that were surveyed in 2023.

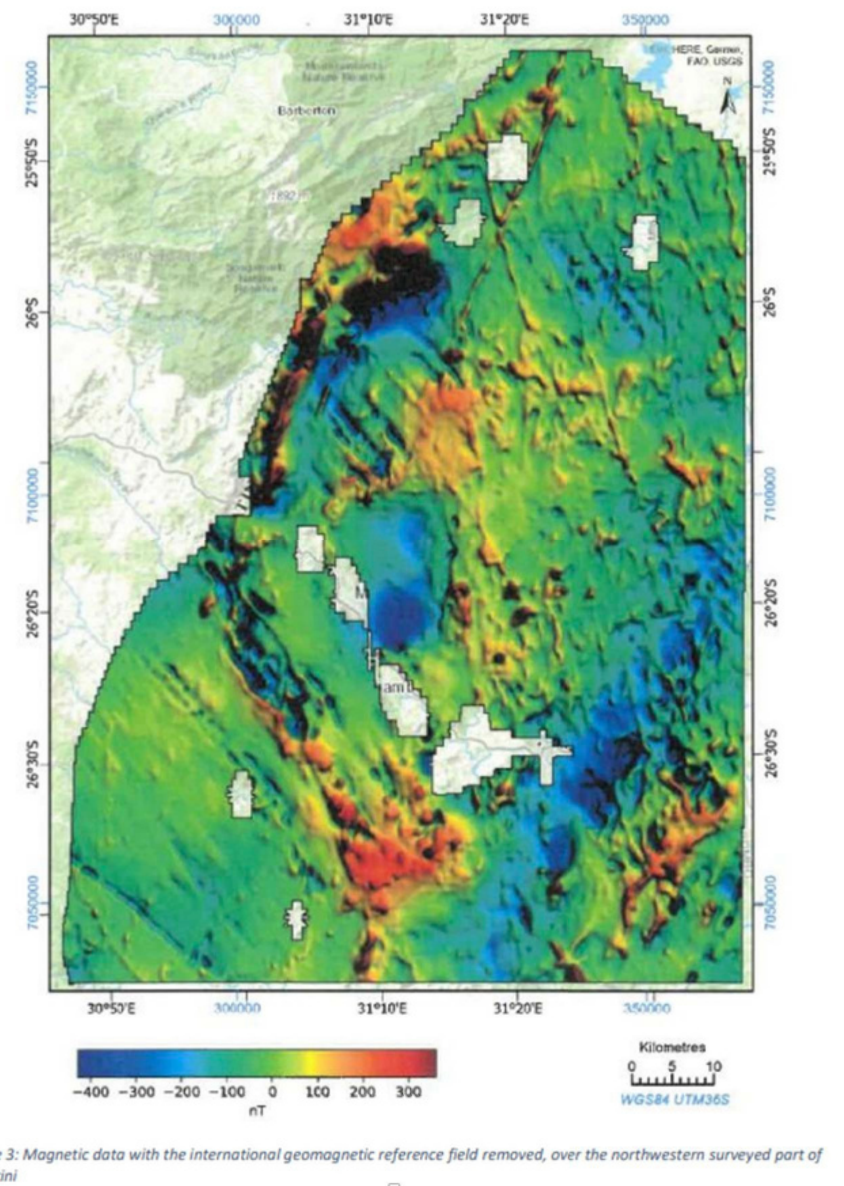

Figure 1: Magnetic data for Northwestern surveyed parts of eSwatini.

Climate Vulnerability, Energy Transition and eSwatini's Green Agenda

According to the National Development Plan (NDP) 2023/24—2027/28 eSwatini has an ambitious green agenda that aims to attain a 5% target reduction of Green House Gas emissions (GHG) by 2030, in line with the Paris Agreement and its own Nationally Determined Commitment (NDC) that was submitted to the United Nations Framework Convention on Climate Change (UNFCCC) and approved in November 2021. The theme of the NDP is "Good Governance, the Anchor for Economic Recovery, Green Growth, and Sustainable Livelihoods". While the country has a negligible emissions status of less than 0.002% of the global emissions stock, its NDP aims to reach a maximum reduction rate of 14% if financing is attained. In line with the NDC commitments, the country has abandoned a thermal power project that intended to upscale energy production for economic development. Below is an infographic depicting the energy profile of eSwatini:

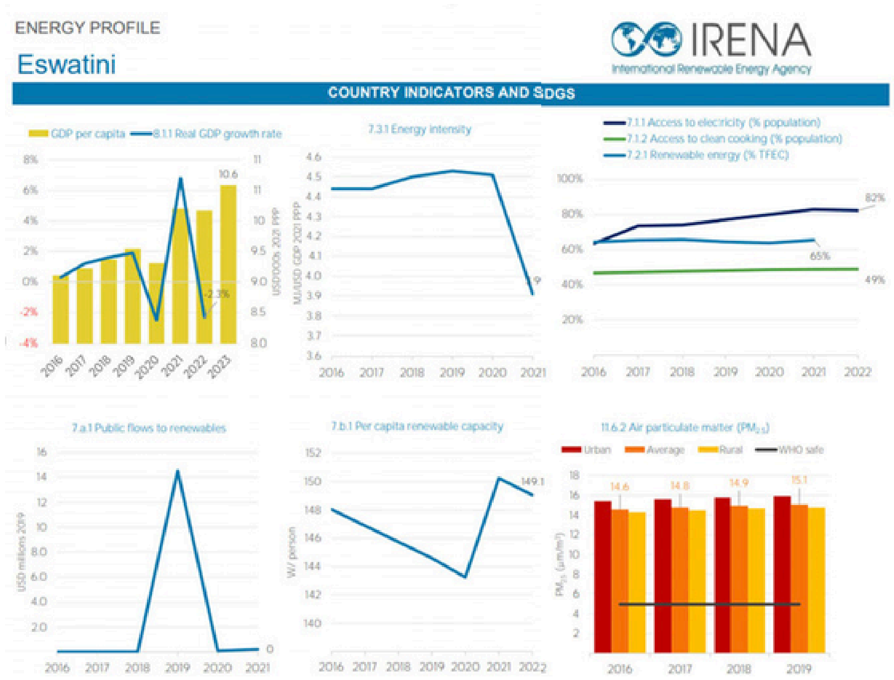

Figure 2: Eswatini energy profile

Mining and Minerals Beneficiation: The NDP and Value Addition

The Country's NDP "has prioritised a strategic position that seeks to strengthen the legislative and institutional framework with the aim to ensure a more equitable, inclusive and appropriate management of renewable and non-renewable natural resources" (ibid). In terms of minerals, the NDP places a premium on the need to promote local beneficiation through value addition on minerals. This is in recognition of the positive impacts and benefits that come with transitioning from a raw minerals extraction process to one that localises skills, technology and employment opportunities within the mining sector. While the NDP outlines a clear vision in this regard, the current practice around all mining activities is still based on the extraction and export of raw minerals. The table below shows the key sectoral outcome targets that the country intends to achieve in relation to its minerals. This table makes clear the fact that the minerals sector of the country is not yet fully developed to the extent that it can achieve localised value addition.

"The mining and extractive industry of eSwatini is very small as the country's economy is not largely driven by mineral resources."

Key Sectoral Outcome Targets	▪ To increase the exploitation and value addition to selected resources for socio-economic development and employment. ▪ Percentage of energy consumed sourced from locally generated renewable energy increased to 30%. ▪ Electricity price inflation stabilised at below 8% on average per year.
Strategy	**Programmes / Interventions**
Strategy 1 - Sustainable management and efficient use of mineral resources	▪ Conduct exploration and quantification of mineral resources across the country and attract investment in mining and value addition ▪ Increase adoption and use of appropriate and affordable technology along the value chain including clean energy and energy saver technologies; ▪ Strengthen the legal and regulatory framework as well as the human and institutional capacity; ▪ Improve inspection programmes at mining and quarrying operations to increase productivity ▪ Expand mineral based processing and marketing
Strategy 2 - Conserving natural resources for present and future generations	▪ Ensuring natural resources security ▪ Enhancing alternative livelihood for indigenous and local communities ▪ Adopting the sustainable consumption and production concept ▪ Increasing the share of renewable energy to 50% in the electricity mix through the adoption of solar, wind, biomass, hydro, and solar water heater technologies

Table 1: Sectoral Outcome Targets for the Minerals sector of eSwatini.

Environmental, Social and Governance Standards

There have been serious human rights and social development concerns raised about the environmental and social challenges surrounding the mining sector of eSwatini. According to Shabangu (2020) these include deforestation, soil degradation, water pollution, acid mine drainage, and other forms of harm to communities in the vicinity of mining areas. Dlamini and Pfunye (2022) examine the conditions of five communities affected by mining in eSwatini and their findings affirm the negative impacts this is having on those communities in Lufafa (gold), Ngwenya (Iron Ore), Maloma (Coal), Malolotja (Green Chalet/Chert), and Mpaka (Coal). These challenges depict massive environmental degradation that remains unattended and hazardous to local communities. Also, water pollution where dangerous chemicals are often discarded into water sources such as rivers thus contaminating them and causing dangerous risks to human health. The lack of safety, crime and illegal mining, lack of company engagement with communities and an absence of prior informed consent are some of the critical issues of concern that are prevalent. While legislation integrates the need for prior informed consent, this is hardly enforced due to weak oversight within the mining sector. Mbuyisa and Armstrong (2024) capture the environmental impacts and problems emanating from the mining of green chert inside the Malolotja Nature Reserve by a company named Michael Lee Enterprises, owned by a Taiwanese national. This points to acute lack of corporate accountability within the mining sector. Controversy has surrounded this mining enterprise as the company has been mining without clearance and compliance certification from the eSwatini Environmental Authority (EEA) – the body responsible for safeguarding the environment. The challenges in and around mining are, therefore, emblematic of poor regulatory laws and policies as articulated in the policy analysis section of this study.

Corruption in the Mining Sector

The mining sector in eSwatini has been marred by corruption, with significant revelations emerging from the "Swazi Leaks" exposé that shines a light into the nebulous and opaque dealings around minerals and their revenues. This investigation, based on over 890,000 internal records from the Eswatini Financial Intelligence Unit (EFIU), exposed how international gold dealers exploited the country's financial systems. Notably, companies like RME Bullion, for example, engaged in complex schemes involving large cash transactions and gold movements through eSwatini's Special Economic Zones, raising concerns about money laundering and the lack of economic benefits to the local population. These activities were often facilitated by weak anti-money laundering controls and the involvement of politically exposed persons, highlighting systemic issues within the sector .

Beyond this, and as demonstrated below, the weak governance architecture of the mining sector enables the King to control the revenues that accrue which are then used for personal gain rather than the public good.

eSwatini's performance on Transparency International's Corruption Perceptions Index (CPI) has declined over the past decade. In 2014, the country achieved its highest score of 43/100, indicating a moderate level of perceived public sector corruption. However, by 2023, this score had fallen to 30/100, placing the country at 130th position out of 180 countries . This decline reflects growing concerns about corruption within the country and affirms the need for greater reforms that would ensure that mining rents and revenues are utilized for the public interest and national economic development goals. For example, Magagula (2022) notes that eSwatini was excluded from the Fraser Institute's 2020 annual survey of mining companies, which, it is argued, was a demonstration of the country's weak regulatory framework that remains a deterrence to investors. Further, the country's legal regime does not comply with the standards of the Extractive Industries Transparency Initiative (EITI). The study recommends that the country should sign up to the EITI and further integrate its standards into the legal framework for the mining sector.

INSTITUTIONAL ARRANGEMENTS AND THE LEGAL FRAMEWORK

Institutional Arrangements

The Mining Department of the Ministry of Natural Resources and Energy is the overall institution responsible for the minerals sector of the country. It is guided by a Minerals Management

Board whose members are all appointed by the King and iNgwenyama. The eSwatini Environment Authority (EEA) is responsible for the environmental aspects of the legal frameworks around mining and is also the custodian of the Environment Management Act and the Environment Assessment Regulations.

The Legal Framework and Ownership of Mining Rights

The Constitution Act of 2005 is the overall legislative framework governing the mining sector and the critical minerals of eSwatini. Sections (211) and (213) of the Constitution vests land and mineral rights respectively in the King and iNgwenyama in trust for the Swazi nation. This means that the framers of the constitution made the iNgwenyama the sole "chief steward" or "custodian" of the mineral and land rights of the country – a position that will be further problematised in later sections of this study. Section 211 (1) reads thus:

(1) From the date of commencement of this constitution, all land (including any existing concessions) in Swaziland, save privately held title-deed land, shall continue to vest in iNgwenyama in trust for the Swazi Nation as it vested on the 12th April, 1973.

Equally, Section 213 reads as follows:

All minerals and mineral oils in, under or upon any land in Swaziland shall, after the commencement of this Constitution, continue to vest in iNgwenyama in trust for the Swazi Nation as vested on the 12th April 1973.

These constitutional provisions are critically important to understand given that they are the overarching legal benchmark and philosophy that underpin all other laws that regulate the mining and energy sectors of the country. The Mines and Minerals Act 2011 flows from the constitution and provides the expanded legal framework for the critical minerals sector. It is important to recognise that in policy terms, the revenue-sharing structure outlined in the Mines and Minerals Act cements the centrality of the King and iNgwenyama in the ownership and use of public minerals derived from mining activities across the country. Part 8 of the Mines and Minerals Act specifies a shareholding structure in which an investor in any mining enterprise holds 50% while the King holds 25% and the Government of eSwatini 25%. Notably, the 25% shareholding by the government is a split with 15% going to government coffers while 10% is meant for community ownership. Currently, there are no community trusts nor is there a national sovereign fund that could be used as mechanisms for investments of funds from this shareholding. It remains opaque how the accrued funds are utilized affirming the need for greater transparency and accountability.

Further, the Act appropriates all rents and royalties accruing from the land and minerals as well as oils to the iNgwenyama and these are in practice paid directly to him – albeit without any transparency or accountability whatsoever on how these are used for national economic development imperatives. Other key legislative laws include the Diamonds Act No. 3 of 2011, the Explosives Act No. 4 of 1961, the Mines and Quarries (safety) Regulations, the Environment Management Act 2022, and the Environment Assessment Regulations 2022. These laws and regulations provide the normative legal framework that guides the entire spectrum of mining in eSwatini in line with the constitutional framework. The country does not currently have a Just Energy Transition (JET) framework or strategy . This is a policy gap that needs to be addressed in order to have a just transition plan that ensures energy security, especially given the high availability of coal, which is set to become a stranded asset. The JET framework should be the product of an inclusive and participatory process that aligns with the Paris Climate Accords while ensuring a transition that does not negatively impact on the country's national sustainable development objectives and goals.

POLICY ANALYSIS

As articulated in the preceding section on the legal frameworks for mining, the policy thrust and character of the mining industry in eSwatini are strongly rooted in a political economy that centres around the office of the King and iNgwenyama. The policies that have been cited herein reflect a deliberate attempt to localise the structures of ownership, management, participation and revenue sharing in line with the spirit and letter of the Africa Mining Vision (AMV). However, this calibration is inherently flawed and problematic in the sense that the existent laws and policies are under the full control and jurisdiction of the King whose unfettered power and influence over the entire mining sector are ubiquitous. These laws are weak on transparency and accountability and the revenue sharing arrangements are not under the full command or oversight of the government through the Executive or Legislature. This is contrary to the spirit of the Africa Mining Vision and the Extractive Industries Transparency Initiative (EITI) and other regional, continental and international frameworks.

The Africa Mining Vision (AMV), adopted by African Union (AU) member states in 2009, for example, promotes the sustainable and equitable exploitation of mineral resources across the continent. The AMV emphasizes mineral-led development by encouraging transparent, inclusive, and environmentally sustainable practices. It seeks to ensure that mining contributes to industrialization, economic diversification, and social development, while maximizing local benefits and minimizing negative impacts. By aligning mining policies with broader development goals, the AMV aims to transform Africa's mineral wealth into a driver for long-term growth and poverty reduction . Similarly, the SADC Protocol on Mining (1997) seeks to promote sustainable and regionally integrated mining development among the members of the SADC. Its provisions emphasize the equitable sharing of mining benefits, capacity building, and the need for environmentally responsible mining practices to support regional economic growth and integration . These normative standards appear to be missing from the minerals governance regime currently followed in eSwatini.

Resultantly, very little information exists in the public sphere for full appreciation of the entire mining landscape of the country. The 10% shareholding that is provided for in the Mines and Minerals Act for mining communities is at best opaque or never really given to communities in actual terms. Yet, mining communities are the ones that suffer the negative effects of the extractive process in its multilayered dimensions. This raises serious concerns around the question of whether mining has a positive impact for ordinary citizens in economic sustainable development terms. In addition, both the constitutional framework and the laws governing mining activities do not provide for fiscal accountability by the King and iNgwenyama on the utilisation of all revenues generated through the 25% shareholding and royalties he holds in trust for the nation.

The mineral governance structure of eSwatini is characterised by severe policy limitations given the fact that the King and iNgwenyama literally appoints all the key role-players and unilaterally decides on the key question of the granting of mining licenses. Because the existing political structure lacks transparency and accountability, the King is able to exercise himself fully on the mineral assets and financial resources that accrue from the mining sector. There is no record in the public sphere where the King has accounted to the nation on the mineral resources that he holds in trust for it. Due to the weak configuration of the state's mining laws, all the relevant institutions have no capacity nor legal power to ensure that mineral resources are accounted for to public oversight bodies.

GAP ANALYSIS

There are a number of gaps that exist within the mining sector that are summarised in this study. These include gaps relating to the legal and regulatory framework, infrastructure, fiscal investment, community engagement, environmental and social challenges, and human resources and skills.

Legal and regulatory framework

The prevailing mining laws, policies and regulations of the country do not meet the litmus test in terms of policy rigour that is aligned with progressive mining instruments and standards. There is an urgent need to reform the structure of the legal framework to ensure that it benefits the national fiscus and local communities where critical minerals are being extracted. Importantly, there is a huge need to ensure transparency, accountability, and good governance to foster investor confidence within the sector. The existing calibration that centres the mining sector around the King and iNgwenyama should be done away with in favour of a transformed sector that enjoys full government oversight through the Executive and Legislature. The country should join the EITI and integrate its mining laws to be aligned with its standards. The country also lacks a Just Energy Transition (JET) framework, yet this is extremely crucial for its green economy ambitions as well as its critical minerals stock.

Infrastructure

The infrastructure network of the country hinders the growth of the mining sector. There is a need to ensure that the road and rail networks are fully developed to enhance the logistical dimensions of the mining sector. Prioritising energy efficiency and supply is also a critical aspect of infrastructure development that should be undertaken. The establishment of a localised minerals value-addition ecosystem is fundamentally important if the country is to leverage the full spectrum of benefits from the extractives sector.

Fiscal Investment

While the Government is on a global drive to mobilise financial investment into the mining sector, the weaknesses in the legal and regulatory framework hinders investment confidence and thwarts both local and foreign direct investment (FDI). There is need to review the existing pathways to the capitalization of the industry in ways that drive sustainable economic growth and development. In large part, there should be incentives that are designed to ensure that the sector grows over the long term.

Community Engagement, Environmental and Social Challenges

The country has the necessary legal regime governing the mining sector, but the enforcement of these is encumbered by political expediency and the problems of a sector that has been captured by the King. The engagement of communities to get prior and informed consent as well as their full participation in mining enterprises should be enhanced. Environment and social impacts should be managed in line with the country's environmental legislation with full accountability and consequence management for violations. Programmes should be developed to ensure that local communities benefit from job creation, skills development, and overall fair compensation from mining activities.

Human Resources and Skills

The country lacks world-class specialized skills and technology in mining, geology, and environmental management. This is a critical gap due to the fact that localised know-how remains the centrepiece of any industry. The country must move away from its reliance on expatriate technical skills and invest more in localised capabilities across the mining industry value chain. Targeted education programs designed for long-term sector strengthening are critical in this regard. Cultivating and maintaining professional expertise within the country is critical for the mining industry to strive in ways that are sustainable.

RECOMMENDATIONS AND POLICY PROPOSALS

Based on the multiple issues that this study has raised, there are a number of recommendations and policy proposals that arise. These are listed and summarized below:

- The legislative framework of the country should be reviewed and amended beginning with the national Constitution Act 2005 and the Mines and Minerals Act 2011. These amendments must seek to re-calibrate the ownership structure of the country's mineral and land rights in favour of the citizens rather than the King and iNgwenyama.
- eSwatini should join the EITI and integrate its mining laws to its standards.
- A Just Energy Transition Framework with attendant legislation should be enacted.
- All laws and policies should be aligned with the African Mining Vision (AMV) and the SADC Protocol on Mining for the maximum optimization of the mining sector.
- The right to access to information should be guaranteed within the legal and regulatory framework in line with the EITI Standard.
- Oversight by the Legislature must be strengthened to ensure that mining revenues are for the public benefit.
- Mining royalties and land rents should be re-assigned to the public purse as opposed to the King and iNgwenyama, especially because the King does not pay taxes in the country. For the Office of the King and iNgwenyama to collect these revenues robs the country's fiscus of much needed finances for its economic development imperatives.
- Given the current prospecting for new minerals in the country, there is need for a revised minerals register and bulletin that is publicly accessible to all citizens to enhance transparency and accountability in the sector.
- Compliance with environmental rules and regulations must be strengthened to ensure that mining companies protect communities and the environment at all material times.

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