

African regional economic communities and the political economy of extraction: Gatekeepers or guardians of the just transition?

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Abstract: *Africa holds a significant share of the world's transition minerals, such as cobalt, lithium and rare earth elements, positioning it as a key player in global decarbonisation. However, the continent faces challenges such as weak governance and an inequitable distribution of resources. The African Union has established various frameworks to guide mineral governance, but their effectiveness relies heavily on regional economic communities (RECs). Through qualitative, desk-based legal research, this chapter examines the roles of the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the East African Community (EAC) in shaping extractive governance. The findings suggest that while RECs contribute to environmental safeguards and community protections, they lack enforcement power and political autonomy. Additionally, they must navigate complex external regulations. The conclusion emphasises that strengthening RECs is crucial to promoting justice, accountability and human rights in Africa's*

energy transition, and that an empowered RECs system can translate mineral wealth into sustainable development.

1 Introduction

Africa holds a central position in the global green energy transition. The continent accounts for more than 30 per cent of the world's known reserves of cobalt, manganese, rare earth elements and other transition minerals that are indispensable to renewable energy systems and electric vehicle production.¹ The demand for these resources has surged under global decarbonisation commitments, making African mineral corridors a strategic frontier for international supply chains.² Yet, this structural endowment is embedded in fragile political economies characterised by governance deficits, rentier dynamics and uneven distribution of benefits. Communities living in proximity to mining sites often face dispossession, environmental degradation and human rights abuses, underscoring the paradox of mineral wealth coexisting with deep socio-economic vulnerability.³

The regulatory landscape governing these resources is fragmented but normatively rich. At the continental level, the African Charter on Human and Peoples' Rights (African Charter) (1981) enshrines

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- 1 ANRC 'Approach paper to guide preparation of an African green minerals strategy' (African Development Bank 2022) 12; United Nations Environment Programme 'Our work in Africa', <https://www.unep.org/regions/africa/our-work-africa> (accessed 28 September 2025); US Geological Survey 'US geological survey releases 2022 list of critical minerals' 22 February 2022, <https://www.usgs.gov/news/national-news-release/us-geological-survey-releases-2022-list-critical-minerals> (accessed 28 September 2025).
 - 2 NS Ouedraogo & JMM Kilolo 'Africa's critical minerals can power the global low-carbon transition' (2024) 6 *Progress in Energy*.
 - 3 L Kulamadayil *The pathology of plenty: Natural resources in international law* (2025) 4.

peoples' sovereignty over natural resources (article 21) and the right to a satisfactory environment (article 24).⁴ Internationally, the Paris Agreement (2015) situates climate mitigation as a collective obligation, thereby indirectly pressuring resource-rich economies to facilitate low-carbon transitions.⁵ More recently, the African Union (AU)'s Green Minerals Strategy (2025) provides a roadmap for aligning mineral governance with climate imperatives and development goals.⁶ Complementing this, the African Mining Vision (AMV) (2009) emphasises beneficiation and local value addition as pathways out of extractive dependency.⁷ Despite this normative architecture, effective enforcement remains elusive. Much of the responsibility for operationalising continental commitments rests with Africa's regional economic communities (RECs), which function as the building blocks of the AU.⁸

RECs such as the Economic Community of West African States (ECOWAS), the Southern African Development Community (SADC) and the East African Community (EAC) have each adopted sectoral instruments ranging from harmonisation directives to model mining policies.⁹ These frameworks recognise the need to promote

4 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, arts 21 & 24.

5 Paris Agreement (adopted 12 December 2015, entered into force 4 November 2016) UN Doc FCCC/CP/2015/10/Add.1.

6 African Union Commission 'Africa's green minerals strategy' (African Union 2025).

7 African Union 'Africa mining vision' (African Union 2009).

8 P Jourdan 'Continental frameworks for mineral resource governance in Africa: Strategies for enhanced domestication' International Institute for Democracy and Electoral Assistance 2025 15; Treaty Establishing the African Economic Community (adopted 3 June 1991, entered into force 12 May 1994) OAU Doc CM/Res.464 (LXIX).

9 ECOWAS Directive C/DIR3/05/09 on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009); SADC Protocol on Mining (1997); EAC Draft EAC Mining Bill (2017).

mineral-led industrialisation while safeguarding environmental and community rights. Yet, enforcement capacity is weak, adjudicatory mechanisms are underutilised, and the integration of human rights standards is inconsistent.¹⁰ At the same time, external regulatory regimes, including the Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance,¹¹ the European Union (EU) Battery Regulation,¹² and the US Dodd-Frank Act,¹³ shape Africa's governance space, creating overlapping demands that African states and RECs must navigate.

Despite their strategic importance, RECs are often overlooked in scholarship and policy debates on the just transition. Analyses usually focus either on national mining codes or on continental strategies, neglecting the regional level where harmonisation, transboundary governance and collective bargaining with external actors occur.¹⁴

This chapter argues that strengthening REC mandates, enforcement mechanisms and adjudicatory capacities is essential for transforming Africa's transition minerals into vehicles of a just and equitable decarbonisation pathway. By situating RECs at the centre of Africa's political economy of extraction, the chapter examines whether existing regional frameworks, ECOWAS, SADC and EAC,

10 JT Gathii 'Saving the Serengeti: Africa's new international judicial environmentalism' (2016) 16 *Chicago Journal of International Law* 386.

11 OECD *Due diligence guidance for responsible supply chains of minerals from conflict-affected and high-risk areas* (2016).

12 Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries [2023] OJ L191/1.

13 US Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 sec 1502.

14 JT Gathii 'African regional trade agreements as flexible legal regimes' (2010) 35 *North Carolina Journal of International Law and Commercial Regulation* 571.

consolidate or challenge extractive dependencies. It interrogates the governance opportunities and institutional gaps within each REC, and evaluates how these mediate the tensions among industrialisation, environmental justice and community rights. In so doing, the chapter finds that RECs occupy a dual and contradictory position: They can function as gatekeepers, reproducing fragmented governance and enabling extractive political economies, or as guardians, capable of embedding distributive justice, environmental safeguards and human rights protections into regional mineral governance. Despite extensive continental norms, the just transition hinges not on AU frameworks alone but on REC-level interventions, where mineral corridors, transboundary ecosystems and affected communities intersect. As such, RECs constitute the institutional hinge between Africa's normative commitments and the lived realities of extraction.

The chapter proceeds in four parts. The first part outlines the legal and institutional foundations of Africa's transition-minerals governance, focusing on continental norms and the delegated role of RECs. The second part undertakes a comparative analysis of ECOWAS, SADC and EAC, examining their mining, investment and environmental instruments and enforcement mechanisms. The third part evaluates how these regional frameworks engage with external regulatory regimes and just-transition principles, highlighting points of convergence, conflict and regulatory fragmentation. The final part synthesises the findings and proposes pathways for strengthening REC-level governance to advance a just, inclusive and sustainable minerals-based energy transition in Africa.

2 Methodology

This chapter adopts a qualitative, desk-based legal research methodology. It employs doctrinal analysis to examine international

investment law instruments, REC treaties, national mining and investment laws, and relevant jurisprudence on transition minerals governance. This is complemented by a comparative approach that assesses how selected African RECs and member states regulate and position transition minerals within broader development and energy-transition frameworks.

The RECs and countries analysed were selected based on their strategic relevance to Africa's transition minerals landscape, including the presence of significant mineral reserves, leadership roles within their respective RECs, and the adoption or ongoing development of legal and policy frameworks addressing mineral governance, industrialisation and energy transition.

The study relies exclusively on secondary data. Primary materials include treaties, REC instruments, national constitutions, mining and investment legislation and regulatory policies, while secondary sources comprise academic literature, policy reports and publications by the AU, RECs, development finance institutions and civil society organisations.

The study is subject to limitations inherent in desk-based research. It does not incorporate primary empirical data, and the availability and depth of legal and policy documentation vary across jurisdictions. In addition, transition minerals governance remains a rapidly evolving field. Nevertheless, the methodology provides a robust analytical framework for examining emerging African legal approaches to transition minerals governance.

3 Continental level: African Union

3.1 Normative frameworks for mineral governance

The AMV, adopted in 2009, remains the cornerstone of Africa's continental mineral governance architecture.¹⁵ It articulates a paradigm shift away from enclave extraction toward resource-based industrialisation, emphasising beneficiation, linkages to local economies and sustainable development.¹⁶ While the AMV is aspirational in scope, its implementation has been uneven, largely due to weak alignment with binding legal instruments and over-reliance on voluntary commitments.¹⁷ To operationalise the AMV, the AU adopted the Action Plan for the Implementation of the AMV (2011), which clusters strategic interventions around geological knowledge, governance, artisanal mining, linkages and human rights.¹⁸

More recently, the African Green Minerals Strategy (AGMS) (2024) provides a normative update that situates mineral governance explicitly within the context of the global need to respond to climate change.¹⁹ The strategy identifies Africa's transition minerals: cobalt, lithium, manganese, graphite and rare earths, as both a comparative

15 African Union (n 7).

16 A Bohne & I Thiam 'Introduction' in A Bohne & I Thiam (eds) *The Africa mining vision: Can business as usual be visionary? Perspectives from four regions* (2019) 4.

17 D van Wyk, S Reyneke & E Bain 'Attainable vision or fairy tale?' in A Bohne & I Thiam (eds) *The Africa mining vision: Can business as usual be visionary? Perspectives from four regions* (2019) 23.

18 African Union 'Action plan for implementing the Africa mining vision' (African Union 2011).

19 African Union Commission (n 6).

advantage and a governance challenge.²⁰ Unlike the AMV, the AGMS explicitly foregrounds key principles of the just transition, emphasising distributive justice, gender inclusion and community rights as integral to resource governance.²¹ Its ambition, however, is constrained by its non-binding character and reliance on RECs for operationalisation. Notably, the extent to which this reliance is accompanied by clear, instructional guidance to RECs remains ambiguous, raising questions about institutional capacity, coherence and the practical challenges of translating continental aspirations into enforceable regional and national legal frameworks.²²

3.2 Developmental visions and continental strategies

Beyond sector-specific frameworks, Africa's resource governance is nested within broader developmental visions. Agenda 2063, the AU's long-term plan for inclusive growth and structural transformation, positions natural resources as a strategic lever for industrialisation and sustainable development.²³ Its First Ten-Year Implementation Plan (2014-2023) identifies mineral-based value addition as central to Africa's integration into global value chains. Similarly, the African Climate Change Strategy (2022) frames the exploitation of transition minerals as a necessary component of Africa's decarbonisation trajectory, while acknowledging the risks of reproducing extractive dependency if beneficiation and local capacity are neglected.²⁴

20 African Union Commission (n 6) 12.

21 African Union Commission (n 6).

22 As above.

23 African Union Commission *Agenda 2063: The Africa we want* (2015).

24 African Union *The African Union climate change and resilient development strategy and action plan (2022-2032)* (2022) 115.

Moreover, the entry into force of the African Continental Free Trade Area (AfCFTA) in 2021 has significant implications for mineral governance.²⁵ The AfCFTA Protocol on Investment (2023) introduces sustainability obligations for investors, offering a potential platform for embedding human rights due diligence in cross-border mineral investments.²⁶ Yet, as with other AU strategies, enforcement is contingent upon REC domestication and state compliance, which remain uneven.

3.3 Human rights and environmental safeguards

The African Charter constitutes the foundational normative instrument linking natural resource governance to rights obligations.²⁷ Article 21 recognises the peoples' right to freely dispose of their wealth and natural resources, while article 24 enshrines the right to a satisfactory environment. These provisions have been judicially elaborated in *SERAC*, where the African Commission on Human and Peoples' Rights (African Commission) held that states have both negative and positive duties to regulate extractive activities.²⁸ Complementing the African Charter, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) introduces gender-

25 Agreement Establishing the African Continental Free Trade Area (adopted 21 March 2018, entered into force 30 May 2019).

26 AfCFTA Protocol on Investment (adopted 19 February 2023, not yet in force).

27 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

28 O Williams 'Case study: *SERAC v Nigeria* examining the role of international law in supporting social movement goals' MA thesis, American University in Cairo, 2011 11; *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) paras 44-47 (*SERAC*).

specific protections, including equality, reproductive rights and access to resources, which can be interpreted as relevant to women's experiences in the extractive industries, even though it does not expressly regulate this sector.²⁹

Environmental safeguards are further codified in the Revised African Convention on the Conservation of Nature and Natural Resources (2003).³⁰ This treaty obliges states to integrate environmental considerations into resource exploitation and to prevent transboundary harms, a provision directly relevant to cross-border mineral corridors.³¹ The African Charter on Democracy, Elections and Governance (African Democracy Charter)³² also bears relevance, as it addresses corruption, accountability and transparency, structural issues that often underlie extractive sector mismanagement.

3.4 Institutional and normative gaps

Despite the density of continental instruments, their effectiveness is curtailed by three structural gaps. First, enforcement deficits persist: AU treaties typically lack supranational enforcement bodies, relying instead on RECs and national implementation.³³

29 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) arts 2, 13, 15 & 19 (African Women's Protocol).

30 Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) art 14.

31 Revised African Convention (n 30) arts 14 & 16.

32 African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012).

33 RY Simo 'The (domestic) enforcement of AU international economic law instruments: Exploring the desirability of direct effect' in O Amao, M Olivier & KD Magliveras (eds) *The emergent African Union law: Conceptualisation, delimitation, and application* (2021) 95.

Second, jurisdictional asymmetries undermine coherence, as climate, mining, trade and human rights regimes evolve in silos with limited cross-referencing. Third, institutional dependence on RECs creates a bottleneck: While the AU provides the normative framework, the translation of principles into binding regional and domestic obligations is delegated to institutions that often lack capacity or political will. As a result, the AU's frameworks risk remaining aspirational unless bolstered by REC-level harmonisation and adjudication. The following part of the chapter examines how selected RECs have responded to this delegated role, assessing whether REC-level legal instruments, institutional mechanisms and dispute-resolution frameworks meaningfully operationalise continental mineral governance norms. By doing so, it evaluates whether REC practice mitigates – or reproduces – the enforcement and coherence deficits identified above.

3.5 Economic Community of West African States

ECOWAS has developed one of the most advanced regional frameworks for mineral governance. The Directive C/DIR3/05/09 on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009) provides common standards on licensing, transparency, environmental protection and community rights.³⁴ This directive complements the ECOWAS Treaty (1993, revised), which contains provisions on natural resource cooperation and environmental management.³⁵ ECOWAS has also adopted an

34 ECOWAS Directive C/DIR3/05/09 on the Harmonisation of Guiding Principles and Policies in the Mining Sector (2009).

35 Revised Treaty of ECOWAS (adopted 24 July 1993, entered into force 23 August 1995).

Environmental Policy (2008)³⁶ and established a Court of Justice, which has demonstrated an expanding role in adjudicating socio-economic rights claims, including in the extractive sector.³⁷ Yet, these opportunities coexist with clear gaps. Despite its normative breadth, the ECOWAS Mining Directive remains a ‘soft law’ instrument, with weak enforcement. National mining codes in states such as Nigeria, Ghana and Burkina Faso have selectively incorporated its provisions, but implementation remains inconsistent.³⁸ The limited effectiveness of the ECOWAS Mining Directive is not simply a problem of implementation capacity, but reflects deeper political-economy constraints. Member states retain strong incentives to preserve discretion over licensing and fiscal terms, particularly when extractives constitute a major source of public revenue and elite rents.³⁹ Enforcement is further weakened by power asymmetries between national executives and ECOWAS institutions, as well as competition among states for investment, which discourages collective discipline and enables selective incorporation of regional standards into domestic mining codes.

36 Supplemental Act 1/2008/CCEG/UEMOA; Supplemental Act A/SA 4/12/8 ECOWAS.

37 *SERAC* (n 28).

38 I T Odumosu-Ayanu ‘Governments, investors and local communities: Analysis of a multi-actor investment contract framework’ (2014) 15 *Melbourne Journal of International Law* 473, 478.

39 African Forum and Network on Debt and Development (AFRODAD) ‘The extent to which ECOWAS countries have domesticated the Africa Mining Vision and the ECOWAS Protocol on Mining’ (2021).

3.6 Southern African Development Community

SADC adopted the Protocol on Mining, one of the earliest regional instruments on extractives.⁴⁰ The Protocol encourages harmonisation of mining policies, sustainable development and cooperation in geological information. The SADC Treaty⁴¹ and the Protocol on Trade⁴² further situate mineral resources within a regional integration agenda. Environmental obligations are codified in the Protocol on Shared Watercourses⁴³ and the Protocol on Environmental Management for Sustainable Development (2014), which indirectly constrain extractive activities.⁴⁴ The Protocol, however, in its normative orientation, reflects an earlier extractive governance paradigm and has not been meaningfully updated to address the accelerated demands of transition minerals, environmental, social and governance (ESG) standards, or just transition imperatives.⁴⁵ Subsequent efforts to modernise SADC's mining governance framework have progressed slowly and unevenly, reflecting political resistance to supranational oversight and the absence of effective regional enforcement mechanisms.⁴⁶

40 SADC Protocol on Mining (adopted 8 September 1997, entered into force 10 February 2000).

41 Treaty of the Southern African Development Community (adopted 17 August 1992, entered into force 30 September 1993) arts 4, 5 & 21.

42 Protocol on Trade in the Southern African Development Community (adopted 24 August 1996, entered into force 25 January 2000) art 3.

43 Protocol on Shared Watercourses in the Southern African Development Community (revised, adopted 7 August 2000, entered into force 22 September 2003) arts 2-5, 7-8, 10.

44 SADC Protocol on Environmental Management for Sustainable Development (adopted 18 August 2014).

45 D Cloete and others 'Navigating the SADC critical minerals transition: Towards preferred futures' (September 2023) 14.

46 Cloete and others (n 45).

Institutionally, the disbanding of the SADC Tribunal in 2012 severely undermined regional adjudication of community and environmental claims, leaving a compliance vacuum.⁴⁷ Member states such as South Africa, Zambia and Zimbabwe thus rely heavily on domestic legal frameworks to regulate extractives, even when regional protocols provide higher standards.

3.7 East African Community

The EAC has been comparatively slow to develop binding regional mining frameworks. The proposed EAC Mining Bill, intended to harmonise licensing, environmental safeguards and revenue-sharing, remains stalled.⁴⁸ Nonetheless, the EAC Treaty obliges member states to cooperate in natural resource management and environmental protection.⁴⁹ The EAC has also adopted instruments relevant to extractives, such as the Protocol on Environment and Natural Resources Management⁵⁰ and the EAC Climate Change Policy (2011).⁵¹ The East African Court of Justice (EACJ) has demonstrated willingness to engage with governance and human rights questions,

47 RB Zarma 'Regional economic community courts and the advancement of environmental protection and socio-economic justice in Africa: Three case studies' PhD thesis, Osgoode Hall Law School of York University, 2021 112.

48 East African Community Mining Bill (2017).

49 Treaty for the Establishment of the East African Community (adopted 30 November 1999, entered into force 7 July 2000) 2144 UNTS 255, arts 5(3) (c), 111, 112 & 114.

50 Protocol on Environment and Natural Resources Management of the East African Community (adopted 3 April 2006, entered into force 2006) arts 5, 9, 10, 17 & 25.

51 East African Community EAC Climate Change Policy (2011) secs 3.3.4, 3.3.5, 4.2 & 6.3.

including in cases touching on land and environmental disputes.⁵² This judicial activism, combined with the pending mining bill, suggests that the EAC could evolve into a stronger actor in extractive governance if political will aligns.

3.8 Comparative analysis: Human rights and the political economy of extraction

Africa's RECs occupy a structurally decisive position in the governance of transition minerals. Situated between ambitious continental frameworks and sovereignty-driven national mining regimes, they generate norms that frequently exceed domestic legislation but lack the authority and enforcement architecture necessary to ensure compliance. ECOWAS, SADC and EAC have each developed mining-relevant instruments, ranging from harmonisation directives to environmental protocols and regional jurisprudence, yet these remain largely soft law mechanisms.⁵³ Their effectiveness is constrained by weak supranational mandates, limited monitoring capacity, and politically contingent incorporation into national mining codes. The disbandment of the SADC Tribunal illustrates the fragility of REC adjudicatory power when regional oversight conflicts with national political interests.⁵⁴

52 *African Network for Animal Welfare (ANAW) v The Attorney General of the United Republic of Tanzania* Ref 9 of 2010 (Judgment, East African Court of Justice at Arusha First Instance Div, 20 June 2014) para 64; *Attorney General of the United Republic of Tanzania v African Network for Animal Welfare (ANAW)* Appeal 3 of 2014 (Judgment, East African Court of Justice at Arusha App Div, 29 July 2015).

53 ECOWAS Mining Directive C/DIR.3/05/09; SADC Protocol on Mining (1997); Draft EAC Mining Bill (2017).

54 On the closure of the SADC Tribunal and its implications for regional accountability, see analysis in regional judicial governance scholarship.

A distributional lens clarifies these institutional limits. Current REC arrangements primarily benefit national executives and mining authorities that retain licensing discretion, alongside investors and external buyers that exploit regulatory variation. By contrast, customary landholders, women in artisanal mining and affected communities disproportionately bear the social and environmental costs of weak regional enforcement.

When human rights and community protections are integrated into the analysis, the limitations become sharper. Continental norms articulate robust guarantees over natural resources, participation and environmental justice,⁵⁵ yet REC operationalisation is uneven. ECOWAS approximates free, prior and informed consent (FPIC) but does not make it binding;⁵⁶ SADC's environmental and gender frameworks remain weakly enforced;⁵⁷ and EAC jurisprudence, though promising, has not translated into systematic safeguards for customary landholders or women in artisanal and small-scale mining.⁵⁸ Empirical evidence from the Democratic Republic of the Congo (DRC), Zambia and Tanzania shows persistent failures of consultation, gender exclusion and environmental harm,⁵⁹ demonstrating that normative density has not produced

55 African Charter on Human and Peoples' Rights arts 21, 22, 24; African Women's Protocol (n 29); Africa Mining Vision (2009).

56 ECOWAS Directive Provisions on Community Participation and Social Safeguards.

57 SADC Treaty arts 5, 21; SADC Gender Protocol (2008); SADC environmental instruments.

58 *ANAW v Tanzania* (EACJ 2014, 2015); EAC Treaty arts 111-114.

59 Amnesty International 'Democratic Republic of the Congo: Industrial mining of cobalt and copper for rechargeable batteries is leading to grievous human rights abuses' 12 September 2023, <https://www.amnesty.org/en/latest/news/2023/09/democratic-republic-of-the-congo-industrial-mining-of-cobalt-and-copper-for-rechargeable-batteries-is-leading-to-grievous-human-rights-abuses/%5C%3E> (accessed 28 September 2025); P Mwaanga

institutional transformation. These gaps are structurally embedded. REC instruments rely on harmonisation without coercive authority, secretariats face limited monitoring capacity, and member states resist regional oversight over land and mineral revenues.⁶⁰ The suspension of the SADC Tribunal illustrates how regional accountability weakens when it constrains politically sensitive extractive governance.

These internal constraints are compounded by external political-economy dynamics. Global supply chains for cobalt, lithium and rare earths are shaped by Chinese infrastructure-for-minerals deals,⁶¹ EU due-diligence regimes⁶² and US disclosure-based regulations.⁶³ These extraterritorial frameworks impose compliance burdens and reinforce Africa's position as a supplier of raw materials. RECs, lacking coordinated bargaining authority, struggle to mediate these pressures or leverage regional harmonisation to shift the distribution of value.⁶⁴ This constrains REC policy space unless regional coordination can offset asymmetric bargaining power.

Yet, RECs remain the most plausible institutional hinge for a just transition, as they are the only scale capable of countering sovereignty-

and others 'Preliminary review of mine air pollution in Zambia' (2019) 5 *Helikon* e02485; Volunteers Spark Others (VSO) Tanzania 'Human rights in the extractive sector in Tanzania: Learning brief' (2024) 22, https://www.vso.nl/app/uploads/2024/05/VSO_LearningPaper-2.pdf (accessed 28 September 2025).

60 MN Kiggundu 'Alternative service delivery in Africa: The case for international regional organisations' (2016) 4 *Africa's Public Service Delivery and Performance Review* 283-305.

61 J Braunstein & M Chuchko 'Resource curse in the age of critical minerals: Geopolitical forces and market maturity' (2025) 127 *Energy Research & Social Science* 104247, 2.

62 Regulation (EU) 2023/1542 (EU Battery Regulation); EU Critical Raw Materials Act; OECD Due Diligence Guidance.

63 Dodd-Frank Wall Street Reform Act 1502.

64 Gathii (n 14).

driven fragmentation through collective standard-setting. Arguably, if empowered with binding monitoring mechanisms, regionalised FPIC standards, environmental-justice obligations and strengthened courts, they could transform continental aspirations into enforceable regional practice, enabling Africa to negotiate the green transition on more equitable terms.⁶⁵ At the same time, claims that RECs are best positioned to drive regional industrialisation and value addition must be interrogated against countervailing sovereign interests and the persistent risk of a regulatory race to the bottom, which may constrain their transformative potential.⁶⁶ The next part of the chapter examines how these reforms can be operationalised within existing REC structures. It shows how regional mechanisms can translate just transition aspirations into enforceable practice and more equitable value distribution.

4 Human rights and community dimensions

4.1 Land rights and community protections

The African Charter remains the foundational instrument linking resource governance to human rights. Article 21 guarantees that '[a]ll peoples shall freely dispose of their wealth and natural resources' and prohibits dispossession without consent.⁶⁷ Article 22 further enshrines the right to economic, social and cultural development,

65 African Union *Africa Mining Vision* (2009); see also AU Green Minerals Strategy (2025); see also AfCFTA Protocol on Investment (2023) on sustainability obligations and regional value chains.

66 GF Nubong *Developmental regionalism and the political economy of Africa's integration* (2023) 32-35.

67 Art 21 African Charter.

obliging states to ensure that extractive projects do not undermine collective self-determination.⁶⁸ These provisions situate land and resource governance not merely as questions of economic policy but as matters of collective human rights. In practice, however, the expansion of large-scale mining concessions often clashes with customary land tenure systems.⁶⁹ Across Africa, land rights are deeply embedded in customary authority, with communities relying on collective stewardship rather than individual title. Yet, state concessions routinely override these systems, granting long-term leases to multinational corporations with minimal consultation.⁷⁰

RECs have emerging potential to harmonise FPIC standards across member states. For example, the ECOWAS Directive on Mining (2009) explicitly references community participation in licensing processes,⁷¹ while the SADC Protocol on Mining (1997) encourages states to adopt participatory frameworks.⁷² Yet, in the absence of binding REC-level enforcement, FPIC remains inconsistently applied, particularly in fragile political economies such as the DRC.⁷³ In Kolwezi, cobalt mining has resulted in

68 Art 22 African Charter.

69 AW Moomen 'Strategies for managing large-scale mining sector land use conflicts in the Global South' (2017) 51 *Resources Policy* 85, 86.

70 R Picciotto *Development cooperation and performance evaluation: The Monterrey challenge* (2002).

71 ECOWAS *Directive C/DIR3/05/09 on the Harmonisation of Guiding Principles and Policies in the Mining Sector* (2009).

72 Protocol on Mining (adopted 8 September 1997, entered into force 10 February 2000) art 2(8).

73 J Lewis, L Foli & S Bockstael 'Free, prior and informed consent and sustainable forest management in the Congo Basin: A feasibility study conducted in the Democratic Republic of Congo, Republic of Congo and Gabon regarding the operationalisation of FSC Principles 2 and 3 in the Congo Basin' (Inter-cooperation and Society for Threatened Peoples Switzerland, September 2008) 22.

widespread displacement of local populations without adequate consultation or compensation, highlighting the gap between normative commitments and lived realities.⁷⁴ These gaps are not merely the result of weak national implementation but reflect deeper structural constraints, including REC secretariats' limited enforcement mandates, political deference to sovereign control over land, and dependence on member state cooperation for compliance. As a result, RECs function primarily as norm-setting forums rather than effective guarantors of community land rights in extractive governance.

4.2 Gender dimensions

The gendered impacts of extractive industries are profound but often overlooked. The African Women's Protocol obliges states to protect women from exploitation and to guarantee their right to a healthy and sustainable environment.⁷⁵ Its relevance to the extractive sector is direct: Women are disproportionately affected by artisanal mining, environmental degradation and the informalisation of labour.⁷⁶

In the DRC, for instance, women working in artisanal cobalt mines face hazardous conditions, sexual violence and economic

74 Amnesty International 'Democratic Republic of the Congo: Industrial mining of cobalt and copper for rechargeable batteries is leading to grievous human rights abuses' 12 September 2023, <https://www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-batteries-leading-to-human-rights-abuses> (accessed 24 September 2025).

75 Arts 18(2) & 19(c) African Women's Protocol (n 29).

76 D Makaza & P Chimuzinga 'Barriers to women's full participation in artisanal and small-scale mining sector' Zimbabwe Environmental Law Association, November 2020 4.

marginalisation.⁷⁷ While men typically occupy the more lucrative positions in mining operations, women are relegated to peripheral roles such as washing ores, which exposes them to toxic substances without protective equipment. These conditions perpetuate cycles of poverty and gender inequality, undermining both article 18(3) of the African Charter (protection of women's rights) and the African Women's Protocol's guarantees.⁷⁸ At the REC level, gender mainstreaming remains underdeveloped in mining instruments. While SADC treaties integrate gender equality in broad terms,⁷⁹ few regional mining policies explicitly address women's roles in extractives. There is thus a missed opportunity for RECs to embed gender-responsive obligations, such as quotas in community consultations or gender audits in mining projects, into regional frameworks. The persistence of gender-neutral extractive governance is similarly structural: REC mining instruments prioritise investment facilitation and state revenue objectives, while gender obligations remain peripheral, non-justiciable and institutionally under-resourced. Without dedicated mandates, monitoring indicators and enforcement mechanisms, RECs lack the capacity to translate gender equality commitments into operational safeguards within the extractive sector.

77 BK Sovacool 'When subterranean slavery supports sustainability transitions? Power, patriarchy, and child labour in artisanal Congolese cobalt mining' (2021) 8 *The Extractive Industries and Society* 271, 290.

78 G Ofori and others "Mining women" and livelihoods: Examining the dominant and emerging issues in the ASM gendered economic space' (2024) 45 *Economic and Industrial Democracy* 1213-1214.

79 Treaty of the Southern African Development Community (adopted 17 August 1992, entered into force 30 September 1993) art 6(2); SADC Protocol on Gender and Development (adopted 17 August 2008, entered into force 22 February 2013).

4.3 Environmental justice

Environmental justice is enshrined in article 24 of the African Charter, which recognises the right of all peoples to a ‘general satisfactory environment favourable to their development’.⁸⁰ Complementing this, the Revised African Convention on the Conservation of Nature and Natural Resources (2003) obliges states to integrate environmental considerations into the exploitation of natural resources, to prevent transboundary harm, and to guarantee public participation in decision making.⁸¹ RECs supplement these obligations with regional environmental provisions. The SADC Treaty requires member states to adopt measures for natural resource conservation,⁸² while the EAC Treaty similarly enshrines environmental protection as a foundational principle.⁸³ The EAC Protocol on Environment and Natural Resources Management (2006)⁸⁴ and the SADC Protocol on Environmental Management (2014)⁸⁵ provide more detailed obligations for environmental and social impact assessments, and public consultation.

80 Art 24 African Charter.

81 Revised African Convention on the Conservation of Nature and Natural Resources (adopted 11 July 2003, entered into force 23 July 2016) arts 4, 16(3) & 22(1)-(3).

82 Treaty of the Southern African Development Community (adopted 17 August 1992, entered into force 30 September 1993) arts 5(1)(g) & 21(3).

83 Treaty for the Establishment of the East African Community (adopted 30 November 1999, entered into force 7 July 2000) 2144 UNTS 255 arts 5(3)(c), 111, 112 & 114(1).

84 Protocol on Environment and Natural Resources Management of the East African Community (adopted 3 April 2006, entered into force 2006) arts 16-17.

85 Protocol on Environmental Management for Sustainable Development (adopted 18 August 2014) arts 4(2)(b) & 5(2)(f).

A useful comparative lens is the EU's Aarhus Convention (1998), which institutionalises three pillars of environmental democracy: access to information, public participation and access to justice.⁸⁶ While African RECs have yet to institutionalise these principles to the same depth, the Aarhus model underscores the potential for regional frameworks to embed environmental justice in extractive governance. Case studies again reveal the gaps. In Zambia's Copperbelt, large-scale copper mining has caused widespread pollution, leading to land degradation and adverse health impacts.⁸⁷ Communities displaced by mining projects have often lacked effective remedies, reflecting both weak domestic enforcement and the absence of REC-level oversight.⁸⁸ In Tanzania, rare earth mining projects have generated contestation over community consent and environmental impact,⁸⁹ illustrating the potential role of the EAC in harmonising FPIC and ESIA standards.

4.4 Dispute resolution and accountability mechanisms

The weakness of domestic courts in addressing community and environmental harms has heightened the importance of regional adjudicatory bodies. The ECOWAS Court of Justice has adjudicated socio-economic rights cases, including those involving extractive industries, while the EACJ has been used to challenge land and environmental decisions. The SADC Tribunal, once a promising forum for community claims against state expropriation, was

86 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447, arts 4, 6 & 9.

87 Mwaanga & others (n 59).

88 As above.

89 Volunteers Spark Others (n 59).

disbanded in 2012 after politically sensitive rulings, underscoring the fragility of regional adjudication when it collides with sovereignty.⁹⁰ The legacy of the Tribunal highlights the central challenge: Regional courts can provide accountability, but only if shielded from political interference.

Strengthening the REC adjudicatory capacity thus is vital for embedding corporate accountability. Regional courts could serve as platforms for communities to challenge environmental and human rights abuses linked to multinational extractives companies, provided that jurisdictional mandates are broadened and access rules liberalised. Without this, Africa risks remaining locked in a governance model where corporations and financiers operate transnationally, while rights protections remain confined to weak domestic institutions.

4.5 Responsible business conduct and transition minerals at the REC level

At present, responsible business conduct remains weakly institutionalised at the REC level. While continental frameworks such as the AMV articulate expectations around corporate accountability, most RECs have not translated these norms into binding regional mining or investment instruments, relying instead on aspirational references to sustainability and participation.⁹¹ No

90 Zarma (n 47) 112.

91 Africa Minerals Development Centre ‘The role of Africa’s critical minerals in a just energy transition: In conversation with the Just Transition and Responsible Business Conduct in Africa Consortium’ 2 June 2025, <https://www.africangreenminerals.com/news/featured-news/2025/the-role-of-africas-critical-minerals-in-a-just-energy-transition> (accessed 15 December 2025).

REC has adopted a comprehensive responsible business conduct framework with monitoring or enforcement mechanisms applicable to extractive industries. This absence of operational frameworks foregrounds the recommendations that follow, which address how RECs could move from normative aspiration to enforceable regional practice.

5 Policy recommendations

The analysis of continental and regional frameworks highlights the fact that Africa's mineral governance architecture is normatively rich but institutionally fragile. To reposition RECs as guardians of the just transition rather than passive gatekeepers, the following policy priorities are critical:

5.1 Strengthening REC mandates

RECs should be empowered to monitor and enforce compliance with member states' mining regimes. This requires mandating REC secretariats to develop annual compliance reports on licensing, environmental and social impact assessments, and community consultations, with peer-review mechanisms modelled on the African Peer Review Mechanism (APRM). This would address persistent implementation gaps and reduce regulatory arbitrage among member states.

5.2 Embedding human rights due diligence

Continental and REC mining treaties should incorporate binding human rights due diligence obligations, ensuring that companies disclose risks related to human rights, labour and the environment. This could be operationalised through REC-level directives requiring

alignment with OECD and AU standards, backed by sanctions for non-compliance. This would translate normative commitments into enforceable corporate responsibilities.

5.3 Institutionalising community participation

Community consultation requirements vary widely across member states, enabling a race to the bottom in protections and undermining the substantive participation of affected communities. Meaningful consultation and engagement, including FPIC for indigenous peoples, should be codified in REC protocols as a non-negotiable prerequisite for mining concessions. This would harmonise community consultation and participation across member states, preventing a ‘race to the bottom’ in which companies exploit weak national regimes.

5.4 Regional adjudication and accountability

Affected communities face limited access to effective remedies due to weak, suspended or narrowly mandated regional courts with restricted jurisdiction over extractive disputes. Strengthening adjudication is essential. The ECCJ should be explicitly mandated to hear community and environmental claims against states, while the EACJ should expand jurisdiction over extractive disputes. Reviving a SADC Tribunal model could restore a critical accountability forum.

5.5 Integrating mineral governance with AfCFTA

Mineral governance frameworks remain siloed from regional trade and industrialisation regimes, constraining beneficiation, regional value-chain development and collective bargaining power. RECs should align their mining protocols with the AfCFTA Protocol on

Investment, ensuring coherence between trade, industrialisation and resource governance. This would facilitate regional beneficiation, reduce external dependency and strengthen Africa's collective bargaining power in negotiations with the EU, US and China.

5.6 Finance accountability

Financial institutions that enable extractive projects are largely excluded from accountability frameworks, despite their decisive role in shaping project design, risk allocation and outcomes. Banks and financiers must not remain outside the accountability chain. REC frameworks should require financial institutions, African development finance institutions, commercial banks and foreign lenders to adopt human rights due diligence standards when funding extractive projects. This would close a major accountability gap and ensure that the financial sector contributes to rights-based mineral governance.

Taken together, these recommendations underscore that regional institutions are the decisive hinge of Africa's just transition. By strengthening REC mandates, embedding human rights, institutionalising community voice and integrating with continental trade frameworks, Africa can shift from regulatory dependency to a polycentric governance model that embeds distributive justice and environmental stewardship into the future of mineral-led development.

6 Conclusion

Africa's transition minerals represent both a historic opportunity and a profound governance challenge. At present, RECs function largely as *gatekeepers* mediating the competing interests of states and

investors but lacking the authority, resources and political backing to enforce accountability. Their mining protocols and directives articulate ambitious norms on transparency, participation and sustainability, yet weak compliance mechanisms, jurisdictional asymmetries and political resistance limit their impact. For Africa to secure a just transition, RECs must evolve into *guardians of justice*. This requires embedding human rights protections, community participation and environmental safeguards into the very fabric of regional mineral governance. Instruments such as FPIC, gender-responsive policies and environmental accountability must become binding obligations rather than aspirational principles. Equally, regional courts must be empowered to adjudicate extractive disputes, ensuring remedies for affected communities and creating deterrents against corporate malpractice.

The way forward lies in aligning continental frameworks with regional implementation. The AU's AMV and AGMS provide visionary blueprints for linking resource governance to industrialisation and climate imperatives. However, their effectiveness depends on REC protocols that translate these continental norms into enforceable regional rules. By integrating mineral governance into the AfCFTA's trade and investment frameworks, Africa can move beyond fragmented national codes toward a coherent regime that maximises value addition, strengthens bargaining power and embeds distributive justice. The choice, therefore, is stark: Either perpetuate extractive dependency under external regulatory regimes, or harness RECs as the institutional hinge of a genuinely just transition. If reimagined as regional accountability hubs, RECs can ensure that Africa's mineral wealth not only powers the world's decarbonisation, but also secures equity, dignity and sustainable development for African peoples.

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