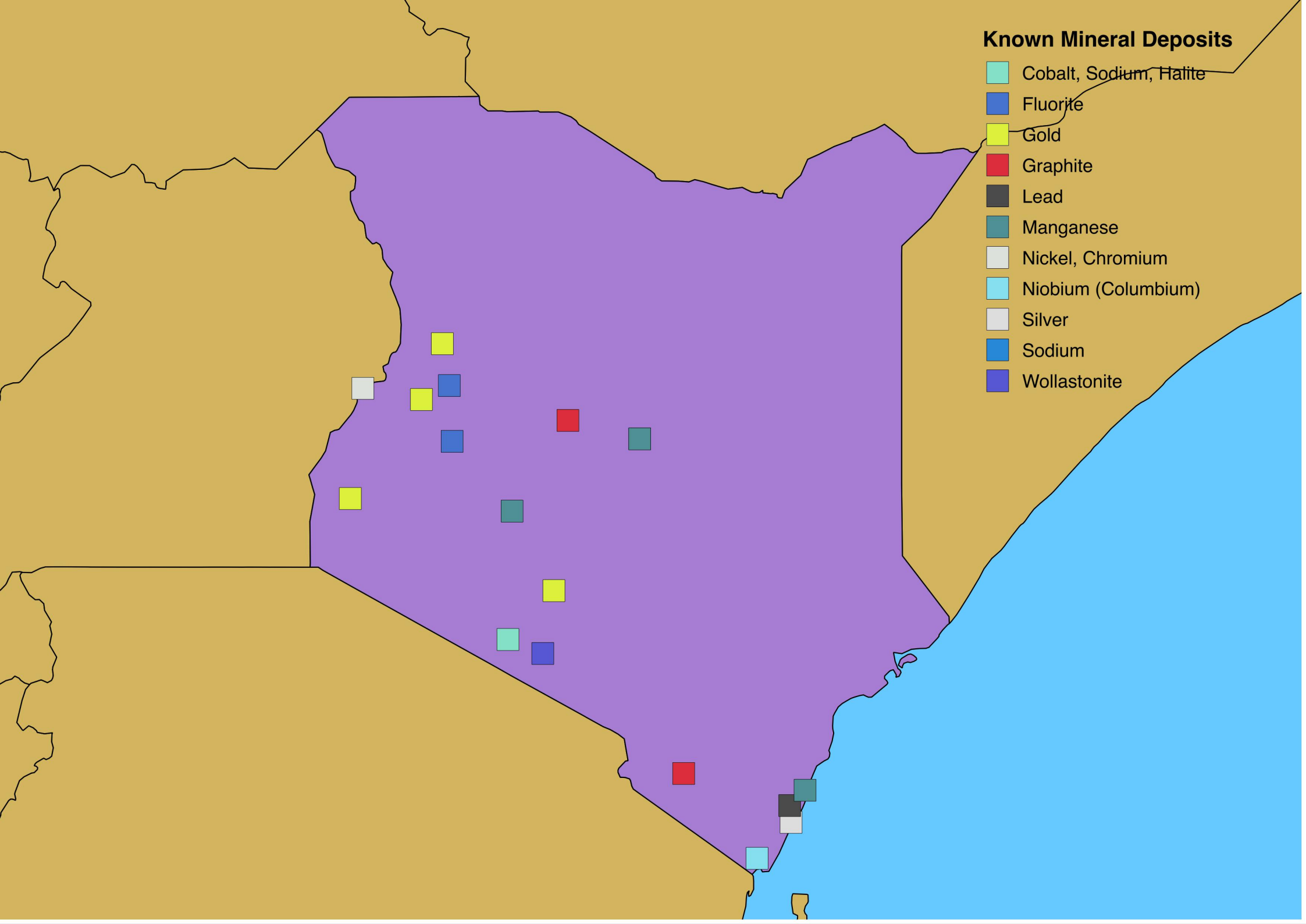
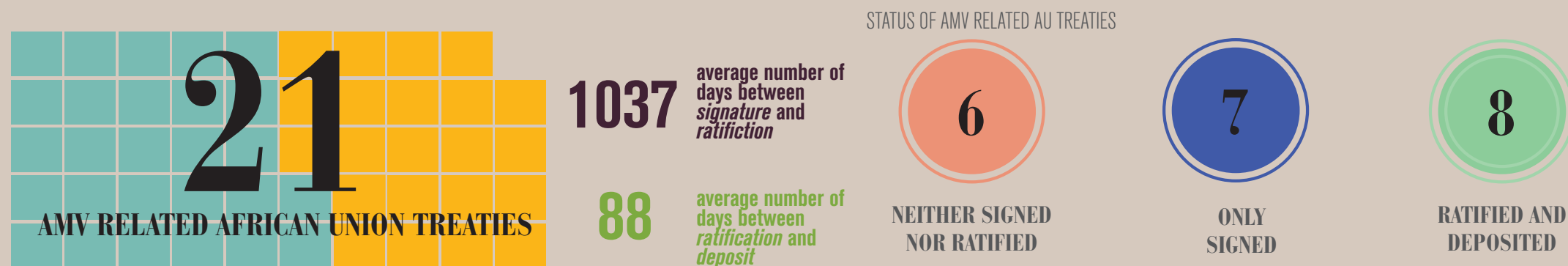
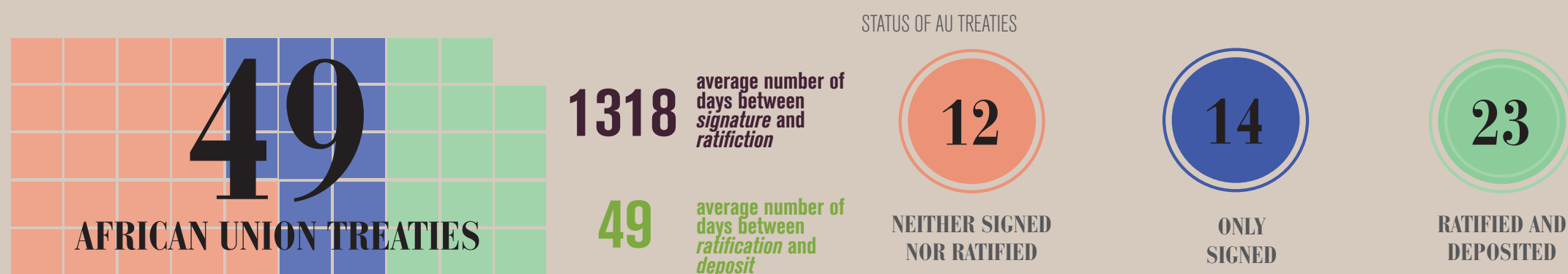


### Known Mineral Deposits

- Cobalt, Sodium, Halite
- Fluorite
- Gold
- Graphite
- Lead
- Manganese
- Nickel, Chromium
- Niobium (Columbium)
- Silver
- Sodium
- Wollastonite



Of the 49 African Union treaties, 21 are related to at least one pillar of the AMV. Of those related to the AMV, 19 (73%) are related to either the mineral governance or environmental and social issues pillar of the AMV, 2 to research and development and one each to ASM and building human and institutional capacities. Of the 21, Kenya has ratified and deposited 8 treaties and is not a signatory to six (see table below). On average, it has taken the country nearly three years between signing and depositing AU treaties related to the AMV.



AMV PILLARS	# AU TREATIES LINKED TO AMV PILLAR	NEITHER SIGNED NOR RATIFIED	ONLY SIGNED	RATIFIED AND DEPOSITED
BUILDING HUMAN AND INSTITUTIONAL CAPACITIES	III	1	1	0
ARTISANAL AND SMALL SCALE MINING	IV	1	1	0
MINERAL SECTOR GOVERNANCE	V	10	3	4
RESEARCH AND DEVELOPMENT	VI	3	1	1
ENVIRONMENT AND SOCIAL ISSUES	VII	9	0	4
LINKAGES AND DIVERSIFICATION	VIII	3	2	0



Source: African Union OAU/AU Treaties, Conventions, Protocols & Charters: <http://www.au.int/en/treaties>  
 The following three legal instruments do not require signatures and are counted as signed in the analysis; Phyto-sanitary Convention for Africa; Cultural Charter for Africa; Additional Protocol to the OAU General Convention on Privileges and Immunities. The following legal instrument does not require signature or ratification and has come into effect upon its adoption by the Assembly on 4 February 2009. The instrument is counted as signed and ratified in the analysis; Statute of the African Union Commission on International Law (AUCIL). Time between signature and ratification are calculated for instruments that were signed before being ratified. Instruments that were ratified without needing to be signed for whatever reason are not included in the calculations

# OVERARCHING POLICY AND LEGAL ENVIRONMENT

## CONSTITUTION OF 2010

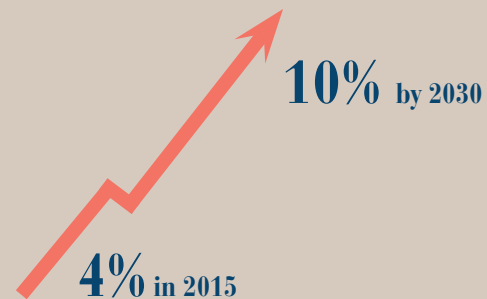
THE OVERARCHING LAW THAT GOVERNS NATURAL RESOURCES IN THE COUNTRY.

THE CONSTITUTION MANDATES THE STATE WITH THE RESPONSIBILITY TO:

**Ensure sustainable exploitation, utilization, management conservation of the environment and natural resources**

**Ensure the equitable sharing of the accruing benefits and guarantee equitable benefit for all people from the use of natural resources**

## VISION 2030

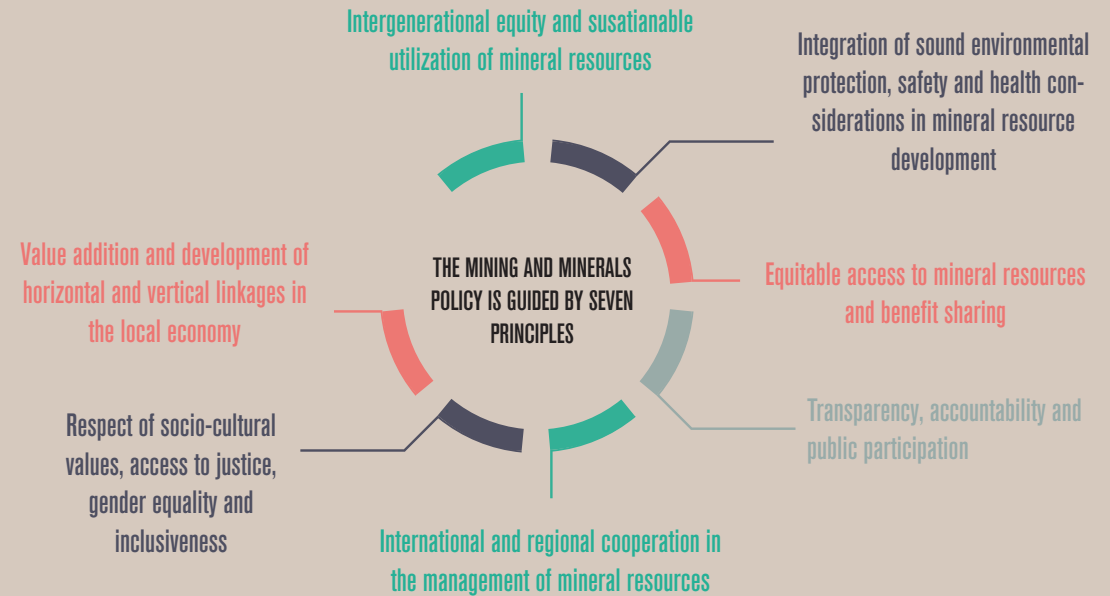


VISION 2030 ASPIRES FOR THE MINING SECTOR'S CONTRIBUTION TO GDP TO INCREASE

## MAIN OBJECTIVES OF VISION 2030

- 1 Provide a legal framework that conforms to current industry needs, trends and international best practices
- 2 Provide a strategy for transparent and accountable licensing procedures including access to land
- 3 Provide a framework for a well-structured mining fiscal regime
- 4 Enhance the acquisition, processing and dissemination of geological and mineral data
- 5 Provide a mineral value-addition strategy
- 6 Provide a sectoral resource mobilization and capacity building framework
- 7 Provide a framework for harmonizing mining and environmental legislations
- 8 Provide a framework for gender mainstreaming and eradication of child labour in the mining industry
- 9 Provide a framework for mainstreaming activities of ASM
- 10 Provide a framework for local participation in investment ventures
- 11 Provide a framework for equitable sharing of mineral benefits

## MINING AND MINERALS POLICY 2014



## MINING ACT 2016

The Act dovetails with AMV principles. It has 12 policy strategies revolving around



# INSTITUTIONAL SETTING



## MINISTRY OF MINES

THE MINISTRY IS RESPONSIBLE FOR THE IMPLEMENTATION OF ARTICLE 69 OF THE CONSTITUTION OF KENYA (2010). THE ARTICLE ENSHRINES THE RESPONSIBILITY FOR ENSURING THE SUSTAINABLE EXPLOITATION, UTILIZATION, MANAGEMENT AND CONSERVATION OF THE ENVIRONMENT AND NATURAL RESOURCES AND EQUITABLE SHARING OF THE ACCRUING BENEFITS TO THE STATE

## MINISTRY KEY ACHIEVEMENTS

- PUBLICATION OF A MINING HANDBOOK FOR INVESTORS
- ACQUISITION OF DATA THROUGH A COUNTRYWIDE AEROMAGNETIC GEOPHYSICAL SURVEY PROJECT

- FORMATION OF A MINING CERTIFICATION LABORATORY AND GEO-DATA BANK. NATIONAL GEO-DATA BANK WILL HOUSE THE NATIONAL GEOLOGICAL DATA
- THE MINISTRY HAS IMPLEMENTED AN ONLINE MINING CADASTRE PORTAL

## KEY INSTITUTIONS



**Ministry of Environment, Water and Natural Resources**  
Mandate is to develop policy and provide direction in the sustainable use of natural resources, water and environment to secure livelihoods of citizens

**Kenya Investment Authority**  
Mandate to promote and facilitate investment in the country and its policies have an an impact on the investment environment in the extractives industry

**NEMA**  
Implements environmental management and conducts all audit and monitoring activities.

**The Environmental Management & Coordination Act**  
Coordinates various sectoral laws dealing with the environment

**Kenya Revenue Authority**  
Mandate to assess and collect taxes. It remains a stakeholder in understanding and interpreting taxation law and its application in the extractives sector

**The Water Act 2002**  
Provides for the sustainable management of water resources

**National Treasury**  
Mandate to formulate finance and economic policy as well as other functions related to its role as custodian of national assets and financial resources. Its policies have an impact on the investment environment of the extractives

**Public Finance Management Act**  
Governs the principles of public finance in Kenya

## KEY INSTITUTIONS CONT.

### Ministry of Lands, Housing & Urban Dev.

Responsible for efficient administration and sustainable management of land resource in the country. Licensing process requires certifications from the Ministry on documentation

### National Land Commission

Responsible for administering transactions related to public land & those involving exploitation of natural resources. It provides approvals of consents for public land use and resolves any other land matters

### County Governments

Charged with the development of counties and administration of activities in local jurisdictions. Their consent is required before any prospecting or mining activity commences

### Committee on Policy and Legal Framework for Geology, Mining and Minerals

Tasked with leading the implementation of policy and legal frameworks relating to the extractives sector

### Judiciary

Tasked with handling any disputes that may emanate from the extractive sector. The role is limited to where agreements expressly limit dispute resolution to arbitration

### Auditor General

Tasked with auditing and reporting accounts of national and county governments funds established and accounts of legislation that may require auditing

### The Land Planning Act

Governs the principles of public finance in Kenya

### Controller of Budget

Tasked with overseeing the implementation of the budgets of the national and county governments by authorising withdrawals from public funds

### Legislature

Plays an oversight role in the management of natural resources. The National Assembly ratifies transactions involving the grant of a right or concession for exploitation

### Attorney General

All laws and regulations developed for the sector have to pass the AGs office. Agreements on natural resources also go through the AGs office before they are ratified by the National Assembly

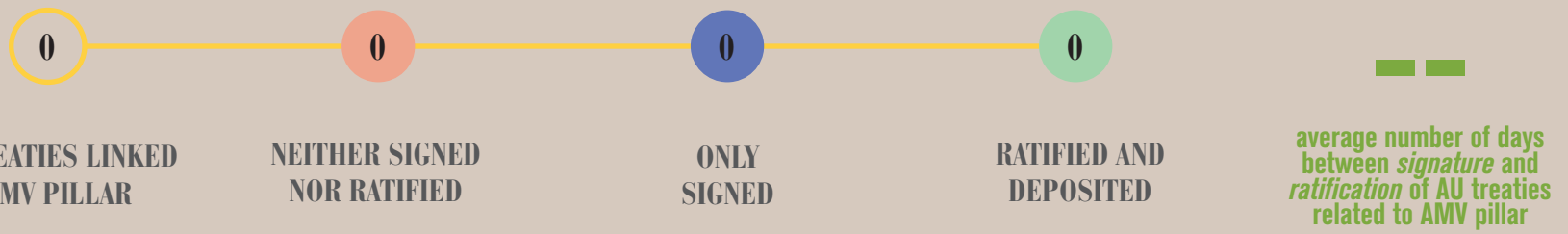
### Public Health Act

Secures and maintains public health. Some of its provisions relevant to the extractive industry include prohibition of destructive activities such as oil spillage, dust and air pollution or any other condition deemed injurious or dangerous to human health



# Mining Revenues and Mineral Rents Management

Programme cluster goal: To create a mining sector that generates adequate income and rents to eradicate poverty and finance African growth and development



## SUMMARY OF GAP ANALYSIS

The policy and legal framework relating to Kenya’s fiscal management of its mineral resources are guided by the mechanisms established under the Constitution of 2010 as well as the Public Finance Management Act (PFMA). This necessitates any analysis of the extractives fiscal regime to pay cognizance to the larger overall fiscal management regime that exists in the country. Kenya enacted its PFMA in 2012 and it lays the principles of public finance management placing emphasis on openness, accountability and public participation. In July 2016 the IMP published a fiscal transparency evaluation report for Kenya. Assessing the Kenyan fiscal management system against 3 principles (fiscal reporting, fiscal forecasting and budgeting and fiscal risks practices) and across 36 principles, the report rated 13 of the 26 principles as either “good” or “advanced” and 16 as “basic”. Particularly, the production and dissemination of annual financial statistics was rated as advanced. However the report did express concerns some of which were that no government balance sheet is reported, concerns around the credibility of forward spending estimates and the fact that around three quarters of the government’s contingent liabilities which total an estimated 12% of the GDP are unreported. The report makes the necessary recommendations and reforms the country must implement. However, of importance to this study is the fact that Kenya’s mineral fiscal regime can’t be separated from the country’s overall fiscal management regime. In fact, it is in all likelihood, bound to reflect it.

The AMV Action Plan identifies two broad expected outcomes of this pillar:

**Enhanced share of mineral revenue accruing to the host country:** The 2016 Mining Act does so by, amongst other things, requiring that a mineral agreement expressly includes the terms and conditions relating to the payment of royalties and taxes. It also requires that any mineral interests be registered only upon proof of compliance with relevant tax provisions. This includes the fact that Section 53 requires mineral rights holders to provide the CS with annual financial statements within a specific time. It further establishes a national mining corporation to be the investment arm of the national government. Government also has a 10% free carrying share in operations. Although the Act is silent on the precise and exact amount or percentage to be paid by the holder of a mineral right. It establishes mandates the CS with determine, through a regulation published in the Gazette, the royalties to be paid on the various classes of minerals.

Certain stakeholders expressed concern with the fact that royalties had not been determined but government’s response is the fact that they have contracted an international firm to conduct a study to determine new royalty rates and that in the meanwhile the old rates will prevail. “We want to get it right so that people don’t get excuses to smuggle minerals. We want something that is (also) attractive and competitive to investors”. Understandably though, the concerns arise from the fact that stakeholders expressed concern that the Act does not, for example, state the principles or factors that will guide the determination of the royalties payable on the various classes of minerals. The fear is hence that the resultant rates may be unacceptable to the public at large, especially since mining companies have apparently already expressed concern with the new regime.

**Improved management and use of mineral revenue:** The Act provides for the division of mineral revenues to ensure that each sphere of government is responsible for their own portion. In this regard, it calls for the division of financial resources in the ratios of 70%, 20% and 10% for the National Government, County Government and the local communities respectively. This was the single most progressive aspect of the new Act that was identified and re-emphasised by all stakeholders interviewed as well as analytical pieces consulted.

A Sovereign Wealth Bill establishing an extractives based natural resources Sovereign Wealth Fund is also currently undergoing the legislative authorization process. Its aim is to enhance intergenerational equity (Article 201 of Constitution). The idea of establishing a SWF so early in the life cycle has clearly proved contentious. Some stakeholders were of the opinion that it was too early and Kenya’s development needs are great and the SWF will see funds locked in savings when they could be spent on bulk infrastructure and social services for example. Most were of the view that the SWF had to be established now with all the other agencies. “Is the national mining corporation not going to be making money and where will this money be going?” questioned one stakeholder. For purposes of this analysis, the immediate need to immediately start work on the establishment of an SWF was viewed as the good practice because of the following two reasons:

1. A SWF cannot be seen as necessarily and always solely a savings fund. Botswana is a good example of a country that managed to ring-fence mineral revenues and share them between a SWF and public infrastructure and human capital development; and
2. The AMV is unambiguous on the issue and as a study benchmarking against the AMV, this was not diverted from.

However, no stakeholder managed to give a convincing reason as to why the SWF has to be solely extractives based. In a country in which the extractives is the sector in its infancy, wouldn’t adopting a more pragmatic approach that compels the more “mature” sectors of the economy to contribute to the SWF make more sense? To this end, the report was concerned with the pace at which the country seems to be “diversifying itself into a Dutch disease” by focusing on the extractives sector as the sole sector to anchor a SWF.

Additionally, concerns were expressed that the SWF Bill creates a parallel structure outside of the PFMA which is supposed to be the supreme law in public finance management. The PFMA establishes clear requirements for public finance management and several stakeholders expressed concern that the SWF Bill for example ignores the PFMA requirement for the preparation of a medium term fiscal strategy.

## SWOT ANALYSIS

### STRENGTHS

- New regime is clear about the percentages as regards benefits sharing amongst the different tiers of government and also provides local communities with larger share.
- The Act is clear on issues such as pre-emptive rights, mineral agreements, mineral rights, and matters revenue sharing among others.
- Fairly sound fiscal management regime that already exists

### WEAKNESSES

- Discordance of the SWF Bill with the PFMA is a major weakness if it is implemented as it is
- Outstanding recommendations as regards strengthen the national fiscal management system’s transparency as articulated by the Fiscal Transparency Evaluation report.

### OPPORTUNITIES

- The current process of determining royalties provides an opportunity to entrench openness and public participation.
- An opportunity to build up on an existing public finance management system that is founded on openness and accountability

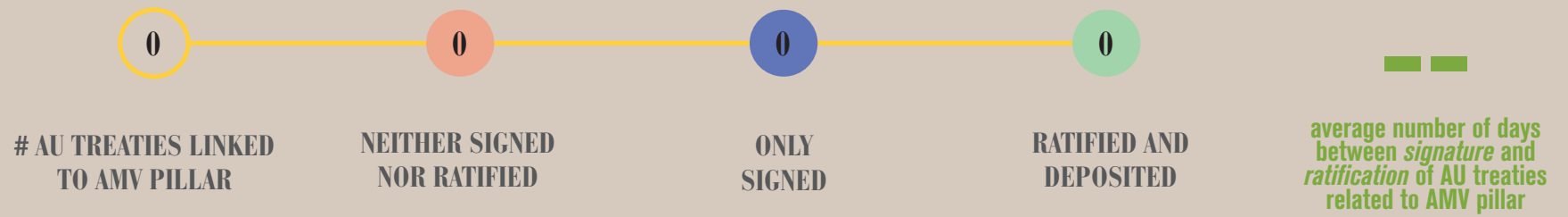
### THREATS

- Natural resource poor counties may find themselves poor raising inequality in the country
- SWF structure ignores PFMA structures and processes



# Geological and Mining Information Systems

Programme cluster goal: To develop a comprehensive knowledge of Africa's mineral endowment



## SUMMARY OF GAP ANALYSIS

Emphasizing the need for a thorough knowledge of the mineral resource base as a fundamental starting point for mineral development interventions, the AMV Action Plan has the “improved geological and mineral information systems to underpin investment in exploration and mine development” as an expected outcome. The importance of a comprehensive mineral endowment database also lies in the fact that it improves the government’s decision-making and ability to negotiate contracts with foreign investors.

In this regard, it is clear that this is still work in progress in Kenya. The operationalization of an online cadaster system however can be seen as a major step as this also will provide mineral information. The Act mandates the Director of Geological Survey responsible to the Cabinet Secretary for operation of the Directorate of Geological Survey; providing geoscience expertise and data to the government; undertaking geophysical, geochemical, seismological, and hydrogeological surveys and mapping; developing a national repository of geo-science information; promoting private sector interest and investment in mineral exploration by providing geological information and services to prospective investors.

The Ministry of Mines is currently engaged with development partners on developing a geological databank to determine the subsoil assets. This geological survey will form the basis of the 20-year strategic plan for the mineral sector.

## SWOT ANALYSIS

### STRENGTHS

- There is awareness and will to strengthen geological data information.
- Establishment of Geological Survey Department

### WEAKNESSES

- Most of the country remains unexplored

### OPPORTUNITIES

- Potential of geological maps to help increase investments

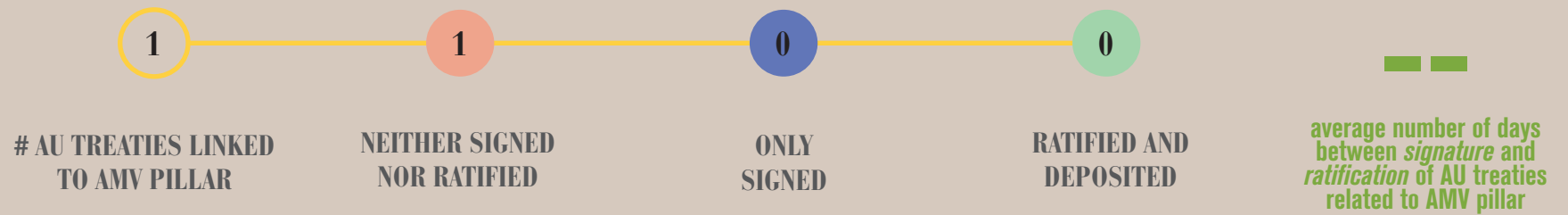
### THREATS

- “The seemingly high costs (financial and technical) of conducting a comprehensive survey



# Building Human and Institutional Capacities

Programme cluster goal: To create a mining sector that is knowledge driven and is the engine of an internationally competitive African industrial economy



## SUMMARY OF GAP ANALYSIS

The necessity of having good institutions supporting the mineral development in order to make the development sustainable cannot be overemphasized. The report's opinion is that there is a general feeling that there exists weak links between the country's vision as regards the mineral sector and its education and training system, which needs significant overhaul if it is to yield significant offsets in skills shortages. These weaknesses also extend to government departments responsible for negotiating mineral development agreements and regulating the exploitation of mineral resources.

In order to remedy this, the Act expressly compels every mineral right holder to ensure skill transfer and capacity building among Kenyans by, amongst other things, detailing how they will recruit and train Kenyans. The Act however does not leave this solely to the mineral rights holder and also compels the Cabinet Secretary to come up with policy guidelines in this regard. The Act also obliges partnerships and links with universities. Additionally, there are plans of creating a national mining institute that will be offering technical training in disciplines related to the extractive industry, enhancing sectoral capacity building, and conducting research on the extractive industry.

## SWOT ANALYSIS

### STRENGTHS

- Possibility of human resource development growing along with the extractive sector.
- Legal texts are available online.

### WEAKNESSES

- No mention of strategy on inclusion of private sector.
- No skills development strategy for the ASM sector
- No policy on education/ vocational training related to extractive industry

### OPPORTUNITIES

- National Mining Institute will provide training opportunities and increased human resource development.
- Ministry of Mines will have the role of coordinating agency.

### THREATS

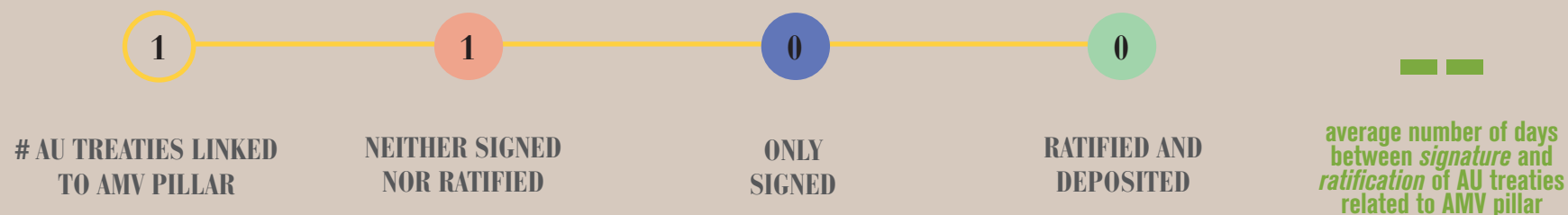
- "Local employee" needs to be defined to avoid confusion on geographical limits.
- Lack of strategic link between national aspirations on the sector and the education and vocational training system.



# IV

## ARTISANAL AND SMALL SCALE MINING (ASM)

Programme cluster goal: To create a mining sector that harnesses the potential of artisanal and small scale mining to advance integrated and sustainable rural socio-economic development



### SUMMARY OF GAP ANALYSIS

An often repeated positive of the new mineral regime is the recognition of artisanal mining, whereas the previous mining regime essentially outlawed artisanal mining. That said, the application and applicability of the legislation remains to be seen as there are significant ambiguities in the manner that artisanal miners are recognized. Section 4 of the Act defines artisanal mining as traditional and customary mining operations using traditional or customary ways and means. Section 96 (2) governing the duration of a permit, re-enforces the categorization of artisanal miners into their own category, and states that artisanal miners can apply to graduate from artisanal to small mining.

However, neither section 32 that spells out the categories of mineral rights nor section 123 that defines the categories of mineral rights relating to small scale operations, recognizes artisanal mining. This mismatch has led to confusion as to its practical implications. Reflecting this, some stakeholders told us that the Act does not recognize artisanal miners but has put them in the same category as small scale miners. Most were sure that the new Act recognizes artisanal miners but expressed ignorance on what the actual legislation says

### SWOT ANALYSIS

#### STRENGTHS

- Artisanal mining has been made legal.
- Current efforts at developing a long term ASM strategy will facilitate the mainstreaming of the ASM sector into the broader national development plans.
- The law requires the geographical determination and designation of ASM areas.

#### WEAKNESSES

- Current regulations seem to turn a blind eye to child labour practices and were said to not take into consideration gender issues around artisanal mining
- Limited financial, technical and business management skills training and assistance threatens to trap the sector in a “subsistence living tailspin”, with low levels of graduation from artisanal to small mining.
- Lack of the sub-sector’s integration in current development plans.

#### OPPORTUNITIES

- The recognition of artisanal mining coupled with the ministry’s current initiative of developing an ASM strategy provides a real opportunity for the country to harness the transformative potential of the ASM sector especially as regards job creation, skills development and socio-economic development.
- The implementation of artisanal miners formalisation presents an opportunity for government to increase its tax base
- Establishment of an artisanal mining committee to advise the representative of the Director of Mines in the granting, renewal or revocation of artisanal mining permits.

#### THREATS

- The fact that mineral deposits do not respect political and administrative boundaries can create administrative and security complications and also incubate inter-community conflict if not well managed.
- Online mining cadaster can prove a challenge to artisanal miners with low literacy levels
- Ambiguities regarding the recognition and classification of artisanal miners in the Act.



# MINERAL SECTOR GOVERNANCE

Programme cluster goal: To create a sustainable and well governed mining sector that is inclusive and appreciated by all stakeholders including surrounding communities



**678**  
 average number of days between signature and ratification of AU treaties related to AMV pillar

## SUMMARY OF GAP ANALYSIS

Kenya's mineral governance regime is undergoing an overhaul. It is hence new and still evolving. This means that any analysis will have to limit itself to what has been achieved so far and a "reasonably objective" forecast of how the implementation phase will evolve. Overall, the study found awareness of the AMV and its issues to be very high amongst all stakeholders in Kenya. Whilst the AMV might not have consciously been the guiding vision to the framing of the new regime; it was clear that the AMV principles are accepted as a guiding principles dovetailing with the country's principles around mineral governance. Consequently there is greater "awareness and reflection" by all stakeholders of the extent to which the national mineral governance regime neatly dovetails with the AMV and how any misalignment can be corrected.

All the stakeholders consulted expressed general satisfaction with the new mineral governance regime and the Act as well; especially as regards issues around the environment, technology transfer, local equity, the recognition of ASM, parliament's strengthened role and public participation. Clear apprehension however was expressed as regards government's ability and commitment during the implementation phase. It must however be said that this apprehension was due to past experience with the way the government managed the sector. However, most also highlighted their optimism due to the consultative and largely transparent nature that the current process has been handled. The establishment of an online mining cadastral was constantly and particularly noted by all stakeholders as proof of government's commitment to transparency and public participation.

## SWOT ANALYSIS

### STRENGTHS

- The new mineral governance regime has generally been embraced by all the sections consulted during this study. The 2016 Mining act contains:
- Strengthened transparency, parliamentary oversight and public access to information (eg online cadastre system).
  - Improved public participation requirements in policy and decision making and monitoring and evaluation of mining projects.
  - Emphasises multi-stakeholder engagements in policy and decision making.

### WEAKNESSES

- There was a recurring opinion that the new mineral governance regime still gave significant discretionary powers to the executive in general and the Cabinet Secretary in particular.
- Seemingly very low link/cooperation with security and health and emergency clusters to put in a place a risk/disaster management strategy especially given that mining activities are in remote areas where, even if security is not an immediate concern, natural disasters and other public health risks need management
- The pending community land bill greatly water's down the credibility of the mineral governance regime as lots of minerals are in communally owned land with no formal legal frameworks as regards ownership and hence who to negotiate with.
- Seemingly limited capacity building programs for CSOs and local communities.

### OPPORTUNITIES

- Move from dualist to monist state hastens, simplifies and automates, the domestication of international conventions
- Regulations to operationalise the law yet to be published and there was uniform "apprehensive optimism" that the consultative decision making process that is taking root in the country will further strengthen the regulation implementation process.
- New institutions can provide a comprehensive approach to developing the mineral sector

### THREATS

- Whilst the constitution guarantees human rights and access to information, sectoral laws regarding human rights in extractives are arguably weak and further weakened by the absence of legislation guaranteeing public access to information.
- The number of Bills still to be enacted that will support good mineral sector governance (such as the SWF Bill, Access to information Bill
- Regulations to operationalise the law yet to be published and there was uniform "apprehensive optimism" as to the extent that government will adhere to the spirit of the law largely due to the "strong" discretionary power given to the Cabinet Secretary
- Security concerns due to terrorist activities in certain parts of the country
- There was a consistently expressed concern regarding the heavy structures of the new bodies created by the Act. This must also be seen within the greater context of the country's current decentralisation process that has seen the creation of more structures that threaten to "burden" the national fiscus long before the mining sector itself matures and starts generating returns.

# VII

## ENVIRONMENT AND SOCIAL ISSUES

Programme cluster goal: To create a mining sector that is environmentally friendly, socially responsible and appreciated by all stakeholders and surrounding communities



**979**  
average number of days between signature and ratification of AU treaties related to AMV pillar

### SUMMARY OF GAP ANALYSIS

The law was observed by almost all stakeholders to have a very strong social responsibility inclination. This is reflected by its insistence on programs aimed at transferring technology and skills to the community and Kenyans at large (Sections 46, 47, 49 and 50).

The Acts opinions as regards environmental issues were generally viewed as progressive. Especially Section 176 (1) which makes it clear that ownership of mineral rights do not exempt the owner from complying environmental protection laws and states that ancillary laws will prevail (such as Water Act). Additionally, mineral license granting will be conditional on completing an environmental impact assessment, social heritage assessment and the approval of an environmental management plan. The Act also requires the depositing of an environmental protection bond which will only be released upon the successful completion of all environmental and rehabilitation obligations upon shut down. There are however concerns around inter-ministerial coordination as environmental issues are largely the mandate of the environment ministry.

The Mining Act entrenches community participation in the decision making process be it on policy or mining operations, for example, it specifically requires that communities, owners and occupiers of land as well as other governing bodies to participate in and consent to the granting of a mineral license. Nonetheless, stakeholders expressed concern at the ambiguous definition of “community” in the Act. Whilst the Act defines community as either a group of people living around exploration and mining operations area; or a group of people who may be displaced from land intended for exploration and mining operations; it does not define the terms ‘around’ or ‘group’. A major weakness of the act is that it is silent on gender issues.

### SWOT ANALYSIS

#### STRENGTHS

- Completing environmental and social impact assessments are now prerequisites for acquiring mining licenses.
- An approved environmental management plan is also a pre-requisite to acquiring a mining license.
- The law requires the geographical determination and designation of ASM areas.
- License holders are obliged to offer adequate compensation for damages, obstructions, and other inconveniences, to owners and/or occupiers of the land.

#### WEAKNESSES

- The Act is not clear who approves the environmental management plan.
- Unclear hierarchy between the Land Act and the Mining Act
- Ambiguous definition of the term “community” as well as other terms related to the word.
- The Act is rather silent on gender and human rights issues. In fact the terms “gender” and “human rights” do not appear in the Act at all.

#### OPPORTUNITIES

- New requirement of large-scale enterprises to form a development agreement with local communities describing value addition for the community.
- Community participation in the decision making process enhanced eg, communities need to give consent to mining operations etc.
- The Act has a section that outlines dispute resolution (Section 156)

#### THREATS

- Unclear definition of social heritage.
- There are concerns around inter-ministerial coordination as well as the usurping of certain functions away from the environment ministry. For example, Section 180(1) prohibits the Cabinet Secretary from granting a license to any applicant that has not submitted site mitigation and rehabilitation or mine-closure plans for approval. Some stakeholders argued that this was misplaced and amounted to usurping some of the Environment department’s core mandate.
- No clear interventions to enhance community understanding of the mining life cycle and its implications. This can undermine the ability to manage community expectations.

# VI

## RESEARCH AND DEVELOPMENT

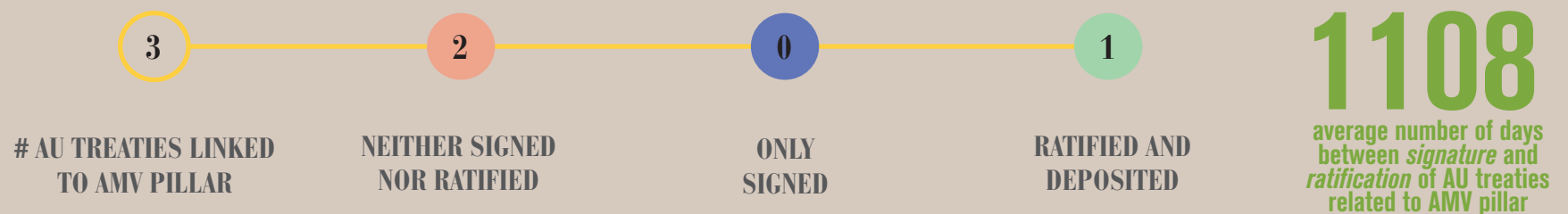
Programme cluster goal: To create a knowledge driven mining sector that is a key component of a diversified, vibrant and globally competitive industrialising African economy



# VIII

## LINKAGES AND DIVERSIFICATION

Programme cluster goal: To create a mining sector that catalyses and contributes to broad-based growth and development through upstream, downstream, sidestream and infrastructure linkages



### SUMMARY OF GAP ANALYSIS

Most stakeholders pointed out that in addition to its “fairly strong” social responsibility provisions, the Mining Act is also particular about the need for fostering technological transfer and ensuring that the mining sector does not develop into an enclave economy. The Act therefore has provisions as regards the employment and training of Kenyans, preference in employment, government participation in mining licenses, local equity participation and preference for local products. In the case of the employment of expatriates for example, the Act has mandated the Cabinet Secretary with setting sunset terms as regards how long they can be employed and how they will be replaced by Kenyans. There was general agreement that the major test of these requirements will be the resultant regulations that will be enacted with concerns high that there will be a lot of “watering down” of the spirit of the Act when the regulations are enacted. The Act is also cognizant of the need to promote research and development and requires, for example, that expatriate staff partner and collaborate with “universities and research institutions to train Kenyans”. There are also several plans to establish technical colleges and universities.

The government also sees infrastructure “as a facilitator that needs focus” and is therefore implementing a number of bulk infrastructure projects in the energy, ICT and transport and logistics. In this regard, it’s particularly worth noting the extent to which the Kenya Nepad secretariat displayed extensive knowledge and awareness of the various projects that facilitate linkages with the extractives sector and particularly how these related with the various Nepad and AU continental infrastructure initiatives. Although government officials generally showed an understanding of the importance of linkages and diversification, the country currently doesn’t have a clear strategy in this regard. This however is understandable given the raft of reforms that have been happening in the country.

### SWOT ANALYSIS

#### STRENGTHS

- Domestic value addition and local sourcing of goods and hiring of local employees requirements
- Sunset clause on the use of expatriates

#### WEAKNESSES

- There is almost no evidence showing that cognisance of gender and development issues related to the extractives and its linkages with the rest of the economy.

#### OPPORTUNITIES

- New mineral fields and/or projects will create infrastructure opportunities
- On-going Infrastructure development projects that can entrench linkages between the mineral sector and the rest of the economy.

#### THREATS

- Slow development and enactment of value addition policies and strategies and/or legislation supporting them
- Infrastructure development plans that are not consciously linked to