

An Appraisal of Legal and Regulatory Frameworks for Guaranteeing Mine-Host Communities' Right to Food in the ICGLR Sub-Region: Part I

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Abstract

The ICGLR sub-region is naturally endowed with plenty of resources such as waters, forests and minerals. Such resources present a great potential to contribute towards local communities' (mine-host communities) well-being when properly harnessed. Minerals for example which are finite by nature calls for robust legal and institutional framework if at all Mine-host communities (MHCs) are to benefit from them. Inversely however, mining is shown to plunge MHCs into poverty vicious cycle through steering civil unrest, military *coup detat* and massive displacement that triggers food insecurity concerns. Minerals instead of contributing towards their socio-economic advancement are instead contributing to human rights violation, in particular the right to food. This work is a product of desk review of primary documents such as; international conventions, protocols, declarations, case laws and sporadic reference to state laws. As such, the study confined itself to the ICGLR framework where protocols and declarations relevant to mineral resources, land and good governance are reviewed. Also, the study randomly picks and refers to domestic laws of respective ICGLR member states in framing up arguments. Review of primary documents is complimented by a qualitative review and analysis of secondary documents such as; journal articles, books, newspaper articles, internet sources to name but a few. The review and analysis presented in themes in this paper finds that weak legal framework in the ICGLR sub-region is contributory to gross violation of MHCs right to food. The study recommends for reforms of the ICGLR legal framework with the view to maximize the guarantee of MHCs' right to food.

Keywords: legal framework, ICGLR, mining, mine-host communities, right to food

1. Introduction

African countries are generally blessed with variety of resources like minerals. Mineral resources, when discovered in any locality they create legitimate expectation of advancement in peoples' well-being (SADC, 2008), (UN Commission on Sustainable Development, 2010). Such an expectation is founded on the reality that, when properly regulated mining tends to have higher potentials to contribute towards socio-economic empowerment of locals. However, when improperly regulated mining is shown to grossly affect a variety of human rights. According to Ploeg & Vanclay, 2017 among most violated rights are; property rights, right to adequate food to name but few. Mining is not only linked with the increased human rights violations but also they are responsible for steering political and or civil unrest in areas where they are mined, subjecting communities hosting mining activities (MHCS) into hardship instead (Billon, 2006), (Philippe, 2008).

As such, inadequate legal and regulatory frameworks in the mineral sector, resonates to above noted mineral gross impacts. The study relies on reviewing of both primary and secondary sources namely; treaties, protocols, statutes, cases and journal and newspapers articles, books, and internet sources, respectively. Themes are prepared and organised based on critical explanatory qualitative analysis where principles are analysed and conclusion is drawn. In particular, this study focuses on the right to food due to the fact that, one may hardly survive without eating. The study further adopts the Human Rights Based Approach (HRBA) to development, an approach requiring observance of human rights in all stages of human development activities. It is shown that, HRBA is vital in achieving good natural resources governance and sustainable development (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), (ICGLR, 2006b). The study also, focuses

on legal and regulatory frameworks of the International Conference of Great Lakes Region (ICGLR) sub-region for two major reasons namely, her geographical location and endowment of variety of mineral resources accompanied with challenges on their regulation as elaborated in para 2 below. However, this paper (part I) presents a critical discussion of the ICGLR legal framework and how it may form the base to guarantee MHCs right to food, while part II (a separate paper from this) is dedicated on the discussion on regulatory framework.

2. Back Ground Information

Generally, food insecurity although being a global concern seems to be acute among ICGLR member states. It is shown for example that more than 25 million people in Kenya faces acute levels of food insecurity (Owino, 2022). Other named countries are inclusive, Ethiopia, Zimbabwe, Zambia, Angola, Uganda and South Sudan (World Vision, 2020), (Owino, 2022), (FAO, 2022). It is projected that unless serious efforts are undertaken the number of population to be threatened by acute food shortage will raise from 29 to 35 million (FAO, 2022). Persistence droughts and lack of expected seasonal rain fall due to climate change seem the major cause of food shortage (FAO, 2022). Mining is said to exacerbate the problem of climate change through clearing forests and or tempering with underground waters (Bradley, 2020). Impacts on climate change coupled with other factors such as the impacts of COVID-19 and the global food insecurity due to war between Russia and Ukraine when combined grossly affects local community's right to adequate food.

Geographically, the ICGLR sub-region represents states which are naturally blessed with plenty of natural and environmental resources such as; minerals, forests, lakes and rivers as the name suggests. Such resources are vital for the wellbeing of its peoples. Forests, rivers and great lakes are not only source of food but also play a big role in climate regulations. Climatic issues may hardly be ignored when the right to food comes to play. Also, the ICGLR sub-region is blessed with plenty of mineral resources. To exemplify this, diamonds has been mined and traded globally in this region for a long time. However, the ICGLR sub-region is reportedly suffer from legal and practical challenges which holds back her potential to converting her resources into a meaningful socio-economic empowerment of locals. Among factors behind this paradox are; weak legal framework to regulate mineral resources extraction, political volatility and civil unrests.

With respect to weak legal framework for example, two issues may be described here. Firstly, not all ICGLR member states expressly provide for recognition and protection of the right to food. When the right to food is not guaranteed under the ICGLR member states laws, it means that such a right may hardly be enforced through courts when it is violated or wherever there are potential threats to violate the same. Secondly, owing to linkages between mining activities and human rights violation in the local communities in the vicinity of mines, there are global initiatives relevant to disconnect the two. Such initiatives are namely, Kimberly Processes Certification Scheme (KPCs), (Interlaken Declaration on Kimberly Process Certification Scheme for Rough Diamond, 2002) and Extractive Industry Transparency Initiative (EITI), (EITI, 2019). However, as it is shown in para 4.8 below, there seems to lack harmonisation of such initiatives among the ICGLR member states.

With respect to political instability and existence of civil unrest evidenced by, military *coup d'etat* and proliferation of insurgents and belligerents, the ICGLR sub-region seems to be grossly impacted. Minerals such as; diamond and gold in some of ICGLR member states are reportedly to end up financing insurgency and civil unrests where they are mined (Clean Diamond Trade Act, 2003). Such a governance gap, in some countries such as DR Congo traces back to pre-colonial era however, it gained pace during colonial and post-colonial era. While during colonial era, developed states were competing for colonies in Africa, America and Australia, local resistance whatever form may depict such a trend. However, the period after independence, legitimate governments in some states such as Angola, DR Congo are reportedly to have been weak such that, some of rebel groups controlled mining sites and benefited its revenue therefrom. Traded minerals and revenue therefrom therefore, become a tool to finance their mission against legitimate elected governments. Consequently, instead of plenty of resources to empower locals, to be able to either buy food or engage into meaningful large-scale and modern farming they instead are subjected to endless civil war perpetuated by the rebels who control mining activities in their vicinity.

3. Essence and Origin of the ICGR

According to Hauk, 2017 the ICGLR is regarded as an African homely designed solution to the African socio-economic, political, cultural and security challenges. He further argues that its establishment was influenced by the European Conference on Security and Cooperation established in the mid-1970s'. Hauk, 2017 notes that, the ICGLR is a sub-region blessed with plenty natural resources but is affected by political instability, civil unrest and unsustainable resources extraction. In the year 2004, desirous to attain peace and guarantee sustainable development of the sub-region, through the Dar es Salaam Declaration and the Pact, the ICGLR was established composed, originally of eleven member states (Blore & Smillie, 2011), (Dar Es Salaam Declaration on Peace,

Security, Democracy and Development in the Great Lakes Region, 2004), (ICGLR, 2006a).

Notably, these two documents established key areas to be focused by the ICGLR, with that respect enacted various protocols to govern such areas since the year 2006. Among relevant protocols to this research are; (Protocol Against the Illegal Exploitation of Natural Resources, 2006), (Protocol on the Property Rights of Returning Persons, 2006), (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). With respect to good resources governance ICGLR adopted the, (Protocol on Democracy and Good Governance, 2006), (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), and (Protocol on the Specific Reconstruction and Development Zone (SRDZ), 2006).

However, since the ICGLR seems to lack relevant instrument on sustainable use of great lakes, this part of the study relies on three instruments which are signed by the ICGLR member states to guarantee sustainable utilisation of shared waters in; Lake Victoria, Lake Tanganyika and River Nile Basin (Protocol for Sustainable Development of Lake Victoria Basin, 2003), (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). As such, these instruments are not part the ICGLR framework. However, since almost all the ICGLR member states have signed either of them in different settings, consequently, they are instrumental in guaranteeing MHCs' to right to food.

In particular, to the focal areas of the ICGLR instruments, the framework is still regarded to be valid to date. It is argued for example that, despite of the fact that some of the political and civil unrest within the sub-region dates back to the colonial era, it is worth noting that some are still on to date. In particular, to DR Congo for example, there are tracks of prolonged civil unrest, undemocratic change of governments, proliferation of rebel groups and their influence in natural resources-rich areas such as; North Kivu, Ituri, Katanga, and Goma among other areas (Hauk, 2017).

The discussion in this paper shows that through the above named ICGLR instruments, there are relevant legal principles to guarantee MHCs rights to food. In particular, the right to food is defined in this study to mean ability of the MHCs to access land, and to peaceful engage into meaningful production of sufficient and un contaminated food in their farms. To arrive at this situation, review of legal principles is imperative. Among principles which are reviewed are; permanent sovereignty over natural resources (PSNR), common but varied responsibilities, no harm rule, sustainable utilisation, notification of planned measure, consultation and negotiation, stakeholders' participation and international cooperation. However, it focuses on instruments under the ICGLR frameworks.

4. Guaranteeing MHCs Right to Food under ICGLR Legal Framework

The right to food seems not expressly guaranteed under the ICGLR framework. Instead a number of legal and other commitments jointly, may be regarded to provide for such a right. For example, legally, all Internally Displaced People (IDPs) are guaranteed of the right to food as it is fundamental for their life (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). In addition, all returning people due to civil unrest, natural disaster and or large-scale development projects induced displacement are guaranteed of right to property such as land (Protocol on the Property Rights of Returning Persons, 2006). Land resource is prime, both for settlement and food production. Consequently, guaranteeing MHCs right to food, resonate to the sustained freedom to use their farm to produce food for their subsistence and even excess for them to earn income that will help them to access other rights. It also resonates to limiting government arbitrary powers to compulsorily acquire their land for mining activities which are reportedly to contribute to biodiversity loss and climate change.

The discussion in this part, focuses on minerals in particular, rough-diamonds. The term rough-diamond is used in this paper to mean and include all uncut or un processed diamonds, unlike the industrial or cut diamond. The preference to this type of mineral resources may be justified in twofold. Firstly, it is noted above that, there is global concern of rough-diamond, mining and trading linkage to human rights violation in local communities in the vicinity of mines. Owing to this nexus, there is a global move to control trading in rough-diamond with the view to sever its linkage to human rights violation. Secondly, many natural resource-rich African countries do not have relevant technology to processes all extracted resources such as diamond (Araujo, 2011). They therefore, compete trading such resources at their raw state (Araujo, 2011). Consequently, in order to legitimise their trade in rough-diamonds they are required to abide to the KPCs initiative. However, since mining activities takes place on land and relies on or affect other resources such as; land, water and plants may not be ignored (Protocol for Sustainable Development of Lake Victoria Basin, 2003). In addition, to a largest extent the discussion here draws its inference from the ICGLR protocols relevant to; control of natural resources uses, good governance and democracy.

4.1 Permanent Sovereignty over Natural Resources (PSNR)

The ICGLR framework expressly provides for the PSNR principle which is key in regulating mineral extraction activities from licensing to value addition and or trading. The PSNR principle at the ICGLR sub-regional level, seems to have adopted the human right approach to resources development (Protocol Against the Illegal Exploitation of Natural Resources, 2006). It thus recognises both the state and its peoples as holders and owners of the natural resources including minerals, land and forest. According to Jong, 2021, PSNR has to be looked as a human right, because it is a cornerstone of peoples' development. In particular, to the modern world where the principle is subjected to the communities and or peoples not only within their state but also beyond their borders, it is a principle which may guarantee global ecosystem integrity (Jong, 2021).

States as trustees of its people are required to enact laws that will regulate all stages related to mining from licensing, operation, processing, trading and closure and post-closure of the mines as it is connected to land which is vital for food production. With respect to land, the need for security of tenure and land use plan, food production will be affected. In Botswana for example, the Tribal Land Board is empowered to block state acquisition of land for mining activities (Ombella, 2022). Also, mining activities and agriculture are taking place concomitantly (Ombella, 2022). Such an approach apart from limiting states acquisition of land, even where acquired, still food production may not be impacted. This is even true with respect to rural communities, women and indigenous peoples who are regarded as prone to land dispossession when large-scale mining takes place. Consequently, states are called to secure land for indigenous peoples affected by large-scale development projects, natural calamities and or civil unrest (Protocol on the Property Rights of Returning Persons, 2006).

With respect to women, the requirement to enact laws that prohibits all forms of discrimination against women forms one among criteria to guarantee women rights over land (Protocol on the Property Rights of Returning Persons, 2006). Also women subjected to natural and or manmade calamities such as; civil war and or typhoons, should be provided with land not only for their settlement but food production. In particular, women access to land should not be limited by any practice and or customs even when held jointly by spouses or women as single parent (Protocol on the Property Rights of Returning Persons, 2006).

With respect to regulation of mining sector, ICGLR member states should also enact laws that will criminalise all illegal exploitation of natural resources (Protocol Against the Illegal Exploitation of Natural Resources, 2006). The protocol also requires, enacted laws to offer among others, deterrent penalties and witness protection as a tool to get inside information from potential illegal extraction of natural resources. According to the protocol, examples of severe penalties are inclusive say; confiscation of mineral consignment and or imprisonment.

In order to achieve this, states need to have law in place to regulate allocation of mineral resources, extraction of such resources, value addition and or trading. With respect to minerals and in particular to rough-diamond, regulation of its extraction and trading is vital to abating human rights violation where it is extracted as noted above. ICGLR require states to guarantee human rights protection in all stages of mining activities and trade of such minerals thereafter (Protocol Against the Illegal Exploitation of Natural Resources, 2006). While this resonates to the HRBA to development taken in this study, it also offers a room to examine the impacts of climate change caused by mining in human rights such as right to food.

According to Jong & Stewart, 2019, the framing of the ICGLR laws and introduction of new crime of illegal extraction of natural resources indicates the innovative approach and desire of the sub-region to finding lasting solution to their problem. They believe that, it is the best way to guarantee African countries benefits from their natural resources endowment. Such a view seems to resonate to the resources curse theory which regards robust legal and regulatory framework as a tool to reverse the curse into a blessing (Sachs, 2013). It also indicates the Africa desire and attempts to find the African homely designed solutions to the African socio-economic, political, cultural and security challenges.

In particular, to indigenous peoples, Africa's position is that both frameworks of individual and collective rights are recognized (ACHPR, 2006). Consequently, the recognition of collective rights offers a room to protect indigenous peoples. To exemplify this, the case of (*Kevin Mgwanga Gunmmme et al v Cameroon*, 2003) recognized communities in Southern Cameroon as a people. When a group of people or a community is given such a status, it means among other rights it can exercise the right to internal self-determination. Notably, Africa's position seems to deny that indigenous people exists within her borders. This position is founded on the arguments that all African communities, existed prior to colonial inversion and that all were colonized.

In the light of the above, Africa's definition of the term indigenous peoples is not definite. Africa defines this term through the use of elements such as; distinguished cultural and livelihood from the dominant group, self-determination, linkages of their life to surrounding natural and environmental resources for their continued

existence. Other elements relied by Africa are; the state of being geographically isolated from the dominant group, the use of separate social, and political organisation a fact that presupposes they are less involved in the main government and hence they are marginalized by the dominant groups (ACHPR, 2006). Arguably, Africa's option to deny and define indigenous people in this manner is founded on her efforts and desire to guarantee unity and multicultural democracies. (ACHPR, 2006).

In addition, states obligation to protect human rights in all mining planning, extraction, processing and trading brings in human rights considerations in the ICGLR instrument regulating extraction of natural resources (Protocol Against the Illegal Exploitation of Natural Resources, 2006). Consequently, states are duty bound to respect and protect indigenous peoples' rights on land inclusive others (Protocol on the Property Rights of Returning Persons, 2006). As such they have to be provided with land, or be allowed to return to their land or be granted alternative land when returning to their land is impossible (Protocol on the Property Rights of Returning Persons, 2006). However, it is reported that most of indigenous communities are marginalized by the mainstream government in a number of aspects such as; access to and or land ownership. In addition, since they are not represented in the mainstream political and economic institutions, they are always victims of socio-economic plans implemented by the main stream government (ACHPR, 2006). Limited access to and ownership of land resonates subjecting these communities into not only poverty but also hunger.

4.2 Common but Varied Responsibility (CVR)

The ICGLR sub-region seems to have not adopted a framework relevant to CVR principle. Instead, the principle seems to be reflected in some elements such as desire for reconstruction and development to guarantee human rights observance and good governance (Protocol on the Specific Reconstruction and Development Zone (SRDZ), 2006). In addition, the ICGLR has impliedly noted the infrastructure and technological gap as a founding cause of youth unemployment (Declaration of the Special Summit of the ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion', 2014). In response therefore, the declaration calls for maintenance of peace and security as a means to attract private investment.

Other efforts are inclusive establishing joint regional exploitation of resources and infrastructure available in the region. Seeking for finance from the international financial institutions to fund food related projects to name but a few (Declaration of the Special Summit of the ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion', 2014). However, all these initiatives are merely persuasive as they are provided under a declaration. Also, even the identified elements are inadequately linked to climate issues say for example carbon trading and climate mitigation and adaptation frameworks.

However, African countries most specifically from the Western and Great Lakes Region are reportedly to be prone to climate change impacts (Guardian Reporter, 2021). In East Africa in particular, it is estimated that 10.1 million people will be forced to migrate from their areas due to climate change impacts by 2050 (World Bank, 2018). Climate variation is easily noticed through typhoons and or severe droughts which does not only pose a threat to biodiversity but also contribute to increasing internally displaced people.

In particular, Sudan as a co-opted member of the ICGLR, it is reportedly there are multitude of factors limiting its ability to conserve her biodiversity (Mwiturubani, 2010). Among such factors are inclusive; budgetary constraints, poor technology to detect impacts on ecology and or biodiversity, inadequate human resources, inadequate infrastructure for communication and combating environmental crimes and little cooperation from neighbouring countries to combat cross-border environmental impacts (Mwiturubani, 2010), (Kircher, 2013).

In addition, it is reportedly, that half of the rural households in Burundi are food insecure (UNICEF, 2022). Food insecurity is manifested through; 50% of children under five years being malnourished and 52 % of children above five years suffering from stunted growth (UNICEF, 2022). In general, the projections indicate that DR Congo, Burundi, Rwanda and Uganda will suffer food shortage owing to decline of about 25% of food produce by 2030 (Ministry of Foreign Affairs of the Netherlands, 2018). The causative factor of such a concern is nothing but climate variation evidenced through prolonged rain resulting to floods and increased deforestation (UNICEF, 2022).

In order to move out of these challenges, adoption of legal frameworks that will lure private sector investment, technological transfer and capacity building, is inevitable. Notably, some African countries including; Republic of South Africa, Republic of Botswana and Republic of Kenya have adopted legal and policy measures on climate issues (Republic of Botswana, 2017). In Kenya for example, there is an established National Climate Change Council relevant to plan and mitigate climate issues at the national level among other organs (The Climate Change

Act, 2016). In South Africa, laws to tap the trade aspects of technological transfer and carbon sequestration benefits through incentivising cleaner development projects are in place (Carbon Tax Act, 2015), (Nachmany et al., n.d.). Perhaps such efforts could be a light to other ICGLR member states. Despite such an achievement, climate and investment friendly legal framework seems a challenge remain to be solved in many developing countries, inclusive those in ICGLR.

4.3 No Harm Rule

The principle prohibiting causing harm beyond the borders is common in international law. In particular, to ICGLR and mineral resources, the rule is enshrined under the Protocol Against the Illegal Exploitation of Natural Resources, 2006. The protocol adopts the African approach where it prohibits ruination of the natural resources (The African Charter on Human and Peoples' Rights, 1986). It is however, more loud when it prohibits extraction of resources that is linked with human rights violations. As such under the protocol illicit exploitation of natural resources is shown to have impacts not only human rights but also environment (Protocol Against the Illegal Exploitation of Natural Resources, 2006). As such, there is a linkage between natural resources, environment and insecurity (UNEP, 2009). Reportedly, about 40% of global disputes in the last 60 years is linked to natural resources extraction (UN, n.d.). The relation is highly noticeable through firstly, in its contribution towards stiff competition on resources which result into conflicts. Secondly, natural resources extracted may be the source of finance to fuel civil conflicts and that continued conflicts may undermine peace and security initiatives especially where there are those who benefit from the continued conflict situation (UNEP, 2009).

In order to reduce and or curb the potential harm, states are required to adopt laws which will regulate effective harnessing of natural resources, mineral inclusive (Protocol Against the Illegal Exploitation of Natural Resources, 2006). Although not expressly provided under the protocol, the ICGLR seems to require human rights impact assessment to be carried before any exploitation of the minerals. Notably, the Environmental Impact Assessment (EIA) seems not provided for as a requirement in case of extraction of minerals in the ICGLR sub-region. However, it being an international customary rule, it may be impliedly required to work hand to hand with human rights impacts assessment. Such a requirement is vital given the fact that the ICGLR region is not only endowed with mineral resources but also, forests and water which are also sources of food.

To cement the value of land and forests on the right to food, it is shown that majority of local communities in Cameroon are dependent on wild meat as source of protein (Brittain, 2021). Among factors contributing to such dependency are; the unique test of the wild meat, culture and its abundance (Brittain, 2021). Indeed, culture may hardly miss in defining what is food for particular community as they tend to differ from one to another (Ombella, 2018). It is shown that communities adjacent to reserved forests which have little or no concessionary logging and or mining agreements are the most beneficiary of wild meat (Brittain, 2021). Consequently, the value of preserving forests here may not be overemphasised.

However, the available trend of the use of water resources taking example of Lake Victoria signal that mining activities do harm the water bodies which are sources of protein to majority of people in the ICGLR. According to Kihampa & Wenaty, 2013 and Ngure et al., 2017 mining activities in the vicinity of Lake Victoria pollutes its waters and the aquatic creatures such as fish which are relevant source of protein. Consequently, anyone consuming the polluted fishes is also impacted health wise due to the deposited heavy metals from mining activities. Indeed, these trend signal harm than conservation of water resources as one of the major source of food in ICGLR sub-region.

4.4 Sustainable Use of Natural Resources

ICGLR framework seems to have no express provision on sustainable use of natural resources. Although such a principle may also be used to mean and refer reasonable and equitable utilisation of natural resources still no express provision on this aspect. Notably, the gist behind the enactment of the Protocol Against Illegal Exploitation of Natural Resources 2006, was to address unsustainable manner in which natural resources (rough diamond) was taking place within the sub-region, (ICGLR, 2006a), (ICGLR, 2017b). It was unsustainable because, neither the present generation, by then, nor the future generation could have benefited from the trend of mineral exploitation, signalling the resource curse instead of blessing.

However, despite the novel approach by the ICGLRs' efforts to guarantee sustainable use of her natural wealthy and resources, existence of insurgence and rebels' held areas in DR Congo contributes to gross deforestation. Deforestation is reportedly to take place even in World Heritage sites such as Virunga National Park (UNEP-MONUSCO-OSESG, 2015). Although mining activities may be contributing this, but the main cause of deforestation is the illegal smuggling of charcoal to neighbouring countries such as Uganda (UNEP-MONUSCO-OSESG, 2015).

Notably, the Congo Forest is a global renown environmental resources shared among many African countries. As such, forests are vital in regulation of climate a fact that need not be overemphasised. It is shown that natural wealthy and resources are vital towards attaining socio-economic recovery in case of war torn countries (UNEP, 2009). Through the revenue derived from the extraction, it guarantees sustainable wellbeing of its people and opens a room for public participation and international cooperation among states (UNEP, 2009).

Although the ICGLR binding framework seems to provide for the principles of sustainable use impliedly, the non-binding for example through declaration, seems explicit. ICGLR member states are required to enact laws and policies that will regulate rational utilisation of land and other resources (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). Since the ICGLR region is blessed with vast of environmental and natural resources, the declaration requires states to adopt laws that will assure that they are sustainably managed in order to guarantee sustainable development to her population.

In order to guarantee MHCs right to food the need to revolutionize the agricultural sector is vital. ICGLR member states are called to invest in agricultural infrastructure such as; irrigation, food processing and distribution networks (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). Agricultural infrastructures are relevant to addressing food insecurity due to heavily dependence on rain and rudimentary tools such as hand hoe. Investment in agriculture is noted as one major approach to abate youth un employment in the sub-region (Declaration of the Special Summit of the ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion', 2014). Although the ICGLR seems silent on the extent of budget to be allocated for agricultural infrastructure, the AU requires at least 10% of annual budget be allocated to agriculture (The Declaration on Agriculture and Food Security in Africa African Union (AU), Assembled in Maputo at the Second Ordinary Session of the Assembly, 10 to 12 July, 2003, 2003), (Malabo Declaration Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihood, 2014).

Also, the East African Court of Justice (EACJ) once ruled against the proposed plan by Tanzania, to construct road across Serengeti National Park (*Network for Animal Welfare (ANAW) vs Attorney General of the United Republic of Tanzania*, 2010). The base of the decision in this case was on state duty to uphold environmental preservation and guaranteeing sustainable use of the preserved resources in the park. Although the ruling is not linked to mining, the court decision to guarantee environmental conservation may not be ignored in guaranteeing food security in Africa.

4.5 Notification

The principle of notification of planned measures is also relevant and recognized to guarantee MHCs right to food in the ICGLR sub-region (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), (Protocol Against the Illegal Exploitation of Natural Resources, 2006), (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). Since mining takes place mainly on land, notification rule applies to protect the rights of land occupiers. Consequently, states and their partners such as MNCs involved in mining sector are obliged to notify land occupiers in case their land is to be used for other purposes (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). Among such information relates to; the justification for acquiring land for mining, procedures of land acquisition, procedures for resettlement and or compensation to name but a few (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). Despite of the internationally, recognised precautionary principle and the requirement of the EIA, the ICGLR seems silent. It is argued that, states adoption of environmental permits standards such as EIA is instrumental in guaranteeing sustainable utilisation and preservation of environmental resources such as forests and international water bodies [emphasis added] (A Ilyas, M I Arisaputra, et al., 2019).

Notably, unlike the international standards on notification in terms of time frame and the obligation to halt the planned measures during which notification is done, the ICGLR seems silent on this. The more ambiguous the principle is, the less the protection it offers to MHCs and their right to food. Such a silent nature of the ICGLR framework on notification, raises a concern given its potential to global environmental resources example; the great lakes and the Congo forests and their potential impacts on climate regulation.

4.6 Consultation and Negotiation

Consultation and negotiation seem to be inevitable principles wherever the use and or management of natural resources comes to play. It is shown to play dual role, firstly, seeking broader acceptance of the planned measure and or instrument. Secondly, consultation and negotiation is a relevant principle in dispute settlement among the ICGLR member states. To begin with the use of consultation and negotiation in order to achieve broader acceptance of planned measures, indigenous communities are taken as example here. In order to use land and or minerals

located in indigenous communities, on need procure their consent (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). Owing to the international protection of indigenous peoples noted above, their consultation has been amplified to, Free, Prior and Informed Consent (FPIC). The ICGLR recognises such a principle, although it is applicable only to internally displaced peoples. In particular, the protocol reads;

...member States shall obtain, as far as possible, the free and informed consent of those to be displaced prior to undertaking displacement justified by compelling and overriding public interest and development... (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006).

The essence of ICGLR recognition of such a principle is to protect the indigenous livelihood whenever their land is used for mining activities. As such, ICGLR recognises that indigenous peoples' have a symbiotic relation to the environmental resources they are found in, and hence the need to protect such environment for their survival (Protocol on the Property Rights of Returning Persons, 2006).

In particular, to pastoral communities, the ICGLR calls for restoration into their original land and or be granted another land of the similar value to support their livelihood in case of resettlement plan (Protocol on the Property Rights of Returning Persons, 2006). Regardless of the key principle of consultation and allocating indigenous people an alternative land, in Kenya, local communities were forcefully removed from the forest without any alternative land (*Ibrahim Sangor vs Minister for State Provincial Administration and Internal Security*, 2011). Although the case is not related to mining, it relevant to signal force eviction and its impacts to human rights including adequate food. It is however argued that despite of the international efforts to provide a link between natural resources and human rights including the right to food, there still lack a concrete understanding of such a relation (Emejuru, 2017). Such a weakness is noted on unclear grounds to base the linkages and incomplete human rights frameworks (Emejuru, 2017). To cement this argument, it is above noted that the human right to food, under the ICGLR framework seems to be guaranteed to some groups not everyone.

With respect to dispute settlement, the use of consultation and negotiation is vital to maintain good neighbourhood syndrome. State parties to the ICGLR and their allies such as MNCs are expected to settle their dispute amicably, through the use of consultation and negotiations (ICGLR, 2006a). Amicable settlement of dispute is vital in guaranteeing peaceful coexistence and hence allow MHCs to engage in food production activities.

4.7 Stakeholders' Participation

Stakeholders' participation as a principle under the ICGLR framework may be explained in two folds. Firstly, since illicit exploitation of natural resources grossly impacts MHCs right to food among others, MHCs are called to be part of management of natural resources in their states. In particular, to land for example, the ICGLR framework prohibits arbitrary displacement caused by large-scale development projects (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). However, when compelling reasons are justifiable, then the displaced group have a right under the protocol to be part of the decision and such a plan. Excluding MHCs from making the decision whether to mine or not has an implication of being evicted from their land. Reportedly, some communities in Tanzania were rendered land less when their farming land was allocated to large-scale mining company for mining instead (Rilefweb, 2013). Arguably, local communities in Cameroon whose land was forcefully used by mining company managed to challenge the companies' project and brought it to the halt after lodging their complaint to the WB which was financing the project (Lo, 2010). Although the Cameroon case represent mining companies in oil and gas, still their approach could be relied with any other MHCs to challenge their non-participation in the projects in their vicinity.

Secondly, participation in decision making refers to benefiting from the decision made with respect to natural resources management and or utilisation. Although there exists international, and state practices on benefit sharing from natural resources many countries still do not regulate such an area. The ICGLR sub-region for example recognises the stream of benefits between the states and MNCs only, ignoring other potential beneficiaries such as MHCs. The specific part of the protocol reads as hereunder;

The profits realized must be fairly distributed between the investors and the Member States concerned, due care being taken to ensure that there is no encroachment or impairment whatsoever, on the Member Status's sovereign right to enjoy and exercise full control over its natural resources (Protocol Against the Illegal Exploitation of Natural Resources, 2006).

MHCs' participation in revenue sharing schemes when minerals are extracted from their locality is relevant to their ability to finance food infrastructure which are shown to be fragile to global climatic variation impacts.

It is argued that, about sixty percent of all disputes in natural resources extraction begin at the inception of resource extraction (Buxton, 2022). Buxton, 2022, further argues that one among the major cause of such disputes is

founded on non-involvement of the local communities. It is reportedly that, owing to underprivileged socio-economic situations of many African countries, failure to strike a balance on resources revenue sharing among stakeholders is at the centre of many resource related disputes (UNEP, 2009). Local communities' interests and or rights including the right to food need to be the priority over the extraction of minerals. Even where mining is taking place, the right to food has to be the concern of MNCs involved in mining in all stages of mining such as; exploration, operation, processing, trading, closure and post closure programmes (Buxton, 2022).

With respect to states practices on benefit sharing, countries such as; Republic of Kenya, Republic of South Africa, Republic of Uganda and Republic of Sierra Leone MHCs are involved through equity participation, joint mining rights, and or percentages of revenue collected (Mineral and Petroleum Resources Development Act, 2002), (Mining Act, 2016), (The Mining and Mineral Act, 2022), (The Mines and Minerals Development Act, 2022). Guaranteeing sharing of revenue in mining is vital in catalysing relevant infrastructure in the agricultural sector. As such the right to food resonates to expansion of and or investment in such infrastructures.

It is reportedly that if Africa is desirous to eradicate hunger she must invest about five to ten percent of her GDP in agricultural infrastructures (Solomon et al., 2007). Notably, Africa's strategy and vision with respect to end and or eliminate hunger in the years 2025 and 2063 respectively, is based the use of technology to increase agricultural produce (African Union & Commission, 2015), (The Continental Business Network (CBN), n.d.). However, it is shown that most natural resource extraction companies for lack of finance and lenient procedures from the government, tend not to involve MHCs in the initial exploration stages (Buxton, 2022). It is even worse when the ICGLR framework seems silent on the states obligation to share revenue to sub-national levels such as MHCs.

Notably, owing to gender concerns such as biased division of labour, women involvement in decision making is also crucial (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). As such, women involvement in decision making is one of the tools for attainment not only of democracy but also good natural resources governance in the ICGLR sub-region (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). It is for example, reportedly that in Rwanda, women are advanced in land ownership than men. As such the rate of women owning land in Rwanda is 19 % while that of men is 11% and that about 48% of the land is owned jointly between men and women (UN Habitat, 2021). In Kenya, the situation seems a bit challenging where about 44% of rural women do not own land (UN Habitat, 2021). In Uganda for example, more than 80% of the rural communities are unsecured due to the fact that they do not have certificate of occupation of such lands (UN Habitat, 2021). In Burundi, it is reportedly, that about half of women do not own land, and that they are not represented in the decision making organs (UNICEF, 2022). Land is regarded as the foundation of food security among rural communities, women and indigenous peoples (UN Habitat & Global Land Tool Network, n.d.). Consequently, women inaccessibility to land resources resonates to food insecurity among MHCs in the ICGLR sub-region.

With respect to access to justice, the ICGLR recognises that when rights and or interest of MHCs are infringed, they should have a forum where they may get redress (Protocol on Democracy and Good Governance, 2006). Access to justice resonates to existence of strong and independent administrative or judicial institutions to remedy infringed rights of MHCs. Such a requirement is also provided for under the ICGLR legal framework (Protocol on the Property Rights of Returning Persons, 2006), (Protocol on the Protection and Assistance to Internally Displaced Persons, 2006). However, the ICGLR legal framework unlike the international framework, does not establish such institutions, instead, member states are called to establish such institutions in their respective framework. Such a position seems to be contrary to what was agreed under the (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004) with respect ICGLR sub-regional legal and or administrative organs. Such an approach limits possibilities of MHCs to resort to supra-national institution for remedy after exhausting locally available remedies.

4.8 International Cooperation

The establishment of the ICGLR is a clear evidence that, international cooperation as a means to effect good natural resources governance is inescapable. International cooperation is sought firstly, through internationalised KPCs (Protocol Against the Illegal Exploitation of Natural Resources, 2006). Under the protocol, it is noted that the ICGLR complies with the international framework on the call to regulate trade in rough-diamond through internationally certified scheme. KPCs was identified as fundamental in abating human rights violation linkages to all mined and internationally traded rough-diamond. All rough-diamonds mined in countries which are not partners to the KPCs could not have access to international markets.

Delinking rough-diamond from international market, dwindles the corresponding revenue to rebel's held mining territories in a number of ICGLR member states (Economic Commission for Africa, 2013). KPCs is therefore, not

just a means to delink rough-diamond contribution to civil unrest, but also offers state maximization of revenue from mining and hence increase its ability to provide for food and water infrastructure (Economic Commission for Africa, 2013). According to Ombella, 2021 adoption of KPCS by ICGLR member states amounts to guaranteeing sustainable harnessing of natural resources in this case rough-diamond. It is argued that, although the KPCS adds into compliance costs to diamond exporting and importing countries, participants' states have witnessed increase in trade in rough-diamond than when compared to non-member states (Borsky & Lieter, 2022). Increasing in the volume of trade in rough-diamonds among the participants is a sign that there is an increase in revenue in respective countries. Increase of mineral revenue to governments signals a blessing not a curse.

Secondly, international cooperation is vital in adoption of harmonised rules to regulate extraction and trading of mineral resources (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). Among aspects to be harmonised are inclusive; protection of human rights in the natural resources extraction value chain, deterrent sanctions and liabilities to both individuals and corporate persons, institutional set-up for certification of trade in rough-diamond and witness protection to name but a few (Protocol Against the Illegal Exploitation of Natural Resources, 2006).

Despite of positive impacts of the KPCS, it is reportedly that not all ICGLR members have domesticated such an initiative (KPCS, 2022). Also, it is reportedly, that the ongoing civil unrest in DR Congo has a nexus not only with how weakened political and economic frameworks within the country are, but also to existence of pockets of insurgents in neighbouring countries (UNEP-MONUSCO-OSESG, 2015). In particular, the existing insurgency in DR Congo is reportedly to be a sub-group of international criminal regime (UNEP-MONUSCO-OSESG, 2015). With respect to diamond, insurgency and or militia in DR Congo are reportedly to smuggle through neighbouring counties diamond worth more than USD 40 million per year (UNEP-MONUSCO-OSESG, 2015).

In addition, various attempts to connive the KPCS initiative is reportedly to take place within DR Congo which although it is reportedly as the second producer of diamond globally, does not benefit from it as expected (Partnership Africa Canada, 2014). Among ways used to connive the KPCS initiative are inclusive; underreporting the actual value of diamond in the shipment, distortion of internal arrangements used to certify diamonds from the Central African Republic which was banned and international organised syndicate of criminals (Partnership Africa Canada, 2014). Arguably, smuggling of diamonds from DR Congo is reportedly to take place through porous borders of neighbouring countries such as; Tanzania Uganda and Kenya (Partnership Africa Canada, 2014). Such trends pose challenges on not only the proper functioning of the ICGLR but also the global KPCS.

In particular, to transparency in mineral extraction, value addition and trading the ICGLR recognises the value of adoption of legal and policy frameworks that will guarantee good governance. Transparency appear in various aspects such as; the political will to curb corruption, addressing climate change impacts, and commitment to end poverty amidst plenty of natural resources (Protocol Against the Illegal Exploitation of Natural Resources, 2006), (Protocol on Democracy and Good Governance, 2006). Notably, transparency in resources extraction offer stakeholders ability to hold accountable both MNCs and state on aspects such as; revenue generated from resource extraction, environmental conservation and socio-economic empowerment (Okuthe-Oyugi et al., 2016), (ICGLR, 2017a).

In particular, to EITI, the ICGLR sub-region adopted the Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region., 2010 which categorically recommended all member states to implement the EITI. Although ICGLR states seem to adopt other initiatives specifically targeting some minerals such as; gold, tin, tantalum and tungsten (3T), and rough-diamond, the EITI targets all minerals and oil and gas (Economic Commission for Africa, 2013). The ICGLR sub-region understands that EITI contributes towards; increasing of government revenue from extractive sector, avoidance of and reduction of corrupt practices among state officials and private firms investing in extractive sector (Okuthe-Oyugi et al., 2016). Increase in good governance and government revenue is instrumental in addressing the ICGLR challenges such as; unemployment among youth, infrastructure deficit and inadequate human resources relevant for governance and or converting the abundant natural resources towards attaining the SDGs such as ending hunger (ICGLR, 2017a).

Despite of the fact that most of the ICGLR members were declared to have complied with the EITI requirements by 2014, some of other states were suspended for some reasons (Okuthe-Oyugi et al., 2016). Also, not all ICGLR member states are members to the EITI.¹ In order to harmonise ICGLR resources governance laws, all ICGLR member states who have not complied with the EITI are called to do so (Declaration of the Special Summit of the

¹ See para 2 above

ICGLR Heads of State and Government on 'the Fight against Youth Unemployment through Infrastructure Development and Investment Promotion', 2014). The current record of members to the EITI shows that, about eight states are not implementing the EITI (EITI Secretariat, 2022b), (EITI Secretariat, 2022a). In particular, the ICGLR member states which are not members to EITI are adopting other initiatives at the sub-regional level for specific minerals as noted immediately above. It is shown that, in implementing the EITI in the ICGLR sub-region it face the following challenges; that some of the member states do not have strong legal framework for effective implementation of EITI, focus in data collection from large-scale mining companies leaving small and medium companies aside, inadequate media support in dissemination of the EITI reports, limited budget to circulate EITI reports and suspension of some countries such as DR Congo (Okuthe-Oyugi et al., 2016).

In particular, to natural calamities such as; typhoons, and droughts, international cooperation resonates to food aid and finances related to; its production, value addition, its distribution and its storage infrastructures (Protocol on the Property Rights of Returning Persons, 2006). As such, international cooperation is regarded as a pillar worth to address climate variation effects in Africa and beyond (AU, 2014). It is noted above climate variation is largely influenced by industrialized countries. African countries are therefore mere victims of such variation (AU, 2014). Consequently, international cooperation aimed at guaranteeing MHCs right to food goes beyond African borders. However, since the ICGLR does not have an instrument on climate change, benefits from the global climate frameworks seems hard to be enjoyed by the sub-region.

5. Conclusion

Absence of robust legal framework within the ICGLR sub-region relevant to guarantee MHCs communities right to food is above identified as a concern. As such despite of the geographical, climatic and physical location of the sub-region both of which offer prime support to food production still MHCs in the ICGLR sub-region are reportedly to suffer from recurrent acute food shortages. It is above shown that food insecurity in the sub-region is triggered in a number of ways. Firstly, through varying climate which is exacerbated by mining activities among others. Secondly, mineral related civil unrest that threatens people from engaging into meaningful food production. Lastly, is the loss of agricultural land through mine induced displacement. Upon recognition of this concern, the ICGLR has adopted some principles which are relevant to guarantee MHCs right to food.

However, despite of adoption of legal framework which provides for such principles, they seem to offer only partial guarantee to MHCs when the right to food comes to play. To exemplify this the right to food is only recognized to sub-groups such as those who are displaced by human and or natural disasters such as floods and or volcanic eruption. Also the ICGLR does not have a legal framework relevant to address climate variation which is reportedly to be exacerbated by mining. It is also noted that, despite of the relevancy of global initiatives in regulation of mineral sector through KPCS and EITI not all ICGLR member states are implementing them. Absence of harmonious regulation of the mineral sector limits the possibility of ICGLR member states to maximize their potential and benefits from the sector. Consequently, this paper calls for review of the ICGLR framework with the view to reform her legal principles to offer fully guarantee MHCs right to food.

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