

An Appraisal of Institutional Framework for Guaranteeing Mine-Host Communities Right to Food in the ICGLR Sub-Region: Part II

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Abstract

Absence of strong institutions worth to realize good governance in the mineral sector and protection of human rights seem a challenge that face not only natural resources-rich developing states but also sub-regional initiatives. Strong institutions are said to depict features such as; independency, relevant infrastructure, relevant expertise and command of political support from the state(s) and or other organs. The International Conference on the Great Lakes Region (ICGLR) sub-region has in place numerous regulatory organs with mandate over good governance in mineral sector and human rights preservation. Unlike other sub-regions in Africa, ICGLR is naturally endowed with plenty natural resources with regional and global value against the global threat of climate change. This paper, through qualitative review of primary and secondary documents namely; protocols, conventions, declarations, pacts, journal articles, books and internet sources examines how strong are the ICGLR institutions towards guaranteeing MHCs right to food. The study found that, despite of the established institutions at the ICGLR sub-regional level, they fall short of the international standards of robust institutions. Such institutions suffer from both legal and practical challenges namely; inadequate independency, inadequate human resources, little or no political will and feeble infrastructure. If the ICGLR sub-region intends to guarantee MHCs right to food, it may not escape eradicating the noted legal and practical challenges of established institutions.

Keywords: ICGLR, institutions, resources governance, MHCs, right to food

1. Introduction

The ICGLR understands that existence of institutional framework is relevant to attaining its objective to sustainably harness her natural resources among others (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), (Samba, 2012). Despite of the fact that, the ICGLR calls for establishing robust domestic institutions as a means to perfect her objectives, several institutions are also established to work jointly with respective member states. The impacts of strong institutions in human rights protection and realizing mineral resources governance is explained in reverse manner as; increased corrupt practices, loss of public trust, non-involvement of public and high investment in army than social-economic infrastructures such as water and food (UNEP, 2009). Indeed, it is argued that, for Africa to benefit from her mining sector, transparency in regulation and management of the sector from its initial stage to value addition and trading is vital (Johannesburg Declaration on Sustainable Development, 2002).

This paper is dedicated to identify and discuss nature and status of institutions legally established by the ICGLR framework. Through these institutions, ICGLR's efforts to guarantee MHCs right to food is examined. Although the focus of the paper is on institutions regulating mining on land, institutions regulating internationally shared water resources are also reviewed here. Since the sub-region seems to have no dedicated instruments on internationally shared waters, this study is based on three instruments relevant to sustainable management of shared waters in the ICGLR namely; Tanganyika, Victoria and Nile. The choice of shared water resources is capable of being explained in three ways. To begin with, mining activities are shown to grossly affect water sources when improperly managed (J. S. Ombella, 2024). As such it is reportedly, ten percent of mining activities around the globe are taking place in areas which ought to have been exclusively for conservation instead (UN, 2010). Consequently, the great lakes region water resources, forests and biodiversity compel member states to establish institutions to protect such resources against gross impacts from human development activities. Next, the aquatic life provides one among major sources of food such as fishes (SADC, 2016). Lastly, shared water resources are

source of clean water which is vital in food cultivation and preparation.

Structurally this paper is organised into six sections including this introduction. Section two provides for background information on the need for robust institutions to guarantee MHCs right to food. It also provides briefly the food insecurity concerns in the ICGLR sub-region. Section three provides for nature and scope of regulatory framework relevant to guarantee MHCs right to food in the sub-region. Section four, identifies and critically discuss existing institutions, while section five identify and presents challenges of such institutions. Section six provides for conclusion and recommendations.

2. Background Information

The area of natural resources; access, exploration, extraction and trading and its link to violation of human rights in the ICGLR sub-region seems a volatile topic to discuss. In the previous discussion, the focus shows that inadequate legal framework on access and use of mineral resources exacerbates MHCs inaccessibility to food. (J. S. Ombella, 2024). This discussion however, illuminates into the nature of established institutions relevant to guarantee mine-host communities' rights such as access to food within the ICGLR sub-region. Civil unrest which witness mineral resources in a number of ICGLR member states being looted is not only responsible towards undermining states ability to finance agrarian reforms but also inhibits locals from engaging into meaningful agricultural activities.

In particular, civil unrest has an impact of triggering internally displaced peoples a move that exacerbate the food security concern which is common in many African countries. Equally, where mineral resources are forcefully extracted by rebel groups, habitual habitants of locality in most conflict prone regions are displaced. Displaced populations' rights are not only subjected into violation but also their life are threatened from vice such as; harsh weather, inaccessibility to drinking water; exposure to wild animals and various diseases vectors to name but a few. In the ICGLR sub-regions, resources related conflicts are common in regions such as; Goma, Ituri, Kivu, all in DRC Congo, Cabo Delgado in Mozambique, South Sudan among other regions (Samst, 2002), (UN Security Council, 2008), (International Peace Information Service, 2018), (Meek & Nene, 2021), (African Centre for Strategic Studies, 2022). It is argued that, one among factors behind continued civil conflicts among ICGLR member states is weak institutions that are incapable of guaranteeing good mineral resources governance and protection of human rights. (Cascao, 2017), (Stamyard et al., 2022).

To curb the aftermath of civil unrest and illicit extraction of mineral resources, the need for strong institutions may not be overemphasised. Such institutions are prime to hold the government, private sector and rebels into account wherever human rights will be violated. Strong and equipped forces are relevant to curb all pockets of insecurity in the sub-regions. Courts of law are vital to guarantee accountability of those who violate human rights and illicit extraction of mineral resources. Moreover, institutions relevant to mediate conflicting parties, guarantee democratic election and rule of law in ICGLRR member states may not be underestimated. Notably, for such institutions to be able to sustainably regulate the harvest minerals in the ICGLR sub-region that will contribute to realisation of human rights including the right to food, they need not only be independent, well equipped with relevant experts, budget, working infrastructure and relevant political will from the governments as here under critically discussed.

3. Nature and Scope of Robust Institutions in Guaranteeing MHCs Right to Food

Existence of institutional framework is vital in attainment of the key objectives set forth under the ICGLR legal framework (Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region., 2010). Such institutions are relevant in management of; allocation, operation, extraction, processing, value addition and trading of natural resources such as minerals (UNECA, 2009). Efficiency in management is vital if at all locals are to benefit from say for example, minerals extracted in their locality (UNECA, 2009). This section presents a critical account of the key elements of strong institutions that may be relied to attain the ICGLR objectives. Africa believes that, protection and enforcement of basic human rights is dependent to the existence of strong institutions both at the regional, sub-regional and domestic levels (Declaration on Democracy, Political, Economic and Corporate Governance, 2003). The discussion covers elements such as; institutional independency, relevant infrastructure, budgetary capacity, expertise and supporting political will.

3.1 Institutional Independence

One among the elements of robust institutions relates to independency. According to the ICGLR framework, states are expected to establish independent institutions relevant to hold into account states (Protocol on Democracy and Good Governance, 2006). Among examples of institutions which are called to be independent are inclusive courts

of law and anti-corruption institutions. ICGLR calls for all member states to establish institutions to hold into account those who will be involved into illegal extraction of mineral resources (Protocol Against the Illegal Exploitation of Natural Resources, 2006). As such good governance in the natural resources sector is relevant to guaranteeing transparency, gender equality and environmental protections (Protocol on Democracy and Good Governance, 2006). The call for independent institutions is also noted at the AU regional framework as a tool to avoid such institutions from being abused by either the state and or private stakeholders through corruption for example (Declaration on Democracy, Political, Economic and Corporate Governance, 2003). Firstly, transparency is vital in guaranteeing maximisation of state revenue from the natural resources extraction and trading which is vital in government ability to invest in food production schemes. Secondly, environmental protection guarantees ecosystem protection whereas diversity in the ecosystem is vital not only on environmental preservation but food production.

Notably, however most African states demonstrate weak institutions which are incapable of holding states and private sector into account. Reportedly, the area of supervision and monitoring of resources extraction and or value addition seems wanting due to weak institutions (Asumda, 2022). In addition, corruption issues are also notable in undermining the independency of even weak established institutions. According to (Chikwanha, 2016) administrative deficiency of established institutions threatens their independency and ability to hold states and private sector such as extractive sector, into account.

3.2 Relevant Working Infrastructure

According to the AU Mining Vision, mineral sector for example has a potential to assist African states attain relevant infrastructure to support their peoples' well-being (UNECA, 2009). Such a reality is reiterated by the ICGLR which also believes that her member states are endowed with resources that may spur development through creation of relevant infrastructure in agriculture, food processing and distribution (Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region., 2010). Indeed, relevant infrastructure may hardly be discerned from the above discussed need for independent institutions. As such, institutions such as; courts and or anti-corruption need relevant working infrastructure such as justice delivery infrastructure. Also, infrastructure, may be looked from the food production, processing and distribution view point. Consequently, states ability to maximise revenue from exploited minerals resonates to her ability to financed such infrastructures. It is however, reportedly that most African states suffer from inadequate infrastructure in strategic investment such as agriculture which could have guaranteed food security (Khadiagala, 2014).

3.3 Relevant Experts

Generally, the preamble to the ICGLR Protocol on democracy and good governance calls for strong institutions to achieve the ICGLR framework objectives. Such institutions need not only be independent, but they must be properly constituted. Proper constitution here is used to mean and include guarantee to attaining relevant experts to man these institutions and that the composition of such experts is gender sensitive (Protocol on Democracy and Good Governance, 2006). Institutions such as; courts and parliament are vital in holding states and private sector into account. Consequently, its members need to have pre-requisite knowledge and skills relevant to extractive sector, if one expects them to regulate mineral sector say for example. Such pre-requisites are vital to be achieved given the notable challenges of information and expertise asymmetry that exists between states and private sector in mineral sector say for example (UNECA, 2009). It is also reportedly that, gender issues in the mineral sector are hardly considered under laws regulating mineral sector in mineral-rich developing states such as Tanzania (J. Ombella, 2021).

In addition, challenges related to relevant science and technology in the mineral sector for example are reportedly to hold back African states from benefiting from the extractive sector. Such challenges are exacerbated through the stiff competition between states and private sector over few experts who are available on areas such as; negotiation and allocation of mineral rights, litigation, value addition, monitoring and evaluation to name but a few (Chikwanha, 2016), (Asumda, 2022).

3.4 Political Will

ICGLR member states have committed themselves in addressing the nexus existing between mineral resources exploration, extraction, trading and violation of human rights through strong political will evidenced by domestication of her relevant instruments (Lusaka Declaration of the ICGLR Special Summit to Fight Illegal Exploitation of Natural Resources in the Great Lakes Region., 2010). The protocol against illegal exploitation of natural resources is a good example of an instrument which requires states to properly regulate exploitation of natural resources. It is also above noted that, ICGLR states are determined to establish strong institutions to

guarantee good governance in mineral resources, access and use within the sub-region. ICGLR member states are called to establish for example relevant forces that may be relied to guarantee among others human rights inclusive the right to food (Protocol on Democracy and Good Governance, 2006). Apart from insecurity contribution towards inability of local communities to engage in agriculture, even little available food becomes challenging on how it can be distributed to conflict prone areas.

Notably however, lack of political will seems a challenge in the ICGLR sub-region. Countries such as; Uganda and Rwanda are being alleged to exacerbate security concerns in DRC Congo by supporting M23 rebels for their economic and political gains (Tunamsifu, 2017). As such the move by Uganda and Rwanda seems contrary to their commitment to guaranteeing socio-economic well-being of all in the sub-region (ICGLR, 2006). Joint efforts to guarantee protection of communities in conflict prone regions seems to be a commitment hard to realise in the current status of ICGLR political fragmentation.

This part shows that there are key standards that are expected to be demonstrated by the institutions at the ICGLR sub-regional and national levels. As such, established institutions to guarantee human rights observance have to demonstrate; independency, proper composition, relevant infrastructure and there must be relevant political will to achieve the broad objectives of the ICGLR legal framework. Despite such requirements, it is noted above that existing institutions hardly achieve these standards owing to, budgetary constraints, inadequate experts, questionable political will and feeble infrastructure to support large-scale food production, value addition and its distribution. The discussion below examines relevant ICGLR institutions and their role towards attaining the right to food to communities neighbouring mines. In particular, the discussion focuses to institutions under the ICGLR and that it does not make reference to those established at the domestic levels of her member states.

4. ICGLR Institutional Framework

This part analyses established institutions relevant to sustainable management of natural resources at the ICGLR sub-region. Notably, not all ICGLR member states are signatories to all instruments regulating sustainable use of natural resources owing to geographical and hydrological patterns of the regulated resources such as waters. Consequently, there seems to be replication of institutions in regulation of shared water resources. Among such institutions are; the Summit, Council of Ministers (CoM), Secretariat, Regional Inter-Ministerial Committee, Lakes Basin Commissions and or authorities, Committee Against Illegal Exploitation of Natural Resources, East African Court of Justice and the Special Fund for Reconstruction and Development. In particular, this paper does not examine institutions such as; Joint Follow-up Mechanism, Expanded Joint Verification Mechanism and Joint Intelligence Fusion Centre. To justify their exclusion, these institutions are not established by existing protocols and seems to be ad hoc than permanent ones. The discussion unfolds below;

4.1 The Summit, Conference of Head of States (CoHoS) and or Council of Ministers (CoM)

Summit, and or CoHoS are organs composed of the heads of states members to the ICGLR (ICGLR, 2006), (Agreement on the Nile River Basin Cooperation Framework, 2010), (Halidu, 2021). The Summit for example is originally established under the ICGLR Pact. Although these organs requires the head of states, practically, Vice Presidents and or Prime Ministers usually constitute relevant quorum when they attend on behalf of their head of State (Hauk, 2017). Summit as it is for CoHoS is the top most organ of the ICGLR framework and Nile River Basin framework (Internal Displacement Monitoring Center & International Refugee Rights Initiatives, 2008), (Agreement on the Nile River Basin Cooperation Framework, 2010). It is chaired by one of the head of state members, a role which is rotational in nature among all heads of states (ICGLR, 2006). The Summit meets only once in every two years under ordinary circumstances. With respect to its voting modality, the Summit takes an approach of consensus. Where consensus is not possible then voting is carries out where a special majority of 8 members out of eleven is expected to pass the decision (ICGLR, 2006). Comparatively, with the United Nation framework, where some members have veto power, the Summit seems to be more democratic in her decision (UN Charter, 1945).

It is not disputed that the decision making process is instrumental in effective implementation of the principles under such frameworks. Egypt and Sudan for example are reportedly to demand being assigned veto power as a ground to ratify the River Nile framework (MCKenzie, 2012). However, the consensus approach as it is for veto, is never without critics (Aduinmay, 2023). It is argued that even one state that is not happy with the decision may delay and or block the decision from being reached (Hauk, 2017).

In particular, to the mandate and or functions of the Summit, it has mandate over all sectors and or instruments established under the ICGLR frameworks. Consequently, among other functions, it hears and holds into account states which are unable to meet the ICGLR protocol requirements (Internal Displacement Monitoring Center & International Refugee Rights Initiatives, 2008). As a top most organ it also deals with monitoring and oversee the

implementation of the key objective of the ICGLR (ICGLR, 2006). Indeed, guaranteeing sustainable harnessing of mineral resources in the ICGLR sub-region may hardly be discerned from global efforts to realise human rights within the sub-region.

Notably, it is reportedly that, the ICGLR seems to have been a success through abating civil war and proliferation of rebel groups when it addressed the M23 civil unrest in DR Congo (Declaration of Commitments by the Movement of March 23 at the Conclusion of Kampala Dialogue, 2013, p. 23). It is also reportedly to have managed to establish the certification mechanisms where minerals such as diamond may be tracked internationally among other successes (Hauk, 2017). However, concerns over, meagre budget owing to members not paying their contribution, absence of sanction to effect compliance of defaulting member state, questionable political desire of some member states and increasingly overlap of states memberships to sub-regional groups are named to hold ICGLR back from attaining its full functionality (Kanyangara, 2016) (Hauk, 2017), (Okuthe-Oyugi, 2019).

4.2 Regional Inter-Ministerial Committee (RIMC) and Council of Ministers (CoM)

The RIMC is one among organs of the ICGLR sub-region (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), (ICGLR, 2006). During the early establishment of the ICGLR framework composed of its relevant protocols, the RIMC was tasked to draft such instruments to be adopted and or approved by the Summit (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). RIMC is therefore, an instrumental organ in the current functioning legal framework under the ICGLR (Internal Displacement Monitoring Center & International Refugee Rights Initiatives, 2008). In the current operation of the ICGLR, the RIMC functions as an executive organ in the conference of parties (Summit). It is composed of ministers from respective countries and is headed by a minister in a rotation approach as the Summit (Halidu, 2021).

Notably, after the establishment of the ICGLR, the RIMC is charged among other functions to monitor the implementation of the Pact. In addition, it is mandated to formulating strategies to achieve the key objective of the Pact (ICGLR, 2006). Consequently, it is also relevant to proposing budget for the implementation of the strategies in the ICGLR (ICGLR, 2006).

Parallel with the RIMC there is established the Council of Ministers (CoM) which is regarded as the organs for sustainable management of Lake Tanganyika and River Nile Basin respectively (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). Unlike the CoM under the Lake Tanganyika framework which is regarded as the supreme organ, the CoM under the River Nile Basin is regarded as ancillary organ to oversee the sustainable management of the River Nile Basin (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). Consequently, although the nomenclature of these organs are similar, their mandate and functions are different. For example, the CoM under the Lake Tanganyika framework plays among others the following roles; policy formulation, approving of protocols to the convention, amendment of the existing protocols and overall overseeing and monitoring sustainable management of Lake Tanganyika (The Convention on the Sustainable Management of Lake Tanganyika, 2003). Such roles are however, left to the CoHoS with respect to River Nile Basin framework. Perhaps, potential of ensued water related conflicts among member states of the Nile River Basin necessitated the preference to head of states than ministers.

4.3 Secretariat

Secretariat is yet another organ of the ICGLR which is composed of technocrats on various areas relevant democracy, good natural resources governance, peace, security and human rights (ICGLR, 2006), (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). Owing to its composition, unlike the Summit, CoM and or the Inter-Ministerial Committee, it is charged with the duty to coordinate the functioning of ICGLR and the top organ in the shared water resources (ICGLR, 2006), (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). It is headed by an Executive Secretary and tasked among other functions to; implement decisions of the two top organs of the ICGLR, the Inter-Ministerial Conference/CoM and the Summit (Halidu, 2021).

Also, the secretariat is charged to promote best ways through which ICGLR may achieve its goals. Other functions are, preparation and coordination of meetings of the top ICGLR organs (The Convention on the Sustainable Management of Lake Tanganyika, 2003), (Agreement on the Nile River Basin Cooperation Framework, 2010). In addition, it is charged to prepare various strategies and or action plans and budget which it will in turn implement subject to approval by the Summit (ICGLR, 2006). Lastly, it is argued that, it is also entrusted with the duty to ensure growing visibility of the ICGLR among peoples in its member states (Internal Displacement Monitoring

Center & International Refugee Rights Initiatives, 2008).

However, a number of challenges are identified against the Secretariat as an institution of the ICGLR that limits its efficiency (Hauk, 2017). Firstly, its composition is practically of technocrats who were hired relatively on the same time. Basing on their tenure, they also end at the same time. Such a trend is argued to impacts institutional memory and continuity. Secondly, the concern of inadequate human resources also affects the ICGLR secretariat (Economic Commission for Africa, 2013), (Aduinmay, 2023). Thirdly, owing to its mandate being narrowed into technical aspects, it seems to be unable to politically coordinate the ICGLR as an institution. Lastly, is the budgetary constraints that inhibits its proper functioning and or implementation of its programmes (Hauk, 2017), (Halidu, 2021).

4.4 Committee Against Illegal Exploitation of Natural Resources (CAIENR)

The CAIENR is an organ established under the Protocol against illegal exploitation of natural resources. It is constituted by a representative from every member states of the ICGLR who are appointed in their personal capacity. Their appointment is for four years' term renewable only once. The CAIENR meets only twice in every year when called by the chair. However, it may meet several other times as sub-committees as may be established thereto. In reaching its decision, majority view binds the committee and that there is no one with veto power (Protocol Against the Illegal Exploitation of Natural Resources, 2006).

In particular, to its functions, the Committee is mandated among other functions to prevent all attempts to illegally exploit natural resources in the sub-region. Also, it is mandated to assess respective member states efforts to curb illicit exploitation of natural resources and advise them accordingly (Protocol Against the Illegal Exploitation of Natural Resources, 2006). To be able to implement its function, it is empowered to collect information on mineral resources; exploration, extraction, trading and analyse them accordingly. It is expected that through the analysis of such data, they may either; rise alarm on some practices or potential threats on pattern of natural resources exploitation, advise member states accordingly and or propose for better ways to combat illicit resources extraction (Protocol Against the Illegal Exploitation of Natural Resources, 2006). Despite of this noble duty of the CAIENR, it is shown that there is a lack of harmony on mineral resources traceability initiatives (J. S. Ombella, 2024). Such a deficiency poses difficulty in collection and analysis of data related to mineral resources extraction, value addition and trading.

4.5 Special Fund for Reconstruction and Development (SFRD)

The SFRD has its origin from the Dar es Salaam Declaration of 2004 which had the vision of finding the lasting solution of internally displaced persons among others (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004), (Protocol on the Specific Reconstruction and Development Zone (SRDZ), 2006). The major concern has been inadequate infrastructure to support food production, coupled with the civil unrest and climate change impacts. African states as it is for the ICGLR too, seem to suffer from inadequate budget which could have financed the relevant infrastructure for food production not only for the displaced groups alone but the entire population (UNGA Resolution, 2015).

In order to provide a lasting solution to the above noted concerns, ICGLR established the SFRD (ICGLR, 2006), (Protocol on the Specific Reconstruction and Development Zone (SRDZ), 2006). This fund intends to pull together efforts of the ICGLR member states to finance for relevant infrastructures for development. The Fund, derives its money from the ICGLR member states contribution which is mandatory. Also, the fund relies on the donation from the development partners (ICGLR, 2006). Although the term 'development partners' is not limited to financial institutions and or supra national organs such as; EU and AU, it is noted that, private sector, and global climate funds seems not expressly included. Such anomaly, may be founded on the fact that the ICGLR lacks a dedicated instrument on climate change.

4.6 Shared Water Basin Commissions and or Authorities

According to (International Network of Basin Organizations & Global Water Partnership, 2012) (INBO & GWP), they define trans-boundary water regulatory institutions to mean;

...permanent institutional arrangements dedicated to all or part of the management of the shared waters between at least two states...'

Their mandates are diverse but mostly, they focus on; collection, processing, assessing and sharing data on water quality and quantity. They also offer a room for consultation and negotiation among the state parties. Lastly, they are the center for making decision that binds member states on trans-boundary waters (International Network of Basin Organizations & Global Water Partnership, 2012). Trans-boundary water regulatory institutions are also vital in identifying areas of common concern such as climate change and striking a balance of interests between

riparian states (J. Ombella, 2019).

In particular, to ICGLR member states three relevant transboundary water authorities may be identified, namely; Lake Victoria Basin Commission (LVBC), Lake Tanganyika Authority (LTA) and the Nile River Basin Commission (NRBC) (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). Notably, two of these organs (LVBC and LTA) seem to have existed since 2003 prior establishment of the ICGLR framework. However, since they are signed and actually bind some of the ICGLR member states subject to their geographical and hydrological factors, they also influence the manner MHCs may rely on them to protect their right to food.

In addition, given the fact that all members of the EAC are also members of the ICGLR, it is impliedly considered in this study as applicable to ICGLR as well. Notably, not all members of the ICGLR are members of the EAC example; Eritrea, Ethiopia, Zambia Mozambique to name but a few. Also, not all members of the ICGLR are located within the vicinity of the great lakes, countries such as Central African Republic and Congo-Brazzaville seem not so linked to lakes. With respect to functions of these established authorities it is charged to carry out assessment of states' compliance with the respective establishing legal instrument (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 the concept of harmonisation of principles and legal frameworks applies here. Indeed, through harmonised frameworks the Commission will guarantee sustainable management and environmental preservation of the Lake.

Also, the Commission is charged to provide for public education on conservation of the ecology and safety of the lake. It does this through encouraging public participation in decision concerning the lake and also concerned with monitoring its safety. The Commission is also mandated to lead on key issues related to research and development concerning the lake. Based on this functions, it is taken as an organ which will set the negotiation strategy and position when negotiations about the lake will be required (Protocol for Sustainable Development of Lake Victoria Basin, 2003). Although the establishment of such authorities is named as a great milestone so far achieved by the ICGLR member states, it is never without critics (Gyamfi, 2018). It is however, reportedly for example that the LVBC seems to be much reliant on foreign donors to fund its functions (Gyamfi, 2018). Also, demographic increase and trends such as increased deforestation is argued to pose a challenge on sustainability of shared lakes example Lake Victoria (Gyamfi, 2018). It is shown that absence of integrated water resources management evidenced through weak institutions, inadequate participation of local communities and inadequate monitoring of the water resources acts as fuel to water conflicts among riparian states (Mwembesa, 2021).

In addition, the absence of a dedicated ICGLR created trans-boundary water resource organ subject the political will of the heads of states in question. It is argued that, political will expressed through joint commissions is the key to addressing the concerns arising out of trans-boundary water basin among the sharing states (ORASECOM, 2011a), (ORASECOM, 2011b). However, a number of factors are relevant to foster cooperation among states sharing water resources. Examples of such factors are; existence of common interest and or concern, common desire to foster socio-economic development, existence of clear agreement setting out the scope, substantive rules, procedural rules, dispute settlement and finally existence of a framework which guides how states may cooperate (International Network of Basin Organizations & Global Water Partnership, 2012).

In particular, existence of multiple shared water resources authorities outside the ICGLR framework offers various forums upon which MHCs may defend their right food. However, some other ICGLR member states for example; Central African Republic, Mozambique, Botswana and Angola are not members of the EAC a fact which clouds the manner in which they may enforce the three legal instruments on shared water resources.

4.7 East African Court of Justice (EACJ)

The EACJ is named as a dispute settlement organ on all issues relating to the Lake Victoria Basin (Protocol for Sustainable Development of Lake Victoria Basin, 2003). The protocol does not establish it rather it makes reference to such an organ. The EACJ is established under the Treaty establishing the East African Community 1999. The EACJ is composed of not more than fifteen judges appointed from the respective member states. Owing to its organisation, it has two levels of hierarchy, the court of first instance and Appellate Court.

In particular, the appointment of these judges is to be approved by the EAC Summit composed of the heads of States of the respective members (Treaty Establishing the African Economic Community, 1999). Once appointed, unless one retires and or removed from office, he/she will serve for a maximum of seven years (Treaty Establishing the African Economic Community, 1999). According to (Possi, 2021) international courts and or tribunals' legitimacy is mostly gauged through some criteria such as; procedural issues, manner of appointment and removal

of judges and how their decisions are implemented. Arguably, the appointment of judges through the Summit and the requirement that the potential appointees must have been judges in their appointing states seem to politicise the manner of appointing judges (Possi, 2021). With respect to removal of judges from office, in order to guarantee their independency, it will take place only on account of inability to carry out his functions due to diseases of the body or mind. Other grounds are inclusive when convicted of fraud and or other dishonest acts and or when a judge has more than one office, with the EAC and the appointing state (Treaty Establishing the African Economic Community, 1999).

With respect to jurisdiction of the court, it has jurisdiction to interpret the EAC treaty and other protocols (Treaty Establishing the African Economic Community, 1999). As noted it jurisdiction is either initial and or referral in nature. Consequently, cases filled either by the partner states, secretary general and or natural or legal persons in the respective states will be entertained by the Court (Treaty Establishing the African Economic Community, 1999). However, it is expressly provided that the EACJ does not have jurisdiction on human rights issues. The provision of Article 27 (2) of the EAC Treaty requires establishment of protocol on human rights for the court to be able to entertain human rights issues (Treaty Establishing the African Economic Community, 1999). According to (Possi, 2021), the trend of the EACJ; entertaining human rights issues regardless of the limitations of Article 27 (2) and absence of compliance track of its decisions especially against EAC member states among others undermines its legitimacy in the eyes of public.

Apart from the above limitation emanating from the EAC treaty, the ICGLR instruments such as protocols and Pacts are not regarded as instruments under the EAC. Consequently, one may hardly lodge a claim in the EACJ intending to enforce provisions of such protocols and or declarations. In other words, the EAC instruments binds all the EAC member states which are also members of the ICGLR. Also such EAC instruments are enforceable through the EACJ.

However, despite all the ICGLR instruments being influential and or binding to all the ICGLR member states which includes EAC member states, they are not enforceable under the EACJ. Worse still, the ICGLR have not established a dispute settlement mechanism and or institution such as; a tribunal and or court as it is for EACJ. As such, absence of a reliable dispute settlement institution at the regional and or sub-regional level will definitely affect the effective enforcement of the principles established and difficult to realise the set objectives of the sub-region. Indeed, this pose a question on the motto that ICGLR frameworks is a homely designed solution to the African socio-economic, legal, political and cultural challenges (J. S. Ombella, 2024).

4.8 The Levy Mwanawasa Regional Centre (LMRC)

The LMRC is an institution, initially conceptualised under the Dar es Salaam Declaration of 2004 as instrumental to address the governance issues in the sub-region (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). It was later enacted into the (Protocol on Democracy and Good Governance, 2006). Despite of its early conceptualisation, its establishment was effected in the year 2009 and came into full operation in the year 2011 (LMRC, 2018). Among the objectives of LMRC are; capacity building on the area of governance, carry out research and advise the ICGLR institutions, assisting the ICGLR meet its international laws obligation and carrying out review among ICGLR member states with respect to compliance with the ICGLR frameworks (LMRC, 2018), (Dar Es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, 2004). With respect to carrying out review among ICGLR member states, the LMRC seems to be an akin institution to the African Peer Review Mechanism (Declaration on Democracy, Political, Economic and Corporate Governance, 2003). LMRC therefore, does not have mandate to compel ICGLR member states to comply with its framework but rather to raise the areas where compliance is not achieved and recommend how compliance may be attained.

In particular, to capacity building, the LMRC is tasked to build capacity relevant to; leadership, good governance and democracy which are cornerstones upon which realisation of socio-economic development and broad-based empowerment may be attained (ICGLR, 2017). It is noted above that the ICGLR sub-region suffers from inadequate human resources capable of converting her abundant mineral resources into socio-economic, cultural and political development. Consequently, the establishment of the LMRC is vital to addressing African problems through African home-grown solutions.

Despite of its wide mandate, the LMRC suffers from financial capacity to efficiently carry out its mandate (LMRC, 2018). It is reportedly that, adequate budget would have been used to, firstly translate the ICGLR instrument and reports into Swahili language to guarantee broad dissemination of the function of the ICGLR framework. Secondly, adequate budget would have guarantee the LMRC ability to provide public awareness and publication of reports concerning the manner in which ICGLR states are complying with the ICGLR framework (LMRC, 2018).

Generally, the ICGLR sub-regional framework provides for relevant institutions that may be relied to safeguard MHCs rights to food. Such institutions are responsible among other things to monitor overall implementation of the key objective of the sub-regional framework, capacity building, recommend for improvements through compliance with the ICGLR framework. It is also shown that other organ such as the EACJ is focused on issues of dispute settlement. However, it is generally, noted above that most of the established institutions are merely administrative and lack the mandate and proper legal authority to compel ICGLR member states to comply with its principles. Although this position seems like correct to institutions established under the ICGLR framework, it is also applicable to the EACJ which is not *per se* the ICGLR institution. It is noted above that, human rights issues are excluded from the jurisdiction of the EACJ, up to and until the EAC will adopt a protocol on human rights. Lastly, despite of the ICGLR being a sub-region which is geographically, and socio-economically recognised as potential beneficiaries of the global climate variation frameworks, it seems to lack respective institution and or instrument to tape such benefits.

5. Distilled Legal and Practical Challenges

This section identifies legal and practical challenges that affect the proper functioning of the identified institutions in the ICGLR sub-region relevant for good mineral resources governance and curbing violations of human rights. It shows that, despite of the fact that there are several institutions established at the ICGLR sub-regional level, still issues of inadequate natural resources governance and violation of human rights is on the rise. Among human rights which is grossly impacted due to such weaknesses is the right to food for communities in the vicinity of mines. Among noted legal and practical challenges are;

5.1 Questionable Institutional Independence

Despite of the existence of legal requirement to have independent institutions both at the ICGLR sub-regional and states levels, the discussion above has shown the contrary. Here three challenges may be noted. Firstly, the ICGLR for example, does not have its own established dispute settlement institutions. Such an institution would have been relevant to safeguard against violation of human rights and sustainable harnessing of mineral resources which is badly needed in the sub-region. Secondly, even where inference is to be made to EACJ as a supra national institution at the ICGLR level, yet it lacks jurisdiction to deal with human rights issues within the region. In addition, even if it would have had the jurisdiction to deal with human rights, not all members of the ICGLR are members of the EAC. Countries such as; Central African Republic, Congo Brazzaville and Zambia for example are not members of the EAC but they are members of the ICGLR. Thirdly, the LMRC is shown to lack capacity to coordinate and or guarantee domestication of the ICGLR frameworks in its respective members. The Centre only carry research and advice states as it lacks mandate to compel for compliance. Such weaknesses hold back the desire of the ICGLR member state to guarantee sustainable harnessing of her mineral resources and protection of human rights. Given the increased massive displacement due to both civil unrest and resources extraction in some ICGLR member states such as; Mozambique and DR Congo, it signals inadequate safeguard of MHCs right to food.

5.2 Weak Infrastructure

The issue of relevant infrastructure such as; justice delivery, food production, storage, processing and distribution is noted above as a concern in the ICGLR sub-region. Also the discussion above has noted the institutional gap with respect to ecological governance of the Great Lakes in the ICGLR sub-region. Instead, the ICGLR for example is dependent on the EAC and the Nile Basin established institutions with respect to governance of the Great Lakes. Such dispersed institutions which lack central mandate offers no sustainable management of Great Lakes which are also sources of aquatic food such as fishes to majority of population in the ICGLR sub-region. Apart from the legal deficiency of established institutions, the ICGLR suffers practical budgetary challenges. Guaranteeing good natural resources governance, rule of law and human rights protection, training of relevant human resources may not be underestimated. However, it is above reportedly that the LMRC suffers from financial budget to fund its activities. Financial limitation is also a concern in establishing relevant infrastructure say for example for; food production, storage, processing and distribution. As such financing of strategic infrastructure seems to be dependent on foreign donors which may not offer a sustainable solution.

5.3 Inadequate Experts

Resources governance and guaranteeing human rights observance is dependent on availability of relevant experts. It is shown above for example the secretariat is responsible to advising the ICGLR top organ with respect to good governance and human rights among other areas. It is noted above that the ICGLR sub-region lacks a framework relevant to addressing the climate change impacts on peoples' rights to adequate food. Such a deficiency, signals absence of relevant experts to guarantee good mineral resources governance in the modern era of the global

concern of climate change. This is even true given the fact that, the ICGLR member states do not use a uniform mineral traceability schemes. Hence, the use of diversified schemes to trace minerals dictates experts with diversified know how as well, whom are hard to come by.

5.4 *Conflicting States Interests*

The need for strong political will relevant to good mineral resources governance and protection of human rights in the ICGLR sub-region is paramount if one intends to guarantee MHCs' right to food. It is noted above that, there seem to lack political will among the ICGLR member states to curb the increasing civil unrest. It is also shown above that, conflicting interest of the ICGLR member states fuel the unrest and hence exacerbating human rights violation. Countries such as; Rwanda, Uganda and Burundi are reportedly to benefit from the political instability in DRC Congo. Also, countries neighboring DRC Congo such as; Central African Republic and Sudan are used as sanctuary to smuggle looted mineral resources. It is also noted that, absence of priority among the ICGLR member states further undermines ability to solve the socio-economic and security concerns in the sub-region. It is argued for example, while Tanzania, Rwanda and DR Congo are focused on mineral certifications, other countries such as Uganda has been pre-occupied to solving the security concerns in the Eastern DR Congo (PEDRO, n.d.). It is also noted above that some countries that are geographically far from the lakes are also less concerned of their sustainable utilization. Such a diverse interest of ICGLR members undermines her potential to achieving her goal to provide an African local designed solution to African local challenges.

6. Conclusion

Existence of strong institutions is reportedly vital to guarantee good governance in mineral sectors in the ICGLR sub-region among other areas. Strong institutions are said to depict among other features, impartiality, relevant working infrastructure, relevant experts and abundant political will from states and its other organs. Good natural resources governance is relevant to guaranteeing effective, allocation, extraction, processing and trading of mineral resources in a manner that does not violate peoples' rights. It is show for example that communities in the vicinity of mining in the ICGLR sub-region suffer from inadequate food due to either civil unrest and or displacement from their land. Although the ICGLR has in place institutional set up including; LMRC, EACJ, SFRD, Secretariat, and shared water basins commissions, still they seem incapable of guaranteeing good natural resources governance and protection of the right to food to MHCs. Among legal and practical challenges encountered by these institutions are; questionable independency, absence of relevant experts, conflicting interests among the ICGLR member states which ruin their political commitments towards good natural resources governance and inadequate infrastructure to guarantee MHCs their right to adequate food.

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