

AFRICAN UNION



UNION AFRICAINE

الاتحاد الأفريقي

UNIÃO AFRICANA

Addis Ababa, Ethiopia P. O. Box 3243 Telephone: +251 11 551 7700 / +251 11 518 25 58/
Ext 2558

Website: [www. au.int](http://www.au.int)

DEPARTMENT OF TRADE AND INDUSTRY

**REPORT ON THE PROPOSED CONCEPT/STRUCTURE OF THE AFRICAN
MINERAL DEVELOPMENT CENTRE (AMDC).**

August 2014

A. Concept for the African Mineral Development Centre (AMDC) Institutional Arrangement

(I) Introduction and background

1. The AMDC was established as a technical implementing arm of the African Mining Vision (AMV). It's currently running as a project guided by the business plan, hosted by the UNECA, mainly financed by financing partners predominantly from Canada and Australia and implemented in partnership with three principal partners, UNECA, AfDB and UNDP under the overall leadership of AUC
2. The AUC was mandated by the Maputo Declaration and CAMRMRD recommendations to develop a report detailing proposals for the institutionalization of the AMDC and submit it to the extra-ordinary Session for the Conference of the AU Ministers Responsible for Mineral Development in one year.
3. This report was developed as a response to the recommendations of the 3rd CAMRMRD for the institutionalization and sustainability of the AMDC based on AUC Policy. It was developed in full consultation with the AUC legal counsel and it takes into consideration the principles and objectives of the OAU/AUC Treaties, Agreements and plan of actions namely the Lagos Plan of Action, the Abuja Treaty and the Constitutive Act of 2000. It also considers the recent and current developments in the global development agendas such as the Post 2015 Development Agenda, the structuring of sustainable development goals but more importantly guided by the vision for the future of Africa embedded in agenda 2063. The achievement of inclusive growth and sustainable development through social and economic transformation of Africa using its resource endowments. The realization of agenda 2063 vision will critically require that the minerals sector plays its transformative role in the socio economic transformation of Africa.

(II) Context

4. Africa is ready to redefine its destiny for the next 50m years. Having recognized what has transpired in the past 50 years and building on the achievements it made, where the African continent has been free of foreign colonialism, the next fifty years are critical for Africa's achievement of economic freedom. This period, will determine Africa's total independence as there cannot be any political independence without economic independence.
5. The consolidation of achievements of the past fifty years recognizes the 'born-in-Africa' and 'self-realization' initiatives such as the Lagos Plan of Action for the Economic Development of Africa, (1980–2000) whose main aim was to increase Africa's self-sufficiency. The Industrialization Development Decade, One (IDDA 1) -(1980 – 1990) and to some extent the second Industrialization Development Decade for Africa IDDA 2, were all reduced to being un-implementable due to destructive policies of the 1980s and 1990s including the notorious Structural Adjustment Programmes (SAP).
6. The continent's ability to feed itself has deteriorated since independence despite the application of Western development policies. Moreover, the gap between the rich and poor within the region has intensified. The challenges underpinning under-industrialisation given the abundant resources, has been mainly bad or poor policies. As the Economic Report on Africa 2013 “the deindustrialization of many African economies over the last three decades, resulting in their increasing marginalization in the global economy, was mainly the result of inadequate policies.
7. It is widely recognized that although there has been modest but stable (and in some reports called a remarkable) economic growth of 5% since 2000, this “economic performance has not generated enough economic diversification, job growth or social development to create wealth and lift millions of Africans out of poverty. A key challenge, therefore, is how Africa can pursue more effective policies to accelerate and sustain high growth and make that growth more inclusive and equitable”.

8. It is against this back ground that the Heads of State and Government in the realization of the dire need for Africa to socially and economically transform herself in the next fifty years, have put in place Agenda 2063 as **"A global strategy to optimize use of Africa's resources for the benefits of all Africans"**. Aiming to encourage discussion among all stakeholders, "Agenda 2063" is an approach to how the continent should effectively learn from the lessons of the past, build on the progress now underway and strategically exploit all possible opportunities available in the short, medium and long term, so as to ensure positive socio-economic transformation within the next 50 years.
9. It is imperative that Africa owns the process of transforming the economies through the endowments both natural and human resources. The formulation of the Africa Mining Vision (AMV) is one of the major steps that was taken by the Member States in order to transform the Minerals Sector in the African continent .

(III) Africa Mining Vision

10. The first AU Conference of African Union Ministers Responsible for Mineral Resources Development (CARMRMD), held in Addis Ababa in October 2008 adopted the African Mining Vision (AMV) and in the same month of the same year the Conference Of African Union Ministers Of Industry (CAMI) 18th Ordinary Session held, on 24 – 28th October, Durban, Republic of South Africa endorsed the Strategy for the Implementation of The Plan of Action for the Accelerated Industrial Development of Africa (AIDA).
11. At their Conference, the African Union Ministers responsible for Mineral Resource Development (CARMRMD) also adopted the Addis Ababa Declaration on the Development and Management of Africa's Mineral Resources, re-affirming their "commitment to prudent, transparent and efficient development and management of Africa's mineral resources to meet the MDGs, eradicate poverty and achieve rapid and broad-based sustainable socio-economic development".

12. The AU Heads of State and government, at Assembly held in Addis in February 2009, welcomed the AMV and requested the “AU Ministers in charge of Mineral Resources Development to develop a concrete action plan for its realization”, acting through the African Union Commission (AUC), and in partnership with the United Nations Economic Commission for Africa (UNECA), the African Development Bank (AfDB), Regional Economic Communities (RECs) and other stakeholders. They further called on the international community and Africa’s development partners to support the efforts of member states “towards enhancing the contributions of mineral resources to the achievement of the MDGs, the eradication poverty and the promotion of sustainable economic growth and development”.

13. The AU Heads of State and government further requested “member States to improve their mineral resources policies, establish appropriate institutional, legal and regulatory frameworks, and invest in human skills, research and development, and geological and geophysical data, that are critical for the efficient and effective management of mineral resources”. They also called upon “the Commission and NEPAD Secretariat, as well as regional economic communities to accelerate the establishment, across Africa, of major integrated corridors for the development and optimal exploitation of the continent’s natural resources”.

(IV) African Mineral Development Centre (AMDC)

14. The AMDC was established by the decision of the 2nd Conference of the AU Ministers Responsible for Minerals Development as an AUC Agency for the Implementation of the Africa Mining Vision. Owing to lack of self-financing, the AMDC was placed under the UNECA as a 5 year project and is currently financed through donor funding. The AMDC has so far four implementing partners, namely; AUC, UNECA, AfDB and UNDP.

15. The Business Plan: The business plan for the AMDC project was submitted to the 3rd Conference of African Union Ministers Responsible for Mineral

Resources Development (CARMRMD). This also earmarked the launch of the AMDC project.

B. The Proposed AMDC Institutional Framework

16. The proposed institutional framework of the AMDC will be guided by a number of key decisions of the Executive Council and Summit as well as key recommendations, of the 2nd and 3rd CAMRMRD towards the implementation of the AMV namely: ownership, governance and reporting mechanism and sustainability. It is also guided by the “Concept Note on Specialized Institutions and Agencies of the African Union” which is a legal document that was provided by the AUC Legal Counsel. (Annex I).

17. In line with the Maputo Declaration, and with full consultation with the AU Legal Counsel the AUC has considered the following structures for the institutionalization of the AMDC:

- a. African Union Commission Specialized Institution: This is an institution or program established under a Department of the African Union Commission to carry out specific responsibilities related to a mandate of a Department in accordance with the rules and regulations of the African Union Commission.

Under this proposal the AMDC will be established by the Policy Organ Decision (The Assembly Decision) as a Specialized Institution under the Department of Trade and Industry responsible for the Implementation of the Africa Mining Vision. It will be coordinated by the Department of Trade and Industry of the African Union Commission and it will be a subsidiary body under the structure and processes of the AUC working hand in hand with NEPAD and other Partners. The Secretariat can be hosted by an African Union member State or Implementing Partner.

- b. As an AUC Specialized Agency: This is an independent body established by Member States of the Union outside the managerial and budgetary rules and

regulations as well as control of the African Union or the Commission to carry out a specific or specialized but related function of the mandate of the African Union. A specialized agency of the African Union may not be necessarily created by the African Union but it has to be incorporated or affiliated or linked by way of Assembly decision in to the African Union system. It is linked with a Department of the Commission or an organ to carry out a specific mandate.

As a Specialized Agency, AMDC will be an Autonomous body linked to the Department of Trade and Industry with a mandate to carry out set of functions or activities for the implementation of the AMV. There will be limited direct coordination of the AUC/DTI but it will report to the AU Policy Organs through the AUC/DTI.

- c. African Union Organ: The AMDC can also be set up as an African Union Organ. This is an autonomous body specifically established by the African Union Assembly in accordance with Article 5 (2) of the Constitutive Act to carry out a specific mandate. Examples are AUC, PAP, AfCHPR. ACHPR, AUCIL and the Board of Corruption.

The Constitutive Act also defines STCs as organs but these are essentially policy organs working with other organs and institutions in providing a policy framework for the implementation of their respective mandates. They are not organs operating in the implementation of mandates as like the AUC and Pan African Parliament (PAP).

C. General criteria for setting up of specialized institution and agencies in the African Union system

- 18. **Specialized Institutions** are by definition subsidiary bodies under the structure and processes of the African Union Commission. Their roles and functions are not well defined in any instrument and derive their legal personality from the African Union Commission. They are set up or established by Policy Organ decisions more specifically the African Union Assembly. Its structures comprise a

secretariat design to implement its mandate. For purposes of governance, specialized institutions report to the Commission through a relevant Department. They do not have any separate instrument establishing them, rather they are established by an Assembly decision which clearly delineates its mandates, functions and structure and funding.

19. **A Specialized agency** is an autonomous body created independent of the African Union with a mandate to execute specialized functions or activities. They have their own legal personality and independence in terms of managerial and budgetary control. In terms of governance, it has its own Assembly, Executive Council and secretariat and Executive board comprising of technically qualified persons.

D. Types of specialized agencies

20. For purposes of establishing agencies in the African Union system, there are three types of agencies to be considered:

- i. Agency set up by Member States*
- ii. Agency set up by the African Union*
- iii. Agency linked to the African Union system*

21. **Specialized agency set up by Member States:** This is an agency set up voluntarily by Heads of African Union Member States outside the AU Structure, managerial and budgetary control with mandate to examine and address a specific issue, goal or objective falling under the general mandate of the African Union.

22. **Agency set up by the African Union:** This is an agency set up by the African Union Heads of States by way of a decision with a legal personality separate from the African Union to carry out an authorized specific mandate on behalf of the Union.

23. **Agency linked or affiliated to the African Union system:** This is an agency set up by Member States carrying out a mandate falling under the general

mandate of the African Union and has been in existence but needed to be affiliated with the African Union system.

General criteria for setting up of specialized agencies

24. A specialized agency may be established by any of the following:

- i. Agency set up by the African Union through an Assembly decision
- ii. Agency set up by some Member States of the African Union through their decision and subsequent approval of the Assembly
- iii. Agency already set up by some Member States of the African Union in pursuit of a related mandate to the African Union.

- It is autonomous
- It has its own legal personality
- It has its own separate budget independent of the AU budget
- It has its own managerial independence
- It has its own structure
- It has its own Staff Rules and Regulations
- It has its own Financial Rules and regulations

25. In order to determine the AMDC institutional framework a number of issues will need to be considered but mainly the key issues as raised by the Maputo CAMRMRD are ownership, sustainability, the governance structure and the reporting mechanism in line with AUC Policy Organs.

26. **Ownership:** The issue of ownership of the AMV; not only of the initiative but of the entire implementation process both the politically and technically by the AU member states is very important. A number of issues such as the policy, legal and regulatory frameworks, contracts negotiation, geological information and data and financing mechanisms require a high level political commitment that can only be enforced by a mandate given by high level political decisions of the AU. The implementation of these areas at the member State level which requires the development and harmonization mechanisms needs to be done through the AUC implementation structures which includes the RECs, key African Institutions and

stakeholders (such as SEAMIC), key partners such as UNECA, UNIDO and AfDB working with other regional and international bodies and institutions.

27. Governance Structure and Reporting mechanism: given the critical importance of ownership, the coordination, monitoring and evaluation (M&E) and the reporting mechanism of the implementation of the AMV has to be aligned to the policy organ structure of the AUC. Therefore, the AMDC governing structure and reporting mechanism have to be in line with AUC reporting mechanism and policy organs:

28. Sustainability: currently the AMDC is purely funded by the partnerfinancing. Whereas AU member States and the AUC welcomes the support provided by partners, this arrangement is a double edged sword towards the implementation of the AMV. It limits the ownership and it is unsustainable. There are a number of areas under the implementation process of the AMV that cannot purely be funded by partners but by the AU members states themselves through the existing AUC budgetary mechanisms. There also areas that will need to be funded by a collaborative partnership with the private sector under Private Public Partnership (PPP) arrangements and are aligned with other AUC programmes such as infrastructure development. There are also some activities that will require purely equity financing and which can generate income to AMDC through the provision of services to the private sector and other third parties under fees or cost. Therefore, to ensure sustainability the following AMV/AMDC financing mechanisms are proposed:

- a. Member State contributions. This will need to be critically analysed given that some AU member States are already contributing to some Minerals Development Institutions and Intergovernmental Bodies such as SEAMIC. The collaboration and partnership between these institutions and AUC regarding the implementation of AMV with clear areas of expertise, roles and responsibilities; and between these institutions and AMDC will guide the structuring of member state contributions and the distribution and allocation of such funds between the relevant institutions. The modality or

methodology for such contributions may be guided by a set of criteria to be developed and that can be guided by the level of development of contributing member States based on GDP, GDP/capita, the contribution of the minerals sector to national income etc. The criteria will need to be developed by relevant expertise.

- b. Minerals Development or a Trust Fund: The minerals development fund or a Trust Fund could be established with the financing coming from partners and also from various alternative sources such as;
 - i. contribution from partners
 - ii. a percentage proportion of royalties say 2 or 3 percent per member country
 - iii. a form of Levy included in the contracts as a Corporate Social Investment (CSI) instead of corporate social responsibility
 - iv. Contributions from key African private sector players and well wishers such as (Dangote, Ibrahim More????,etc)
 - c. Public Private Partnerships: following the recommendations of the 3rd CAMRMRD to broaden partnerships under the AMDC, one of the key financing mechanisms would be to enhance PPP arrangements. These are critical and can be included in contract negotiations and potentially consider including Corporate Social Investments (CSI) instead of the private companies providing Corporate Social Responsibility.
29. Taking into consideration a number of issues regarding the institutionalization of the AMDC including the time it may take to finalize the institutionalization process, funding mechanisms, reporting mechanisms, ownership etc, the AUC recommends option one above: Please see below the table of issues for ease of reference:
30. The AUC has developed a Statute which codify the duties and responsibilities of the AMDC and ensure accountability and can be tailored to any of the above options

E. Hosting Arrangements and Criteria

31. The Criteria for Hosting the AU Organs which is attached ref. NO. EX.CL/195 (VII) Rev. 1 Annex III,, was adopted by the 7th Ordinary Session of the Executive Council and endorsed by the 5th Ordinary Session of the Assembly held in Sirte, Libya on 1 -2 and 4 -5 July 2005 respectively

F. Recommendation

Following the above analysis, it is recommended that:

- a. **AMDC be established as an AUC Specialized Institution under the Department of Trade and Industry decision at the next Extra-Ordinary Session of CAMRMRD and subsequent approval of the Assembly**
- Or**
- b. **AMDC be established as a Specialized Agency set up by Member States of the African Union through their decision at the next Extra-Ordinary Session of CAMRMRD and subsequent approval of the Assembly**
- c. **In respect of (b) above the Legal Statute establishing the AMDC as a specialized Agency be approved for submission to the Extra-Ordinary Session of CAMRMRD and subsequent approval of the Assembly**
- d. **Based on the Criteria of Hosting as endorsed by the AUC Summit, Member States interested in Hosting the Secretariat of the AMDC submit their expression of interest for consideration by the AUC Policy Organs,**
- e. **A Minerals Development Fund as a financing mechanism for sustainability of AMDC be established**
- f. **The AUC recommends the following Governance Structure for option (a) of the above structures**

AMDC Structure

