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Taxation and the State of Africa Mining Vision implementation: A case study of Tunisia

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Key Concepts

Extractive sector
Tax system
Revenue management
Africa Mining Vision

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Abstract

The governance of Tunisia's oil, gas and mining sectors shifted from a taboo subject to the centre of reform discussions since 2011. These debates arose in response to demands from marginalized regions and civil society organizations that accused the overthrown regime of corruption and mismanagement of natural resources. By 2015, protesters in Tunisia called for greater transparency in the oil industry through a campaign that started in the social media then expanded to the capital streets18. "Where is the oil?" is the moto of the campaign that didn't only ask for more transparency in the extractive sector, with demands for more equitable and optimal exploitation of mineral resources in order to underpin broad-based sustainable growth, socio-economic development and moreover a substantive address to Tunisia deep regional disparities. More recently, social movement in Tataouine have also recalled these concerns at a local level.

Claims that exist in Tunisia around the extractive sector are actually echoed of situations known by many of African countries. Regarding this, in February 2009, the Heads of State and Governments of the African Union (AU) elaborated and adopted the African Mining1 Vision (AMV)2. The AMV serves as the key framework at the continent level to "promote mineral resource-based development and structural transformation". AMV has even been translated in an Action plan for helping countries to implement it according 8 clusters, including the Cluster1 : "Mining revenues and mineral rents management" and the Cluster5 : "Mineral sector governance".

Whereas some African countries officially adopted AMV and start to implement its Action Plan, Tunisia didn't launch any specific process or measures for domesticating the Africa Mining Vision, but passed reforms on its own progressively since 2011.

The framework of the natural resources management and more specifically the extractive sector has obviously changed since the revolution of 2010. But to what extent has it changed? Are the changes that occurred in the extractive sector aligned with the AMV principles?

This working paper is assessing the institutional and legal framework evolution of the extractive sector in Tunisia in the light of AMV principles and action plan. Africa Mining Vision domestication in Tunisia remaining low, the existing gaps indicate ways for Tunisia to foster a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

Abbreviations

- **AGIL:** National Company of Oil Distribution
- **AMDC:** African Mineral Development Centre
- **AMGF:** African Minerals Governance Framework
- **AMV:** African Mining Vision
- **AU:** African Union
- **CMV:** Country Mining Vision
- **CPG:** Compagnie de Phosphate de Gafsa
- **DAP:** Di-Ammonium Phosphate
- **EAC:** East Africa Community
- **ECOWAS:** Economic Community of West African States
- **ETAP:** Tunisian Company of Petroleum Activities
- **FDI:** Foreign Direct Investment
- **GCT:** Group Chimique Tunisien
- **GDP:** Gross Domestic Product
- **ICT:** Information and Communication Technologies
- **NRGI:** Natural Resources Governance Institute
- **OECD:** Organisation for Economic Cooperation and Development
- **OGP:** Open Government Partnership
- **RAI:** Right of Access to Information
- **RECs:** Regional Economic Communities
- **SADC:** Southern African Development Community
- **SOE:** State Owned Enterprises
- **STIR:** Société Tunisienne des Industries de Raffinage
- **SWF:** Sovereign Wealth Funds
- **TJNA:** Tax Justice Network-Africa
- **TSP:** Triple Super Phosphate
- **PA:** Phosphoric Acid

I. Introduction and Rationale for the Study

In February 2009, the Heads of State and Governments of the African Union (AU) adopted the African Mining[1] Vision (AMV)[2] . The AMV serves as the key framework at the continent level to "*promote mineral resource-based development and structural transformation*". In particular, the AMV seeks to foster a "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". The AMV focuses on the transformation of minerals as a strategy for overall development by ensuring that linkages between the mining industry and other sectors of the economy are strengthened. It also includes measures to ensure that the allocation of revenue from the mining sector is done in an appropriate manner, through implementing new contractual arrangements and legal instruments to ensure new revenue distribution mechanisms for sharing at local levels by establishing Sovereign Wealth Funds (SWF) and encouraging investors in the extractive sector to take part in the local development.

The AMV was established following the realization that the nature of the mineral fiscal regimes was generally regressive, resulting in the share of governments falling as profitability of mining operations rose. This was also compound by weak capacity of state agencies responsible for collecting taxes, incentive problems, lacking transparency and the aggressiveness with which foreign multinationals create loopholes in the system to reduce their tax burdens.

It has been thirteen years since the AMV was adopted, yet the mining regime in many African countries continue to face several challenges that the AMV was established to address. This is due to the slow rate of domestication of the AMV principles by the African countries. Efforts at the Regional Economic Communities (RECs) and the continental level (AU) towards ensuring that the AMV provisions are adopted have also been at a slow pace. These efforts include the development of the "Action Plan to Implement the AMV" by the 2nd AU Conference of Ministers Responsible for Mineral Resources Development in 2011[3] . The 2011 Action Plan presents a framework for translating the AMV from policy aspiration to practical actions that ought to be taken at various levels towards the realization of the AMV.

The Action Plan calls for the establishment of the African Mineral Development Centre (AMDC), which has since been established to coordinate activities of Member States, RECs and other stakeholders towards the realization of the AMV[4] . In 2014, the AMDC developed a Country Mining Vision (CMV) guidebook[5] to help Member States transpose the AMV to the national level.

The CMV was developed as a tool to facilitate the domestication of the AMV at country level. However, it was not intended to replace national mineral policies, as not all countries are expected to formulate a CMV. It is mostly the major mineral economies that are expected to develop a CMV, which is expected to be grounded in the political economy of country's policy-making and reform process. The CMV is important in national development plans and strategies and are aligned to the AMV.

On 17 December 2013, during the third ordinary session of AU Conference of Ministers Responsible for Mineral Resources Development[6], the ministers mandated the AU commission to develop an African-led and owned mineral sector governance framework. Later in 2017 the AU published the African Minerals Governance Framework[7] (AMGF). Which represents a better way of measuring mineral economic and governance capacity in Africa member states. It also represents an innovative and comprehensive approach to accelerating and ensuring the implementation of the AMV.

[1] Standard Industrial Classification defines mining industry as the branch of manufacture and trade basedontheextractionofores,fossil, minerals, stone, clay, gravel and similarcommodities.

[2] AMV – Africa Mining Vision | African Union

[3] Draft Action Plan Implementing AMV-UNECA

[4] African Minerals Development Centre, a new project to improve sustainabilityonthecontinent

[5] Country Mining Vision Guidebook

[6] Ordinary Session of the African Union Conference of Ministers Responsible for Mineral Resources Development

[7] Africa Mining Vision: African Minerals Governance Framework

Tax Justice Network-Africa (TJNA)[8] undertook three countries and REC's studies to measure progress towards domesticating the AMV. Three historically mining countries selected for the case studies are Ghana[9] , a member of Economic Community of West African States (ECOWAS), Tanzania[10] a member of the East Africa Community (EAC) and Zambia[11] a member of the Southern African Development Community (SADC).

The studies found all three countries have made tangible progress towards aligning national laws, systems and frameworks to the vision. With the exception of West Africa, very little progress has been achieved in the EAC and SADC towards domesticating the continental vision at the sub-regional level. Implementation of the AMV is, thus, slow and uneven.

Ghana, Tanzania and Zambia have put in place some mining fiscal regimes and systems to ensure they improve their national capacity to physically audit mineral production and exports. This was implemented by well-trained fiscal inspectors[12].

All three countries have instituted programs intended to build capacity and enhance skills of public officials in negotiating fiscal regimes and effectively monitoring compliance with taxation laws.

Tanzania has instituted, since July 2010, ring fencing in the country's mining sector, where losses incurred in one mine cannot be used to offset profits of another mine, even if both mines are part of the same legal entity. The purpose is to maximise taxes payables by mining companies.

Although the implementation of the AMV by Ghana, Tanzania and Zambia is described by the TJNA policy brief as slow, the simple fact of adopting the AMV and start implementing it is considered as a step toward adopting the Africa 2063 Agenda[13], hence promoting mineral resource-based development and structural transformation.

The Africa Mining Vision is considered as an opportunity that coincide with the structural changes that Tunisia has been going through during the last decade. During the revolution of 14 January 2011, Tunisian citizens outset the then President, Zine Al-Abidine Ben Ali, due to the degradation of the economic situation[14]: high unemployment rate (13.05 percent 2010), rising inequalities and poverty (30.5 percent 2010) and corruption that stroke all the country starting Ministries and State-owned companies[15].

The governance of Tunisia's oil, gas and mining sectors shifted from a taboo subject (before the 2010 revolution) to the centre of reform discussions especially those around the 2014 constitution[16]. These debates arose in response to demands from marginalized regions and civil society organizations that accused the overthrown regime of corruption and mismanagement of natural resources.

Members of the National Constituent Assembly with the contribution of civil society activists wrote the Article 13 of 2014 constitution , an article that gave back the natural resources to their natural owners; the citizens, and paved the way to a new area of natural resources exploitation in Tunisia.

This article states that: "*Natural resources belong to the Tunisian People. The State exercises sovereignty over them in the name of the people. Investment contracts related to these resources shall be presented to the competent committee in the Assembly of the Representatives of the People. The agreements concluded shall be submitted to the Assembly for approval.*" [17]By 2015, protesters in Tunisia called for greater transparency in the oil industry through a campaign that started in the social media then expanded to the capital streets[18]. "*Where is the oil?*" is the moto of the

[8] The Tax Justice Network Africa is a Pan-African organization and a member of the Global Alliance for Tax Justice. Launched in January 2007 during the World Social Forum held in Nairobi, TJNA promotes socially-just, accountable and progressive taxation systems in Africa. It advocates for tax policies with pro-poor outcomes and tax systems that curb public resource leakages and enhance domestic resource mobilization.

[9] WhereIsTheMoney_Ghana.pdf

[10] WhereIsTheMoney_Tanzania.pdf

[11] WhereIsTheMoney_3countries.pdf

[12] AMV Policy Brief 2017-Tax Justice Africa

[13] Africa Agenda 2063 is the continent's strategic framework that aims to deliver on its goal for inclusive and sustainable development and is a concrete manifestation of the pan-African drive for unity, self- determination, freedom, progress and collective prosperity.Agenda 2063: The Africa We Want. | African Union (au.int)

[14] Tunisia: President Zine al-Abidine Ben Ali forced out - BBC News

[15] Ben Ali: the Tunisian autocrat who laid the foundations for his demise (theconversation.com)

[16] Tunisia's Next Revolution: Inspired by New Resource Governance Laws, a Burgeoning Civil Society Springs into Action | Natural Resource Governance Institute

[17] (anonymous) (constituteproject.org)

[18] Oil and accountability in Tunisia: "Winou el pétrole?» | openDemocracy

campaign that didn't only ask for more transparency in the extractive sector but also echoed the AMV, with demands for more equitable and optimal exploitation of mineral resources in order to underpin broad-based sustainable growth, socio-economic development and moreover a substantive address to Tunisia deep regional disparities.

The campaign, led by civil society activists and politicians, resulted in some major restructuring of the extractive sector including contracts disclosure, data transparency and law amendments.

The Tunisian constitution of 2022, that was subject of referendum on 25 July 2022, reenforced the citizens ownership of natural resources by means of the Article 16 that enlarged the area to include all of the "*Nation's Wealth*". the Article states:

"The Nation's wealth belongs to the Tunisian people. The State must distribute its revenues of the basis of justice and equity among citizens in all parts of the republic.

Agreements and investment contracts on national wealth shall be submitted to the Representative National Assembly and to the National Council of Entities and Territories for approval."

The framework of the natural resources management and more specifically the extractive sector has obviously changed since the revolution of 2010. But to what extent has it changed? Are the changes that occurred in the extractive sector aligned with the AMV principles?

II. Objectives and Methodology of the Study

Tunisia did not officially sign for the adoption of the African Mining Vision. No information about it was communicated by the government and/or the ministry in charge of the extractive sector. The late president Beji Caied Essebsi, however, approved the African 2063 Agenda, which is the original framework of the AMV, and expressed Tunisia's commitment to promoting peace, security, human rights and development in Africa[19].

Within this context and the African Mining Vision Action Plan, the main purpose of the study is to review developments that have taken place in post-revolution Tunisia regarding the extractive sector fiscal regime and revenue management and analyse to what extent the governance of mining natural resources in Tunisia is aligned with the AMV.

The review is envisaged to lead a gap analysis and mapping of key issues that disrupt opportunities and pose challenges in relation to implementing the AMV. The broad objective, therefore, is to assess progress that has been made regarding the extractive sector framework to draw some lessons from what has happened so far and to provide advice and recommendations for Tunisian government officials and other stakeholders in the extractive sector.

The two key objectives are:

1. Review developments of the extractive sector framework, fiscal regime and revenue management on the eve of the 2010 revolution.
2. Analyse the alignment of the extractive sector with the AMV Action Plan and its related document.

In the light of the above, four research questions were identified:

1. What is the state of the extractive sector in post-revolution Tunisia?
2. What steps and efforts have been taken by the authorities in post-revolution

[19] At UN Assembly, Tunisia's President cites African 2063 Agenda as vital to continent-wide development | | UN News

Tunisia that can be identified as compliant to the AMV Action Plan?

3. What is the impact of these modifications and developments?

4. What opportunities and challenges exist for better aligning the extractive sector with the AMV?

To answer these questions, secondary source of data will be used in getting relevant data. It includes government publications about the extractive sector (Hydrocarbon's code, Mines code, contracts, annual reports etc.), data generated from official websites such as the State-Owned Companies and articles, case studies, and reports from the parliamentary committee, audit court, civil society organisations and institutions that are related to the extractive sector development.

The use of this set of data sources aims at getting a deeper understanding of the natural resources; mines and hydrocarbons, governance policy implemented by the government, furthermore understanding what had been done in order to address the major questions raised.

In order to achieve the objectives of this research mentioned above: review the developments of the extractive sector framework, fiscal regime and revenue management on the eve of the 2010 revolution, only two of the AMV action plan clusters[20] are pertinent to examen their implementation by the Tunisian authorities; cluster 1: mining revenues and mineral rents management and cluster 5: mineral sector governance.

III. The Extractive Sector in Tunisia

Tunisia has a long history of natural resources extractions that goes back to 1887. The mineral industry of Tunisia includes the mining of barite, gypsum, iron ore, phosphate rock and salt and the manufacturing of cement, phosphate-based fertilizers and such chemicals as aluminium fluoride. The country also produces crude petroleum, natural gas and refined petroleum products.

Table 1 : Mineral Commodities production per tons (metric)

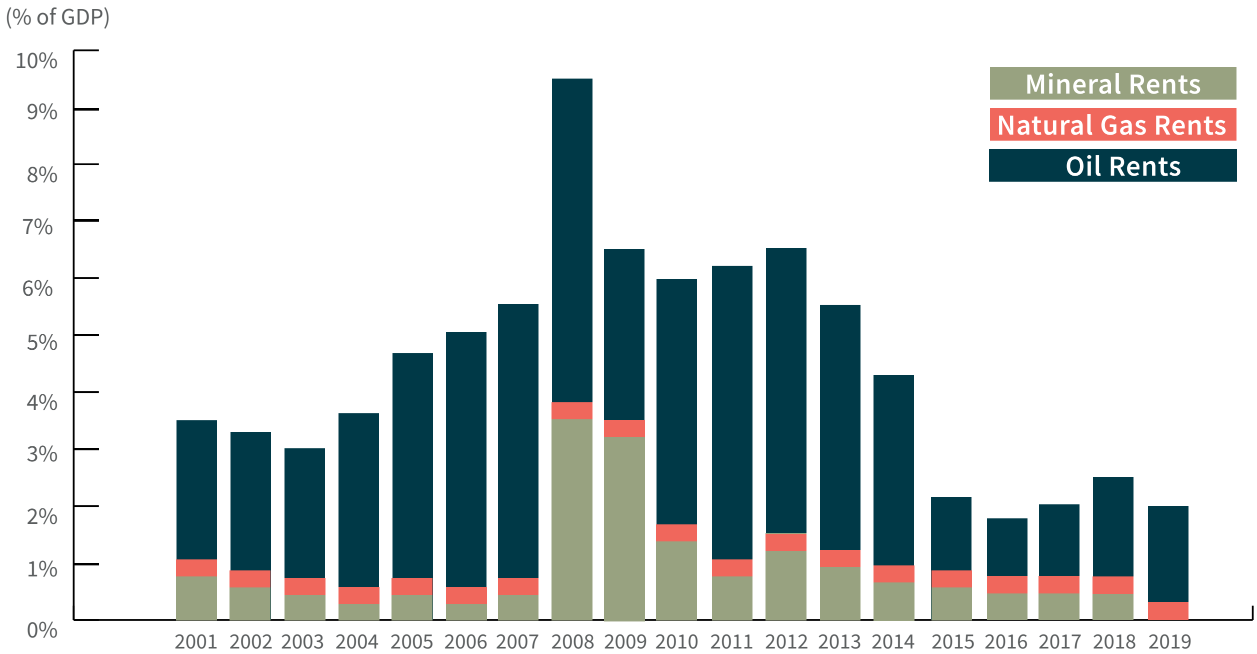
Source : British Geological Survey[21]

MINERAL COMMODITIES	2015	2016	2017	2018	2019
BARYTES	10 000	10 000	NA	NA	NA
GYPSUM	690 000	902 394	944 245	984 031	946 829
IRON ORE	284 600	210 697	197 965	175 853	186 485
CRUDE STEEL	50 000	50 000	50 000	50 000	50 000
CRUDE PETROLEUM	2 547 000	2 169 400	1 827 600	1 764 000	1 686 000
NATURAL GAS	2 479	2 213	2 089	1 962	1795
PHOSPHATE ROCK	3 228 322	3 663 613	4 422 100	2 802 000	4 108 800
SALT	1 280 000	1 346 026	1 403 537	2 116 972	2 039 781

[20] Cluster 1: Mining revenues and mineral rents management
Cluster 2 Geological and mining information systems
Cluster 3: Building human and institutional capacities
Cluster 4: Artisanal and small-scale mining
Cluster 5: Mineral sector governance
Cluster 6: Research and development
Cluster 7: Environmental and social issues
Cluster 8: Linkages and diversification and
Cluster 9: Mobilising mining and infrastructure investment

[21] World mineral statistics archive | MineralsUK (bgs.ac.uk)

Figure 1 : Natural Resource Rents in Tunisia (% of GDP) 2001-2019



Source: World Bank Data

The estimates of natural resources rents are calculated as the difference between the price of commodity and the average cost of producing it[22]. As can be seen from Figure1, earning from natural resources, especially from oil and minerals account for a sizable share of GDP, the oil rents declined from an average of 4 percent of GDP between 2001-2011 to an average of 2 percent of GDP after 2011. Also, mineral rents peaked in 2008 to reach 3.43 percent of GDP mainly due to phosphate production. Tunisia made it to the top five world producers with 7.8 million tonnes of phosphate in 2008[23] . According to World Investment Report 2021[24] published by the United Nations Conference on Trade and Development UNCTAD, the two major sectors that attract foreign direct investment in Tunisia in 2019 are the manufacturing sector that attracted 54 per cent of FDI followed by the energy sector that attracted 33 per cent of FDI. But TOE working paper, Assessment of investment incentives in Tunisia[25], published in 2014 indicates that between 2007 and 2011 energy sector was responsible for more than 40 per cent of FDI, coming first before the manufacturing sector.

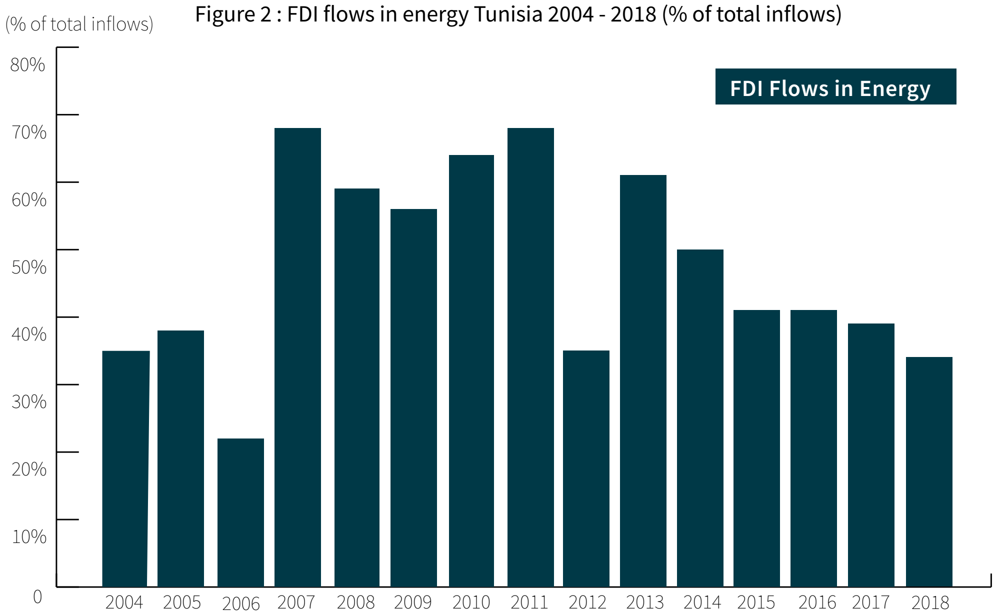
[22] World Development Indicators | DataBank (worldbank.org)

[23] FACTBOX-World's top five producers of phosphate | Reuters

[24] World Investment Report 2021: UNCTAD

[25] Bilan des incitations aux investissements en Tunisie | Observatoire Tunisien de l'Economie

Figure 2 : FDI flows in energy Tunisia 2004 - 2018 (% of total inflows)



Source: OECD

Hence, the data obtained from OECD Review of foreign direct investment statistics Tunisia[26] published in 2020 and illustrated in Figure2 display the significant role of energy sector (oil and gas exploration and exploitation) in attracting foreign direct investment to the Tunisian economy, confirming TOE working paper findings. The flows fell to 35 percent in 2012 due to the revolution of 2011 and the political and economic instability at the time.

[26] OECD Review of Foreign Direct Investment Statistics of TUNISIA

The extractive sector in Tunisia lost its place as a first attractor of FDI. As can be shown in Figure2, the average of FDI flows in energy dropped from 60 percent of total flows between 2007 and 2011 to 43.5 percent of total flows between 2012 and 2018.

Moreover, the contribution of investment, exports and productivity of the extractive sector to growth are significantly below their pre-revolution levels.

Natural resources extraction in Tunisia takes place in the interior regions that have lower development levels, informal economies and high levels of unemployment compared to the coastal areas[27]. While the extractive industry is seen as the only opportunity in the region, individuals closely associated with the former regime of the outthrown President Ben Ali were reported abusing the laws and regulations to give exploration permits in exchange for bribes[28]. This discontent was one of the main driving forces of the 2011 revolution[29]

[27] Transition économique, dérégulation et résistances en Tunisie| Observatoire Tunisien de l'Economie

[28] Chiboub-Essebsi : une relation en or…noir - Nawat

[29] Tunisia: Behind Tunisia's 'Economic Miracle': Inequality and criminalization of protest-Nawat

Endorsing international transparency standards: implementation of Cluster 5

The extractive sector has experienced major changes in the aftermath of 2011 revolution, including joining the Open Government Partnership OGP; a process that started in 2012. Officials from Tunisian government and key ministries organized a workshop in Tunis with Brazilian (Brazil was chairing the OGP initiative at the time) and Kenyan experts to discuss best practices in open data and e-participation. Through this program, Tunisian officials enhanced their knowledge and skills to develop open government policies and use information and communication technologies ICT in open government initiatives, especially to fulfil OGP requirements . The OGP requirements[30] are classified in four major axes[31] related to:

- Financial and fiscal transparency;
- Right of access to information;
- Disclosure of assets;
- And, participation and civil liberties protection.

[30] Strengthening Open Government in Tunisia | South-South Facility

[31] Open Government Partnership – Tunisie

Under OGP, several reforms and initiatives have been implemented. Since joining the OGP initiative in 2014, Tunisia has elaborated and implemented three national action plans. The First Action Plan spanned the period from 2014 to 2016 and consisted of 20 commitments[32]. The Second Action Plan, which included 15 commitments, covered the period from 2016 to the end of August 2018. The Third Action Plan contained 13 commitments and run from 2018 to 2020[33]. All commitments are related to adopting openness in government work, fighting corruption, fostering a participatory approach, and improving the quality of public services.

[32] Tunisia, First Action Plan, 2014-2016- Open Government Partnership

[33] Action Plan-Open Government Partnership- 2021 2023- Tunisia

The reforms and initiatives implemented under the OGP initiative fall within Cluster 5 of the AMV Action Plan "Mineral Sector Governance" according to which, strong transparent and participatory governance process, at all levels, can assist mineral-rich countries attain sustainable economic growth and socio-economic development. Public participation legitimizes a project, thus reducing the costs emanating from the social tensions that can result from an externally imposed project.

The results thus obtained are compatible with the first activity of the Cluster 5 Action Plan: Strengthen transparency and access to information. To boost the transparency of government action and consolidate the right of access to information, Tunisia has made efforts to enhance the legal and regulatory framework at the national and local levels in order to valorise and strengthen Tunisia's experience in the field of open government.

Among the most important achievements in this framework, we can list :

- Protecting the right of access to information as a constitutional principle[34]. Article 32 of the Constitution of 2014 provides that "the State guarantees the right to information and the right of access to information".
- The promulgation of the Organic Law No.2016-22 dated 24 March 2016 relating to the Right of Access to Information (RAI)[35], 2016 on the right of access to information as well as the promulgation of the regulatory texts thereto, such as Circular no. 2018-19 of May 18, 2018 on the right of access to information
- Establishment of the Access to Information Authority[36] in accordance with Article 37 of Organic Law no. 22 of 2016. The members of the authority were elected by the Tunisian Parliament on 18 July 2017[37].

At the end of September 2016, Open Data Portal went online as a new advanced version of the first portal developed in 2012. The Open Data Portal of the industry and energy sectors, was set by the Ministry of Industry, Energy, and Mines. It includes updated information dealing with oil and mining sector investment, data related to production, consumption, import, export, distribution and contracts of companies working in this field, as well as their investments, operations, and agreements[38].

Accordingly, Tunisia made progress in achieving the third activity of AMV Action Plan Cluster 5, resource the legislature to provide effective oversight over mineral sector institutions and mining companies.

Prior to the adoption of the Constitution of 2014 and Article 13, oil and gas contracts and permits were approved by a ministerial decree. In 2017, the parliamentary committee in charge of industry, energy and natural resources adopted Article 13 by amending the Hydrocarbon code Article 19.

"All contracts must be examined by parliament and approved by law"[39]

This amendment guaranteed more control over the natural resources by Tunisian citizens through the elected members of parliament. The contracts and permits are no longer approved by ministerial decree but they must be submitted to the committee in charge of industry, energy, and natural resources where hearing sessions are hold to hear expert's opinion and consult about the contracts. Those contracts are to be submitted for approval later during a voting session. Since these contracts are ordinary law according to the Tunisian legislation, the voting session require a majority of parliament members present; provided that this majority shouldn't be less than the third of the parliament members.

Since the parliament members are considered as stakeholders for the extractive sector and that they were granted participation in policy making process through this amendment, Tunisia improved its second monitoring indicator of Cluster 5 of the AMV action plan, according to which *"communities and other stakeholders participate in policy making process and mining projects".*

[34] Tunisie: l'adoption de la loi sur l'accès à l'information est une étape importante vers la transparence

[35] Loi organique n° 2016-22 du 24 mars 2016

[36] About INAI - هيئة النفاذ إلى المعلومة في تونس

[37] Parliamentary session 18 July 2017

[38] data.industrie.gov.tn

[39] Tunisie - Code des hydrocarbures 2017 (www.droit-afrique.com)

Following the promulgation of this law, ETAP director stated, during a hearing session in the Parliament on 23 February 2017, that both Article 13 of the 2014 Constitution and Article 19 of the Hydrocarbons code are heralded by both national and international investors, because those laws will guarantee the stability of the State commitment, since the permits will be granted in the name of People.

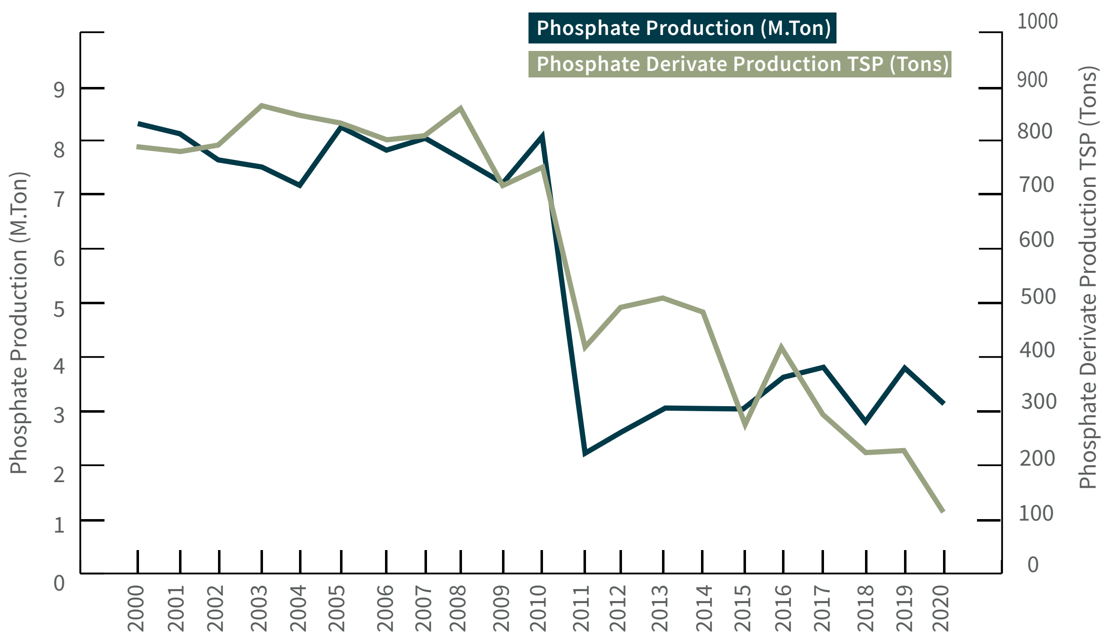
A. The mining sector in post-revolution Tunisia

Until 2010, Tunisia used to be the 5th producer of phosphate in the world and the 2nd as phosphate derivates producer[40]. During the last decade, revenues from phosphate and its derivates have been in sharp decline due to the continuing social protest in the mining area[41], which affected production, paralyzed its transport and had a huge negative impact the financial balance of companies operating in the sector including Compagnie de Phosphate de Gafsa CPG and Group Chimique Tunisien GCT.

[40] FACTBOX-World's top five producers of phosphate | Reuters

[41] Tunisia's phosphate mines – between a rock and a hard place | Global Risk Insights

Figure 3 : Evolution of phosphate and phosphate derivates production 2000-2020



Source: Ministry of Energy, Mines and Renewable Energy

As a result, the production of phosphate has declined substantially during the period going from 2011 to 2020 compared to 2010. During the year 2020, production reached 3.85 million tonnes against 3.144 million tonnes in 2019, a decrease of 18 percent compared to 2019 and 61 percent compared to 2010 when the production was 8 million tonnes as shown in Figure 3.

Furthermore, Figure 3 shows that the production of phosphate derivates (phosphoric acids and fertilizers) also fell sharply due to the lack of phosphate supplies to the processing facilities. The deficit in phosphate production and transport also caused a remarkable drop in exports of phosphate derivates during the period of 2011-2020, which led to the sector losing some strategic customers and its position in the international market .[42]

In 2010, Groupe Chimique Tunisien GCT (or Tunisian Chemical Group in English) was the third exporter of TSP (with 18% of world exports), the second exporter of phosphoric acid (11% of world exports), and the 5th exporter of DAP (7% of world exports[43]). In their annual report of 2014[44] the board of GCT states that the company is building a minerals-based industry in Tunisia to add value to the phosphate, mineral resources by producing a large panel of fertilizer products in order to promote

[42] Tunisia - Economic and Social Challenges Beyond the Revolution (afdb.org)

[43] GCT-ANNUAL-REPORT-2012-PART1.pdf

[44] GCT-ANNUAL-REPORT-2014-PART1.pdf

agriculture and ensure sustainability of the sector. Hence, GCT mission is to help develop mining into the third pillar of industrialization in the country. In the process, GCT is helping build industrial cities, create jobs and enable communities to prosper.

Box 1:

Le Groupe chimique Tunisien GCT: is a state-owned company that was created in 1992, produced triple super phosphate TSP and Di-ammonium phosphate DAP. GCT is among world wide leading producers and and exporters of phosphate derivatives.

It processes about 6.5 million tons of Tunisian phosphate rock each year, into merchant grade phosphoric acid MGA, Di-ammonium phosphate DAP and Mono-ammonium phosphate MAP as well as triple super phosphate TSP and also supply

phosphate and also supply phosphate product with Da-calcium phosphate DCP.

Conformity of the GCT vision to AMV Cluster 1 activities

Until 2014, the information communicated by GCT in their annual reports implies that they succeeded in aligning with AMV principles and Action Plan especially Cluster 1 activities; beneficiation of local authorities and communities from mining projects and establishing infrastructure funds, through different kinds of activities[45]:

[45] GCT-ANNUAL-REPORT-2014-PART2.pdf

- Support to agriculture development groupings by contributing to the cost of irrigation water.
- Contribution in the health sector through the acquisition of ambulances and hospital equipment.
- Contribution in the education sector through the acquisition of equipment and building human resource capacity.
- Contribution to regional councils to support the infrastructure of neighbouring areas of factories.
- Grants to local sports associations.
- Contribution to the financing of cultural events.
- Participation in clean-up campaigns by providing equipment.
- Aid to social associations.

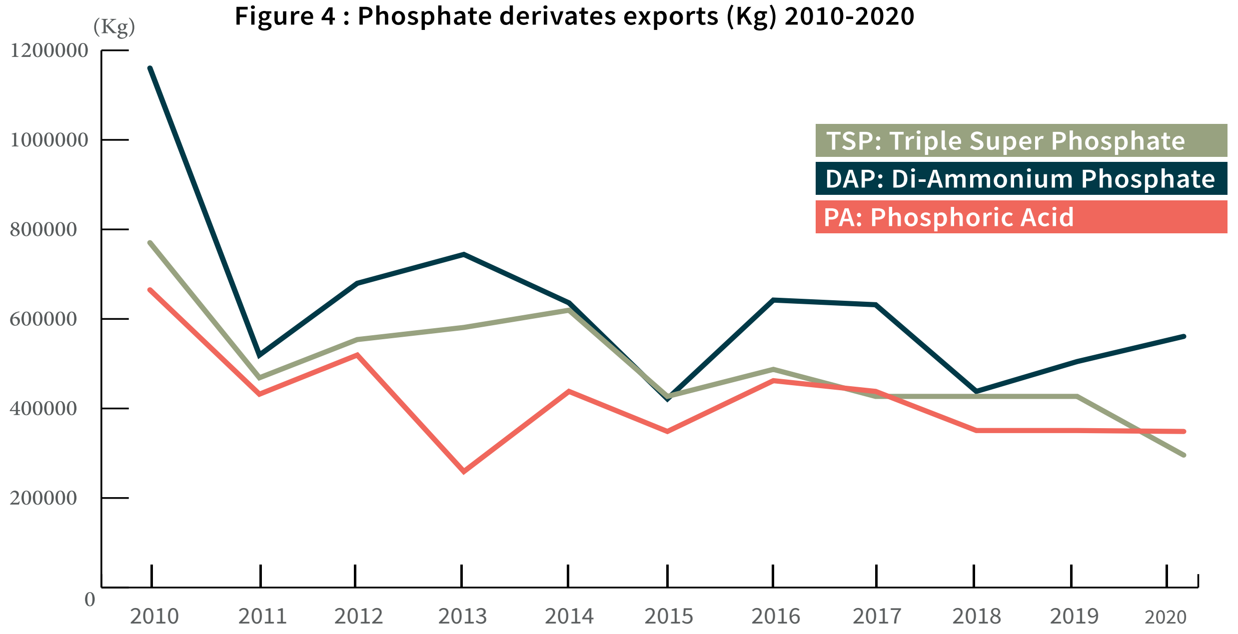
Eventually, according to the national company official website[46] ,GCT was a driving force for the region where it operates: it created jobs, promoted internal social programs and allocated important funds to finance social activities in order to maintain the serene and stable social climate in the company. That was until it started scoring a negative operating result in 2015 (-15 Million Dinars) and (-12 Million Dinars) in 2016. According to a document published on the Ministry of Industry, Energy and Mines official website[47], given that the last available annual report of GCT is of 2014.

[46] Groupe Chimique Tunisien : Accueil (gct.com.tn)

[47] Microsoft Word - GCT.docx (energiemines.gov.tn)

Due to the fact that 81 percent of GCT profits comes from exporting phosphate derivates, we extracted the exports data from the Ministry of Industry, Energy, and Mines and illustrated it in the following figure.

Figure 4 : Phosphate derivates exports (Kg) 2010-2020



Source: Ministry of Industry, Energy, and Mines

As can be seen in figure 4, the phosphate derivates exports fell sharply in 2011, DAP and TSP exports rebounded slightly between 2012 and 2014 to fall again along with the AP exports starting in 2015. According to Fitch Ratings[48], blockades and sit-ins in phosphate mining extraction sites are the main reasons behind the exports decrease which is further confirmed by the Annex 9 of State Budget 2020 "Report about Public Enterprises"[49] that states that the disruption of production in the extraction sites that caused the loss 85 days of work on yearly basis between 2016 and 2018 is among the

major factors that resulted in constraining the GCT productivity in only 39 percent of its capacity. which transmit us to Compagnie des Phosphates de Gafsa CPG, the exclusive performer of phosphate extraction in Tunisia.

Before proceeding to the National company, CPG, it's notable to point out the interdependency between different AMV Action plan clusters. Blockades and sit-ins are manifestations of social issues addressed in Cluster 7 of the AMV Action plan Environment and social issues and since, as mentioned above, these manifestations have a direct impact on GCT exports, hence performance and revenue, addressed by the Action Plan Cluster 1 Mining revenues and mineral rents management, we can deduce that cluster 7 and cluster 1 are dependent upon one another.

Box 2 :

Compagnie des phosphate de Gafsa CPG: is a state owned company, created in 1967, that operates open-cast mines and run s11 phosphate rock-washing plants. CPG is the exclusive performer of phosphate mining in Tunisia and responsible for the formulation of polieiers concerning the country phosphate mining.

In 2010, CPG phosphate production exceeded 8.5 million tons, hence Tunisia was responsible for 4.3 percent of the world supply of phosphate rock[50]. It was Africa's second ranked producer after Morocco and ranked as the world fifth producer after China, United States of America, Morocco and Russia.

Between 1990 and 2010, CPG had been the driving force of Gafsa region, where phosphate extraction sites are located, with more than 5000 jobs created and continuing support to the regional schools, sports and cultural activities[51], and hospitals infrastructure[52]. CPG was aligned with AMV and the African Minerals Governance Framework via creating a strong phosphate extraction industry that is internationally competitive, socially responsible and appreciated by surrounding communities.

[48] Fitch Rates Groupe Chimique Tunisien 'AA-(tun)'; Outlook Stable (fitchratings.com)
[49] annexe_n_09_01_1.pdf (finances.gov.tn)

[50] https://www.cpg.com.tn/documentation/451561.pdf

[51] https://www.cpg.com.tn/documentation/448656.pdf

[52] Tunisie : La CPG dote l'hôpital de Metlaoui d'un scanner (baya.tn)

[53] Mineral Commodity Summaries 2021 (usgs.gov)

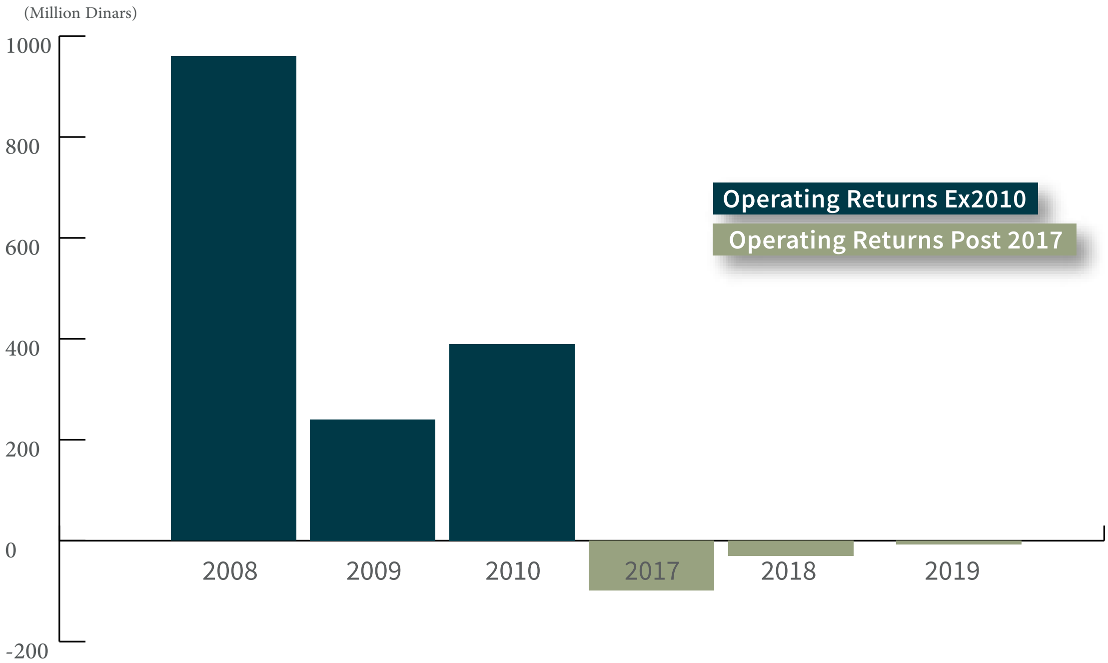
[54] Pnadw835.PDF (usaid.gov)
55Tunisia phosphate exports halted by job protests | Reuters

[55] Tunisia phosphate exports halted by job protests | Reuters

According to US Geological Survey[53], in 2019 Tunisia was ranked the 10th largest phosphate producer in the world, losing 5 places in 10 years. Phosphate extraction has been experiencing many difficulties during the last decade, starting with the intensification of competition on the world market following the entry of new phosphate producers such as Saudi Arabia (ranked 6th) and the expansion of production capacity of other producers such as Morocco (ranked 2nd largest producer and 1st in term of reserves), against the declining demand from some important markets such as China and India[54].

The intensification of protests and sit-ins in the mining area during the time between 2011 and 2020 paralyzed both extraction of phosphate and its transportation to GCT facilities[55].

Figure 5: Operation returns of CPG (Million Dinars)



Source: CPG annual report 2010 and Ministry of Industry, Energy and Mines

Figure5 shows the evolution of operating returns of CPG between 2008 and 2010, and 2017 and 2019. Unfortunately, no data are available for the period between 2011 and 2016. The Annual Reports of CPG are no longer being published on the official website, the Data Portal of the Ministry of Industry, Energy and Mines only displays phosphate production in quantities and the only available document on the Ministry of Industry, Energy and Mines displays financial indicators of the CPG between 2017 and 2019[56].

[56] CPG.pdf (energiemines.gov.tn)

As can be seen in Figure5, CPG went from a company with over 200 million Dinars operating returns (at the time phosphate production contributed to the GDP by 4 percent), to scoring negative operating returns in 2017, 2018, and 2019. Hence, CPG is no longer capable to contribute to national economy, neither to the regional economy in the extraction area in Gafsa; CPG became unable to finance local development like it used to be during the period between 2014 and 2016 [57].

[57] Tunisie-CPG: 60 MDT alloués aux projets de développement- L'Economiste Maghrébin

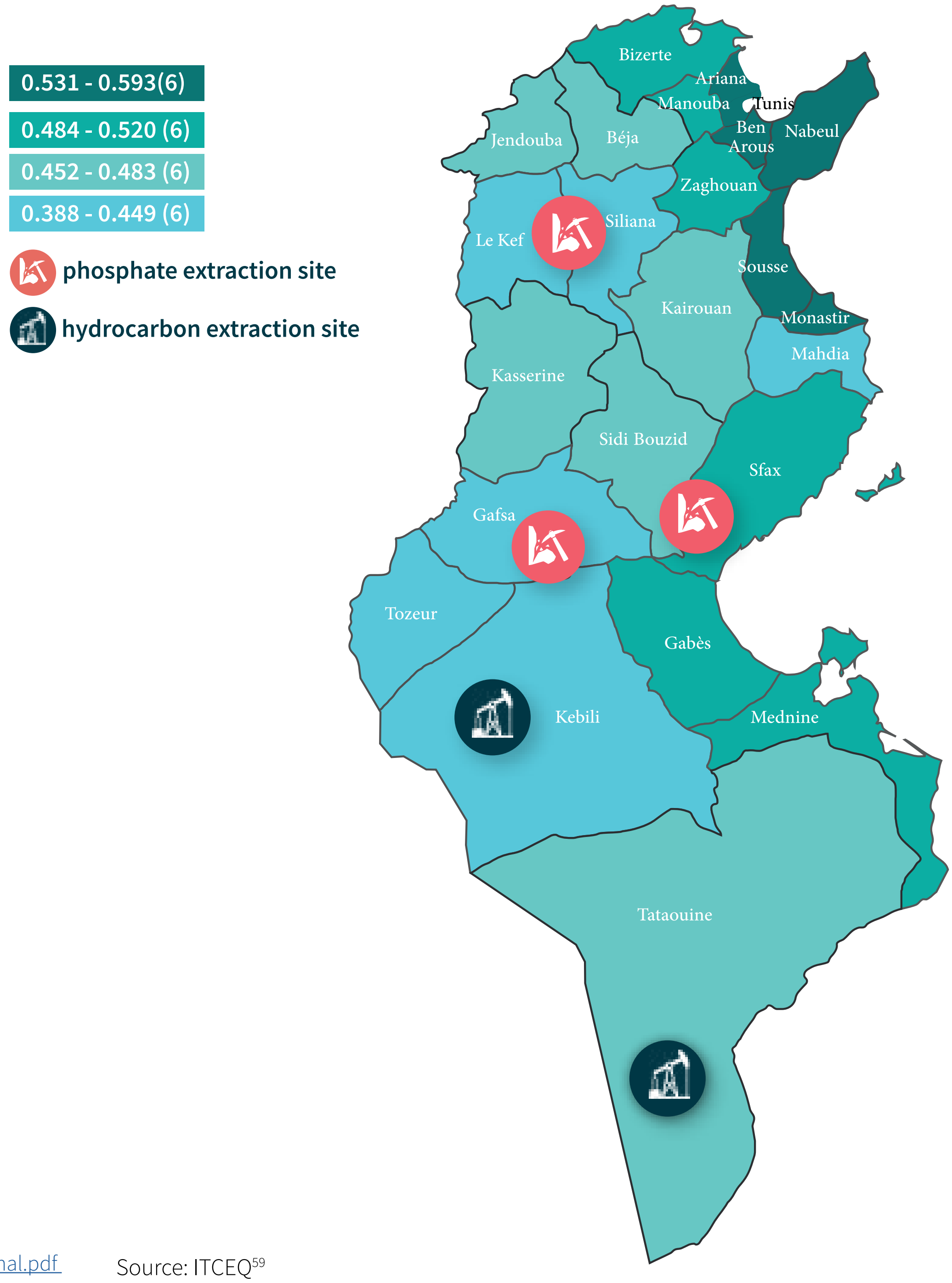
[58] ANNEXE_09.pdf (finances.gov.tn)

Furthermore, according to the Annex 9 of the State Budget 2022 "Report of Public Enterprises"[58], the national company debt increased from 172 Million TND to 378.43 Million TND between 2018 and 2020; 40 percent of that debt is being held by banks.

Regional development in mining area, the natural resource curse

The narrative of the mining activities being a driving force for the region and the national companies helping build industrial cities, create jobs and enable communities to prosper is contradicted by the weak regional development indicator of the Tunisian governorates where extraction sites are located.

Figure 6 : Repartition of governorates by the regional development indicator in Tunisia 2018



Source: ITCEQ[59]

[59]indicateur-dev-regional.pdf (itceq.tn)

The map above indicates the repartition of governates by the regional development indicator in Tunisia 2018. From this map it can be seen that governorates where mining activities are located :Kef, Siliana, Sidi Bouzid, Sfax and mainly Gafsa, are the governorates with the lower regional development indicator.

Furthermore, the unemployment rate per governorate in 2019 point out the two governorates with the highest unemployment rate in 2019 are Tataouine, where the major oil and gas fields situated and Gafsa where the major phosphate mining sites are located.

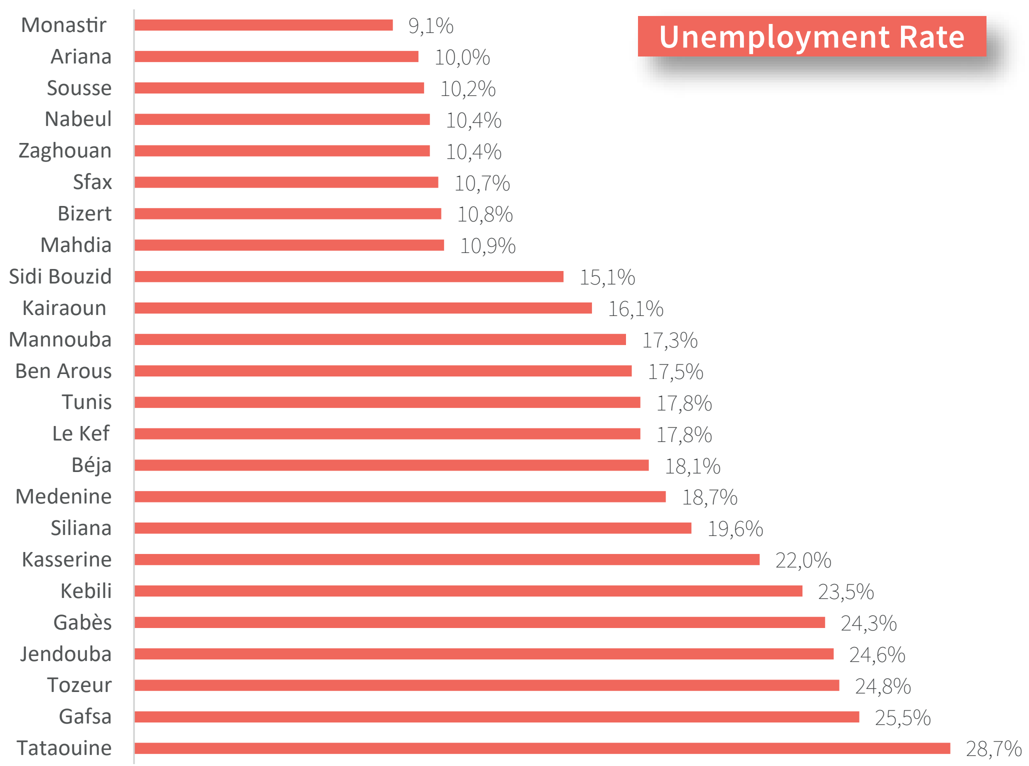
According to TOE data analysis n25, Political and Economic choices in Tunisia hamper regional job creation[60], the excessive concentration on trade policies and international value chains caused important disparities between regions where governorates with access to the sea and airports became much more attractive to national and international capital leaving most of internal governorates, like Gafsa and Tataouine, behind which resulted in low capacity of job creation.

[60] da_num25_en.pdf (economie-tunisie.org)

Both of Gafsa and Tatouine are under the natural resource curse, the focus on mining and extraction activities prevented the expansion of any other economic activities and/or the deteriorating of agriculture activities due to the arid climate and the costly irrigation work[61]. Add to that the huge expansion of these activities during the 70s and 80s and wide range of public services to the employees and to their families at the time instituted a rent seeking behaviour among the locals who are only interested in seeking a job in the national companies operating in the region

[61] Political ecology of phosphate in Tunisia, Mathieu Rousselin, 2018

Figure 7 : Unemployment Rate per governorate June 2019



Source: Le Manager.tn[62]

Summing up the results, it can be concluded that the high unemployment rate and the very weak regional development indicators in the regions where the extraction sites are located is the main reason behind the uninterrupted social unrest, particularly and not exclusively, the protest in the mining basins in Gafsa[63] and the Kamour protest in Tataouine[64].

Hence, the deduction previously made about the interdependency between the revenue management (Cluster1) and the social issues (Cluster7) is further confirmed. In fact, this interdependency has sent the mining sector into an infinity loop where lack of mining revenues and mineral rents mismanagement is manifested by a low regional development level in the region where mining resources are located that leads to social tensions in the extracting sites which in its turn results disrupting the extraction and production process, consequently a mining revenue decrease, and the wheel keeps spinning.

[62] Taux de chômage en Tunisie par Gouvernorat » Offres d'emploi (recruter.tn)

[63] Mining delegations in Gafsa: economic and social vulnerability impede the right to a decent life! | FTDES

[64] Life on the Edge: How Protests in Tataouine Forced Tunis to Back Down - Carnegie Middle East Center

Cluster 1 and Cluster 7 interdependency: the infinity loophole

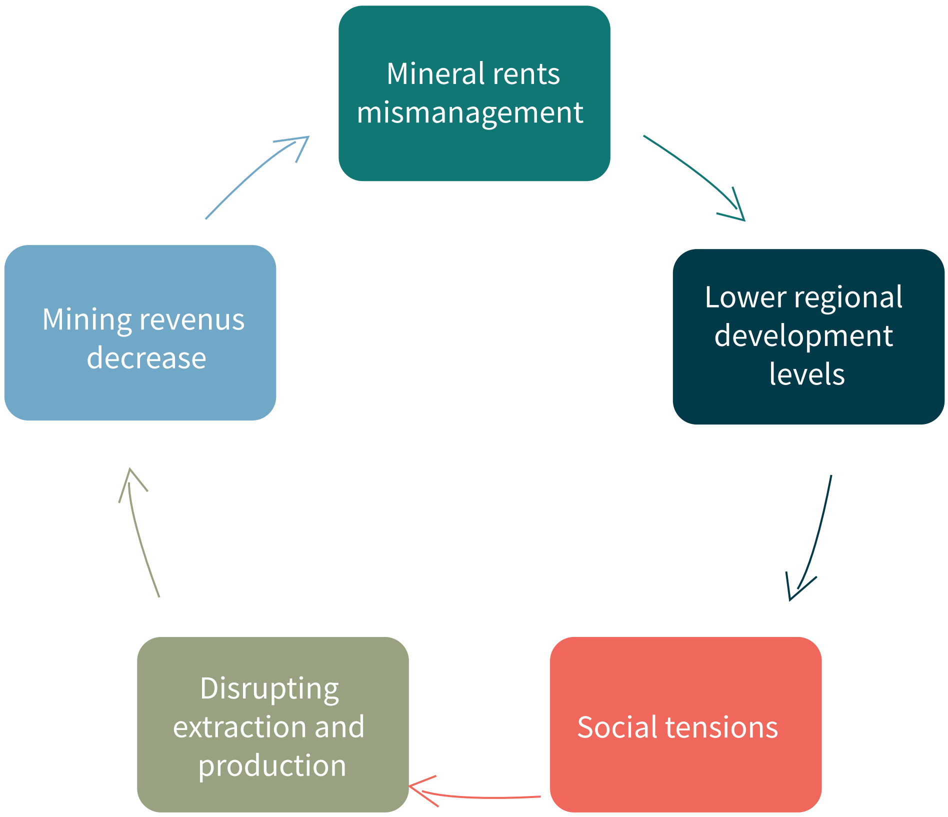


Figure 8: Cluster 1 and Cluster 7 interdependency: the infinity loophole

Addressing these issues on individual basis and distinctly cannot break the infinity loop, this going to require a coordinated policy strategies that account for both mining revenues and mineral rents management activities (Cluster1) and social issues activities (Cluster7) as recommended by the AMV Action Plan.

B. The hydrocarbon sector in post-revolution Tunisia

Compared to its regional neighbours, Algeria and Libya, Tunisia has traditionally been a relatively minor oil and gas producer, producing about 37.68 thousand barrels per day, June2021[65], and hosting only one refinery in Bizerte governorate under the control of the national company STIR.

Not only the refinery activities are under the control of the State, in 1972 the Tunisian National Oil Company ETAP was created in order to increase control and actively and directly participate in all hydrocarbons related operations.

The ETAP current mission include promoting the hydrocarbon sector in Tunisia, management of national patrimony, conducting studies of developing discoveries, developing oil and gas productions, and supplying national market with natural gas and crude oil.

Of 23 active concessions of hydrocarbons activities in Tunisia, ETAP participate in 22 concessions with at 50 percent and with two concessions totally controlled by the national company.

Hydrocarbons contracts in Tunisia are regulated by three legal frameworks:

Royal decrees: issued on December 13, 1948[66] defining specific measures and procedures to facilitate exploration and exploitation of mining products of the second group, hydrocarbons, and Royal decree dated June 1, 1953[67] on the amendment of the mining system.

[65] Tunisia Production of crude oil, 2019-2021 - knoema.com

[66] Décret du 13 Décembre 1948 (sicad.gov.tn)

[67] Decret du 1er janvier 1953 sur les mines .pdf (energiemines.gov.tn)

[68] Decret-Loi_85-9_Fr.pdf (etap.com.tn)

[69] code_hydrocarbures.pdf (etap.com.tn)

1985 Decree: decree n9-1985 dated September 14, 1985[68] on the adoption if special provisions concerning the exploration and production of liquid and gaseous hydrocarbons.

Hydrocarbon Code: issued by Law n.9-1999 dated August 17, 1999 and subsequent amended laws[69].

According to the Tunisian legal framework, there are two types of contracts in the hydrocarbons sector. The first and the most used hydrocarbons contract is the Special Agreement. It regulates the contractual relation between the State, ETAP and investors in terms of exploration, research and exploitation of hydrocarbons, as provided for in the Hydrocarbon Code. The signing of the Special Agreements is mandatory and predominant to the second type of contracts.

The second type is the Partnership Agreement and Production Sharing Agreements. They define the contractual relationship between ETAP and the investor in terms of hydrocarbons' prospection, exploration and operations, in application of the provisions of the Hydrocarbon Code and regulation texts for the application in special agreements, they can be in the form of Partnership/Joint Ventures or Production Sharing Agreements.

Since some of the contracts were signed before the Hydrocarbon Code, and the investors were granted the possibility to choose whether or not to affiliate to the Hydrocarbon Code; some investors preferred to hold to the previous legal framework thus these permits are under the Special Agreement legal framework.

[70] Primer: Fiscal Regime Design | Natural Resource Governance Institute

The legal framework of the hydrocarbon sector also contains the fiscal regime which is defined by the Natural Resources Governance Institute NRGI as "The set of instruments or tools (taxes, royalties, dividends.) that determine how the revenues from oil and mining projects are shared between the State and the companies."[70]

Since there are three forms of contracts, there is also three different tax system in the Tunisian hydrocarbon fiscal regime. Under the Special Agreement, the investor have all the obligations of paying taxes, fees and royalties. As for the Partnership/Joint Ventures, since the permit is hold by the ETAP and the investor, each partner pays the fees, royalties, and taxes due according to the respective percentage of the share.

And lastly the Production Sharing Agreements under which the national company, ETAP, indemnify the investor when it pays all the taxes and fees, including proportional royalties on production and income tax.

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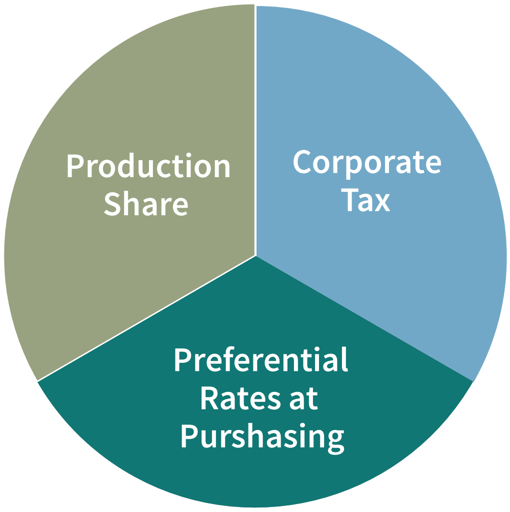
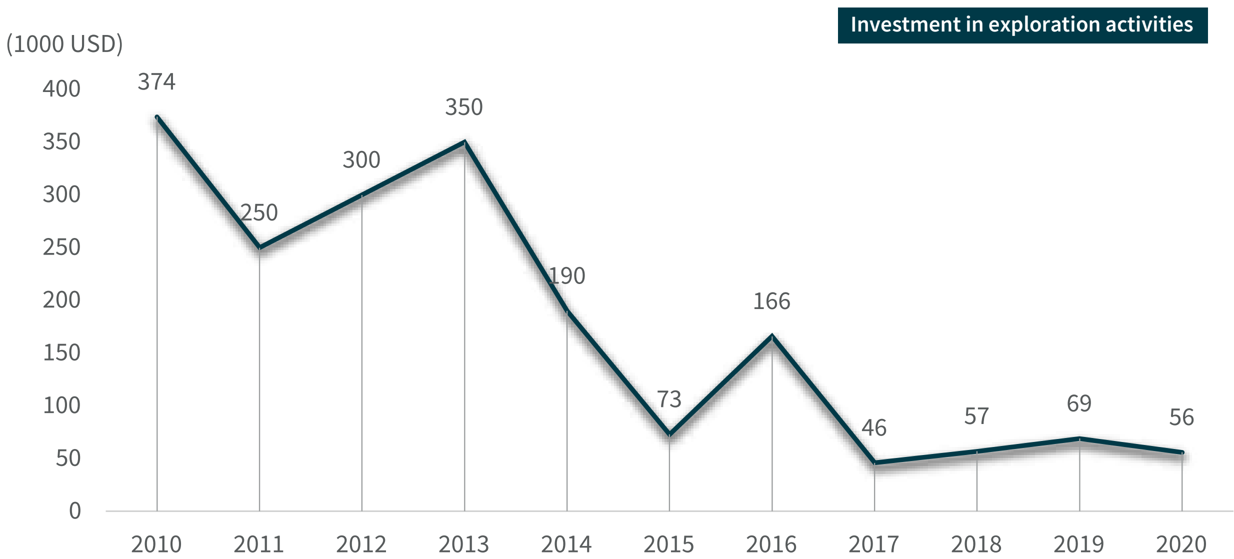
Figure 9 : Different types of State revenues from Hydrocarbons sector



Put in another way, the State revenues from the Hydrocarbon sector include: a production share ranging between 2 percent and 15 percent for natural gas, a corporate tax between 50 percent and 70 percent for oil and between 50 percent to 65 percent for natural gas. Also, the State have the exclusive privilege to purchase 20 percent of the oil production at preferential rates, 10 percent less than market price. In addition to company profits generated by ETAP's participation in concessions and other tax and fees on construction, land contract registrations. The stability of the legal framework that didn't change since the adoption of the hydrocarbon code in 1999 combined with the comparative advantages in the domestic business climate and security situation attracted foreign investment in the hydrocarbon sector[71]

[71] assessing-tunisia-upstream-petroleum-fiscal-regime.pdf (resourcegovernance.org)

Figure 10 : Investment in exploration activities (1000 USD)



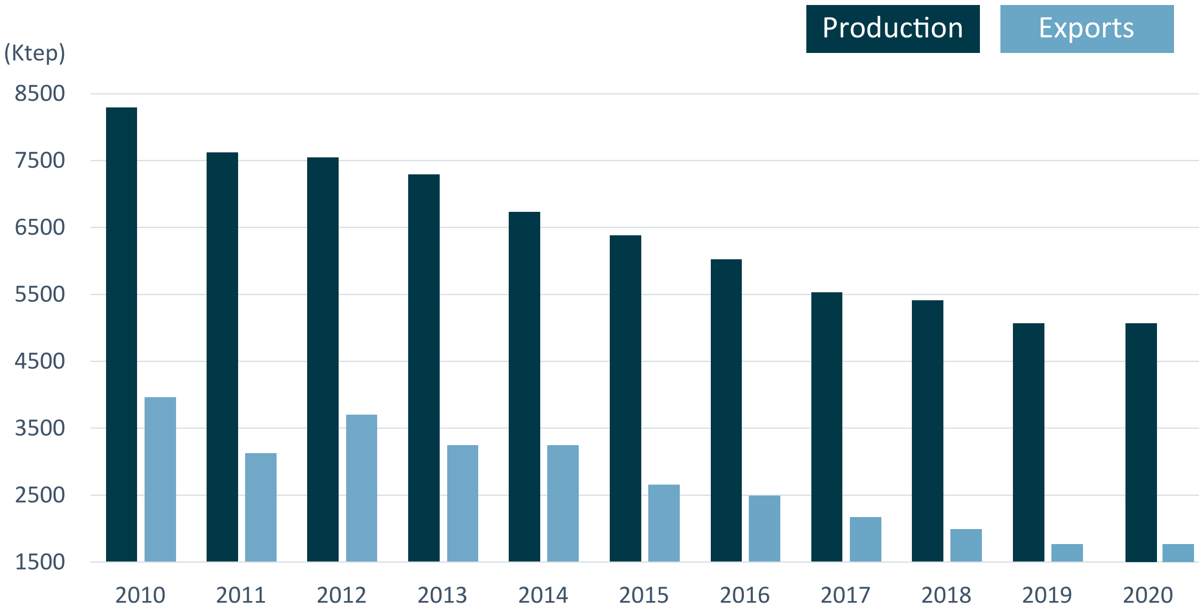
Source: Annual Report ETAP 2020[72]

As illustrated in figure 6 investment in exploration activities has an average of 292.8 thousand USD from 2010 to 2014. But during the period between 2015 and 2020 the investments declined to an average of 93.4 thousand USD.

[72] RAPPORT ETAP 2020.indd

The production and exports also start declining in 2010. As can be seen in figure7, over the period between 2010 and 2020 oil and gas production declined by 40 percent equivalent to 3.63 percent declined per year which resulted in a decrease in exports by 53 percent over 11 years.

Figure 11 : Oil and Gas production and export 2010-2020 (Ktep)



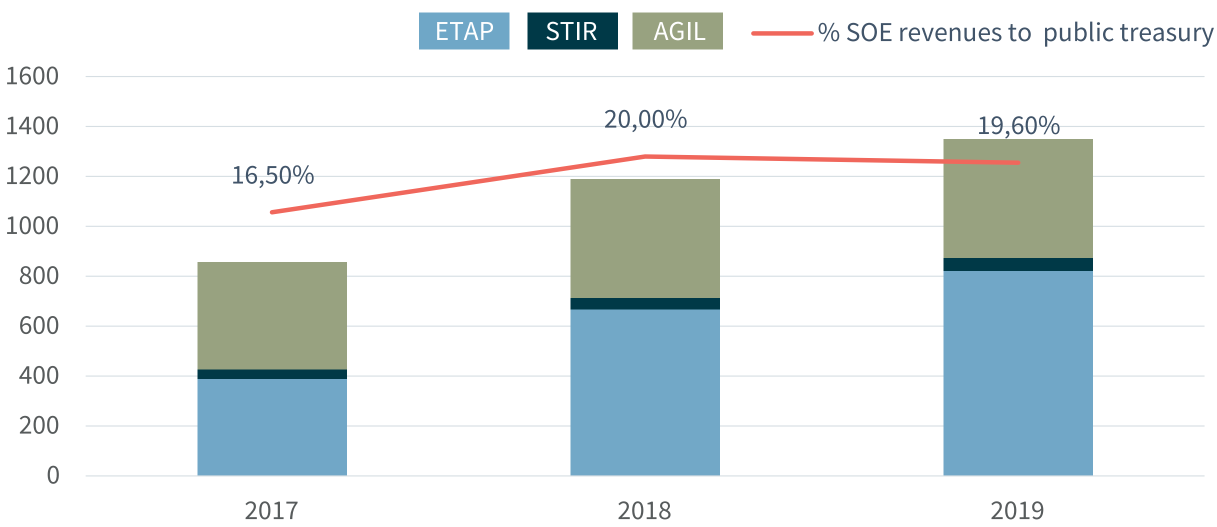
Source: Ministry of energy and mines73

[73] Evolution du Bilan Energétique - 2010-2019 (energiemines.gov.tn)
[74] Nawaat – Le déclin du potentiel résiduel des hydrocarbures en Tunisie et la nouvelle alternative
[75] Nawaat – Le marasme du secteur pétrolier en Tunisie
[76] With the Benefit of Hindsight: The Impact of the 2014-16 Oil Price Collapse (worldbank.org)

The decline in production, exports and investment in exploration activities can be explained by the fact that existing reserves have a limited lifespan, Tunisia has 17-20 years' worth of oil reserves left and 20-22 years' worth of natural gas at current exploitation rates[74]. Furthermore, instability after the revolution of 2011[75], combined with lower global oil prices since mid-2014[76], has slowed new investment and related activities as can be seen in figure 6 and figure7.

TOE fostering fiscal justice: the implementation of AMV Cluster 1 and 5

Figure 12 : Contribution of SOE operating in the extractive sector to the public treasury



Source: Ministry of finance Annex 9 of Financial Law 2021

The figure above shows that despite the fact that investment, production and exports in the sector declined during the last decade, the contribution of State-Owned Companies operating in the hydrocarbons sector, ETAP, STIR and AGIL the national company responsible for the hydrocarbons transportation, to the public treasury had increased between 2017 and 2019 and oscillate between 16.5 percent and 20 percent of the total revenues from the state-owned companies to the public treasury.

This kind of information's was not communicated by the ministry of finance before the publication of Annexes of the Financial Law in 2021. Hence adopting the new organic Law of Finance in 2019[77] granted more transparency in terms of government revenues which can be considered as the implementation of Cluster5 of the AMV Action Plan through the achievement of the first activity: strengthen transparency and access to information.

The annexes of the Financial Law also include a report about fiscal incentives and expenditure made by the State. The report was the result of a campaign led by TOE[78] while the parliament was discussing the new Organic Law of Finance back in 2018 when TOE led a based evidence campaign in order to convince parliamentary members to add an annex about fiscal incentives and expenditure to the Financial Law in order to evaluate the incentives accorded to private investors and assess their cost-effectiveness.

The first Annex 12, Report on Fiscal incentives and expenditures, was published in December 2020[79] marking a new improvement in terms of transparency, access to information and a major turning point for the Tunisian fiscal system. It can be considered along with the publication of annex9, Report on State-Owned Companies[80], as the first step in the AMV Action Plan Cluster1, Mining revenues and mineral rents managements, since to review the current fiscal regime and evaluate its components and review the State revenues from the extraction sector it's needed to have a full disclosure of information about the State revenues and fiscal incentives and expenditure.

The improvement was limited because of the opacity and non-specificity of the information disclosed, the data published in annex 12 of the Financial Law 2021 and 2022 include the overall financial incentives and expenditures for companies operating in the energy sector combined and the exemption from the value added tax on sales for the hydrocarbons company are not evaluated[81] Hence, it's unfeasible to assess or to review these incentives and fiscal expenditures by company.

In contrast, investment incentives have been the focus of TOE research paper working paper number 4 "Assessment of investment incentives in Tunisia" published in 2014[82]. The author attention was focused on measuring the magnitude of the costs-benefits on investment incentives in Tunisia, the study show that incentives not only cost Tunisian taxpayers dearly, but did not have a direct and casual effect on growth, employment and investment. Moreover, according to the paper, FDI does not serve the country's macroeconomic objectives and which is a scourge for the general balance of public finances.

The study covered the energy sector as well stating that is extract the country's currency reserve along with-it natural resources, has a low employment capacity, takes overrated privilege in forms of tax incentives and financial advantages and is tremendously non transparent and is particularly prone to corruption. Two other activities of Cluster1 of the AMV Action Plan where implemented. In 2015 four corporates, including the national company ETAP, (OMV, MDCO, ENI, ETAP) operating in the hydrocarbons sector in the region of Tataouine signed an agreement with the ministry in charge of Hydrocarbon sector in order to identify the needs of the region

77 Microsoft Word - LOB 2019 (finances.gov.tn)

78 La réforme de la Loi Organique du Budget| Observatoire Tunisien de l'Economie

79 Annexe 14 LF2021 Dépenses fiscales.pdf (gbo.tn)

80 Annexe 9 LF2021 Entreprises Publiques.pdf (gbo.tn)

81 الجمهـــورية التونســية (sharepoint.com)

82 Bilan des incitations aux investissements en Tunisie | Observatoire Tunisien de l'Economie

in terms of development and assigned a competent organization to identify achievable development projects to be financed by the four corporates.

The experience inspired another agreement between the ministry in charge of the hydrocarbons sector and four other companies including the ETAP (MAZARINE, PERENCO, WINSTAR, ETAP) in the region of Kebili signed in April 2016 with the same objectives of improving the development in communities near mining areas. Which resulted in an increase of local authorities and communities' benefit from mining projects as stated in Clsuter1 of the AMV Action Plan.

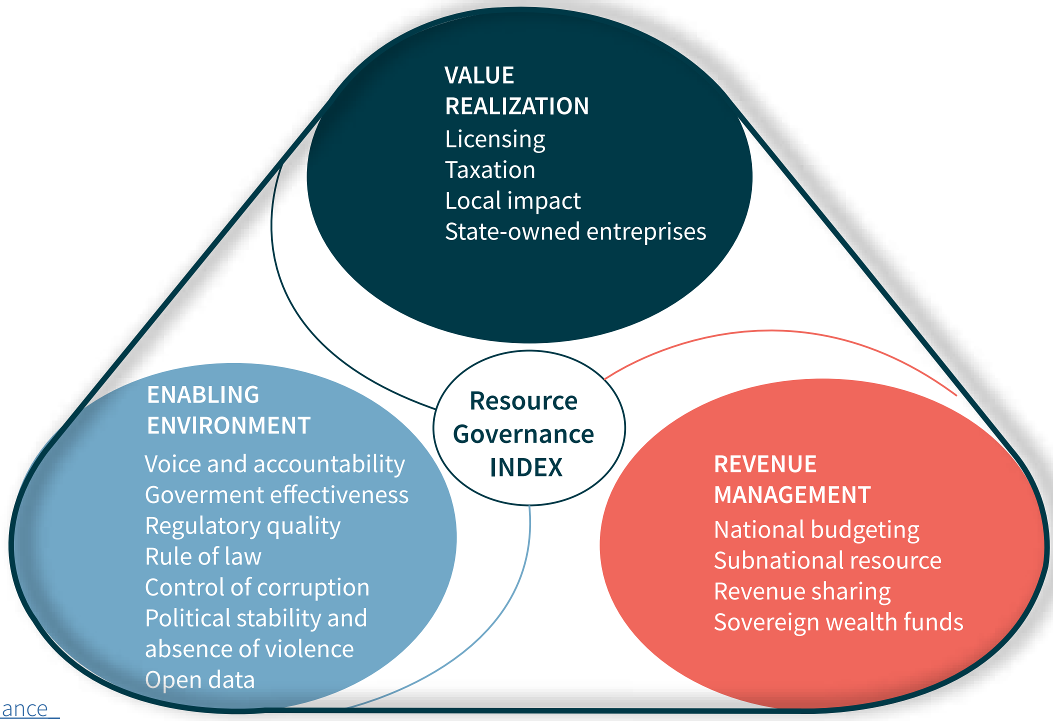
Later in 2018, the parliament ratified the Corporate Social Responsibility Act[83] which was inspired by the agreements signed in Tatatouine and Kebili regions, the Act isn't implemented yet and it's the subject of TOE policy brief under the title of "CSR and Human rights in Tunisia: a label law to help companies" .

IV. Assessment of AMV implementation in Tunisia according to Natural Governance Index

The previous sections have shown that the progress that was made in the extractive sector in Tunisia, specifically the legal framework, can be considered as a good match to Africa Mining Vision Action Plan. In this section we will review the progress we outlined in the previous sections based on the Natural Resources Governance Institute NRGI resource governance index. The Natural Resources Governance Institute is an independent, non-profit organization that provides policy advice and advocacy infused with lessons learned in the field of the natural resources governance and with insights developed through rigorous research[84].

The NRGI publishes a Resource Governance Index in order to measure the quality of extractive sector governance in resource-producing countries around the world. It is a robust, evidence-based tool that allows stakeholders- such as governments, civil society actors, private companies and citizens – to understand how their countries perform in terms of resource governance. It is a freely available data product that serves as a global benchmark, country and sector diagnostic tool, and a roadmap for policy and practice reform[85].

Figure 13 : Resource Governance Index measures



Source: Resource Governance Index Report 2021[86]

[83] Tunisie: Les députés ont adopté le projet de loi sur la RSE | Web Manager Center

[84] What We Do | Natural Resource Governance Institute

[85] What We Do | Natural Resource Governance Institute

[86] 2021_ResourceGovernance_Index_English.pdf (resourcegovernanceindex.org)

The Resource Governance Index published in 2017 and 2021 assess how 18 resources-rich countries govern their oil, gas and mineral wealth. The index composite score is made up of three components as the figure 9 below illustrates it. Figure 13 : Mesures de l'indice de gouvernance des ressources [86]

Two components measure key characteristics of the extractive sector; value realisation and revenue management, and a third captures the broader context of governance; the enabling environment. These three overarching dimensions of governance consist of 14 subcomponents, which comprise 51 indicators that are calculated by aggregating 136 questions as described in 2021 Report. The RGI was chosen to assess the progress of the Tunisian extractive sector in view of the common elements of the AMV action plan clusters activities and the subcomponents of the RGI such as: licensing, taxation, revenue management, government effectiveness, regulatory quality and open data. According to the Tunisia country profile on the resource governance index website[87] both oil and gas sector and mining sector scored weak in value realization. Even though the progress that have been made in cluster 5 activities as discussed in section 1, 2 and 3 with regard to contract and data disclosure, and the establishment of an open data portal for the extractive sector, the progress is limited due to the lack of disclosure regarding companies' beneficial ownership and public officials' financial interest information.

The subcomponents taxation decreased by 22 points for the oil and gas sector, from 80 points in 2017 to 58 points in 2021. The right to access to information that was ratified by the parliament in March 2016 was the main reason of Tunisia oil and gas sector scoring such high score in 2017 and placed as good.

But this transition was constrained by the absence of law that mandates the public disclosure of payments made by companies operating in the hydrocarbon sector to the government. On the other side, the ministry of finance denied a request for information submitted by the Arab Reporter Investigative Journalism ARIJ[88] investigation team in 2020, regarding detailed statement about the taxes levied from oil companies operating in Tunisia during the years 2016, 2017, and 2018[89] .This lack of transparency justifies the degradation of taxation score by 22 points in 2021 RGI.

As shown in the figures bellow, Tunisia extractive sector scored poor in revenue management. Even though several initiatives have been established in the mining and oil and gas sector, like Kebili and Tataouine agreements, or the national company CPG financing regional development previous to 2016, such initiatives weren't enough to improve Tunisia extractive sector score for revenue management due to the absence of sovereign wealth fund or subnational resource revenue sharing mechanisms. The Corporate social responsibility Act ratified in 2018 is supposed to be the legal framework to establish sovereign wealth funds and a new revenue sharing mechanisms is not implemented yet.

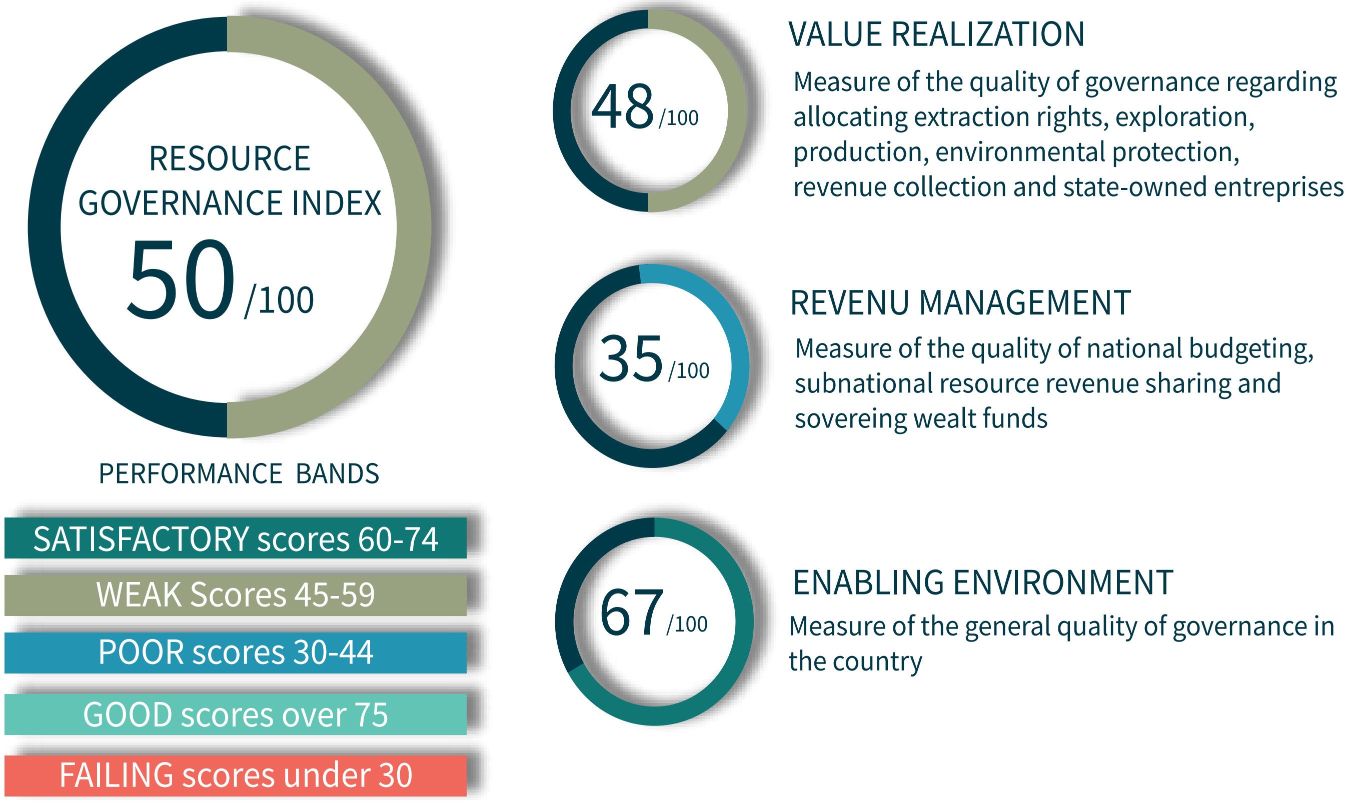
[86] 2021_ResourceGovernance_Index_English.pdf (resourcegovernanceindex.org)

[87] Resource Governance Index

[88] Arab Reporters for Investigative Journalism (ARIJ)

[89] Millions missing from Tunisia's Petroleum Taxes (arij.net)

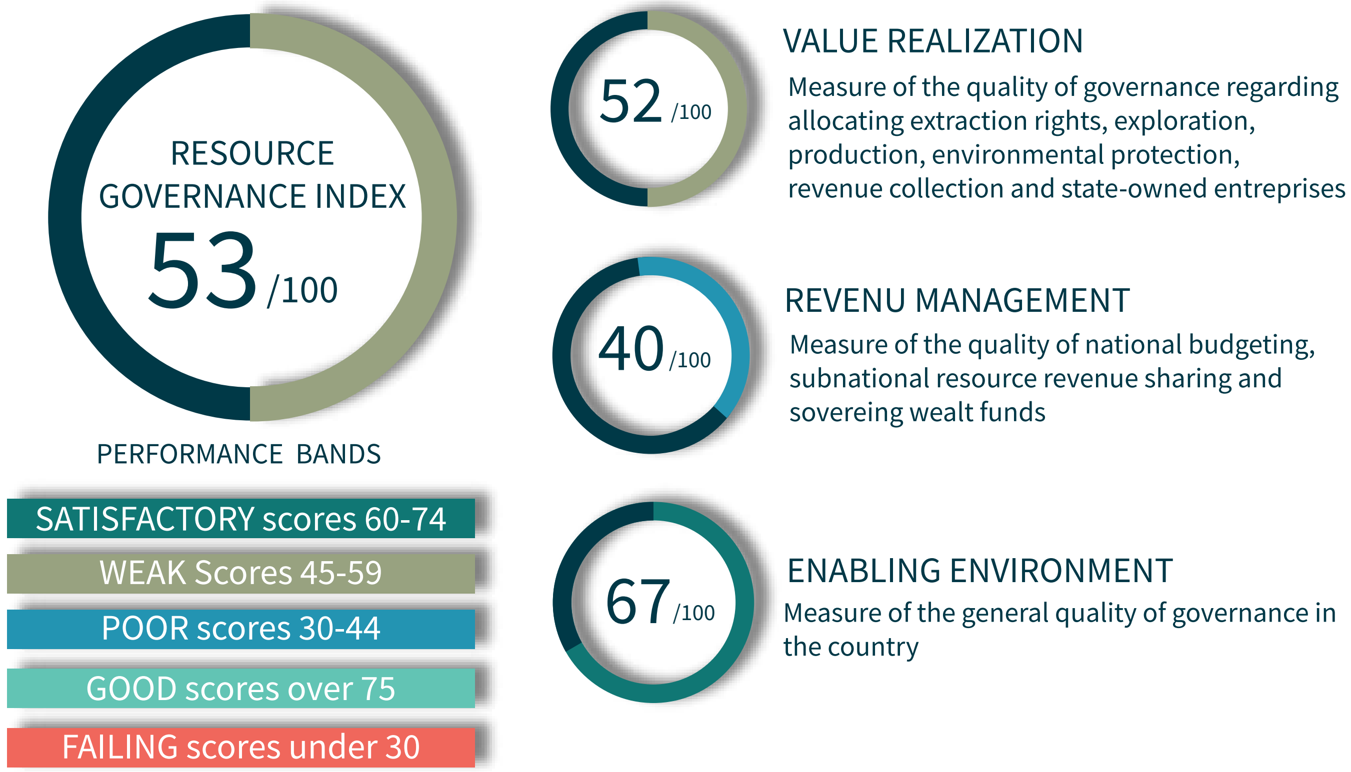
Figure 14 : Tunisia mining: resource governance index and component scores



[90] resourcegovernanceindex

Source: NRGI[90]

Figure 15 : Tunisia Oil and Gas: 2021 resource governance index and component



[91] resourcegovernanceindex

Source: NRGI[91]

The progress caused by the adoption of Article 13 of 2014 constitution and the amendments of laws intended to implement this article granted more control over the extractive sector as we explained previously. Thus, the score of oil and gas sector and mining sector in enabling environment was high; 67 points in 2021 placing Tunisia extractive sector as satisfactory.

According to the Index scores, out of the 8 subcomponents of enabling environment components indicated in figure 9, the only subcomponent that the Tunisian extractive sector scores poor is the political stability and absence of violence due to the continuity of protests in both phosphate mining extraction sites, Gafsa, and the oil and gas extraction sites in the southern region of the country. Besides protests, political instability can be explained by the short lifetime of Tunisian governments; since the 2011 revolution there has been a new government almost every year[92].

[92] 42 ministres et secrétaires d'état : Un record depuis 2011 | La Presse de Tunisie

The progress caused by the adoption of Article 13 of 2014 constitution and the amendments of laws intended to implement this article granted more control over

V. Aligning the Tunisian extractive sector to the AMV : Challenges and opportunities

Based on our observations in section concerning AMV action plan Cluster 1, and Cluster 5 activities implementation and the NRGI reports about Tunisia that confirmed our observations, in this section is a synopsis of the advancement made in the realization of activities of each of chosen AMV action plan clusters.

Figure 16 : Progress that Tunisia made in implementing the AMV Clusters 1, and 5

The figure above illustrates the progress that Tunisia made in each cluster activities. The Africa Mining Vision included a detailed set of activities to establish in order to fully implement each Cluster. The figure above indicates the number of activities which are being implemented by the Tunisian authorities, green for the fully established activities, yellow for the moderately established activities and red for the activities that are at the first level of implementation.

In the following we listed cluster1and cluster 5 details as indicated in the AMV draft action plan:

Cluster1: Mining revenues and mineral rents management:

Activities:

Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.

Improve local communities' benefit from mineral resources through access to jobs, education, transport infrastructure, health, services, water and sanitation.

Monitoring indicators:

Increase numbers of policy makers and other stakeholders attending capacity building workshops.

Degree to which local authorities and communities' benefit from mining projects.

Cluster5: Mineral sector governance:

Activities:

Strengthen transparency and access to information

Improve public participation and domesticate in national policies, laws and regulation.

Resource the legislator to provide effective oversight over mineral sector institutions and mining companies.

Monitoring indicators:

Degree of adherence to international transparency and convention.

Degree to which communities and other stakeholders participate in policy making processes and mining projects

Number of people attending capacity building workshops.

The following three tables indicates each of Cluster1, and Cluster5 activities as stated in the AMV draft action. The third column describe the state of advancement of Tunisia in implementing each of the activity. This table is inspired by the AMV African Minerals Governance Framework[93] that have been designed by the AMDC to serve as a monitoring tool to help African countries to determine their progress with regard to realizing the transformative ambitions of the vision.

The criteria of whether the implementation of the activity is described as unimplemented, low, moderate, or advanced was made based upon this paper observations and the monitoring of the Tunisian government. To be more specific an activity is considered of a low progress if the implementation started but the execution of the activity still did not take place, an activity is considered of a moderate progress if the implementation and the execution of this activity is under way but not yet established and an activity is considered of advanced if it's fully implemented and established

[93] Africa Mining Vision: African Minerals Governance Framework | UNECA

Table 2 :
Cluster 1: mining revenues and mineral rents management progress in Tunisia

Activities	Progress	Argument
Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls	**Moderate**	The activity implementation is moderate since negotiation and renegotiation of contracts took place but the desired outcome of optimizing revenues and ensure fiscal space has not fully materialized.
Review the current fiscal envi-ronment in African mining coun-tries to develop guidelines for optimizing tax packages in a manner that does not discourage mining investment	**Low**	The activity implementation is low since publishing the report on tax incentives and financial advantages is considered as primordial to review the fiscal envi-ronment but no further actions were taken.
Develop systems to evaluate components of tax regimes for leakages and transfer pricing	**Moderate**	The government has put in place several systems but it is too early for the authorities to be able to evaluate transfer pricing. As an example, technical specification for the country-by-country reporting has only been released in August 2022[94] .
Review applicability and terms of double taxation agreements and BITs with host countries of mining companies	**Unimplemented**	
Build capacity to auction mineral rights where applicable	**Moderate**	The activity implementation is moderate since parliamentary deputies were to capacity building workshops but the workshops were only about the hydrocarbon sector.
Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws	**Moderate**	The activity implementation is moderate since the Tunisian Ministry of Energy, Mines and renewable energy started devoting a share of the ministry budget to building capacities and enhancing skills of the ministry officials
Explore strategies for investing windfall earnings and mineral rent into stabilization funds, in-frastructure funds and sovereign wealth funds	**Unimplemented**	
Develop rent distribution sys-tems for allocating part of miner-al revenue to communities near mining areas and local authorities	**Moderate**	The activity implementation is moderate due to the existence of a rent distribution systems, but it still a centralized system.
Improve local communities' ben-efit from mineral resources through access to jobs, educa-tion, transport infrastructure, health services, water and sani-tation.	**Moderate**	The activity implementation is moderate since only one of this area is covered: access to jobs, local communities are privileged in access to jobs in the extrac-tion sites

[94] Dépôt de la déclaration pays par pays (Article 32 LF2)

Table 3 :
Cluster 5: mineral sector governance progress in Tunisia

Activities	Progress	Argument
Strengthen transparency and access to information	**Advanced**	The activity implementation is advanced but not fully established since lack of transparency still persist and contracts annexes that contain fiscal regime details are not disclosed
Improve public participation and do-mesticate in national policies, laws and regulations.	**Advanced**	The activity is fully implemented since the constitutions of 2014 and 2022 that natural resource contracts are approved by the parliament in the name of the Tunisian citizens.
Resource the legislature to pro-vide effective oversight over mine-ral sector institutions and mining companies	**Moderate**	The adoption of open government and the publication of the state budget annexes guaranteed a better oversight for the legis-lature but there is still some lack of transparency prevent-ing the oversight to be effective.
Provide capacity building pro-grammes to strengthen the ca-pacity of local communities and CSOs to make informed de-ci-sions on mining projects	**Unimplemented**	
Establish multi-stakeholder over-sight bodies to ensure broad participation in the decision mak-ing, monitoring and evaluation of mineral projects	**Low**	This activity was implemented on the legislative level, the multistakeholder oversight body is not physically estab-li-shed yet
Empower HR institutions to mo-nitor and enforce human rights standards in relation to mineral operations	**Unimplemented**	
Develop methodologies and tools for mainstreaming health and human rights issues into im-pact assessment procedures and policy planning frameworks	**Unimplemented**	

As may be seen above in the tables, the Tunisian authorities did not fulfil any of the Draft Action Plan activities for Cluster1, and Cluster5. The progress variated from low, early stage of implementation, and moderate, middle stage of the implementation, which confirm the previous observation that Tunisia is still at an early stage of the AMV implementation. Hence the Africa Mining Vision must be adopted at the highest level, the Tunisian Government, in order to fulfil the activities accomplishment and the implementation of the AMV with the aim of promoting a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

Conclusion

The mining and extractive sector legal framework is static since its establishment in the 90s, and archaic; failed to cope with the changes and turnovers of the sector both on the national and international level.

However, the Tunisian extractive sector have experienced an economic downfall during the last decade. as evidenced by the significant decrease of the financial and economic indicators. Among the stakes of the economic development of the sector, these indicators finally raise the issue of domestic revenues decrease from the extractive sector.

Regarding this, the fiscal regime for extractive sector, especially for hydrocarbons, is generally described as rigid, complicated and generous in terms of incentives. Both tax and investment incentives that were meant to encourage investors, enhance job creation, and promote regional development failed to attend these objectives.

Actually, the historical centralized revenue management system resulted in the impoverishment of governorates where extraction sites are located; with the highest unemployment rate, weakest regional development indicator and rising social tensions. Since the Tunisian State failed to respect, to protect and to fulfil the economic and social rights in these regions, it fells under the natural resource curse; despite being home to valuable natural resources, namely phosphate rocks, natural gas and oil, these governorates underperform economically and socially.

The Africa Mining Vision was designed to tackle these issues and promote mineral resource-based development and structural transformation through fostering transparent, equitable and optimal exploitation of mineral resources. To this end, the African Union developed the AMV Action Plan; a framework to translate the AMV principles into actions and measures that have to be taken by decision makers and leaders of African countries.

The gap analysis between the transformations that the mining and extractive sector experienced post the Tunisian revolution of 2011 and the AMV Action Plan activities of Cluster1: "mining revenues and mineral rents management" and Cluster5: "mineral sector governance" led to the conclusion that the process of implementing the AMV in Tunisia is uneven, slow and sometimes limited.

In terms of mining revenues and mineral rents management, the amendment of the Hydrocarbon Code in 2017 reshaped the hydrocarbons contracting process by involving parliamentary deputies in the process. Another legislative amendment contributed in the domestication of cluster1 activities; the amendment of the State Budget Organic Law in 2019 and the publication of the annexe about State Owned Companies and the annex about tax incentives and financial advantages granted by the Tunisian State. The progress was constrained since Tunisia did not reach the desired outcome of optimizing the sector revenue and did not review the current fiscal environment of the sector. The disclosed document has to be upgraded with the lacking data and enhanced with more detailed and evaluation indicators. Moreover, according to Cluster1 activities, Tunisia needs to review the extractive and mining sector rent distribution system. Albeit a rent distribution system for allocating part of the mineral and extractive revenue to local communities already exist, but it is a centralized system that did not succeed at improving development indicators in the extraction areas.

In terms of mineral sector governance, where transparency and access to information are fundamentals, Tunisia joined the Open Government Partnership initiative and is in the process of adopting the Extractive Industries Transparency Initiative, but the lack of transparency still persists. Tunisian authorities did not fully disclose the extractive sector contracts annexes, the annexes that contain details about the fiscal regime applicable to the hydrocarbons contracts. In addition, the Ministry of Finance denied the right of access to information on enterprises operating in the extractive sector detailed payments.

Another development that facilitated the implementation of activities from cluster1 and cluster5, the adoption of a new approach by the Tunisian decision makers where the Governmental institution and the Parliament enhanced capacity buildings of their staff.

Political instability that Tunisia faced during the same period disrupted the domestication of the AMV, with 8 months as the average life span of a Government Cabinet it is challenging to fully achieve the AMV Action Plan activities add to that the various and divergent economic orientation of each new Government Cabinet.

However, and over a decade, 2011-2021, Tunisian mining and extractive sector has gone from a taboo to be one of the main focuses for legislative and executive authorities, civil society organization.

The small progress of the Tunisian extractive sector can be considered as a progress in implementing the Africa Mining Vision., but succeeding at domesticating the AMV and fully implement its Action Plan will require first identifying weaknesses and imperfection of the mining and extractive sector and provide evidence-based solutions and alternatives to better control and govern the sector. More than adopting and implementing AMV Action Plan activities separately, we recommend that the Tunisian authorities adopt a national strategy for the extractive sector.

Similarly, to the AMV, an inclusive national strategy that encompass all interested and involved parties, should foster a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

Annex :

Fiscal regime of the extractive sector in Tunisia

Natural Resource Governance Institute NRGI, defines the fiscal regime for oil and minerals as follow:

A fiscal regime is the set of instruments or tools (taxes, royalties, dividends, etc.) that determine how the revenues from oil and mining projects are shared between the state and companies.1

A fiscal regime can be defined for a particular economic entity if it is large enough and has substantial economic impact on the economy. Usually, the focus is on laws and regulations that determine the rates or levels of financial benefits arising out of economic activities that are attributable to the state.

In the extractive sector, therefore, fiscal regime comprises taxes, fees duties and rents that companies are required by legal instruments (laws, regulations, treaties, policies and agreements) to either pay or net to pay to relevant state agencies.

The fiscal regime that is applicable to the extractive sector is influenced by a range of economic, social and political factors. Ordinarily, and at the political level, the establishment of a state and responsibilities assigned to it require of the state to raise revenues through taxation for the purposes of discharging its responsibilities.

Moreover, natural resources and extractive industry have potentials to transform economies with respect to growth and development, and the design of fiscal regime usually takes this into account. The nature of extractives activities and impacts produced therefore puts the sector in a unique position and require that design of fiscal regime duly takes account of.

Yet, the fiscal regime and its implementation are critical to the overall strength of the resource sector decision chain. The effectiveness of a regime will depend on clarity with respect to its objectives, the instruments chosen to meet those objectives and their administration, relative to the economic situation in the country.

Fiscal Regime of the mining sector

Tunisia mining legislation is mainly governed by the Mining Code MC. It is one of the main legal frameworks for minerals exploration and exploitation in Tunisia.

The MC was promulgated by Law 2003-30 dated 28 April 2003 to replace the mining code of 1953. The new MC was promulged in order to encourage research and mining activity and this for a better development of its mining potential.

- Tax and financial incentives:

Profit tax at the rate of 25% of annual profit. However, the holder is exempt from paying income tax for the first five years from the start of effective exploitation. The holder is also exempt from Value-added tax VAT, due on the occasion of operations carried out in Tunisia.

Imports are free from customs duties and all other tax or duty levied on the importation of goods and equipment necessary for mining activity.

Shareholders all exempt from all taxes and duties on dividends received as well as on the possible repatriation of invested capital.

Mining companies can set up a provision to reconstitute the deposit up to 50% of the taxable profit to develop mining research outside the concession and carry out projects to retain mine's workforce.

The holder is exempt for his research and mining activities from all duties, taxes and direct and or indirect taxes, already instituted or which will be instituted by the Tunisian State or local communities other than those provided in the mining code.

Fiscal Regime of the Hydrocarbon sector

Legal Framework

Tunisia oil and gas tax legislation is mainly governed by the Hydrocarbons Code HC. It is one of the main legal frameworks for hydrocarbons prospecting, exploration and exploitation in Tunisia.

The HC was promulgated by Law 99-93 dated 17 August 1999 and has been amended several times by the following's acts:

Law 2002-23, dated 14 February 2002

Law 2004-61, dated 27 July 2004

Law 2006-80, dated 18 December 2006

Law 2008-15, dated 18 February 2008

Law 2017-61, dated 24 August 2017

The HC has also been amended by several decrees enacted by the State to clarify the applicability of the HC's provisions.

Prior to the promulgation of the HC, oil and gas activities were governed by Law 85-9, dated 14 September 1985. Moreover, prior to the promulgation of the HC and Law 85-9, each license had its own convention, comprising the sole legal and tax framework governing the related activities. In this respect, exploitation concessions awarded and developed prior to the effective date of the HC are excluded from the application of the provisions of the HC and the regulations issued for its implementation.

In this way, Tunisian legislation has promoted stabilization of the tax framework governing investment in the and gas industry. In fact, according to Article 3 of the HC and from its effective date, holders of valid prospecting or exploration permits and/or exploitation concessions granted but not yet developed are entitled to opt, with regard to such permits and concessions, for the application of the provisions of the HC and the regulations issued for its implementation.

The exercise of the mentioned option shall be subject to written notification, stamped and signed by the holder of the permit and/or exploitation concession and addressed to the authority in charge of hydrocarbons no later than six months after the effective date of the HC.

Nevertheless, the provisions of the HC are applicable to hydrocarbon licenses awarded after the promulgation of the code.

Because of the particularity of each permit or exploitation concession agreement, the following section detail only the applicable tax rules in accordance with the HC. In this respect, the HC has defined two types of tax regimes:

- The concession regime
- The production sharing contracts
- The main taxes applicable in this sector are:
- Corporate tax
- Royalties on production
- Registration duties
- Turnover taxes

Fiscall regime

The fiscal regime that applies to the petroleum industry in Tunisia consists of a combination of royalties, Minerals Extraction Tax (MET), corporate profits tax and an export duty on crude oil, oil products and natural gas.

i. Royalties MET

An oil and gas entity are subject to disbursement of a portion of its production, commonly referred to as royalties in respect of oil production. Generally, for gas, the royalty due is paid in cash.

The royalty's production percentage should vary according to the R-factor, determined as following:

$$R = \frac{\text{total accumulated revenes}}{\text{total accumulated expenditures}}$$

R=total accumulated revenuestotal accumulated expenditures

Total accumulated revenues are equivalent to the total turnover for all fiscal years prior to the considered fiscal year, reduced by the sum of tax charges due or paid for all fiscal years preceding the considered fiscal year.

Total accumulated expenditures are equivalent to the total amount of prospecting and production expenses, research and development costs and administrative costs.

All depreciation and tax charges due or paid must be excluded from the calculation of the total accumulated expenditures.

The royalty's production percentage used should vary according to the nature of the hydrocarbons as follows:

However, in the case of non-participatory by the national oil company, ETAP, in an exploitation concession, the rate of proportional royalty applicable to the said concession may not be less than 10% for liquid hydrocarbons and 8% for gaseous hydrocarbons.

For liquid hydrocarbons	
R≤0.5	2%
0.5≤R≤0.8	5%
0.8≤R≤1.1	7%
1.1≤R≤1.5	10%
1.5≤R≤2	12%
2≤R≤2.5	14%
R>2.5	15%

For gaseous hydrocarbons	
R≤0.5	2%
0.5≤R≤0.8	5%
0.8≤R≤1.1	7%
1.1≤R≤1.5	10%
1.5≤R≤2	12%
2≤R≤2.5	14%
2.5≤R≤3	15%
3≤R≤3.5	13%
R>3.5	15%

ii. Corporate income tax

According to Article 107.2 of the HC, for oil and gas entities, the taxable income is determined for corporate income tax CIT purposes in accordance with the rules set out by the Individual and Corporate Income Tax Code ICITC.

For hydrocarbons activities, the determination of taxable income is calculated separately by the holder from its other activities in Tunisia, in accordance with Article 106 of the HC.

Enterprises and corporates subject to the CIT are subject to the social contribution of solidarity for profit of social funds.

The social contribution of solidarity is equal to the difference between:

- The due CIT according to the legislation in force.
- The due CIT according to the rates provided by the legislation in force increased with one point.

The social contribution of solidarity is paid within the same deadline and according to the same modalities prescribed for the payment of the CIT and, where appropriate, the withholding tax WHT.

The social contribution of solidarity is applicable to incomes and profits realized starting from 1 January 2018.

iii. Ring Fencing

Tunisia applies the ring-fencing principle in determining an entity's corporate tax liability in relation to its oil and gas activities. In the respect, hydrocarbon income tax is determined separately for each concession.

iv. Profit tax levied on taxable profit

A concession holder should maintain Tunisian tax records of its hydrocarbon activities in TND currency and in accordance with the local legislation for each concession.

Taxable profit is equivalent to non-exempt income less deductions. Non-exempt income includes salles income (determined with reference to accounting data for sales) and non-sale income (certain items are specifically mentioned in the Tax Code). Deduction include expenses to the extent that they are economically justified and documented in accordance with Tunisian legislation.

The income tax from hydrocarbon activities should be determined using a variable rate based on the R-factor, according to Article 101.3 of the HC.

The CIT rate used will vary according to the nature of the hydrocarbons as follows:

However, in the case of participation by ETAP in an exploitation concession at a rate equal or greater than 40%, the CIT rate applicable to the profits generated from said concession is set to 50%.

During the prospecting and exploration stage, oil and gas companies will not generate any hydrocarbon activities profit.

Exploration costs incurred can be treated at the choice of the holder, either as deductible expenses in the fiscal year during which they were incurred, or capitalized and depreciated from the first fiscal year of production at a maximum rate of 30%. In general, most oil and gas companies operating in Tunisia use the capitalization method.

Development costs are deductible through the depreciation of constructed fixed assets.

For liquid hydrocarbons	
R≤1.5	50%
1.5≤R≤2	55%
2≤R≤2.5	60%
2.5≤R≤3	65%
3≤R≤3.5	70%
R>3.5	75%

For gaseous hydrocarbons	
R≤2.5	50%
2.5≤R≤3	55%
3≤R≤3.5	60%
R>3.5	65%

v. Export duty

Export duty (also known as Customs Service Duty, or RPD) is determined based on the price fixed every month by the General Directorate of Energy. However, any amount paid for the RPD levied on the export of hydrocarbons produced by a company or on its behalf is considered as an advance of CIT due by the entity for the fiscal year during which the said amount was paid, or, otherwise, for subsequent fiscal years.

vi. Production sharing contracts

Exploration permits as well as any resulting exploitation concessions are granted by the State to ETAP, within the PSC framework, as the holder of the concession for which the production will be carried out.

For its activities of exploration and exploitation of hydrocarbons, ETAP is entitled to enter into a PSC with private contractors that are able to demonstrate the necessary financial and technical potential to conduct exploration and production activities. The contractor finances at its sole risk the entirety of the prospecting, exploration and exploitation activities on behalf and under the supervision of ETAP.

In the case of production of hydrocarbons, ETAP will have to assign to the contractor a quantity of the said production within the limit of a percentage specified in the PSC to enable the contractor to recover the expenses incurred under the contract with ETAP, including expenditures incurred relating to PSC and the prospecting permit (recovery oil).

In addition, and as remuneration, the ETAP assigns to the contractor a percentage of the remaining production agreed upon under the PSC (profit oil/gas). The profit oil/gas allocated to the contractor should be adjusted according to the R-factor, increased over the time the contractor has recovered all the incurred prospecting, research and appraisal, development and exploitation expenditures.

According to Article 114.1 of the HC, in consideration of the share of the production made available to ETAP after deduction of the recovery oil and profit oil/gas, the contractor shall be deemed to have paid the CIT (specifically the contractor tax will be paid by ETAP). Such tax is set for every fiscal year to the value of the production quantities taken by the contractor as profit oil/gas.

According to the HC, the CIT due will be directly settled by ETAP on behalf of the contractor. The amount should be credited to the contractor's CIT account with the revenue authorities.

Capital allowances

i. Depreciation

For tax purposes, depreciable assets include assets that have a limited useful life and that decrease in value over time. In this respect, expenditures that may be capitalized consist of the following:

- Geological and geophysics studies
- Drilling costs (tangibles and intangibles)
- Facilities and installation

According to Article 111 of the HC, the annual rate of amortization should not exceed 30%.

However, for asset retirement obligation ARO, the holder of the exploitation concession is entitled to an allowance on the site abandonment and restoration costs. To be deducted from taxable income, the ARO should be provided for during only:

- The last three years for sites located onshore
- The last five years for sites located offshore

ii. Special allowances

According to Article 109 of the HC, subject to the holder's election, the following expenses incurred may be treated either as expenses deductible from the taxable income, or capitalized and amortized annually:

- Prospecting and exploration expenses
- Dry-hole costs
- Well abandonment costs
- Drilling costs for wells producing hydrocarbons in non-commercial quantities
- Preliminary setup costs related to the start-up activities of exploration and exploitation incurred in compliance with the relevant convention

Incentives

An oil and gas entity are entitled to build up a deductible reinvestment reserve within the limit of 20% of its taxable income to finance the following:

- Prospecting and/or exploration expenditures on the same permit and/or other prospecting or exploration permits held by the holder. However, the financing rate of the reserve may not exceed 30% of the expenditure amount.
- Prospecting and/or exploration expenditures incurred in addition to initial contractual commitments on the same permit or other permits held by the holder. However, the financing rate of the reserve may not exceed 50% of the additional prospecting and/or exploration expenditure.
- Expenditure for the construction of pipelines for the transportation of hydrocarbons.

In this context, the concession holder should use the reinvestment reserve to finance one of the projects realized by it, and related to one of its permits/concessions as describes above.

Any reserve built up during a given fiscal year that has not been reinvested in whole or in part during the three fiscal years following the year of its build-up is subject to income tax at the rate applicable to the income which it was built up, increased by late-payment penalties.

Withholding taxes

Oil and gas entities should withhold tax on payments made locally or to non-residents. The entity should withhold tax according to the following domestic rates:

i. Payments to residents

- 1.5% on payments in consideration of goods and services, when their amounts exceed 1,000 TND.
- 15% on payments in consideration of rent, fees and royalties for individuals, and 5% on fees due to entities and individuals subject to personal and corporate tax.
- 10% on dividends paid to individuals (0% for resident companies)
- 20% on interest and on attendance fee
- Withholding taxes on salary determined based on the annual salary, including premiums, indemnities and other advantages in-kind after deduction of 10% for professional expenses (capped to 2,000 TND). The income tax charge due on the annual income should be determined according to the following scale's table

In this context, the annual income tax charge should be divided by 12 to determine the monthly Withholding taxes charge.

Salary is also subject to the social contribution of solidarity for the profit of social funds. The social contribution of solidarity is equal to the difference between the PIT determined based on the PIT progressive scale, the PIT based on a modified PIT progressive scale, by increasing with one point the tax rates applicable to each income bracket.

The social contribution of solidarity is paid within the same deadlines and according to the same modalities prescribed for the payment of the PIT and, where appropriate, the Withholding taxes.

ii. Payments to non-residents

- 10% on dividends
- 20% on interest or attendance fee paid to individuals or entities
- 20% on salaries paid to non-resident employees who spent less than six months in Tunisia for occasional work
- 10% on interest paid on loans obtained from non-resident banks
- 15% for payments to unregistered permanent establishment of non-resident companies

Annual salary (TND)	Tax rate
0–5,000	0%
5,001–20,000	26%
20,001–30,000	28%
30,001–50,000	32%
>50,000	35%

- 15% on other payments:

For technical assistance, however, parent company of the holder is exempt from Withholding taxes due for the studies and technical assistance rendered to the holder

For capital gains, the Withholding taxes, is equal to 25% of the capital gain realized, but the capital gain tax may not exceed 5% of the sales price. For non-resident individuals, the capital gains tax is 10% of the capital gain realized, but the capital gains tax may not exceed 2.5% of the sales price

- Non-residents established in Tunisia, and exercising their activity for a period not exceed six months, are subject to income tax or to CIT through Withholding taxes for amounts due to them under the following rates:

5% of gross revenue for construction

10% of gross revenues for assembly operations

15% of gross revenues or gross revenue for other services

The Withholding taxes domestic rates mentioned above could be decreased by a double taxation agreement DTA.

The applicable rate is 25% when the beneficiary is a resident of a tax haven such as Cayman Islands (UK), Barbados, Costa Rica, Panama, Liberia and 30 others identified and listed by a decree.

In case the Tunisian entity (oil and gas entity) has not performed the Withholding taxes on the payment made to non-resident, the Withholding taxes due by the Tunisian entity is calculated based on the “taken in charge” tax formula, as follows:

$$100 \times \frac{t}{100} - t$$

Where “t” is the Withholding taxes rate due to the common regime.

Financing considerations

Interest charged on loans and/or credit amounts not exceeding 70% of these investments shall be deductible only if the loans or credit amount pertain to development investments. Interest charged on loans and/or credit amounts pertaining to prospecting and exploration investments are not considered deductible expenses.

Transactions

i. Asset disposals

The transfer of a license, in whole or in part, should not trigger any tax consequences.

According to Article 105.1 of the HC, in the case of a transfer in whole or in part of the rights and obligations resulting from a prospecting permit, an exploration permit or an exploitation concession, such transfer shall not be subject to any tax, duty or levy of any nature existing at that date or that may subsequently be created.

Furthermore, according to article 110.1.C of the HC, in the case of a transfer in whole or in part of the rights and obligations resulting from prospecting permit, an exploration permit or an exploitation concession of hydrocarbons, the transferee may depreciate only the expenditure incurred by the transferor that has not yet been recovered or depreciated.

ii. Capital gains

According to Tunisian domestic law, capital gains on the sale of shares by resident entities is subject to CIT.

These provisions also apply to capital gains realized by legal entities either established nor domiciled in Tunisia, subject to exemptions laid down by the tax treaties concluded between Tunisia and the transferor's country of residence.

Indirect taxes

i. Value-Added tax VAT

According to Article 7 of the Tunisian value-added tax VAT code, most goods and services are subject to VAT at a standard rate of 19%. Other services are subject to the same tax whether at a rate of 13% or at a rate of 7%, depending on the nature of the service rendered.

Oil and gas companies are, however, eligible for VAT suspension pursuant to Article 100.G. this VAT suspension will only be applicable if the entity obtains a valid VAT suspension certificate provided by the local tax authority.

ii. Import duties

Oil and gas entities are entitled to import the following goods free of duties and any other taxes, rights and levies due on imports of goods, including VAT, with the sole exception of the RPD and the royalty for electronic data processing:

- All machinery, tools, equipment, materials and vehicles to be effectively used in prospecting and exploration activities
- Vehicles used for company transportation

This exemption is not applicable to merchandise and goods available in Tunisia of a similar quality and of a comparable price to those goods being imported.

iii. Registration fees

Oil and gas entities are subject to a fixed registration tax for the hydrocarbon exploration and exploitation convention and appendices and for the associated amendments, additional acts, particular agreements or production sharing agreements concluded pursuant to the said convention.

However, goods and services supply contracts associated with all the activities of the concession holder exercised within the framework of the said particular conventions, and dealing with the exploitation of hydrocarbons, are subject to registered fees the rate of 0.5% of the contract value.

Fiscal Regime by type of contracts

Convention or Special Convention	
Sharing Approach	The convention is the primary type of contracts that regulate the contractual relationship between the ETAP and the investors as regards the prospection, search and exploitation of hydrocarbons under the Hydrocarbons code.
Commitment	Investor commitments: Finance prospection and search activities Commit to achieve the minimum of activities Inform the granting authority about the programs on prospection and search Respect the chain of command and the laws specially the hydrocarbons code
ETAP and/or Ministry contribution	Grant to the investor the possibility of renewal and extension granted by the hydrocarbons code. Grant to the investor the possibility to obtain a concession in case of findings. Refund the search and exploitation costs.
Fiscal Regime	Each associate has to pay: Fees Royalties Tax on production concreted by the ratio R.

Production Sharing Agreement	
Sharing Approach	The search license is granted to both ETAP and investor according to a convention which specify to percentage of partnership
Commitment	The investor, alone, bear the risks of prospection and search activities
ETAP contribution	In case of a discovery, ETAP has to confirm its participation in the exploitation convention in 6 months starting the day the investor submits the request of exploitation concession.
Fiscal Regime	Each associate has to pay: Fees Royalties Tax on production concreted by the ratio R.

Joint Venture Agreement	
Sharing Approach	The search license is granted to the ETAP The investor is only a contractor The contractor may have one or several companies
Commitment	The contractor finances all the prospection, search and development costs on behalf of ETAP.
ETAP contribution	ETAP is the owner of the license, hence it is the sole owner of any convention derived from it (according to Act 98 97 HC).
Fiscal Regime	ETAP pays the Royalties and tax on production on behalf of the contractor. Meanwhile, the contractor receives: A share of the outputs to cover production costs. A share of the outputs as a bonus.

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