

Keynote Aisha Abdallah: “Mining in Africa: Practical Perspectives on International Arbitration”

1. The New Mining Landscape

The mining sector is undergoing a profound structural shift, driven largely by the global transition toward lower-carbon energy systems. International climate commitments, most notably under the Paris Agreement, require states to reduce their greenhouse gas emissions. Achieving those commitments necessitates significant changes to the energy sector, which remains heavily reliant on fossil fuels that still account for the vast majority of global energy supply.

This energy transition is inherently mineral intensive. It depends on a defined group of about 26 transition minerals which are considered necessary to shift the production, storage, transmission, and use of energy from fossil fuels to renewable sources. Transition minerals include copper, cobalt, lithium, nickel, graphite and rare earth elements, which are essential inputs for clean-energy technologies such as solar panels, wind turbines and battery storage systems. Beyond energy applications, many of these minerals are also integral to advanced defence systems and the digital infrastructure underpinning contemporary economies including smartphones and data centers. Many of these minerals are categorized as ‘critical minerals’ based on their economic importance to specific countries and the vulnerabilities of their supply chains. For purposes of this article, the terms ‘transition minerals’ and ‘critical minerals’ will be interchangeable.

As clean energy technologies scale up globally, they are driving an equally rapid surge in the demand for transition minerals. In 2023 alone, the global market for solar panels, wind, batteries, electric vehicles (EVs), heat pumps and electrolyzers exceeded USD 700 billion, with EVs and batteries accounting for 65% of the total market value due to record EV sales of 14 million units in 2023 and 17 million units in 2024. This growth in clean energy technologies, together with a fivefold increase in solar and wind capacity additions between 2015 and 2023, is reshaping mineral demand patterns worldwide. Lithium demand is expected to rise fivefold by 2040, graphite and nickel to double, cobalt and rare earths demand is expected to grow 50–60%, while copper demand is projected to expand by 30% over the same period. In short, the accelerating deployment of clean technologies is intensifying the global appetite for the very minerals that underpin the energy transition, further elevating their strategic and economic importance.

Beyond energy transition minerals, the new mining landscape also encompasses agricultural minerals and precious stones, which are increasingly framed as strategic resources in their own right. Rising fertilizer prices and supply chain volatility following disruptions at the Strait of Hormuz have brought renewed attention to phosphate mining. This is particularly true for Africa, which holds a significant share of global phosphate reserves and is increasingly positioning itself as a critical supplier of phosphate for food security and agricultural resilience needs.

At the same time, Africa remains a major global source of precious and semi-precious stones, including diamonds, emeralds, rubies and sapphires, with gemstone mining playing a significant role in

employment, export earnings and local economic activity. For example, Mozambique is the leading global producer of rubies and Zambia is famous for its emeralds. Much of this production is driven by artisanal and small-scale mining (ASM), which supports millions of livelihoods but poses persistent environmental, labor and governance challenges, prompting growing efforts to formalize the sector, strengthen ESG compliance and integrate gemstone supply chains into legal and responsible market frameworks. Together, agricultural minerals and precious stones highlight that Africa's evolving mining landscape is not limited to the energy transition alone but is increasingly shaped by broader concerns around food security, sustainable livelihoods and value retention across diverse mineral sectors.

2. Africa's Strategic Role in the Energy Transition

Africa's strategic importance in the energy transition is underpinned by the high concentration of critical mineral reserves and extraction in a small number of countries. The continent holds roughly 30% of the world's critical mineral reserves, including 75% of global cobalt production, 62% of manganese, as well as substantial deposits of lithium, copper and rare earth elements.

According to data compiled by Our World in Data, the Democratic Republic of Congo (DRC) alone accounts for more than 70% of global cobalt extraction and holds a dominant share of known cobalt reserves, making it indispensable to global battery supply chains. Other African countries similarly occupy strategically significant positions. For instance, South Africa holds substantial reserves of manganese and both South Africa and Gabon are key producers of manganese, a mineral widely used in wind and solar power, as well as the batteries of electric vehicles. Further, Guinea is one of the world's three largest producers of bauxite and has the highest reserves of the mineral, essential for many technologies including wind turbines, solar panels, and batteries. In addition, Zimbabwe, alongside the Democratic Republic of Congo and Mali, holds substantial deposits of lithium which are yet to be explored. This geographic concentration of minerals positions African states as central stakeholders in the energy transition.

More recently, Kenya has emerged as a focal point in the intensifying race for critical minerals. Kenya's Mrima Hills in Kwale County holds 5.8 million tonnes in niobium deposits and 48.7 million tonnes of rare earth-bearing ore, described as a 'once-in-a-generation' deposit. Niobium is a strategic input used to strengthen steel alloys for aerospace, defence and energy infrastructure, while rare earth elements are indispensable for electric vehicles, wind turbines, smartphones and advanced electronics. Early valuations place the Mrima Hill deposits at approximately USD 62 billion, a figure approaching twice Kenya's projected national budget for the 2025/2026 financial year and, if realized, capable of materially reducing the country's public debt burden.

Notably, niobium and rare-earth deposits are increasingly identified along a central African corridor stretching from eastern DRC to Kenya, reinforcing the strategic relevance of these states not only to the energy transition but also to defence and high-technology supply chains. In March 2026, the Kenyan government formally invited expressions of interest for the commercial development of Mrima Hill. This

triggered competition among various international firms amid heightened geopolitical interest, particularly from the United States (the **US**) and China, as Washington seeks to curb China's dominance over rare-earth processing and supply chains.

Despite this strong resource base, Africa's role in the energy transition has largely been limited to the early, extractive stages of mining. In practice, most African states primarily export their minerals either as raw ores or in a semi-processed form, for refinement and processing elsewhere. The DRC illustrates this pattern clearly. Although it produced nearly two-thirds of global mined cobalt in 2024, the DRC exported nearly all of its mined cobalt with limited processing for further refinement in China. As a result, much of the economic value generated by Africa's critical minerals is realized outside the continent.

This extractive pattern is increasingly reinforced by geopolitical pressures. As competition among major powers intensifies, particularly US efforts to diversify critical-mineral supply chains away from China, investment engagement in African states has increased. However, such engagement has often prioritized secure and rapid access to minerals over domestic value-addition and industrial-development objectives.

Kenya illustrates this tension. Kenya's Mining Act imposes local-participation and ownership requirements, including a 60% local ownership threshold for small-scale mining operations and local-content obligations for large-scale projects, aimed at promoting beneficiation and retention of value within the domestic economy. These measures, however, have been characterized by the United States Trade Representative as unfair barriers to trade. They have also been framed as forms of resource nationalism that conflict with US strategic objectives to secure access to critical minerals and reduce dependence on Chinese supply chains. This dynamic highlights the friction between African states' development-oriented mineral policies and the supply-security priorities of external actors.

In response, African governments are increasingly calling for value addition in the mining sector. As explained by Global Witness, value addition is not limited to earning more revenue from mineral exports. At its core, it means ensuring that mining generates real and lasting benefits for producing countries and the communities affected by extraction. This includes processing and refining minerals locally, but also creating jobs, transferring skills and technology, building infrastructure such as roads, schools and hospitals, and supporting economic activities beyond mining alone. Value addition also requires meaningful involvement of local communities in decisions that affect their land and livelihoods. Properly understood, value addition is therefore both an industrial policy tool and a development objective, aimed at ensuring that African states and communities share more fairly in the economic and social value created by the minerals that underpin the global energy transition.

To increase domestic value addition, African states have established a wide array of policy and legal measures. Broadly, these fall into four categories. First, several countries have imposed export restrictions on unprocessed minerals, including Namibia's 2023 ban on unprocessed lithium, cobalt, manganese, graphite and rare earths and Zimbabwe's ban on lithium ore exports. Second, governments

are deploying financial incentives to support processing after mineral extraction. For instance, Zimbabwe offers duty-free importation of processing equipment and reduced corporate tax rates for Special Mining Leaseholders, while Zambia provides 100% capital allowances and deductible mineral royalties for copper processors.

Third, many states have introduced local content regimes, which require projects to utilize local goods, services, labor and local equity participation, where a portion of the project is owned by local or national investors, as a means of maximizing domestic value addition. Some examples include Ghana's local content and local participation regulations which contain minimum local equity thresholds and targets for the local procurement of goods and services, and South Africa's insistence on minimum procurement of goods at 70% and services at 80% from local firms verified to have Black Economic Empowerment status.

Finally, several countries have embedded beneficiation into national development strategies, including Kenya's Mining Strategic Plan (2023–2027) and South Africa's MPRDA, which promote local mineral processing rather than exporting them in their raw form. Together, these measures reflect a continent-wide shift toward retaining more value from critical minerals before they enter global supply chains.

3. The Race for Africa's Minerals

Africa has become a central arena where major powers compete for access to critical mineral supplies. Among the powers, China moved both early and decisively. Over the past two decades, it has combined long-term investments in African mines in the DRC, Zimbabwe and Tanzania with parallel control over processing facilities and transport infrastructure. In practice, Chinese companies hold equity stakes in key cobalt, copper and lithium projects in countries such as the DRC, Zambia, and Zimbabwe. These investments are frequently combined with roads, railways and power projects developed under the 2013 Belt and Road Initiative. This integrated approach, frequently framed by China as a win-win partnership with African states, has enabled China to secure reliable access to African minerals while simultaneously presenting its engagement as supportive of the development and industrialization of host states.

This dominance has triggered growing concern in the US and the European Union (the **EU**), which were comparatively late to engage in Africa's critical-minerals sector. By early 2025, it became apparent that global mineral supply chains are highly concentrated making the supply of critical minerals vulnerable to trade disruption. This risk crystalized during recent trade tensions with China, particularly following China's restrictions on exports of rare-earth minerals and advanced lithium-processing technologies. In response, the US and EU have accelerated strategies to diversify the supply chain of critical minerals, with Africa identified as a priority region for new investment.

Key initiatives include the Minerals Security Partnership (MSP), a coalition of the US, EU and thirteen other countries aimed at building diverse, secure and sustainable critical-mineral supply chains, while promoting ESG standards in African countries. Another initiative is the Lobito Corridor, a US and

EU-backed rail and port network connecting the mineral-rich Copperbelt of the DRC and Zambia to Angola's Atlantic port of Lobito. It is designed to transport copper and cobalt from the DRC and Zambia westward to the Atlantic, bypassing trade routes long associated with Chinese networks. This illustrates that competition now extends beyond mining investments to infrastructure and supply chain control.

At the same time, the US has adopted measures to cushion its own exposure to China's export restrictions on critical minerals. In early 2026, the US announced the creation of Project Vault, a \$12 billion critical-minerals stockpile, to protect US industry against supply shocks and export restrictions. As highlighted by Al Jazeera, however, stockpiling does not substitute for long-term access to mineral resources, and the US remains reliant on alliances and African partnerships to challenge China's entrenched position in processing and refining.

Taken together, these developments show that the race for Africa's critical minerals is no longer confined to extraction alone. It is increasingly shaped by competing geopolitical strategies that combine mining investment with control over processing capacity, infrastructure and supply-chain routes. African states now sit at the center of this strategic contest, while simultaneously seeking to assert greater control over how their mineral resources are developed and monetized. The rising demand and competition for Africa's minerals is spurring the reform of regulatory frameworks in African states and shifting the project risk of mining ventures across the continent. This is creating fertile ground for policy-driven disputes as examined in the next section.

4. The Evolution of Mining Disputes in Africa

Across the continent, resource-rich African states are revising their mining laws and policies to ensure they attain their development goals and benefit from the extraction of critical minerals through value addition and domestic industrialization. This includes higher state equity participation, increased royalties and taxes, mandatory local processing and beneficiation rules, and tighter ESG regulation. These changes are often justified as necessary to fund development, meet climate obligations, and correct historical imbalances in resource extraction. However, these reforms have created conflict between older mining agreements and investors' original expectations, on one hand, and governments' newer regulatory, tax and development objectives on the other.

These regulatory shifts interact, often contentiously, with stabilization clauses in mining agreements, legacy bilateral investment treaties (BITs), and contractual commitments made under earlier regulatory and fiscal frameworks. The resulting friction is further complicated by the growing incorporation of sustainability, climate and ESG-related obligations, including those aligned with the Paris Agreement and the UN Sustainable Development Goals.

Recent mining disputes therefore reflect a broader recalibration of the relationship between host states and foreign investors. Mali's decision to increase state and local participation in mining projects from 20% to up to 35% under its revised mining code triggered ICSID arbitration by Barrick Gold, which is emblematic of this trend. The dispute follows a wider pattern of policy-driven disputes across the Sahel and

Central Africa region, including mining arbitrations linked to 'resource nationalism' by African states of their critical minerals. As states assert their regulatory sovereignty over these minerals, the reforms are increasingly giving rise to international arbitration.

These national reforms sit within a wider framework of regional economic integration under the African Continental Free Trade Area (**AfCFTA**) and the Regional Economic Communities (**RECs**). The AfCFTA treats RECs as the building blocks of continental integration and seeks to harmonize trade, investment and development policy, in support of industrialization and sustainable development. Its Protocol on Investment reflects this shift by reaffirming states' regulatory space and embedding environmental, social and governance considerations into Africa's emerging investment framework.

This regional policy direction is increasingly visible in the governance of critical minerals, where REC-based cooperation is being used to align mineral policies, promote beneficiation and strengthen regional value chains. A recent example includes coordination between South Africa and the DRC to obtain funding for mining and energy projects by leveraging DRC's copper and cobalt reserves and South Africa's financial and industrial expertise. Another is the collaboration between Nigeria, South Sudan and South Africa to improve, *inter alia*, mineral exploration and technical capacity, aiming to attract investment. Finally, Gabon's Minister of Trade and Mineral Resources is reported to have pushed for greater harmonization among ECOWAS and AfCFTA members, particularly during the rush for critical minerals, although the same may be difficult due to diverging national interests. These initiatives are intended to retain greater value within the continent rather than perpetuate extractive export models.

Under the Protocol on Investment, the AfCFTA prioritizes consultation, dispute prevention and state-to-state dispute settlement, while deliberately deferring the treatment of investor-state dispute settlement to a separate Annex that remains under negotiation. This sequencing does not reject ISDS outright, but reflects concerns drawn from past African and REC experience, that unrestricted investor access to arbitration may constrain states' ability to regulate in pursuit of industrial, environmental and sustainable-development objectives.

At the same time, commentators note that limiting ISDS may reduce investor certainty and shift enforcement toward domestic courts or diplomatic protection. Importantly, the Protocol's sustainable-development provisions and the prospective availability of counterclaims, signal an effort to rebalance investment dispute resolution by allowing host states not only to defend regulatory measures, but potentially to pursue claims against investors for breaches of ESG, human-rights or environmental obligations. While concrete applications cannot yet be observed pending adoption of the Annex, the AfCFTA's emphasis on regulatory space, dispute prevention and reciprocal obligations is clear. This is particularly evident in sectors relevant to sustainable development such as critical minerals, reflecting the growing prioritization of the objectives of African development.

As such reforms become lasting features of Africa's mining landscape, the risk of future disputes increasingly depends on how both new and existing investors understand and respond to country-specific mining standards and development priorities. For new projects, this means careful upfront assessments of

new legal, fiscal and ESG requirements. For existing operations, the challenge lies in navigating the interaction between initial contractual and treaty protections and newly introduced regulatory expectations. Investors that engage constructively with host states are generally better placed to navigate regulatory change. This engagement could involve adjusting operations to reflect revised industrial and sustainability policies. By demonstrating ongoing alignment with long term national development objectives, investors can improve operational continuity and reduce the risk of project suspension, forced renegotiation or closure as reforms take effect.