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4 June 2024

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Submission to the Australian Federal Parliament on Strategic Partnerships for Critical Minerals: Advancing Australia's 2023-2030 Goals through African Investment.

Dear Madam

We would like to take this opportunity to express our gratitude to the Australian Department of Foreign Affairs and Trade (**DFAT**) for meeting with Australia-Africa Minerals & Energy Group (**AAMEG**) on 6 September 2023 at the Pan Pacific Hotel in Perth. The meeting was productive and well received by our members.

AAMEG and DFAT each had key outcomes and action items resulting from this meeting, including for AAMEG to develop a formal submission to the Australian Federal Parliament for one or more economic treaties with African states. Enclosed with this letter is AAMEG's formal submission in response to this suggestion.

We would welcome the opportunity to meet with DFAT again (and other relevant Federal Government departments) to discuss the contents of this submission as well as the way forward.

On behalf of our members, we thank you again for you for consideration of this submission and we look forward to working with you to reinvigorate Australia's ties with Africa.

Yours Sincerely

Roger Staley
Chief Executive Officer

A Call to Support Australia's Critical Minerals Strategy 2023-2030 by Facilitating Australian Investment into Africa

Unlocking Economic Opportunities and Securing Strategic Resources for Australia's Future

Submission to the Australian Federal Parliament

Delivered: 4 June 2024

This Submission has been prepared by representatives of the Australia-Africa Minerals & Energy Group ("AAMEG") to highlight the important role that the Australian resources industry plays across the African continent and support the development of stronger investment promotion and protection in key African markets for the energy transition.

1. Executive Summary

Comprising more than a quarter of UN member states, African nations have a strong voice in global affairs. By 2050, a quarter of the world's population will be African.[1] There is no question that Africa's importance in global geo-politics, security and development will continue to grow.

Australia already has diplomatic relations with all 54 African UN-member states. Further, trade and investment between Australia and Africa has been strong, with Australia's two-way goods and services trade with Africa valued at $9.6 billion in 2021. To illustrate, Australia's largest export to Africa is wheat, valued at over $900 million in 2021, with the majority going to South Africa, Kenya, Egypt and Sudan. In 2022, gold, Australia's largest import from Africa, was valued at over $828 million in 2022 and primarily came from Côte d'Ivoire, Mali and Senegal. In 2021, Australia's second largest import from Africa was crude petroleum, valued at just over $1 billion.[2]

The world is just at the beginning of the energy transition explosion and securing sufficient input materials to fuel the energy transition and ease supply-chain dependence from other countries is a strategic consideration. In order to facilitate and secure greater Australian foreign direct investment into Africa, particularly in the mining and energy sectors, AAMEG, on behalf of its members, is seeking the Australian Government's support to negotiate investment promotion and protection and agreements with strategic African countries for Australia. In return, there will be demonstrable benefits to Australia such as diverse, resilient and sustainable supply chains, securing critical minerals resources for use by Australia and its allies and building sovereign capacity in critical minerals processing to become a renewable energy superpower.

AAMEG has identified the following countries it considers will be strategic partners for Australia as part of the energy transition and which may result in successful investment promotion discussions: Tanzania, Namibia, Côte d'Ivoire, Ghana, Botswana, Zambia, Rwanda, Madagascar and Burundi.

In this Submission, we cover why Australia should move now to expand its investment promotion and protection framework in Africa, what Australia's competitors are currently doing and high-level country highlights of countries in Africa that we consider could be strategic partners for Australia. We contend that, in addition to improving economies and lives in African host countries, jobs and economic opportunities will occur in Australia if critical mineral ores and concentrates produced by Australian operators in Africa are shipped to hubs in Australia for downstream processing.

This Submission is intended to be the starting point for the Australian Government to consider the value of expanding its investment promotion and protection framework into Africa. AAMEG is aware of the Government's concern not to extend investor-state dispute settlement (ISDS) provisions in new investment agreements. While this policy is understandable in the context of investment agreements concluded with other capital exporting countries (likely to invest in Australia), it conversely constitutes a pitfall for Australian energy and resources companies – and, thereby, Australian national economic interests – investing and operating in African jurisdictions where the rule of law is weak or

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1 https://www.aspistrategist.org.au/reinvigorating-australian-ties-with-africa/
2 https://www.dfat.gov.au/geo/africa-middle-east/africa-region-brief#:~:text=Australia's%20two%2Dway%20goods%20and,Kenya%2C%20Egypt%2C%20and%20Sudan.

non-existent (especially in respect of foreign property) and whose companies do not invest in return in Australia.

AAMEG, on behalf of its members, welcomes the opportunity to continue to work with the Australian Government on the development of an investment promotion and protection strategy for Africa.

2. AAMEG Background

Over the past 20 years, Australian mining companies have taken an increasing role in exploring and developing mining projects on the African continent, the effects of which have far exceeded the Australian Government's initial expectation and involvement. Taking up a suggestion by DFAT that the Australian mining industry consider establishing a representative body to facilitate a more active engagement with government as well as to leverage the industry's presence on the African continent, AAMEG was established in 2010 and formally incorporated in April 2011.

One of the key advocacy roles AAMEG fulfils on behalf of its members is to raise the profile of the significant investment and contribution that Australian mineral and energy companies make in Africa. At the end of calendar year 2023, AAMEG had more than 110 members with operations and interests in more than 40 countries of Africa. ASX-listed and functionally Australian AAMEG members represent the entire mineral resources value chain, including mineral exploration, development and mining companies and their respective Mining Equipment, Technology, and Services (METS) providers. Additionally, AAMEG includes a growing number of (more than 10) African countries as Associate Members.

As detailed in Figure 1 below[3] , Australian (ASX-listed and/or functionally Australian) mineral and energy companies and their Australian service providers are currently operating in 44 African countries. Within this group, Australian materials companies hold critical minerals projects in 20 countries, the top five of which are Tanzania, Namibia, South Africa, Guinea and Botswana.

[3] Australia-Africa Minerals and Energy Group, 2024.

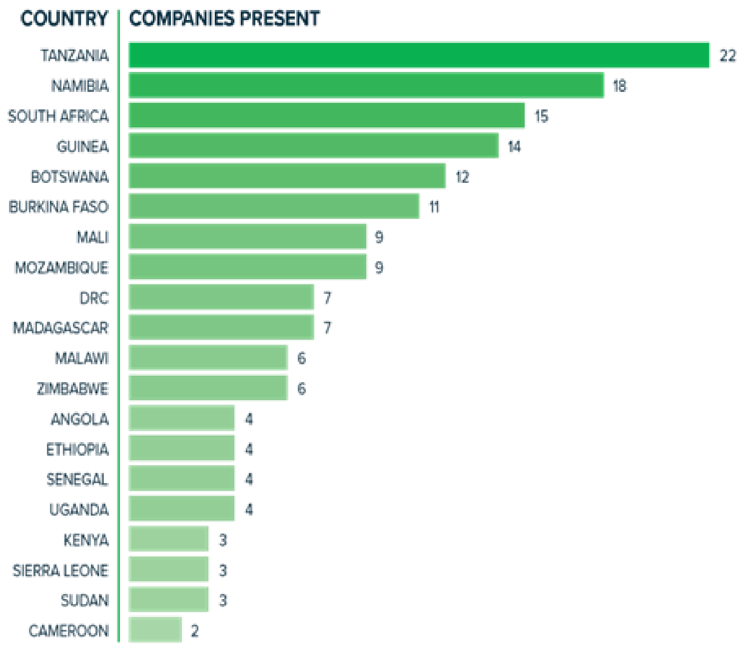

Figure 1. ASX-listed or functionally Australian companies operating Critical Minerals projects in African countries, as at March 2024

3. Now is the time to broaden Australia's Bilateral Investment Treaty (BIT) program, focusing on Africa and leveraging Australia's Critical Minerals Strategy

The spotlight on Africa continues to grow as countries and investors around the world focus on the global energy transition. Australia and its companies are uniquely placed to contribute to a prompt, fair and effective energy transition in Africa, for the following reasons:

- Australia has strong corporate governance requirements, strong anti-money laundering and anti-bribery legislation and strong modern-slavery requirements. Many of the countries actively investing in Africa at the moment do not have such robust systems in place.

- Australia is one of the world's leading mineral resources exploration and development countries, with expertise and experience that is highly sought after around the globe.

- Australian companies have access to capital markets that know and understand mining as well as how to operate in Africa.

If Australia broadened its engagement on investment promotion and protection through BITs and other investment treaties in Africa, this will:

- Contribute to achieving Australia's goals under the Minerals Security Partnership (MSP),

- Improve and secure Australia's access to the critical minerals required for the world's energy transition,

- Support existing Australian companies that have invested in Africa, and
- Promote further investment in Africa by Australian companies and their strategic partners.

a. Achieve Strategic Minerals Partnership goals

In July 2022, Australia joined the MSP, thereby committing to its aim to accelerate the development of diverse and sustainable critical energy minerals supply chains through working with host governments and industries to facilitate targeted financial and diplomatic support for strategic projects along the value chain.[4] Current MSP partners include Canada, Finland, France, Germany, India, Italy, Japan, Norway, Korea, Sweden, the United Kingdom, the United States and the European Union.

In February 2023, additional countries attended MSP meetings held in South Africa. These countries included Angola, Botswana, the Democratic Republic of the Congo, South Africa, Tanzania, Uganda and Zambia.[5]

The principles and goals of the MSP include government cooperation for "*good mining governance for the betterment of communities, economies and the environment*".[6] This principle can be achieved through encouraging changes in domestic legislation, but it can also be facilitated through entering into BITs as a way to enforce a minimum international standard of treatment and protection for investors and their investments. This is consistent with the position the Hon. Madeleine King MP advocated at the Africa Down Under 2023 conference in stating, "*Building capacity in the mining sector in Africa is a focus for Australia. We want to support governments in Africa to deliver responsible, accountable and effective mining governance*." [7] Further, the Western Australian Minister for Mines and Petroleum Bill Johnston said "[t]*here are great opportunities for African countries to maintain and build on our partnership through investment with WA companies*".

By engaging in investment promotion and protection discussions with African countries and securing such protection, Australia can achieve its MSP goals and further encourage the export and growth of Australian mineral exploration, development and processing technologies and skills.

As a practical example, Geoscience Australia has developed a Mineral Potential Mapper after decades of research and data collation.[8] The Hon. Madeleine King MP highlighted the developments at Geoscience Australia and the potential for the deployment of this technology in Africa during the same speech at Africa Down Under:

> "*The investments we have made in Geoscience Australia and the Australian Space Agency are allowing advancements like airborne imaging to map the location of*

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4 https://www.state.gov/minerals-security-partnership/; https://www.minister.industry.gov.au/ministers/king/media-releases/australia-joins-global-minerals-security-partnership

5 https://www.state.gov/minerals-security-partnership-governments-engage-with-african-countries-and-issue-a-statement-on-principles-for-environmental-social-and-governance-standards/

6 https://www.state.gov/wp-content/uploads/2023/02/MSP-Principles-for-Responsible-Critical-Mineral-Supply-Chains-Accessible.pdf

7 https://www.minister.industry.gov.au/ministers/king/speeches/speech-africa-down-under-conference

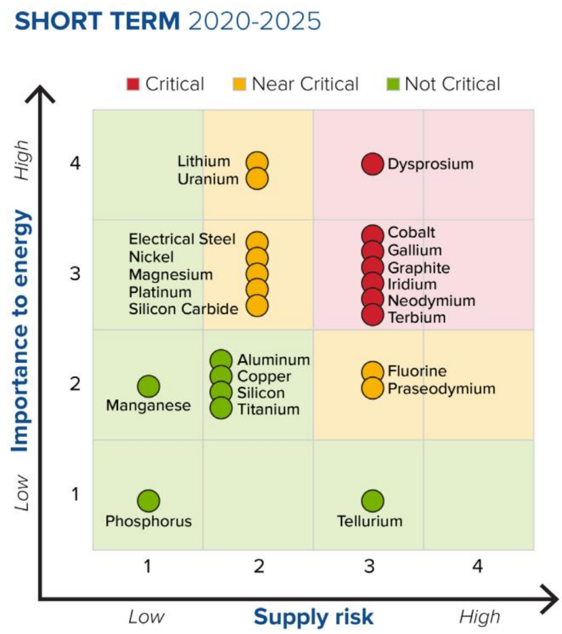
8 https://www.ga.gov.au/scientific-topics/minerals/mineral-potential-mapper

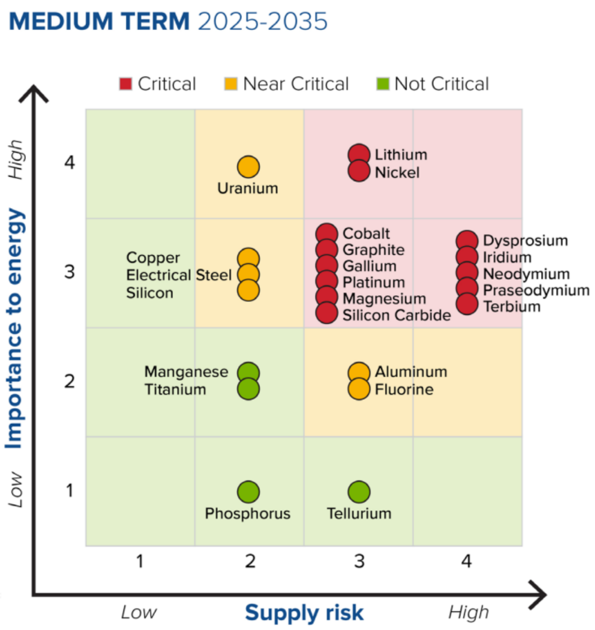
resources and mineral deposits. Opportunities exist to use similar methods to map deposits across vast continents like Australia and Africa."[9]

The technology developed by Geoscience Australia aligns with Australia's goals under the MSP and has the potential to assist the development of certain countries across Africa. Further, deployment of this technology also has the potential to give Australian exploration and mineral development companies an advantage over companies from competitor countries actively present in Africa (such as Canada, the United Kingdom, China and Russia).

However, before such technology is deployed and the treasure map of minerals is uncovered, the Australian Government should consider the investment promotion and protection frameworks it could, and should, have in place with strategic partners in Africa.

In mid-2023, the US Department of Energy also released its Critical Minerals Assessment, evaluating supply risk and importance of minerals.[10] Graphs from the report are extracted below, highlighting minerals that are predicted to be classified as critical and near-critical during the next decade, which includes, among others: (i) uranium; (ii) copper; (iii) graphite; (iv) lithium; and (v) nickel.





In June 2023, Australia released its Critical Minerals Strategy 2023–2030, which sets out how the Australian Government will seize its share critical minerals opportunity.[11] Of the six focus areas identified, we consider Focus Area 1: Developing strategically important projects to be the most relevant to Australia's outbound investment into Africa. Australia is seeking to develop industry around initial priority technologies for critical minerals which align with Australia’s Critical Technology Statement and include but are not limited to:

- Batteries and battery components,
- Rare earth permanent magnets,

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9 https://www.minister.industry.gov.au/ministers/king/speeches/speech-africa-down-under-conference
10 https://www.energy.gov/sites/default/files/2023-07/doe-critical-material-assessment_07312023.pdf
11 https://www.industry.gov.au/sites/default/files/2023-06/critical-minerals-strategy-2023-2030.pdf

- Catalysts for hydrogen production,
- Semiconductors for micro-chips and solar photovoltaic materials and devices,
- Defence technologies, and
- High-performance alloys and metals (for example, of magnesium, silicon, tungsten and titanium).

In February 2024, nickel was added to Australia's list of 26 critical minerals, which includes, among others: (i) cobalt; (ii) graphite; and (iii) lithium.[12] All of these minerals and others have a role to play in the energy transition and as part of Australia's Critical Minerals Strategy.

In noting the considerable quantity and value of Australian-controlled critical mineral resources in Africa, AAMEG believes there is a means within the guidelines of Australia's Critical Minerals Strategy for Australia to achieve its stated Strategy Objectives and become a renewable energy superpower. Specifically, AAMEG believes that jobs and economic growth will occur in Australia if critical mineral ores and concentrates produced by Australian-controlled operators in Africa are shipped to hubs in Australia for downstream processing. The resilient and sustainable supply chain thus established would be enhanced considerably if supported by a bilateral investment treaty between Australia and the source country.

b. Secure Australia's position in Africa against competitor countries

Over the past decade, China has maintained the primary source of foreign direct investment in greenfield investment projects in Africa. This is followed by Russia, the UAE, the United States, Italy and France, as demonstrated in Table 1 below. In addition, the competition for securing access to critical minerals required for the energy transition will shape sources of foreign direct investment (FDI) and demand for projects across Africa for the next five years.

Table 1. Total value of greenfield investment projects by origin, 2006-2020

Country	Total period investment U.S. dollars (billion)			Share of total greenfield foreign direct investment (percent)		
	2006–10	2011–15	2016–20	2006–10	2011–15	2016–20
China	17	19	71	4.1	5.7	19.9
Russia	5	3	33	1.1	0.8	9.2
UAE	48	20	24	11.5	5.8	6.8
United States	36	28	23	8.5	8.3	6.6
Italy	12	14	23	2.9	4.0	6.4
France	34	33	20	8.0	9.8	5.6
UK	46	25	16	11.0	7.4	4.6
Saudi Arabia	3	3	13	0.7	1.0	3.5
Germany	9	10	10	2.2	2.9	2.7
Hong Kong	1	5	9	0.1	1.5	2.6
Japan	7	5	9	1.7	1.4	2.5
Morocco	1	4	9	0.1	1.3	2.4
South Africa	14	16	8	3.3	4.8	2.4
Switzerland	11	7	7	2.6	2.1	2.1
Cyprus	0	0	6	0.0	0.0	1.8
Other	177	149	74	42.2	43.4	20.9
Total	420	342	355	100.0	100.0	100.0

UAE = United Arab Emirates. UK = United Kingdom.
Note: All values are rounded. Totals may not add due to rounding.
Source: USDA, Economic Research Service calculations using data provided by fDi Markets, Financial Times Limited (2021).

12 https://www.industry.gov.au/publications/australias-critical-minerals-list-and-strategic-materials-list

In order to counter the growing influence that competitor countries, particularly China, the UAE and Russia, have in Africa, Australia needs to consider its investment promotion and protection strategy in Africa. There is currently a fierce race to secure as many feed minerals as possible to fuel the next decade of the energy transition. In order to protect and secure Australia's supply chains and to avoid over-dependence on certain resources that are subject to heavy geo-political currents, the Australian Government should consider creating an environment conducive to Australian businesses investing in Africa. It should also be noted that some competitor countries do not put the same emphasis as Australia – if any at all – on ESG and anti-corruption norms; this means that fostering Australian companies' presence in Africa is in the immediate interest of not only Australia, but of African countries themselves.

c. Australian companies have heavily invested in Africa and will continue to do so

In 2024, AAMEG records indicate that there are about 170 Australian materials companies operating in Africa (in addition to the various METS contractors that are directly and indirectly supplying goods and services across Africa).[13] This aligns with DFAT's statement, "*Australian investment in Africa is significant, particularly in the resources sector. There are over 170 ASX-listed companies operating in 35 countries in Africa.*"[14] Further, "[t]*he proportion of ASX-listed explorers with operations in Africa started from 10.9% in June 2013 and progressively grew to being 15.3% of the total sector in June 2023.*"[15]

As the Hon. Tim Watts MP highlighted, "[t]*rade between Australia and countries on the African continent has grown rapidly, almost doubling to $11 billion since 2016-17 and Australian mining companies invest an estimated $40 billion across Africa.*"[16] AAMEG believes that the amount of investment from Australian mining companies in Africa exceeds $60 billion (dollars of the day), based on its review and update to 2023 data from S&P Global Market Intelligence.[17]

Accordingly, Australian companies have set a strong precedent and standard for investing in Africa, which will be encouraged to grow further under improved investment promotion and protection conditions.

4. The benefits of bilateral investment treaty protection

At their core, BITs are (and should be) simple and easy to use instruments. This makes them accessible for:

- The parties negotiating them,
- The future governments operating under them, and
- Foreign investors.

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13 BDO, https://www.bdo.com.au/en-au/insights/natural-resources/special-edition-exploration-data-for-african-explorers

14 https://www.dfat.gov.au/geo/africa-middle-east/africa-region-brief

15 BDO, Explorer Quarterly Cash Update: Exploration data for companies operating in Africa June 2013 to June 2023 https://www.bdo.com.au/en-au/insights/natural-resources/special-edition-exploration-data-for-african-explorers

16 https://ministers.dfat.gov.au/minister/tim-watts/media-release/africa-down-under

17 https://www.lowyinstitute.org/the-interpreter/australia-africa-economic-diplomacy-out-sync-investment-ties

Fundamentally, BITs are only worthwhile negotiating if they contain investor-State dispute settlement (ISDS) provisions. As we explain below, there is limited utility to Australian investors in negotiating BITs or other investment promotion instruments if there is no independent dispute resolution forum where the investment protections that have been agreed can be enforced.

d. Bilateral investment treaties vs free-trade agreements

BITs and Free-Trade Agreements (**FTAs**) each have their appropriate place in Australia's investment promotion and protection network. In the context of Australia's relationship with African countries, we consider that BITs have a better chance of successful negotiation compared to attempting FTA negotiations, for the following reasons.

- First, many countries (Australia included) already have model BITs and existing BITs that can readily inform future negotiations. These model BITs can be updated to bring the text of the Model BIT into alignment with current Australian investment policy.

- Secondly, BITs are generally short and simple documents (ranging between 10 to 15 pages) and have a narrow scope compared to FTAs. Accordingly, targeting BITs with countries in Africa will reduce the negotiation duration and cost compared to FTAs. This will allow Australia to implement any BIT strategy in relatively short order, to maintain pace with developments in energy transition and global demand for critical and strategic minerals.

- Thirdly, BITs naturally reflect the status of Australia's formal written investment promotion relations with countries across Africa – as well as the economic reality, with Australia being predominantly a capital-exporting nation, while most African countries for now remain developing economies. It may thus be premature for Australia to approach countries across Africa seeking engagement on detailed FTA negotiations, which may result in unsuccessful negotiation outcomes. In addition, it is likely that FTA negotiations would take a lot longer, risking Australia missing out on the current critical window of opportunity.

e. Investment protection and investor-State dispute settlement

BITs and investment protection provisions are only useful to Australian investors if they have robust ISDS provisions; they need to have 'teeth' to work. ISDS-backed BITs are useful to investors in two situations: (i) when the investor makes (or expands) its investment and (ii) when a dispute arises between the investor and its host government.

From Australia's point of view, Australian ISDS-backed BITs offer a number of advantages to Australian investors:

- They provide a mechanism to resolve investment disputes without creating country-to-country conflict;

- They protect Australian citizens who invest abroad and Australian shareholders investing through the ASX;

- Not only do they reduce the cost of capital (including by obviating the need for Australian companies to invest through third countries), they allow project development to proceed. Investment protection is often a condition of financing for projects, especially in emerging markets; and

- They provide Australian overseas investors with reassurance that their host country will respect the rule of law in relation to their investments.

The utility of an ISDS-backed BIT in a situation where a dispute arises between the investor and the host government is clear and relatively well understood. If an Australian investor has its investments unlawfully expropriated or is subjected to unfair treatment by its host government, an ISDS-backed BIT gives the aggrieved investor direct access to an international forum that is outside the control of the host government and that has the power to make an award for the payment of monetary compensation enforceable against the non-immune property of the host government in over 160 countries. This means that in the enforcement of its treaty rights, the Australian investor is not dependent on the courts of the host State, which too often are the subject of government influence or, due to weakness in the wider rule of law, unable to effectively control the executive branch of the host government.

In addition to providing recourse to arbitration, there is evidence that ISDS-backed BITs can improve the prospects of a project succeeding. This is for two main reasons:

- Firstly, the existence of ISDS-backed BIT protection often reduces the cost of capital, improving project economics, and

- Secondly, the existence of ISDS-backed BIT protection leads to enforceable international minimum standards of treatment of investors and their investments.

The principal commercial benefit that a foreign investor gains from being covered by an ISDS-backed BIT is that it will (or should be) less expensive for the investor to finance its investment in the host State. This is because an investment made under an ISDS-backed BIT will (or should) attract a lower country risk premium (**CRP**) than it would if it were not covered by an ISDS-backed BIT. Financiers use CRP as a tool to calculate the necessary rate of interest on a loan or the return on an equity investment made in the host State: a high CRP increases the cost of capital – meaning financiers will require a higher interest rate for loans to the investor and equity investors will require higher rates of return on their investment; conversely, a lower CRP reduces the cost of capital, meaning the investor can borrow money at a lower rate or attract equity investors for lower returns.

Turning to the investment protections that are negotiated in ISDS-backed BITs, these fall into two main categories – as they can serve two different purposes.

- The first category of investment protection is that concerned with protection from expropriation and nationalisation. The guarantees against unlawful expropriation are fundamental to prevent catastrophic loss of investment and to provide a clear delineation of treatment that is not accepted internationally, without compensation for any and all loss caused. However, unlawful direct nationalisation is far less common now. Accordingly, this protection is only necessary in relatively extreme circumstances.

- The second category of investment protection comprises a framework of internationally recognised standards of treatment towards foreign investors and their investments in a host country. These standards of treatment are already present in many of Australia's existing BITs and include:

- guarantee of fair and equitable treatment (**FET**);
- guarantee of full security and protection (**FSP**);
- guarantee against impairment by arbitrary or discriminatory conduct;
- most-favoured nation treatment (**MFN**); and
- guarantee of written undertakings.

The utility of this second category of investment protection is occasionally overlooked, particularly in the context of the ongoing and day-to-day operations of Australian investors. This second category of investment protection can be invoked by an investor in discussions with their host government to keep their investment on course and subject to internationally recognised standards of treatment. However, these investment protections are only useful if the BIT is backed by ISDS. Without ISDS, the BIT is merely a 'toothless tiger'.

5. Australian companies use ISDS

To date, there have been at least 10 cases commenced by Australian investors against foreign governments under BITs and FTAs. We provide a non-exhaustive list of these cases in **Annexure 1** and of cases against African countries in **Annexure 2**. It is evident that Australian companies and affiliates of Australian companies have used and continue to use ISDS to protect their investments, where ISDS is available.

One ongoing example of an Australian investor using ISDS is Australian gold producer, Kingsgate Australia (**Kingsgate**) in its ISDS case against the Kingdom of Thailand.[18] By way of background, Kingsgate commenced gold production at the Chatree gold mine in Thailand in 2001. However, in May 2016 the Thai Government announced that all gold mining in Thailand would cease by 31 December 2016. In November 2017, Kingsgate announced that it had commenced arbitration against Thailand under the Australia-Thailand FTA.[19] Kingsgate engaged in the arbitration and entered into negotiations with the Thai government regarding the Chatree mine,[20] which ultimately led to Kingsgate announcing in March 2023 that the Thai government had approved the reopening of the Chatree mine in Thailand.[21]

The *Kingsgate v Thailand* case demonstrates the power the ISDS provisions in the Australia-Thailand FTA had to facilitate negotiations between an Australian investor and a foreign government regarding their investments. Fortunately for Kingsgate, it had the protection of the Australia-Thailand FTA. However, if the Australia-Thailand FTA was not in place, it is likely that the company would not be in the position it is in today. In the words of Kingsgate's Chairman in his address to shareholders at the end of 2022:[22]

> "[N]*ot all countries have the respect for the rule of law as is the case in Australia. Neither is it the case that* [ISDS] *gives foreign companies operating in Australia an unfair advantage. It is no coincidence that most disputes awaiting resolutions by the international courts are in certain African countries, not known for their embrace of democracy or the absence of corruption.*"

One key consideration arising from this statement is that not only are the African countries with which Australia should contemplate entering into a BIT very unlikely to see their companies perform outbound investments in Australia in the foreseeable future (thus

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[18] *Kingsgate Consolidated Ltd. v. Thailand*, PCA Case No. 2017-36/AA684.
[19] Kingsgate Announcement, 'Commencement of arbitration against Thailand' 3 November 2017.
[20] Kingsgate Announcement, 'Thailand Update' 23 September 2021.
[21] Kingsgate Announcement, 'The Chatree Gold Mine is OPEN' 17 March 2023.
[22] Kingsgate Announcement, 'Chairman's Address' 1 December 2022.

reducing the dispute risk close to nil), but Australia has little to fear from ISDS to the extent that it is among the countries in the world that uphold the rule of law and treat foreign property in accordance with the most stringent standards of international law.

It is also significant to bear in mind that most Australian mining companies operating in Africa are funded by thousands upon thousands of individual shareholders who invest their savings into these ventures. This means that, in the event of an expropriation of an Australian company's assets, or any other critical host state measure against such a company, it is not only the viability of the impacted company that is at stake, but the livelihood of the Australian people behind its business.

For these reasons, AAMEG believes there are compelling, national-interest reasons for Australia to depart from the Government's current policy not to include ISDS in new investment agreements when negotiating such agreements with African countries.

6. Australia's current BIT program and those of its competitors

As at the end of 2023, Australia has 15 BITs in force. However, the Australia-Egypt BIT is the only BIT that Australia has with a country in Africa. The map below highlights Australia's BIT program:

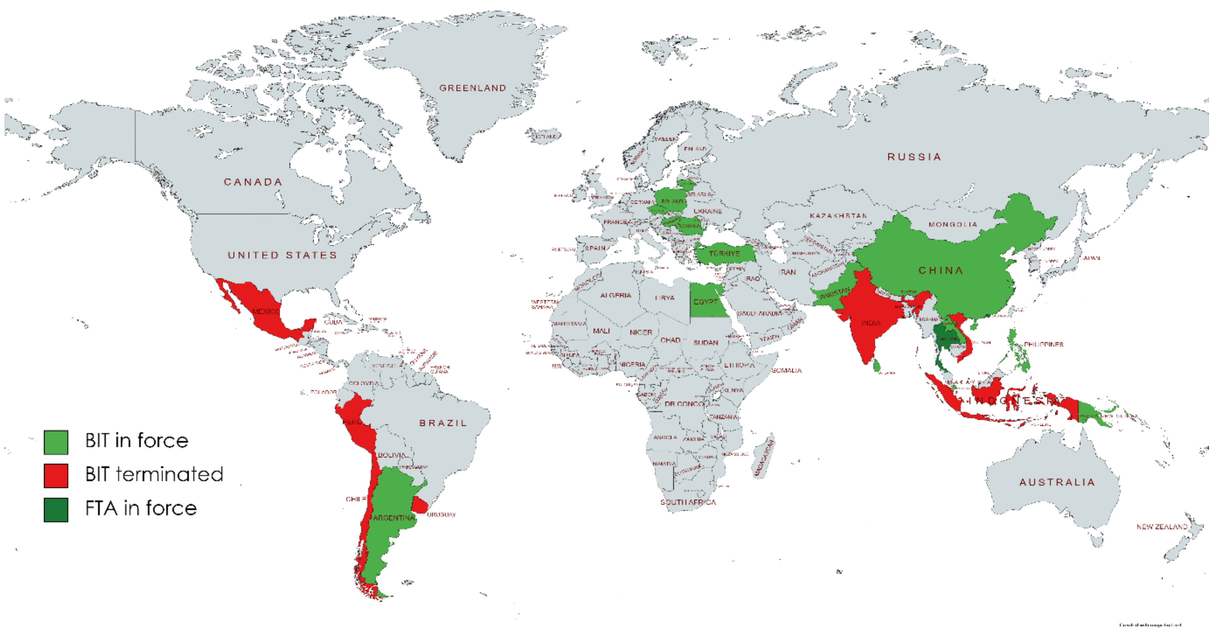

Figure 2. Country map of Australian BITs and FTAs with ISDS provisions[23]

Australian investors have very limited BIT protection compared to Canada and the United Kingdom across Africa. Generally speaking, Canada and the UK have (rightly) concentrated their BIT efforts in West and East Africa:

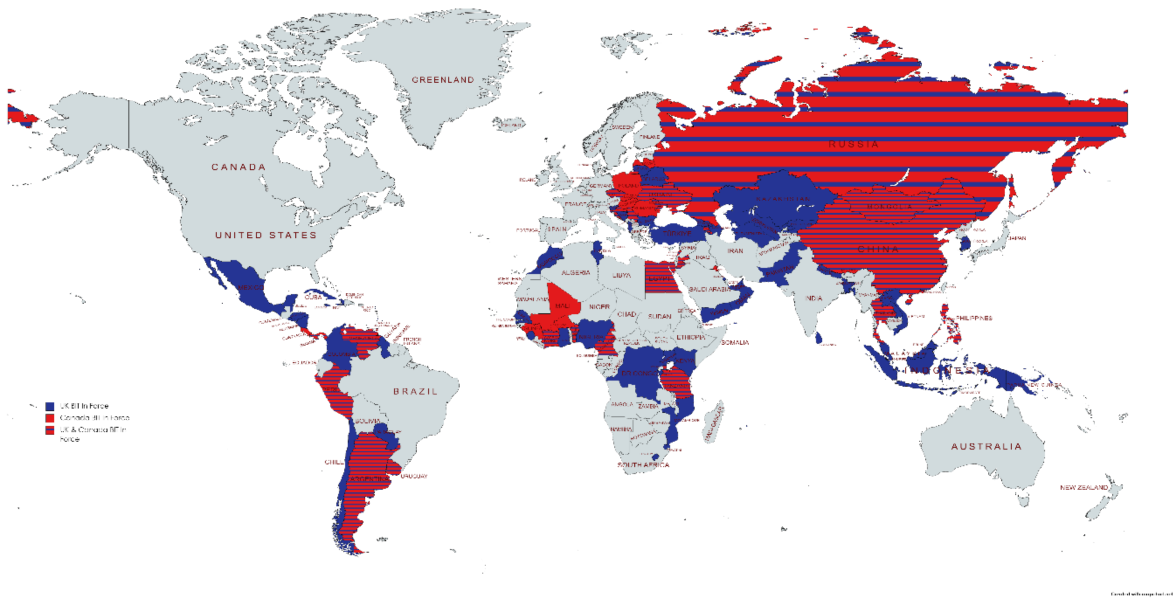

Figure 3. Countries with BITs in force between Canada or the United Kingdom

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f. BIT trends in Africa (2017-2023)

Over the course of 2017-2023, trends have emerged in which countries are signing BITs across Africa. As evident in the list below, the UAE, Türkiye and Japan have been the main countries expanding their BIT program across Africa over the last six years. This is consistent with investment trends that have been observed across Africa during the latter half of the last decade. Between 2012-2022, investment from the UAE into Africa stood at US$ 59.4 billion.

List 1 below highlights BITs signed across Africa between 2017-2023 with countries outside the African continent.

List 1: BITs signed across Africa (2017-2023)

- Angola - China (2023)
- Angola - Japan (2023)
- Mozambique - United Arab Emirates (2022)
- Côte d'Ivoire - United Arab Emirates (2021)
- Angola - Türkiye (2021)
- Côte d'Ivoire - Japan (2020)
- Japan - Morocco (2020)
- Sierra Leone - United Arab Emirates (2019)
- Guinea-Bissau - United Arab Emirates (2019)
- Gambia - United Arab Emirates (2019)
- Brazil - Morocco (2019)
- South Sudan - United Arab Emirates (2019)
- Liberia - United Arab Emirates (2019)
- Côte d'Ivoire - Portugal (2019)
- Burkina Faso - Türkiye (2019)
- Kenya - Mauritius (2019)
- Gabon - United Arab Emirates (2019)
- Niger - United Arab Emirates (2018)
- Qatar - Rwanda (2018)
- Côte d'Ivoire - Qatar (2018)
- Singapore - Rwanda (2018)
- Kenya - Singapore (2018)
- Brazil - Ethiopia (2018)
- Mali - United Arab Emirates (2018)
- Mali - Türkiye (2018)
- Mauritania - Türkiye (2018)
- Türkiye - Tunisia (2017)
- Chad - Türkiye (2017)
- Ethiopia - Qatar (2017)
- Rwanda - United Arab Emirates (2017)
- Uganda - United Arab Emirates (2017)
- Burundi - Türkiye (2017)
- Angola - United Arab Emirates (2017)
- United Arab Emirates - Burundi (2017)
- Mozambique - Türkiye (2017)
- Belarus - Sudan (2017)

7. Where should Australia focus its efforts to negotiate BITs

Indicia and criteria are required to assess where Australia should focus its efforts to negotiate BITs. These indicia should focus on identifying the greatest impact that can be achieved for Australian investors. We consider that some of the relevant indicia for this identification exercise include considering the following questions:

1. Which are the top countries that Australian companies have invested in and will continue to invest in?

2. Which countries will be the most significant as part of the energy transition?

3. Which countries in Africa have signed BITs with trading partners similar to Australia, such as the United Kingdom, Canada and Japan, or geo-significant countries, such as China and Russia?

4. Which countries in Africa are actively reaching out to Australia and Australian energy and resources companies to invest in their countries?

With these indicia in mind, we have identified that Australia should focus its efforts on negotiating BITs with Tanzania, Namibia, Côte d'Ivoire, Ghana, Botswana, Zambia and Rwanda. However, the countries Australia could approach first is open to discussion. We provide a highlight for each of these countries below.

This list is not exhaustive and is not geared towards investing in countries in Africa with the highest country investment risk profile. These countries have been identified as they rank highly on one or more of the indicia we have outlined above.

g. Mineral deposits across Africa

The Hon. Madeleine King MP has called out the strong mineral endowment of some African countries in saying: "[f]*ifty per cent of global cobalt reserves are found in the Democratic Republic of Congo, 30 per cent of manganese in South Africa, over 12 per cent of the world's graphite is found in Mozambique, Zambia and Tanzania*."[24]

The figure below provides an overview of key locations where mineral deposits have been identified in Africa, including those required for the energy transition: graphite, lithium, nickel, copper and uranium.

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[24] https://www.minister.industry.gov.au/ministers/king/speeches/speech-africa-down-under-conference

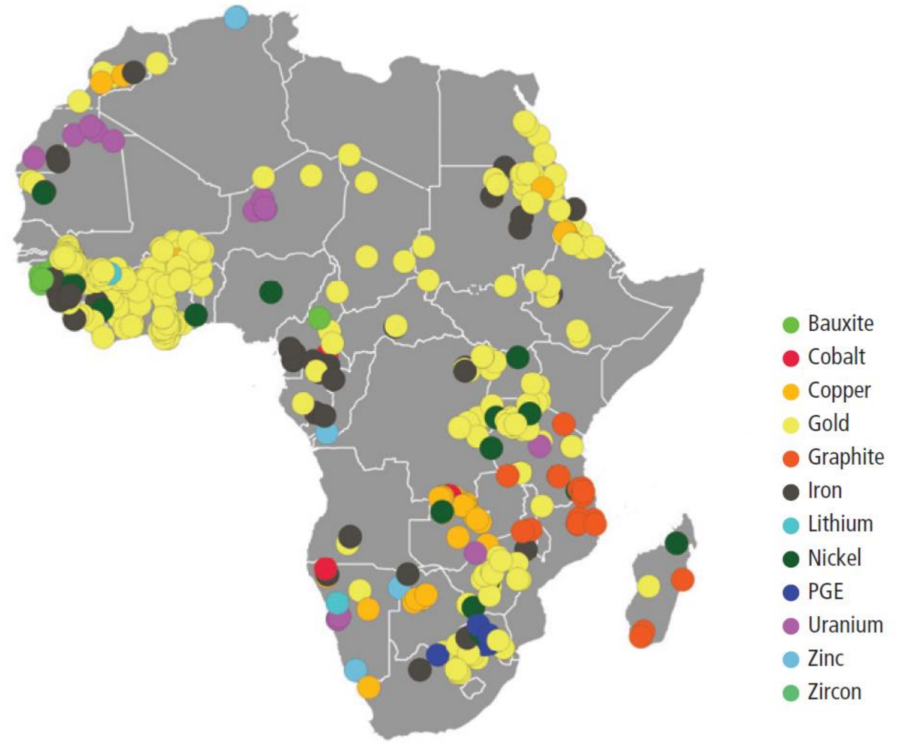

Figure 4. Selected Metals and Minerals Deposits Discovered in Africa, 1990-2019[25]

h. Country highlight: Tanzania

In July 2020, Tanzania formally graduated in status from being classed as a low-income to lower-middle-income country, reflecting sustained macro-economic growth.[26] Tanzania is rich in strategic mineral resources and Australian companies have already identified and started investing in this. AUSTRADE has identified that:

> "*Tanzania has around 164 of the 240 mining projects active in East Africa, according to Africa Mining IQ 2022. Since the change of President in 2021, Tanzania has embarked on a major turnaround to attract new mining investment. This has resulted in an 'Aussie boom'. In the last 2 years, 90% of mining licences have been granted to Australian companies. These companies have committed about US$3–4 billion worth of investment in Tanzania, mainly in graphite mining.*"[27]

In April 2023, the Tanzanian Government signed contracts worth $667 million with three Australian companies to mine graphite and rare earths.[28] Relevantly, the US considers graphite a critical mineral for the short and near future, which will face high supply risk. Australian companies already operating in Tanzania include:

- Peak Rare Earths: Ngualla Rare Earth Project;
- Perseus Mining: Nyanzaga Gold Project;

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25 Albert Zeufack and James Cust, The Untapped Economic Potential of Sub-Saharan Africa's Oil, Gas and Mineral Resources, April 2023.
26 https://www.worldbank.org/en/country/tanzania/overview#2
27 https://www.austrade.gov.au/en/news-and-analysis/analysis/east-africa-seeks-australian-mets-know-how
28 https://www.theeastafrican.co.ke/tea/business/tanzania-signs-rare-earths-deals-with-australian-firms-4203894

- EcoGraf: Epanko Graphite Project;
- Black Rock Mining: Mahenge Graphite Project;
- Walkabout Resources: Lindi Jumbo Graphite Project; and
- Evolution Energy Minerals: Chilalo Graphite Project.

In September 2023, representatives of the Tanzanian Government visited Australia to attend the Africa Down Under conference, demonstrating Tanzania's commitment to attracting Australian investment.[29] During Africa Down Under, the Tanzanian Commissioner for Minerals, Dr Abdulrahman Mwanga, said the turnaround in the country's mining sector under the leadership of President Dr Samia Suluhu Hassan had resulted from its commitment to support foreign investors: "[We are] *ready to work with all investors in the mining sector and* [will be] *working tirelessly on creating a conducive environment for investment, raise appetites and enable the flow of capital from financial institutions to various mining activities*."[30]

Tanzania has 11 BITs currently in force, including those with Canada and the United Kingdom. Tanzania has not entered into a new BIT since 2015, a period which aligns with President John Magufuli's presidential term from November 2015 to March 2021. With President Dr Samia Suluhu Hassan currently in power and a strong focus on investment, there may be a new opportunity to negotiate a BIT between Australia and Tanzania.

It is worth noting that in late 2023, over US$ 100 million in damages was awarded against Tanzania in an investor-State dispute case concerning a nickel project.[31] This international arbitration was commenced under the United Kingdom – Tanzania BIT. Accordingly, entering into a BIT at this time may be a sensitive topic for Tanzania, and Tanzania's recent experience should be considered.

i. Country highlight: Namibia

According to GlobalData, Namibia was the world's third-largest producer of uranium in 2022.[32] Nuclear energy will contribute significantly to the energy transition and uranium is expected to remain a near critical mineral over the next decade. There are already a group of key Australian mining companies exploring and developing uranium deposits as well as other mineral projects in Namibia. These include:

- Deep Yellow: Tumas Uranium Project,
  Omahola Uranium Projects,
  Nova Uranium Joint Venture, and
  Yellow Dune Uranium Joint Venture;
- Bannerman Energy: Etango Uranium Project;
- Paladin Energy: Langer Heinrich Uranium Mine,
- Elevate Uranium: Marenica Uranium Project,
- Prospect Resources: Omaruru Lithium Project,
- Arcadia Minerals: Swanson Tantalum Project,
  Kum-Kum Nickel Project,
  Bitterwasser Lithium in brines and clays projects, and

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29 https://www.miningreview.com/battery-metals/africa-down-under-tanzania-in-the-spotlight-as-a-growth-market/
30 https://www.miningreview.com/investment/africa-down-under-2023-australian-investment-in-africa-is-back/
31 *Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38.
32 https://www.mining-technology.com/data-insights/uranium-in-namibia/?cf-view

Karibib Copper Project.

- Askari Metals: Uis Lithium Project, and
- Celsius Resources: Opuwo Cobalt Project.

During May 2023, the Namibian Government announced that it would seek to acquire minority stakes in mining operations across the country. This quickly led to a 20% share price drop for Paladin Energy and a 10% fall for Deep Yellow.[33] As it turned out, this announcement was not out of the ordinary and it is generally accepted across Africa that governments will be issued a minority stake in mining projects.

In addition to its vast natural resources, Namibia is also positioning itself to be a producer of green hydrogen, aiming to reach carbon neutrality by 2050 and to become a global net exporter and hub for the production of Green Hydrogen.[34]

In September 2023, the Government of Namibia, represented by the CEO of the Namibian Investment Promotion Development Board (**NIPDP**), Ms Nangula Uaandja, visited Western Australia to deliver a presentation on Green Energy and Value Addition in Namibia.

Namibia has signed 15 BITs, of which 9 are in force. The most recent BIT signed by Namibia (in 2009) was with Russia. Similar to Tanzania, Namibia has had a large period of inactivity in entering into new BITs. We also note that Namibia has signed, but not ratified, the ICSID Convention and the New York Convention. Accordingly, there is an added layer of investment risk for Australian companies investing in Namibia.

j. Country highlight: Côte d'Ivoire

Mineral resources in Côte d’Ivoire include diamond, gold and nickel which is relevant considering Australia nickel to its critical minerals list in February 2024. Deposits of iron ore, bauxite, lithium, manganese and cobalt also exist but have not been extensively developed, although iron ore is mined near Mount Nimba. AAMEG records reveal that over 10 known Australian companies are operating in Côte d’Ivoire. These include Touraco Gold and Perseus Mining.

Director General of Mines and Geology at Côte d’Ivoire's Ministry of Mines, Petroleum and Energy, Mr Bamba Moriba, stated: "[t]*here are continuous improvements in governance, strong state support for mining, quality infrastructure and procedures to facilitate investment in Cote d'Ivoire's fast-growing mining sector*."[35]

Mr Moriba emphasised: "[t]*he mining sector in Côte d'Ivoire offers great opportunities for investors and is supported by the government's efforts to maximize the economic benefits for the country*."[36]

As outlined in Figure 1 above, 10 known Australian companies are currently operating in Côte d’Ivoire. These include:

- Turaco Gold: Eburnea Gold Project,
- Perseus Mining: Sissingué and Yaouré Gold Mines,
- Mako Gold: Napié Gold Project,

33 https://www.fool.com.au/2023/05/30/heres-whats-happening-in-namibia-and-which-asx-uranium-shares-are-being-impacted/
34 https://gh2namibia.com/h2-projects/
35 https://www.cruxinvestor.com/posts/cote-divoire-an-emerging-mining-hotspot-in-west-africa
36 https://www.cruxinvestor.com/posts/cote-divoire-an-emerging-mining-hotspot-in-west-africa

- Tietto Minerals: Abujar Gold Project, and
- Desert Metals: Tengrela South Gold Project,
  Adzope Gold Project,
  Agboville Lithium Project,
  Kounahiri West Gold and Lithium Projects, and
  Vavouva Gold Project.

Côte d'Ivoire has signed 18 BITs, 8 of which are currently in force. It has been relatively active in BIT negotiations over the past decade and has signed the following BITs in recent years with non-African countries:

- Côte d'Ivoire – United Arab Emirates (2021)
- Côte d'Ivoire – Japan (2020)
- Côte d'Ivoire – Portugal (2019)
- Côte d'Ivoire – Qatar (2018)
- Côte d'Ivoire – Mauritius (2016)
- Côte d'Ivoire – Türkiye (2016)
- Canada - Côte d'Ivoire (2014)
- Côte d'Ivoire – Singapore (2014)

k. Country highlight: Botswana

During his presentation at the Africa Down Under 2023 conference, President Mokgweetsi Masisi expressed a strong desire to attract foreign direct investment in its mineral exploration and extraction sectors. He said:

> "*Like other African countries, we recognise the role played by national and international investors in the mining sector. We wouldn't be where we are if it hadn't been for successful partnerships with multinational corporations which have helped us maximise output in the metals value chain development.*"[37]

> "*The ability to attract exploration capital from global markets from any country is underpinned by the political and fiscal landscape. We must ensure stable, well codified laws are supported by fair and transparent statutes, regulations and processes.*"[38]

Accordingly, Botswana may be open to having a discussion about entering into a BIT for the promotion and protection of investment between Australia and Botswana. The US expects that copper will become a near critical mineral over the next decade.

Australian companies already operating in Botswana include:

- Sandfire Resources: Motheo Copper Mine;
- Cobre: Ngami Copper Project,
  Kitlanya East and West Copper Projects, and
  Okavango Copper Project, and
- Si6 Metals: Maibele Nickel, Copper, Cobalt, PGE and Silver projects.

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37 https://www.miningreview.com/investment/africa-down-under-2023-australian-investment-in-africa-is-back/
38 https://www.miningreview.com/investment/africa-down-under-2023-australian-investment-in-africa-is-back/

Botswana has signed 10 BITs, but only two have entered into force (the Botswana – Germany BIT (2000) and the Botswana – Switzerland BIT (1998)). The last BIT that Botswana signed was with Zimbabwe in 2011.

l. Country highlight: Ghana

In 2022 during the Africa Down Under conference in Perth, Ghana's Minister for Lands and Natural Resources, Samuel Jinapor, said that:

> "[i]*n addition to gold, we mine bauxite, manganese and diamonds. There are also deposits of other minerals like lithium and iron ore; base metals such as copper, zinc, nickel, chrome and lead; as well as vast deposits of industrial or development minerals including sand, gravel, granites and salt*".[39]

Mr Jinapor went on to say that:

> "[t]*he priority of the government of Ghana continues to be the translation of these volumes of minerals production into wealth to benefit all stakeholders, equitably, including the larger populace as optimally as possible*".

During Africa Down Under 2023, Ghana's Deputy Minister for Lands and Natural Resources, George Mireku Duker said the Government was mindful of the need for mining policies that would sustain its recent achievements in attracting increased investment for traditional commodities such as gold and bauxite, but also energy minerals such as lithium and graphite.[40]

Accordingly, Ghana has demonstrated strong signs of wanting to move its mineral exploration projects into production.

Australian companies already operating in Ghana include:

- Castle Minerals: Wa Graphite, Gold and Zinc Project,
- Atlantic Lithium: Ewoyaa Lithium Project,
- Azumah Resources: Wa Gold Project; and
- Perseus Mining: Edikan Gold Project.

Ghana has signed 28 BITs, of which 9 are currently in force. The most recent signed was with Türkiye in 2016, although it is yet to come into force.

m. Country highlight: Zambia

Zambia possesses some of the world's highest-grade deposits of copper and is ranked the seventh largest copper producer in the world. Copper will continue to feature heavily as a critical mineral for the energy transition.

The United Kingdom Foreign Minister, James Cleverly, visited Zambia in 2023 as part of an Africa roadshow. The UK foreign ministry confirmed that the UK would agree a UK-Zambia Green Growth Compact, aimed at generating GBP 2.5 billion ($3.17 billion) of British private

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[39] https://www.theassay.com/articles/feature-story/ghana-looking-to-add-critical-mineral-production-to-its-golden-riches/#:~:text=Ghana%20has%20about%20500%20active,%2C%20lead%20and%20columbite%2Dtantalite.

[40] https://www.miningreview.com/investment/africa-down-under-2023-australian-investment-in-africa-is-back/

sector investment in Zambia's mining, minerals and renewable energy sectors, alongside GBP 500 million of government-backed investments.[41]

There is strong interest and support for Zambia by Australia's mining and investment competitors and thus it is an investment destination that should seriously be considered.

Australian companies already operating in Zambia include:

- Beltz Mining: Mwekera Copper Project, Luswishi Copper Project,
- Castillo Copper: Luanshya Copper Project, Mkushi Copper Project Mwansa Copper and Manganese Project.

Zambia has signed 16 BITs, of which 10 are currently in force. It has been relatively active in BIT negotiations over the past decade, having signed the following BITs in recent years with non-African countries:

- United Arab Emirates – Zambia (2020)
- Türkiye - Zambia (2018)
- Mauritius - Zambia (2015)

n. Country highlight: Rwanda

Rwanda is one of the world's largest producers of tin, tantalum and tungsten (**3Ts**) and also exports gold and gemstones. In addition, Rwanda has known occurrences of lithium-bearing minerals.

In 2023, the Rwanda Development Board contacted AAMEG seeking help to facilitate an investment seminar in Western Australia. Rwanda had already visited Germany and Britain as part of its investment roadshow. Speaking at events in Australia, the Rwanda Development Board Chief Executive, Clare Akamanzi, said Rwanda was willing to offer seven-year tax exemption periods and 50 per cent tax deductions to offshore investors, provided they were interested in Rwandan priority investments such as technology, infrastructure including energy and water, tourism, mining, housing and manufacturing.[42]

During Africa Down Under 2023, Yamina Karitanyi, the CEO of the Rwanda Mines, Petroleum and Gas Board stated, among other things:

> "*That's the next focus, not only for government to do a bit more, which is required to have a credible story to tell investors on battery minerals, but also inviting (companies) to come into the field to do early stage exploration and indeed, mining as we move forward*"
>
> "*We also have some deposits of uranium, thorium and others, so we're busy with exploration work to match the demand, particularly linked to energy transition*"[43]

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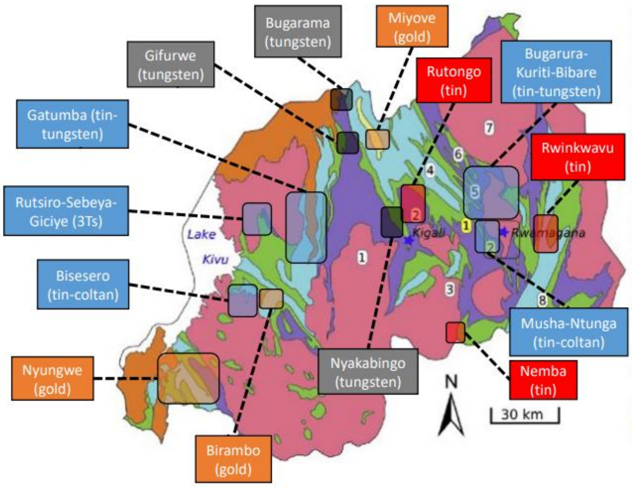
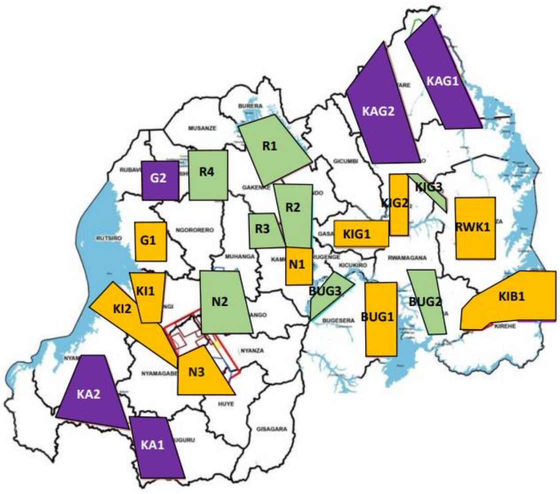
[41] https://www.reuters.com/world/britain-agrees-deals-clean-energy-critical-minerals-with-zambia-2023-08-02/#:~:text=Zambia%20is%20a%20major%20copper,as%20cobalt%2C%20manganese%20and%20nickel.

[42] https://www.theaustralian.com.au/business/companies/australia-offered-tax-holidays-and-large-discounts-for-investing-in-rwandas-ailing-economy/news-story/4c2c8e248307b03417b8435edff9f1a1

[43] https://www.theaustralian.com.au/business/mining-energy/rwanda-aiming-to-build-its-mining-sector-beyond-tin-tantalum-and-tungsten/news-story/fb3752005f2e97a4ad7a928749a89414

During 2023, Rwanda released a report documenting 23 target areas which are ready for further exploration, with work done to date ranging from early stage airborne geophysics to economic studies and resource estimates.[44] The map on the left below shows where certain minerals, including the three 'T's' have been identified, with the map on the right showing the 23 target areas which are ready for further exploration.





With strong government support, a revitalised mining sector and impressive achievements in human rights, Rwanda is showing signs of why the international mining industry should be strongly considering Rwanda for future business opportunities. Rio Tinto is already involved in Rwanda, signing an earn-in investment and joint venture agreement with Aterian Plc (a London Stock Exchange listed resources company) to develop lithium and by-products on 1 August 2023.[45] On 29 January 2024, the state-owned Rwanda Mines, Petroleum and Gas Board announced it had agreed a memorandum of understanding with Rio Tinto for the exploration and mining of lithium in Rwanda.[46]

Rwanda has signed 15 BITs, of which 6 are currently in force. Rwanda has been relatively active in BIT negotiations over the past decade and has signed the following BITs in recent years with countries outside of Africa:

- Qatar - Rwanda (2018)
- Singapore – Rwanda (2018)
- Rwanda - United Arab Emirates (2017)
- Rwanda – Türkiye (2016)

o. Country highlight: Madagascar

Madagascar has extensive deposits of minerals with current production centred upon graphite, nickel, chromium, cobalt and ilmenite. Graphite mining is rapidly growing in Madagascar as the country's graphite deposits are known to be of extremely high quality. AAMEG knows of two Australian companies operating in the Madagascan graphite sector.

Australian companies operating in Madagascar include the following:

- Base Resources*: Toliara Ilmenite, Zircon and Monazite Project,

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44 https://www.rmb.gov.rw/index.php?eID=dumpFile&t=f&f=68168&token=bca415628ca0d601bb28468f283b98d21a6986c1

45 https://polaris.brighterir.com/public/aterian_plc/news/rns/story/rgze30w

46 https://www.barrons.com/news/rwanda-signs-lithium-deal-with-rio-tinto-34c4e3cb

*(*Merging with US-based Energy Fuels Inc. at the time of writing)*

- Greenwings Resources: Millie's Reward Lithium Project, Graphmada Graphite Complex,
- Evion Group: Maniry Graphite Project; and
- Akora Resources: Bekisopa, Satrokala, Tratramarina and Ambodilafa Iron Ore Projects.

Rio Tinto also has extensive involvement in Madagascar. In 1998, Rio Tinto and the Government of Madagascar signed the Convention d'établissement (Framework Agreement). Since that time, Rio Tinto has invested US $1 billion in QIT Madagascar Minerals (**QMM**), including ilmenite, zirsill and monazite projects. Monazite in particular is a rare earth mineral used in renewable energy technologies, such as high-powered magnets for wind turbines and electric vehicles.[47] On 22 August 2023, Rio Tinto and Madagascar renewed their long-term partnership and agreed on the future fiscal arrangements for QMM.[48]

Madagascar has signed 11 BITs, of which 8 are currently in force. Madagascar has not been active in BIT negotiations over the past decade. The most recent BIT entered into by Madagascar was with Switzerland in 2008.

p. Country highlight: Algeria

Algeria is the biggest country on the African continent and is strategically placed in North Africa, close to Europe and the middle east. Among other minerals being extracted in Algeria, Algeria is reported to have large undeveloped iron ore reserves. For example, the Gâra Djebilet mine is estimated to have a reserve of over 2 billion tons, with iron grading over 50%.

Algeria has green hydrogen development ambitions and, given its proximity to Europe and abundance of renewable energy sources, it is strategically positioned to progress towards this objective. Various countries, including the Netherlands, Germany, Italy and France, are seeking to collaborate with Algeria in the new energy space, particularly in green hydrogen.[49] In March 2023, the Algerian Ministry of Energy and Mines unveiled a national roadmap for hydrogen industry development and aims to provide the European market with 10% of its hydrogen needs by 2040. Securing foreign financing and grants, as well as international strategic partnerships, is reported as an important aspect of the roadmap.[50]

On 18 May 2023, Australian company Terramin Australia announced that the Algerian mining regulator awarded Terramin a mining permit for the Tala Hamza Zinc Project. Tala Hamza is a world class ore body that may become one of the largest developing zinc and lead deposits in the world.[51]

AAMEG understands that Algeria recently contacted DFAT to express its interest in an investment treaty with Australia.

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47 https://www.riotinto.com/en/operations/madagascar/qit-madagascar-minerals

48 https://www.riotinto.com/en/news/releases/2023/rio-tinto-and-government-of-madagascar-reach-agreement-supporting-the-long-term-operation-of-qmm-

49 https://www.sciencedirect.com/science/article/abs/pii/S0360319924001228

50 https://research.csiro.au/hyresource/policy/international/algeria/; https://www.hydrogeninsight.com/policy/algeria-aims-to-supply-europe-with-10-of-its-clean-hydrogen-needs-by-2040-in-new-national-h2-roadmap/2-1-1426265

51 https://static1.squarespace.com/static/637d667ba746ad764c544b1a/t/64656fefd2a2de291aa0d725/1684369392988/230518+Tala+Hamza+Mining+Permit+Issued+FINAL.pdf

Algeria has signed 45 BITs, of which 29 are in force. The most recently signed was in 2012 with Serbia. As with Tanzania, Algeria has a large period of inactivity in entering into new BITs.

8. Application to other sectors

Although this Submission is focused on the mineral extractives industry, the reasoning and justifications are directly applicable to other sectors. Other areas in which Australian companies are investing, or may invest in the future, include agriculture, education, technology, value chain addition and manufacturing.

Australia is already working with African partners on innovative and climate-resilient agriculture through the Australian Centre for International Agricultural Research.[52] Further, the emergence of Nigeria, South Africa, Kenya and Egypt as major start-up hubs will provide opportunities for Australian businesses in new areas.[53]

As discussed above, many countries in Africa are shifting their focus to the domestic processing of raw minerals and in-country value-chain addition. For example, in November 2023, Tanzania announced that it will require in-country processing of lithium.[54] These changes in policy mean that greater investment will be made in Africa for on-shore processing and, in some countries, manufacturing.

Accordingly, DFAT should consider the benefits BITs could have for the wider Australian business community operating in different sectors.

9. Tax treaties & Tax dispute resolution

A final point that has been raised by AAMEG members and Board is tax treatment and double taxation. Some AAMEG members have raised concerns that Australian contractors, engineers and other service providers are also disadvantaged by the absence of bilateral tax treaties with African countries. Bilateral tax treaties commonly include a Mutual Agreement Provision "MAP" as a tax dispute resolution mechanism. This is particularly relevant with African jurisdictions where aggressive tax audits are not uncommon and the resultant tax disputes and the lack of tax dispute resolution mechanisms pose significant challenges. This leads to Australian based companies incurring additional tax costs that are not incurred by competitors who may benefit from such treaties. The result of this is that the cost base for some Australian METS contractors is not competitive with other foreign jurisdictions, making it difficult and less attractive to pursue work in Africa.

It is also noteworthy that a tax treaty network is generally seen as a key requisite in encouraging foreign investment.

Further, more tax challenges may arise if/when the OECD Global Minimum Tax Pillar 2 is adopted. For in-scope Australian entities, difficulties may arise where African countries are non-OECD countries and taxes paid locally are not necessarily recognised under the OECD Global Minimum Tax Pillar 2 framework in the ultimate parent company's home country.

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52 https://www.aspistrategist.org.au/reinvigorating-australian-ties-with-africa/
53 https://www.aspistrategist.org.au/reinvigorating-australian-ties-with-africa/
54 https://www.theafricareport.com/326733/exclusive-tanzania-to-ban-unrefined-lithium-exports-from-may-2024/

Another key consideration regarding tax is the potential loss of tax revenue for Australia as a result of Australian companies needing to structure their investments in African countries through overseas jurisdictions with which such countries have a BIT. In addition to this potential loss of revenue for the Australian Government, the commercial need for Australian companies to channel their investments through at least one third-party jurisdiction, at best increases their cost of capital and, at worst, discourages these companies from building up critical investment protection for their operations in countries with a high sovereign risk.

10. The way forward: support that AAMEG and its members can provide to DFAT

As we outlined above, AAMEG has more than 110 members operating across Africa. Together we have the insights and resources to provide the following assistance to DFAT and the Australian Parliament:

(i) As this Submission is not intended to be exhaustive, AAMEG welcomes the opportunity to provide further details that DFAT or other Australian Government departments may find helpful. For example, AAMEG can work with its members to provide detailed submissions and analysis supporting investment promotion and protection negotiations with identified countries in Africa.

(ii) At DFAT's request, AAMEG will seek short papers or letters of support from its members which have operations in each African country identified as a potential strategic partner for Australia. Letters of support from Australian mineral exploration and development companies will bolster the justification for selecting certain African countries as strategic partners with which to negotiate a BIT.

(iii) AAMEG and its members welcome the opportunity for further round-table discussions with DFAT regarding the matters covered in this Submission.

(iv) Some of AAMEG's members have strong relationships with their host country's government and may be willing to facilitate round-table discussions between the host government, Australia and the Australian investor.

(v) AAMEG and its members are often approached by the investment boards and other ministerial departments of various African countries. For example, in 2023 alone AAMEG facilitated engagement between Australian mining companies and the Namibian Investment Board and the Rwandan Investment Board. AAMEG welcomes the opportunity to involve representatives of DFAT in future events hosted with representatives of African countries.

11. Additional Reference Materials

For further reference, we have provided a copy of the following with this submission:

- Australia-Africa Minerals & Energy Group, "*Submission to the Australian Senate on Australia's Trade and Investment Relationships with the Countries of Africa*" dated 18 August 2017.

END OF SUBMISSION

Annexure 1 – Australian ISDS cases

Below is a non-exhaustive list of ISDS cases commenced by either Australian investors or companies which are ultimately owned by Australian investors. What is evident from this list is that Australian companies and Australian affiliated companies use ISDS for the benefit of Australian-owned projects and Australian shareholders.

1. ISDS Treaty Cases involving an Australian Investor

- *Barrick (PD) Australia Pty Limited v. Independent State of Papua New Guinea*, ICSID Case No. ARB/20/27
- *Prairie Mining Limited v. Republic of Poland*
- *Cassius Mining Limited v. The Government of the Republic of Ghana (II)*
- *Kingsgate Consolidated Ltd. v. Thailand*, PCA Case No. 2017-36/AA684
- *White Industries Australia Limited v. The Republic of India*
- *Churchill Mining and Planet Mining Pty Ltd v. Republic of Indonesia*, ICSID Case No. ARB/12/40 and 12/14
- *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste*, ICSID Case No. ARB/15/2
- *Tethyan Copper Company Pty Limited v. Islamic Republic of Pakistan*, ICSID Case No. ARB/12/1
- *Platinum Blackstone PTY LTD (formerly known as Nexbis Pty Ltd) v. Republic of Maldives*, SIAC Case No. ARB003 of 2014
- *Tantalum International Ltd. and Emerge Gaming Ltd. v. Arab Republic of Egypt,* ICSID Case No. ARB/18/22

2. ISDS non-treaty cases involving an Australian investor

- *Sundance Resources Ltd v. Republic of Cameroon*, ICC Case
- *Sundance Resources Limited and Congo Iron SA v. Republic of Congo*, ICC Case No. 26145/DDA/AZO (C-26344/AZO)

3. ISDS cases involving a subsidiary owned by an Australian company

- *Greenland Minerals A/S (GMAS) v. Government of Greenland and the Government of the Kingdom of Denmark*
- *Nachingwea U.K. Limited, Ntaka Nickel Holdings Limited and Nachingwea Nickel Limited v. United Republic of Tanzania*, ICSID Case No. ARB/20/38
- *EEPL Holdings v. Republic of Congo*, ICSID Case No. ARB/21/53
- *EnviroGold (Las Lagunas) Limited v. Dominican Republic*, ICSID Case No. ARB(AF)/20/1

Annexure 2 – Public ISDS cases against certain countries in Africa[55]

COUNTRY NAME	CASES AS RESPONDENT STATE	CASES AS HOME STATE OF CLAIMANT
Algeria	12	1
Benin	1	0
Burundi	4	0
Cabo Verde	1	0
Cameroon	2	0
Congo	3	0
Democratic Republic of the Congo	4	0
Egypt	46	7
Equatorial Guinea	1	0
Ethiopia	3	0
Gabon	3	0
Gambia	2	0
Ghana	3	0
Kenya	1	0
Lesotho	2	0
Libya	22	0
Madagascar	4	0
Morocco	8	0
Mozambique	3	0
Nigeria	4	0
Rwanda	1	0
Senegal	5	0
Sierra Leone	1	0
South Africa	1	3
Sudan	2	0
Tanzania, United Republic of	10	0
Tunisia	1	1
Uganda	1	0
Zimbabwe	3	0

55 https://investmentpolicy.unctad.org/investment-dispute-settlement