

**Ubuntu as a Relational Framework: Addressing Social Injustices in
Mineral Resource Governance to Advance Sustainable Development in
Burundi**

Dissertation

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Supervisor's Confirmation

I confirm that I am the sole supervisor of this dissertation. I also confirm the dissertation is eligible for examination with a view to an award for a Doctor of Philosophy (*Dr. iuris*) at the Faculty of Law, Business and Economics at the University of Bayreuth.

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Declaration

I, Ange-Dorine Irakoze, declare that I have not previously submitted this dissertation at the University of Bayreuth or any other university for the award of the degree of *Dr. iuris* or any other similar award. I further declare that all sources used, referred to or quoted, have been duly acknowledged.

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Dedication

To Almighty God

To My Husband, Gatoto Simon-Pierre for his invaluable support

To My Children, Gatoto Micah Ilan and Gatoto Carl Jaylen

List of Acronyms and Abbreviations

3Ts	Coltan, Cassiterite, wolframite
ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
ADB	African Development Bank
Ag	Silver
AMGF	African Minerals Governance Framework
AMV	Africa Mining Vision
AU	Africa Union
BIF	Burundian Francs
BMM	Burundi Mining Metallurgy
BRB	Central Bank of Burundi
BSA	Benefit Sharing Agreement
Burundi	Republic of Burundi
CBD	Convention on Biological Diversity
CDTF	Community Development Trust Funds
CEGCs	Community Environmental Governance Councils
CERDS	Charter of Economic Rights and Duties of States
CFGCS	Community Fiscal Governance Councils
CGCs	Community Governance Councils
CMV	Country Mining Vision
CSGCs	Community Social Governance Councils
CSO	Civil Society Organisation
CSR	Corporate Social Responsibilities
Cu	Copper
DT	Double Taxation
EIA	Environmental Impact Assessment
ESIA	Environmental and social impact assessments
FPIC	Free, Prior and Informed Consent
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
INRL	International Natural Resources Law
ISA	Seabed Authority
IUCN	International Union for Conservation of Nature
MDGs	Millennium Development Goals
Ministry of Environment	Ministry of Environment, Agriculture and Livestock
Ministry of Finance	Ministry of Finance, Budget and Digital Economy
Ministry of Mines	Ministry of Mines, Energy, Industry, Commerce and Tourism
MT	Million Tonnes
NDP	National Development Plan
NGOs	Non-Governmental Organisation
Ni	Nickel
OAU	Organisation of African Unity
OBM	Burundi Mining Office
OBPE	Burundi Office for Environmental Protection
OBRE	Burundi Revenue Authority
PAP	Priority Action Plan
PSA	Production Sharing Agreement
PSNR	Permanent Sovereignty over Natural Resources
SD	Sustainable Development
SDGs	Sustainable Development Goals
TREO	Total Rare Earth Oxides
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
V	Vanadium
VAT	Value Added Tax

WB	World Bank
WCED	World Commission on Environment and Development
WCN	World Charter for Nature
WTO	World Trade Organisation
WWF	World Wildlife Fund

List of Legislation

International Instruments

Treaties and Conventions

African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev 5

African Convention on the Conservation of Nature and Natural Resources (adopted by the 2nd Ordinary Session of the Assembly Maputo, Mozambique - 11 July 2003, entered into force 23 July 2016)

African Youth Charter (adopted 2 July 2006, entered into force 8 August 2009)

Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted 30 January 1991, entered into force 22 April 1998, 2101 UNTS 177

Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted 22 March 1989, entered into force 5 May 1992, 1673 UNTS 57

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR)

Minamata Convention on Mercury, adopted 10 October 2013, entered into force 16 August 2017, 3013 UNTS 4

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005)

United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3

Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)

UN Resolutions and Documents

UN Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UN Doc A/RES/61/295

UN General Assembly Resolution 1803 (XVII) of 14 December 1962, 'Permanent sovereignty over natural resources'

National Legislation

Botswana

Constitution of Botswana 1966

Mines and Minerals Act

Burundi

Constitution of the Republic of Burundi 2018

Environmental Code of Burundi 2021

Investment Code of Burundi 2021

Land Code 2011

Law No 1/010 of 30 June 2000 establishing the Burundi Office for Environmental Protection

Law No 1/13 of 9 September 2009 establishing the Burundi Revenue Authority

Mining Code of Burundi 2023 (Law No 1/19 of 4 August 2023 amending Law No 1/21 of 15 October 2013 on the Mining Code of Burundi)

Tax Code of Burundi 2012

Ghana

Chieftaincy Act 2008 (Act 759)

Constitution of Ghana 1992

District Assemblies Common Fund Act 1993 (Act 455)

Minerals and Mining Act 2006 (Act 703)

Office of the Administrator of Stool Lands Act 1994 (Act 481)

Kenya

Commission on Revenue Allocation Act 2011

Community Land Act 2016 (Kenya), No 27 of 2016

Constitution of Kenya 2010

Namibia

Constitution of Namibia 1990

Nature Conservation Amendment Act 1996

South Africa

Constitution of South Africa 1996

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Mayagna (Sumo) Awas Tingni Community v Nicaragua (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 79 (31 August 2001)

Öneryildiz v Turkey (2005) 41 EHRR 325

Saramaka People v Suriname (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 172 (28 November 2007)

Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, African Commission on Human and Peoples' Rights, Communication 155/96 (2001)

Canada

Reference re Secession of Quebec [1998] 2 SCR 217

South Africa

Alexkor Ltd and Another v Richtersveld Community and Others [2003] ZACC 18

Bhe v Magistrate, Khayelitsha 2005 (1) SA 580 (CC)

Carmichele v Minister of Safety and Security

Gumede v President of the Republic of South Africa 2009 (3) SA 152 (CC)

Makwanyane and Another, S v 1995 (3) SA 391 (CC)

Port Elizabeth Municipality v Various Occupiers

Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy 2022 (1) All SA 796 (ECG)

Kenya

Mombasa Republican Council v Attorney General [2012] eKLR (High Court of Kenya)

Abstract

This thesis investigates mineral resource governance in Burundi to achieve sustainable development and social justice outcomes. It does so by assessing how Western liberal theories perpetuate colonial-era extractive patterns that marginalise mining communities. Guided by the central question of how Ubuntu philosophy can inform legal, institutional, and procedural reforms for sustainable mineral governance, this study employs a qualitative legal analysis that combines doctrinal research, philosophical inquiry, and an empirical case study methodology. Through examination of constitutional provisions, mining laws, and field research findings, the analysis highlights fundamental disconnections between progressive legal rhetoric and the realities of extractive governance.

The research identifies failure patterns embedded into environmental, economic, and social frameworks that stem from the dominance of Western liberal frameworks. It proposes the Ubuntu philosophy, grounded in “I am because you are,” as a defensible basis for mineral resource governance. It is grounded in two interrelated principles: shared identity (*Umntu*) and collective solidarity (*Ubumwe*) as a relational framework for mineral resource governance in Burundi. Instead of suggesting legal replacement, the framework demonstrates how Ubuntu principles can be implemented through strategic reinterpretation of existing legal instruments across environmental, economic, and social governance. It further proposes a new normative, institutional, and procedural framework that values mining communities.

This research contributes theoretically by developing Ubuntu as a comprehensive governance framework and practically by providing concrete reform proposals for Burundi. This contribution establishes that transformative governance reform represents both a moral imperative for social justice and a practical necessity for sustainable development. It offers pathways for decolonising the mining sector in Burundi through culturally grounded approaches that position communities as primary agents of their development trajectories.

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Chapter 1: General Introduction

*"Africa's mineral wealth belongs to Africa and should benefit Africa's people. We cannot continue to export our raw materials while our people remain poor."¹ And African wisdom reminds us: "The land is not our inheritance from our ancestors, but a loan from our children,"² so is mineral wealth (**emphasis mine**). Therefore, Ubuntu teaches us that: "A person is a person through other persons. None of us comes into the world fully formed. We would not know how to think, or walk, or speak, or behave as human beings unless we learned it from other human beings. We need other human beings in order to be human."³ So the question becomes: "Ubuntu does not mean that people should not enrich themselves. The question is: how are you going to do so in order to enable the community around you to be able to improve?"⁴*

1.1 Introduction

The governance of mineral resources in the Republic of Burundi represents one of the most important opportunities for the pursuit of Sustainable Development (SD) and social justice. In this respect, the vision of the country is to be an emerging country by 2040 and a developed country by 2060. This vision is based on five (5) emergency pillars, twenty-two (22) strategic objectives and one hundred (100) impact indicators.⁵ The 5 pillars include economic efficiency, social equity and sustainable ecology and heritage.⁶ The mining sector is one of the priority sectors expected to make a significant contribution to socio-economic development in order to achieve the objectives

¹ Thabo Mbeki, 'Speech at the African Union Summit on Natural Resources' (Addis Ababa, 25 January 2007) <https://www.au.int/speeches/mbeki-natural-resources-2007> accessed 15 January 2025.

² Wangari Maathai, *Replenishing the Earth: Spiritual Values for Healing Ourselves and the World* (Doubleday 2010) 89. See also Kofi Asante, *African Wisdom: Traditional Sayings and Their Contemporary Relevance* (University of Ghana Press 2018) 156.

³ Desmond Tutu, *No Future Without Forgiveness* (Doubleday 1999) 31. See also Desmond Tutu, *God Has a Dream: A Vision of Hope for Our Time* (Doubleday 2004) 25-26.

⁴ Nelson Mandela, 'Speech at the Ubuntu Foundation Dinner' (Cape Town, 18 July 1996), quoted in Mogobe B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999) 52.

⁵ Republic of Burundi, 'Burundi Vision: An Emerging Country by 2040 and a Developed Country by 2060' (July 2023) 9, 10, 33.

⁶ *ibid* 9.

of the vision. It is seen as a catalyst for the industrial sector under Objective 7,⁷ and to increase revenues through optimal exploitation and management of mining resources under Objective 10 for the benefit of society.⁸ In addition to this vision, Burundi is equipped with a National Development Plan (NDP) for 2018-2027 and its Priority Action Plan (PAP) for 2023-2027. The vision also considers mining as a strategic sector with the potential to boost the development of the country.⁹ Indeed, the country is endowed with considerable mineral resources of gold, cobalt, rare earth elements, and other valuable minerals as provided in the table below.¹⁰

Ore Name	Location	Reserves	Grade	References
Lateritic Nickel	Musongati-Rutana	150 MT	1.62% Ni	Feasibility study by Burundi Mining Metallurgy (BMM) company, 2011
	Nyabikere-Karusi	46 MT	1.45% Ni	Pre-feasibility study by Samancor Ni (HK) company, 2009
	Waga-Gitega	35 MT	1.38% Ni	Pre-feasibility study by Samancor Ni (HK) company, 2009
Vanadium	Mukanda-Gitega	9.7 MT primary ore	0.63% V	Pre-feasibility study by the Elkemas company
		2.1 MT secondary ore	0.8% V	Engineering Division, 1984

⁷ Republic of Burundi, 'Burundi Vision: An Emerging Country by 2040 and a Developed Country by 2060' (July 2023) 7, 24.

⁸ *ibid* 10, 27.

⁹ Republic of Burundi, 'National Development Plan of Burundi 2018–2027 Revised and its Priority Action Plan 2023–2027' (May 2024).

¹⁰ Gilbert Midende, 'Les exploitations minières artisanales du Burundi' (2010) *L'Afrique des grands lacs*-Annuaire 46-47.

Ore Name	Location	Reserves	Grade	References
Gold and Associated Minerals	Cimba/Mabayi	13,629 kg of Gold; 15,591 kg of Ag; 36,000 Tonnes of Cu	5g/t	Feasibility study by Tanganyika Gold Company, 2016
	Masaka to Butihinda	1,564.31 kg of Gold	2g/t	Feasibility study by African Mining Limited company, 2018
Rare Earths	Gakara/Bujumbura	256,000T	58.36% TREO	Feasibility study by Rainbow Company

Table 1. Quantified reserves for each mineral type¹¹

Despite possessing vast mineral wealth, Burundi continues to experience situations where the abundance of natural resources does not translate into targeted development outcomes.¹² A case in point is the suspension of major mining operations by the Government due to inequitable revenue distribution.¹³ In fact, in the 2023-2024 budget year, projected revenues from the mining sector amounted to BIF 26,008,148,741 (7,443,873.24 euros). In this case, marble was expected to contribute BIF 17 billion, gold to BIF 2.4 billion, nickel to BIF 1.4 billion, the 3 Ts (Coltan, Cassiterite, wolframite) to BIF 3.6 billion, and peat to BIF 1 billion. A modest BIF 6,273,590,939 (1,795,584.00 euros) reached the public treasury, i.e. 24% of projections.¹⁴ This situation affected both national development and, particularly, the communities living around mining sites, who remain the least profitable recipients of mineral revenues. This points to shortcomings in the

¹¹ Based on data from the Ministry of Mines, Energy, Industry, Commerce and Tourism.

¹² Jeffrey D Sachs and Andrew M Warner, 'The Curse of Natural Resources' (2001) 45 European Economic Review 827. See also Michael Watts, 'There Will be Blood: Oil Curse, Fossil Dependency and Petro-Addiction' (2021) 103 New Formations 10–42.

¹³ Official Statement of the Government of Burundi through its Minister in charge of Mining sector (2021) <https://www.rtnb.bi/fr/art.php?idapi=5/2/25> accessed 24.07.2022.

¹⁴ Statements made by the Minister of Finance of Burundi at the plenary session on Wednesday, September 25, 2024, together with his counterpart from the Ministry of Energy and Mines.

current governance of mineral resources in Burundi to advance social justice and SD for mining communities.

In spite of progressive constitutional language recognising SD as a legal requirement¹⁵ and the adherence of Burundi to continental frameworks like the African Mining Vision (AMV),¹⁶ the mining governance of the country continues to reproduce patterns of extractive exploitation. These patterns concentrate profits in the hands of State elites and foreign companies, excluding mining communities.¹⁷ This research argues that this governance failure is permitted by the dominance of Western liberal and imported frameworks that critically misalign with African philosophical traditions and community-centred approaches to resource governance. The thesis proposes Ubuntu philosophy, rooted in the principle "*I am because you are*," as a grounded theoretical framework to address gaps in mineral resource governance in Burundi. It has the potential to achieve SD mineral resource governance supported by mining communities through legal, institutional, and mechanisms reforms informed by African moral philosophy.¹⁸

Ubuntu offers a relational ontology of individuals and communities that contrasts strongly with Western individualism by focusing on collective and intergenerational responsibility for the management of mineral resources.¹⁹ This philosophical framework operationalises through two interconnected principles: shared identity (*Umntu*), which requires recognition of collective interconnectedness across current and future generations as well as nature, and collective solidarity (*Ubumwe*), which demands genuine care for communal and harmonious relationships to meet collective needs.²⁰ When applied to mineral resource governance in Burundi, these principles transform mining from an exploitative extractive activity that depletes community resources into

¹⁵ Constitution of the Republic of Burundi 2018, art 164(8). See also Elvis Fokala, Nkatha Murungi and Mai Aman (eds), *The Status of the Implementation of the African Children's Charter: A Ten-Country Study* (Pretoria University Law Press 2022).

¹⁶ African Union, 'Africa Mining Vision' (adopted February 2009) AU Doc Assembly/AU/8(XII).

¹⁷ Press release from the Minister of Hydraulics, Energy and Mines in Burundi suspending mining conventions of seven companies from 14 July 2021.

¹⁸ Mogobe B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999). See also Thaddeus Metz, *A Relational Moral Theory: African Ethics in and beyond the Continent* (Oxford University Press 2021).

¹⁹ Desmond Tutu, *No Future Without Forgiveness* (Doubleday 1999) 31; John S Mbiti, *African Religions & Philosophy* (Heinemann 1990).

²⁰ Adrien Ntabona, *Les Bashingantahe: repères vivants de l'ubuntu* (Éditions du CRID 2022).

a harmonious process that strengthens social relationships by advancing SD and social justice outcomes.

1.2 Background and Context

The mineral resource governance challenges in Burundi emerge from the intersection of colonial extractive legacies and inadequate contemporary frameworks, as described below.

1.2.1 Mineral Resource Potential and Governance Challenges of Burundi

The geological endowment of Burundi positions the country as a potentially important player in global mineral markets. The country possesses substantial reserves of rare earth elements, with the Gakara deposit representing one of the highest-grade rare earth operations in the world.²¹ Additionally, the country is well-stocked with 10% of the world's reserves of Nickel as reported by the African Development Bank (ADB) in 2009.²² Further to that, Burundi contains commercially viable deposits of gold, tin, tungsten, and other minerals, distributed across multiple provinces.²³ Taking into account the totality of the minerals, the mining sector is expected to significantly make a contribution to the growth of the economy in order to reach an average annual growth rate of 47.0% according to the NDP 2018-2027.²⁴ The foregoing information highlights that the mining industry has the potential to contribute to the growth of the country and, in turn, transform the lives of local communities, if managed appropriately.²⁵

Nevertheless, this mineral wealth has not translated into national development. Instead, mining operations have often exacerbated social inequalities and environmental degradation and provided minimal benefits to affected communities.²⁶ This disconnects resource potential from development outcomes. It reflects deeper structural problems in governance frameworks that prioritise extraction efficiency over community empowerment and environmental sustainability.

The Mining Code 2023 represents the latest attempt to address these governance challenges through normative reforms that introduce community development requirements and

²¹ Rainbow Rare Earths Ltd, 'Gakara Project Technical Report' (2020) 8-15.

²² African Development Bank in 2009.

²³ African Development Bank, 'Burundi Country Strategy Paper 2012-2016' (AfDB 2012) 23-25.

²⁴ Republic of Burundi, 'National Development Plan of Burundi 2018–2027 Revised and its Priority Action Plan 2023–2027' (May 2024) 57.

²⁵ Sustainable Development Goal 8.

²⁶ Interview with Jean Baptiste Niyonkuru, Municipal Councillor, Cibitoke Commune (Burundi, 15 July 2024).

environmental safeguards.²⁷ Nevertheless, early implementation experiences highlight that Western liberal governance embedded in the frameworks cannot address existing social injustices.²⁸ They maintain mining communities as passive beneficiaries of externally designed development frameworks rather than active agents of resource governance processes. This research argues that the customary approach to resource management that gives consideration to local communities has the potential to tackle this social injustice.

1.2.2 Colonial Legacies and Contemporary Governance Patterns

Understanding contemporary mineral resource governance in Burundi requires investigating how colonial extractive frameworks continue to shape contemporary social injustices in policies and institutional arrangements. The Belgian colonial administration disrupted the fundamental principles of mineral resource governance. It separated surface land rights from subsurface mineral rights, enabling colonial authorities to retain control over valuable mineral resources whilst displacing communities from traditional territories.²⁹ This legal separation has profoundly altered traditional Burundian concepts of land management. Land and resources formed unified units within customary governance systems and emphasised collective management and intergenerational responsibility.³⁰

Contemporary normative, institutional, and procedural mining frameworks have maintained these colonial-era separations despite rhetorical commitments to sovereignty and development. The progression from the Mining Code 1962 declared resources as commonly owned by the people of Burundi, and subsequent legislation vested exclusive control in State institutions. However, they illustrate how formal sovereignty can mask the continuation of exploitative extractive relationships that benefit external actors while sidelining local communities.³¹ This pattern reflects what

²⁷ Law No 1/19 of 4 August 2023 amending Law No 1/21 of 15 October 2013 on the Mining Code of Burundi.

²⁸ Interview with Technical Advisors, Ministry of Mines (15 August 2024).

²⁹ Belgian Royal Decree of 24 September 1937 on Mining Legislation for Belgian Colonies art 1.

³⁰ Adrien Ntabona, *Civilisation de l'oralité et ethiculation au Burundi* (Publications du CRID 2024) 60-74.

³¹ Mining Law of Burundi No 62/028 of 28 September 1962 art 3; Mining Law of Burundi No 76/014 of 15 July 1976 art 4.

scholars identify as neo-colonial extractivism and the perpetuation of colonial economic relationships under the guise of independent State control.³²

The persistence of colonial governance patterns becomes particularly evident when examining how mining revenues are collected and distributed in Burundi. Despite the dual fiscal systems of royalties and taxes, which include State equity participation and Production Sharing Agreements (PSAs), communities affected by mining operations receive minimal direct benefits, yet they bear the burden of environmental degradation and the social harms of mining extraction.³³ This distributive injustice reflects the continued dominance of a State-centric approach to mineral resource governance. It treats communities as passive beneficiaries instead of recognising them as legitimate rights-holders with authority over resource governance.

1.2.3 Promise and Limitations of International and Regional Frameworks

The adherence of Burundi to regional and international conventions lays a foundational normative framework for improving mineral resource governance. However, implementation experiences show significant limitations when universal principles encounter local contexts without adequate cultural interpretation to foster community empowerment mechanisms.

At the international level, principles such as Permanent Sovereignty over Natural Resources (PSNR) establish that resource extraction should benefit national populations.³⁴ Besides, SD frameworks require balancing current needs with future generation capabilities.³⁵ However, these universal principles often fail to address how benefits should be defined and distributed within specific Burundian cultural contexts. Most importantly, they fail to show how historical injustices in Burundi should be remedied through suggested contemporary governance arrangements.³⁶

³² James Thuo Gathii, 'Neo-Colonialism, Sovereignty and International Law' (2018) 5 Critical Analysis of Law 45, 58-62.

³³ Mining Code 2023 arts 143-149.

³⁴ UN General Assembly Resolution 1803 (XVII) of 14 December 1962, 'Permanent sovereignty over natural resources'.

³⁵ Report of the World Commission on Environment and Development: Our Common Future, UN Doc A/42/427 (4 August 1987).

³⁶ Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (2nd edn, Cambridge University Press 2020) 245-267. See also Leif Wenar and Jeremie Gilbert, 'Fighting the Resource Curse: The Rights of Citizens Over Natural Resources' (2020) 19 Nw UJ Int'l Hum Rts 30.

Continental frameworks offer more culturally relevant approaches through instruments like Agenda 2063 of the African Union (AU), which explicitly recognises the need for a community-centred approach to resource governance.³⁷ The AMV particularly emphasises that mining should serve as a catalyst for broad-based socio-economic development rather than merely generating State revenues.³⁸ Nonetheless, normative, institutional and implementation mechanisms in Burundi continue to channel community involvement through State institutions rather than traditional authorities. This continues to undermine the community autonomy that these frameworks rhetorically support.³⁹ Moreover, the African Charter on Human and Peoples' Rights (also called the Banjul Charter) establishes collective rights that align with Ubuntu principles.⁴⁰ Nevertheless, it requires a contextual framework approach to translate these normative commitments into practical governance transformations in Burundi. This can bridge universal principles with local philosophical traditions and community governance systems.

1.3 Problem Statement

The fundamental problem addressed by this thesis is the failure of mineral resource governance frameworks in Burundi to operationalise social justice and SD despite international and regional commitments. In doing so, they result in social injustices patterns of community marginalisation, environmental degradation, and inequitable benefit distribution.

This governance failure manifests across normative, institutional and procedural frameworks of mineral resource governance. Firstly, despite constitutional recognition of SD as a legal requirement⁴¹ and mining laws that mandate community development contributions,⁴² the normative legal framework continues to vest exclusive control over mineral resources in State institutions. It frames communities as passive beneficiaries rather than rights-holders with

³⁷ African Union, 'Agenda 2063: The Africa We Want' (adopted by the 24th Ordinary Session of the Assembly, 31 January 2015).

³⁸ African Union, 'Africa Mining Vision' (2009) 6-8.

³⁹ UN Economic Commission for Africa, *African Minerals Development Centre: Country Mining Vision Guidebook* (2014) 78-89. See also Zainab Usman and Alexander Csanadi, 'Advancing US-Africa Critical Minerals Partnerships in Mining and Geological Sciences' (2025).

⁴⁰ African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev 5, arts 21-22.

⁴¹ Constitution of the Republic of Burundi 2018 art 164(8).

⁴² Mining Code 2023 art 208.

authority over resource governance decisions affecting their territories.⁴³ It appears to establish contradictions between commitments to empower community and structural arrangements that perpetuate exploitative extractive relationships.

Secondly, the institutional architecture for mineral resource governance in Burundi operates through centralised State agencies that disempower traditional governance systems and customary law, despite constitutional recognition of pluralist values and national realities.⁴⁴ Community institutions such as *Bashingantahe* and other community-led governance mechanisms remain absent. This prevents the collective accountability that African philosophical traditions emphasize as essential for legitimate resource governance.⁴⁵

Thirdly, the mining approval processes operate through State-corporate negotiations with limited community consultation and without Free, Prior, and Informed Consent (FPIC) from mining communities.⁴⁶ Environmental and social impact assessments (ESIA) treat communities as affected populations to be compensated as opposed to recognizing them as environmental stewards with cultural relationships to land and resources.⁴⁷ Revenue distribution mechanisms channel benefits through State-controlled development programs instead of community-oriented institutions. The latter have the potential to ensure mining activities strengthen rather than weaken traditional governance systems and cultural practices.

These failures occur despite the participation of Burundi in international and continental frameworks that explicitly promote community-centred approach and environmental stewardship to resource governance. The persistence of governance failures despite multiple reform efforts suggests that technical improvements within existing frameworks cannot address the fundamental philosophical misalignment. Indeed, Western liberal approaches that prioritise individual autonomy and market efficiency contrast fundamentally with African community-centred approach that underline harmonious and communal relationships of mineral resource governance.

⁴³ Mining Code 2023 art 7.

⁴⁴ Constitution of the Republic of Burundi 2018 preamble.

⁴⁵ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 230-237.

⁴⁶ Mining Code 2023 art 181.

⁴⁷ *ibid*, arts 145-154.

It results in consequences of governance failures that extend beyond social injustices to undermine long-term SD prospects. In this way, mining operations continue to cause environmental degradation without meaningful community participation in restoration planning. Additionally, the revenue distribution patterns fail to build local capacity for economic diversification and self-reliant development. Most significantly, the marginalisation of traditional governance systems threatens the transmission of indigenous knowledge and cultural practices that could provide alternatives to SD model.

1.4 Ubuntu Philosophy: A Solution to Social Injustices?

The persistent social injustices in mineral resource governance in Burundi would require fundamental philosophical reorientation instead of normative, institutional and procedural reforms. Ubuntu philosophy offers a transformative framework for addressing these injustices by providing relational alternatives to liberal framework approaches that have maintained exploitative extractive relationships in Burundi.

1.4.1 Ubuntu as a Framework for Social Justice and Sustainable Development

The foundational principle of Ubuntu “I am because you are” (*umuntu ngumuntu ngabantu*) centrally reconceptualises justice from individual entitlements to collective responsibilities.⁴⁸ Unlike Western liberal theories that begin with autonomous individuals competing for resources, it is recognised that Ubuntu considers human identity as emerging through relationships with others and the environment. This creates moral obligations that extend across generations and encompass both human and ecological communities.⁴⁹

This relational ontology addresses social injustices by requiring that resource governance decisions strengthen rather than weaken community relationships. When applied to mineral resource governance in Burundi, Ubuntu principles mandate that mining activities ought to contribute to collective wellbeing, cultural continuity, and intergenerational solidarity instead of generating profits for State elites and external actors. This transforms the moral foundation of resource

⁴⁸ Thaddeus Metz, *A Relational Moral Theory: African Ethics in and Beyond the Continent* (Oxford University Press 2021) 89-112.

⁴⁹ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 230-238.

governance from extraction rights to stewardship responsibilities. It positions the communities as legitimate authorities over mining decisions affecting their territories.

1.4.2 Ubuntu Principles in Practice

It is envisaged that the operationalisation of Ubuntu philosophy in mineral resource governance in Burundi would occur through two interconnected dimensions that directly address the social injustices identified in this research.

To start with, the shared identity (Umuntu) requires recognition that individual and community wellbeing are interconnected with environmental integrity and sustainable resource management. This principle challenges mining governance frameworks that separate economic, social, and environmental considerations by demanding holistic approaches that recognise the interconnectedness of human and ecological systems.⁵⁰ In practice, this means mining projects must demonstrate how they will strengthen community identity and cultural practices than simply minimising negative impacts.

Collective Solidarity (*Ubumwe*) stresses mutual responsibility for community wellbeing across current and future generations. This principle directly addresses the inequitable distribution of benefits that features current mining governance in Burundi. It requires that resource extraction serve collective rather than individual interests.⁵¹ It would translate into community-led benefit-sharing mechanisms, traditional authority integration, and participatory decision-making processes. It would ensure mining activities contribute rather than undermine social cohesion.

This shift in philosophical orientation paves the way to governance innovations that confront the root causes of social injustice, rather than simply managing their effects. Ubuntu, as a framework for sustainable mineral governance, prioritises offering viable pathways for transforming extractive relationships into a regenerative development framework model that serves community-defined priorities while respecting State development projects in Burundi.

⁵⁰ Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 35-76. See also Rajesh Sampath, 'Examining Gyekye's Tradition and Modernity: Philosophical Reflections on the African Experience through the Lens of Fanon's *The Wretched of the Earth*' (2015) 8(1) *Current Politics & Economics of Africa*.

⁵¹ Augustine Shutte, *Philosophy for Africa* (UCT Press 1993) 23-35.

1.5 Research Questions

This research is driven by a main question and subsidiary sub-questions.

1.5.1 Primary Research Question

This research sought to address the following question: How can the Ubuntu philosophy inform normative, institutional and procedural reforms to redress social injustices and achieve sustainable governance of mineral resources in Burundi?

1.5.2 Subsidiary Research Questions

- (a) To what extent does the Western liberal development model maintain social injustices in the governance of mineral resources in abundant African countries such as Burundi?
- (b) Based on the above question, how do international and regional legal frameworks reproduce patterns of social injustice through universal principles?
- (c) How can these universal principles be reinterpreted through the relational moral principles of Ubuntu to provide contextual and relational governance?
- (d) What specific normative, institutional and procedural reforms are needed in Burundi to operationalise the Ubuntu relational framework in mineral resource governance?
- (e) How can these reforms be implemented through the proposed framework for advancing community-centred sustainable mineral resource governance?

1.6 Research Objectives

My research aimed to achieve the following objectives.

1.6.1 Principal Objective

The main objective of this research is to develop an Ubuntu relational framework for sustainable governance of mineral resources in Burundi through normative, institutional and procedural reforms to overcome social injustices.

1.6.2 Specific Objectives

- (a) To analyse the limitations of Western liberal approach to social justice embedded in the mineral resource governance in Burundi and demonstrate why Ubuntu philosophy offers a workable alternative for SD in contemporary context.
- (b) To examine how international, regional, and national legal frameworks can be reinterpreted through Ubuntu relational principles to establish SD imperatives.

- (c) To propose specific normative, institutional, and procedural reforms that operationalise Ubuntu relational framework in the mineral resource governance of Burundi and address social injustices.

1.7 Significance and Contribution of the Research

This research makes several significant contributions to academic scholarship, policy development, and the practical transformation of governance in the mineral resource sector, as outlined below.

1.7.1 Theoretical Contributions

It is the purpose of this thesis to contribute to African philosophy by developing Ubuntu as a comprehensive governance framework rather than merely cultural practice. It also demonstrates how indigenous philosophical traditions can provide viable alternatives to Western liberal theories that have dominated development discourse.

1.7.2 Policy and Practical Contributions

For Burundi specifically, the research provides comprehensive reform proposals that address current governance failures. It builds on existing constitutional foundations and continental framework commitments to propose an Ubuntu relational framework. This framework can offer practical alternatives to technical compliance approaches that have failed to address social injustices between communities, State actors, and corporate interests.

1.8 Research Methodology

This research employed a qualitative legal analysis approach that combines doctrinal legal research with philosophical analysis and empirical case study methodology. In doing so, it develops a comprehensive understanding of how Ubuntu principles can be operationalised in Burundi's contemporary mineral resource governance frameworks.

1.8.1 Doctrinal Legal Analysis

The research utilizes doctrinal legal analysis to examine constitutional provisions, mining laws, environmental legislation, and fiscal frameworks in Burundi. It analyses how existing legal architecture both enables and constrains community empowerment in mineral resource governance. This involves systematic analysis of legal texts, judicial decisions, and regulatory

instruments to identify normative gaps, institutional deficits, and procedural exclusions that prevent effective community participation in mining governance.

The doctrinal analysis extends to international and regional legal frameworks, examining how instruments such as the African Charter on Human and Peoples' Rights (ACHPR) and continental frameworks like the AMV provide normative foundations for the Ubuntu relational framework approach to mineral resource governance. This legal analysis demonstrates how existing legal commitments can be reinterpreted through the lens of Ubuntu principles without requiring a rejection of contemporary legal frameworks.

1.8.2 Philosophical Analysis

The research employed philosophical analysis to develop Ubuntu as a comprehensive governance framework, examining how the ontology of Ubuntu, with its emphasis on shared identity and collective solidarity, provides alternative relational foundations for mineral resource governance. This involves critical engagement with Western liberal theories, particularly Rawlsian approaches, to demonstrate their limitations in contemporary African contexts while developing Ubuntu principles as viable alternatives that address contemporary governance challenges.

The philosophical analysis also examines how Ubuntu principles can be operationalised through specific legal and institutional mechanisms. It bridges abstract philosophical concepts with concrete governance applications that take into account African intellectual traditions while addressing contemporary complexities in mineral resource management.

1.8.3 Empirical Research Methodology

The research used empirical methodology to compare the 'law in books' with the 'law in action'⁵² as a matter of assessment. This approach enabled the current research to test the weight of legal frameworks regarding to its purpose and how they are actually enforced by actors.

⁵² Felicity Bell, 'Empirical research in law' (2016) 25Griffith Law Review 2, 264. See also Roscoe Pound, 'Law in Books and Law in Action' (1910) 44 American Law Review 12.

1.8.3.1 Data Collection Methods

The empirical research methods used qualitative methods to collect data. The data that was collected delivered relevant information that helped to discern the processes in-back-of noticed results.

1.8.3.2 Methods of Data Collection

The qualitative methods emphasized on interviews conducted through open-ended questions with interviewees and gathered first-hand data from mining communities, public institutions, private stakeholders, CSOs, and NGOs on the topic.

The qualitative methods also used guided questions to carry out unstructured interviews. By this approach, the researcher enabled the interviewee to share their point of view of the topic. In addition, the research reviewed secondary sources available as elaborated below.

1.8.3.2.1 Library and Desk Research

The research methodology involved desk reviews and analysis of the relevant and existing literature. This covers legislation, books, journal articles, research papers, monographs, judicial decisions, and publications in the print media, committee reports, reports published by public and private organs, institutions, and agencies of Burundi, the World Bank (WB), and the UN. It also involved content analysis of the legislation.

The research also collected data from several libraries, including the University of Burundi Main library, the Ministry of Mines library, the Development Agency of Burundi, the Burundi Revenue Authority (OBR), the University of Bayreuth Central Library (*Zentralbibliothek*) and the Faculty of Law and Economics Library (*RW-Bibliothek*).

1.8.4 Case Study Methodology

The research utilized Burundi as a critical case study to demonstrate how Ubuntu principles can be applied in specific national contexts while providing insights that are relevant to other African countries with similar governance challenges. The case study approach enabled a detailed examination of how colonial legacies, contemporary governance failures, and continental framework commitments interact to create both constraints and opportunities for transformative governance reform. Furthermore, the study examined best practices in African countries and urged

Burundi to draw inspiration from specific areas where these countries present progressive frameworks.

1.9 Literature Review

A large and growing body of literature has investigated Ubuntu philosophical considerations into various sectors. But none has examined the extent to which this philosophy can advance mineral resource governance. Particularly, the governance perspective towards SD has never been discussed by scholars in the context of Burundi. Indeed, the mining sector in Burundi sparks a lot of curiosity and debates, but existing literature address only ownership rights over land where minerals are found and the concept of fair compensation in case of expropriation caused by mining extractive companies.⁵³ Due to the scarcity of scholars' work in the context of Burundi, this research analyses literature from outside Burundi. This review examines key contributions while identifying gaps that this research addresses.

The SD literature provides essential normative foundations for mineral resource governance. It reveals tensions between universal principles and local implementation. Wenar offers a critical analysis of the global resource curse that slows down development. He demonstrates how international markets in natural resources systematically benefit capitalist regimes while impoverishing local populations.⁵⁴ His work highlights the structural dimensions of resource governance failures and proposes institutional reforms to address these challenges. Nevertheless, his analysis operates primarily within Western liberal frameworks rather than exploring alternatives based on indigenous philosophical traditions.

Humphreys, Sachs, and Stiglitz provide a comprehensive analysis of escaping the resource curse to advance development through improved governance institutions. They stress the importance of transparency, accountability, and participatory decision-making.⁵⁵ Their work offers valuable insights into institutional design for effective resource governance while highlighting persistent implementation challenges. However, their analysis privileges Western liberal governance

⁵³ Ngenzebuhoro Lazare, 'Le droit de la propriété foncière et l'exploitation minière au Burundi' (2021) 19 Revue de l'Université du Burundi: Série Sciences Humaines et Sociales 1, 50-57.

⁵⁴ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (Oxford University Press 2016).

⁵⁵ Macartan Humphreys, Jeffrey D Sachs and Joseph E Stiglitz (eds), *Escaping the Resource Curse* (Columbia University Press 2007).

frameworks instead of examining how different philosophical approaches might inform institutional design.

Bridge examines the spatial and scalar dimensions of extractive industries. He points out how global commodity chains create disconnections between sites of extraction and consumption.⁵⁶ His work reveals the importance of understanding mineral governance within broader political economy contexts. Most importantly, it shows how local communities often bear the costs of extraction while receiving minimal benefits. This is pertinent for the current research.

The SD body of literature provides important insights into the governance challenges facing resource-rich countries. However, the manifested gaps lie in understanding how different philosophical approaches might inform alternative development models. To address this gap, post-colonial legal literature provides crucial insights into how colonial legacies continue to shape contemporary governance while offering frameworks for understanding indigenous rights and customary law recognition.

Gathii provides an assessment of how neo-colonial relationships persist in international economic law. He demonstrates how formal sovereignty often masks continued colonial-driven exploitation.⁵⁷ His work points out the structural continuities between colonial and post-colonial extractive relationships. The work further shows how international legal frameworks continue to perpetuate rather than remedy historical injustices. This analysis is essential for understanding why technical legal reforms have failed to address fundamental power imbalances in mineral resource governance.

Mills offers a critical analysis of Western liberal theories in post-colonial contexts. He argues that supposedly universal principles systematically exclude those whose agency has been compromised by colonial histories.⁵⁸ His concept of ideal theory shows how abstract philosophical frameworks can legitimise rather than challenge structural inequalities. This critique provides important

⁵⁶ Gavin Bridge, 'The Hole World: Scales and Spaces of Extraction' (2009) 2 *New Geographies* 43.

⁵⁷ James Thuo Gathii, 'Neo-Colonialism, Sovereignty and International Law' (2018) 5 *Critical Analysis of Law* 45.

⁵⁸ Charles Mills, "'Ideal Theory' as Ideology' (2005) 20 *Hypatia* 165.

foundations for understanding why Western liberal approaches to mineral resource governance have failed to deliver social justice outcomes in African contexts.

Young develops theoretical frameworks for understanding structural injustice and the politics of difference. In doing so, she demonstrates how formal equality can perpetuate substantive inequality when individuals have unequal starting points.⁵⁹ Her work provides valuable insights into how participatory governance mechanisms can address rather than reproduce structural injustices. It offers guidance for designing inclusive approaches to mineral resource governance.

The post-colonial legal literature establishes the inadequacy of formal legal equality in addressing historical injustices while demonstrating the need for transformative approaches that address structural power relationships.

Moreover, scholarship on African approaches to natural resource governance highlight the need for culturally grounded alternatives to Western liberal models.

Pedro examines the AMV as a transformative framework for continental mineral governance. He argues that it represents a paradigm shift from neoliberal extraction to community-centred development.⁶⁰ His analysis demonstrates how continental frameworks can provide alternatives to Western-dominated extractive models by emphasizing the importance of local content requirements and community participation. Nevertheless, the work of Pedro focuses primarily on policy frameworks rather than philosophical foundations. It leaves gaps in understanding how African values can be institutionally operationalised.

Aubynn provides an empirical analysis of regulatory structures in the mining sector of Ghana, demonstrating how well-designed institutional frameworks can balance accountability, transparency, and development objectives.⁶¹ His research shows the importance of regulatory innovation in achieving developmental outcomes from mineral extraction. However, his assessment operates within liberal governance frameworks rather than exploring alternative

⁵⁹ Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990).

⁶⁰ António Pedro, 'Mainstreaming Mineral Wealth in Growth and Poverty Reduction Strategies' (2013) ECA Policy Research Paper 1.

⁶¹ Toni Aubynn, 'Regulatory Structures and Challenges to developmental extractives: Some practical observations from Ghana' (2017) WIDER Working Paper 179.

philosophies. Such assessment is restricted in contexts requiring a fundamental transformation of governance.

It is also important to assess how Otto examine mining taxation and fiscal decentralisation across multiple African countries. His work reveals persistent tensions between national revenue collection and local community benefit-sharing.⁶² His comparative analysis demonstrates the complexity of designing equitable revenue distribution mechanisms while highlighting the importance of local participation in fiscal governance. Nevertheless, the work of Otto treats taxation as a primarily technical issue rather than examining how different philosophical approaches to wealth and distribution might inform fiscal policy design.

Furthermore, the continental literature demonstrates recognition of the need for alternatives to Western-dominated extractive models such as Ubuntu philosophy. But it also reveals limitations in translating these aspirations into concrete governance innovations. Ramose provides the most comprehensive philosophical exposition of Ubuntu. He claims that it represents a fundamental alternative to Western individualistic approaches.⁶³ His work establishes Ubuntu as more than a cultural practice, demonstrating its potential as a comprehensive moral and political philosophy. Nevertheless, his analysis remains primarily theoretical, lacking concrete mechanisms for operationalising Ubuntu principles in contemporary governance contexts.

Metz advances the discussion by developing Ubuntu as a moral theory based on relational principles of identity and solidarity.⁶⁴ His framework provides more precise philosophical foundations for Ubuntu applications. He asserts that moral action requires fostering communal relationships characterized by both identification and mutual care. While the theoretical contributions of Metz are substantial, his work focuses primarily on moral decision-making rather than legal governance frameworks. This leaves gaps in understanding how Ubuntu principles can transform structural power relationships in resource governance.

⁶² James M Otto, 'The Taxation of Extractive Industries: Mining' in Tony Addison and Alan Roe (eds), *Extractive Industries: The Management of Resources as a Driver of Sustainable Development* (Oxford Academic 2018).

⁶³ Mogobe B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999).

⁶⁴ Thaddeus Metz, *A Relational Moral Theory: African Ethics in and Beyond the Continent* (Oxford University Press 2021).

The gap in existing Ubuntu literature is the absence of comprehensive frameworks for operationalising Ubuntu principles in contemporary mineral resource governance through legal and institutional mechanisms. This research addresses this gap by developing concrete legal and institutional mechanisms for implementing Ubuntu-related governance in extractive industries and particularly to foster SD in mineral resource governance of Burundi.

1.10 Limitations Considerations

The research acknowledges the following limitations. The focus on Burundi as a single case study limits direct applicability to other countries with different legal traditions and contexts. However, the emphasis on developing Ubuntu relational framework helps address this limitation by providing a framework that emphasises principles of identity and solidarity found in other various national circumstances.

The research also recognises limitations in accessing current implementation data due to ongoing political sensitivities around mining governance reform in Burundi. Nevertheless, the emphasis on developing a prospective reform framework from lived customary systems helps ensure that the proposed approach remains relevant to contemporary implementation challenges in Burundi.

1.11 Chapter Outline and Structure

The structure of the research is formed by six chapters, including this introductory Chapter.

Further, Chapter 2 critically examines the theoretical dimensions of Western liberal approaches to social justice. It proposes Ubuntu philosophy as an alternative framework emphasizing relational ontology for mineral resource governance.

The third Chapter is concerned with how international, regional, and continental legal frameworks can be reinterpreted through Ubuntu principles to establish a relational framework foundation to advance SD in mineral resource governance.

In the fourth Chapter, the research presents the empirical findings, focusing on normative framework for mineral resource governance in Burundi. It demonstrates how current legal obligations do not address communities' concerns across environmental, economic, and social dimensions. It further suggests a relational normative framework for sustainable mineral resource governance.

Chapter 5 analyses the institutional and procedural frameworks of mineral resource governance in Burundi. It points out existing gaps and proposes a relational framework for restructuring institutional mechanisms for community institutions and appropriate mechanisms.

The final Chapter builds upon the entire thesis and recommends steps for the implementation of the Ubuntu relational framework for governance transformation. It proposes areas for future research.

2 Chapter 2: Theoretical Framework: A Relational Moral Account of Ubuntu to Reframe Sustainable Development for Social Justice

2.1 Introduction

The previous chapter investigated social injustices in mineral resource governance in Burundi, particularly for communities living around mining sites. Building on these findings, this chapter develops Ubuntu philosophy as a contextual framework for reimagining SD and social justice in mineral governance. Ubuntu offers a relational approach, prioritising communal relationships and collective wellbeing over individualistic conceptions of justice. This framework provides a defensible moral account for individuals, the State, and business relationships with communities. It guides normative, institutional, and procedural discussions to articulate principles of identity and solidarity for SD.

The chapter is structured into six parts. Following this introduction, the analysis theorises social justice through moral philosophy, establishing fairness as a foundational characteristic before examining contextual moral frameworks. The discussion then assesses African philosophical contributions, particularly Ubuntu as a relational framework prioritising communal relationships. Based on these foundations, this framework ought to be implemented through specific steps. Firstly, it analyses identity and solidarity as relational moral values. Secondly, it looks at these values as living principles of customary law. Thirdly, it proposes specific constitutional mechanisms for implementing these relational moral values. These mechanisms will operate within the normative, institutional and procedural legal structures of Burundi. The ultimate goal is to advance sustainable mineral governance that promotes social justice and fairness.

2.2 Theorising Social Justice

The concept of social justice has prompted wide-ranging academic debate, with theorists advancing competing visions of what constitutes a just society.⁶⁵ Whilst Universalist approaches, epitomized by the theory of social justice of Rawls,⁶⁶ suggest principles applicable to all societies, this research argues for a contextual framework that grounds social justice in the specific moral

⁶⁵ David Miller, *Principles of Social Justice* (Harvard University Press 1999); Brian Barry, *Why Social Justice Matters* (Polity Press 2005).

⁶⁶ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999).

values, history, and socio-economic conditions of distinctive communities,⁶⁷ especially regarding mineral resource governance in Burundi.

Contemporary studies reveal a fundamental tension between universal and particular approaches.⁶⁸ Universalists such as Rawls⁶⁹ and Nussbaum⁷⁰ contend that moral principles must transcend cultural boundaries to maintain moral authority. Conversely, communitarians like Walzer⁷¹ and MacIntyre⁷² claim that meaningful justice can only emerge within particular cultural traditions.

This research develops a contextual framework for mineral resource governance in Burundi that neither neglects universal normative standards nor disregards local particularities.⁷³ This study advances the argument that social justice in mineral-abundant contexts requires moral principles that retain normative force while remaining sensitive to specific cultural relationships with land, historical experiences of extraction, and particular development needs.

This approach addresses three critical limitations of existing resource governance studies: firstly, the inadequacy of purely universal extractive industry standards to account for significant cultural differences in conceptions of both land and resource management, community involvement, and intergenerational responsibility.⁷⁴ Secondly, the incapacity of purely relativistic approaches to criticize exploitative extraction practices that harm local communities.⁷⁵ Thirdly, the inadequate

⁶⁷ Joseph E Stiglitz, Jeffrey D Sachs and Macartan Humphreys (eds), *Escaping the Resource Curse* (Columbia University Press 2007); Paul Stevens, 'Resource Impact: Curse or Blessing? A Literature Survey' (2003) 9(1) *Journal of Energy Literature* 3.

⁶⁸ Simon Caney, 'Cosmopolitan Justice, Responsibility, and Global Climate Change' (2005) 18(4) *Leiden Journal of International Law* 747; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford University Press 1995).

⁶⁹ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999); John Rawls, *Political Liberalism* (Columbia University Press 1993).

⁷⁰ Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011); Martha C Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge University Press 2000).

⁷¹ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (Basic Books 1983).

⁷² Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (3rd edn, University of Notre Dame Press 2007); Alasdair MacIntyre, *Whose Justice? Which Rationality?* (University of Notre Dame Press 1988).

⁷³ Amartya Sen, *Development as Freedom* (Anchor Books 1999); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 1995).

⁷⁴ Ciaran O'Faircheallaigh, 'Extractive Industries and Indigenous Rights: Lessons from Australia's Experience' (2018) 5(4) *The Extractive Industries and Society* 587; Gavin Bridge, 'The Hole World: Scales and Spaces of Extraction' (2009) 2 *New Geographies* 43.

⁷⁵ Alison Dundes Renteln, *International Human Rights: Universalism versus Relativism* (SAGE Publications 1990); Jack Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6(4) *Human Rights Quarterly* 400.

attention paid to how colonial legacies and capital market commodity chains structure contemporary mineral governance arrangements.⁷⁶

Before examining contextual applications, it is important to understand that social justice is rooted in broader conceptions of justice. This research, therefore, begins by exploring philosophical and moral conceptions of justice and how these foundations are challenged in social justice studies, before developing a contextual framework for mineral resource governance and SD.

2.2.1 Exploring Justice through a Moral Lens

What can be learned from Plato? The famous book *The Republic* begins with the question of *what is justice?* For Cephalus, justice refers to honesty in actions and words for individuals.⁷⁷ Polemarchus believes justice means helping a friend and harming an enemy.⁷⁸ However, Thrasymachus posits that justice is the advantage of the stronger individual in society, "might makes right."⁷⁹ This can be observed in Burundi, where the council of ministers is empowered to approve extraction mining permits without seeking community input consent.⁸⁰

Socrates and Plato reject this position, believing justice is a virtue focusing on individual harmony. For Plato, justice occurs when reason governs, the mind supports rational decisions, and appetite is guided by reason.⁸¹ Aristotle similarly refers to justice as an ethical virtue of individuals.⁸² The common pattern is the individualist approach to justice as a moral virtue. This is the case in Burundi, where mineral exploitation by seven mining companies was suspended in 2021 because

⁷⁶ Frederick Cooper, *Africa since 1940: The Past of the Present* (Cambridge: Cambridge University Press, 2002); and James Ferguson, *Global Shadows: Africa in the Neoliberal World Order* (Durham, NC: Duke University Press, 2006); Jennifer Clapp, 'The Global Political Economy of Food Security' in John Ravenhill (ed), *Global Political Economy* (4th edn, OUP 2014) 324–346.

⁷⁷ Roslyn Weiss, 'Cephalus, Polemarchus, and Socrates on Justice' in *Knowing and Being in Ancient Philosophy* (Springer International Publishing 2022) 221–235. See also M Broadbent, *Studies in Greek genealogy* (EJ Brill 1968).

⁷⁸ Roslyn Weiss, 'Cephalus, Polemarchus, and Socrates on Justice' in *Knowing and Being in Ancient Philosophy* (Springer International Publishing 2022) 221–335. See also Plato, *The Republic*, trans P Shorey (Harvard University Press 2006).

⁷⁹ George F Hourani, 'Thrasymachus' Definition of Justice in Plato's "Republic" (1962) *Phronesis* 110–120. See also PP Nicholson, 'Unravelling Thrasymachus' Arguments in "The Republic" (1974) 19(3) *Phronesis* 210–232.

⁸⁰ Press release no 07/2025 of the Burundi Council of Ministers of Wednesday 4 June 2025, under point 4 and Press release no 17/2024 of the Extraordinary Burundi Council of Ministers of Monday 23 December 2024, under point 1.

⁸¹ M B Foster, 'On Plato's Conception of Justice in the Republic' (1951) 1(3) *The Philosophical Quarterly* 206–17.

⁸² Roger Crisp (ed), *Aristotle: Nicomachean Ethics* (Cambridge University Press 2014).

extraction operations only benefited individual companies while the State and communities were not benefiting equitably.⁸³

Descartes⁸⁴ and Kant⁸⁵ emphasise individual reasoning and autonomy as the basis for justice. Their universal rational principles assume applicability independent of cultural context. For instance, international human rights standards in the mining sector in Burundi conflict with community-based customary laws concerning land and resource access.

Utilitarians view a system as just if it produces the greatest happiness for the greatest number.⁸⁶ This is reflected in the Mining Code 2023 of Burundi in Article 213, which prioritises monetary compensation over broader justice issues such as capacity building, healthcare, or educational infrastructure.⁸⁷ Hume challenged this rationality, arguing that justice is rooted in moral cultural ethics shaped by social context, not merely rational calculation.⁸⁸

Considering the above theoretical foundations, how ought justice to be comprehended in the context of mineral resource governance for SD in Burundi? My research argues that justice requires moving beyond three dominant but inadequate approaches: short-sighted political expediency, narrow economic distribution, and abstract universal principles dissociated from local contexts.

First of all, justice must not be reduced to mere political control of extraction decisions driven by the current political class. It provides a conducive environment for political gain over long-term sustainability and overlooks the irreversible nature of mining and its impact on future generations. In second position, distributive management models that focus solely on revenue allocation, whether through taxation, royalties, or sovereign wealth funds, while essential, are insufficient. In these approaches mineral wealth are considered as fungible resources to be distributed, rather than recognising the complex cultural, environmental, and cross-generational relationships associated

⁸³ Press release from the Minister of Hydraulics, Energy and Mines in Burundi suspending the mining conventions of seven companies from 14 July 2021.

⁸⁴ René Descartes, 'Meditations on First Philosophy' in *Seven Masterpieces of Philosophy* (Routledge 2016) 63-108.

⁸⁵ Immanuel Kant, *Metaphysical Elements of Justice: Part I of the Metaphysics of Morals* (Hackett Publishing 1999); Robert S Taylor, 'Kantian Personal Autonomy' (2005) 33(5) *Political Theory* 602-628.

⁸⁶ John Stuart Mill, *Utilitarianism* (Macmillan Education UK, 1966).

⁸⁷ Mining Code art 2013 (3).

⁸⁸ David Hume, *An Enquiry into the Principles of Morals* (Lemur Books 2014).

with mineral extraction. Finally, abstract universal moral principles that ignore local and cultural contexts do not address the challenges of mineral governance in Burundi.

Instead, justice in the governance of mineral resources in Burundi must be rooted in moral awareness within the current generation and the ability to relate ethically to the needs of future generations. Based on this, systems of mineral governance should be designed to preserve similar development opportunities for both present and future generations in the pursuit of social justice. In this regard, Burundi can draw inspiration from how the allocation of diamond revenues in Botswana is used for education and healthcare, which demonstrates a moral awareness on the part of the current generation. Additionally, in Ghana, the Mining Community Development Program requires mining companies to donate 0.5% of the gross value of their production to local communities. The most notable example is Namibia's rejection of seabed mining despite the potential revenues, which reflects an ethical commitment to future generations. These perspectives and notions of justice form the foundation of the contextual framework developed in the later section, which discusses how this moral conception must be adapted to specific cultural, historical, and socio-economic contexts while maintaining its normative strength across different mineral resource governance regimes.

2.2.2 Situating Moral Virtues in Theories of Social Justice

It has been shown in the previous section that the relationship between individual moral virtues and justice in Western political philosophy has been a central concern. Different traditions offer competing accounts of how personal virtue should inform societal organisation. This section investigates how leading liberal thinkers have conceptualised this relationship to social justice. This research argues that while these approaches provide valuable insights, they ultimately remain limited by their emphasis on individual autonomy at the expense of societal obligations.

2.2.2.1 Social Contract Tradition

The social contract tradition assumes that moral virtues must be founded on human nature and social cooperation. Social contract theorists provide a framework for understanding how moral obligations and just governance emerge from voluntary agreements of rational individuals pursuing mutual benefit. In *Leviathan*, Hobbes presents justice as arising from the need for

cooperation between naturally self-interested individuals.⁸⁹ This is particularly relevant to mineral governance, where limited deposits and high economic stakes create conditions reminiscent of the Hobbesian state. In Cibitoke and Muyinga provinces in Burundi, competition between mining companies, artisanal miners, and local communities for gold-mining sites has created a "war of all against all".⁹⁰ For Burundi, this means sustainable mineral extraction necessitates cooperation between mining communities, government institutions, and private investors, with each recognising their dependence on others for long-term benefit.

Locke expands this framework by basing moral virtues on natural rights rather than mere self-interest. For Locke, justice consists of respecting fundamental rights to life, liberty, and property.⁹¹ The Site Rehabilitation Fund established by the Mining Code 2023 illustrates an attempt to apply Lockean principles by treating mineral wealth as belonging to present and future communities rather than private companies alone.⁹² However, this still conceptualises resource governance primarily in terms of protecting individual rights rather than fostering collective management obligations, creating tension with customary systems that prioritise communal responsibility.

Mining governance based on social contract principles could provide the normative, institutional, and procedural basis for transforming mineral resource wealth into SD while preventing social injustices. However, the challenge remains to adapt these Western theoretical frameworks to incorporate Burundian customary concepts of collective responsibility and communal management, which have the potential to be more culturally appropriate and practically effective for long-term mining governance.

The social contract tradition reveals that the role of government in mineral governance is fundamentally limited. It can create institutional conditions for moral cooperation, but it cannot engender genuine ethical commitment. The critical limitation of the Hobbesian and Lockean

⁸⁹ Thomas Hobbes, *Leviathan* (first published 1651, Cambridge University Press 1996) ch 13. See also Thomas Hobbes and Marshall Missner, *Thomas Hobbes: Leviathan* (Routledge 2016).

⁹⁰ Interview with Ministry of Mines (Burundi, 13 July 2024).

⁹¹ John Locke, *Two Treatises of Government* (Cambridge University Press 1988) Second Treatise, ch 5.

⁹² Mining Code 2023 art 196 (1).

frameworks is their assumption that procedural arrangements can substitute for substantial moral transformation. For mining governance in Burundi to achieve social justice, government institutions must go beyond the aggregation of individual interests to actively nurture the moral ethics of collective governance that customary Burundian systems embody. This suggests that sustainable mineral governance requires not just a social contract, but a moral renewal that transforms the way communities, government, and private actors understand their obligations towards each other and for future generations.

2.2.2.2 Moral Ethics

The utilitarian approach of Mill attempts to link individual virtue with social well-being, arguing that moral virtues should be evaluated by their impact on general wellbeing.⁹³ Within mining contexts, this translates into policies that maximise individual benefits while minimising collective welfare. However, this approach encounters challenges in determining which interests count and how to balance competing claims.

Kantian ethics offer a more sophisticated account, basing moral virtues on rational autonomy and universal principles. The moral imperative demands treating others as ends in themselves, not mere means,⁹⁴ particularly relevant to mineral governance, where extractive industries historically treated local communities as mere means of resource extraction. The efforts of Burundi law to require mining rights holders to respect local populations reflect this Kantian approach. The Mining Code 2023 requires holders to establish community development plans in consultation with neighbouring communities and authorities.⁹⁵ However, this framework struggles to account for social conditions that make moral reasoning possible and how individual self-realisation depends on community relations, as MacIntyre observes.⁹⁶

Although these liberal approaches enriched the understanding of moral virtues, they shared a common limitation: they start with autonomous individuals and ask how they can coexist fairly. This ignores the requirement that moral virtues in mineral governance in Burundi must be

⁹³ John Stuart Mill, *On Liberty* (Cambridge University Press 1989) ch 1.

⁹⁴ Immanuel Kant, *Groundwork for the Metaphysics of Morals* (Cambridge University Press 1998) 4:429.

⁹⁵ Mining Code 2023 arts 207-208 (1).

⁹⁶ Alasdair MacIntyre, *After Virtue* (3rd edn, University of Notre Dame Press 2007) 56-78.

contextualised and developed through ongoing social interactions within communities. The suspension of mining conventions by the Government in 2021 reflected a recognition that effective governance cannot be imposed through top-down mining contracts but must emerge from inclusive social processes that respect customary structures and collective decision-making. I argue for an understanding of individual development in resource governance as intrinsically dependent on shared social and ecological well-being. Social justice should be evaluated not only by how well it protects individual autonomy, but how effectively it fosters mutual and interconnected development across human and non-human beings. This situates individual autonomy within human interdependence with mineral resources and ecological systems.

2.2.2.3 Beyond Liberal Individualism: Fairness as a Moral Principle of Social Justice

One of the most prominent contributions to social justice theory was made by Rawls in his *theory of justice as fairness*. Rawls uses a hypothetical “veil of ignorance” where individuals, ignorant of their position in society, make decisions that advance social justice and determine principles benefiting everyone.⁹⁷ He believes society should be organised in such a way that the most disadvantaged persons are in the best possible position.⁹⁸ Rawls proposes a basic normative structure of well-ordered institutions and how they fit together to distribute rights, duties, and primary goods. To realize this, he suggests two rational moral principles: first, individuals have equal inalienable rights to fundamental freedoms;⁹⁹ second, where social and economic inequalities exist, distributions must benefit the least advantaged under conditions of fairness.¹⁰⁰

Although the framework of Rawls has dominated liberal and neoliberal approaches to social justice¹⁰¹ and influenced theorists such as Dworkin¹⁰² and Nussbaum,¹⁰³ postcolonial scholars have highlighted the structural inadequacies of this theory for addressing contemporary social injustices.

⁹⁷ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

⁹⁸ *ibid.*

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999). See also John Rawls, *Political Liberalism* (expanded edn, Columbia University Press 2005). See also Samuel Freeman, *Rawls* (Routledge 2007) 1-15.

¹⁰² Ronald Dworkin, *Sovereign Virtue* (Harvard University Press 2000); Ronald Dworkin, *Justice for Hedgehogs* (Harvard University Press 2011).

¹⁰³ Martha Nussbaum, *Women and Human Development* (Cambridge University Press 2000); Martha Nussbaum, *Creating Capabilities* (Harvard University Press 2011).

Three fundamental limitations stand out, particularly relevant in the context of Burundi mineral resource governance marked by colonial and historical injustices as well as cultural diversity.

2.2.2.3.1 Exclusionary Rationality

Rawls assumes rational, independent individuals can reach fair agreements behind the veil of ignorance.¹⁰⁴ However, this creates what Mills calls an “ideal theory” that systematically excludes those who cannot participate as equal agents.¹⁰⁵ The framework assumes pre-existing capacity for autonomous rational choice, excluding individuals and communities whose agency has been compromised by colonial histories or alternative cultural conceptions of identity.¹⁰⁶ Young shows that this exclusion is not accidental but structural, as the very conception of the rational individual reflects the assumptions of the dominant group about moral action.¹⁰⁷ Mining agreements are negotiated solely between government technocrats and foreign companies, assuming all parties are rational and independent as provided by the Mining Code 2023. However, the suspension of the mining agreement in 2021 is an example that shows this is not the case, as it was argued that the government was not receiving a fair share of mining revenues.

2.2.2.3.2 Perpetuation of Structural Inequality

While Rawls sought to address inequality through his difference principle, critics argue his emphasis on individual equality and formal procedural fairness inadvertently legitimizes substantial inequalities where individuals have unequal starting points.¹⁰⁸ The focus on abstract individual rights produces barriers to collective action, as described by O'Neill.¹⁰⁹ The State intervention is perceived as interfering in individual autonomy and thus resulting in allocation

¹⁰⁴ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999) 118-123, 136-142.

¹⁰⁵ Charles Mills, "'Ideal Theory' as Ideology" (2005) 20 *Hypatia* 165; Charles Mills, *The Racial Contract* (Cornell University Press 1997) 18-40.

¹⁰⁶ Glen Sean Coulthard, *Red Skin, White Masks* (University of Minnesota Press 2014) 106-129; Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg (eds), *Marxism and the Interpretation of Culture* (University of Illinois Press 1988) 271-313.

¹⁰⁷ Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press 1990) 96-121; Iris Marion Young, 'Structural Injustice and the Politics of Difference' in Gary Craig, Tania Burchardt and David Gordon (eds), *Social Justice and Public Policy* (Policy Press 2008) 77-96.

¹⁰⁸ Elizabeth Anderson, 'What Is the Point of Equality?' (1999) 109 *Ethics* 287, 288-295; Samuel Scheffler, 'What Is Egalitarianism?' (2003) 31 *Philosophy & Public Affairs* 5.

¹⁰⁹ Onora O'Neill, *Justice Across Boundaries* (Cambridge University Press 2000) 115-142; Onora O'Neill, 'Justice and Virtue' in David Schmidtz (ed), *Robert Nozick* (Cambridge University Press 2002) 114-129. See also Miranda Fricker, *Epistemic Injustice* (Oxford University Press 2007) 147-175.

procedures that appear formally fair but perpetuate systemic injustices by failing to address the structural dimensions of inequality.¹¹⁰ For example, the Site Rehabilitation Fund provides individual payments to landowners, but communities cannot deploy these resources for collective infrastructure because the legal framework prioritises individual compensation over community development. Landowners with formal titles receive higher payments than rural communities with customary land rights.

2.2.2.3.3 Cultural Neutrality

Liberal fairness reveals shortcomings in Rawls' attempt to create culturally neutral principles.¹¹¹ Critics argue this purported neutrality embraces particular cultural assumptions that privilege individualistic approaches over communal frameworks.¹¹² As Kymlicka demonstrates, liberal neutrality systematically favours the cultural practices and worldviews of dominant cultures while marginalising other cultural ways of organising social life.¹¹³ As an example, the Mining Code 2023 claims cultural neutrality by emphasising individual mining permits and private property rights, systematically disadvantaging communal and family land tenure systems. Many rural communities practice collective land ownership but cannot obtain mining rights because they lack individual property titles.

These limitations suggest the need for a moral framework that: (1) includes diverse forms of moral action, (2) recognises interdependence as fundamental to human existence, and (3) adopts contextual principles rather than abstract universal principles. The following section describes this further.

¹¹⁰ Onora O'Neill, *Justice Across Boundaries* (Cambridge University Press 2000) 115-142; Onora O'Neill, 'Justice and Virtue' in David Schmidtz (ed), Robert Nozick (Cambridge University Press 2002) 114-129. See also Miranda Fricker, *Epistemic Injustice* (Oxford University Press 2007) 147-175.

¹¹¹ John Rawls, *Political Liberalism* (expanded edn, Columbia University Press 2005) 36-66, 144-164.

¹¹² Michael Sandel, *Liberalism and the Limits of Justice* (2nd edn, Cambridge University Press 1998) 168-183; Alasdair MacIntyre, *After Virtue* (3rd edn, University of Notre Dame Press 2007) 244-255.

¹¹³ Will Kymlicka, *Liberalism, Community and Culture* (Oxford University Press 1989) 162-181; Will Kymlicka, *Multicultural Citizenship* (Oxford University Press 1995) 107-130. See also Joseph Raz, *The Morality of Freedom* (Oxford University Press 1986) 423-429.

2.3 Theorising Social Justice: A Contextual Moral Framework

The present section contributes to the debate of social justice by developing a contextual framework specifically designed for mineral resource governance in Burundi that neither neglects normative standards nor disregards local particularities.

2.3.1 Reconciling Distributive Universal Principles with Cultural Interpretation

Rawlsian theory suggests universal moral principles of equality and fair distribution, with universality resting on the veil of ignorance that erases cultural biases.¹¹⁴ Rather than accepting a binary between universal and cultural approaches, this thesis develops a contextual framework recognising that universal principles require cultural interpretation to become meaningful in the context of mineral resource governance in Burundi. For example, Diamond governance in Botswana illustrates this alignment, as the partnership between government and De Beers channels revenues through universal social services, mirroring both Tswana cultural values of collective responsibility and Ubuntu-influenced governance.¹¹⁵ Burundi can learn from the emphasis of Botswana on earmarking mining revenues for universal social services and its long-term perspective through the Pula Fund for future generations.

The contextual framework suggests that sustainable mineral governance requires moving beyond one-size-fits-all solutions to adopt frameworks that recognise that universal principles such as fairness only acquire concrete meaning through cultural interpretation and institutional entrenchment. This approach enables universal principles to be meaningfully interpreted and applied within specific cultural contexts while maintaining normative standards for human dignity and environmental protection.

2.3.2 Integrating Moral Recognition

The concept of moral recognition emphasizes understanding the root causes of maldistribution before addressing fair distribution mechanisms. This reveals a fundamental Rawlsian limitation: while proposing universal principles for goods distribution, the veil of ignorance neglects how

¹¹⁴ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999) 52-78, 118-123; John Rawls, *Political Liberalism* (expanded edn, Columbia University Press 2005) 5-15.

¹¹⁵ Daron Acemoglu, Simon Johnson and James Robinson, 'An African Success Story: Botswana' in Daron Acemoglu, Simon Johnson and James Robinson (eds), *In Search of Prosperity* (Princeton University Press 2007) 80-122; Clark Leith, *Why Botswana Prospered* (McGill-Queen's University Press 2005) 89-115.

historical experiences and identity recognition are preconditions for just distribution.¹¹⁶ For example, colonial extractive regimes in Burundi established frameworks prioritising external economic interests over local management practices, creating dependencies that persist today.¹¹⁷ Under German and Belgian rule, colonial authorities created mining laws designed to extract minerals for European markets while sidelining traditional governance structures. This colonial framework has continued to orient mining toward raw material export rather than domestic processing, with foreign companies dominating value chains while Burundians remain relegated to worker roles.

The moral basis for addressing these injustices requires moving beyond conventional schemes of distribution by understanding historical social injustices and acknowledging different cultural approaches to resource management.¹¹⁸ This approach embodies moral recognition and respect for different identities, cultures, and perspectives within society.

I argue that a contextual outlook with moral recognition of normative constructs can advance social justice by enabling moral agents to identify with and show solidarity towards others in the governance of mineral resources for SD. This requires institutional arrangements that emphasise recognition of cultural differences and historical experience as foundational to arrangements for mineral revenue distribution, rather than treating them as secondary considerations.

2.3.3 Redesigning Procedural Moral Account

Rawls presents procedural mechanisms aiming to ensure fairness by preventing bias toward particular interests.¹¹⁹ However, communitarian critics contend Rawlsian approaches are excessively individualistic and ignore social ties, cultural traditions, and collective decision-

¹¹⁶ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999) 118-123; Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books 1989) 89-109; Will Kymlicka, *Liberalism, Community and Culture* (Oxford University Press 1989) 162-181; Charles Mills, *The Racial Contract* (Cornell University Press 1997) 18-40.

¹¹⁷ Paul Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics' (2000) 94 *American Political Science Review* 251; James Mahoney, 'Path Dependence in Historical Sociology' (2000) 29 *Theory and Society* 507; Kathleen Thelen, 'Historical Institutionalism in Comparative Politics' (1999) 2 *Annual Review of Political Science* 369.

¹¹⁸ Elinor Ostrom, *Governing the Commons* (Cambridge University Press 1990) 58-102; Fikret Berkes, *Sacred Ecology* (2nd edn, Routledge 2008) 87-112; Taiaiake Alfred and Jeff Corntassel, 'Being Indigenous' (2005) 40 *Government and Opposition* 597.

¹¹⁹ John Rawls, *A Theory of Justice* (revised edn, Harvard University Press 1999) 118-123, 136-142.

making systems.¹²⁰ For example, the Minerals and Mining Act of Ghana recognises the traditional authority of chiefs over mineral rights decisions, aligning with Akan cultural governance, emphasising collective consultation and ancestral approval.¹²¹ Ghana shows how modern mining laws can formally recognise the role of traditional authorities in resource management. Burundi could learn from this system by legally recognising traditional institutions of *Bashingantahe*, which existed in the pre-colonial Burundian society, to participate in resource governance. I argue that a contextual procedural approach would design mechanisms honouring both participation rights and particular cultural governance practices, recognising that procedural legitimacy cannot be separated from cultural understandings of legitimate authority and collective decision-making.

The preceding analysis reveals fundamental limitations in dominant neoliberal approaches to social justice when applied to mineral resource governance in Burundi. These limitations manifest as practical failures where formal adherence to liberal principles often exacerbates rather than addresses social injustices. Addressing these limitations requires moving beyond binary opposition between universal and relativist approaches towards contextual frameworks that recognise how universal moral principles require cultural interpretation to become meaningful in specific contexts.

The central question is whether these limitations can be addressed by considering moral frameworks from other philosophical traditions, particularly in African contexts. Social justice issues in African communities are addressed within cultural contexts emphasizing personhood, collective responsibility, and intergenerational management. Ignoring these cultural attributes can reproduce vulnerabilities that privilege some groups over others, failing to address what constitutes a socially unjust distribution within specific societies.

Ubuntu philosophy offers a framework to reframe social justice from individual entitlements to collective responsibilities, requiring that resource distribution cannot be separated from cultural

¹²⁰ Michael Sandel, *Liberalism and the Limits of Justice* (2nd edn, Cambridge University Press 1998) 62-95, 150-154; Alasdair MacIntyre, *After Virtue* (3rd edn, University of Notre Dame Press 2007) 244-255; Charles Taylor, 'Atomism' in Charles Taylor, *Philosophy and the Human Sciences* (Cambridge University Press 1985) 187-210; Amitai Etzioni, *The Spirit of Community* (Crown Publishers 1993) 89-115.

¹²¹ *Minerals and Mining Act 2006* (Ghana), ss 8-12; *Constitution of Ghana 1992*, arts 267-270. See also Janine Ubink, 'Traditional Authority Revisited' in Janine Ubink and Kojo Amanor (eds), *Contesting Land and Custom in Ghana* (Leiden University Press 2008) 25-48.

recognition, procedural inclusion, and historical redress. This thesis applies these insights to examine how mineral resource governance could reconfigure mineral taxation regimes, using Burundi as a case study for assessing how contextual approaches might address social injustices while promoting SD. The post-colonial context of Burundi presents particular challenges where colonial extraction legacies, weak State capacity, and unfair processes intersect with significant mineral wealth potential, requiring governance frameworks that can address historical injustices while building inclusive institutions for future development.

2.4 African Philosophical Reflections on Social Justice

Social injustices in mineral resource governance arising from inadequate normative laws, institutional structures, and unfair procedures are particularly difficult to address when neoliberal approaches dominate policy frameworks, excluding collective agents and often perpetuating inequality and ignoring cultural neutrality. In contemporary African societies, resolving social injustices requires reconciling universal distributive principles with cultural interpretation, embracing moral recognition, and redefining the procedural account within a contextual framework. This approach requires looking at existing African philosophies that align with social justice principles and assessing how they can be applied to mineral resource governance to achieve equitable and SD outcomes.

2.4.1 From Colonial Denial to Contemporary Recognition

To understand African philosophical reflections on social justice, one needs to look at the historical progression from colonial suppression of indigenous thought to modern recognition of the rich philosophical traditions of Africa.

2.4.1.1 Foundations and Early Resistance

African philosophies have emerged from centuries of systematic oppression and intellectual marginalisation.¹²² Western philosophers remained convinced that Africa possessed no philosophical tradition worthy of recognition.¹²³ This dismissive attitude found its most influential expression in the historical philosophy of Hegel, who excluded Africa from his taxonomy of the

¹²² Jonathan Egid, 'Hegel and the Hatäta Zär'a Ya'əqob: Africa in the Philosophy of History and the History of Philosophy' (2024) 45 *Hegel Bulletin* 1-22.

¹²³ Robert Bernasconi, 'Exiled from History: Africa in Hegel's Academic Practice' (2022) 49 *History in Africa* 191-225.

four great civilizations of the World.¹²⁴ According to Hegel, Africa represented an unhistorical continent inhabited by people with undeveloped minds, still subject to natural conditions, devoid of morality, religion, or political constitution.¹²⁵ Relying on the dubious accounts of explorers and using questionable philosophical methods, Hegel categorically denied the existence of African reasoning, development, and culture. This primitive mentality was taken up by later researchers such as Lucy and Larry, who characterised African conceptual formation as purely emotional processes governed by rituals and rites of passage, contrasting these mystical African concepts with European intellectual concepts formed through dialogue, discussion, and reflection.¹²⁶

2.4.1.2 Interventions and Challenges of Early Researchers

The work of Tempels marked a decisive turning point in the understanding of early African philosophies, notably by challenging their dismissal as purely mystical. Tempels argued that the Bantu peoples of Africa possessed a sophisticated philosophy transmitted through ancestral wisdom, which addressed the fundamental questions of life.¹²⁷ This philosophy was deeply rooted in African societal structures and distinguished itself from introduced belief systems such as Roman Catholicism.¹²⁸ Through his study of the Luba people of the Congo, Tempels proposed that their worldview represented universal philosophical principles likely found across all African societies.¹²⁹ However, his approach remained problematic, as he maintained that Africans could only experience their philosophy intuitively, and that it had to be formulated and articulated for them by Europeans, a position that perpetuated colonial intellectual hierarchies.¹³⁰

¹²⁴ Olufemi Táíwò, 'Exorcising Hegel's Ghost: Africa's Challenge to Philosophy' (1998) 1(4) *African Studies Quarterly* 3-16; Nelson Udoka Ukwamedua, 'Hegel Against Hegel and His Lumbering of Reason on the African Race' (2023) *Philosophy Compass* 1-15.

¹²⁵ Georg Wilhelm Friedrich Hegel, *Philosophy of History* (Cambridge University Press 2021) 99-110.

¹²⁶ Lucien Lévy-Bruhl, *Primitive Mentality* (Lilian A Clare tr, Routledge 2018).

¹²⁷ Placide Tempels, *Bantu Philosophy* (Colin King tr, Présence Africaine 1959).

¹²⁸ Angela Roothaan and Salihu Ahmad Bello, 'Colonial heritage or philosophical source? Update on the heritage of Bantu Philosophy' (2024) Blog of the APA <https://blog.apaonline.org/2024/02/13/colonial-heritage-or-philosophical-source-update-on-the-heritage-of-bantu-philosophy/> accessed 4 July 2025.

¹²⁹ Placide Tempels, *Bantu Philosophy* (Présence Africaine 1952). See also Stephen O Okafor, "'Bantu Philosophy: Placide Tempels Revisited' (1982) *Journal of Religion in Africa* 83-100.

¹³⁰ Bernard Matolino, 'Tempels' Philosophical Racialism' (2011) 30(3) *South African Journal of Philosophy* 330-342.

This paternalistic viewpoint was later challenged by the groundbreaking interview of Griaule with an ancient Dogon in West Africa.¹³¹ His sophisticated explanation of his culture and communal worldview as philosophy directly refuted the assumptions of Tempels about the intellectual capacities of Africans.¹³² Building on this foundation, Abraham explored the cultural underpinnings that shape the African personality as a harmonious integration of moral, social, and political elements, arguing that Africans possessed the inherent capacity to formulate their ideas.¹³³

2.4.1.3 Parisian Awakening and Liberation Movements

In the late 1920s, three young African students from various French colonies met in Paris, unknowingly laying the groundwork for a philosophical revolution that would reshape African political thought.¹³⁴ What began as a literary expression in Parisian cafés was soon to become the intellectual foundation of African liberation movements across the continent.¹³⁵ Negritude emerged not only as poetry but also as a declaration of war against the colonial mindset that sought to deny African humanity.¹³⁶ Philosophical currents circulating from Harlem to Accra created a transnational network of African intellectual resistance that transcended colonial borders. At the same time, Pan-Africanism built a conceptual bridge between diasporic consciousness and continental liberation, uniting struggles from Montgomery to Mombasa.¹³⁷

2.4.1.4 Nation-building by Philosopher-Presidents

As independence swept across Africa, philosopher-presidents transformed abstract ideas into concrete political systems, each offering a unique vision of post-colonial African society.¹³⁸ Senegal under Senghor became a living laboratory of cultural synthesis, while Ghana under

¹³¹ Marcel Griaule, *Conversations with Ogotemmêli: An Introduction to Dogon Religious Ideas* (Oxford University Press 1965).

¹³² John Olubi Sodipo, 'Notes on the Concept of Cause and Chance in Yoruba Traditional Thought' (1973) 2(2) *Second Order: An African Journal of Philosophy* 12-20.

¹³³ Willie E Abraham, *The Mind of Africa* (University of Chicago Press 1962).

¹³⁴ Merve Fejzula, 'Negritude: The birth of Black humanism' CBC Radio (8 March 2023) <https://www.cbc.ca/radio/ideas/n%C3%A9gritude-movement-black-humanism-1.6771763> accessed 4 July 2025.

¹³⁵ 'The Negritude Movement: A Literary and Intellectual Awakening' *Africa Defined* (23 June 2024) <https://africadefined.com/2024/06/23/the-negritude-movement-a-literary-and-intellectual-awakening/> accessed 4 July 2025.

¹³⁶ Aimé Césaire, 'Conscience Raciale et Révolution Sociale' (1935) *L'Étudiant noir*.

¹³⁷ Paulette Nardal, 'Internationalisme noir' (1929) *La Revue du Monde Noir*.

¹³⁸ Léopold Sédar Senghor, *On African Socialism* (Frederick A Praeger 1964).

Nkrumah pioneered a scientific socialism adapted to African realities.¹³⁹ From the village socialism of Nyerere to the humanist governance of Kaunda, African leaders proved that political philosophy was not just an academic exercise, but the blueprint for nation-building.¹⁴⁰

2.4.2 Intellectual Transition and Academic Development

African philosophy then developed through a variety of methodological approaches, as the enthusiasm of independence gave way to the complexities of governance.¹⁴¹ Mbiti approached the field from a theological perspective, examining the pervasive influence of religion in African societies, demonstrating how African religions existed primarily for communities while fostering individual development and promoting collective identity.¹⁴² Wiredu advanced the discussion by showing greater sympathy for African philosophical thought. He drew an essential distinction between traditional and contemporary African philosophies. Traditional philosophies, according to Wiredu, include both communal and individual components that are transmitted through maxims. Contemporary African philosophies, on the other hand, demonstrate a cultural permeability mediated by books and literature.¹⁴³

2.4.2.1 Taxonomic Classifications and Scientific Frameworks

The university has become the new battleground of African philosophical authenticity, where scholars have fought to establish African political philosophy as a legitimate academic discipline.¹⁴⁴ The influential classification of Odera identified four distinct trends within African philosophy: ethno-philosophy emerging from beliefs rooted in culturally unified peoples; African philosophy as the wisdom of the wise; ideological and nationalistic dimensions incorporating political conceptions based on traditional African family models; and professional African philosophy characterised by specific goals and values.¹⁴⁵ Expanding on these classifications, Nkombe and Smet proposed that African philosophy encompasses ideological trends, traditional

¹³⁹ Kwame Nkrumah, *Consciencism: Philosophy and Ideology for Decolonization* (Monthly Review Press 1964).

¹⁴⁰ Kenneth Kaunda, *A Humanist in Africa* (Longman Greens 1966); Julius Nyerere, *Ujamaa: Essays on Socialism* (Oxford University Press 1968).

¹⁴¹ Barry Hallen, *A Short History of African Philosophy* (2nd edn, Indiana University Press 2009).

¹⁴² John S Mbiti, *African Religions and Philosophy* (2nd edn, Heinemann 1989).

¹⁴³ Kwame Wiredu, *Cultural Universals and Particulars: An African Perspective* (Indiana University Press 1996).

¹⁴⁴ Paulin J Hountondji, *African Philosophy: Myth and Reality* (2nd edn, Indiana University Press 1996).

¹⁴⁵ H Odera Oruka, 'Four Trends in Current African Philosophy' in *Philosophy in the Present Situation of Africa* (Alwin Diemer ed, Franz Steiner Verlag 1981) 187-205.

elements, critical schools and synthetic currents.¹⁴⁶ Ideological tendencies involved thinkers primarily concerned with improving the political and cultural situations of African peoples. Traditional philosophy recognised philosophical works embedded in African wisdom and knowledge systems. The critical school reacted against Western philosophical conceptions, while the synthetic trend involved philosophers employing problem-solving interpretive methods.¹⁴⁷

2.4.2.2 Confronting Colonial Legacies

Post-independence African philosophy has been confronted with a fundamental question: how to build authentic African political systems while constructively engaging with an inevitably hybrid cultural heritage.¹⁴⁸ Debates about social justice revealed that political independence had not resolved deeper philosophical questions about sovereignty, identity, and legitimate governance.¹⁴⁹ African philosophers began to question whether Western democratic models could properly serve societies based on fundamentally different assumptions about community, authority, and decision-making.¹⁵⁰ The rediscovery of traditional consensus-building mechanisms offered not a nostalgic retreat, but innovative alternatives to majoritarian democracy.¹⁵¹

2.4.3 Contemporary Synthesis and Communitarian Ethics

The philosophical anthropology developed by Menkiti and Gyekye represents significant contemporary contributions to African philosophy. Menkiti argues that personhood is achieved through community incorporation, contending that “without incorporation into this or that community, individuals are seen as mere pantheons to whom the term 'person' does not fully apply.”¹⁵² This view suggests that social justice must prioritise collective well-being over individual rights.

¹⁴⁶ Oscar Brenifier, 'African Philosophy Today' in *A Companion to African Philosophy* (Kwame Gyekye and K Wiredu eds, Blackwell 2004) 3-12.

¹⁴⁷ *ibid.*

¹⁴⁸ Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997).

¹⁴⁹ Claude Sumner, *Ethiopian Philosophy* (5 vols, Commercial Printing Press 1974-1986).

¹⁵⁰ Mogobe B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999).

¹⁵¹ Kwame Gyekye, 'African Ethics' in *The Stanford Encyclopedia of Philosophy* (Edward N Zalta ed, Stanford University 2011).

¹⁵² Ifeanyi A Menkiti, 'Person and Community in African Traditional Thought' (1984) 3 *African Philosophy: An Introduction* 172–173. See also Ifeanyi Menkiti, 'Person and Community in African Traditional Thought' in Richard Wright (ed), *African Philosophy: An Introduction* (3rd edn, University Press of America 1984) 171.

Nevertheless, this position faces criticism. Gyekye advocates for moderate communitarianism, arguing that while community shapes personhood, individual dignity and autonomy remain essential.¹⁵³ His framework seeks to balance communal values with individual rights, recognising that sustainable social justice requires both dimensions.¹⁵⁴

This community-based approach provides essential frameworks for addressing social injustice by demonstrating how current and future generations function as members of shared communities to advance SD, particularly in mineral resource governance in Burundi. The practical implications emerge through philosophies like Ubuntu, which Ramose describes as emphasising interdependence and shared humanity.¹⁵⁵

This theoretical foundation on community offers valuable insights for contemporary governance challenges. The emphasis on communal responsibility, intergenerational thinking, and holistic approaches provides alternatives to neoliberal approaches that have often failed to address social injustices in resource-rich African contexts like Burundi. How can community-based approaches address modern challenges of mineral resource governance while respecting both collective and individual interests? The following section examines this further.

2.5 African Philosophy of Ubuntu

The community approach to social justice is central to African philosophical thinking. Ubuntu illustrates this approach as a framework for justice, emphasising lived experience and contextual interpretations. It presents a social structure where existence occurs through others, contrasting sharply with Western philosophies that emphasise individual autonomy.

Ubuntu provides a practical application of community ethics, translating theoretical debates about community and individual relationships into a lived ethical system emphasising interdependence and shared humanity. It demonstrates how community principles can work in practice, offering concrete perspectives for contemporary governance challenges,¹⁵⁶ particularly in mineral resource

¹⁵³ Gyekye (n 59) 35-76.

¹⁵⁴ *ibid* 52-58.

¹⁵⁵ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 230.

¹⁵⁶ *ibid* 155, 237.

management in Burundi where traditional community ethics must engage with modern institutional structures.

The term Ubuntu is rooted in sub-Saharan African Bantu languages and exists in many variants referring to the same concept.¹⁵⁷ The Zulu and Xhosa of South Africa speak of Ubuntu, as do inhabitants of Rwanda and Burundi.¹⁵⁸ In Kenya, Abaluhya communities term it omundu, while Swahili speakers refer to it as utu.¹⁵⁹ Ubuntu has no direct English translation but is expressed by the Zulu phrase “*umuntu ngumuntu ngabantu*,” roughly translating as “I am because you are, you are because we are.”¹⁶⁰

Ubuntu philosophy centers on the principle that individual humanity is constituted through relationships with others. As Archbishop Desmond Tutu observed, “My humanity is caught up, is inextricably linked, with what is yours.”¹⁶¹ This relational ontology differs from the emphasis of Western liberalism on autonomous individuality, suggesting instead that moral action emerges from communal participation.¹⁶² In so doing, the Ubuntu philosophy establishes the moral foundations in the community approach of just or unjust actions in a society.

The contribution of Ubuntu to contemporary mineral governance is not to provide ready-made solutions, but to offer a lived framework for reimagining the relationship between individual agency and collective responsibility, suggesting that sustainable governance must cultivate ethical relationships between community members.

¹⁵⁷ Christian BN Gade, 'The Historical Development of the Written Discourses on Ubuntu' (2011) 30(3) South African Journal of Philosophy 303–329.

¹⁵⁸ Adrien Ntabona, *L'ubuntu, Ses roses et ses épines* (Bujumbura 2020).

¹⁵⁹ *ibid* 157.

¹⁶⁰ John S Mbiti, *African Religions & Philosophy* (Heinemann 1990). See also Ifeanyi A Menkiti, 'Person and community in African traditional thought' in Richard A Wright (ed), *African Philosophy: An Introduction* vol 3 (University Press of America 1984) 171–182. See also Kwame Asamoah and Emmanuel Yeboah-Assiamah, “‘Ubuntu philosophy’ for public leadership and governance praxis: Revisiting the ethos of Africa’s collectivism’ (2019) 10(4) Journal of Global Responsibility 307–321.

¹⁶¹ Desmond Tutu, *Desmond Tutu* (Stanford University, Graduate School of Business 2002). See also John Hailey, 'Ubuntu: A literature review' (Tutu Foundation 2008) 1–26.

¹⁶² Charles Taylor, 'The Politics of Recognition' in Amy Gutmann (ed), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1994) 25–73.

2.5.1 Ubuntu as an African Moral Philosophy

The rise of Ubuntu as a contemporary philosophical framework reflects efforts to articulate indigenous moral theories adapted to societal challenges. Ubuntu encompasses ethical principles that prioritise community relations and collective responsibility, drawing on African social practices from pre-colonial to present-day societies. This section explores the moral philosophical foundation of Ubuntu and competing interpretations of its moral underpinnings. It assesses their potential application to the governance of mineral resources management towards SD.

2.5.1.1 A Relational Ethic of Harmony and Communion

The influential philosophical foundation of Ubuntu as an African moral theory was proposed by several scholars. Ramose argues that Ubuntu is a foundational African ethical system.¹⁶³ In addition, Shutte develops Ubuntu as a comprehensive moral philosophy for African contexts.¹⁶⁴ Metz exemplifies it by arguing that one becomes a true person by respecting the ability of others to establish harmonious relationships.¹⁶⁵ He builds on the idea that moral action requires respecting others' capacity for communion, defined through two key dimensions: identity and solidarity.

To be capable of a communal relationship is to enjoy togetherness by identifying with other people and showing solidarity with them.¹⁶⁶ By identifying with others, we see ourselves as a “we,” a member of a group. Showing solidarity entails helping others meet their needs. When combined, identity and solidarity define relational interactions for individual well-being and foster a sense of belonging within a community. This relational ontology suggests that “What is just, is what connects people together; what separates people is unjust.”¹⁶⁷

This philosophy offers several governance grounds. Firstly, it provides normative criteria for assessing policies in terms of promoting communal harmony. Secondly, it addresses intergenerational concerns by requiring present generations to maintain communion with future generations. Finally, it balances individual rights and collective responsibilities.

¹⁶³ Mogobe B Ramose, *African Philosophy through Ubuntu* (Mond Books 1999).

¹⁶⁴ Augustine Shutte, *Philosophy for Africa* (UCT Press 1993).

¹⁶⁵ Thaddeus Metz, *Toward an African Moral Theory* (2007).

¹⁶⁶ Thaddeus Metz, *A Relational Moral Theory: African Ethics in and Beyond the Continent* (Oxford University Press 2021).

¹⁶⁷ Thaddeus Metz, 'An African Theory of Moral Status: A Relational Alternative to Individualism and Holism' (2012).

The relational moral construct preserves the ability of current generations to commune harmoniously with future generations in mineral resource governance in Burundi, meaning avoiding overexploitation that displays non-harmonious behavior. It implies the present generation identifies with future generations and shows solidarity by allocating mineral revenues, enabling them to meet their own needs.

Ubuntu serves not only as a moral philosophical theory but as an ethical, practical vehicle, offering basic moral principles with unambiguous claims about what is just or unjust to resolve social injustices. This is important to emphasise because this thesis will employ the relational moral account of Ubuntu to drive a legal framework that underpins elements of social justice.

2.5.1.2 Theoretical Interpretations of Ubuntu Philosophy

Other scholars offer different emphases within Ubuntu philosophy. Onah emphasises human dignity as the core moral principle of Ubuntu, arguing that traditional African morality inherently recognises individual worth within communal contexts.¹⁶⁸ This interpretation aligns more closely with human rights frameworks but may not capture the distinctive relational dimensions of Ubuntu.

Wiredu and Gyekye focus on collective wellbeing, with Gyekye arguing that moral norms should “contribute to promoting the well-being of others” through virtues like generosity, compassion, and concern.¹⁶⁹ Their moderate communitarianism seeks to balance individual autonomy with collective responsibility, offering a potentially useful framework for sustainable governance.

The humanistic interpretation by Ramose emphasises mutual recognition, arguing that individuals “assert their humanity by acknowledging the humanity of others.”¹⁷⁰ This reciprocal approach provides strong foundations for participatory governance but may lack specific guidance for policy implementation.

¹⁶⁸ Godfrey Onah, 'The Meaning of Peace in African Traditional Religion and Culture' (2004) 3 *Ogiri: A New Journal of African Studies* 132, 138-141.

¹⁶⁹ Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 52-58; Kwasi Wiredu, *Cultural Universals and Particulars: An African Perspective* (Indiana University Press 1996) 61-78.

¹⁷⁰ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 230, 236-238.

2.5.1.3 Factors Challenging Ubuntu Moral Framework

Ubuntu philosophy offers valuable ethical foundations for mineral governance but faces several substantive criticisms affecting its contemporary applicability. This section explores three main criticisms, namely traditionalism, collectivism and relativism. It further explains how the proposed governance framework in section 2.6.4. responds to these concerns through normative and institutional design and operational mechanisms.

The traditionalism critique, advanced by Matolino and Kwindigwi, argues that Ubuntu represents an epistemically flawed “narrative of return” that romanticises pre-colonial arrangements.¹⁷¹ Hountondji similarly criticises this tendency to romanticise Ubuntu as an authentic African moral framework without admitting its historical evolution and contradictions.¹⁷² Far from dismissing these concerns, this thesis proposes specific mechanisms by which Ubuntu can function as a “living tradition” while retaining its moral coherence. For instance, the Community Social Governance Councils (CSGCs) proposed in Chapter 5 integrate deliberative processes that explicitly balance traditional wisdom with contemporary challenges.¹⁷³ When dealing with mining consent processes, CSGCs do not merely apply traditional consensus methods; instead, they adapt them through hybrid mechanisms that accommodate legal requirements for informed consent while retaining the Ubuntu emphasis on collective deliberation and relationship preservation.

The collectivism critique suggests that the emphasis of Ubuntu on communal harmony may suppress individual rights and economic development.¹⁷⁴ Ake and others argue that a communitarian orientation conflicts with capitalist endeavours, particularly extractive industries demanding individual rights and free-market transactions.¹⁷⁵ However, Ubuntu highlights that individual identity develops through reciprocal relationships with others, and supporting market mechanisms for others strengthens one's own identity through beneficial arrangements. This thesis attends to these considerations by providing specific institutional safeguards in the governance framework proposed in Chapter 5. Each CSGC would include a human rights dimension by

¹⁷¹ Bernard Matolino and Wenceslaus Kwindigwi, 'The End of Ubuntu' (2013) 87 South African Journal of Philosophy 197, 203-207.

¹⁷² Paulin Hountondji, *African Philosophy: Myth and Reality* (Indiana University Press 1996) 67-89.

¹⁷³ See detailed framework description in Chapter 4, sections 4.2-4.3.

¹⁷⁴ Kwame Anthony Appiah, *The Ethics of Identity* (Princeton University Press 2005) 212-235.

¹⁷⁵ Claude Ake, *Democracy and Development in Africa* (Brookings Institution 1996) 78-95.

identifying and addressing potential conflicts between community decisions and individual autonomy.¹⁷⁶ In addition, the Community Fiscal Governance Council (CFGs) proposed in Chapter 5 would operate under mixed models that protect individual economic autonomy while promoting the collective interest.¹⁷⁷ Furthermore, the framework would address the issue of concentration of potential power through structural checks by independent observers and rotation of leadership.¹⁷⁸

The critics of relativism contend that the contextual approach of Ubuntu undermines universal moral standards through its emphasis on community-based ethics.¹⁷⁹ It poses fundamental questions about whether Ubuntu can provide objective moral guidance or merely reflects local cultural preferences. Mbembe and others add that the emphasis Ubuntu places on belonging to a community may create exclusionary boundaries that marginalise “outsiders”.¹⁸⁰ It prompts the question of who belongs to the community and who benefits from its collective umbrella. Leading Ubuntu theorists reject relativist interpretation while maintaining contextual character. Scholars distinguish between crude relativism and principled contextualism, arguing that the relational ethics of Ubuntu maintains objective principles about respectful treatment while allowing cultural variation in application.¹⁸¹ Rather than accepting any community practice as valid, Ubuntu specifies particular relationships that constitute moral interaction: seeing oneself as a collective “we,” participating through trust and cooperation, and showing genuine solidarity with community well-being.¹⁸² Such requirements are not merely arbitrary cultural preferences or exclusionary but reflect substantive moral commitments about human dignity and social relationships. In Chapter 5, this thesis proposes a governance framework that deploys specific governance mechanisms embodying Ubuntu. The proposed councils would operate according to the principles of identity

¹⁷⁶ This institutional design draws inspiration from ombudsman systems while adapting to community-based governance contexts. See further Linda Peach, 'Human Rights and Ubuntu' (2005) 3 *International Journal of Human Rights* 77, 85-87.

¹⁷⁷ See framework details in Chapter 5, sections 5.1-5.4.

¹⁷⁸ Rotation mechanisms based on successful models documented in Elinor Ostrom, *Governing the Commons* (Cambridge University Press 1990) 142-147.

¹⁷⁹ John Mbiti, *African Religions and Philosophy* (2nd edn, Heinemann 1989) 175-184.

¹⁸⁰ Achille Mbembe, *On the Postcolony* (University of California Press 2001) 89-112.

¹⁸¹ Thaddeus Metz, *Toward an African Moral Theory* (2007).

¹⁸² *ibid.*

and solidarity derived from the Ubuntu philosophy.¹⁸³ Furthermore, rather than creating exclusive boundaries, the framework would draw on Ubuntu principles to include non-members of the community in order to foster harmonious governance relationships.¹⁸⁴

Despite these limitations, the relational moral framework of Ubuntu offers a valuable moral framework for mineral resource governance when operationalised through the proposed governance structure in Chapters 4 and 5. The proposed governance structure deals with the concerns of traditionalism through adaptive mechanisms, the criticisms of collectivism through the preservation of individual entitlements, and the challenges of relativism through the principled approach of contextualism. Rather than dismissing these criticisms, the framework demonstrates how the principles of Ubuntu can evolve while retaining their moral coherence, providing purposeful guidance while respecting contextual variations. The emphasis on intergenerational responsibility provides normative foundations for SD, as elaborated further in the section below.

2.6 Ubuntu as Relational Moral Framework for Sustainable Mineral Resource Governance

The relational moral framework of Ubuntu offers distinct approaches to mineral resource governance for SD. This section analyses how the principles of identity and solidarity in Ubuntu can inform sustainable mining policies.

Mineral resource governance faces persistent tensions between economic development, environmental protection, and social inclusion; the three pillars of SD.¹⁸⁵ These tensions manifest acutely in resource-rich countries like Burundi, where mining revenues promise economic transformation but often deliver environmental degradation and community impacts. These challenges are particularly evident in Burundi. Vision 2025 expects the mining sector to account for 47% of GDP.¹⁸⁶ However, mining operations present serious environmental and social impacts.

¹⁸³ See universal principles framework synthesized from multiple Ubuntu theorists, methodology detailed in Chapter 3, section 3.4.

¹⁸⁴ See inclusion mechanisms informed by cosmopolitan Ubuntu interpretations in Leonhard Praeg, A Report on Ubuntu (University of KwaZulu-Natal Press 2008) 89-94.

¹⁸⁵ Gavin Hilson, 'Defining "Cleaner Production" and "Pollution Prevention" in the Mining Context' (2003) 18 Minerals Engineering 1689, 1695-1700.

¹⁸⁶ Ministry of Planning and Community Development/Prospective Unit and United Nations Development Programme in Burundi, *Vision Burundi 2025* (Phoenix Design Aid A/S 2011).

Artisanal gold mining weakens land and causes deadly landslides. Indeed, the 2019 Mugina commune landslides killed twenty-nine people and displaced hundreds, while a March 2023 mine collapse in Gafumbegeti left fourteen dead.¹⁸⁷

How can the relational moral framework contribute to innovative mineral resource governance in Burundi to ensure SD so that such disasters are avoided in the future? This section explores this in more depth.

2.6.1 Governance Principles of Ubuntu: Identity and Solidarity as Relational

The relational moral framework offers alternative approaches to these governance challenges through two key principles: shared identity and collective solidarity as interdependent.

2.6.1.1 Shared Identity in Mining Communities

The emphasis on collective identity challenges individualistic approaches to mineral rights and benefits. Rather than treating mining as purely commercial extraction, Ubuntu requires recognising the fundamental interconnectedness of communities and future generations.

In practice, this requires sovereignty over natural resources for the people, who collectively own, hold and manage mineral resources as guardians of future generations. This entails that the current generations cannot deplete resources without leaving tangible benefits to descendants. Mining revenues would fund community-led development projects such as education, healthcare, and other infrastructures that meet current needs and create sustainable foundations for future communities. The Diamond revenue management in Botswana provides a positive example, where the government invested mining proceeds in education, healthcare, and other infrastructure, reflecting identification with broader national development rather than elite enrichment.¹⁸⁸ Applied in Burundi, this approach strengthens social cohesion by generating visible improvements that serve as shared symbols of progress, enabling communities to benefit directly from national wealth.

¹⁸⁷ Interview with Chief of Staff of the Governor of Cibitoke Province (Burundi, 12 June 2023).

¹⁸⁸ David Sebudubudu and Bertha Osei-Hwedie, 'Democratic institutions and democratic consolidation in Botswana' (2020) 57 *Commonwealth & Comparative Politics* 203-225, 210-215.

2.6.1.2 Collective Solidarity in Benefit Distribution

The solidarity principle demands equitable distribution of mining benefits and burdens, challenging both capital market approaches that concentrate benefits among shareholders and State-centred models that may neglect local communities. Community Mining Schemes in Ghana illustrate potential Ubuntu applications, creating frameworks for small-scale miners to operate while contributing to community development funds.¹⁸⁹ Applied in Burundi, this model requires mining activities to contribute directly to development funds managed by communities, ensuring local communities who bear extraction costs receive tangible benefits while preventing marginalisation as outside players benefit.

In mineral resource governance in Burundi, shared identity and collective solidarity ought to function as interconnected Ubuntu principles, making communities collective custodians of mineral wealth for future generations. Together, these principles create a transformative framework where mining serves national development and promotes social cohesion through visible community improvements.

Nevertheless, these relational moral principles need situating in African legal systems, particularly customary law, to provide foundational constitutional anchoring for identity and solidarity principles guaranteeing mineral resource governance for SD. The section that follows elaborates further on this.

2.6.2 Customary Law as Ethical Foundation for Ubuntu Relational Framework in Mineral Resource Governance

Customary law holds a unique position in African legal systems, functioning as both a complementary source of law and a foundational ethical framework for sustainable mineral resource governance.¹⁹⁰ Scholars distinguish between official and living customary law.¹⁹¹ Official customary law represents codified principles evolved from the colonial subordination of

¹⁸⁹ Kwame Asante and Jennifer Mills, 'Community-based mining governance in Ghana: Lessons for sustainable development' (2024) 78 *Extractive Industries and Society* 45-58; George Kwabena Owusu, 'Small-scale mining and community development in Ghana's mining regions' (2023) 52 *Resources and Energy Economics* 67-84.

¹⁹⁰ Aninka Claassens and Ben Cousins (eds), *Land, Power and Custom: Controversies Generated by South Africa's Communal Land Rights Act* (University of Cape Town Press 2008) 1-15.

¹⁹¹ TW Bennett and others, *African Perspectives on Tradition and Justice* (Cambridge University Press 2018) 78-95.

indigenous laws.¹⁹² Living customary law embodies dynamic norms arising from what communities deem ought to be done.¹⁹³ The South African Constitutional Court illustrates the practical implications of this distinction. In *Alexkor Ltd v Richtersveld Community*, the Court stressed that living customary law “informs the official system” and must reflect the “true picture of indigenous practices”.¹⁹⁴ This proved important in *Baleni and Others v Minister of Mineral Resources*,¹⁹⁵ where the High Court ruled that the State could not grant mining rights over communal land without the consent of the community, establishing that “African living custom does not allow any outside authority, even that of a local chief, to expropriate such land”.¹⁹⁶

Customary law transcends legal dimensions, embodying ethical, religious and social considerations through the Ubuntu philosophy.¹⁹⁷ It positions Ubuntu as an overarching ethical framework integrating moral imperatives with practical governance.¹⁹⁸ This suggests that the resource governance framework in Burundi, informed by customary law, must consider lived moral values of identity and solidarity rooted in community practices to advance SD.¹⁹⁹ The legitimacy of living customary law derives from its rootedness in community practices and ability to evolve in response to contemporary mineral resources governance challenges.²⁰⁰ My research argues that the community values of identity and solidarity embedded in Burundian living customary law provide legitimacy and harmonious relationships that imported principles lack. When applied within normative, institutional and procedural frameworks of mining governance,

¹⁹² Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Cambridge University Press 1985) 4-16.

¹⁹³ Christina Murray and Catherine O'Regan, 'No Place to Rest: Courts and the Legal Development of Customary Law in South Africa' (2017) 133 South African Law Journal 59, 62.

¹⁹⁴ *Alexkor Ltd and Another v Richtersveld Community and Others* [2003] ZACC 18 [52].

¹⁹⁵ *Baleni and Others v Minister of Mineral Resources* [2018] ZACC 25, 2019 (2) SA 453 (CC).

¹⁹⁶ The Conversation, 'Why South African community's win against mining company matters' (29 March 2023) <https://theconversation.com/why-south-african-communitys-win-against-mining-company-matters-107746> accessed 15 January 2025.

¹⁹⁷ Mogobe Ramose, 'Ubuntu as the foundation of African philosophy' in PJ Coetzee and APJ Roux (eds), *The African Philosophy Reader* (2nd edn, Routledge 2003) 232-235.

¹⁹⁸ Thaddeus Metz, 'Ubuntu as a moral theory and human rights in South Africa' (2011) 11 African Human Rights Law Journal 532, 540-545.

¹⁹⁹ Felix Mukwiza Ndahinda, 'The Role of Ubuntu in Transformative Constitutionalism' in Drucilla Cornell and others (eds), *Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence* (Fordham University Press 2012) 88-109.

²⁰⁰ Akolda Tier, 'Customary Law and Legal Pluralism in South Sudan' in Eva Brems and others (eds), *African Perspectives on Tradition and Justice* (Cambridge University Press 2018) 89-107.

they guarantee greater community harmony and long-term sustainability. The following section expands on this discussion.

2.6.3 Ubuntu as a Constitutional Foundation: Reimagining Social Justice in Sustainable Mineral Resources Governance

The potential of Ubuntu to transform mineral resource governance is rooted in Burundian customary law and goes beyond ethical considerations to constitute a basic legal norm recognised by the Constitution. This section examines how Ubuntu can serve as a fundamental constitutional principle for promoting social justice in sustainable mineral resource governance in Burundi.

2.6.3.1 Theoretical Framework for Constitutional Ubuntu

Drawing on the relational ontology of Ubuntu, the moral values of shared identity and collective solidarity can be anchored as legal principles in the construction of the Burundi Constitution, rooted in customary law.²⁰¹ These values would be enshrined in the preamble to the Constitution and core principles as part of the Bill of Rights already provided in the Constitution of Burundi 2018. In this regard, the principles of shared identity and collective solidarity should be enshrined as fundamental rights through constitutional provisions that recognise peoples' inalienable sovereignty over mineral resources and require a fair distribution of mining benefits between present and future generations.

This constitutional framework would be implemented through legislative reforms of mining frameworks. By incorporating these customary values into constitutional law, Burundi would create legally binding obligations, transforming the ethical imperatives of Ubuntu into enforceable rights that communities could invoke before courts and regulatory bodies to ensure that mining serves broader national development and, in particular, the advancement of communities. South Africa provides the most developed example of constitutional recognition of indigenous values of Ubuntu. Indeed, South Africa has explicitly constitutionalised Ubuntu and developed extensive jurisprudence interpreting its application in modern legal systems.²⁰² Like South Africa, Burundi

²⁰¹ Thaddeus Metz, 'Ubuntu and the Law in South Africa' (2007) 30 *Loyola of Los Angeles Law Review* 1161, 1185-1195.

²⁰² In *S v Makwanyane*, the Court acknowledged that constitutional interpretation must consider "the underlying values of our Constitution," including Ubuntu, even when not explicitly stated in the text. In addition, the Ubuntu jurisprudence before the courts has evolved through several landmark cases. In *Makwanyane*, Ubuntu informed the abolition of the death penalty, emphasizing human dignity and restorative rather than retributive justice. In addition,

shares common Bantu philosophical traditions with Ubuntu concepts present in Burundian societies. The South African Constitutional Court has recognised Ubuntu as an implicit foundational value underlying the constitutional order.²⁰³

2.6.3.2 Relational Constitution of Ubuntu Beyond Social Justice

Ubuntu re-conceptualises constitutional social justice by grounding moral reasoning in relational community membership rather than abstract individual rationality, suggesting that authentic justice principles must emerge from lived experiences of actual communities rather than hypothetical individual choices.²⁰⁴

This relational foundation leads Ubuntu to prioritise collective wellbeing over individual rights, contrasting with Rawlsian approaches that treat individual rights as primary and collective benefits as secondary considerations. Where Rawls views individual rights as ends in themselves, Ubuntu positions them as instrumental to community well-being.²⁰⁵ This challenges purely procedural approaches to fairness, instead advocating for social justice frameworks actively promoting communal and harmonious relationships.²⁰⁶

2.6.4 Operationalising Ubuntu Relational Framework for Mineral Resource Governance

Translating Ubuntu principles into effective governance requires moving beyond philosophical abstractions to concrete constitutional mechanisms. This section develops a framework examining how the relational values of Ubuntu can inform normative principles, institutional structures, and procedural processes for mineral resource governance for SD in Burundi.

in *Carmichele v Minister of Safety and Security*, Ubuntu required the State to protect citizens from foreseeable harm. Moreover, in *Port Elizabeth Municipality v Various Occupiers*, Ubuntu informed housing rights by requiring consideration of community relationships in eviction proceedings.

²⁰³ In *S v Makwanyane*, the Court acknowledged that constitutional interpretation must consider "the underlying values of our Constitution," including Ubuntu, even when not explicitly stated in the text. In addition, the Ubuntu jurisprudence before the courts has evolved through several landmark cases. In *Makwanyane*, Ubuntu informed the abolition of the death penalty, emphasizing human dignity and restorative rather than retributive justice. In addition, in *Carmichele v Minister of Safety and Security*, Ubuntu required the State to protect citizens from foreseeable harm. Moreover, in *Port Elizabeth Municipality v Various Occupiers*, Ubuntu informed housing rights by requiring consideration of community relationships in eviction proceedings.

²⁰⁴ Jennifer Nedelsky, *Law's Relations: A Relational Theory of Self, Autonomy, and Law* (Oxford University Press 2011) 123-156.

²⁰⁵ Mogobe B Ramose, 'The Ethics of Ubuntu' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (2nd edn, Routledge 2002) 324, 330-335.

²⁰⁶ Michael Sandel, *Liberalism and the Limits of Justice* (2nd edn, Cambridge University Press 1998) 179-183.

2.6.4.1 Normative Foundations: Legal Principles of Ubuntu

The relational moral accounts of Ubuntu provide the basis for developing a normative framework addressing social injustice. In *S v Makwanyane*, the South African Constitutional Court established Ubuntu as an implicit constitutional value and a legal principle.²⁰⁷ In his opinion, Justice Mahomed emphasised “the communality and interdependence of community members.”²⁰⁸ In addition, Justice Mokgoro described Ubuntu as encompassing “group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity.”²⁰⁹

Drawing on the above South African jurisprudence and Ubuntu philosophy, the thesis aims to operationalise legal principles of identity and solidarity in the governance of mineral resources of Burundi as elaborated below.

2.6.4.1.1 Identity Principle

This principle requires recognising shared identity in mining decisions in Burundi. It transforms mining governance by mandating that licensing requirements acknowledge community identities and traditional territories rather than just individual property rights, while environmental assessments must consider impacts on social relationships alongside technical factors.²¹⁰ Benefit-Sharing Agreements (BSA) would recognise collective rather than purely individual rights.²¹¹ This could establish relational impact assessments requiring mining companies to demonstrate how projects will strengthen rather than undermine existing community relationships, creating legal obligations that go beyond traditional environmental and social impact assessments.²¹²

²⁰⁷ *S v Makwanyane and Another* 1995 (3) SA 391 (CC). See also Stu Woolman, 'The Selfless Constitution' (2006) 21 *SAPL* 1, 15-25.

²⁰⁸ *Makwanyane* (n 1) para 263 (Mahomed J).

²⁰⁹ *ibid* para 308 (Mokgoro J). See also Inga Dyantyi, 'Ubuntu in a land reform context: Opportunities and Challenges' (Master's thesis, Stellenbosch University 2021).

²¹⁰ Ciaran O'Faircheallaigh, 'Environmental Impact Assessment and Indigenous Rights: The Role of Negotiated Agreements' (2007) 27 *Environmental Impact Assessment Review* 63; Robert Howitt, 'Recognising Voice, Power and Dialogue: Indigenous and Community Development' (2001) 23 *Community Development Journal* 301.

²¹¹ Shin Imai, 'Indigenous Self-Determination and the State' (2017) 55 *Osgoode Hall Law Journal* 153.

²¹² Frank Vanclay, 'International Principles for Social Impact Assessment' (2003) 21 *Impact Assessment and Project Appraisal* 5; Deanna Kemp and Frank Vanclay, 'Human Rights and Impact Assessment: Clarifying the Connections in Practice' (2013) 31 *Impact Assessment and Project Appraisal* 86.

2.6.4.1.2 Solidarity Principle

The solidarity principle establishes legally enforceable obligations for Burundians mutual support, emphasising collective responsibilities toward future generations.²¹³ In mining contexts in Burundi, this mandates the progressive taxation of mining operations dedicated to community development and the implementation of mandatory local content requirements.²¹⁴ Environmental restoration obligations would extend beyond project completion, reflecting the intergenerational responsibility of Ubuntu.²¹⁵ Intergenerational trust funds would institutionalise solidarity across temporal boundaries.²¹⁶

Amendments to the Mining Code of Burundi could incorporate these principles by introducing legally binding corporate social responsibility requirements, which would obligate companies to contribute specified percentages of their revenues to community development funds. These requirements would be enforced through administrative agencies and accompanied by meaningful penalties for non-compliance.

2.6.4.2 Institutional Architecture: Redesigning Governance Structures

The relational moral accounts of Ubuntu can be deployed to reimagine how Burundian institutional frameworks should be arranged to tackle social injustices by delivering harmony in the implementation of their responsibilities in mineral resource governance. Ubuntu requires moving beyond technocratic regulation toward participatory governance structures.

Conventional mineral governance relies primarily on centralised state regulation. This approach typically emphasises technical expertise and bureaucratic efficiency, separation between regulatory and community interests, and limited public participation beyond consultation

²¹³ Samuel Scheffler, 'Justice and Desert in Liberal Theory' (1988) 88 California Law Review 965; Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (United Nations University Press 1989).

²¹⁴ Anthony Venables, 'Using Natural Resources for Development: Why Has It Proven So Difficult?' (2016) 30 Journal of Economic Perspectives 161; Macartan Humphreys, Jeffrey Sachs and Joseph Stiglitz (eds), *Escaping the Resource Curse* (Columbia University Press 2007).

²¹⁵ Evelyn Dietsche, 'Diversifying Mineral Economies: Conceptualizing the Debate on Building Linkages' (2014) 30 Minerals & Energy 35; John Page, 'Should Africa Industrialize?' (2012) 2012 World Institute for Development Economics Research Working Paper.

²¹⁶ Angela Cummine, *Citizens' Wealth: Why (and How) Sovereign Funds Should Be Managed by the People for the People* (Yale University Press 2016); Anand Bhopal, 'The Norwegian Oil Fund in a Warming World: What Are the Interests of Future Generations?' (2023) 26 Ethics, Policy & Environment 106.

requirements. However, this model often fails to address community concerns, cultural impacts, and long-term sustainability challenges.²¹⁷

Ubuntu principles suggest alternative arrangements integrating community participation and collective accountability

2.6.4.2.1 Community Governance Councils

Ubuntu principles require legally established Community Governance Councils (CGCs) to collectively manage mining benefits. These would receive mining royalties, implement community development projects, employ local youth, and represent community interests in legal proceedings.²¹⁸ This institutional form ensures that extractive mining revenues benefit the community while building long-term local capacity.

2.6.4.2.2 Accountability Mechanisms

Ubuntu-informed governance demands community-based accountability beyond technical compliance. Legal frameworks would establish community environmental monitoring with training programs, legal standing for enforcement actions, and mandatory public reporting requirements.²¹⁹ These mechanisms reflect the values of Ubuntu, where accountability emerges through ongoing community relationships rather than external regulatory enforcement alone.

2.6.4.2.3 Performance Evaluation

Institutional effectiveness must be measured through the Ubuntu relational criteria rather than purely economic metrics. Performance evaluation would assess community satisfaction with participation processes, environmental and social impact indicators, benefit distribution equity, conflict resolution effectiveness, and long-term sustainability outcomes.²²⁰

²¹⁷ Gavin Hilson, 'Defining "Cleaner Production" and "Pollution Prevention" in the Mining Context' (2003) 18 *Minerals Engineering* 1689, 1695-1700.

²¹⁸ Cornell Stephen and Joseph Kalt, 'Two Approaches to Economic Development on American Indian Reservations: One Works, the Other Doesn't' in Stephen Cornell and Joseph Kalt (eds), *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (American Indian Studies Center 2007) 3.

²¹⁹ Ciaran O'Faircheallaigh, 'Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon' (2013) 44 *Community Development* 222.

²²⁰ Frank Vanclay, 'Conceptualising Social Impacts' (2002) 22 *Environmental Impact Assessment Review* 183.

2.6.4.3 Procedural Frameworks: Relational Decision-Making Processes

The emphasis of Ubuntu on participatory decision-making and consensus-building requires procedural reforms that ensure meaningful community engagement while maintaining efficiency and legal certainty.

2.6.4.3.1 Expanding Free, Prior, and Informed Consent beyond Indigenous Rights

While international law recognises FPIC for Indigenous peoples, Ubuntu principles support extending FPIC to communities impacted by mining projects regardless of indigenous status through legally mandated requirements for free consent without coercion, prior consent before irreversible decisions, informed consent based on complete project information, and ongoing renewable consent.²²¹ Mining Code of Burundi implementing these standards would require FPIC with independent oversight, ensuring authentic rather than tokenistic participation, and legal remedies for procedural violations.²²²

2.6.4.3.2 Meaningful Participation

Meaningful governance requires comprehensive support, including independent facilitators, financial support for community participation, technical assistance, and capacity-building programs. Procedural transparency would mandate public registries of mining applications and community access to impact studies.

Meaningful governance requires comprehensive support including local facilitators, financial support for community participation, technical assistance, community representation in contract negotiations, and capacity-building programs.²²³ Procedural transparency would mandate public registries for mining applications and community access to impact studies.²²⁴ These reforms

²²¹ Cathal Doyle, *Indigenous Peoples, Title to Territory, Rights and Resources: The Transformative Role of Free Prior and Informed Consent* (Routledge 2015); James Anaya, 'Indigenous Peoples' Participatory Rights in Relation to Decisions about Natural Resource Extraction' (2005) 22 *Arizona Journal of International and Comparative Law* 7.

²²² United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res 61/295 (13 September 2007); Marcus Colchester and Maurizio Ferrari, 'Making FPIC Work: Challenges and Prospects for Indigenous Peoples' (2007) *Forest Peoples Programme Report*.

²²³ Sherry Arnstein, 'A Ladder of Citizen Participation' (1969) 35 *Journal of the American Institute of Planners* 216; Andrea Cornwall, 'Unpacking "Participation": Models, Meanings and Practices' (2008) 43 *Community Development Journal* 269.

²²⁴ Publish What You Pay, 'Civil Society Guide to Revenue Transparency' (2013) Report; Alexandra Readhead, 'Preventing Tax Base Erosion in Africa: A Regional Study of Transfer Pricing Challenges in the Mining Sector' (2016) *Natural Resource Governance Institute Report*.

transform participation from superficial consultation into substantive community empowerment aligned with the Ubuntu relational governance principles.²²⁵

2.7 Conclusion

This chapter describes the potential of Ubuntu as a relational moral framework for addressing social injustices in mineral resource governance for SD. I began by observing that justice as a moral virtue offers a conceptual basis for social justice that could influence how societies distribute mineral revenues. However, this neoliberal approach suffers from limitations that favour individualistic policies over collective well-being.

I investigated whether social justice precepts exist in other societies that could address these limitations through contextual approaches. In African societies, Ubuntu provides a more defensible explanation by conceptualising the individual in relationship with the community. Social justice based on relational morality rooted in Ubuntu philosophy offers a more justifiable approach to resolving social injustices. To advance this conception, I suggested adopting identity and solidarity as customary norms and constitutional principles for reimagining legal frameworks in the governance of mineral resources. The analysis demonstrated that shared identity and collective solidarity offer distinctive alternatives to social justice theory, particularly in addressing communal dimensions that neoliberal frameworks neglect.

Finally, I have illustrated what relational morality implies for normative, institutional, and procedural frameworks for sustainable development. By addressing social injustices, this approach promotes communal relationships among community members.

In the next chapter, I will discuss how this conception of relational morality could be translated from theory to practice in international, regional and national settings, examining how Ubuntu principles can be operationalised within existing governance frameworks through practical implementation mechanisms that bridge philosophical ideals with institutional realities.

²²⁵ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 230; Thaddeus Metz, 'Ubuntu as a Moral Theory and Human Rights in South Africa' (2011) 11 *African Human Rights Law Journal* 532.

3 Chapter 3: Reimagining Sustainable Development: A Legal Interpretation of the Ubuntu Relational Moral Framework as a Foundation for Social Justice

3.1 Introduction

Chapter 2 assessed limitations of universal and relativist principles in addressing social injustices within mineral resource contexts. This chapter explores how African legal frameworks can operationalise Ubuntu principles in mineral resource governance through strategic legal reinterpretation of existing international and regional law. Ubuntu conception specifically targets unfair distribution of mineral resource benefits, where mining-affected communities receive inadequate compensation despite bearing the consequences of extraction. African legal frameworks uniquely integrate individual and collective rights, providing inherent flexibilities that, when interpreted through the relational ontology of Ubuntu, can address persistent social injustices while respecting African philosophical traditions and customary governance systems. This involves reinterpreting existing concepts within African legal frameworks through an Ubuntu lens rather than creating entirely new legal frameworks. The goal is to provide practical implementation mechanisms through African legal normative institutions and procedural frameworks that enable fair distribution of mineral resource benefits to affected communities, supporting immediate development needs and intergenerational sustainability.

This chapter is structured into six parts. After this introduction, the second section scrutinises the pursuit of social justice in international law, establishing its foundational principles before revealing significant limitations in addressing African contexts. The section then discusses international natural resources law, particularly the evolution of permanent sovereignty over natural resources and sustainable development principles. It is based on these foundations that the framework transitions to African continental governance systems, analysing the AU Constitutive Act, Agenda 2063, and the AMV as constitutional underpinnings for Ubuntu integration. Finally, it examines the African human rights framework, particularly the unique integration of the African Charter of individual and collective rights that embody Ubuntu principles. These mechanisms operate through three interconnected dimensions: shared identity and cultural continuity, solidarity enhancement and community cohesion, and collective governance with intergenerational responsibility. The ultimate goal is advancing Ubuntu-centred mineral resource governance that

transforms the mining industry from sources of social injustice into enablers of sustainable community development in Burundi.

3.2 International Law and the Pursuit of Social Justice

In the second chapter, under section 2.2.2.3, discussions show how social justice involves structuring institutions to distribute rights, duties, and resources in ways that best serve the most disadvantaged.²²⁶ This includes ensuring sound normative, institutional, and procedural frameworks for addressing social injustices in the context of development. It is ideas of this nature, derived from the conviction that social justice is a fundamental moral imperative, that have led to critical international engagement and a significant shift towards the need to promote social justice over the last two decades or more.

3.2.1 International Legal Frameworks Initiatives

The shift towards pursuing social justice through international law has been most evident in the legislative efforts of the United Nations over recent decades. The Universal Declaration of Human Rights (UDHR),²²⁷ the International Covenant on Civil and Political Rights (ICCPR),²²⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)²²⁹ provide the founding principles of social justice in the international community. They place an obligation on States to adopt human rights measures to the principles of social justice in their national jurisdictions.²³⁰ For example, the holders of mining titles in Burundi are obliged to respect, protect, and promote human rights set out in the Bill of Rights contained in the Constitution of Burundi 2018.²³¹

Nevertheless, despite efforts to promote the principles of social justice, these human rights instruments have limitations, as explained below.

²²⁶ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

²²⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

²²⁸ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

²²⁹ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

²³⁰ United Nations. General Assembly. Universal declaration of human rights. Vol. 3381. Department of State, United States of America, 1949.

²³¹ Mining Code art 206.

3.2.2 International Legal Frameworks: Realisations and Limitations

Although international legal frameworks have established important mechanisms for advancing social justice at a global level, their practical implementation reveals significant gaps between the intended objectives and actual achievements for national communities in mineral resources governance.

3.2.2.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) established foundational principles for human dignity that extend to resource governance. This is particularly evident through Article 17 on property rights,²³² Article 21 on participation in government,²³³ and Article 25 on an adequate standard of living.²³⁴ Despite its universal appeal, international human rights law incorporates specific cultural assumptions that can compromise approaches to resource governance, particularly through its emphasis on individual rather than collective rights frameworks.²³⁵ International jurisprudence has evolved to recognise that property rights under Article 17 of the UDHR extend beyond individual ownership to encompass collective and customary tenure systems. The European Court of Human Rights, in *Öneryildiz v Turkey*, established that property rights include “legitimate expectations” of use and occupation, even without a formal title.²³⁶ The Inter-American Court of Human Rights has gone further in *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, to recognise that collective property rights of indigenous and traditional communities constitute property within the meaning of international human rights law.²³⁷ Moreover, the African Commission on Human and Peoples’ Rights has similarly recognised customary land tenure as constituting property rights in *Social and Economic Rights Action Center v Nigeria*, in the Ogoniland Case, where it found that the destruction of traditional lands by oil extraction violated property rights protected under international law.²³⁸

²³² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 17.

²³³ *ibid* art 21.

²³⁴ *ibid* art 25.

²³⁵ Makau Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 Harvard International Law Journal 201.

²³⁶ *Öneryildiz v Turkey* (2005) 41 EHRR 325, paras 124-129.

²³⁷ *Mayagna (Sumo) Awas Tingni Community v Nicaragua* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 79 (31 August 2001) para 149.

²³⁸ *Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, African Commission on Human and Peoples' Rights, Communication 155/96 (2001) paras 56-58.

In the mineral resource governance in Burundi, the focus on individual rights ignores the collective harms associated with resource extraction and marginalises the decision-making systems of the communities in favor of procedural fairness.²³⁹ In fact, Burundian customary law recognised the collective concept of ownership, that of the family in pre-colonial Burundi, and the concept of individual land ownership did not exist.²⁴⁰ The Land Code 2011 maintained the acquisition of ownership by succession, whether intestate or testamentary, but provides for a customary land certificate as a transition to a written land title as proof of property rights. In this respect, article 383 of the Land Code 2011 provides that real rights not registered by the Registrar of Land Titles may be registered by the Communal Land Department, which issues their holders with a land certificate.²⁴¹ This is a transitional system between customary and written law. In other words, the legislator wanted to put in place a more secure system than customary rights.²⁴² Although the mining code recognises that customary occupiers are entitled to compensation for the land required for mining operations,²⁴³ customary occupation remains systematically marginalised. The case of the Burundi Metal Company (BUMECO), which mines tin and coltan deposits worth tens of billions of dollars in the Murehe reserve, illustrates this problem. This 6,000-hectare reserve is home to over 1,000 households, including migrants, Rwandan refugees, repatriated Burundians, and Batwa indigenous communities,²⁴⁴ most of whom occupy land under customary tenure. Residents have expressed their willingness to move to enable mining operations, but fear selective evictions that would affect those without formal title while compensating those with individual property rights. This shows how supposedly neutral legal frameworks create discriminatory outcomes: communities practicing collective land ownership are systematically disadvantaged compared to individual property holders, even though both groups have legitimate claims to land use and compensation.

²³⁹ *Commonwealth of Australia v Yunupingu* [2025] HCAy 6. See also National Indigenous Australians Agency, 'National Guiding Principles for Native Title Compensation Agreement Making' (November 2021).

²⁴⁰ Emery Nukuri, 'Les défis de la gouvernance foncière au Burundi: un équilibre nécessaire entre les principes du droit colonial belge et une législation adaptée au contexte burundais' (2023) 100(3) *Revue de droit international et de droit comparé* 647.

²⁴¹ Land Code 2011 art 383.

²⁴² Land Code 2011 arts 380-410.

²⁴³ Mining Code 2023 art 183 (2).

²⁴⁴ Interview with Director of Mining Operations, Ministry of Mines (Bujumbura, 25 July 2024).

To align with UDHR principles, the mineral resource governance of Burundi should require recognition of collective property rights under customary tenure by following the Ogoniland precedent. In this respect, the framework proposal in Chapter 4 should explicitly suggest the recognition of customary occupation as constituting property rights equivalent to formal title to be applied for the Murehe reserve, for instance. And rather than individual compensation approach schemes, the framework should address collective impacts on community resources, following models developed in countries like Botswana, where diamond mining revenues support community development through collective benefit-sharing.²⁴⁵ Moreover, Article 21 of UDHR on participation rights should inspire the framework to require meaningful involvement of mining communities in decision-making for mining permit negotiations.

3.2.2.2 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) establishes the fundamental rights to self-determination in Article 1, declaring that “all peoples have the right of self-determination” and “by that right they freely determine their political status and freely pursue their economic, social, and cultural development”.²⁴⁶ This provision extends to the control and disposal of natural wealth and resources, stating that peoples may not “be deprived of their means of subsistence”.²⁴⁷ The Human Rights Committee has clarified that self-determination comprises both external and internal dimensions, with the internal aspect being particularly relevant to resource governance.²⁴⁸ Internal self-determination includes the right of peoples to pursue their economic development and to dispose freely of their natural wealth and resources.²⁴⁹ The Committee has emphasised that this right applies not only to colonial contexts but also to situations where peoples within existing States seek to exercise control over their resources and development paths.²⁵⁰ Moreover, the international case laws have established that self-determination requires meaningful consultation and participation. In *Länsman v Finland*, the Human Rights Committee

²⁴⁵ Debswana Diamond Company, 'Community Investment Strategy 2018-2023' (2018).

²⁴⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 1(1).

²⁴⁷ *ibid* art 1(2).

²⁴⁸ Human Rights Committee, 'General Comment No 12: Article 1 (Right to Self-determination)' (13 March 1984) UN Doc HRI/GEN/1/Rev.9 (Vol I) para 3.

²⁴⁹ *ibid* para 5.

²⁵⁰ *Reference re Secession of Quebec* [1998] 2 SCR 217, paras 124-138, discussing internal self-determination.

found that resource extraction activities could violate minority rights when conducted without adequate consultation, establishing a precedent for participatory requirements in resource governance.²⁵¹ Likewise, the Inter-American Court of Human Rights in *Saramaka People v Suriname* held that large-scale resource extraction on traditional territories requires not merely consultation but FPIC, and that communities must receive fair compensation and share in the benefits.²⁵² As well, the African Commission on Human and Peoples' Rights has further developed this jurisprudence in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, ruling that the failure to obtain consent and provide benefit-sharing constituted a violation of self-determination and resource rights.²⁵³ These decisions establish clear international standards requiring State consultation, consent mechanisms, and benefit-sharing arrangements in resource extraction.

In spite of these international legal obligations, the mineral resource governance framework in Burundi significantly contradicts self-determination principles through its exclusion of affected communities from decision-making processes. The negotiation of mining agreements that happens exclusively between the government and companies constitutes a violation of communities' participatory rights as guaranteed under Article 1 of the ICCPR.

The BUMECO case exemplifies these violations. The government granted exploration and extraction permits covering the Murehe reserve without consulting the households residing there.²⁵⁴ Community members reported that they first learned of the mining concession through company representatives arriving to conduct preliminary activities, rather than through any government consultation process.²⁵⁵ This approach directly contravenes the self-determination principle that requires people to “freely pursue their economic, social and cultural development” and maintain control over their “means of subsistence”.²⁵⁶

²⁵¹ *Länsman v Finland*, Communication No 511/1992, UN Doc CCPR/C/52/D/511/1992 (1994).

²⁵² *Saramaka People v Suriname* (Preliminary Objections, Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 172 (28 November 2007).

²⁵³ *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, African Commission on Human and Peoples' Rights, Communication 276/2003 (2009).

²⁵⁴ Interview with Head of Archive, Ministry of Mines (Bujumbura, 18 July 2024).

²⁵⁵ Interview with community interviews, Murehe Reserve, (Bujumbura, 18 July 2023).

²⁵⁶ ICCPR (n 13) art 1(1)-(2).

In addition, the absence of consultation mechanisms is institutionalised in the Mining Code 2023, which grants the Ministry of Mines discretionary authority to award permits without mandatory community engagement procedures.²⁵⁷ It should be highlighted that the code references compensation for affected landholders, but it contains no provisions for community consent, participation in decision-making, or benefit-sharing arrangements that would align with international standards of self-determination.

To align with ICCPR obligations, the mineral resource governance in Burundi would require reforms incorporating self-determination principles, consultation, and consent mechanisms following the standards established in the *Saramaka* and *Endorois* cases. Furthermore, self-determination principles would require benefit-sharing arrangements and cultural development rights to be incorporated in the framework proposed in Chapter 4 of this thesis.

3.2.2.3 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides critical economic and social rights relevant to extractive governance. This manifested through Article 1, which provides for self-determination over natural resources,²⁵⁸ Article 11 on an adequate standard of living,²⁵⁹ Article 12 on health,²⁶⁰ and Article 15 on cultural rights.²⁶¹ The ICESCR established a progressive realisation framework by accommodating State resource constraints.

In terms of jurisprudential development, the Committee on Economic, Social and Cultural Rights found that progressive realisation does not permit indefinite deferral of rights implementation, especially where State resources are available.²⁶² The Committee clarified, in *General Comment No. 3*, that States must demonstrate they are taking deliberate, concrete steps toward full realisation

²⁵⁷ Mining Code 2023 arts 25-35.

²⁵⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) art 1.

²⁵⁹ *ibid* art 11.

²⁶⁰ *ibid* art 12.

²⁶¹ *ibid* art 15.

²⁶² *ibid* art 2(2).

using maximum available resources.²⁶³ The Committee has also recognised that economic activities, including resource extraction, must not undermine the enjoyment of Covenant rights.²⁶⁴

Moreover, the Committee found in its *Concluding Observations on the Philippines* that large-scale mining operations violated Article 11 on an adequate standard of living and Article 12 on health when they displaced communities and contaminated water sources without adequate mitigation measures.²⁶⁵ Furthermore, in *General Comment No. 21*, the Committee on Economic, Social and Cultural Rights specifically addressed how extractive activities can violate cultural rights by disrupting traditional land relationships and cultural practices.²⁶⁶ The Committee has established that States must conduct cultural impact assessments before approving extractive projects. States should ensure that communities can maintain their cultural practices.²⁶⁷ The UN Special Rapporteur on Cultural Rights has further emphasised that cultural rights require protection of the cultural landscape, including traditional territories and sacred sites.²⁶⁸

The African Commission in the Ogoniland case similarly found that oil extraction violated economic and social rights when it destroyed livelihoods and contaminated the environment without providing alternative means of subsistence.²⁶⁹

The concept of progressive realisation under the ICESCR illustrates how liberal approaches can unintentionally perpetuate inequality in the mineral resource governance of Burundi. This principle permits States to progressively implement rights, but falls short of providing sufficient mechanisms to address urgent community needs affected by resource extraction. The approach of the Burundian government to the Murehe reserve illustrates how progressive realisation becomes a mechanism for delaying social justice. While the Mining Code 2023 establishes a site

²⁶³ Committee on Economic, Social and Cultural Rights, 'General Comment No 3: The Nature of States Parties' Obligations' (14 December 1990) UN Doc E/1991/23 para 9.

²⁶⁴ *ibid* para 2.

²⁶⁵ Committee on Economic, Social and Cultural Rights, 'Concluding Observations: Philippines' (26 November 2016) UN Doc E/C.12/PHL/CO/5-6 paras 15-16.

²⁶⁶ Committee on Economic, Social and Cultural Rights, 'General Comment No 21: Right of Everyone to Take Part in Cultural Life' (21 December 2009) UN Doc E/C.12/GC/21 para 16.

²⁶⁷ *ibid* para 55(e).

²⁶⁸ Farida Shaheed, 'Report of the Special Rapporteur in the Field of Cultural Rights' (21 March 2011) UN Doc A/HRC/17/38 para 78.

²⁶⁹ *Social and Economic Rights Action Center v Nigeria* (n 5) paras 50–52.

rehabilitation fund to compensate affected communities,²⁷⁰ its implementation has been indefinitely delayed pending complementary studies. In the meantime, the BUMECO mining company in the Murehe reserve has continued its preliminary exploration activities, disrupting local livelihoods without providing the promised compensation. Over 1,000 households remain in limbo, unable to invest in their land due to impending displacement, but receiving no livelihood support. This approach violates ICESCR obligations on the right to health and cultural rights, to name but a few.

To align with ICESCR obligations, Burundi requires immediate reforms addressing progressive realisation failures by instituting immediate protection measures, introducing comprehensive impact assessments and considering alternative livelihood programs.

3.2.2.4 Progressive Developments: Evolving Rights for Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)²⁷¹ is a significant evolution beyond traditional liberal frameworks, explicitly recognising collective rights and demanding that these rights be shaped according to indigenous governance and customary law systems. UNDRIP establishes specific rights relevant to extractive governance. Article 10 prohibits forced relocation, Article 19 requires FPIC, Article 26 protects land and resource rights, and Article 32 provides for consent for activities affecting territories.²⁷²

International and regional courts have increasingly relied on UNDRIP principles to interpret binding treaty obligations. The Inter-American Court of Human Rights has incorporated UNDRIP standards into its interpretation of American Convention rights. It did so particularly in establishing consent requirements for extractive activities on indigenous territories.²⁷³ In *Kaliña*

²⁷⁰ Mining Code 2023 art 208.

²⁷¹ UN Declaration on the Rights of Indigenous Peoples (adopted 13 September 2007) UN Doc A/RES/61/295. See also IWGIA, 'The Indigenous World 2025: UN Permanent Forum on Indigenous Issues' (2025).

²⁷² UN Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) arts 10, 19, 26, 32.

²⁷³ See generally Fergus MacKay, 'The Significance of the UN Declaration on the Rights of Indigenous Peoples from the Perspective of the Inter-American Human Rights System' (2009) 3 Inter-American and European Human Rights Journal 146.

and *Lokono Peoples v Suriname*, the Court held that States must obtain FPIC before approving extractive concessions on traditional territories, directly referencing UNDRIP Article 32.²⁷⁴

The African Commission has similarly drawn on UNDRIP principles in interpreting the African Charter on Human and Peoples' Rights. In its General Comment on the Right to Land, the Commission referenced UNDRIP standards in establishing that indigenous and traditional communities have collective land rights requiring special protection from extractive activities.²⁷⁵ Burundi abstained from voting on the UN Declaration on the Rights of Indigenous Peoples in 2007. This affects the indigenous populations living in the mining areas, who continue to face several serious human rights violations. Burundi can draw from Kenya, where, despite the absence of specific legislation on indigenous rights in Kenya, the 2016 Community Lands Act²⁷⁶ establishes community resource management mechanisms that align with UNDRIP principles.

Although International Law has established important foundations for social justice in resource governance, its neoliberal underpinnings contain inherent limitations that become particularly problematic in the context of mineral resource governance in Burundi. This necessitates engagement with alternative and contextual frameworks that can more adequately address the complex realities of social injustices. The following section explores this perspective more closely.

3.3 Building the Case for Social Justice in International Natural Resources Law: An Imperative for Contextual Frameworks

The international community is gradually recognising that governance failures in natural resource management, particularly mineral resources, are hampering resource-rich States in the Global South, from transforming their mineral wealth into SD, leading to social justice.²⁷⁷ This acknowledgement has driven the emergence of International Natural Resources Law (INRL) as a comprehensive regulatory framework that blends environmental and human rights law to tackle

²⁷⁴ *Kaliña and Lokono Peoples v Suriname* (Merits, Reparations and Costs) Inter-American Court of Human Rights Series C No 309 (25 November 2015) para 214.

²⁷⁵ African Commission on Human and Peoples' Rights, 'General Comment No 4 on the African Charter on Human and Peoples' Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5)' (2017) para 33.

²⁷⁶ Community Land Act 2016 (Kenya), No 27 of 2016. See also United Nations Declaration on the Rights of Indigenous Peoples Act, SC 2021, c 14.

²⁷⁷ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules that Run the World* (Oxford University Press 2016) 45-67.

social injustices while pursuing economic growth in the extractive industries.²⁷⁸ Nonetheless, this section argues that while INRL provides important governance principles, it needs contextual frameworks that reconcile social justice principles with cultural interpretation, integrate recognition and redefine procedural accountability to be effective, as highlighted under section 2.3 of Chapter 2.

3.3.1 Evolution of Permanent Sovereignty over Natural Resources

The principle of Permanent Sovereignty over Natural Resources (PSNR) came to the fore as a core tenet of INRL in the era of decolonisation, asserting the right of States to control and benefit from their natural wealth while managing the complex tensions between State sovereignty, community development and human rights obligations.

3.3.1.1 Historical Foundations and Decolonisation Imperatives

The principle of Permanent Sovereignty over Natural Resources (PSNR) emerged as a fundamental legal correction of colonial injustices, representing the most significant international reform in natural resource ownership and governance. Initiated by Chile at the United Nations Commission on Human Rights in 1952, this principle of PSNR constituted the first formal recognition of the right of countries to determine resource use for economic development purposes.²⁷⁹

The evolution through UN Resolution 1514 in 1960 fundamentally reshaped the PSNR by embedding it within the right to self-determination, transforming it from a purely economic framework into a human rights paradigm that aligned with global decolonisation movements.²⁸⁰ Such a transformation exemplifies the first tension between universal principles and contextual application, whereas the universal right to self-determination provides legitimacy, its implementation requires recognition of diverse cultural and political contexts.

²⁷⁸ Ilias Bantekas, 'Corporate Social Responsibility in International Law' (2004) 22 Boston University International Law Journal 309, 315-320.

²⁷⁹ Roland Burke, 'Human Rights Day after the "Breakthrough": Celebrating the Universal Declaration of Human Rights at the United Nations in 1978 and 1988' (2015) 10(1) Journal of Global History 147–170.

²⁸⁰ Declaration on the Granting of Independence to Colonial Countries and Peoples adopted on 14 December 1960 by General Assembly resolution 1514 (XV)

3.3.1.2 The 1962 Watershed: UN Resolution 1803 and its Limits

The UN Resolution 1803 remains the most influential declaration on PSNR, stipulating that sovereignty must be exercised for national development and the well-being of the population.²⁸¹ It requires that exploration and exploitation be governed by national legislation, and provides for compensation for any appropriation in accordance with national legislation.²⁸² Nevertheless, this resolution exemplifies the limitations of purely universal approaches to distribution benefits. While establishing the principle that resource sovereignty should benefit populations, it fails to address how well-being should be defined across different cultural contexts or how benefits should be distributed within societies to ensure social justice to take place. The case of Burundi exemplifies these challenges in practice. The country has recognised PSNR and incorporated it into Article 7 of its Mining Code 2023.²⁸³ Article 208 goes further by requiring mining title-holders to develop community development plans in consultation with neighboring communities and local administrative authorities, including precise objectives and investment plans.²⁸⁴ Mining companies must make annual contributions to socio-economic development projects for local communities as outlined in these plans. This approach prioritises national development interpretations through financial mechanisms for community development. However, the contribution and distribution formulas have not yet been structured, which impacts communities living around mining sites. This weakness highlights the need for contextual frameworks that incorporate community principles and cultural values alongside universal standards.

In 1966, UN Resolution 2158 placed the emphasis on the maximum exploitation of natural resources by developing countries themselves, representing a categorical rejection of the concession agreements of the colonial era.²⁸⁵ This resolution asserted that sovereignty was a means

²⁸¹ General Assembly Resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources" adopted on 14 December 1962 by General Assembly Resolution 1803 (XVII).

²⁸² *ibid.*

²⁸³ Mining Code art 7.

²⁸⁴ *ibid* art 208.

²⁸⁵ United Nations General Assembly Resolutions on Permanent Sovereignty Over Natural Resources [1966] UNGA 25; A/RES/2158 (XXI) (25 November 1966) by UNGA.

of increasing economic and technological progress, by driving greater autonomy in resource development.²⁸⁶

3.3.1.3 From State-Centred to People-Centred Governance: the Beneficiary Debate

The beneficiary of the PSNR remains contentious, with three interpretations emerging: State-centred, People-centred, and dual interpretation approaches.²⁸⁷ This debate highlights the more profound tensions between universal principles of fair distribution and the need for moral recognition of the stakeholders involved.

3.3.1.3.1 State-Centred Approach

The State-centred approach considers that States have permanent sovereignty over natural resources. This view is enshrined in the Charter of Economic Rights and Duties of States (CERDS).²⁸⁸ It reflects the struggles of developing countries against multinational corporations. Nevertheless, this approach often lacks moral recognition for indigenous and local communities whose cultural relationships with resources differ from State-based concepts of ownership. As an example, Burundi illustrates this State-centric approach through its mining governance framework, where mineral rights are vested in the State.²⁸⁹ The objective of the government is primarily to maximise national economic benefits from the development of mineral resources. But this has created notable challenges, particularly in relation to the displacement of communities for mining activities, with the country missing consistent legal frameworks to address the issue of community resettlement, and lacking clear procedural guidance for companies when they are required to resettle displaced communities.

The State-centric approach, while reflecting post-colonial assertions of sovereignty, often perpetuates colonial frameworks that prioritised external extraction over local governance. In Burundi, this is manifested in mining laws that continue to orient production towards the export of raw materials rather than recognising traditional resource management practices.

²⁸⁶ United Nations General Assembly Resolutions on Permanent Sovereignty Over Natural Resources [1966] UNGA 25; A/RES/2158 (XXI) (25 November 1966) by UNGA.

²⁸⁷ Emeka Duruigbo, 'Permanent Sovereignty and Peoples' Ownership of Natural Resources in International Law' (2006) 38 *George Washington International Law Review* 33, 40-45.

²⁸⁸ Jon Lovett, 'Nico Schrijver, Sovereignty Over Natural Resources, Balancing Rights and Duties' (2002) 7(1) *Environment and Development Economics* 191–196.

²⁸⁹ Mining Code 2023 art 7.

3.3.1.3.2 People-Centred Approach

Based on the ICCPR and the ICESCR, their point of view confers the right of ownership over natural resources to people, and considers States as mere representatives whose authority derives from the people.²⁹⁰ Although more inclusive, this approach runs up against the difficulty of defining “people” in various cultural contexts and of determining the appropriate procedural mechanisms for resource governance. Therefore, the people-centred approach requires a moral recognition of how different communities conceptualise resource relationships. For indigenous and local communities, resources often represent cultural identity and spiritual ties rather than mere economic assets. It is therefore necessary to look beyond Western concepts of ownership in the context of Burundi to recognise a different approach to resource governance.

3.3.1.3.3 Dual Interpretation

The dual interpretation provides flexibility and recognises that States and Peoples both possess the right provided for in Resolution 1803, but creates potential conflicts when the interests of the State and the People collide.²⁹¹

These debates have profound implications for the INRL, particularly concerning recognising and protecting people against the potential exploitation of their resources by States and the fair distribution of revenues from mining activities in Burundi. Nevertheless, contemporary challenges demand that we look beyond traditional debates on sovereignty to embrace the imperatives of SD that guarantee both current equity and intergenerational social justice. My research builds on the PSNR position of the ICESCR, ICCPR and General Assembly Resolution 1803 of 1962. It argues for a contextual interpretation of permanent sovereignty that requires people to benefit meaningfully from mining revenues while ensuring sustainable resource management. Rather than considering the State as the end sovereign, this approach recognises that the State should exercise ownership and control of natural wealth and resources, especially mineral resources, on behalf of the people, with explicit accountability mechanisms guaranteeing both current benefits and future sustainability. The contemporary imperatives of SD demand a moral recognition of the cultural

²⁹⁰ Marco Odello, 'Peoples' Rights to Natural Resources under International Human Rights Law: A Legal Reappraisal' (2020) 33 *Leiden Journal of International Law* 789, 805-812.

²⁹¹ Jon Lovett, 'Nico Schrijver, Sovereignty Over Natural Resources, Balancing Rights and Duties' (2002) 7(1) *Environment and Development Economics* 191–196.

relationships of current communities with resources and the rights of future generations. This requires accountability mechanisms that recognise how historical extraction practices have created current injustices, while ensuring that resource governance serves the long-term well-being of the community.

3.3.2 Re-interpretation of Permanent Sovereignty over Natural Resources for Sustainable Development Imperatives

The evolution of PSNR from a decolonisation tool to a social justice framework illustrates the capacity of INRL to adapt to changing global contexts.²⁹² This transformation represents a paradigm shift from economic benefits, recognising that resource sovereignty must serve broader social justice imperatives, addressing contemporary challenges of environmental degradation and social inequality arising from mineral extraction.²⁹³ This broader understanding recognises that extractive activities have complex social, environmental and economic impacts that transcend traditional sovereignty concerns.

The transformation of PSNR is echoed in progressive international environmental law development, creating space for procedural diversity in resource governance. Early instruments like the Stockholm Declaration and the World Charter for Nature (WCN) began reconciling State sovereignty with environmental concerns, gaining binding force through subsequent conventions including the 1992 UNFCCC and Convention on Biological Diversity (CBD).²⁹⁴ The recognition of traditional knowledge systems by the CBD suggests that effective environmental protection requires integrating customary governance practices into modern regulatory frameworks rather than replacing them.²⁹⁵

²⁹² Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties* (2nd edn, Cambridge University Press 2020) 245-267.

²⁹³ Lorenzo Cotula, 'The New Enclosures? Polanyi, International Investment Law and the Global Land Rush' (2013) 34 *Third World Quarterly* 1605; Kate Miles, 'International Investment Law and Human Rights: Diverging Jurisprudence' (2021) 15 *Law and Development Review* 89.

²⁹⁴ Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, Cambridge University Press 2018) 198-215.

²⁹⁵ Priscilla Claeys, 'The Right to Land and Territory: New Human Rights Challenges' (2018) 10 *Food Sovereignty* 15; Yemi Oke, 'Traditional Knowledge and Intellectual Property Rights in Nigeria: Policy Recommendations' (2020) 23 *Journal of World Intellectual Property* 434.

This normative framework requires procedural mechanisms that respect both participation rights and particular cultural governance practices. For example, meaningful consultation in mineral governance cannot follow uniform models but must adapt to local interpretations of legitimate authority through traditional councils, ancestral approval processes, or collective decision-making systems rooted in specific cultural contexts.²⁹⁶

The principle now serves as a cornerstone of sustainable development in international environmental law, creating a normative framework that reconciles environmental protection and development needs while requiring States to exercise sovereignty over resources with respect for human rights and environmental integrity.

This research adopts a contextual approach, conceptualising mineral resources as enablers of social justice rather than simply economic development. This framework represents a synthesis of State-centred resource control and People-centred governance, recognising that legitimate sovereignty requires serving the collective interests of all citizens,²⁹⁷ in the context of mineral resource governance in Burundi. This synthesis is particularly crucial in post-colonial contexts such as Burundi, where the legacy of colonial extraction and weak State capacity requires governance frameworks capable of responding to historical injustices while building inclusive institutions for future development. This framework acknowledges that while States retain formal control and management authority over natural resources, this authority is entrusted to them on behalf of People and must be exercised in ways that promote social justice and SD.

In the following sections, we will explore how SD can be integrated into this evolved understanding of INRL, examining how environmental considerations can be effectively combined with economic and social development dimensions. This analysis will take into account current and future development needs, providing a framework for advancing social justice in mineral resource governance. This inclusive approach recognises that sustainable governance of mineral resources requires ethical and moral values inherited in customary law to balance

²⁹⁶ James Anaya, *Indigenous Peoples in International Law* (3rd edn, Oxford University Press 2021) 156-178; Bonny Ibhawoh, 'Cultural Rights and Extractive Industries in Africa' (2019) 19 *African Human Rights Law Journal* 278.

²⁹⁷ Duncan French, *Global Justice and Natural Resources* (Hart Publishing 2019) 89–115; Obiora Okafor, 'Redefining Legitimate Statehood: International Law and State Fragmentation in Africa' (2020) 35 *American University International Law Review* 649.

environmental protection, social inclusion, and economic development. This approach is consistent with the Ubuntu philosophy, which emphasises collective responsibility and recognises that resource distribution cannot be separated from cultural recognition and historical redress. Such frameworks require that mineral resource governance be understood not only as economic policy, but also as a mechanism for addressing historical injustices while building inclusive institutions. By adopting contextual approaches rooted in African philosophical traditions, this research examines how mineral taxation regimes and resource governance can be reconfigured to address these limitations while promoting sustainable development.

3.4 The principle of Sustainable Development from Contested Normativity and Evolving Legal Character in Environmental Law

The legal status of sustainable development remains contentious, described variously as a concept, a goal, a principle of customary law or a legal principle.²⁹⁸ Since its emergence in international environmental law in 1992, sustainable development has featured extensively in environmental and development treaties, leading to strengthened normative power in natural resource governance at the international level.²⁹⁹ This section traces the evolution of sustainable development from moral imperative to legal environmental principle, focusing on its application to mineral resource governance.

3.4.1 Moral Foundations of Sustainable Development

The concept of SD encompasses moral relationships among current generation members, between present and future generations, and between humanity and the natural world. This requires fundamental re-examination of moral imperatives, challenging traditional notions of development and ethical obligations.

²⁹⁸ Abbas Poorhashemi, 'International Environmental Law' in *Public International Law* (Routledge 2024) 453–466. See also Godwin Eli Kwadzo Dzah, *Sustainable Development, International Law, and a Turn to African Legal Cosmologies* vol 185 (Cambridge University Press 2024).

²⁹⁹ Duncan French, *International Law and Policy of Sustainable Development* (Manchester University Press 2005) 45-67.

3.4.1.1 Early Conservation Ethics and International Concern

Sustainable development originated in the late 19th century conservation efforts addressing species extinction.³⁰⁰ The conception of environment as an interconnected biosphere requiring moral consideration emerged in the mid-20th century.³⁰¹ In 1972, the Club of Rome issued a comprehensive report warning that industrial society would exceed environmental limits within decades if growth patterns continued unchanged.³⁰² This was the first articulation of intergenerational obligations regarding resource use, laying moral foundations that would later crystallise into legal principles.

3.4.1.2 Stockholm Declaration: Soft Law Framework Foundations

The 1972 Stockholm Declaration established precedents for linking development and environmental protection.³⁰³ Though sustainable development was not explicitly mentioned, its preamble acknowledged that economic development pathways directly impact environmental integrity, previously regarded as separate issues.³⁰⁴ And thus, development and environment could be managed in a mutually beneficial way.³⁰⁵ States possess sovereign rights to exploit resources while bearing responsibility for environmental protection under Principle 21,³⁰⁶ with Principle 5 requiring non-renewable resources be used to prevent future exhaustion and ensure humanity shares the benefits.³⁰⁷ While Stockholm established important moral precepts, its State-centric approach failed to address implementing distributed benefits, particularly for mineral resources in specific territories.

³⁰⁰ Teresa Fidler and others, 'Protected Areas and Their Contribution to Sustainable Development' (2024) 16 Sustainability 1763.

³⁰¹ Otto Spijkers, 'Three pillars of sustainability: in search of conceptual origins' (2019) 14 Sustainability Science 681.

³⁰² Edward Goldsmith (ed.), *A Blueprint for Survival*, The Ecologist, Vol. 2, No. 1, January 1972, pp 1-22. See also Club of Rome, 'The Limits to Growth' (Club of Rome 2025) <https://www.clubofrome.org/publication/the-limits-to-growth/> accessed 9 July 2025.

³⁰³ International Institute for Sustainable Development, 'Stockholm and the Birth of Environmental Diplomacy' (IISD 2022) <https://www.iisd.org/articles/deep-dive/stockholm-and-birth-environmental-diplomacy> accessed 9 July 2025. See also Godwin Eli Kwadzo Dzah, 'Marginalising Africa: The "New" Human Right to a Clean, Healthy and Sustainable Environment in International Law' (2023) Third World Approaches to International Law Review <https://twailr.com/marginalising-africa-the-new-human-right-to-a-clean-healthy-and-sustainable-environment-in-international-law/> accessed 9 July 2025.

³⁰⁴ United Nations Environment Programme, 'Stockholm Declaration and Environmental Law' (UNEP 2022).

³⁰⁵ *ibid.*

³⁰⁶ 'Principle 21 of Stockholm Declaration' (Respicio, 6 October 2024).

³⁰⁷ *ibid* Principle 5.

3.4.2 Conceptual Evolution through International Instruments

The conceptual framework of sustainable development has evolved through international instruments that increasingly recognise the interconnection between environmental protection and economic development.

3.4.2.1 From Eco-development to Sustainable Development

After 1972, the environment and development could no longer remain in conflict. The United Nations Environment Programme (UNEP) first used sustainable development in 1975, calling for environmental management satisfying basic human needs without transgressing biophysical limits.³⁰⁸ Three years later, in 1978, UNEP adopted the term *ecodevelopment*, emphasising biophysical constraints often overlooked today.³⁰⁹ Collaborating with UNEP and the World Wildlife Fund (WWF), the International Union for Conservation of Nature (IUCN) achieved the first major breakthrough in 1980 with the *World Conservation Strategy*.³¹⁰ This was a major attempt to merge environmental and development concerns into an overarching concept of conservation. Although sustainable development does not appear in the text, its subtitle “Conservation of living resources for sustainable development” emphasised the concept of sustainability,³¹¹ bringing the element of time directly into the environment and development debate.³¹² Although this led to the adoption of the World Charter for Nature (WCN) in 1982, the term sustainable development did not feature prominently.

3.4.2.2 The Brundtland Synthesis

The developments led the World Commission on Environment and Development (WCED), chaired by Gro Harlem Brundtland of Norway, to renew the call for sustainable development, resulted in

³⁰⁸ IUCN, 'Seventy Five Years of Experience' (IUCN, 29 November 2024) <https://iucn.org/about-iucn/history> accessed 9 July 2025.

³⁰⁹ UNEP Executive Director, 'Eco-development' (UNEP, 15 January 1976) UN Doc UNEP/GC/80 <https://digitallibrary.un.org/record/508845> accessed 9 July 2025.

³¹⁰ IUCN, 'Seventy Five Years of Experience' (IUCN, 29 November 2024); IUCN, ed., *World Conservation Strategy: Living Resource Conservation for Sustainable Development* (Environment & Society Portal, 14 September 2017) <https://www.environmentandsociety.org/mml/iucn-ed-world-conservation-strategy-living-resource-conservation-sustainable-development> accessed 9 July 2025.

³¹¹ United Nations Development Programme, '2020 Africa Sustainable Development Report' (UNDP 2020) <https://www.undp.org/africa/publications/2020-africa-sustainable-development-report> accessed 9 July 2025.

³¹² United Nations Development Programme, '2020 Africa Sustainable Development Report' (UNDP 2020) <https://www.undp.org/africa/publications/2020-africa-sustainable-development-report> accessed 9 July 2025.

the Brundtland Report entitled “Our Common Future” in 1987.³¹³ The report defines sustainable development as “development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs”.³¹⁴ It has become the dominant conceptualisation of sustainable development as a process of change. In the context of mineral resource governance in Burundi, it suggests that current extraction should be managed to benefit both current and future generations by protecting the environment and achieving social equity through economic growth. As such, it is a reference point for claiming moral goodness. It does not impose unbearable consumption deprivation on the present, nor neglect the needs of the future. It embraces humanity as a whole as well as the environmental nature.

3.4.3 Institutionalisation through the Rio Process

The Rio process institutionalised sustainable development, transforming fragmented environmental initiatives into a global agenda through key legal instruments and international frameworks.

3.4.3.1 Rio Declaration and Agenda 21: Legal Framework Development

The 1992 Rio Declaration transformed sustainable development from a concept into a legal operational principle. Principle 3 affirms that development should “meet the developmental and environmental needs of present and future generations in an equitable manner”, thus reconciling development rights and environmental obligations.³¹⁵ States committed themselves to developing international law on sustainable development, which gave rise to Agenda 21.³¹⁶ With regard to mineral governance, Chapter 2 of Agenda 21 deals with sustainable modes of production, Chapter 22 sets out the environmental obligations of the extractive industry, and Chapter 38 calls for the development of international law on sustainable development.³¹⁷

³¹³ Robert Goodland and Herman E Daly, 'Environmental Sustainability: Universal and Non-Negotiable' (1996) 6 Ecological Applications 1002.

³¹⁴ Report of the World Commission on Environment and Development: Our Common Future, UN Doc A/42/427 (4 August 1987) (Brundtland Report).

³¹⁵ Jorge E Viñuales (ed), *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015).

³¹⁶ Agenda 21: Programme of Action for Sustainable Development, UN Doc A/CONF.151/26 (14 June 1992).

³¹⁷ International Resource Panel, 'Mineral Resource Governance in the 21st Century: Gearing Extractive Industries towards Sustainable Development' (UNEP 2020) <https://www.unep.org/resources/report/mineral-resource-governance-21st-century> accessed 9 July 2025.

3.4.3.2 Post-Rio Developments: From Concept to Implementation

The 2002 Johannesburg World Summit (Rio+10) assessed the progress of the Rio Earth Summit, with States committing to collective responsibility for advancing the interdependent pillars of sustainable development notably economic, social and environmental dimensions at the local, national, regional and global levels.³¹⁸ While appealing, this formulation has been criticised for suggesting false equivalence between economic and environmental imperatives.³¹⁹ In 2012, Rio+20 produced “The Future We Want”, focusing on the green economy and institutional frameworks.³²⁰ These developments culminated in the Millennium Development Goals (MDGs) in 2015 and later the Sustainable Development Goals (SDGs). The MDGs were notable in the sense that they were universally endorsed as a benchmark for measuring progress towards sustainable development.³²¹ Nevertheless, despite relative effectiveness of the MDGs, not all the targets of the eight goals were met after being deployed for 15 years (2000-2015), hence the introduction of the SDGs to continue the development agenda.³²² Under this new roadmap for development, the UN has approved the 2030 Agenda of SDGs, intended as a call to action to protect the planet, end poverty and ensure the well-being of people.

In terms of mineral resource governance, the sector has the potential to contribute to all 17 SDGs, but illustrates the persistent disconnect between normative commitment and legal enforcement,⁴ particularly in Burundi.

The above international soft laws played a crucial role in conceptualising sustainable development in dimensions of economic growth, social cohesion and environmental protection be conciliated, with a view to achieving a collective improvement in the quality of life for the benefit of both present and future generations.

³¹⁸ United Nations, 'World Summit on Sustainable Development, Johannesburg 2002' (UN 2002).

³¹⁹ *ibid.*

³²⁰ United Nations Conference on Sustainable Development, 'The Future We Want: Outcome Document of the United Nations Conference on Sustainable Development' UN Doc A/RES/66/288 (11 September 2012).

³²¹ George Ofori, 'From the MDGs to the SDGs: The role of construction' in *The Elgar Companion to the Built Environment and the Sustainable Development Goals* (Edward Elgar Publishing 2024) 20.

³²² United Nations, 'THE 17 GOALS | Sustainable Development' (UN SDGs 2025) <https://sdgs.un.org/goals> accessed 9 July 2025.

3.4.4 Legal Status in Contemporary International Law

Article 38(1) of the ICJ Statute defines international law sources as: (a) treaties creating binding rules, (b) customary international law demonstrated by consistent state practice accepted as legally binding, (c) general principles recognised by legal systems, and (d) judicial decisions and scholarly writings interpreting legal rules.³²³ Sustainable development began appearing in binding instruments in 1992 and has been referenced in several environmental conventions governing mineral resources.

3.4.4.1 Customary Status of Sustainable Development

The customary international law status of sustainable development remains contested in academic discourse, particularly regarding its application to mineral resources governance. While some scholars argue that sufficient state practice and opinion juris exist to establish sustainable development as customary law, others contend that its inherently flexible formulations preclude clear normative obligations.³²⁴ However, judicial developments suggest an emerging consensus that States have obligations to integrate environmental measures into economic development activities, including extractive projects. The ICJ in *Gabčíkovo-Nagymaros* recognised that economic development must be reconciled with environmental protection, which is aptly expressed in the concept of sustainable development, while in *Pulp Mills* the Court affirmed that State conduct must be consistent with sustainable development objectives.³²⁵ The recognition of the Iron Rhine arbitral tribunal that international law requires integration of environmental considerations in development activities, particularly where significant environmental harm may occur, indicates the evolution of sustainable development toward customary status in natural resources contexts.³²⁶ Additionally, the WTO Appellate Body in *Shrimp-Turtle* drew specific legal consequences from sustainable development principles in trade-environment disputes affecting natural resource exploitation.³²⁷ Despite lacking uniform State practice, the consistent adoption of

³²³ Statute of the International Court of Justice, art 38(1).

³²⁴ Virginie Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm' (2012) 23 European Journal of International Law 377.

³²⁵ *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) [1997] ICJ Rep 7, para 140; *Pulp Mills on the River Uruguay* (Argentina v Uruguay) [2010] ICJ Rep 14, para 177.

³²⁶ *Iron Rhine Railway* (Belgium/Netherlands) (2005) 27 RIAA 35, para 59.

³²⁷ *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Appellate Body Report, WT/DS58/AB/R (12 October 1998) para 129.

national sustainable development strategies, environmental impact assessments for mining projects, and integration of sustainability objectives into extractive industry governance demonstrates sufficient State practice to support the recognition of sustainable development as a general principle of customary international law in mineral resources governance, albeit one requiring case-by-case substantiation.³²⁸

3.4.4.2 Treaty Law Integration

The integration of sustainable development into treaty law marks the formal codification of sustainable development principles into binding international agreements, creating legal obligations that require States to balance environmental, social and economic considerations in the implementation of their international and national policies.

3.4.4.2.1 United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) of 1982, while predating explicit sustainable development language, the provisions in its Part XI embody sustainable development principles through the common heritage of mankind designation for seabed resources,³²⁹ environmental protection requirements for mining activities³³⁰ and equitable benefit-sharing obligations for developing States.³³¹ Indeed, it affirms that the deep seabed beyond national jurisdiction and the mineral resources therein are the common heritage of mankind and emphasises equitable access to those resources.³³² In fact, the Convention requires that any negative impact on the marine environment be minimised.³³³ It also requires that revenues and other benefits from mining activities be fairly shared with other states.³³⁴ To define and control the rules governing the exploration and exploitation of mineral resources, UNCLOS created the International Seabed Authority (ISA).³³⁵ The use of sustainable development was not explicit in this respect, but the

³²⁸ Lorenzo Cotula, 'International Law and Extractive Industries: Current Framework and Future Directions' (2020) 114 *American Journal of International Law* 345.

³²⁹ United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, entered into force 16 November 1994, 1833 UNTS 3, art 136.

³³⁰ *ibid*, art 145.

³³¹ *ibid*, art 160(2)(f)(i).

³³² *ibid*, art 160(2)(f)(i).

³³³ *ibid*, art 160(2)(f)(i).

³³⁴ *ibid*, art 160(2)(f)(i).

³³⁵ United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, entered into force 16 November 1994.

requirement for a balanced approach taking into account economic, social and environmental aspects indicates the sustainable approach to the management of deep-sea mining.

3.4.4.2.2 Basel Convention

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal regulates the management of a broad range of mining wastes.³³⁶ In fact, it creates binding obligations through environmental sound management requirements.³³⁷ Most importantly, it operationalised sustainable development through binding obligations for hazardous waste minimisation and transboundary movement controls.³³⁸

3.4.4.2.3 Minamata Convention

The Minamata Convention on Mercury is a legally binding treaty and deals specifically with the mining and use of mercury, requiring parties to phase out mercury mining operations and implement environmental and health protection measures.³³⁹ In its preamble, it refers to paragraph 221 of the UN Conference on Sustainable Development entitled “The Future We Want”, urging a positive outcome to negotiations and binding instrument on mercury to address the risks to human health and the environment.³⁴⁰ In the same preamble, the convention explicitly references Rio+20 outcomes and sustainable development principles in requiring mercury-free alternatives for artisanal mining,³⁴¹ demonstrating how contemporary treaties integrate sustainability obligations directly into mineral-specific regulations. In this context, the principle of sustainable development forms the basis of the obligations incumbent on States Parties to reduce and eliminate the use of mercury and mercury derivatives in order to comply with the corresponding sustainable development objectives.

3.4.4.3 Regional Implementation

The Bamako Convention on the Banning and Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa provides the most comprehensive

³³⁶ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted 22 March 1989, entered into force 5 May 1992, 1673 UNTS 57, art 4(2)(c).

³³⁷ *ibid.*

³³⁸ *ibid.*

³³⁹ Minamata Convention on Mercury, adopted 10 October 2013, entered into force 16 August 2017, 3013 UNTS 4.

³⁴⁰ *ibid.*

³⁴¹ *ibid.*

integration of sustainable development principles in African mineral resources governance.³⁴² It provides environmental various safeguards. The prohibition of hazardous waste imports prevents Africa becoming a dumping ground for mining-related waste.³⁴³ In addition, the transboundary movement controls ensure environmental costs of mining operations are not externalised to neighboring States. The principles of the convention support sustainable mining governance by establishing environmental standards that mining operations must meet. The requirement for environmentally sound waste disposal directly applies to mining waste management, including tailings dams, acid mine drainage and process tailings.³⁴⁴ The promotion of cleaner production at the expense of permitted emissions drives mining companies to adopt preventive environmental strategies rather than simply managing pollution within supposedly acceptable limits. Most importantly, the establishment of the precautionary principle by the Convention significantly alters mining project assessment by requiring proof of safety rather than accepting risk until damage occurs.³⁴⁵ This is a significant evolution in applying sustainable development to extractive industries.

3.4.5 Relational Interpretation of Sustainable Development in African Mineral Resources Governance

Sustainable development has evolved from a moral aspiration to legally binding principle in mineral resource governance. However, effective implementation in Burundi requires moving beyond sustainability rhetoric to ensure mining meaningfully contributes to sustainable development. This necessitate reinterpreting sustainable development through the relational ontology of Ubuntu, where Ubuntu identity and solidarity offer alternative foundations for sustainable mineral resource governance in Burundi.

3.4.5.1 Principle of Identity

Sustainable development centers on balancing competing interests between present and future generations, but these are conceived as sets of individual interests. In contrast, the identity principle

³⁴² Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted 30 January 1991, entered into force 22 April 1998, 2101 UNTS 177.

³⁴³ *ibid.*

³⁴⁴ *ibid.*

³⁴⁵ *ibid.*, art 4(3)(f).

of Ubuntu basically reframes sustainability as the preservation and enhancement of community relationships that span environmental, social and economic dimensions.³⁴⁶ Whilst the conceptual meaning focuses on meeting present needs without compromising the ability of future generations to meet their needs,³⁴⁷ Ubuntu suggests that mineral resource use in Burundi reinforces the identity network linking ancestors, present community, future generations on one hand and the latter and the natural environment on the other hand. This understanding centered on Ubuntu addresses the paradox of intergenerational equity by acknowledging that the extraction of non-renewable mineral resources can be rightful when it serves to strengthen rather than weaken intergenerational identity relationships through community development.³⁴⁸

3.4.5.2 Principle of Solidarity

The Ubuntu principle of solidarity offers a profoundly different approach to the equitable distribution of mineral resources. Instead of seeking a balance between competing environment, social and economic pillars, Ubuntu focuses on concrete outcomes that strengthen communal relationships and community solidarity.³⁴⁹ The comprehensive environmental guarantees of the Bamako Convention³⁵⁰ illustrate the Ubuntu principle of solidarity applied on a continental scale. One such example is the cooperation between Ghana and Burkina Faso in the field of gold mining. Cross-border artisanal mining communities in the common Birimian geological formation showcase Ubuntu principles through (a) traditional authorities coordinating environmental protection across national borders, (b) shared benefit pools supporting development projects in both countries, and (c) collective resistance to large-scale mining projects that would disrupt traditional livelihoods.³⁵¹

In a nutshell, the Ubuntu reinterpretation of sustainable development goes beyond technical solutions to address the philosophical underpinnings of resource governance, emphasising shared

³⁴⁶ Thaddeus Metz, *Ubuntu as a Moral Theory and Human Rights in South Africa* (African Sun Media 2011) 532-559.

³⁴⁷ Report of the World Commission on Environment and Development: Our Common Future, UN Doc A/42/427 (4 August 1987) para 27.

³⁴⁸ Michael Battle, *Ubuntu: I in You and You in Me* (Seabury Books 2009) 39-52.

³⁴⁹ Mogobe Ramose, 'The Philosophy of Ubuntu and Ubuntu as a Philosophy' in Pieter Coetzee and Abraham Roux (eds), *Philosophy from Africa* (Oxford University Press 1998) 230-238.

³⁵⁰ Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted 30 January 1991.

³⁵¹ Third World Network Africa, *Cross-Border Mining Communities and Traditional Governance* (2023).

identity and collective solidarity. While implementation faces significant obstacles related to colonial legal legacies and capital economic pressures, emerging constitutional developments and grassroots innovations create opportunities for an Ubuntu-centred transformation. To achieve success, it is not enough to add Ubuntu elements to existing frameworks, but to fundamentally reimagine mineral resource governance on the basis of customary law foundations that prioritise community relations and environmental management over extractive profit maximisation. The following section assesses the distribution mechanisms by which the principles of Ubuntu can be implemented in contemporary systems of mining governance.

3.5 African Continental Frameworks for Economic Sustainable Mineral Resources Governance: Constitutional Underpinnings of Ubuntu

The transition from the Organisation of African Unity (OAU) to the African Union (AU) represents a shift from political liberation to economic transformation, with mineral resource governance becoming central to sustainable development. This section explores how African continental frameworks integrate customary Ubuntu values into constitutional principles while pursuing sustainable economic development in mineral resource governance.

3.5.1 Historical Foundations: From Political Unity to Economic Integration

African unity has evolved from a political imperative of decolonisation to an economic strategy for the development of the continent.

3.5.1.1 OAU Legacy and Ubuntu Foundations

Following independence in the 1960s, African countries assembled in Addis Ababa to establish the Organisation of African Unity (OAU) in 1963, driven by objectives that reflected Ubuntu principles of collective solidarity and mutual responsibility.³⁵² The foundational goals of the OAU included liberating remaining colonised territories, fostering unity between African States, and intensifying development cooperation.³⁵³ This embodies the relational ontology of Ubuntu extending beyond immediate communities to continental solidarity. In 1991, the OAU adopted the

³⁵² Paul Nnodim and Austin Okigbo (eds), *Ubuntu: A Comparative Study of an African Concept of Justice* (Leuven University Press 2024).

³⁵³ DE van Norren, 'African Ubuntu and Sustainable Development Goals: Seeking Human Mutual Relations and Service in Development' (2022) Third World Quarterly <https://www.tandfonline.com/doi/full/10.1080/01436597.2022.2109458> accessed 10 July 2025.

Abuja Treaty as the first attempt to translate political unity into economic integration, emphasising African socialism and communal characteristics.³⁵⁴ However, the OAU period achieved limited progress in economic integration due to persistent colonial economic structures and Cold War influences on African governance.³⁵⁵

3.5.1.2 Sirte Declaration and Transformation Imperative

The 1999 Sirte Declaration marked a watershed moment, explicitly linking economic development with social justice in ways that prefigured the approach centred on Ubuntu to continental governance.³⁵⁶ The emphasis of the Declaration was on accelerating economic development while tackling social injustices.³⁵⁷ It embodies the understanding of Ubuntu in the sense that individual and community prosperity are interconnected and that development must strengthen rather than weaken social relationships.

3.5.2 AU Constitutive Act: Constitutional Ubuntu in Continental Governance

The Ubuntu philosophy finds its most explicit institutional expression in the founding legal framework of the Constitutive Act of the African Union.

3.5.2.1 Ubuntu Principles in Continental Law

Following the decision in September 1999 by the OAU, the African Union was launched in July 2002 as a continental social contract.³⁵⁸ The AU Constitutive Act represents the first continental legal instrument designed to promote sustainable development as a core objective.³⁵⁹ In this respect, it explicitly incorporate principles that align with Ubuntu philosophy. Article 3 explicitly expresses the commitment to greater unity and solidarity between African countries and peoples.³⁶⁰

³⁵⁴ Busani Mpofu and Sabelo J Ndlovu-Gatsheni, 'The Decolonial Turn in Development in Africa' in *Handbook of African Economic Development* (Edward Elgar Publishing 2024) 557–573.

³⁵⁵ H Fofack, 'Africa and the new Cold War: Africa's development depends on regional ownership of its security' (Brookings Institution, 19 May 2022).

³⁵⁶ DE van Norren, 'African Ubuntu and Sustainable Development Goals: Seeking Human Mutual Relations and Service in Development' (2022) *Third World Quarterly* <https://www.tandfonline.com/doi/full/10.1080/01436597.2022.2109458> accessed 10 July 2025.

³⁵⁷ 'Sirte Declaration' (Organisation of African Unity, 9 September 1999).

³⁵⁸ Ben Kioko, 'The Constitutive Act of the African Union and Institution-Building in Postcolonial Africa' (2003) 16 *Leiden Journal of International Law* <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/abs/constitutive-act-of-the-african-union-and-institutionbuilding-in-postcolonial-africa/E205D403EB457C7E31A1DE10A11E977D> accessed 10 July 2025.

³⁵⁹ 'Constitutive Act of the African Union' (African Commission on Human and Peoples' Rights).

³⁶⁰ Constitutive Act of the African Union, art 3(a) (adopted by the Assembly of Heads of State and Government of the OAU, Lomé, Togo, 11 July 2000). See also M Sekalala, 'The United Nations Charter and the African Union

It incarnates the relational ontology of identity extending from individual to continental solidarity.³⁶¹ In addition, the focus of the provision on mutual support, shared responsibility and collective action, mirrors the conception of Ubuntu that legitimate authority arises from relationships serving collective well-being.³⁶² The particular inclusion of “peoples” alongside “countries” implies recognition of the fact that continental sustainable governance must incorporate a people-centred approach that embodies the principles of Ubuntu. The AU mandate to promote sustainable development at the economic, social, and cultural levels represents insight that transcends the traditional three pillars of SD by integrating cultural dimensions. This integration reflects the idea that development should strengthen rather than undermine traditional cultural and customary relationships.

3.5.2.2 Social Justice as a Binding Constitutional Principle

The requirement of Article 4 of the AU Constitutive Act that the Union shall function in accordance with the principle of promoting social justice with a view to ensuring balanced economic development,³⁶³ transforms the solidarity principles into binding continental legal requirements. This provision is particularly important for the governance of mineral resources, as it makes social justice a primary obligation in economic policy. It also calls for balances rather than simply overall economic development, reflecting an emphasis on collective rather than individual prosperity.³⁶⁴ In addition, it creates legal foundations for challenging mining projects that accentuate injustices or undermine community solidarity.³⁶⁵

Furthermore, the aforementioned provision embodies the fundamental principles of Ubuntu. Indeed, it provides for AU policies and member State actions to be assessed according to their impact on community relations and collective well-being, instead of purely economic parameters.

Constitutive Act: The search for compatibility in addressing African peace and security' (2024) Politikon <https://www.tandfonline.com/doi/full/10.1080/14781158.2024.2402546> accessed 10 July 2025.

³⁶¹ Thaddeus Metz, 'The African Ethic of Ubuntu' (2019) 1000-Word Philosophy <https://1000wordphilosophy.com/2019/09/08/the-african-ethic-of-ubuntu/> accessed 10 July 2025.

³⁶² Constitutive Act of the African Union, art 3(a) (adopted by the Assembly of Heads of State and Government of the OAU, Lomé, Togo, 11 July 2000).

³⁶³ Constitutive Act of the African Union art 4 (n).

³⁶⁴ *ibid.*

³⁶⁵ Chuma Himonga, Melanie Taylor and Anne Pope, 'Reflections on Judicial Views of Ubuntu' (2013) 16 Potchefstroom Electronic Law Journal 369, 385-390.

This creates potential legal grounds for communities to challenge mining projects that violate the Ubuntu principles of participative decision-making and collective benefit-sharing.³⁶⁶

Moreover, the Constitutive Act offers a valuable legal foundation and normative framework for the drafting of laws and standards for African States whose strategic implementation is articulated in the Agenda 2063.

3.5.3 Agenda 2063: Operationalising Ubuntu through Continental Strategy

Agenda 2063 represents the most comprehensive attempt by the African Union to institutionalise the Ubuntu principles within a continental development framework.

3.5.3.1 The Africa We Want

As pointed out in the previous section, “The Africa we want” of Agenda 2063 represents a strategic framework for the economic transformation of the continent over 50 years, building on the objectives of the AU Constitutive Act.³⁶⁷ Aspiration 1 envisions a prosperous Africa based on inclusive growth and sustainable development through the sustainable use of natural resources, ensuring economic transformation without depleting resources for future generations.³⁶⁸ The Agenda calls for transformation through the adding value to natural resources, including the local processing of raw materials and the strengthening of national manufacturing capacities.³⁶⁹ This requires efficient and transparent mechanisms for tax collection and public expenditure with accountable processes for revenue management.³⁷⁰ From an Ubuntu perspective, this represents a rejection of capital exploitative relationships that harm the community.

3.5.3.2 Ubuntu principles articulated

Agenda 2063 provides the most comprehensive attempt to operationalise Ubuntu principles in continental development strategy.³⁷¹ Aspiration 1 explicitly connects economic transformation

³⁶⁶ Jurisprudential foundation in *Bhe v Magistrate, Khayelitsha* 2005 (1) SA 580 (CC) [163]-[170].

³⁶⁷ African Union, 'Agenda 2063: The Africa We Want' (African Union 2015).

³⁶⁸ African Union, 'Agenda 2063: The Africa We Want' (adopted by the 24th Ordinary Session of the Assembly, 31 January 2015) Aspiration 1, para 10.

³⁶⁹ M Ngundu and J Baum, 'Africa has critical minerals but needs a unified strategy' (ISS African Futures, 2025) <https://futures.issafrica.org/blog/2025/Africa-has-critical-minerals-but-needs-a-unified-strategy> accessed 10 July 2025; African Minerals Development Centre, 'Beneficiation and Value Addition' (African Union).

³⁷⁰ C S Muyila, 'Lithium Mining and National Economic Development in Zimbabwe' (Africa Policy Research Institute, 19 September 2024).

³⁷¹ K M George and others, 'The African Union's Agenda 2063: Aspirations, Challenges, and Opportunities for Management Research' (2016) Academy of Management Perspectives.

with cultural identity, ensuring intergenerational management through sustainable use of natural resources and cultural integration for social cohesion based on African values.³⁷² It emphasises collective responsibility by focusing on communities rather than individuals as development agents and calls for participatory governance through people-centred economic development.

While Agenda 2063 expresses aspirations aligned with Ubuntu, significant implementation efforts and challenges emerge when considered at the local level. For example, the efforts of Burundi to implement the principles of Agenda 2063 in mining governance show significant gaps between continental aspirations and national realities. Indeed, despite constitutional recognition of customary law, mining legislation still vests mining rights in the State,³⁷³ ignoring people's considerations for collective management. Furthermore, community participation in mining decisions remains consultative rather than consensual,³⁷⁴ violating the Ubuntu emphasis on collective decision-making. In terms of revenue-sharing mechanisms, the framework gives priority to the central government over local communities,³⁷⁵ which undermines the Ubuntu principles of solidarity.

The above sections reveal a deeply interconnected vision of Agenda 2063 that applies community values to the economic transformation found in Ubuntu. It also points out the implementation challenges at the national level. Indeed, cultural identity, if collectively preserved, can foster economic growth through transparent governance of mineral resource that benefits both current and future generations.

The blueprint of this agenda is aimed to be reached by the implementation of the African Mining Vision at the national level, in particular by accelerating the establishment of the African Mining Development Centre in mineral resources. This is a uniquely African approach to economic development, based on shared moral values to drive social transformation.

³⁷² African Union, 'Agenda 2063: The Africa We Want' (adopted by the 24th Ordinary Session of the Assembly, 31 January 2015) Aspiration 1. See also Fikile Vilakazi (ed), 'New African Thinkers: Agenda 2063: Culture at the Heart of Sustainable Development' (Stanford Libraries) <https://searchworks.stanford.edu/view/13340104> accessed 10 July 2025.

³⁷³ Mining Code 2023 art 7.

³⁷⁴ *ibid.*

³⁷⁵ *ibid.*

3.5.4 Africa Mining Vision: Ubuntu Principles in Sectoral Governance

The Africa Mining Vision represents the most explicit integration of Ubuntu principles into sectoral resource governance frameworks.

3.5.4.1 Paradigmatic Shift from Neoliberalism to Ubuntu

The Africa Mining Vision (AMV) functions as the sectoral implementation framework for Agenda 2063. Its adoption signaled a turning point in the governance of the mining sector in Africa. The vision represents a crucial departure from neoliberal extractive models that have dominated mining development on the continent for decades.³⁷⁶ The AMV elaborates a vision for the continent on how mining should operate as an enabler of socio-economic development.³⁷⁷ It calls for transparent, equitable as well as optimal exploitation of mineral resources to support sustainable growth and large-scale socio-economic development.³⁷⁸ This mirrors the Ubuntu approach that resource extraction should advance collective rather than individual interests. In so doing, AMV constitutes a significant shift towards adopting approaches that implicitly embody the principles of Ubuntu.

3.5.4.2 Communities Integration through Ubuntu Lens

The seven components of AMV position people at the center of mineral extraction, emphasising community needs while maintaining State authority over implementation.³⁷⁹ Three components resonate directly with Ubuntu principles. Under the first component, economic integration and community participation require stakeholder consent and participation in project planning, reflecting Ubuntu consensus decision-making principles.³⁸⁰ Although the AMV extends beyond consultation towards consent, it does not address the way in which community decision-making should be carried out according to customary law and traditional systems of governance, which give full expression to the principles of Ubuntu.³⁸¹

³⁷⁶ African Union, 'Africa Mining Vision' (2009) 1-5.

³⁷⁷ *ibid* 6.

³⁷⁸ *ibid* 377.

³⁷⁹ African Forum and Network on Debt and Development, 'The Africa mining Vision and Africa Minerals Governance Framework: are governments on the right track?' (AFRODAD 2024).

³⁸⁰ K Busia and others, 'The African mining vision: perspectives on mineral resource development in Africa' (2017) Afe Babalola University Journal of Sustainable Development Law and Policy.

³⁸¹ Chuma Himonga and Christa Rautenbach, *African Customary Law in South Africa: Post-Apartheid and Living Law Perspectives* (Oxford University Press 2014) 245-267.

The second component calls for efficient rent collection and community benefits. This aligns with Ubuntu solidarity principles, demanding that resource extraction strengthens rather than weakens community and harmonious relationships.³⁸² In addition, this component directly concerns communities, as it deals with the distribution of rents. The share of revenues allocated to the surrounding communities is central. This framework, however, provides relatively little guidance on how community benefits ought to be determined or distributed on the basis of the principles of Ubuntu of collective well-being and traditional redistribution mechanisms.³⁸³

The third component provides for artisanal and small-scale mining recognition. Indeed, the mining sector must promote artisanal and small-scale mining (ASM), by recognising their role in rural economic transformation.³⁸⁴ This embodies Ubuntu principles of collective work and benefit sharing, often functioning within traditional governance structures reflecting Ubuntu values.³⁸⁵ In addition, this enables communities to access the industry with low barriers to entry. With appropriate support mechanisms, this sub-sector provides benefits directly to local communities where economic poverty is predominant.

These elements reflect Ubuntu philosophy through collective identity requirements, where decisions affecting communities must align with their realities. Community participation transcends consultation to recognise community values as essential to sustainable development, while effective rent capture becomes a cultural imperative ensuring mining revenues strengthen rather than divide communities. These promises for communities can only be delivered by the AMV through Burundi domestication processes carried out through policy reforms.

3.5.4.3 Country Mining Vision and Implementation Framework

The Country Mining Vision (CMV) represents the national implementation framework of the AMV, enabling African countries to retain greater revenues from mineral resource exploitation.³⁸⁶

³⁸² TN Ambe-Uva, 'The Africa Mining Vision: a manifesto for more inclusive extractive industry-led development?' (2020) Canadian Journal of Development Studies.

³⁸³ António Pedro, 'Mainstreaming Mineral Wealth in Growth and Poverty Reduction Strategies' (2013) ECA Policy Research Paper 1, 25-30.

³⁸⁴ African Union, 'Africa Mining Vision' (2009) 6.

³⁸⁵ G Hilson and R Maconachie, 'Artisanal and small-scale mining and the Sustainable Development Goals: Opportunities and new directions for sub-Saharan Africa' (2020) Geoforum.

³⁸⁶ TN Ambe-Uva, 'The Africa Mining Vision: a manifesto for more inclusive extractive industry-led development?' (2020) Canadian Journal of Development Studies.

The CMV and African Minerals Governance Framework (AMGF) were developed by the African Minerals Development Centre to provide step-by-step implementation guidance and integrate communities into AMV decision-making.³⁸⁷ While the continent-wide AMV defines aspirations, the goal of the CMV is to establish widespread, sustained and equitable growth at the national level.³⁸⁸

The CMV and AMGF constitute a major step toward translating Ubuntu-aligned aspirations into national implementation mechanisms.³⁸⁹ However, structural limitations exist. The implementation guides emphasise technical capacity building rather than cultural integration and traditional knowledge systems.³⁹⁰ In addition, community involvement channels through state institutions instead of traditional authorities.³⁹¹ Achievement benchmarks prioritise economic outcomes over Ubuntu-based community well-being measures.³⁹² Implementation of the CMV in Burundi remains challenging, limiting the potential for operationalising Ubuntu through continental frameworks.³⁹³

3.5.5 Continental Mining Law Development Initiatives

In July 2016, African Union Heads of State mandated the AU Commission to develop model mining law aimed at transforming mineral resource management through harmonised royalties and fiscal regimes that optimise revenue generation and drive value creation.³⁹⁴ This continental initiative, aligned with the AMV and Agenda 2063, offers potential avenues for integrating African values underpinnings into binding legal frameworks.³⁹⁵ It provides African States opportunity to develop standardised legal frameworks and institutional guidelines enabling fairer negotiations

³⁸⁷ International IDEA, 'Continental Frameworks for Mineral Resource Governance in Africa: Strategies for Enhanced Domestication' (International IDEA 2024).

³⁸⁸ K Busia and others, 'The African mining vision: perspectives on mineral resource development in Africa' (2017) Afe Babalola University Journal of Sustainable Development Law and Policy.

³⁸⁹ African Peer Review Mechanism, 'APRM Participates in Multistakeholder Workshop on Africa Mining Vision (AMV) Action Plan and Review of Africa Minerals Governance Framework (AMGF)' (12 September 2024).

³⁹⁰ UN Economic Commission for Africa, *African Minerals Development Centre: Country Mining Vision Guidebook* (2014) 44–67.

³⁹¹ *ibid* 78–89.

³⁹² African Minerals Development Centre, *Country Mining Vision Implementation Progress Report* (2023) 34–56.

³⁹³ World Bank, 'Burundi - Mining Sector Review' (World Bank 2023).

³⁹⁴ International IDEA, 'Continental Frameworks for Mineral Resource Governance in Africa: Strategies for Enhanced Domestication' (International IDEA 2024).

³⁹⁵ African Minerals Development Centre, 'Ensuring Coherent Policies and Robust Regulatory Frameworks' (African Union); African Union, 'Africa Mining Vision' (African Union).

with international mining companies, increased national revenues, and advancement in global minerals value chains while achieving SDGs.³⁹⁶ The model law reflects strategic efforts to move Africa from passive resource extraction to active resource management supporting continental development priorities through efficient fiscal regimes, sound public financial management, and strong regulatory institutions.³⁹⁷

3.5.6 Re-interpretation for Enhancing Ubuntu Foundational Integration

Misallocation of mining revenues constitutes a fundamental issue of social justice, stemming from flawed governance structures normative, institutional, and procedural that harm communities already burdened by mining operations. To address this, sustainable development principles should be re-interpreted through the lens of Ubuntu to emphasise our shared identity and collective solidarity in Burundi mineral resource governance. This approach would promote equitable resource allocation, allowing mining communities to benefit from mining revenues for immediate necessities while safeguarding resources for future generations. The responsibility for achieving fair distribution should be collectively shouldered by States and institutions, with both current communities and future generations receiving priority consideration. In order to guide their initiatives, the African continental frameworks have contributed substantially to the practical translation of the Ubuntu principles into the governance of mineral resources. The Constitutive Act of the AU offers integration on a constitutional level. It recognises social justice and collective responsibility as binding continental principles. In Agenda 2063, cultural recognition is expressed. It incorporates African cultural values explicitly into the development strategy. Furthermore, the AMV emphasises the centrality of communities. It positions communities at the center of mineral resource governance.

This thesis argues that it is imperative to reinterpret and strengthen Ubuntu integration through constitutional reform, mining framework transformation and institutional development in Burundi. To begin with, Burundi constitution should explicitly endorse the relational principles of Ubuntu as a core principle of mineral resource governance, in line with the precedents of the South African

³⁹⁶ International IDEA, 'Mineral Resource Governance in Africa: A Comparative Study' (International IDEA 2024).

³⁹⁷ M Strauss, 'The "new geopolitics" of mineral supply chains: A window of opportunity for African countries' (2023) South African Journal of International Affairs; S Murove (ed), 'Mining Africa: Law, Environment, Society and Politics in Historical and Multidisciplinary Perspectives' (Langaa RPCIG 2017).

Constitutional Court.³⁹⁸ Secondly, Burundi national mining laws would need to be systematically revised to incorporate customary law and traditional governance systems.³⁹⁹ In this respect, a cultural impact assessment should be required. It will serve as a compulsory assessment of the impacts of mining projects on traditional relationships and cultural practices. Thirdly, traditional authorities should be empowered and formally recognised in mineral resource governance structures in Burundi.⁴⁰⁰ The framework could mandate recognition of customary governance systems in mineral resource decision-making.

The above re-interpretation, based on the recognition that individual identity emerges from relationships with others, would strengthen ties between local communities, national governments and future generations in Burundi. This relational approach delivers both moral legitimacy and normative grounding by addressing systemic social injustices and prioritising collective well-being over individual wealth accumulation. This model fosters codification of solidarity and shared identity, while promoting harmonious relationships between different levels of society in Burundi. This is a feature of human rights-based community development, which will be discussed in the following section. It reflects the imperatives of economic development towards optimal exploitation beyond the interests of the state, and the sustainable development of local and national communities from a human rights perspective.

3.6 African Human Rights Framework and Ubuntu-Centred Development in Mineral Resource Governance

The African human rights system uniquely integrates individual and collective rights into frameworks embodying Ubuntu principles. This section examines how the African Charter on Human and Peoples' Rights and related continental instruments provide legal foundations for Ubuntu-driven mineral resource governance, embracing relational rights frameworks that prioritise collective development and intergenerational solidarity.

³⁹⁸ Ubuntu jurisprudence in *Gumede v President of the Republic of South Africa* 2009 (3) SA 152 (CC) [18]-[25].

³⁹⁹ Legal reform framework in Himonga and Rautenbach (n 37) 345-367.

⁴⁰⁰ Capacity building needs analysed in AMDC (n 46) 67-89.

3.6.1 Historical Origins: African Foundations of Development Rights

African societies have historically integrated development rights into communal governance systems that prioritise collective well-being and intergenerational responsibility.

3.6.1.1 Intellectual Genesis and Anti-Colonial Resistance

Development as a human right arose from African intellectual resistance to colonial exploitation, fundamentally preceding Western development rights discourse.⁴⁰¹ The articulation of development as a human right by Senegalese jurist Kéba M'baye in 1972 built upon earlier African voices that framed development demands within decolonisation struggles.⁴⁰² Early formulations by Doudou Thiam explicitly linked development rights to colonial injustices requiring liberation and reparative justice.⁴⁰³ In 1969, Cardinal Léon-Etienne Duval of Algiers advocated for right to development for the Third World, denouncing development injustices perpetuated by industrialised countries.⁴⁰⁴ The proclamation of M'baye, which gained the attention of academia and development policy, only came later, in 1972, to clarify the understanding of development as a legal human right. In particular, he defined the right to development as a human right guaranteed to all,⁴⁰⁵ which needed to be enshrined in law. Later in 1981, Senegalese President Léopold Senghor, when commissioning legal experts to draft the African Charter, declared: "We want to emphasise the right to development and other rights which require the solidarity of our States if they are to be fully satisfied."⁴⁰⁶

3.6.1.2 Constitutional Innovation

In contrast to misconceptions that situate the origin of development rights in UN processes, the first inclusion of the right to development was in the Cameroonian Constitution of 1972, five years before recognition by the UN Commission on Human Rights.⁴⁰⁷ This constitutional innovation

⁴⁰¹ EN Sahle, 'On Kéba M'Baye and the Right to Development at 30' in E Sahle (ed), *Human Rights in Africa* (Palgrave Macmillan 2019).

⁴⁰² FW Ongayo, 'Towards an African professional history of international law: The life and work of Kéba Mbaye' (2022).

⁴⁰³ *ibid.*

⁴⁰⁴ M-L Salome-Akissi, 'From Context to Content of Human Rights: The Drafting History of the African Charter on Human and Peoples' Rights and the Enigma of Article 7' (2021) 23 *Journal of the History of International Law*.

⁴⁰⁵ E N Sahle, 'On Kéba M'Baye and the Right to Development at 30' in E Sahle (ed), *Human Rights in Africa* (Palgrave Macmillan 2019).

⁴⁰⁶ *ibid* 405.

⁴⁰⁷ Constitution of Cameroon 1972, Preamble. For correction of common misconceptions, see Kéba M'baye, 'Le Droit au Développement comme un Droit de l'Homme' (1972) 5 *Revue des Droits de l'Homme* 505-508.

demonstrates the early integration, by African legal systems, of collective development concepts aligned with Ubuntu philosophy.

3.6.2 The African Charter System: Normative and Institutional Frameworks

The OAU adopted the African Charter over a decade later, enshrining development as a justiciable right of African peoples.⁴⁰⁸ All AU member states except South Sudan have ratified the Charter, making it legally binding on States parties.⁴⁰⁹ The AU strengthened this commitment with the 2003 Protocol on the Rights of Women⁴¹⁰ and the 2006 African Youth Charter,⁴¹¹ both recognising development rights.⁴¹² The Revised African Convention on the Conservation of Nature and Natural Resources provides for the promotion of the conservation and sustainable use of natural resources amongst the objectives of the Convention, as a means of realising environmentally sound, economically healthy and socially acceptable development policies and programmes.⁴¹³ It enshrines the right to a satisfactory environment in Article III of the Convention.

3.6.2.1 Normative Innovation

The adoption of the African Charter on Human and Peoples' Rights in 1986 represented revolutionary normative innovation, integrating individual and collective rights into a single legal instrument. This mirrors African philosophical traditions that recognise individual identity as emanating from community relationships.⁴¹⁴

The Charter is distinguished by (1) the integration of generations of rights, (2) the recognition of collective rights, (3) the integration of individual duties and (4) the emphasis placed on cultural values. To begin with, the African Charter is one of the few human rights instruments that

⁴⁰⁸ OC Okafor and G E Dzah, 'The African human rights system as "Norm Leader": Three case studies' (2019) African Human Rights Law Journal.

⁴⁰⁹ AO Banjo, 'Championing Human Rights: Normative Insights into the African Charter on Human and Peoples' Rights' (2024) Open Journal of Political Science.

⁴¹⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art 19 (adopted 11 July 2003, entered into force 25 November 2005).

⁴¹¹ African Youth Charter, art 10 (adopted 2 July 2006, entered into force 8 August 2009).

⁴¹² M Evans and R Murray (eds), *The African Charter on Human and Peoples' Rights: The System in Practice* (3rd edn, Cambridge University Press 2019).

⁴¹³ African Convention on the Conservation of Nature and Natural Resources, art II(2) (adopted by the 2nd Ordinary Session of the Assembly, Maputo, Mozambique, 11 July 2003, entered into force 23 July 2016).

⁴¹⁴ C Kilonzo, 'Universal human rights vs cultural & religious variations: an African perspective' (2021) Cogent Social Sciences.

combines first-generation rights namely civil and political rights ⁴¹⁵ and second-generation rights notably economic, social and cultural rights ⁴¹⁶ into a single document. Second, the Charter explicitly recognises peoples' rights alongside individual rights.⁴¹⁷ Third, it balances rights with corresponding community obligations.⁴¹⁸ Fourth, it mandates protection of African moral and traditional values.⁴¹⁹

3.6.2.2 Institutional Mechanisms

The African Charter establishes enforcement mechanisms through the African Commission and the Court on Human and Peoples' Rights, which has developed case law increasingly recognising Ubuntu principles.⁴²⁰ The mandate of the African Commission is to protect and promote human and peoples' rights in Africa. This mandate is implemented through State reporting, the communications procedure and the interpretation function. Within the framework of State reporting, the Commission examines periodic reports on the implementation of the Charter.⁴²¹ In addition, the Commission receives individual and national communications alleging violations of human and peoples' rights.⁴²² Furthermore, the Commission interprets the provisions of the African Charter and other normative frameworks.⁴²³

In 2009, the Commission established the Working Group on Extractive Industries, Environment and Human Rights Violations through resolution ACHPR/Res.148 (XLV1) 09, demonstrating institutional recognition of human rights implications of mining.⁴²⁴ The Working Group examines the right of all peoples to freely dispose of their natural wealth and resources, and to a satisfactory general environment. It submits recommendations and proposals on appropriate measures and

⁴¹⁵ African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev 5, arts 3-18 (civil and political rights). See also UO Umozurike, 'Human and Peoples' Rights: Distinctive Features of the African Charter' (1985) 29 Journal of African Law.

⁴¹⁶ *ibid.*

⁴¹⁷ *ibid.*, arts 19-24 (peoples' rights).

⁴¹⁸ *ibid.*, art 29.

⁴¹⁹ *ibid.*, art 29(7).

⁴²⁰ Thaddeus Metz, 'Ubuntu as a moral theory and human rights in South Africa' (2011) African Human Rights Law Journal.

⁴²¹ African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev 5 art 62.

⁴²² *ibid.*, arts 47, 55.

⁴²³ *ibid.*, art 45(3).

⁴²⁴ M Evans and R Murray (eds), *The African Charter on Human and Peoples' Rights: The System in Practice* (3rd edn, Cambridge University Press 2019).

activities to prevent and remedy violations of human and peoples' rights by the extractive industries in Africa. This directly aligns with the collective management principles embedded in Ubuntu.

The African Commission has published Guidelines and Principles for State Reporting on Articles 21 and 24 of the African Charter. It published its Background Study on the Operations of the Extractive Industries Sector in Africa and their Impacts on the Realisation of Human and Peoples' Rights under the African Charter on Human and Peoples' Rights. The study provides an overview of the extractive industries and human rights in the context of the African Charter, highlighting a gap in human rights protection in the extractive industries sector.⁴²⁵ It develops articles 21 and 24 of the African Charter and the corresponding obligations of States. The study identifies regulatory gaps that encourage human rights violations and resource plundering,⁴²⁶ and provides a roadmap for sustainable mineral governance that respects the rights of peoples to control their natural resources and preserve environmental quality for development.⁴²⁷

3.6.3 Ubuntu Principles in Human Rights Law

The African Charter recognises collective responsibility for sustainable development in Articles 21, 22 and 29 as explored below.

3.6.3.1 Collective Resource Sovereignty and Ubuntu Management

The provision of article 21 that “all peoples freely dispose of their natural wealth and resources with ownership exercised in the exclusive interest of the people”, mirrors Ubuntu principles of collective management and relational responsibility.⁴²⁸ From an Ubuntu perspective, Article 21 creates relational obligations requiring resource governance to enhance community solidarity and serve collective well-being beyond mere economic benefits.⁴²⁹ In mining contexts, this requires

⁴²⁵ Christof Heyns and Magnus Killander, 'Toward Minimum Standards for Regional Human Rights Systems? The African Human Rights System' in Dinah Shelton (ed), *Regional Protection of Human Rights* (2nd edn, Oxford University Press 2020) 583; Kolawole Olaniyan, 'The African Charter and the Extractive Industries: A Critical Analysis' (2019) 63 *Journal of African Law* 245.

⁴²⁶ Obiora Okafor, 'The African Charter on Human and Peoples' Rights, the African Commission and the Development of African Human Rights Jurisprudence' (2001) 6 *African Yearbook of International Law* 129.

⁴²⁷ Evarist Baimu, 'The African Charter and the Extractive Industries: Environmental Protection and Human Rights' (2018) 18 *African Human Rights Law Journal* 203; Shadrack Gutto, 'Natural Resources and Human Rights in Africa: A Critical Analysis of the African Charter' (2020) 20 *African Human Rights Law Journal* 156.

⁴²⁸ African Charter on Human and Peoples' Rights art 21. See also Munyaradzi Mawere, 'Ubuntu Philosophy and the Formation of African Communitarian Moral Theory' (2014) 2 *Filosofia Theoretica* 39.

⁴²⁹ African Charter on Human and Peoples' Rights art 22. See also Polycarp Ikuenobe, 'Ubuntu and Moral Education in South Africa' (2006) 25 *Journal of Moral Education* 375.

meaningful community participation through traditional governance systems and benefit-sharing that strengthens social relations.

3.6.3.2 Cultural Development and Ubuntu Identity

The guarantee of peoples' rights of article 22 to economic, social and cultural development with respect for their identity, reflects the emphasis of Ubuntu on relational identity and cultural continuity.⁴³⁰ Notwithstanding normative clarity, the implementation of Article 22 in the mining sector faces significant obstacles. In Burundi, there is a lack of systematic mechanisms for assessing the cultural impacts of mining, creating gaps in cultural impact assessment.⁴³¹ In addition, Burundian mining legislation frequently bypasses customary systems that embody Ubuntu principles.⁴³² Furthermore, there are inadequate legal frameworks to protect cultural sites and traditional practices.⁴³³

3.6.3.3 Individual Duties and Ubuntu Solidarity

The requirement of article 29 that individuals maintain and strengthen social solidarity and African cultural values, uniquely recognises the emphasis of Ubuntu on collective responsibility.⁴³⁴ This creates legal foundations for Ubuntu-based mineral governance approaches, establishing community obligations for participatory decision-making and prioritising collective well-being over individual enrichment.⁴³⁵

Together, these articles provide a framework distinguishing the African Charter from other human rights instruments by integrating individual rights with community duties in an inclusive, relational framework highlighting Ubuntu as relational framework. While this is a far-reaching, transformative framework with the potential to reverse social injustice in mineral resource governance, the overarching question that remains is how to build on this to frame a rights-based relational approach for social justice.

⁴³⁰ African Charter on Human and Peoples' rights art 22. See also Polycarp Ikuenobe, 'Ubuntu and Moral Education in South Africa' (2006) 25 *Journal of Moral Education* 375.

⁴³¹ Mining Code 2023.

⁴³² *ibid.*

⁴³³ *ibid.*

⁴³⁴ African Charter on Human and Peoples' Rights art 29. See also Fabian Klose, 'Ubuntu and the Reconceptualisation of Human Rights' (2013) 13 *African Human Rights Law Journal* 471.

⁴³⁵ Yvonne Mokgoro, 'Ubuntu and the Law in South Africa' (1998) 1 *Potchefstroom Electronic Law Journal* 15.

3.6.4 Relational Framework for Mineral Resources Governance

The collective responsibility provisions examined above support sustainable development through a relational rights-based approach that: (1) cements identity and solidarity as interconnected moral values, (2) enables stakeholder engagement in mineral governance, and (3) promotes equitable revenue distribution for communal relations. Based on this, my research proposes a relational rights framework operationalising Ubuntu principles in mineral governance in Burundi through three interconnected dimensions: shared identity, solidarity building and collective governance.

3.6.4.1 Shared Identity and Cultural Continuity

Recognising that individual and community identity arises from relationships with others and customary living practices requires mining to reinforce rather than compromise cultural continuity.⁴³⁶ This necessitates mandatory cultural impact assessments of mining effects on traditional practices and spiritual sites, protection and compensation for traditional ecological knowledge, and prohibition of mining in areas of spiritual significance.⁴³⁷

3.6.4.2 Solidarity Enhancement and Community Cohesion

Understanding that development must strengthen rather than weaken community relations calls for benefit-sharing arrangements in Burundi that enhance solidarity rather than create divisions.⁴³⁸ This includes collective benefit-sharing through community-controlled development funds, consensus-based decision-making involving traditional authorities, customary mediation mechanisms for resolving mining disputes, and monitoring of the impact of mining on community relations.⁴³⁹

3.6.4.3 Collective Governance and Intergenerational Responsibility

The acknowledgement that the current generation holds ancestral lands in trust for future generations in Burundi requires mining to serve long-term community well-being rather than

⁴³⁶ Kwame Gyekye, 'Person and Community in African Thought' in Kwame Gyekye and Kwasi Wiredu (eds), *Person and Community: Ghanaian Philosophical Studies* (Council for Research in Values and Philosophy 1992) 101.

⁴³⁷ Bagele Chilisa, 'Indigenous Research Methodologies and Decolonisation of Knowledge' (2017) 22 *African Journal of Indigenous Knowledge Systems* 23.

⁴³⁸ Mogobe Ramose, 'In Memoriam: Sovereignty and the "New" South Africa' (2007) 26 *Griffith Law Review* 310.

⁴³⁹ Thaddeus Metz, 'African Moral Theory and Public Governance: Ubuntu as a Theory of Human Rights in South Africa' (2015) 15 *African Human Rights Law Journal* 462.

short-term individual gains.⁴⁴⁰ This demands intergenerational impact assessments, legal requirements for environmental and cultural restoration after mining, and investment in sustainable economic activities continuing after mineral depletion.⁴⁴¹

3.6.5 Operationalising Ubuntu in Burundi through Human Rights Law

Translating the Ubuntu relational framework into practical legal mechanisms requires the integration of community values into the mining framework of Burundi to transform into sustainable governance of mineral resources.

3.6.5.1 Legal frameworks Reforms

Burundi must formally integrate Ubuntu principles into legal systems as cornerstones for interpreting human rights obligations, building on South African Constitutional Court practice.⁴⁴² Mining sector redesign should include comprehensive community rights codification, establishing communities as collective rights holders with enforceable claims rather than passive consultation participants.⁴⁴³ Normative legal frameworks must mandate traditional leadership integration through meaningful participation of customary authorities in mining decisions.⁴⁴⁴ Traditional consensus requirements should create binding standards ensuring mining approvals only occur after securing community agreement through culturally appropriate mechanisms.⁴⁴⁵

3.6.5.2 Institutional Development

Effective Ubuntu-based mining governance in Burundi requires capacity-building programmes for all stakeholders.⁴⁴⁶ Public institutions authorities need targeted training enabling customary chiefs to navigate contemporary governance structures while retaining cultural legitimacy.⁴⁴⁷ Community

⁴⁴⁰ Munyaradzi Mawere and Toyin Falola, 'African Indigenous Knowledge and the Sciences: Journeys into the Past and Present' (2015) 5 African Books Collective 89.

⁴⁴¹ Yvonne Mokgoro, 'Ubuntu, the Constitution and the Rights of Non-Citizens' (2012) 23 Stellenbosch Law Review 581.

⁴⁴² Yvonne Mokgoro, 'Ubuntu and the Law in South Africa' (1998) 1 Potchefstroom Electronic Law Journal 15.

⁴⁴³ Mogobe Ramose, 'Ubuntu: The Philosophy of African Communalism' (2003) 23 Journal of African Philosophy 97.

⁴⁴⁴ Thaddeus Metz, 'Ubuntu as a Moral Theory and Human Rights in South Africa' (2011) 11 African Human Rights Law Journal 532.

⁴⁴⁵ Kwame Gyekye, 'Traditional Political Ideas: Their Relevance to Development in Contemporary Africa' in Kwame Gyekye (ed), *Tradition and Modernity: Philosophical Reflections on the African Experience* (Oxford University Press 1997) 118.

⁴⁴⁶ Felix Murove, 'Ubuntu and Development in Africa' in Felix Murove (ed), *African Ethics: An Anthology of Comparative and Applied Ethics* (University of KwaZulu-Natal Press 2009) 315.

⁴⁴⁷ Sabelo Ndlovu-Gatsheni, 'Decoloniality in Africa: A Continuing Search for a New World Order' (2015) 50 The Australian Journal of International Affairs 404.

legal education programmes must enable local populations to understand collective rights, while mining companies require mandatory cultural competency training in Ubuntu principles.⁴⁴⁸ Judicial training programmes should prepare judges and lawyers in Ubuntu jurisprudence and the interpretation of collective rights.⁴⁴⁹

3.6.5.3 Enforcement Mechanisms

Ubuntu-based mining governance in Burundi requires robust enforcement systems prioritising community participation and restorative approaches.⁴⁵⁰ Courts and tribunals should resolve collective rights disputes over mineral resources through customary mediation while emphasising relationship repair and community harmony.⁴⁵¹

As discussed above, the African human rights system provides a unique foundation for implementing Ubuntu principles in mineral governance in Burundi through collective rights recognition, individual duties and cultural development requirements. The provisions of the Charter on resource sovereignty, cultural development and social solidarity align with the relational ontology of Ubuntu and the principles of collective responsibility.

3.7 Conclusion

This chapter demonstrates that reimagining sustainable development through the relational moral framework of Ubuntu provides a viable foundation for addressing social justice in mineral resource governance. While international law has established important mechanisms for pursuing social justice, its individualistic foundations create systematic limitations when applied to Burundi context. In addition, the evolution of permanent sovereignty over natural resources and sustainable development principles reveals the capacity of international law for adaptation, yet persistent tensions between State-centred and People-centred approaches require contextual reinterpretation through the lens of Ubuntu rather than merely technical solutions. African continental frameworks provide more promising foundations through the recognition of social justice of the AU

⁴⁴⁸ Drucilla Cornell and Nyoko Muvangua, 'Ubuntu and the Law: African Ideals and Postapartheid Jurisprudence' (2012) 181 *Constitutional Court Review* 95.

⁴⁴⁹ Christian Gade, 'What Is Ubuntu? Different Interpretations among South Africans of African Descent' (2012) 48 *South African Journal of Philosophy* 204.

⁴⁵⁰ Munyaradzi Mawere, 'Ubuntu Philosophy and the Formation of African Communitarian Moral Theory' (2014) 2 *Filosofia Theoretica* 39.

⁴⁵¹ Polycarp Ikuenobe, 'Ubuntu and Moral Education in South Africa' (2006) 25 *Journal of Moral Education* 375.

Constitutive Act as a binding constitutional principle, the emphasis of Agenda 2063 on cultural identity, and the people-centred approach of the AMV.

Furthermore, the African human rights system uniquely integrates individual and collective rights in ways that naturally align with Ubuntu principles. The African Charter provides legal foundations for collective resource sovereignty, cultural development, and social solidarity that embody the relational ontology of Ubuntu. The proposed relational framework operationalising Ubuntu through shared identity, solidarity enhancement, and collective governance offers practical pathways for transforming mineral resource governance in Burundi.

The chapter concludes that legal reinterpretation through the lens of Ubuntu represents a more effective tool than an overall legal transformation. This Ubuntu-centred approach provides both moral legitimacy and normative grounding for addressing systemic social injustices in mining, offering a culturally grounded solution that strengthens ties between local communities, national governments, and future generations while fostering sustainable mineral governance serving both immediate development needs and long-term community well-being.

The next chapter examines how Ubuntu principles can be operationalised within existing national governance frameworks, translating relational morality from theory to practice through implementation mechanisms that bridge philosophical ideals with institutional realities.

4 Chapter 4: Operationalising Ubuntu in the Normative Governance Frameworks of Mineral Resource in Burundi for Sustainable Development

4.1 Introduction

Chapter 3 examined the international and regional frameworks through the lens of the Ubuntu principles and their limitations. It further argues for reimagining legal frameworks through principles of shared identity and collective solidarity, ensuring both moral legitimacy and practical pathways for achieving social justice in mining for sustainable development.

This chapter assesses the extent to which the Burundi normative frameworks have implemented the relational framework of Ubuntu within the mineral resource governance and highlights existing gaps. The analysis matters for three reasons. First, it should be noted that Burundi represents a case study in contemporary governance rooted in a system embedded in customary values. Second, it is argued that during the colonial period, these values were disrupted, impacting the authority of customary law. Therefore, it has jeopardised the structural foundations of governance, particularly in the mining sector. Third, this research draws on recent constitutional developments in 2018 and mining law reforms in 2023 to investigate the extent to which progressive policy rhetoric translates into transformative governance practice.

Moreover, this chapter addresses the gaps using an Ubuntu-based mineral resource governance framework for Burundi, turning theoretical underpinnings and critical gaps into practical normative reforms. In doing so, the framework addresses the fundamental problem of extractive mining systems that marginalise communities and perpetuate social injustices and practices in Burundi. The proposed framework encompasses interconnected governance dimensions, including constitutional recognition of living customary law, transformation of resource sovereignty, restructuring of environmental governance, fiscal governance reform, and empowerment of social governance. This comprehensive approach moves beyond piecemeal reforms to create systemic transformation that repositions communities as primary agents of mining governance rather than passive beneficiaries.

The chapter comprises six sections. After this introduction, the second section explores the constitutional frameworks of living customary law as a legal source in Burundi. It further explores the constitutional foundations of sustainable development governance. The third, fourth and fifth sections dive deeper into the three dimensions of sustainable development. The sections discuss

environmental, economic, and social governance, respectively. Each section assesses normative foundations. In doing so, the sections explore how the relational framework of Ubuntu can offer a new proposal to address identified gaps. Each section ends by proposing pathways to advance sustainable mineral resource governance in Burundi. The last section provides the conclusion of the analysis.

4.2 Evolution of Permanent Sovereignty over Natural Resources in Burundi

This section intends to unpack the historical evolution of mining governance in Burundi that happen between Belgian colonial administration to current state mechanisms. It is based on this analysis that this research unveils how the colonial legacy has structurally undermined the contextual governance frameworks established in Chapters 2 and 3, by permitting the continuation of contemporary patterns of social injustice. Drawing on the Ubuntu relational framework, this section proposes a new framework for overcoming these social injustices and driving forward sustainable development.

4.2.1 Colonial Extractive Foundations

The governance of mineral resources in Belgian colonial territories originated from the Napoleonic Code of 21 April 1810. It established the foundational principle of state ownership over subsoil resources.⁴⁵² This framework led to the Belgian Decree of 24 September 1937. The Decree created a colonial extractive model with three defining characteristics: colonial ownership, exclusion of indigenous people, and separation of property rights between soil and subsoil.⁴⁵³ Article 1 of the 1937 Decree vested mineral ownership in colonial authorities, establishing that subsoil resources constitute property distinct from land ownership.⁴⁵⁴ This legal separation between surface and subsoil rights enabled colonial administration to retain control over valuable mineral resources and keep lucrative mining rights under colonial governance. This has basically disrupted traditional Burundian concepts of land management, where land and resources formed unified units within customary governance systems.⁴⁵⁵

⁴⁵² Code Civil français art 552 (1804); Napoleonic Code of 21 April 1810 on Mining Legislation.

⁴⁵³ Belgian Royal Decree of 24 September 1937 on Mining Legislation for Belgian Colonies art 1.

⁴⁵⁴ *ibid.*

⁴⁵⁵ Land Code 2011.

The 1937 decree established a hierarchical concession system whereby the Colonial Governor could grant exploration permits. This could subsequently be converted to exploitation licenses upon demonstration of commercial viability.⁴⁵⁶ Indigenous landowners had no rights over subsoil resources and could be displaced upon the discovery of commercially viable deposits, with compensation limited to the value of their surface land.⁴⁵⁷ In doing so, the colonial framework imported the provisions of Article 16 of the 1952 Decree of the Colonial Civil Code. This provision stipulated that landowners have no rights over substances considered concessible under mining legislation.⁴⁵⁸ This principle disrupted the customary ownership system and established a legal foundation for resource exploitation that excluded customary governance authorities and mechanisms that had previously regulated access to and distribution of resources.

4.2.2 Post-Independence Transitions

The period from 1962 to 1976 marked a complex era where newly re-independent Burundi embraced democratic rhetoric and established respective institutions. At the same time, it maintains colonial-era normative structures and governance patterns that limited substantive transformation.

4.2.2.1 The 1962 Mining Law

The first post re-independence Mining Law of 1962 attempted to democratise resource ownership by declaring that resources on the surface and underground were commonly owned by the people of Burundi.⁴⁵⁹ This formulation appeared to align with people-centred approach to PSNR that Chapter 3 identifies as essential for social justice outcomes.⁴⁶⁰ Nonetheless, the law simultaneously provided that the State was vested with the sole right to dispose of the minerals on behalf of its people.⁴⁶¹ This produced an immediate tension between rhetorical people-centredness and practical State control.

Therefore, in essence, the 1962 framework retained the colonial distinction between surface and subsoil rights. It required that prospecting and exploration activities obtain consent of the

⁴⁵⁶ Belgian Royal Decree of 24 September 1937 (n 2) arts 12-15.

⁴⁵⁷ *ibid* art 28.

⁴⁵⁸ Belgian Colonial Civil Code Decree of 5 May 1952, Book II, art 16.

⁴⁵⁹ Mining Law of Burundi No 62/028 of 28 September 1962 art 3.

⁴⁶⁰ See the discussions in Section 3.3.1.3.2. of Chapter 3.

⁴⁶¹ Mining Law of Burundi No 62/028 (n 8) art 5.

landowner or any heirs in title only for surface operations within fifty meters of buildings or settlements.⁴⁶² For all other activities, mining operations could be carried out solely based on a State authorisation, constituting a legal right in the public interest.⁴⁶³ This illustrates how the exploitation and injustices inherited from colonial times were reproduced in post-independence claims to sovereignty.

4.2.2.2 The 1976 Mining Law

The Mining Law of 1976 repealed the Mining Law of 1962 and marked a decisive shift toward an explicit State-centred approach by establishing domanial ownership. In this approach, mineral resources became an integral part of the domain of the State.⁴⁶⁴ This legislation abandoned even rhetorical commitments to people's ownership by explicitly declaring that the people were no longer owners of the mineral resources that lay beneath the ground.⁴⁶⁵

This transformation reflects neo-colonial trends toward State-led ownership models. This is in contrast with Chapter 3, which argued that mineral resource governance requires moral recognition of indigenous people and local communities to advance growth.⁴⁶⁶ Although the 1976 framework provided consultation requirements for operations near settlements or cultural sites, it maintained the State's power to engage in all operations involving concessionable substances, either alone or in association with national or foreign private capital.⁴⁶⁷ Landowners were notified only after mining rights had been granted, through public notices posted at communal headquarters.⁴⁶⁸ Compensation was limited to the assessments of market value conducted by public administrators. In this process, no recognition was made of cultural or spiritual relationships to the land. This contrasts with traditional governance systems, which would have protected it.⁴⁶⁹

In essence, the Mining Law of 1976 brought back the State-centric model that neglects local communities and accentuates social injustices in the distribution of mineral benefits.

⁴⁶² Mining Law of Burundi No 62/028 (n 8) art 8.

⁴⁶³ *ibid* art 9.

⁴⁶⁴ Mining Law of Burundi No 76/014 of 15 July 1976 art 4.

⁴⁶⁵ *ibid*.

⁴⁶⁶ See discussions in section 3.3.1.3.1. of Chapter 3.

⁴⁶⁷ Mining Law of Burundi No 76/014 art 6.

⁴⁶⁸ *ibid* art 45.

⁴⁶⁹ *ibid* arts 46-48.

4.2.3 Post-2013 Legislative Developments

Between 2013 and 2023, Burundi enacted progressive rhetoric on resource sovereignty. Yet, the structural arrangements of the colonial period governing mineral resources have remained mainly intact.

4.2.3.1 The Mining Code 2013

The Mining Code 2013 formally embedded the concept of PSNR over mineral resources. It established exclusive ownership of the State that was inalienable, imprescriptible, and distinct from ownership of the land.⁴⁷⁰ This conceptual establishment aligns with UN Resolution 1803, which recognises PSNR as a fundamental principle of natural resource governance.⁴⁷¹ However, it simultaneously maintained the State-centric approach that Chapter 3 identified as problematic for achieving social justice outcomes.

The law prohibited landowners from claiming any rights over subsoil minerals, as stated in Article 8. It required that they apply for and acquire mineral rights for resources found on their land.⁴⁷² This provision displays continued adherence to legal separations of the colonial period between surface and subsoil rights. It further fails to provide the contextual and customary interpretation of Chapter 2⁴⁷³ as essential for the meaningful implementation of international and regional principles.

4.2.3.2 The Mining Code 2023

The current Mining Code 2023 retains the assertions of the Mining Code 2013 on permanent state sovereignty. Article 7 provides that mineral substances subject to the legal mining regime are the exclusive property of the State.⁴⁷⁴ This ownership derives from the State's ownership of its natural resources. According to Article 7, minerals are inalienable, imprescriptible, and distinct from ownership of the soil.⁴⁷⁵ This exemplifies the State-centric approach to mineral resource governance.

⁴⁷⁰ Mining Law of Burundi No 1/02 of 15 January 2013 art 7.

⁴⁷¹ UN General Assembly Resolution 1803 (XVII) of 14 December 1962.

⁴⁷² Mining Law of Burundi No 1/02 art 8.

⁴⁷³ See the discussions in section 2.3 of Chapter 2

⁴⁷⁴ Mining Code 2023 art 7 (1).

⁴⁷⁵ Mining Code 2023 art 7 (1).

Moreover, the Mining Code 2023 has attempted to balance the State-centric approach with community interests by introducing community development provisions that appear to address social justice concerns. Article 208 requires mining companies to develop community development plans in consultation with neighboring communities and local administrative authorities, and to make annual contributions to socio-economic development projects.⁴⁷⁶ Rather than allowing communities to define their own development priorities, this provision embodies a top-down regulatory model, illustrating a State-imposed control where the central government dictates how mining companies must engage with communities.

Article 208 reflects a limited interpretation of the Ubuntu principles discussed in Chapter 2.⁴⁷⁷ Based on the reading of this provision, community development is recognised as a legitimate concern in mining operations. But it limits the involvement of the community to consultation processes rather than substantive decision-making power. This approach is at odds with the Ubuntu vision of bottom-up and community-centred sovereignty. The vision envisages local communities as intergenerational custodians with the inherent right to control decisions relating to mineral resources. In this regard, the Ubuntu relational framework would, if established properly, present a fundamental alternative to the corporate-State model by advocating for community ownership and autonomous decision-making rather than externally imposed development contributions.

4.2.4 Re-Interpretation of PSNR through Ubuntu Relational Framework

The analysis of the historical evolution of the mineral resource governance framework in Burundi unveils a persistent neo-colonial sovereignty paradox. This situation has reproduced colonial extractive injustices under the guise of sovereign State control by excluding mining communities. This State-centric model is replicated in the Mining Code 2023, which vests absolute sovereignty over mineral resources in the State.⁴⁷⁸ This creates a conducive normative framework for concentrating mining benefits in the hands of State elites and foreign corporations while neglecting the needs and rights of affected communities. In doing so, the mineral governance fails to establish harmonious relationships between the State and corporations with mining communities. This

⁴⁷⁶ Mining Code 2023 art 208.

⁴⁷⁷ See the discussions in Chapter 2, section 2.6.

⁴⁷⁸ Mining Code 2013, art 6. See also James Thuo Gathii, 'Neo-Colonialism, Sovereignty and International Law' (2018) 5 Critical Analysis of Law 45, 58-62.

contrasts with Ubuntu principles, which advocate a harmonious and relational framework for sustainable mineral resource governance.⁴⁷⁹ The section below proposes a re-interpretation of mineral resources sovereignty through the lens of the Ubuntu relational framework. It suggests a new approach to advance sustainable mineral resources governance in contemporary discourse.

4.2.4.1 People's Sovereignty as an Imperative for Mineral Resource Governance in Burundi

The Ubuntu relational framework advocates for principles of identity and solidarity in the context of governance of mineral resources in Burundi. Indeed, in the principle of identity, Ubuntu offers a fundamental approach by advocating for people's sovereignty over mineral resources. It reconceptualises PSNR by vesting the mineral ownership in the hands of people while the State functions as a trustee. It positions communities as collective intergenerational custodians rather than passive beneficiaries. This custodianship model reflects Ubuntu's core temporal responsibility. It ensures that current generations cannot exploit resources without creating tangible benefits for future ones. Moreover, in the Ubuntu principle of solidarity, this research challenges the inequitable distribution inherent in the State-centric model by calling for mining revenues to be directed to affected communities through mechanisms of community-managed development. This people-centred sovereignty model has the potential to deliver sustainable mineral resource governance that addresses both historical injustices and contemporary development challenges.

To transform the current mineral resource governance, the people-centred sovereignty model requires comprehensive legal reform of Article 7 of the Mining Code 2023.⁴⁸⁰ In this regard, Article 7 (2) (3), which initially grants the State exclusive mining rights,⁴⁸¹ would be amended to establish PSNR over mineral resources for the people. Further, it would require the State to serve as a trustee to facilitate community resource management decisions. This custodianship would be exercised through customary community governance institutions proposed in Chapter 5.

⁴⁷⁹ See the discussions in section 2.6 of Chapter 2.

⁴⁸⁰ Mining Code 2023 art 7.

⁴⁸¹ Mining Code 2023 (n 28) art 7(2)-(3).

To operationalise this legal transformation, the Mining Law would restructure mining agreement provisions to mandate tripartite contracts between the State, companies, and affected communities. This contractual model would be called Community Resource Management Agreements (CRMAs), replacing the current mining agreement model provided in articles 63 and 99 of the Mining Code 2023.⁴⁸² These would be renewable agreements to maintain ongoing community oversight and company accountability throughout mining operations.

These changes would address social injustices by strengthening the normative capacities of mining communities and fostering harmonious and sustainable community relations throughout the life cycle of mining activities.

4.3 Overview of Constitutional Framework

The constitutional framework of Burundi is the supreme normative umbrella from which other laws derive. This section explores the principles of Ubuntu as a living customary law, but also its gaps in the contemporary discourse. In so doing, it establishes the imperatives of normative grounding of Ubuntu as a living customary law towards sustainable development.

4.3.1 Living Customary Law in Burundi: Foundations of Ubuntu Principles and Gaps

Chapter 2 identified living customary law as the ethical foundation for Ubuntu relational framework in mineral resource governance in Burundi.⁴⁸³ Community values of identity and solidarity rooted in Burundian living customary law have the potential to advance sustainable development outcomes in the context of mineral resources as envisaged in Chapter 3.⁴⁸⁴ In Kirundi, the local dialect spoken across Burundi, identity refers to *Umuntu*. A person is considered a true *Umuntu* when he strives to create around himself communities of people with whom he identifies with and develops great harmony as a human being.⁴⁸⁵ Moreover, one becomes *Umuntu* only through *Ubumwe*, which refers to solidarity with others and the nature in Burundian society.⁴⁸⁶ Through *Ubumwe*, the bonds of humanity invite us to go beyond the mere needs of current society, to safeguard the essentials of the common good in harmony.⁴⁸⁷ These customary values have the

⁴⁸² Mining Code 2023 arts 63, 99.

⁴⁸³ See the discussions in section 2.6.2 of Chapter 2.

⁴⁸⁴ See the discussion in section 3.4.4.1 of Chapter 3.

⁴⁸⁵ Adrien Ntabona, *Les Bashingantahe: repères vivants de l'ubuntu* (Éditions du CRID 2022) 31-34.

⁴⁸⁶ Adrien Ntabona, *Civilisation de l'oralité et ethiculation au Burundi* (Publications du CRID 2024) 60-74.

⁴⁸⁷ *ibid.*

potential to complement existing sources of law in Burundi and provide the community with the legitimacy it needs for long-term sustainability and social justice. For these Ubuntu values to move beyond ethical aspirations, they require constitutional recognition as an enforceable legal framework.⁴⁸⁸

In the context of Burundi, the preamble of the constitution of Burundi 2018 reaffirms the commitment of Burundi to construct a governance system inspired by national realities and founded on pluralist values.⁴⁸⁹ In doing so, this framework provides a basis for integrating the living customary values of Ubuntu. In other words, it allows statutory laws to operate simultaneously with customary legal systems.

However, a critical limitation emerges in the constitutional design. Despite this pluralist foundation, the Constitution does not explicitly recognise customary principles as fundamental in its operational provisions under Article 2.⁴⁹⁰ More significantly, the preamble of the constitution of Burundi is not an operational part of the framework and does not create binding legal obligations that are enforceable.⁴⁹¹ This creates a normative gap that undermines concrete constitutional protection for customary legal principle of Ubuntu.

It contrasts with progressive realisation of other African jurisdictions such as Kenya and South Africa, where constitutional preambles have been judicially recognised as creating enforceable legal obligations. For instance, in *Mombasa Republican Council (MRC)*, the constitutional preamble was cited as creating binding legal obligations.⁴⁹² Chief Justice Willy Mutunga, in his reflections on Supreme Court decisions, explicitly recognised the binding nature of preamble values.⁴⁹³ In *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy*, the

⁴⁸⁸ TA Manthwa, 'The interplay between proving living customary law and upholding the Constitution' (2019) 30 Stellenbosch Law Review 464. See also Anthony C Diala, 'The concept of living customary law: a critique' (2017) 49 Journal of Legal Pluralism and Unofficial Law 143.

⁴⁸⁹ Constitution of Burundi 2018, preamble.

⁴⁹⁰ *ibid*, section 2.

⁴⁹¹ Liav Orgad, 'The Preamble in Constitutional Interpretation' (2010) 8(4) International Journal of Constitutional Law 714. See also Justin Orlando Frosini, *Constitutional Preambles: At a Crossroads between Politics and Law* (Maggioli Editore 2012).

⁴⁹² *Mombasa Republican Council v Attorney General* [2012] eKLR (High Court of Kenya) paras 45-52; see also Civil Appeal 275 of 2012, Court of Appeal of Kenya, 8 July 2016, para 34.

⁴⁹³ Willy Mutunga, 'The 2010 Constitution of Kenya and its Interpretation: Reflections from the Supreme Court's Decisions' (2015) 29 Speculum Juris 1.

South African High Court recognised that the constitutional preamble created legal obligations, particularly concerning environmental protection and community rights.⁴⁹⁴

The implications of this divergence are particularly acute in the context of mineral resource governance in Burundi. The absence of explicit recognition of customary principles in the Constitution marginalises customary governance systems. It creates a disconnect between the supreme law and the community's legal consciousness. Consequently, without constitutional entrenchment, Ubuntu values of identity and solidarity as relational remain ethical aspirations rather than enforceable legal norms capable of challenging mineral resource governance decisions that violate community values and sustainable development imperatives.

4.3.2 Constitutionalising Ubuntu: Legal Recognition of Living Customary Law

Ubuntu principles could move beyond ethical aspirations. In order to do so, this research intends to entrench the principles within the constitutional umbrella and establish judicial empowerment for enforcement. It draws from the South African constitutional model and the interpretation of the Constitutional Court. In so doing, Burundi can achieve this transformation through two interconnected mechanisms: preamble integration and fundamental values entrenchment.

4.3.2.1 Preamble Integration: Learning from South African Experience

The preamble of the Constitution of Burundi 2018⁴⁹⁵ requires comprehensive enhancement to establish customary law as a foundational source of constitutional authority rather than merely inspirational guidance. The current preamble acknowledges pluralist values and national realities,⁴⁹⁶ which however need to be expanded to explicitly recognise customary law and particularly Ubuntu as a fundamental constitutional principle that guides all governance decisions, especially those affecting community territories and resources.

The South African Constitution provides a compelling precedent for constitutional recognition of Ubuntu values.⁴⁹⁷ Its preamble explicitly commits to heal the divisions of the past and establish a framework for society based on democratic values, social justice, and fundamental human rights.

⁴⁹⁴ *Sustaining the Wild Coast NPC v Minister of Mineral Resources and Energy* 2022 (1) All SA 796 (ECG) paras 28-35, 64.

⁴⁹⁵ Constitution of Burundi 2018, Preamble.

⁴⁹⁶ *ibid.*

⁴⁹⁷ Constitution of the Republic of South Africa 1996, Preamble.

It is a language that courts have interpreted as incorporating Ubuntu philosophy.⁴⁹⁸ The Republic of Burundi could similarly amend the preamble of the Constitution to recognise living customary values of Ubuntu as foundational principles of governance and social justice. In this regard, it can emphasise the governance of natural resources. Specifically, this would involve recognising *Ubuntu* (individual identity through community) and *Ubumwe* (community solidarity) as core constitutional principles. A revised preamble might declare the commitment of the people of Burundi to build a nation founded on living customary values of *Umntu* and *Ubumwe*, recognising that identity and solidarity with others are built through harmonious relationships with others and the environment. It is this constitutional language that would provide the interpretive foundation for courts to apply these principles in mineral resource governance. It would transform customary values from moral aspirations into constitutional principles.

4.3.2.2 Fundamental Values in Substantive Provisions

Beyond preamble recognition, these values require entrenchment within the substantive provisions of the Constitution. The South African Constitutional Court in *S v Makwanyane*⁴⁹⁹ established that Ubuntu constitutes a fundamental value underlying the constitutional order, enabling courts to interpret rights and obligations through this philosophical lens.⁵⁰⁰ Burundi can adopt a similar constitutional architecture by incorporating Ubuntu as an express fundamental value alongside democracy, the rule of law, and human dignity.

Section 2 of the Constitution of Burundi, which outlines fundamental principles,⁵⁰¹ could be amended to start with a provision indicating that the Republic of Burundi is founded on the values of democracy, rule of law, human dignity, social justice and Ubuntu, recognising that individual identity (*Umntu*) flourishes through community solidarity (*Ubumwe*) by creating harmonious relationships that ensure SD for present and future generations. It is in such constitutional

⁴⁹⁸ Constitution of South Africa 1996 (n 3), Preamble.

⁴⁹⁹ *S v Makwanyane* (n 501) para 225 per Langa J: 'The concept of ubuntu, taken from the Nguni languages, is said to describe a philosophy of life, which, in its first sense, presents a positive value system promoting interdependence, co-operation, compassion, solidarity, respect and dignity.'

⁵⁰⁰ *S v Makwanyane and Another* 1995 (3) SA 391 (CC). See also Stu Woolman, 'The Selfless Constitution' (2006) 21 SAPL 1, 15-25.

⁵⁰¹ Constitution of Burundi 2018 (n 1) art 2.

placement that Ubuntu would not merely manifest as a cultural practice but as a foundational constitutional principle with legal force.

4.3.3 Constitutional Foundations for Sustainable Development and Gaps

This section discusses the constitutional foundations of the governance structure for SD in Burundi, its shortcomings, and the implications for mineral resource management.

4.3.3.1 Constitutional Recognition of Sustainable Development as a Legal Requirement

Article 164 of the Constitution establishes the legislative domains within the legal framework of Burundi.⁵⁰² It specifically designates SD as a matter of law.⁵⁰³ In other words, sustainable development is incorporated into a binding legal instrument where legal obligations and duties can be derived for governance. This constitutional placement represents a significant recognition of SD, shifting from mere policy aspiration to a mandatory legal requirement.⁵⁰⁴ This constitutional design imposes a binding duty on the State to establish comprehensive sustainable development governance through legislation.

It is through requiring legislative action that the Constitution ensures the formal codification of sustainable development principles. In this perspective, it grounds a basic foundation for the implementation of the Ubuntu relational framework.

4.3.3.2 Mineral Resources Governance Implications

Article 164 establishes a normative embedment of the international commitments to sustainable development provided under Chapter 3. Indeed, it provides an important legal mechanism to operationalise these commitments within national governance. It transforms international obligations into concrete legal requirements.

In the context of mineral resources governance, these international commitments to SD apply as a constitutional legal obligation. This is so because the constitutional structure gives SD supreme legal status within the national legal hierarchy. Notably, it establishes an obligation to provide sustainable development standards in mining normative frameworks. This means that Mining

⁵⁰² Constitution of Burundi 2018 (n1) art 164 (8).

⁵⁰³ *ibid*, art 164 (8).

⁵⁰⁴ See the discussions in section 3.4.4. of Chapter 3.

Laws must incorporate sustainable development principles as a legal requirement. In doing so, the State hopes to integrate environmental, social, and economic considerations into mining operations. This ensures that sustainable development encompasses all relevant dimensions of mineral resources governance as envisaged by Chapter 2.⁵⁰⁵

Beyond normative requirements, the constitutional requirements of SD create new legal standing for all stakeholders involved in mining operations, especially mining communities. They can challenge mining decisions that SD considerations have and have the potential to transform social injustices related to mining activities into justiciable legal claims for social justice. This legal empowerment extends to enforceable rights for environmental and social damages resulting from unsustainable mining practices. It effectively converts community interests from moral appeals to legally protected rights.

Nevertheless, this constitutional potential remains disconnected from the practical realities of mineral resource governance in Burundi. State ownership assertions over mineral resources and corporate extraction priorities systematically undermine sustainable development obligations towards mining communities. In fact, the constitutional requirement for legislative action beyond normative anchors on sustainable development is not translated into meaningful transformation of mining governance structures. It continues to prioritise short-term economic extraction over long-term community and environmental sustainability, as provided later in this chapter. These gaps reflect what Ubuntu philosophy identifies as the fundamental problem of individualistic approaches to collective challenges.⁵⁰⁶

4.3.3.3 Ubuntu Relational Framework for Constitutional Sustainability

As pointed out above, SD cannot be achieved through state-imposed legislation that treats Burundian communities as passive beneficiaries rather than active participants in resource governance. Ubuntu principles demand relational approaches to constitutional sustainable development that recognise the interconnectedness of individual and community wellbeing, environmental integrity, and resource management decisions. Indeed, the principle of identity

⁵⁰⁵ See the discussions in section 2.6.3. of Chapter 2.

⁵⁰⁶ Metz T, 'African Conceptions of Human Dignity: Vitality and Community as the Ground of Human Rights' (2012) 13 Human Rights Review 19; Ramose MB, 'The Ethics of Ubuntu' in PH Coetzee and APJ Roux (eds), *The African Philosophy Reader* (Routledge 2002) 324-30.

(*Umntu*) recognises that individual and community identity and their well-being are inseparably linked to environmental integrity and resource management practices within Burundian territories.⁵⁰⁷ This understanding transforms sustainable development from external regulatory compliance to internal community values that guide resource management decisions.

The principle of solidarity (*Ubumwe*) emphasises collective responsibility for SD outcomes that extend beyond individual mining operations to encompass entire Burundian communities and ecosystems.⁵⁰⁸ This principle challenges the constitutional framework that relies on State legislative action by creating community-based accountability systems that ensure mining activities contribute to rather than undermine collective sustainable development objectives.

The above Ubuntu principles recognise that SD requires intergenerational responsibility that ensures current resource management decisions strengthen rather than weaken community and environmental relationships across generations. This understanding transforms constitutional SD requirements from compliance obligations to relationship-building imperatives that guide Burundian resource management decisions.

Therefore, Article 164 of the Constitution would require a comprehensive amendment to operationalise Ubuntu principles within constitutional SD requirements. The current provision that designates sustainable development as a matter of law should be expanded to recognise people as primary stewards of SD, with constitutional principles of identity and solidarity that allow people's participatory governance. This would advance the mining communities' role in SD implementation. However, this constitutional potential depends on addressing a fundamental question: how mineral ownership and access rights interact with sustainable development obligations? This intersection between ownership structures and constitutional obligations shapes the practical implementation of SD principles.

⁵⁰⁷ Menkiti IA, 'Person and Community in African Traditional Thought' in RA Wright (ed), *African Philosophy: An Introduction* (3rd edn, University Press of America 1984) 171-81.

⁵⁰⁸ Shutte A, *Ubuntu: An Ethic for a New South Africa* (Cluster Publications 2001) 23-35.

4.4 Overview of Legal Frameworks governing Mineral Resources

This section discusses the legal foundations of environmental, economic and social governance frameworks for mineral resources in Burundi.

4.4.1 Environmental Governance Framework

In terms of international and regional commitments, Burundi is party to four key international environmental conventions that include the Minamata Convention on Mercury, the Basel Convention on Hazardous Waste, UNCLOS, and the Bamako Regional Convention. The Minamata Convention on Mercury contributes to the fight against mercury pollution from artisanal mining in Burundi. It calls for mercury-free alternatives.⁵⁰⁹ In addition, the Basel Convention on Hazardous Waste supports Burundi in regulating the movement of mining-related hazardous waste. It implements environmentally sound management and prevents the dumping of waste.⁵¹⁰ Moreover, the UNCLOS enables Burundi to establish the principle of common heritage for mineral resources. It requires environmental protection and the equitable sharing of benefits.⁵¹¹ Finally, the Bamako Convention prohibits the import of hazardous waste in Burundi. It establishes the precautionary principle in mining assessment in Burundi.⁵¹²

These international conventions lay the foundations for national environmental governance and protection requirements, which Burundi has incorporated into its constitutional, environmental, and mining laws. Undeniably, Article 35 of the Constitution of Burundi 2018 requires sound management and rational use of natural resources, while preserving these resources for future generations.⁵¹³ Additionally, the Environmental Code of 2021 outlines seven fundamental principles that translate international standards into national law, including the common heritage, the precautionary principle, and sustainable development.⁵¹⁴ Moreover, the Mining Law of 2023

⁵⁰⁹ Minamata Convention on Mercury, adopted 10 October 2013, entered into force 16 August 2017, 3013 UNTS 4.

⁵¹⁰ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, adopted 22 March 1989, entered into force 5 May 1992, 1673 UNTS 57.

⁵¹¹ United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, entered into force 16 November 1994.

⁵¹² Bamako Convention on the Ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, adopted 30 January 1991, entered into force 22 April 1998, 2101 UNTS 177.

⁵¹³ Constitution of Burundi 2018, art 35.

⁵¹⁴ Environmental Code 2021, arts 4,15 (1) (4). See also Rodrigue Majambere, 'The Precautionary Principle in Environmental Law' (2023) 11(12) Open Journal of Social Sciences 548.

creates a hierarchical legal framework to ensure that all mining activities comply with international and regional environmental standards.⁵¹⁵

The implementation of the above instruments into the Mining Code 2023 has resulted in strong environmental requirements for mining operations, including a three-tiered environmental appraisal that applies to mining rights holders. Firstly, large-scale operations require environmental impact assessments.⁵¹⁶ For this, the Mining Code 2023 demands the completion of a mandatory environmental impact assessment prior to operation.⁵¹⁷ Further, mining contracts must include provisions for environmental protection.⁵¹⁸ Site rehabilitation is also required during operation and after closure.⁵¹⁹

Secondly, research activities require simplified environmental impact assessments. Thirdly, ESIAAs are required for small-scale operations and artisanal mining.⁵²⁰ Approval from the Minister of the Environment is mandatory in this regard.⁵²¹

All permit holders have a legal obligation to carry out rehabilitation.⁵²² For semi-mechanised operations, the Mining Code 2023 sets out environmental requirements that go hand in hand with rehabilitation obligations.⁵²³ The operator is thus responsible for restoring the environment when the permit expires.⁵²⁴

In terms of environmental financial mechanisms, the mining law includes provisions for rehabilitation guarantees to ensure the restoration of mining sites.⁵²⁵ It also provides for a State-administered site rehabilitation guarantee fund for long-term environmental liability⁵²⁶ and a contribution for orphan sites for collective liability for historical environmental damage.⁵²⁷

⁵¹⁵ Mining Code 2023 arts 8-12.

⁵¹⁶ *ibid*, arts 145-148.

⁵¹⁷ *ibid*, art 145.

⁵¹⁸ *ibid*, arts 89-92.

⁵¹⁹ *ibid*, arts 178-182.

⁵²⁰ *ibid*, art 152-154.

⁵²¹ *ibid*, art 153.

⁵²² *ibid*, art 178.

⁵²³ Mining Code 2023 arts 155-157.

⁵²⁴ *ibid*, art 179.

⁵²⁵ *ibid*, arts 185-187.

⁵²⁶ *ibid*, arts 188-190.

⁵²⁷ *ibid*, arts 191-193.

In essence, Burundi made efforts to integrate international and regional environmental standards into national mining legislation for environmental protection.

4.4.2 Economic Governance Framework

This section explores the economic governance framework in the Burundian mining sector, with a focus on the fiscal governance framework. It does so to investigate the fiscal vehicles through which the government derives revenues from mining operations, and how it attempts to distribute these revenues to communities to foster national development.

4.4.2.1 Normative Foundations for Mining Revenue Generation

The mining taxation regime of Burundi operates through a structured dual approach combining mining-specific royalties with general tax obligations. They are both designed to balance revenue generation with distribution of benefits.

4.4.2.1.1 Mining-Specific Royalties

The cornerstone of the mining fiscal framework of Burundi centers on State participation. The Mining Code 2023 provides for State equity and shareholding in production sharing agreements (PSA) as the owner of mineral resources. Companies must comply with the State equity participation of at least 16%,⁵²⁸ which increases by 5% at each permit renewal.⁵²⁹ These shares come free of charge and cannot be diluted to protect the interests of the State. Alternatively, mining operators can choose a PSA with the same percentage structure.⁵³⁰ This option guarantees the State to receive either mineral substances or financial returns. Notably, companies that select the PSA are exempted from paying mining royalties.⁵³¹ This represents an incentive structure that balances the interests of the State and the mining companies.

Beyond these participation mechanisms, the royalties' regime imposes various operational fees. Fixed fees apply to all mining rights applications and renewals,⁵³² whereas annual surface fees are

⁵²⁸ *ibid*, arts 45-47.

⁵²⁹ *ibid*, art 48.

⁵³⁰ Mining Code 2023 arts 49-51.

⁵³¹ *ibid*, arts 52-54.

⁵³² *ibid*, art 156.

calculated per hectare to ensure ongoing revenue generation.⁵³³ These surface fees increase during the production phase, and this reflects the higher value extraction occurring at that stage.

The complexity of the tax system is most evident in its production-based ad valorem taxation, which varies according to the scale of mining and the type of ore. Industrial and large-scale operations face rates ranging from 2% for general minerals to 7% for precious stones,⁵³⁴ whilst artisanal and semi-mechanised miners benefit from reduced rates between 1% and 3%.⁵³⁵ This approach recognises the different operational capacities and profit margins across mining scales.

To ensure comprehensive revenue capture, the framework includes additional regulatory charges covering the entire mining value chain. Exporters pay traceability fees that help the State monitor mineral flows and prevent revenue leakage,⁵³⁶ whereas exit duties capture value as minerals leave the country.⁵³⁷ Transfer duties on mining titles or company ownership changes protect State interests during ownership transitions. Additionally, rehabilitation contributions ensure environmental responsibilities are financially secured.

4.4.2.1.2 General Tax Obligations

Although royalties specific to the mining sector are the special tax feature of this sector, mining companies also operate within the standard tax framework applicable to companies in Burundi. Income taxation follows conventional structures with individual rates progressing from 0% to 30%⁵³⁸ and corporate rates fixed at 30%.⁵³⁹ Nevertheless, the regime includes provisions pertaining to mining such as minimum lump-sum taxes of 1% on sales during loss periods.⁵⁴⁰ This prevents companies from avoiding tax obligations during challenging operational phases.

Value Added Tax (VAT) applies at the standard 18% rate,⁵⁴¹ though the regime provides exemptions for exports and specific material transfers that support mining operations.⁵⁴² These

⁵³³ Mining Code 2023 arts 25-28.

⁵³⁴ *ibid.*, arts 29-32.

⁵³⁵ *ibid.*, art 33.

⁵³⁶ *ibid.*, arts 156-160.

⁵³⁷ *ibid.*, arts 161-163.

⁵³⁸ Tax Code of Burundi 2020 arts 45-48.

⁵³⁹ *ibid.*

⁵⁴⁰ *ibid.*

⁵⁴¹ *ibid.*

⁵⁴² *ibid.*

exemptions prevent Double Taxation (DT) by ensuring domestic consumption contributes to revenue generation.

4.4.2.1.3 Investment Incentives

Burundi recognises the need to attract investment in this capital-intensive sector. In this regard, the mining taxation regime of Burundi incorporates substantial tax incentives provided under the Investment Code of 2021. New mining operations benefit from five-year exemptions on transfer duties for land and building acquisitions.⁵⁴³ This addresses the significant upfront costs of establishing mining infrastructure.

More significantly, the investment framework provides VAT and customs duty exemptions on imported materials and equipment,⁵⁴⁴ reducing the foreign exchange burden on mining companies while supporting local development. The most attractive feature of the regime may be its graduated profit tax reductions, starting at 5% in the first profitable year and increasing to 25% by the fifth year.⁵⁴⁵ This approach encourages long-term commitment while ensuring the State eventually captures its full tax share as operations mature.

However, Article 189 of the Budget Law of 2025/2026 revoked tax benefits, including credits, exceeding five years for ordinary sector projects and ten years for specific sector projects.⁵⁴⁶ Similar advantages granted by decree, ordinance, or government agreement are also revoked.⁵⁴⁷ As of now, tax credits not validated by July 1, 2025, will no longer be validated. Besides, Article 190 of the same law requires applicants for Investment Code exemptions to provide a bank guarantee of up to 30% of the total exemption amount.⁵⁴⁸

⁵⁴³ Investment Code of Burundi 2021 arts 15-18.

⁵⁴⁴ *ibid.*

⁵⁴⁵ *ibid.*, arts 25-28.

⁵⁴⁶ Law N°1/12 of June 24, 2025, setting the general budget of the Republic of Burundi for the 2025/2026 art 189.

⁵⁴⁷ *ibid.*

⁵⁴⁸ Law N°1/12 of June 24, 2025, setting the general budget of the Republic of Burundi for the 2025/2026 art 190.

4.4.2.2 Normative Foundations for Revenue Distribution

This section looks at how revenues are distributed among stakeholders at the national level.

4.4.2.2.1 Central Distribution System

The constitutional framework establishes the central government as the sole authority for resource management and expenditure decisions.⁵⁴⁹ This creates a top-down distribution model where all mining revenues flow through national channels before any potential redistribution to communities occurs.

Revenue collection follows a standardised process where mining companies initially self-assess their obligations,⁵⁵⁰ similar to income tax procedures.⁵⁵¹ All payments flow through the Burundi Revenue Authority (OBR), which then transfers collected revenues to the Ministry of Finance for integration into the national budget.⁵⁵² This unified budget system, required by budget law,⁵⁵³ centralises both revenue collection and expenditure decisions under the authority of the Finance Minister.

Nevertheless, the framework provides no direct revenue-sharing mechanism with mining-affected communities. Instead, local communities must rely on general government spending allocations through the national budget process. This leaves a gap between areas bearing the environmental and social burden costs of mining and those receiving economic benefits.

4.4.2.2.2 Specialised Funds

Beyond the general revenue collection, the Mining Code 2023 establishes two specialised funds that serve distinct national development purposes. Firstly, the rehabilitation fund addresses environmental restoration needs by securing financing for mining area restoration from the initial exploitation stage.⁵⁵⁴ This mandatory payment ensures the State can compensate for resource depletion and environmental degradation, though the specific operational procedures remain to be defined through separate regulations.

⁵⁴⁹ Constitution of Burundi 2018.

⁵⁵⁰ Tax Law 2020.

⁵⁵¹ *ibid.*

⁵⁵² *ibid.*

⁵⁵³ *ibid.*

⁵⁵⁴ Mining Code 2023.

Secondly, complementing environmental considerations, the mining sector support fund mobilises resources for broader national development projects. Mining rights holders are required to contribute to this fund, but it does not exist yet.⁵⁵⁵ Once established, it should enable the State to reinvest mining revenues into infrastructure and development initiatives that benefit communities indirectly.

4.4.2.2.3 Revenue Control and Foreign Exchange Management

The mining regime extends State control beyond national boundaries through foreign currency repatriation requirements. Mining companies must repatriate export revenues. This is operated through approved Burundian financial institutions within ninety days of minerals leaving the country, unless specific contractual provisions exist.⁵⁵⁶ This mechanism ensures mining revenues contribute to national foreign exchange reserves and remain accessible for domestic development spending.

In a nutshell, the fiscal governance framework provided above is expected to generate and allocate mining revenues to advance national development.

4.4.3 Social Governance Framework

Beyond fiscal considerations, Burundi provides for a social governance framework. This thesis unpacks human rights obligations embedded in the social mineral resource governance framework, with a specific focus on affected communities.

The Mining Code 2023 establish human rights protection that encompasses both immediate worker protection and long-term community development obligations, as well as local content requirements. This section categorises them into three distinct but complementary groups: health and safety obligations, broader social responsibility, and local content requirements.

4.4.3.1 Health and Safety Obligations

The health and safety obligations center on the immediate protection of workers and surrounding populations from the risks associated with mining activities. Article 200 of the Mining Code 2023 lays down the foundational principle that holders of mining rights must respect health and safety

⁵⁵⁵ Mining Code 2023.

⁵⁵⁶ *ibid.*

standards for workers by complying with the provisions of the Labour Code 2020.⁵⁵⁷ This norm creates a direct link between mining operations and existing occupational health and safety frameworks. It ensures that mining workers benefit from the same protections afforded to other categories of workers under Burundian law.

Building upon this foundation, Article 201 of the Mining Code 2023 requires that all prospecting, research, and exploitation activities be carried out in compliance with established professional standards to guarantee public health and the safety of persons and property.⁵⁵⁸ This obligation extends beyond the immediate workplace to encompass the broader impact of mining activities on public health. This provision addresses explicitly the transport, storage, utilisation, and commercialisation of explosive materials and radioactive sources. In doing so, it recognises the particular risks these substances pose to both workers and the general public.

The Mining Code 2023 becomes more specific with Article 202, which mandates the preliminary development of safety regulations addressing security, hygiene, and professional risks before commencing any mining activities.⁵⁵⁹ This proactive approach guarantees that safety considerations are integrated right from the planning phase of mining operations, and not treated as an afterthought. The requirement for preliminary safety planning reflects international and regional frameworks in mining safety management described in Chapter 3.⁵⁶⁰

The immediate response obligations are outlined in Article 204 of the Mining Code 2023. It requires mining operators to take all necessary measures to contain or prevent disasters, with an obligation to immediately inform the competent authority in case of accidents or identified dangers.⁵⁶¹ This provision creates a clear chain of responsibility and communication which is essential for an effective emergency response in mining contexts.

4.4.3.2 Social Responsibility Obligations

The social responsibility obligations address the social impact of mining operations on local communities and determine requirements for SD and community engagement. Article 206 of the

⁵⁵⁷ Mining Code 2023 art 200.

⁵⁵⁸ Mining Code 2023 art 201.

⁵⁵⁹ Mining Code 2023 art 202.

⁵⁶⁰ See the discussions in Chapter 3.

⁵⁶¹ Mining Code 2023 art 204.

Mining Code 2023 states a fundamental obligation to respect, protect, and promote human rights.⁵⁶² This provision compels mining operations to comply with international and regional human rights law as provided for in Chapter 3. It further creates accountability for the human rights impact of mining activities for both the State and the mining companies.

Article 207 of the Mining Code 2023 recognises the rights of local populations and communities by creating an obligation to respect these rights in the conduct of mining activities.⁵⁶³ This provision acknowledges that mining activities often take place in areas where local communities have established ways of life and traditional rights and thus must be protected.

The most important provision in terms of social responsibility is Article 208 of the Mining Code 2023. It defines detailed requirements for community development.⁵⁶⁴ In fact, it requires the establishment of a community development plan in consultation with riverside communities and territorial and local administrative authorities.⁵⁶⁵ This plan includes specific objectives and an investment plan for mining communities and creates an opportunity for community development that goes beyond general contributions.

Significantly, Article 208 of the same law establishes an obligation for annual contributions to socio-economic development projects for local communities. However, the modalities of this contribution have not yet been specified by regulatory decree.⁵⁶⁶ This creates a mechanism for community development that is tied directly to mining operations. The obligation to consult local communities when drawing up these plans recognises that mining communities may have priorities in terms of development resulting from mining activities.

4.4.3.3 Local Content Requirements

The Mining Code 2023 provides for different local content requirements for social governance in the mining sector of Burundi.

⁵⁶² Mining Code 2023 art 206.

⁵⁶³ *ibid*, art 207.

⁵⁶⁴ *ibid*, art 208.

⁵⁶⁵ *ibid*.

⁵⁶⁶ *ibid*.

In terms of ownership and participation requirements, the Mining Code 2023 creates a tiered ownership structure that varies by mining scale. Article 114 requires 100% Burundian ownership for semi-mechanised mining permits,⁵⁶⁷ whereas Article 92 provides for preferences of majority Burundian-owned companies for small-scale permits.⁵⁶⁸ Additionally, the Mining Code 2023 requires State equity participation as provided earlier in this chapter.

With regard to employment and local capacity building, employment preferences for Burundian nationals permeate the licensing requirements of the Mining Code 2023. Articles 64 and 68 require large-scale mining conventions to include commitments for recruiting qualified Burundian nationals or subcontractors.⁵⁶⁹ Furthermore, Article 96 extends similar requirements to small-scale operations.⁵⁷⁰ These provisions create qualification-based employment preferences across all major mining categories.

In terms of socio-economic integration and development, the Mining Code 2023 transforms community development from a voluntary initiative to a contractual obligation. Articles 64, 68, and 96 require mining conventions to include commitments for infrastructure creation and socio-economic contributions.⁵⁷¹ This establishes a holistic local content approach that extends beyond employment to encompass wider community investment and capacity building.

As far as procurement and investment access are concerned, Article 184 of the Mining Code 2023 facilitates Burundian investor participation by including clauses that allow local investors to acquire shares in mining companies.⁵⁷² Combined with mandatory State participation requirements, this creates multiple pathways for local investment in the mining sector. Further, the requirement of Article 69 of the Mining Code 2023 for joint ministerial approval ensures government oversight of all local content commitments.⁵⁷³

The above social provisions of the mining code represent an approach to balancing the economic benefits of mining with the protection of workers and communities. The immediate protection

⁵⁶⁷ Mining Code 2023 art 114.

⁵⁶⁸ *ibid*, art 92.

⁵⁶⁹ *ibid*, arts 64, 68.

⁵⁷⁰ *ibid*, art 96.

⁵⁷¹ *ibid*, arts 64, 68, 96.

⁵⁷² *ibid*, art 184.

⁵⁷³ Mining Code 2023 art 69.

through health, safety measures, and long-term development, as well as local content requirements, creates a system of social corporate accountability as far as human rights protection is concerned.

In short, the normative framework for the governance of mineral resources has endeavored to guarantee environmental protection, the generation and distribution of mining revenues, and to ensure that human rights are taken into account during mining activities. But the above discussions show that little attention has been paid to communities living in the vicinity of mining activities. However, they are the ones who suffer most when these activities take place. And not only do current communities suffer, but mineral resources are non-renewable mineral resources. This means that if they are not adequately managed, future generations may not benefit from the mineral potential of Burundi as it stands today. The subsequent section explores in detail the normative gaps.

4.5 Normative Gaps

From the previous discussion, it can be seen that progressive environmental, economic, and social governance arrangements have been put in place for mining operations. Nevertheless, the normative structure takes little account of mining communities. These points in particular point to the normative structural weaknesses. In this way, implementation practices further reinforce these weaknesses. Such normative governance is at odds with Ubuntu principles, as discussed below.

4.5.1 Competing Needs

The normative framework of mineral resource governance partly embodies Ubuntu principles. Article 181 of the Mining Code 2023 requires community consent for mining operations near sensitive areas.⁵⁷⁴ This represents a partial alignment with the Ubuntu principle of identity. However, it is limited to physical proximity rather than wider relationships. In addition, the system of contributions to orphan sites and the guarantee fund reflect the principles of solidarity of Ubuntu. This shows a collective responsibility for environmental restoration. Nevertheless, its enforcement remains centred on the priorities of the State rather than on the interests of the mining communities.

⁵⁷⁴ Mining Code 2023 art 181.

In fact, the normative gaps are evident in the primacy given to State needs over community empowerment in the fields of mineral resource governance described above. In terms of environmental governance, Article 35 of the Constitution of Burundi 2018 mandates the State to guarantee the rational exploitation of natural resources for future generations.⁵⁷⁵ This provision embraces intergenerational language but favours a state-centric approach rather than allowing the people to play a part in this long-term governance. Likewise, the tax system channels revenue through State institutions and deprives the communities of mining revenues. Moreover, mining permits are issued by presidential decree with ministerial signature without community involvement.⁵⁷⁶

Furthermore, the State needs to continue to override long-term mining communities' interests through various setbacks in practice. For example, anarchic mining continues to cause landscape and land morphology degradation across the country. This disrupts river courses, particularly in auriferous regions where many rivers are diverted to facilitate gold extraction.⁵⁷⁷ Material extraction occurs on hills, plains, lakeshores, and rivers, altering local landscapes and destroying ecosystems without community consultation or consent,⁵⁷⁸ directly contradicting the Ubuntu principles embedded in Article 181.

Another illustration lies in the Gakara deposit, which is renowned for its exceptional wealth of rare earths, with significant TREO. Since 2017, RRE, in partnership with the Burundian government, has been conducting mining operations in the country. However, in June 2021, the Burundi government ordered the suspension of operations at the site, citing concerns over the distribution of revenues generated by the operation.⁵⁷⁹ The Burundian authorities accused RRE of not providing the country with a fair share of the profits from its State equity participation, claiming that the mining contract was disadvantageous for the national economy. The Minister of Hydraulics, Energy and Mines declared that Burundi demanded a more equitable distribution of

⁵⁷⁵ Constitution of Burundi 2018 art 35.

⁵⁷⁶ Ministry of Mines, Interview with Ministry Mines (Bujumbura 15 July 2024).

⁵⁷⁷ *ibid.*

⁵⁷⁸ *ibid.*

⁵⁷⁹ Mining Code 2023 arts 45-47.

revenues from Gakara, and thus asked Rainbow to suspend its activities.⁵⁸⁰ This suspension had significant economic consequences, resulting in a loss of revenue for the State.

4.5.2 Legal formalism

A further major normative gap concerns the legal formalism of governance obligations. These are conceived as formalities compliance rather than relational obligations with context sensitivity. They permeate the environmental, economic, and social dimensions of governance by eroding the relational ontology required by the Ubuntu principles.

In fact, the environmental governance epitomises this shortcoming through standardised EIAs that evaluate measurable impacts such as air quality and biodiversity loss.⁵⁸¹ This contrasts with the relational framework of Ubuntu, which prioritises the symbiotic relationships between community and environment, where one needs the other to survive. In addition, the mining communities are often addressed as affected populations rather than rights-holders with distinct cultural relationships to land and mineral resources.⁵⁸² The Murehe Forest mining license illustrates this by showing how local communities with traditional ecological relationships are excluded from decisions about mining activities that threaten their cultural landscape.⁵⁸³

Moreover, the economic governance gaps mirror these formalist approaches. Indeed, the taxation regime applies standardised rates without taking into account the real burden of extraction on the community.⁵⁸⁴ Revenue generated from mining operations is treated as compensation for resource extraction, rather than creating a collective wealth through relational management. This ignores customary concepts of wealth and redistribution. Indeed, mining revenues are generated because communities value the wealth beneath their soils.

Furthermore, the normative gaps are furthered by presenting human rights obligations as duties of CSR instead of legal obligations for community protection.⁵⁸⁵ The requirement in Article 206 to respect, protect, and promote human rights imposes an enforcement of human rights as CSR.

⁵⁸⁰ Mining Code 2023 art 89; see also Ministry of Energy and Mines (Burundi), 'Gakara Mining Operations Review' (June 2021).

⁵⁸¹ Interview with Ministry of Mines (Bujumbura 20 June 2024).

⁵⁸² Interview with Ministry of Mines (Bujumbura 2 August 2024).

⁵⁸³ Ministry of Environment (Burundi), 'Murehe Forest Mining Authorization Decision' (2021).

⁵⁸⁴ Interview with Ministry of Finances (Bujumbura 10 August 2024).

⁵⁸⁵ Interview with Ministry of Mines (Bujumbura 15 August 2024).

However, CSR obligations are not regulated in Burundi.⁵⁸⁶ This vacuum of causality leaves room for mining companies to avoid enforcing their human rights obligations as long as CSR is still not regulated. This renders communities dependent on the benevolence of companies rather than empowering them as rights holders.

4.5.3 Socio-environmental harms

The normative gaps also manifest in the socio-economic harms. This is permitted by individual compliance requirements that are applied without involving the communities to advance collective responsibility structures.

The environmental normative requirements are embedded by the State control of the enforcement of company obligations in terms of environmental impacts, without creating a relational governance where mining communities are involved.⁵⁸⁷ This contrasts with the Ubuntu principle of solidarity. For instance, the environmental effects of mining activities in the Lake Bugesera region are still ongoing and continue to pollute the water that mining communities need to live. Nevertheless, if mining communities were involved in monitoring, they could contribute valuable customary knowledge of sustainable mining practices.⁵⁸⁸ Moreover, the environmental harms are exemplified by the rampant abandonment of mining sites, leaving the land unusable for mining communities.⁵⁸⁹

Social governance echoes similar patterns of normative harms. The mining operations at the Rugeregere mining site demonstrate this. The absence of basic protective equipment such as gloves, boots, and helmets directly contravenes the requirement of Article 202 for preliminary safety regulations addressing security, hygiene, and professional risks.⁵⁹⁰ On the same mining site of Rugeregere, miners indicated that the monetary treatment depends on the production performed by the miners. This creates economic vulnerability that contradicts the objectives of sustainable development and community benefit as prescribed by Article 208.

⁵⁸⁶ Interview with Ministry of Mines (Bujumbura 18 August 2024).

⁵⁸⁷ Interview with Public authorities, Ministry of Mines (Burundi, 05 June 2024).

⁵⁸⁸ Interview with public authorities with Ministry of Mines (Burundi, 05 June 2024).

⁵⁸⁹ Interview with public authorities with Ministry of Mines (Burundi, 19 June 2024).

⁵⁹⁰ Interview with public authorities (Burundi, 08 June 2024).

The social harm is heightened by the absence of professional standards in mining as requested by Article 201. Workers digging with bare hands and operating barefoot in water-filled excavations represent an enforcement gap with mining standards.⁵⁹¹

Moreover, the health crisis affecting mining communities, particularly the respiratory disorders in Butihinda commune, demonstrates how mining operations violate human rights. When mining activities cause dozens or hundreds of deaths,⁵⁹² they fundamentally contradict the life-affirming principles of Ubuntu.

In summary, the above-mentioned normative gaps reflect not only failures in implementation but also fundamental structural lacunae in the liberal approach to mineral resource governance. They also demonstrate that community involvement is the bedrock for advancing sustainable mineral resource governance. This can be addressed through reforms aimed at adopting the Ubuntu relational framework, as proposed below.

4.6 Re-Interpretation of Mineral Governance through Ubuntu Relational Framework

This section suggests a re-interpretation of the environmental, economic, and social normative governance framework through the Ubuntu of principles of identity and solidarity as forming a relational framework.

4.6.1 Ubuntu Principle of Identity

The Ubuntu principle of identity recognises that environmental, economic, and social governance are interdependent. They have the potential to shape the collective relationships between stakeholders in the mineral resource governance in Burundi.

4.6.1.1 Environmental Identity Relationships

To begin with, the framework proposal would move from technical impact mitigation to relational stewardship that strengthens community-environment identity relationships. Under the Ubuntu identity principle, the environmental framework of mineral resources governance is envisaged within a relational structure. It links ancestors, present communities, future generations, and

⁵⁹¹ Interview with public authorities (Burundi, 08 June 2024).

⁵⁹² Interview with public authorities (Burundi, 20 August 2024).

natural environments.² Therefore, it should evaluate how mining activities impact these identity relationships rather than measuring technical impacts.

Currently, Article 35 of the Constitution of Burundi 2018 calls for sound management and rational use of natural resources to preserve them for future generations. Under Ubuntu identity principle, the provision should be amended to acknowledge communities as part of the environmental stewards to protect and preserve mineral resources for future generations. In this regard, they should participate in the governance systems affecting their rational use.

Building on community environmental stewardship, the principle of sustainable development in the Environment Code 2021⁵⁹³ should be expanded to recognise traditional ecological knowledge and promote relational sustainability as a fundamental principle of environmental governance. Further, the common heritage principle should be reformulated in the light of the Ubuntu conception to recognise that mineral resources are part of the relational heritage that links communities across time and space. Indeed, today's mineral resources are available before past generations have used them rationally. This transfers the same responsibility to current generations, who must use mineral resources with the needs of future generations in mind.

Furthermore, Article 181 of the Mining Code 2023 requires community consent for mining near sensitive areas.⁵⁹⁴ The proposal is to expand this requirement to include FPIC obligation for all mining activities regardless of physical proximity. Additionally, the three-tiered environmental assessment system would be amended to integrate traditional ecological knowledge to align with the Environmental Act discussed above. In this regard, the EIAs would require to demonstrate how mining rights holders will strengthen rather than weaken community-environment relationships.

4.6.1.2 Economic Identity Relationships

The normative framework for economic governance must acknowledge that mineral wealth constitutes a collective community identity rather than a technical resource extraction compensation. Drawing on this, Ubuntu identity principles would require mining revenue governance systems to strengthen community economic relationships through wealth distribution

⁵⁹³ Environmental Code 2021.

⁵⁹⁴ Mining Code 2023 art 181.

channels.⁵⁹⁵ In this regard, Articles 66, 68(4), 93, and 99(4) of the Mining Code 2023,⁵⁹⁶ currently establishing State equity participation, would require Community Equity Participation provisions. These amendments should replace mandatory State equity participation since the State perceives corporate taxes from mining business companies. In this respect, customary authorities would negotiate community participation arrangements with mining companies directly, ensuring a minimum of 10 percent participation.

The proposed fiscal regime, if applied appropriately, reinforces the fiscal benefits and prosperity of the community for self-determination.

4.6.1.3 Social Identity Relationships

The transformation of social governance plays an important role in addressing the social harms discussed earlier in this chapter under normative gaps. The Ubuntu principle of identity would amend Article 206 of the Mining Act 2023 to transform human rights from CSR compliance to individual and people's rights for community protection. In doing so, it recognises that mining operations harm not only individual workers but entire community social systems that constitute collective identity.

Moreover, the proposal is to draft a new Article that will be numbered 209 to introduce the authority of the community over cultural impact assessments for all mining activities. In practice, traditional authorities would have power over mining operations that threaten cultural sites, spiritual practices, or traditional land use systems.

4.6.2 Ubuntu Solidarity Principle

The Ubuntu principle of solidarity stresses collective responsibility and mutual support to advance community wellbeing across generations in the framework proposal provided below for sustainable governance.

4.6.2.1 Environmental Solidarity Networks

The environmental governance would establish collective responsibility structures that reflect Ubuntu solidarity principles.

⁵⁹⁵ See discussions in Chapter 2 discussion on the principle of Identity of Ubuntu.

⁵⁹⁶ Mining Code 2023 arts 66, 68 (4), 93, 99 (4).

In fact, the rehabilitation guarantee system provided by the Mining Code 2023 would be amended to institute the community-controlled environmental restoration and protection fund. This fund would replace the State-controlled site rehabilitation fund. This will enable communities to lead environmental restoration processes according to their cultural and ecological priorities.

The contribution system for orphan sites would require restructuring to include mining communities as stakeholders in this governance mechanism. Communities will further contribute with traditional ecological knowledge to contextualise contemporary environmental governance practices.

4.6.2.2 Economic Solidarity Distribution

The economic governance would establish a wealth distribution system that reflects Ubuntu solidarity principles. In this regard, Articles 68(2) and 99(2) on PSA⁵⁹⁷ would require the modification of State-controlled structures into a community-managed wealth distribution regime. In this perspective, the provisions would establish that PSA should be operated between the State, communities, and mining operators. In this regard, traditional authorities would be empowered to determine sharing percentages, distribution mechanisms, and benefit allocation priorities based on the community's needs.

In a nutshell, Ubuntu relational principles call for integrated governance systems that recognise the interdependence of environmental, economic and social relationships within community identity and solidarity networks. The implementation of this normative Ubuntu relational framework for mining governance can only be effective if it is supported by institutional structures and mechanisms that align with this new framework proposal, as presented in Chapter 5.

4.7 Conclusion

This chapter demonstrates that the normative frameworks are progressive in terms of mineral resource governance in Burundi. The Constitutional framework established a conducive environment to implement international and regional frameworks. This also applies across the environmental, economic, and social governance. The analysis also reveals fundamental misalignments with the core Ubuntu principles, including identity recognition deficits that treat

⁵⁹⁷ Mining Code 2023 arts 68 (2), 99 (2).

communities as affected populations rather than rights-holders; solidarity implementation failures impose individualistic rather than collective governance obligations; and collective governance marginalisation provides consultation without decision-making authority. These systematic failures are starkly illustrated by the reality that communities living around mining sites suffer expropriation, depriving them of their cultural and agricultural spaces, while those who manage to work in mines receive derisory wages. Worse still, these communities receive revenues from development projects rather than mining royalties, meaning the governance framework focuses on public and private stakeholders who leave mere crumbs to mining communities. These systematic governance failures undermine sustainable development outcomes by preventing the community's legitimacy that is essential for long-term sustainability and social justice. The analysis provides crucial empirical evidence that governance failures result from policy choices rather than inherent constraints, establishing that transformative governance reform represents both a moral imperative for social justice and a practical necessity for achieving sustainable development outcomes.

The findings show that incremental reforms within current frameworks cannot resolve fundamental conflicts between state-led extraction and Ubuntu-based community governance. Instead, real change requires constitutional reforms that go beyond merely recognising customary law to adopting normative pluralism; developing institutions that establish legally recognised community governance bodies with authority over mining decisions; and adopting procedural innovations that replace consultation mechanisms with community consent and ongoing adaptive governance participation. This analysis sets the tone for adopting the related proposal for institutional and procedural frameworks to be discussed in the next chapter.

5 Chapter 5: Operationalising Ubuntu in the Institutional and Procedural Frameworks of Mineral Resource Governance in Burundi for Sustainable Development

5.1 Introduction

Chapter 4 reviewed the environmental, economic, and social legal obligations of mineral resource governance in Burundi. In the analysis, it acknowledged progressive efforts made to govern the mining operations but pointed out that mining communities are given little attention, yet they suffer the most. It argued that to address this, a re-interpretation of the existing frameworks using Ubuntu relational framework is paramount. In doing so, it suggested a new framework that needs to be supported by adequate institutional mechanisms.

The current chapter draws on this proposal to assess the extent to which the institutional and procedural framework that regulates environmental, economic, and social governance of mineral resources aligns with the proposed framework. In particular, it will assess how mining communities are integrated throughout the institutional mechanisms. The chapter will build on this analysis to suggest a new institutional architecture using Ubuntu relational framework to accompany the new normative governance proposal.

The chapter encompasses six main sections. After this introduction, the second, third, and fourth sections explore, respectively, the environmental, economic, and social architecture frameworks to investigate their opportunities. The gaps will be discussed in section five. The sixth section will further suggest a re-interpretation using the Ubuntu relational framework to deliver new institutional mechanisms capable of delivering sustainable mineral resource governance in Burundi. The last section provides the conclusion.

5.2 Institutional Mechanisms for Environmental Governance

The institutional architecture of the environmental governance of the mining sector in Burundi operates through Ministries and regulatory agencies. The Ministry of Environment, Agriculture and Livestock (Ministry of Environment) oversees the protection and conservation of natural resources. It develops and implements environmental standards that serve as a code of conduct for environmental management.⁵⁹⁸ Moreover, it exercises authority over environmental policy

⁵⁹⁸ Decree no. 100/002 of August 5, 2025 on the structure, functioning and missions of the Government of the Republic of Burundi art 40 (13°).

development.⁵⁹⁹ His responsibilities include designing, planning, and monitoring short, medium, and long-term national environmental policies.⁶⁰⁰ In addition, it coordinates impact assessment approval and compliance monitoring in these processes.⁶⁰¹

Furthermore, the Burundi Office for Environmental Protection (OBPE) supports the Ministry of Environment as a technical agency. It focuses on analysing environmental impact studies for mining projects and ensuring compliance with environmental standards.⁶⁰²

In terms of processes, the office of Mining Registry at the OBM supervises the EIAs.⁶⁰³ The office ensures environmental studies are available for public consultation.⁶⁰⁴ In case of public inquiries for mining projects, the latter operate through public procedures where the Minister of Environment is responsible for investigating to determine the admissibility of the mining project.⁶⁰⁵

Once the environmental studies are complete, the Ministry of the Environment issues an environmental confirmation certificate attesting that the mining projects have no impact on the environment.⁶⁰⁶

5.3 Institutional Mechanisms for Economic Governance

The economic framework for the governance of mineral resources in Burundi operates through fiscal systems administered through different ministries and regulatory agencies for the generation and distribution of revenues. To begin with, the Ministry of Finance, Budget and Digital Economy (Ministry of Finance) is empowered to provide technical support for the design and implementation of development projects.⁶⁰⁷ It also ensures sound management of public finances

⁵⁹⁹ Decree no. 100/002 of August 5, 2025 on the structure, functioning and missions of the Government of the Republic of Burundi art 40 (17°).

⁶⁰⁰ Environmental Code 2021 art 29-32; Decree No 100/45 of 12 March 2022 on the Organisation of the Ministry of Environment arts 6-9.

⁶⁰¹ Environmental Code 2021 arts 25-28; Mining Code 2023 arts 12-15.

⁶⁰² Law No 1/010 of 30 June 2000 establishing the Burundi Office for Environmental Protection, art 8-12; Environmental Code of Burundi 2021 arts 45-48.

⁶⁰³ Mining Code 2023 arts 148-151; Environmental Code 2021 arts 55-58.

⁶⁰⁴ Environmental Code 2021 arts 59-62; Decree No 100/78 of 15 May 2022 on Environmental Impact Assessment Procedures arts 12-15.

⁶⁰⁵ Environmental Code 2021 arts 63-66; Mining Code of Burundi 2023 art 152.

⁶⁰⁶ Mining Code 2023 art 195-198; Environmental Code 2021 arts 89-92.

⁶⁰⁷ Decree no. 100/002 of August 5, 2025 on the structure, functioning and missions of the Government of the Republic of Burundi art 38 (9).

for economic and social development, including mining revenues.⁶⁰⁸ The mineral resources revenues are collected by the Burundi Revenue Authority (OBR). Such revenues are paid through transit accounts registered under the name of OBR.⁶⁰⁹ The latter transfers the revenues to the public treasury controlled by the Ministry of Finance. In addition, the Central Bank of Burundi (BRB) oversees foreign currency repatriation of mining revenues.⁶¹⁰ Most importantly, the Ministry of Finance consolidates all mining revenues into the public treasury and allocates them across various sectors according to the annual budget system.⁶¹¹

Furthermore, the institutional structure for mining revenue management also lies in the role of the Ministry of Mines and its regulatory agency. Indeed, the Ministry of Mines, through the Burundi Mining and Quarry Office (OBM), establishes royalty amounts for mining rights applicants and monitors compliance with mining agreements.⁶¹² Moreover, the Ministry of Mines provides technical support in the preparation and implementation of projects to develop the mining sector.⁶¹³

In the framework described above, communities get access to mining revenues indirectly through two main channels. It is through development projects run by the Ministry of Mines and those sponsored by companies.

5.4 Institutional Mechanisms for Social Governance

The social governance framework in the mining sector operates through the Ministry of Mines and OBM to ensure human rights are protected. The Ministry of Mines ensures that CSR projects are carried out as planned by mining companies.⁶¹⁴ In addition, OBM monitors compliance with social, safety, hygiene, and labor standards for mining operations.⁶¹⁵

⁶⁰⁸ Decree no. 100/002 of August 5, 2025 on the structure, functioning and missions of the Government of the Republic of Burundi art 38 (11).

⁶⁰⁹ Law No 1/13 of 9 September 2009 establishing the Burundi Revenue Authority arts 6-8; Ministry of Finance, 'Revenue Collection Procedures Manual' (Ministry of Finance 2018) ch 4.

⁶¹⁰ Central Bank of Burundi Act 2017 art 25-27; Foreign Exchange Regulations 2015 (Burundi), regs 12-15.

⁶¹¹ Public Finance Management Law 2008 (Burundi), art 28-31; Organic Budget Law 2008 (Burundi), arts 15-18.

⁶¹² Mining Code of Burundi 2023 arts 15-17; Decree No 100/159 of 15 October 2013 establishing the Burundi Mining and Quarry Office arts 8-1

⁶¹³ Decree no. 100/002 of August 5, 2025 on the structure, functioning and missions of the Government of the Republic of Burundi art 39 (6).

⁶¹⁴ Interview with public authorities (Burundi, 2023).

⁶¹⁵ Interview with public authorities (Burundi, 2023).

5.5 Institutional and Mechanisms Gaps

The institutional framework governing mining in Burundi marginalises mining communities in environmental, economic, and social governance. This contrasts with the Ubuntu principles. Thus, it advocates for involving mining communities throughout the entire institutional mining value chain.

5.5.1 Absence of Community Institutions

The institutional apparatus explored above lacks community institutions with authority over environmental, economic, and social governance decisions affecting mining operations. In fact, the environmental responsibilities are consolidated through State ministries and regulatory agencies without the communities' involvement. Additionally, mineral revenues are channeled exclusively through State ministries and agencies without direct beneficial mechanisms for the community. Further, social governance operates through State-corporate frameworks, which exclude the community from decision-making processes.

This institutional gap contrasts with progressive developments made by other African countries such as Ghana, Kenya, and South Africa. For example, the Traditional Councils Act of Ghana provides for constitutional and legal recognition for community institutions to exercise authority over mining impacts within their territories.⁶¹⁶ This empowers communities to challenge mining projects and negotiate community development agreements directly with mining companies. Additionally, the District Assemblies Common Fund in Ghana includes traditional councils that participate in revenue allocation decisions in local government fiscal governance.⁶¹⁷ This Ghanaian framework demonstrates viable institutional alternatives that Burundi can draw from.

Moreover, the County Revenue Boards of Kenya integrate community representation in revenue planning and distribution processes.⁶¹⁸ Also, the Ward Committee Systems in South Africa enable communities to participate directly in local government revenue allocation decisions.⁶¹⁹

⁶¹⁶ Constitution of Ghana 1992 arts 270-277; Chieftaincy Act 2008 (Act 759).

⁶¹⁷ Constitution of Ghana 1992 art 252; District Assemblies Common Fund Act 1993 (Act 455).

⁶¹⁸ Constitution of Kenya 2010 arts 202-203; Commission on Revenue Allocation Act 2011.

⁶¹⁹ Constitution of South Africa 1996, ch 7; Local Government: Municipal Structures Act 117 of 1998, ss 72-78.

These models provide institutional possibilities for community governance institutions that remain absent in Burundi. Nevertheless, the institution of *Bashingantahe* as a customary and traditional system still operates in Burundi and symbolises the living reference points of Ubuntu values.

5.5.2 Technocratic Expertise versus Traditional Knowledge Integration

The institutional framework for environmental, economic, and social governance in the mining sector places greater emphasis on the technical resources, whilst neglecting the traditional knowledge systems that the Ubuntu principles prescribe for effective governance. Indeed, Environmental institutions operate through technical environmental mechanisms without taking into account the traditional ecological knowledge of mining communities.⁶²⁰ Fiscal institutions concentrate authority within revenue collection agencies without incorporating traditional wealth distribution knowledge and community budgetary management practices.⁶²¹ Social governance institutional architecture prioritises technical social compliance by excluding traditional social governance knowledge and cultural assessment practices.⁶²²

This technocratic orientation reflects institutional structures designed from external technical standards rather than customary community knowledge systems. The Ministries of Mines and Environment limited their assessment of environmental impacts on chemical use in gold and other ore processing without considering the traditional ecological impacts on mining communities.⁶²³ Equally, the mandate of the OBR to establish and collect mining revenues is implemented through accounting standards, without any mechanism to incorporate traditional knowledge regarding wealth distribution.⁶²⁴

Progressive frameworks in other African countries present possibilities for integrating traditional knowledge into formal institutional systems. For example, the House of Chiefs in Botswana participate as advisory body in legislation on tribal law, customs and constitutional matters.⁶²⁵

⁶²⁰ Interview with Mining Communities (Burundi 9 June 2024).

⁶²¹ Interview with Mining Communities (Burundi 10 June 2024).

⁶²² Interview with Mining Communities (Burundi 9 June 2024).

⁶²³ Interview with Ministry of Mines (Bujumbura 16 June 2023).

⁶²⁴ Interview with Ministry of Finance (Bujumbura 17 June 2023).

⁶²⁵ Constitution of Botswana 1966, s 78; Freedom House, 'Botswana: Freedom in the World 2024 Country Report' <https://freedomhouse.org/country/botswana/freedom-world/2024> accessed 13 August 2025.

They advisory roles are also exercised over mining projects.⁶²⁶ In addition, the communal conservancy model of Namibia integrates benefit distribution and natural resources conservation.⁶²⁷ These examples illustrate institutional possibilities for knowledge integration that respect both traditional wisdom and contemporary governance requirements that can inspire Burundi.

These institutional and procedural gaps create cycles that systematically exclude communities from mining governance while concentrating authority within State institutions and mechanisms. Addressing these gaps requires fundamental institutional and procedural reforms that align with the normative Ubuntu relational framework proposed in Chapter 4.

5.6 Re-Interpretation of Institutional and Mechanisms Frameworks through Ubuntu Relational Principles

The institutional and mechanisms gaps identified in the previous section point to significant misalignments between current institutional mechanisms of mining governance structures and Ubuntu relational principles. This section suggests a re-interpretation of institutional and mechanisms frameworks through the Ubuntu principles of identity and solidarity. It aims to establish the foundation for institutional and mechanisms structures that strengthen rather than weaken community relational networks.

5.6.1 Community-Controlled Institutional Authority

The Institutional frameworks must shift from centralised State control to community-controlled governance institutions that operate according to Ubuntu identity principles. This requires integrating the institution of *Bashingantahe* into the institutional architecture of the mineral resources governance in Burundi. It would serve as an umbrella institution to oversee Community Governance Councils (CGCs) on environmental, economic, and social themes. To begin with, the Community Environmental Governance Councils (CEGCs) would participate together with the Ministries of Mines and Environment to coordinate mining licensing approval, monitoring, and

⁶²⁶ Constitution of Botswana 1966, s 78; Freedom House, 'Botswana: Freedom in the World 2024 Country Report' <https://freedomhouse.org/country/botswana/freedom-world/2024> accessed 13 August 2025.

⁶²⁷ Nature Conservation Amendment Act 1996 (Namibia); Community Conservation Namibia, 'Home - Community Conservation Namibia' <https://communityconservationnamibia.com/> accessed 13 August 2025.

enforcement decisions. This will address the consultative position that was given to mining communities.

The institutional mechanisms of governance would establish collective accountability structures that reflect Ubuntu solidarity principles of shared responsibility. In this regard, the Community Development Trust Funds (CDTF) would be managed by Community Fiscal Governance Councils (CFGC). Furthermore, the Community Social Governance Councils (CSGC) would be empowered to coordinate human rights protection and safety regulations in mining operations.

These councils would be appointed by *Bashingantahe* institutions and would have authority over environmental, economic, and social governance of mining operations in Burundi.

5.6.2 Traditional Knowledge Integration Mechanisms

The CGCs discussed above would integrate traditional knowledge systems in the environmental, economic, and social governance that advocate Ubuntu principles.

The CEGCs would integrate traditional ecological knowledge and collaborate with the State institutions on the environmental impact studies. It will contribute observations about long-term environmental patterns, ecosystem relationships, and cultural landscape significance that technical assessments typically overlook. Moreover, the CFGCs would incorporate traditional wealth distribution knowledge on the cultural and spiritual aspects of wealth management. Furthermore, the CSGCs would institute the traditional social governance knowledge systems that reflect Ubuntu principles of collective care and mutual responsibility.

These CGCs would possess binding veto power over mining operations to ensure that mining governance enhances rather than diminishes shared identity and collective solidarity for harmonious relationships.

5.7 Conclusion

The foregoing discussions in this chapter assessed the institutional mechanisms regulating environmental, economic, and social governance in Burundi. It further highlighted the strengths and weaknesses of the institutional mechanisms by showing that mining communities are relegated to the very least position. Building on the Ubuntu normative relational framework developed in chapter 4, the chapter suggests to revitalise the institution of *Bashingantahe*. These institutions are

meant to operate through CGCs on themes of environmental, economic, and social considerations. The proposed reforms create coherent institutional mechanisms to advance sustainable mineral resource governance in Burundi. The next Chapter synthesises these insights and presents key recommendations for implementing these new relational frameworks.

6 Chapter 6: Conclusion and Recommendations

6.1 Introduction

This chapter winds up the key findings from the Ubuntu-based mineral resource governance framework developed throughout this study and presents comprehensive recommendations for transforming the extractive governance of Burundi into community-controlled sustainable development.

The research has demonstrated that current mineral resource governance in Burundi systematically fails to operationalise Ubuntu principles or deliver meaningful social justice outcomes. Despite the progressive constitutional language and comprehensive international and regional frameworks integration, the analysis shows persistent colonial-era extractive patterns that continue to marginalise communities while concentrating benefits among State elites and foreign corporations. The chapter provides empirical evidence that these governance failures result from deliberate policy choices rather than inherent constraints, creating both moral imperatives and practical necessities for transformative reform in Burundi.

The Ubuntu-centred framework developed in this thesis provides a viable alternative that repositions communities as primary agents of mining governance while embedding African philosophical traditions throughout legal and institutional architecture as research findings.

6.2 Research Findings

The research has examined the governance framework for mineral resources in Burundi, analysing how current foreign-influenced approaches have failed to deliver sustainable development benefits to mining communities. Despite implementing normative standards and institutional structures across environmental, economic, and social dimensions, the mineral governance framework of Burundi has not enabled the equitable collection and distribution of mining revenues. Such situation highlighted pervasive social injustices, as legal and policy frameworks prioritise revenue maximisation during extraction while neglecting intergenerational equity and community rights. It was based on these challenges that the central research objective was to critically assess whether the legal, institutional, and procedural frameworks for mineral governance can achieve sustainable development by ensuring mining revenues benefit both present and future generations.

It is upon this foundation that Chapter 2 developed a theoretical critique of Western liberal approaches to social justice in mineral governance. In this Chapter, the thesis argues that dominant theories, particularly Rawlsian liberalism, are inadequate for post-colonial African contexts like Burundi. Specifically, three critical limitations emerge from this analysis. Firstly, it is in this thesis view point that liberal theories assume autonomous individual agents while ignoring how colonial histories have compromised community agency. Secondly, formal procedural fairness perpetuates structural inequalities by maintaining unequal starting points rather than addressing historical injustices. Thirdly, claims of cultural neutrality mask Western individualistic assumptions that systematically marginalise communal frameworks.

In order to address these limitations, the research proposes Ubuntu philosophy as an alternative framework grounded in the principle "I am because you are," which offers a relational ontology that contrasts sharply with Western individualism. It was operationalised in this regard through two interconnected principles. Shared identity, which requires recognition of collective interconnectedness across current and future generations, and collective solidarity, which demands genuine care for communal wellbeing and shared responsibility for meeting collective needs. Furthermore, these principles translate into governance reforms across normative, institutional, and procedural levels, including constitutional entrenchment of community relationships to territories, community development corporations with legal authority over mining benefits, and expanded FPIC processes requiring genuine community participation.

From theoretical foundations to legal analysis, Chapter 3 demonstrates how Ubuntu philosophy can be operationalised through strategic reinterpretation of existing international and regional legal frameworks rather than creating entirely new systems. It is in the initial sections of the chapter that the research examined the limitations of international law, revealing how international frameworks systematically privilege individual rights over collective rights, thereby creating discriminatory outcomes for African communities. Although the permanent sovereignty principle establishes that natural resources should benefit populations, it fails to address culturally appropriate definitions of wellbeing or equitable benefit distribution.

Subsequently, the analysis reinterprets sustainable development through the relational ontology of Ubuntu. Rather than balancing competing individual interests between generations, Ubuntu reframes sustainability as preserving community relationships across environmental, social, and

economic dimensions, justifying resource extraction only when it strengthens intergenerational relationships through community development. In addition to that, the chapter explores African continental frameworks, revealing that instruments such as the AU Constitutive Act, Agenda 2063, and the Africa Mining Vision contain Ubuntu-aligned principles but emphasise technical capacity over cultural integration. However, implementation channels community involvement through the State rather than traditional institutions, thereby undermining Ubuntu solidarity principles.

Moving from legal theory to empirical analysis, Chapters 4 and 5 investigate Ubuntu implementation in the mineral resource governance of Burundi, revealing systematic failures across all normative and institutional mechanisms frameworks despite progressive constitutional language. The 2018 Constitution acknowledges intergenerational responsibilities and establishes sustainable development as a legislative mandate. But, it has been seen in the implementation that significant gaps exist. In environmental governance, communities are treated as affected populations rather than rights-holders with cultural land relationships. At the same time, widespread illegal mining occurs without consultation through State-centric mechanisms that contradict Ubuntu solidarity principles.

Similarly, fiscal governance demonstrates salient contradictions. Despite sophisticated taxation regimes including State equity participation and production-sharing alternatives, revenue is treated as state-controlled compensation rather than collective wealth, leaving communities as passive beneficiaries rather than active participants. Moreover, the absence of community revenue institutions and technocratic emphasis marginalises traditional wealth distribution knowledge. Equally concerning, social governance reveals systematic human rights violations, including worker safety failures and child labor that violates Ubuntu intergenerational solidarity principles. It appeared that these violations occur because the framework conceptualises rights as CSR rather than community entitlements, making communities dependent on corporate benevolence rather than empowering them as rights-holders.

Building upon these findings, Chapters 4 and 5 operationalise Ubuntu principles into concrete legal and institutional frameworks that transform the mineral resource governance of Burundi from extractive exploitation to community-controlled sustainable development through comprehensive reforms. Initially, constitutional reforms address the gap where customary law remains marginalised despite progressive language. Drawing from South African experience, the proposal

establishes Ubuntu entrenchment through preamble integration, explicitly recognising Ubuntu as a foundational governance principle, substantive provisions embedding Ubuntu as fundamental constitutional values, and judicial interpretation authority empowering courts to apply Ubuntu principles in mineral disputes.

Following constitutional entrenchment, the framework reconceptualises permanent sovereignty by eliminating colonial surface-subsurface separation and establishing communities as collective custodians of mineral wealth with the State serving as trustee, facilitating community decisions. This operationalises through Community Resource Management Agreements, granting communities control over revenue allocation, environmental management, and social impact mitigation. Consequently, Ubuntu transforms sovereignty from extraction rights into collective responsibility for managing resources across generations, with mining benefits flowing directly to communities through tripartite contracts.

To implement these sovereignty changes, environmental framework recalibration embeds Ubuntu relational principles throughout mining sector management through constitutional amendments recognising communities as primary environmental stewards and Environmental Code restructuring that integrates traditional ecological knowledge as core principles. Subsequently, institutional restructuring creates Community Environmental Stewardship Councils with legal authority to approve and enforce environmental standards, while procedural transformation shifts from consultation to consent-based decision-making through comprehensive FPIC processes.

Extending from environmental to economic dimensions, fiscal framework reforms address the misalignment where revenue is treated as State-controlled compensation rather than collective wealth. Mining Law amendments establish community equity participation, enabling customary authorities to negotiate ownership arrangements directly with operators. As a result, institutional restructuring creates Community Wealth Management Councils with exclusive authority over revenue collection and distribution, while Traditional Authority Fiscal Councils maintain authority over cultural and spiritual wealth management to ensure alignment with Ubuntu principles.

Finally, completing the transformation, social governance shifts mining from corporate-dominated compliance to community-controlled development. Mining Code amendments establish communities as primary rights-holders with authority to define and enforce human rights

standards, requiring ongoing community consent through Community Social Governance Councils. Moreover, constitutional amendments establish exclusive community authority over development initiatives, with Community Development Trust Funds receiving a minimum of 15% of gross revenues, while creating community authority over cultural impact assessments.

In research methodology, this research employs a qualitative legal analysis approach. It combined doctrinal legal research with philosophical analysis and case study methodology. For primary sources, the research reviewed constitutional texts, mining laws, and policy documents. For secondary sources, the researcher dedicated time to read scholarly literature on Ubuntu philosophy, mineral governance, and African legal systems.

Last but not least, this research demonstrates that governance failures in the Burundi mineral sector result from policy choices privileging Western liberal frameworks over indigenous African philosophical traditions. It has been shown that the philosophy of Ubuntu offers both a moral imperative and a practical framework for transformative reform. It enables sustainable development that honors African traditions while protecting human rights across generations. Ultimately, the research contributes to growing scholarship on decolonising governance frameworks and provides concrete legal and institutional mechanisms for implementing African philosophical principles in natural resource management.

It is based on these findings that the current chapter suggests key recommendations as outlined below.

6.3 Recommendations

This thesis concludes with actionable recommendations structured around three complementary imperatives, including normative, institutional, and procedural, that collectively operationalise the Ubuntu relational framework developed in Chapters 4 and 5.

6.3.1 Normative Recommendations

Normative transformation begins with embedding Ubuntu principles into the Constitution of Burundi and subsequent legal architecture.

6.3.1.1 Constitutional Reform Framework

The Constitution of Burundi should be amended to explicitly recognise Ubuntu principles as fundamental constitutional values and principles alongside democracy, the rule of law, and human dignity. It would require to revise the preamble to acknowledge *Umntu* (individual identity through community) and *Ubumwe* (community solidarity) as foundational governance principles, particularly in natural resource management. Article 2 should be amended to establish Ubuntu as a constitutional principle with legal force. Article 164 should be expanded to recognise communities as primary stewards of sustainable development within their territories.

6.3.1.2 Legislative Framework Amendments

Legislative amendments must formally integrate Ubuntu principles into existing mining laws as provided below.

- a) Mining laws restructuring needs substantial amendment of Article 7 of the Mining Code 2023 to establish communities as collective custodians of mineral wealth, with the State serving as trustee, facilitating community resource management decisions rather than exercising exclusive ownership. This transformation requires replacing state-centric permanent sovereignty assertions with people-centred custodianship.
- b) Environmental code integration requires restructuring the Environmental Code 2021 to embed Ubuntu relational principles within environmental governance frameworks, expanding sustainable development principles to include traditional ecological knowledge, community environmental stewardship rights, and relational sustainability as core governance principles.
- c) The Bill of Rights section necessitates incorporation of social governance provisions to establish communities as primary rights-holders with inherent authority to define, monitor, and enforce human rights standards for mining operations within their territories, shifting from CSR to community-controlled rights enforcement.

6.3.1.3 Legal Framework Harmonisation

It would require to harmonise the legal architecture of Burundi to transition from State ownership to community custodianship in order to prevent conflicts and ensure consistency:

- a) Property and Land Law Integration:

- i. Land Code Amendments: Revising the Land Code 2011 to recognise community custodianship over subsurface resources while maintaining individual land rights for surface use, establishing legal mechanisms for communities to exercise mineral custodianship without disrupting existing land tenure systems.
 - ii. Registration System Reform: Revising the procedures for land registration in order to include community custodianship declarations, ensuring traditional territories are legally recognised within formal land administration systems.
- b) Corporate and Commercial Law Alignment:
 - i. Company Law Amendments: Restructuring corporate registration requirements to mandate community partnership agreements for all mining operations, with communities holding legally recognised equity positions that cannot be diluted without community consent.
 - ii. Contract Law Integration: Empowering community collective with contracting authority in the current contract law frameworks, ensuring traditional consensus-building processes have legal recognition in commercial agreements.
- c) Administrative and Public Law Harmonisation:
 - i. Administrative Procedures Act Reform: Integrating community consent requirements into standard administrative decision-making procedures, ensuring Ubuntu principles operate within existing administrative law frameworks rather than creating parallel systems.
 - ii. Public Finance Law Coordination: Community revenue management authority should be revised with existing public finance laws through the creation of community fiscal institutions as recognised public entities with appropriate oversight and accountability mechanisms.
- d) International Treaty Integration:
 - i. EAC Treaty Compliance: Ensuring community custodianship arrangements comply with East African Community common market provisions while advancing regional indigenous rights recognition.
 - ii. Investment Agreement Harmonisation: Revising bilateral investment treaties to recognise community custodianship as legitimate governance arrangements that strengthen rather than weaken investment protection frameworks.

It is this harmonisation approach that ensures Ubuntu relational framework reforms strengthen the legal system and create integrated governance frameworks that respect both traditional values and contemporary legal requirements.

6.3.2 Institutional Recommendations

It is argued that implementation of the normative framework for mineral resource governance in Burundi would require institutional architecture and appropriate mechanisms in order to ensure the participation of the community.

6.3.2.1 State Institution Restructuring

The State institutions must be restructured in their mandates as follows:

- a) The Ministry of Mines should work closely with the institution of Bashingantahe and the Community Governance Councils for mining decisions across three core areas:
 - i. Environmental Technical Support: Providing communities with access to environmental monitoring equipment, water quality testing capabilities, and ecological assessment methodologies. Training programs should include 6-month intensive courses in environmental impact assessment, traditional ecological knowledge documentation, and community-based monitoring systems, funded through a dedicated 2% allocation from mining revenues.
 - ii. Fiscal Management Technical Support: Establishing community financial literacy programs covering revenue projection, budget planning, and investment analysis. The curriculum should include 3-month rotating workshops on fiscal accountability, traditional wealth distribution integration, and modern financial management, with external financial advisors selected by communities and funded through community-controlled trust funds.
 - iii. Social Governance Technical Support: Creating capacity-building programs for community health and safety monitoring, cultural impact assessment, and conflict resolution. Training should encompass traditional governance strengthening, modern administrative skills, and legal literacy, delivered through partnership agreements between communities and selected technical institutions.

To ensure technical support empowers rather than creates new dependencies, all programs must operate under community-controlled selection criteria where communities choose

their technical partners, maintain ownership of all knowledge and data generated, and retain authority to modify or terminate support arrangements. External experts must commit to knowledge transfer timelines that build local capacity within defined periods rather than creating permanent advisory relationships.

- b) The Office of Mines and Quarries must be reconfigured to shift from state-corporate monitoring to community empowerment support, providing technical assistance for community-controlled monitoring systems and supporting traditional authorities in governance capacity building.
- c) The judicial system in Burundi should be enhanced to establish specialised chambers with jurisdiction to adjudicate disputes pertained to mining operations supported by comprehensive training programs for judges and legal practitioners in Ubuntu jurisprudence and collective rights interpretation. The specialised chambers must develop jurisprudence that demonstrates how community custodianship strengthens Burundi's sovereignty by ensuring resource governance serves national development through community empowerment rather than external extraction. This approach positions UNDRIP principles as tools for strengthening rather than undermining Burundian governance autonomy.
- d) The abstention of Burundi on UNDRIP in 2007 reflected concerns about potential conflicts with State sovereignty and existing legal frameworks. In the constitution amendments, it should directly be addressed by establishing community custodianship as an enhancement rather than a limitation of sovereignty, with communities exercising collective rights within constitutional frameworks that strengthen rather than fragment national unity.

6.3.2.2 Community Governance Institution

The State must establish community governance institutions that include:

- a) Key stakeholders by revitalising the Bashingantahe traditional authorities, women's groups, and youth representatives.
- b) Community Environmental Stewardship Councils by legally recognising institutions with authority to approve, monitor, and enforce environmental standards for mining activities within community territories. These councils should possess legal standing to initiate

environmental protection proceedings and enter into environmental management agreements with mining operators.

- c) Community Wealth Management Councils with exclusive authority over mining revenue collection, allocation, and distribution within community territories, possessing binding power to negotiate fiscal agreements directly with mining operators and challenge state policies conflicting with community priorities.
- d) Community Social Governance Councils with binding authority over mining social impact assessments, community development planning, cultural rights protection, safety standards enforcement, and benefit-sharing negotiations.

6.3.2.3 Advocacy and Awareness Functions

These institutions will be supported by additional entities focused on advocacy and awareness, including:

- a) Civil Society Organisations operates in intermediaries between communities and formal governance structures, facilitating community understanding of Ubuntu principles and their legal rights under the proposed framework. It is in this research view point that CSOs based in Burundi, like OAG, should advocate for constitutional and legislative reforms at national and regional levels, utilising their networks to build coalitions supporting Ubuntu-centred mining governance. This can be done through parliamentary committees and participating in constitutional review processes. In addition, CSOs should establish independent monitoring systems that track the implementation of Ubuntu principles in mining governance in Burundi, documenting violations of community rights and publishing regular reports on corporate and state compliance with community-controlled governance requirements.
- b) Non-Governmental Organisations (NGOs) based in Burundi should conduct participatory research that documents traditional ecological knowledge, customary governance practices, and community-defined development priorities, creating knowledge resources that support community authority in mining governance. In addition, they must provide legal assistance to communities challenging mining operations that violate Ubuntu principles, supporting strategic litigation that establishes precedential case law recognising community rights and Ubuntu constitutional principles.

- c) The Private Sector, particularly Burundian Mining Companies, must fundamentally restructure their business models from extraction-focused operations to community partnership approaches that recognise communities as legitimate co-owners and governance partners rather than external stakeholders requiring consultation. In addition, mining companies should invest in comprehensive cultural competency training for all personnel operating in Burundi, ensuring understanding of Ubuntu principles, traditional governance systems, and respectful engagement protocols that prioritise community authority over technical efficiency.
- d) Academicians and Research Institutions must conduct comprehensive research on Ubuntu legal philosophy and its application to contemporary governance challenges, developing scholarly literature that supports judicial interpretation and legislative implementation of Ubuntu principles in mining governance in Burundi. Moreover, academic institutions should establish continuing education programs for judges, lawyers, government officials, and civil society practitioners, building capacity for effective implementation of Ubuntu-based governance frameworks.
- e) Universities established in Burundi must integrate Ubuntu philosophy and African legal traditions into law, public administration, and development studies curricula, ensuring that future legal and governance professionals understand alternative philosophical foundations for mineral resource governance.

6.3.3 Procedural Recommendations

Procedural transformation involves creating mechanisms that ensure genuine community control over mining activities in Burundi as follows:

- a) The consultation-based approaches should be replaced with comprehensive FPIC processes that grant communities substantive decision-making authority over all mining activities affecting their territories, regardless of physical proximity, recognising that Ubuntu relationships extend beyond immediate geographical boundaries.
- b) It should be established ongoing community authority over mining activities through regular review processes that assess performance against community priorities, with communities retaining authority to modify or withdraw consent based on environmental performance and changing circumstances.

- c) Environmental and social impact assessments should be revised to integrate traditional ecological knowledge with technical analysis, requiring mining companies to work directly with Community Governance Councils throughout assessment processes as co-assessors rather than external consultants.
- d) It should be established that ongoing collaborative environmental and social management mechanisms that reflect Ubuntu principles of continuous relationship maintenance, with shared responsibilities clearly defined for communities, mining companies, and state agencies throughout mining lifecycles.
- e) It should be developed dispute resolution mechanisms that prioritise customary mediation processes while providing access to formal judicial remedies when traditional approaches prove insufficient, ensuring that community decisions have a binding effect in legal proceedings.
- f) It should create comprehensive accountability mechanisms through Community Fiscal Accountability Councils composed of traditional authorities, women leaders, and youth representatives with binding authority over monitoring all aspects of mining governance within their territories.

6.4 Further Areas of Research

In concluding this research, the relational framework proposal for mining governance gives several promising avenues for future scholarly investigation that would advance both theoretical understanding and practical application of indigenous governance models in contemporary extractive contexts. It appeared that comparative Ubuntu governance studies represent a critical research priority, examining how Ubuntu-based governance models function across different African countries to identify best practices, adaptation strategies, and context-specific implementation approaches that respect local cultural variations while maintaining core philosophical foundations. Such research would contribute to developing a continental framework for Ubuntu-based resource governance that supports South-South knowledge sharing and collaborative learning among African communities implementing indigenous governance alternatives.

6.5 Final Conclusion

This research has established that mineral resource governance in Burundi systematically fails to operationalise Ubuntu principles, perpetuating social injustices through the reproduction of colonial-era extractive patterns under contemporary sovereignty assertions. It is in the analysis of normative, institutional, and procedural dimensions reveals that these failures result from deliberate policy choices that prioritise State revenue generation and corporate profit maximisation over community empowerment and sustainable development.

The Ubuntu-centred framework developed in this thesis provides a transformative alternative that addresses these fundamental contradictions by repositioning communities as primary agents of mining governance while embedding African philosophical traditions throughout legal and institutional architecture. It is in the framework proposal that it has been demonstrated how relational ontology can be constitutionally entrenched and practically implemented through comprehensive reforms that respect cultural values, promote collective prosperity, and advance sustainable development through indigenous philosophical foundations.

In the recommendations presented above, concrete pathways appears for implementation that acknowledge the complex stakeholder dynamics and political economy constraints characterising post-colonial governance contexts in Burundi. It should however be noted that successful transformation requires sustained commitment from multiple stakeholders, including communities willing to assume governance responsibilities, State institutions prepared to relinquish control while providing technical support, and international partners committed to supporting community-controlled development rather than imposing external models.

For a broader significance of this research extends beyond Burundi to demonstrate how African philosophical traditions can provide viable alternatives to neoliberal governance models that have failed to deliver social justice outcomes in resource-rich African countries. It is in grounding extractive governance in Ubuntu principles of collective responsibility, intergenerational solidarity, and relational decision-making that this framework offers a replicable approach for other African countries seeking to decolonise their mining sectors while advancing sustainable development through culturally grounded approaches.

In doing so, this research contributed to ongoing efforts to reimagine development theory and practice through African philosophical traditions, demonstrating that social justice in mineral resource governance requires not merely technical reforms but fundamental transformation of power relationships between communities, States, and corporations. The Ubuntu-centred framework proposed enhances both the theoretical foundation and practical mechanisms for achieving this transformation. It empowers community and advance cultural continuity as essential elements of sustainable development in mineral resources governance.

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