

AN OUTLINE OF SELECT MINING POLICY AND LEGISLATION FRAMEWORKS FROM EAST AND SOUTHERN AFRICA

This brief provides an outline of key provisions from mining policy and legislation from some selected countries that we studied in the course of the Policy and Institutional Audit for Mining Governance consultancy.

1. Vesting of minerals

- South Africa: Minerals and Petroleum Resources Development Act 2004 – vests all mineral rights in the state;
- Malawi, Zimbabwe and Zambia: the Mines and Minerals Act, vests mineral rights in the President
- Botswana: the Mines and Minerals Act and the Mineral Rights in Tribal Territories Act vest mineral rights in the state.
- In Uganda the Mining Act 2003 vests all minerals in the Government.
- There is hardly any difference in legal terms between vesting mineral rights in the state (the republic) and vesting in the president on behalf of the people or the republic. The Ugandan formulation however gives a different scenario in that minerals are not vested in the people or in the President on behalf of the people; rather in the government.
- The above frameworks are the same in Mozambique, Kenya and Tanzania.

2. Constitutionalizing economic and social rights

- South Africa, Zimbabwe and Malawi have included economic, social, cultural and environmental rights in their Constitutions.
- The framing of these rights is in varying degrees of enforceability but have considerable potential of influencing the manner in which the extractive industries respond to these rights at local level.
- Most of the Constitutions have been influenced by the Rio Declaration and provide either in form of clear rights or principles of national policy for the state to take measures to protect the environment prevent pollution and promote sustainable development.
- This framework can be used to inform development of a more inclusive and rights based mining governance framework.

3. Mining licenses

- The various country legislation require mining companies to apply for mining licenses to explore, prospect or mine minerals. There are conditions whose details differ from country to country regarding coverage of land, period of license and renewal.
- For example the number of years for exploration and prospecting licenses is generally uniform in the region and so is the maximum number of years for a mining license. The licenses also regulate and set standards and conditions under which mining can take place.
- Mining contracts or concessions may contain provisions for mining companies to comply with such as revenue sharing, royalty payments, tax

obligations, environmental requirements, social responsibility, labour conditions, decommissioning, among others.

4. Mining and land ownership

- Land ownership, tenure and use are key to livelihoods: mining is therefore often in conflict with local community interests.
- All the countries have legislation addressing land acquisition for different purposes including for mining.
- Botswana's Acquisition and Property Act restricts compensation to the value of property on the land. Malawi has the Land Acquisition Act while the Mines and Minerals Act gives power to the President to acquire land for mining purposes under the Land Acquisition Act.
- Zimbabwe's land compensation regime for mining on the other hand is provided for under the Mines and Minerals Act which gives private land holders to be compensated by mining rights holders once a mining operation is established; compensation for communal land is however payable to district councils in Zimbabwe.

5. Environmental protection

- Most countries have enacted policies and legislation following the adoption of the Rio Declaration at the Rio Summit in 1992.
- South Africa enacted the National Environmental Management Act; Zimbabwe enacted the Environmental Management Act; while Botswana enacted the Environmental Impact Assessment Act, the Atmospheric (Pollution Prevention) Act and Waste Management Act. These pieces of legislation deal with environmental protection, control of pollution and hazardous waste and radioactive material, which generally apply to mining operations.
- A key tool for environmental regulation adopted by most of these countries is the Environmental Impact Assessment (EIA), which is required before a mining license can be issued.

6. Access to information

- Social and environmental accountability is anchored on access to information, disclosure laws and practices. Mining operations, which take place in rural setting, need free, prior informed consent of local communities to enhance sustainable development.
- Zimbabwe and South Africa have the right of access to information in their environmental legislation, which can be used in mining related issues. Malawi has the right to information in the Constitution but the EMA does not make provision for access to information. The revised EMA bill has provided the right to information.
- On the other hand, there are a number of pieces of legislation including mining related ones, which restrict access to information. For example, Zambia's Mines and Minerals Development Act 2008 generally restricts disclosure of information related to a mineral right unless with the consent of the holder of the mineral right. Most of the mining legislation in the region are silent on access to information.

7. Mining Health and Safety

- In most countries mining legislation provide for safety and health of mine workers. These provisions are usually complimented by labour legislation.
- This is the case in Malawi where the Mines and Mineral (Mining Safety) Regulations made under the Mines and Minerals Act provides detailed provisions for health and safety of mine workers. The same is the case under Zambia's Mines and Minerals Development Act 2008.
- In Botswana the Mines, Quarries, Works and Machinery Act provides for safety and protection of mine workers.
- In Malawi the Occupational Safety Health and Welfare Act 1997 provides for health and safety of all workers inclusive of mine workers. This may bring conflict between mining safety regulatory framework and the general workers safety legislation.