

Catholic Commission for Justice and Peace (CCJP)



Land Displacement, Involuntary Resettlement and Compensation Practice in the Mining Sector

*A Comparative Analysis of Legal and Policy Frameworks in
Southern Africa*

Preface

The Catholic Commission for Justice and Peace (CCJP) recognizes the importance of the mining sector in the socio-economic development of Malawi. Among many other governance issues currently under debate, dialogue or discussion; the need for strengthening the sector's legal and policy framework is being pursued both by government and CSOs with the seriousness it deserves.

CCJP realizes that there are many entries into such a daunting initiative, but through TIWONE project, CCJP in Malawi has opted to deal with existential impact of the booming mining industry on the livelihoods of citizens. As such, CCJP commissioned this study to gain insights into some Southern Africa regional best legal and policy practices on land displacement, resettlement and compensation. This is our choice, focus and priority out of the larger and wider voices on mining.

Communities in Malawi have already started encountering displacements, resettlements and compensation unfortunately with varying degrees of commonality, legality and objectivity. This study therefore provides an opportune for designing interventions that bring to the fore, the human life experiences as far as land displacement and resettlement have ensued due to mining in Malawi.

As more licenses for exploration are being given to investors; as few more mining companies are in real time mining processes, the voices from the poor and marginalized need to be heard and need protection from government's desire to gain more financial resources from the mining sector. TIWONE project, through this study, seeks to lay the foundation that anchors responsible mining processes and that no community is put into the margins of development or has its livelihoods affected at the thriving of an investor in mining.

CCJP acknowledges the timely contribution of Catholic Relief Services (CRS) to this initiative and guiding CCJP to find the niche within the larger debate on mining in Malawi. CCJP further thanks Imani Consulting LTD for conducting this study on its behalf and by doing it so effectively.

This report has more details that can be used for numerous interventions and can also be used as a resource book.

August 2014- Lilongwe
CCJP Malawi National Secretary

Executive Summary

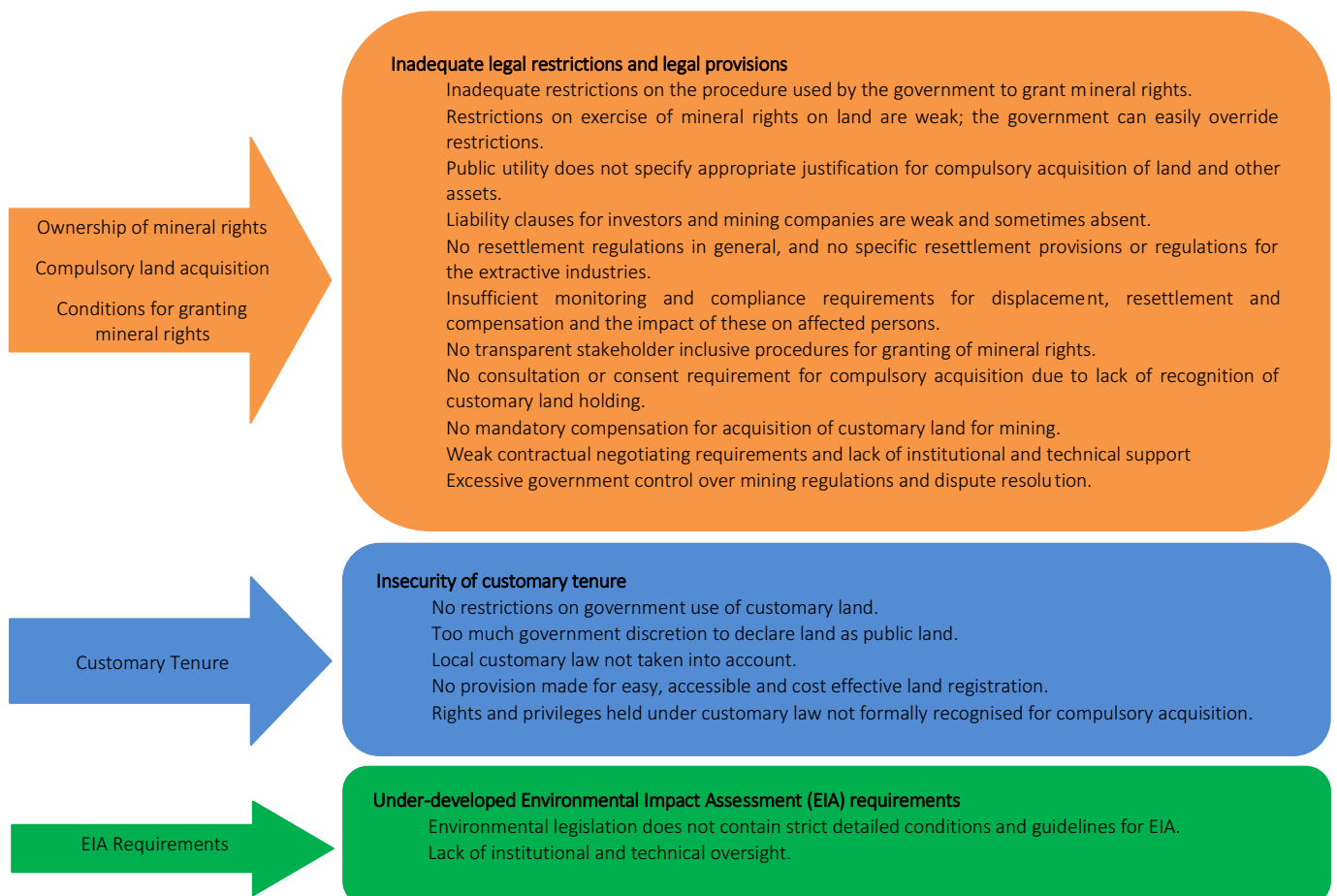
The mining sector has become a focal point for the Malawian government, cited in the Malawi Growth and Development Strategy II 2012-2016 as a priority sector, accompanied by growth in contributions to GDP over the last decade. Harnessing the country's resources can spur on national socio-economic development if economic activity, environmental integrity, social concerns and effective governance systems are properly integrated.¹ If these pillars of sustainable development are excluded countries may be bound by the so-called 'resource curse', which describes the situation of countries rich in non-renewable resources that are not able to use these resources to drive equitable socio-economic development, while countries with fewer resources tend to have higher economic growth.²

Balancing competing interests in the extractives industries, the principles of sustainable development and the welfare of affected local communities is a challenge for governments and stakeholders. Each year mining-induced displacement affects one million people worldwide;³ the process of displacement and resettlement is often marred by weak and mismanaged legal and institutional frameworks. This has led to many evidenced cases of social, environmental and economic injustice that in some examples have received international attention and have resulted in high profile public litigation actions.

Mining-induced displacement, resettlement and compensation are covered by the following laws in Malawi:

The Constitution of the Republic of Malawi 1994
 The Mines and Minerals Act 1981
 The Land Acquisition Act 1972
 The Environmental Management Act 1996

This comparative legal and policy analysis of mining-related displacement, resettlement and compensation in Malawi, Botswana, Mozambique, Zambia and South Africa shows that the governance framework does not always safeguard the rights of citizens or promote sustainable development. This analysis found that there were **significant gaps in the Malawian governance framework**, which are summarised in the following diagram:





The key recommendations for the Malawian government include:

Ensure that in all cases of displacement and resettlement that the livelihoods of affected people are at least restored.

Constitutionally guarantee the preservation of socio-cultural rights through security of tenure and recognition of customary rights.

Repeal and replace restrictive provisions contained in the Mines and Minerals Act and the Land Act, including

- Reforming the administration of customary tenure in the Land Act
- Promoting transparency and public participation in the Mines and Minerals Act
- Promoting stakeholder engagement within the negotiation process
- Delimiting government control and governmental powers in the administration of the Mines and Minerals Act
- Including professional institutional oversight to ensure compliance (environmental protection agency, social institutions with focus on vulnerable groups)
- Incorporate customary law and practice considerations in administrative decision-making.

Modernise environmental protection laws to include clear and detailed requirements on Environmental and Social Impact Assessments, monitoring and compliance.

Enact new legislation compiling a resettlement procedure in one document including clear instructions on compensation. Until this is in place, ensure companies are applying international best practice policy, such as the International Finance Corporation’s Performance Standard 5 on Land Acquisition and Involuntary Resettlement and the World Bank Operational Policy 4.12 on Involuntary Resettlement.

Introduce clear resettlement and compensation monitoring procedures and stricter measures for in cases of non-compliance. Enact freedom of information and access to information measures.

Officially begin EITI candidacy process.

The key recommendations for the Catholic Commission for Justice and Peace include:

Lobby government to repeal restrictive sections of law and to introduce new laws.

Advocate for speedy policy and legal reform by galvanising political will through highlighting community and stakeholder concerns.

Work with other stakeholders and key institutions to educate them on critical issues and to influence advocacy.

Educate and build the capacity of affected populations in legal literacy for displacement, consent and compensation issues, in available dispute resolution mechanisms, general legal rights and the obligations of investors and government. The studies suggested below will provide evidence for the approach to be taken and highlight the gaps to be addressed for community empowerment.

Fund investigative studies of the practice and application of current law through baseline surveys of affected communities using quantitative and qualitative approaches to understand the variance among different sites and demographic and cultural groups. This should target not only communities affected by mining but also communities displaced by other projects, such as road and rail development.

Fund a thorough stakeholder assessment of the perceptions and understanding around displacement, resettlement and compensation issues in Malawi to inform advocacy work and promote better stakeholder engagement and relations; stakeholders should include companies in the extractive industries, government (national and district level; Ministry of Lands, Housing and Urban Development and Ministry of Natural Resources, Energy and Mining), traditional leaders, affected and future affected communities, media and civil society organisations.

Fund monitoring and evaluation exercises following relocation with a view to ensuring best practice and corporate responsibility.

Use results of research to make recommendations to government on ensuring sustainable development guides displacement, resettlement and compensation of communities.

Generate advocacy and learning material based on evidence from studies to target different stakeholders.

Abbreviations and Acronyms

BEE	Black Economic Empowerment
BP	Bank Procedures
CBRLDP	Community-Based Rural Land Development Project
CCJP	Catholic Commission for Justice and Peace
CSO	Civil Society Organisation
DUAT	Direito de Uso e Aproveitamento da Terra
EA	Expropriation Act
EAA	Environment Assessment Act
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EMA	Environmental Management Act
EMP	Environmental Management Plan
EPPA	Environmental Protection and Pollution Act
EPPCR	Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations
ERMA	Environmental Regulation for Mining Activities
ESIA	Environmental and Social Impact Assessment
GDP	Gross Domestic Product
GOXI	Governance of the Extractive Industries
ICMM	International Council on Mining and Metals
IFC	International Finance Corporation
LA	Land Act
LAA	Land Acquisition Act
LL	Land Law
MGDS	Malawi Growth and Development Strategy
MICOA	Ministry of Coordination of Environmental Affairs
ML	Mining Law
MLR	Mining Law Regulations
MMA	Mines and Minerals Act
MMDA	Minerals and Mining Development Act
MPRDA	Mineral and Petroleum Resources Development Act
NEMA	National Environmental Management Act
NGO	Non-Governmental Organisation
NRP	National Resettlement Policy
OECD	Organisation for Economic Co-operation and Development
OP	Operational Policy
PWYP	Publish What You Pay
RAP	Resettlement Action Plan
TIWONE	Transparency Initiative With Our Natural resources Extractives
TLA	Tribal Land Act
UN	United Nations

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1 Introduction

1.1 Context

Mining in Malawi is touted to contribute 20% to Gross Domestic Product (GDP) in the next five years. Even if this goal, set out in Malawi's Mines and Minerals Policy (2013), is optimistic,⁴ Malawi's mining sector has undoubtedly grown in the last decade. Mining contributed less than 3% to GDP until 2006⁵ but increased to over 10% by 2010, which can be largely attributed to production at Kayelekera Uranium Mine.⁶ As of October 2013, over 50 mining and 100 exclusive prospecting licences were valid⁷ including 6 prospecting licences for petroleum. Many activities in mining, oil and gas remain in the prospecting stage with Environmental and Social Impact Assessments (ESIAs) being developed.

The mining sector has become a focal point for the Malawian government; it is cited in the Malawi Growth and Development Strategy II 2012-2016 as a priority sector and is supported in the Malawi National Export Strategy 2013-2018.⁸ In Malawi, mining should "contribute to socio-economic development of the country including poverty reduction and sustainable development", according to the country's Mines and Minerals Policy 2013. This aligns with the Africa Mining Vision's desire to see "transparent, equitable and optimal exploitation of mineral resources [...] underpin broad-based sustainable growth and socio-economic development", which was developed in 2008 at the first Africa Union Conference of Ministers Responsible for Mineral Resources Development.⁹

Harnessing resources can spur on national socio-economic development if economic activity, environmental integrity, social concerns and effective governance systems are properly integrated.¹⁰ Equitable distribution of costs and benefits must be ensured and the potential for future generations to meet their own needs must not be compromised.¹¹ Thus sound management, stakeholder engagement, and strict adherence to accountability and transparency are required at all stages of the natural resource exploitation cycle, from project inception and development to mine closure and rehabilitation. Unfortunately, the benefits of resource wealth are frequently inequitably and inefficiently distributed in Southern Africa.¹²

The delays countries are experiencing in seeing resource wealth converted into sustainable development is not for want of actors involved in the extractive industries. National and regional government ministries and agencies, multinational corporations, small-scale entrepreneurs, state-owned mining companies, banks, donors, non-governmental organisations and traditional authorities all play a role. The government takes a lead through creating the legislative and policy framework, issuing mineral rights, negotiating agreements, managing corporate compliance to national laws and standards, and overseeing revenues.¹³

Land, including ownership, tenure and related land use rights, is central to rural livelihoods in developing countries¹⁴ and interests in land frequently clash with the needs of the mining industry. Land ownership, displacement and compensation are some of the key legal issues faced by governments, companies and citizens. These competing interests pose real challenges to safeguarding the rights and livelihoods of people who often find themselves at the periphery of developing, planning and implementing mining projects.¹⁵ Evidence from across the region shows that those communities near mining sites, most in need of enjoying the benefits of resource extraction, tend to bear a disproportionate share of the social and environmental costs of mining.¹⁶

Loss of land, mainly due to compulsory land acquisition and insecurity of tenure under customary law, has resulted in mining-induced displacement that affects an estimated one million people every year.¹⁷ Compulsory acquisition rights allow government to acquire land for public purpose without the willing consent of its owner or occupant. Here, the responsibility for displaced communities, including resettling and compensating displaced households, lies ultimately with the government. Governments therefore require efficient and fair legal and policy frameworks and monitoring mechanisms to guide and manage involuntary resettlement. Companies in turn are also concerned with the impact of their operations on communities since without the social licence to operate, extraction of resources becomes riskier and more costly.

Malawi does not have a national resettlement policy or specific legislation and regulations but has a number of different laws that are applied when communities are resettled as a result of infrastructural development projects. The Public Roads Act 1962, for instance, makes more detailed provision for compensation of surface rights than the mining

law does; in the case of private land, compensation is based on the loss and suffering caused by damage to surface rights and is valued based on whether the person affected has to change their residence or place of business and includes reasonable expenses incidental to the change. Compensation for land which is customary land is assessed after consultation with the chief and is based on the loss suffered from the disturbance of surface rights. It also includes compensation for other disturbance including consideration of whether the affected person has to move his residence or place of business and where no alternative land can be made available to them or the land made available is not fit for agricultural purposes compensation must be given, and also includes considerations of where alternative land made available is fit for cultivation and the likely cost of money, materials and work.

In most resettlement cases in Malawi that arise from infrastructure development, international policy frameworks and best practice, and in particular the World Bank Operational Policy on Involuntary Resettlement, have been used to supplement the legal framework.¹⁸ However, to date, Malawi has very little experience resettling communities displaced by activities in the extractive industries; this is likely to change with the increase in exploration and extraction. As a result, it is important to consider best practice in the legal and policy framework as well as in managing land displacement, resettlement and compensation in order to further the debate on how mining can contribute to, and not stifle, socio-economic development and to examine the ways the government can best approach this through the lens of sustainable development.

This comparative analysis of regional legal and policy frameworks governing land displacement, resettlement and compensation practices in the extractive industries has been commissioned by the Catholic Commission for Justice and Peace (CCJP). It will be used to inform CCJP's work within the ongoing project the Transparency Initiative With Our Natural resources Extractives (TIWONE) that has received financial and technical support from the Catholic Relief Services. The goal of TIWONE is to ensure that Malawi's natural resources benefit Malawians themselves and extraction does not leave behind social and environmental challenges. CCJP has prioritised land displacement, resettlement and compensations issues for lobbying and advocacy campaigns.

1.2 Report Structure

In **Chapter 1** of this report, the background, rationale, and methodology for the comparative analysis are described. The data collection approach and selection of countries are presented followed by the listing of questions used to guide the comparative analysis of legal and policy frameworks that engage land displacement, resettlement and compensation issues. A list of the key legal and policy documents for each country is provided followed by a table with the components used to assess the legislation.

Chapter 2 of this analysis examines land displacement, resettlement and compensation in general to put into context the comparative analysis of legal and policy frameworks in theory and in practice. After the three areas are defined, general features of national law and policy are introduced that affect land displacement, resettlement and compensation as well as mining rights and licences. This is followed by a presentation of international and company policies that address resettlement related issues and often are used to supplement national law in the region.

Chapter 3 focusses on mining, land tenure and resettlement in Malawi and in the selected Southern African countries (Botswana, Mozambique, South Africa and Zambia). Brief examples of each country's experiences with resettlement are discussed to draw out the main challenges companies, countries and communities face.

In **Chapter 4**, a comprehensive table is used to compare the legal and policy frameworks for land displacement, resettlement and compensation in the five countries. Key areas have been selected for comparison, which are presented in Table 2.

The final chapter, **Chapter 5**, draws together the analysis with a list of key recommendations for Malawi on best laws, policies and practice from each country and from international and company approaches, guided by the World Bank Operational Policy on Involuntary Resettlement and the International Finance Corporation's Performance Standard on Land Acquisition and Involuntary Resettlement, under the areas of land displacement, resettlement and compensation. These are addressed to the Government and to CCJP.

1.3 Methodology

1.3.1 Data Collection

The emphasis of this report is a regional comparative analysis of law and policy related to land displacement, resettlement and compensation through desktop research. A content analysis was applied to key policies and legislation governing land tenure; land acquisition and ownership of minerals rights, and laws on mining and minerals and compensation practices. The methodology for assessing displacement, resettlement and compensation in practice consisted of studying different examples of reported instances of displacement in each case study. Where necessary, primary data was collected through key informant interviews with several stakeholders in the mining sector in Malawi. Qualitative methods were applied to collect primary and secondary data.

1.3.2 Selection of Case Study Countries

In order to conduct the regional comparative analysis of the legal and policy framework with a focus on land displacements, resettlement and compensation practices, the following 14 countries from Southern Africa were selected for criteria testing: Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.

Following the testing of criteria, **Mozambique, South Africa, Botswana** and **Zambia** ranked most highly and have thus been selected. Zimbabwe and Tanzania followed closely behind the top four. For more information on the selection process, see Annex 6.1.

1.3.3 Comparative Analysis

The purpose of the comparative analysis of laws, policies and practice related to land displacements, resettlement and compensation is to learn from other countries' experience in the region. This analysis was informed by the following research questions:

- What are the similarities between the legal and policy framework of Malawi and the regional case studies?
- What are the disparities between the legal and policy framework of Malawi and the regional case studies?
- What recommended features of international best practices and lessons learnt can be incorporated into law and policy in Malawi?

National legislation and policy guiding land use and ownership were central to the comparative analysis. For each country, the analysis involved research into land law and tenure, the actual processes of land acquisition, including the consequences of compulsory acquisition for mining and loss of rights, and the acquisition of mineral rights. Understanding issues involved in land acquisition for mining in Malawi was supplemented by key informant interviews (see Annex 6.2). Information on resettlement examples from selected countries was taken directly from national statutes and supplementary information from policy documents and reported accounts of displacements.

Table 1. List of National Statutes and Policies

Country	Legislation	Date and Relevant Chapter	Policy
Malawi	Constitution	1994	Mines and Minerals Policy 2013
	Land Act (LA)	1967 Cap 57:01	
	Mines and Minerals Act (MMA)	1981 Cap 61:01	National Land Policy 2002
	Land Acquisition Act (LAA)	1972	
	Environmental Management Act (EMA)	1996 Cap 60:02	
Chiefs Act	1967 Cap 22:03		
Botswana	Constitution	1966	Mineral Investment Promotion Policy 2008
	Mines and Minerals Act (MMA)	1999 Cap 66:01	National Land Policy Issues Report 2002
	State Land Act	1967 Cap 32:10	
	Tribal Territories Act	1967 Cap 66:02	
	Tribal Land Act (TLA)	1973 Cap 32:02	

Country	Legislation	Date and Relevant Chapter	Policy
	Acquisition of Property Act (APA) Environment Assessment Act (EAA)	1973 Cap 2:10 2010 Cap 18:01	Citizen Economic Empowerment Policy 2012
Mozambique	Constitution Land Law (LL) Mining Law (ML) Environmental Regulation for Mining Activities (ERMA) Environmental Impact Assessment Regulations Mining Law Regulations (MLR) Regulation for the Resettlement Resulting from Economic Activities	2004 Nr 19/97 Nr 14/2002 Decree 26/2004 Nr 45/2004 Decree 28/2003 2012	National Land Policy 1995
South Africa	Constitution Mineral and Petroleum Resources Development Act (MPRDA) National Environmental Management Act (NEMA) Local Government Municipal Systems Act Extension of Security of Tenure Expropriation Act (EA)	1996 28 of 2002 1998 No 32 of 2000 Act 62 of 1997 Act 63 of 1975	A Beneficiation Strategy for the Minerals Industry of South Africa 2011 Amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry 2010 Stakeholders' Declaration on Strategy for the Sustainable Growth and Meaningful Transformation of South Africa's Mining Industry 2010 Mines and Minerals Policy 1998 Land Policy 1997
Zambia	Constitution Minerals and Mining Development Act (MMDA) Land Acquisition Act (LAA) Lands Act (LA) Environmental Protection and Pollution Act (EPPA) The Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations (EPPCR)	1999 2008 1992 12:189 1995 12:184 1990 (Amendment Act of 1999) 1997	Mineral Resources Development Policy 2013 National Land Administration and Management Policy 2006 (draft)

A content analysis was used to assess the policies in each country to understand the approach to mineral and land use and the consideration of communities and resettlement issues within these guiding documents. Legislation that is more comprehensive and enforceable was more deeply scrutinised; different components were identified for assessing the

legal underpinnings of land rights and land acquisitions. These components, listed in Table 2, were selected to demonstrate where laws across Malawi and the selected countries showed similarities and differences in approach.

Table 2. List of Components used in Legal Assessment

Component	Description
DISPLACEMENT	
Vesting of mineral rights	The custodian/owner of mineral rights has the right to sell the mineral resources in the land, can grant licences for exploration and extraction, and can transfer rights to buyers. The holder of the right to the land owns the surface rights to the land (the rights to use the exterior or upper boundary of the land). Once the rights are transferred to the holder of mineral rights, he/she is the only person that can transfer these rights to buyers.
How mineral rights are granted	Whether the rights to minerals are bought or granted under licence or concession, once mineral rights are granted, the holder and its employees may 1) enter the land under the conditions to which a right relates, 2) bring onto the land any equipment and construct any infrastructure required for operations, 3) prospect, mine, explore or produce for its own account on or under the land for the mineral for which a right has been granted, 4) remove and dispose of any minerals found during operations, and 5) carry out other activities in accordance with the laws of the country and the contractual agreement between the custodian and the buyer.
Expropriation of property/compulsory acquisition	The power of government to acquire private rights in land for a public purpose, without the willing consent of its owner or occupant.
Conditions for exercise of mineral rights	The legal provisions that lay out the conditions for the use of mineral rights
Acquisition under the Mining Law	How land subject to mineral rights can be acquired under the mining legislation.
Acquisition under other legislation	How land subject to mineral rights might otherwise be acquired.
Environmental Impact Assessment (EIA) requirements	If the country has requirements for Environmental Impact Assessment/Environmental Social Impact Assessments, it requires a developer to carry out an environmental and social assessment of the potential impacts of any project and state the measures proposed for preventing or mitigating any anticipated adverse effects to the environment or society. Requirements consider the laws that address environmental protection and conservation of biodiversity, and regulate environmental management.
Public participation, consultation and information disclosure	Legislated steps and processes through which land occupants are informed, consulted, or given decision-making authority over land transfer and its terms.
Recognition of informal tenure	Refers to the legal status of customary land within national statutes
RESETTLEMENT	
Planning and documentation	The prescribed planning and documentation of resettlement often encompassed by the EIA requirements, such as, a Resettlement Policy Framework and Resettlement Action Plan.
Compliance, reporting, monitoring and supervision	Looks at whether there are any legal provisions that require monitoring of social impacts, and where present which social dimensions should be monitored.
Remedy available/dispute resolution and other grievance mechanisms	The options for legal remedy available to aggrieved parties in relation to the legislation under study.
COMPENSATION	

Component	Description
Compensation for disturbance of surface rights (timing of payments; completion of compensation and resettlement)	Provisions in legislation for compensation when an occupant's surface rights are disturbed by mining, including when payments have to be made and when compensation and resettlement are considered as complete.
Matters to be considered in determining compensation (including calculation and valuation of payments)	The elements/factors, outlined in law, that should be taken into consideration when calculating and valuing compensation – this usually determines how fair and adequate the compensation is.

Key sources of information included websites of governments and independent mining bodies in the region, grey literature produced by companies and non-governmental organisations, research conducted and published by academic institutions and scholars, the Extractive Industries SourceBook, the United States Geological Survey Mineral Yearbooks and the Governance of the Extractive Industries (GOXI) online platform. All references are cited in the Endnotes and additional information is provided as annexes to this report.

2 Land Displacement, Resettlement and Compensation

Land displacement, resettlement and compensation are discussed generally in this chapter to provide the basis for the following chapters. In particular, the governance framework of land displacement, resettlement and compensation is briefly outlined with attention on national legal and policy frameworks, international initiatives and company policies.

2.1 Context

Each year, over 15 million people are affected by development-induced **displacement**,¹⁹ resulting from large investment in infrastructure (such as constructing dams, and building roads and railways) and mining, urbanisation, the expansion of commercial agriculture and the establishment of protected areas of nature. At least one in ten cases of displacement is caused by mining. This includes both **physical displacement** (relocation or loss of shelter) and **economic displacement** (loss of access to assets that lead to a loss of income or livelihood) resulting from land acquisition or restriction to the access of natural resources.

Displacement poses a risk to socio-economic sustainability. Negative effects include landlessness, joblessness, homelessness, marginalisation, increased morbidity and mortality, food security issues, loss of access to property, social disarticulation and community breakdowns, and loss of schooling and access to public services (see Annex 6.3 for further information on the implications of displacement).²⁰ The intensity of the risks varies depending on time, place and the social group exposed to the risks.²¹

Most legal systems provide that surface right holders be **compensated** for the disturbance of rights when land is delineated for the extraction of resources.²² However, compensation is often complicated especially where there is no clear definition of land ownership and rights to land because it is then difficult to determine who should be compensated, what type of loss should be compensated and how the amount of compensation should be determined. Ensuring a clear system is used to determine compensation and a neutral, trusted body or authority is in place to set and administer compensation is important.

International best practice and the principles of sustainable development dictate that a community should be left in the same or a better position following displacement. Thus mere cash compensation for losses incurred is usually inadequate for rehabilitating a displaced household as it does not take into account the additional costs of relocation. Risks that are related to the market-use of cash for acquiring replacement assets are thus pushed from the company or government to the displaced communities when compensation is paid in cash only.²³ Instead, compensation should be accompanied by efforts to **resettle** communities, that is, to assist communities “[...] in their efforts to improve, or at

least restore, their incomes and standards of living".²⁴ Resettlement is described as **involuntary** when communities do not have the right to refuse land acquisition which results in displacement.

In the following two sections, the roles of government and of companies within the context of land displacement, resettlement and compensation are explored.

2.2 National Legal and Policy Frameworks

Legislative engagement and governance can strengthen accountability and transparency in the mining sector.²⁵ For many governments in Southern Africa, this role has proved challenging as accountable governments attempt to foster business conditions that promote private investment while addressing relevant domestic policy issues that affect communities. In addition, governments have to consider the environmental impact of mining activities and the fair distribution of the resultant revenue²⁶ in the drive towards sustainable development.

The governance frameworks regulating the mining sector include different legislation and regulations, government policy documents, company policy frameworks and, in many cases, chiefs and local leaders are influential. Mining statutes typically indicate procedures and limitations for the general conditions of exploitation and the granting of concessions and licences, mineral rights, royalties and permits. Financial and company statutes, tax structures and laws governing land, employment, the environment, and occupational health and safety often supplement these provisions. Land displacement, resettlement and compensation, which directly affect the livelihoods of communities,²⁷ are governed by a variety of provisions spread across different statutes and policy documents.

The distinction between law and policy is relevant. Policy outlines the aspirations of the executive branch of government, but to achieve the aims set out in policy, the parliament may need to pass new laws. Statements in law bind national courts, while, at best, policy can be used to persuade courts in one direction or another but courts are free to be guided or influenced by it or to ignore it all together. That is, statute law enacted by parliament is binding and enforceable, whereas policy created by executive branches of government, private industry actors and international organisations is unenforceable, bearing no statutory force.²⁸ Enforceable investment contracts can be important tools for defining the parameters of an investor's engagement with the mining industry. Government departments negotiating contracts should place emphasis on accountability, international compliance and fair distribution of profits. International best practice should be used to inform contractual agreements and be reflected in the laws that affect mining companies rather than relying on the discretionary negotiations between company and government as they develop a Mining Development Agreement. Yet in many of the countries studied, government contract negotiation is often weak²⁹ and the result is agreements that do not favour the needs of the wider citizenry.

2.2.1 Land Tenure and Resettlement

Insecure land tenure and its importance in the context of resettlement are considered here. Most countries in the region inherited a dual system of customary and statutory land tenure at independence. The many different spheres of authority complicate the institutional frameworks behind tenure: government and traditional leaders, national, provincial and local governance, and common and customary law.

Customary Land Tenure

The majority of land in Southern Africa is held under customary tenure³⁰, this means that access to land is largely administered by indigenous systems of land tenure and customary laws. Customary tenure comprises unwritten norms and practice, passed down from generation to generation. The inherent conflict between state law, introduced by European colonial administrations, and customary law, which predates these colonial administrations and is often viewed as more legitimate,³¹ can be seen as the source of insecurity of tenure. Despite recent efforts at land tenure reform in countries such as South Africa,³² Namibia³³ and Botswana,³⁴ insecure land and tenure rights are characteristic of the situation in most Southern African countries. The categories of land ownership in Southern Africa are contentious areas for consideration.

Customary land often represents a system of equity and security of access to land for rural Southern Africans yet it can also be viewed as 'dead capital',³⁵ as it is usually unable to generate capital and generally economically unproductive. Thus attempts at land tenure reform have converted customary rights into state-recognised rights with written, registered titles to physically demarcated land, including the recognition of group rights. The accessibility to land

through kinship and traditional leaders may offer more access to land for the most vulnerable community members on the basis of need; customary land in this light is seen as a feature of rural life that ensures continuing access to land for the poor and vulnerable.³⁶ However, this system may also bar certain groups from land and property access or ownership. Under some customary systems, women cannot access property through inheritance.

Security of tenure, either through registration of formal titles for customary property or through recognition of customary rights through statutes that validate customary tenure, lies at the heart of involuntary resettlement. Legal protection and the buyer's legal liabilities are dependent on the category of tenure held.³⁷ In many Southern African countries, lack of clarity frequently leads to disputes about the type of tenure system of the land in question. It is therefore not surprising that frameworks guiding involuntary resettlement are similarly weak or non-existent. In this "policy vacuum", resettlement is guided (if at all) by the piecemeal application of land, environmental and planning legislation which has not been specifically designed to cover mining-related involuntary resettlement. Without land reform, displaced people may be at risk of losing land and livelihoods without receiving adequate compensation for these losses.

Land Rights, Mineral Rights and the State

Ownership of the rights to land and of the rights to the minerals beneath the surface of the land are often held separately by different parties. Under private or customary ownership, surface rights to land allow communities to occupy land and make their livelihoods, while mineral rights are vested in the state. As the custodian of mineral rights, it is the state alone that has the right to grant licences and permits to mining companies. Often communities have no legal involvement in making decisions about the land and its use, and governments in charge of enabling and promoting mining activities do not need to seek the permission of communities that depend on the land. Consequently, mining companies are often cast in opposition to communities and decision-making may be perceived as pitting national sovereignty against local community rights.

The process that allows the state direct access to private or customary land is entrenched in the doctrine of eminent domain. This principle gives government the power of compulsory acquisition under national law, which allows the government to acquire private rights to land for a 'public purpose' or the 'public good' without the willing consent of its owner or occupant. This principle is deeply rooted in almost all legal systems, and the establishment of efficient and fair legal and institutional frameworks for exercising this power is pertinent to mining-induced displacement. Reprieve from this type of government action is difficult to realise under the law, and the remedy through relocation and compensation for affected people is often inadequate.

2.2.2 Compensation

Under national laws when the government acquires land rights for public use, the landholder is entitled to compensation for losses suffered. A long standing principle in many jurisdictions is that compensation should be guided by the objectives of equity and equivalence;³⁸ many national constitutions provide that the compensation must be fair and adequate. In many instances, financial compensation seems inadequate in relation to the long-term social and economic costs of mining.³⁹ Compensation in government compulsory land acquisition depends on the rights held. Generally, in compulsory acquisition:

from customary rights holders, compensation is not a legal requirement although most policies require that communities must be resettled. As a result, compensation is often discretionary, dependent on the investor or government agency negotiating with the community, and on the community's legal awareness and access to knowledge; and

from private owners, compensation is given to the owner for ownership interests in the land along with other elements prescribed by law.

2.2.3 Dispute Resolution

The existence of local, targeted and accessible bodies to deal with grievances is necessary. The mechanisms which exist to address land disputes and non-compliance with national laws vary from country to country and include community level mechanisms,⁴⁰ specialised land tribunals⁴¹ and the courts of the judiciary. Formal contesting of extensive displacement of customary land is uncommon and this may be attributed to the respect for chiefly authority and the limited understanding of claim to legal rights.⁴² Court systems also have the reputation of being slow, backlogged and expensive. Properly instituted dispute resolution mechanisms can give affected communities access to redress.

Mining companies are also likely to introduce grievance mechanisms to manage human rights risks and dispute resolution and to address community complaints and concerns (usually at the project or operational level).⁴³ These extrajudicial mechanisms, from the company perspective, should address complaints promptly and effectively to ensure, where possible, that matters are not referred to the formal justice system which can be costly and lengthy, may not have satisfactory outcomes for parties involved and thus may affect a company's social licence to operate.⁴⁴ In addition, some communities may lack access to or not have the capacity to take grievances to formal courts.

Project-level grievance mechanisms may not always have the best outcomes for communities and should not replace judicial action. For example, African Barrick Gold has faced criticism for compensating a man who was injured at the North Mara Gold Mine in Tanzania and requiring him to sign an agreement to waive all rights to taking part in any proceedings against the company in any parts of the world. Leigh Day, a UK-based law firm, commenced proceedings against the company and mine in 2013 on behalf of Tanzanian villagers who claim that the companies are liable for the deaths and injuries caused by mine security and police excessive force at the mine. Leigh Day was concerned that the mine made compensation and remedy offers to people, who did not have adequate legal representation, in return for signing away of rights.⁴⁵

2.2.4 Mineral Rights and Licences

The legislative framework for mining sets out the exploration, development and mining rights of that nation. The types of licence typically encompass exploration and extraction. The types of mining tenements granted and administered under Malawi's Mines and Minerals Act (1981) are listed below.

Reconnaissance licences (section 17) permit the holder to carry out reconnaissance activities for a maximum of 12 months, excluding the preparation period. The purpose of reconnaissance is to look for potential prospecting areas.

Non-exclusive prospecting (section 73) and **exclusive prospecting** (section 26) licences permit the holder to carry out exploration activities for a maximum of three years, excluding the preparation period. Prospecting and exploration include the evaluation of a mineralisation area, sampling, and providing the necessary data for a feasibility study (including determining mineral commodity production rate, mining, ore processing and metallurgical methods).

Mining licences (section 38) permit the holder to carry out mining activities for a maximum of 25 years or the life of the ore body, whichever is shorter.

2.3 International Initiatives and Company Policy

Companies in the extractive industries face rising costs and increased risk of liability when problems arise in affected communities. As a result, companies conduct social-cultural analyses and due diligence reviews, including assessing national law and policy that govern resettlement in the country of operation. Companies often also develop their own policies to manage the impacts of projects on society and the environment. In Southern Africa, many mining companies indicate that they apply international best practice, initiatives and policies that have been developed within the extractive industries and by financing institutions, in order to reduce their exposure to liability and risk and give them the social licence to operate.⁴⁶

The social licence to operate exists when a mining company and its operations have the ongoing approval and acceptance of nearby communities and other stakeholders who are or may be affected by the mining projects. Mining companies need both government and community permission to conduct business; however, the social licence is not a formal agreement but based on the credible relationship between a mining company and communities. It is essential because companies need to manage risks including social conflict and damaged reputation that can affect the overall viability and success of a mining project.

The last two decades has witnessed the burgeoning of sustainable and responsible business guidelines, principles and practices, including ones specifically for the extractive industries.⁴⁷ These emphasise corporate social and environmental responsibilities and aim to instil responsible practices as an integral component of doing business.⁴⁸ However, these complement rather than substitute legal and regulatory national frameworks and cannot be legally enforced. Nonetheless, they demand that companies "strive to be better than the law requires and, in this way, move beyond the lowest-common-denominator standards or rules".⁴⁹ Please consult Annex 6.4 for a more detailed overview of international policies and initiatives.

The major international financial institutions, including the World Bank, International Finance Corporation (part of the World Bank Group), African Development Bank and Asian Development Bank, have their own involuntary resettlement policies for projects for which they provide finance. These policies have most frequently been applied in the last two decades in dam development⁵⁰ in line with their leanings towards more sustainable development and are an integral part of the approach these lending institutions take manage risk for project financing. They have been developed to provide substantive and procedural policy protections for people displaced from their livelihoods and/or homes by projects financed by the institutions.

In the mining sector, the World Bank Operational Policy (OP) and Bank Procedures (BP) 4.12 on Involuntary Resettlement and the International Finance Corporation's (IFC's) Performance Standard 5 on Land Acquisition and Involuntary Resettlement, which were first adopted in 1980 and 2006, respectively, with ongoing updating, are most commonly applied. Most mining companies use one of these standards to govern their resettlement policies and planning. For example, AngloAmerican, Barrick, Rio Tinto and Vale commit to the application of the IFC Performance Standards in their policies on community engagement, human rights and sustainable development, even when the IFC is not providing project finance.⁵¹ In Malawi, the Resettlement Policy Framework produced for the proposed Globe Metals & Mining Kanyika Niobium Project commits to adhere to not only Malawian law but also the IFC guiding principles.⁵² Paladin Africa in its Kayelekera Uranium Mine project also committed to the IFC standards through adherence to the Equator Principles⁵³ that align with the IFC standards.

The widespread use of these policies is because they tend to be more comprehensive on involuntary resettlement than national land and mining laws, especially in Southern Africa. For example, non-formal occupants, such as tenants or slum dwellers, are usually not entitled to compensation payments if they face displacement. Land law typically legislates compensation based on the legal status of the landholder and tenants, while the IFC Performance Standard and World Bank OP 4.12 recognise compensation of occupants who have no legal title. If companies were simply to follow the law, their social licence to operate would be diminished and operational risks would increase by neglecting these occupants of a resettled area in compensation arrangements. This, in turn, would have an adverse impact on these occupants, falling short of the guiding principle of sustainable development that is heralded in many mineral and mining policies in the region.

The eight IFC Performance Standards are part of the IFC's broader Sustainability Framework⁵⁴ and commitment to sustainable development. They help clients of IFC investment activities manage and improve their environmental and social performance through a risk and outcomes based approach. The World Bank OP 4.12 similarly seeks to address and mitigate impoverishment risks resulting from involuntary resettlement development projects. This OP is part of a series of policies that guide the implementation of projects. According to the IFC Performance Standard and the World Bank OP 4.12, involuntary resettlement should

- a) be avoided where feasible or minimised, exploring viable alternatives,
- b) assist displaced people in improving their livelihoods or at least to restore them to pre-project/pre-displacement levels, whichever is higher,
- c) ensure displaced people are consulted, informed and participate in planning and implementation of resettlement programmes, and
- d) ensure displaced people share in project benefits.

To date, there has not been an assessment of the impact of the World Bank and IFC policies and standard on mining-induced displacement. Nonetheless, Sonnenberg and Münster argue (2001) in a qualitative assessment of involuntary resettlement in Southern Africa's mining sector⁵⁵ that the biggest problem with the World Bank policies is that they are guidelines rather than prescriptive tools with enforcement mechanisms. The result is a large gap between policy and performance, with only short-term monitoring required. Evidence from the World Commission on Dams study Dams and Development,⁵⁶ which covers dam-induced displacement, indicates that the World Bank guidelines, like the IFC standard, emphasise project planning and design and not options assessment, implementation or compliance monitoring. Free, prior and informed consent⁵⁷ is also not required and often resettlement plans and policy frameworks are drawn up by the mining company or a consulting company paid for by the company. The value of these international guidelines is only as effective as the supporting national frameworks and legislation and institutional capacity to facilitate and implement these guidelines in resettlement.

It will be demonstrated in the recommendations in Chapter 5 that these principles contain many of the detailed provisions for displacement, resettlement and compensation that are absent in national law and policy in Southern Africa.

3 Extractive Industries, Resettlement and Land Tenure in the Selected Countries

In this section, the extractive industries and land tenure are briefly discussed for each selected country to provide context for the legal framework presented in Chapter 4. In addition, cases of resettlement are concisely explored to highlight some of the main challenges governments, companies and communities face.

3.1 Extractive Industries, Land Tenure and Resettlement

3.1.1 Malawi

Extractive Industries

Malawi's economy is agriculture-dependent and subsistence farming is the primary livelihood for the majority of the population. Malawi has known deposits of metals, such as iron ore, niobium, tantalum and zirconium, industrial minerals including cement, gemstones and rare earths, mineral fuels and related materials including coal and uranium,⁵⁸ and hydrocarbons. Run by Paladin Africa, a subsidiary of Paladin Energy, the largest mine is Kayelekera Uranium Mine, which is currently on care and maintenance mode following the suspension of production in February 2014.⁵⁹ Malawi's mining industry is small compared to most other countries in the region and in its infancy; most licences that have been awarded are for prospecting and not mining. As of October 2013, over 50 mining and 100 exclusive prospecting licences were valid.⁶⁰

The mining sector is expected to grow in its contributions to GDP; it contributed less than 3% to GDP until 2006,⁶¹ but increased to over 10% by 2010, which can be attributed to production at Kayelekera.⁶² Last year, Malawi launched the Mines and Minerals Policy (2013) which makes known the government's commitment to ensuring that Malawi's minerals contribute to sustainable development. The policy will inform a new Mines and Minerals Bill that is being drafted; the current Mines and Minerals Act is from 1981.

Resettlement and Land Tenure

80% of all land in Malawi is customary land and is defined as land falling within the jurisdiction of a recognised traditional authority and which is held, occupied or used under customary law (Land Act 1967).⁶³ Land in Malawi is also held as government land, all public land other than public roads⁶⁴ (Land Act 1967); as public land⁶⁵; and as private land.⁶⁶

Malawi does not have a national resettlement policy although resettlement and compensation are reflected in the Mines and Minerals Policy (2013) and the National Land Policy (2002). Projects in energy and roads have resulted in land acquisition, resettlement and compensation in Malawi although little data is available to indicate the numbers of displaced communities or households. Many of these have been guided by resettlement policy frameworks and action plans that are specific to the project in question and usually required as part of the conditions for projects that are financed by international lending institutions, such as the World Bank or IFC. For example, as part of a World Bank requirement, in 2009, the Ministry of Education, Science and Technology developed a Resettlement Policy Framework to accompany the National Education Sector Plan 2008-2017. The improvement and construction of education infrastructure would require formal land acquisition and affect community access to resources.⁶⁷

Much of the resettlement literature in Malawi is based on "development-induced displacement", referring to the relocation of people due to infrastructure development and land reform. There is no peer-reviewed literature on mining-induced displacement in Malawi but there are a number of reports produced by civil society organisations (CSOs) and non-governmental organisations (NGOs) on the impact of mining operations on communities. In particular, the contested impacts of Kayelekera are documented; this operation saw the resettlement of 5 households in line with government legislation⁶⁸ and the local village headman reallocated land to these families. Paladin's extension of Karonga Airport runway also resulted in the resettlement of communities. Paladin and the Department for Civil Aviation shared the costs of compensation that were administered by the District Commissioner. The Ministry of Lands, Housing

and Urban Development was responsible for assessing the value of property and other assets, and the company and government determined a compensation schedule together.⁶⁹ Malawi's second largest mining project, proposed by Globe Metals & Mining is Kanyika Niobium Project, will see the displacement, resettlement and compensation of 125 households if it goes ahead. The Resettlement Policy Framework is already in place for this project as part of the Environmental Social Impact Assessment.⁷⁰

In Table 3, the social, cultural, economic, environmental, health, legal and stakeholder relations issues that have surfaced during an examination of literature on displacement, resettlement and compensation in Malawi and in several interviews are presented. Not all cases are affected by all the listed issues, but these provide an idea of some of the important areas of consideration. This is not exhaustive, since a multi-stakeholder assessment was not conducted, but rather it illustrates the urgency in enhancing the current legal and policy framework as well as the need for further research into the impact of this current framework on practice in Malawi through ethnographic study of communities and engagement with company and government stakeholders. This lies beyond the scope of this primarily desktop comparative analysis of legal and policy frameworks in the region.

The following table is based on:

two qualitative studies (using focus group discussions, questionnaire interviews and key informant interviews) on the **Community-Based Rural Land Development Project (CBRLDP)**. The first⁷¹ is a general study of the experiences of relocated households, while the second⁷² hones in on the experiences of women-headed households as a vulnerable group in the resettlement process. CBRLDP involved resettling landless people and took place in four districts, Mulanje, Thyolo, Mangochi and Machinga, between 2004 and 2009. To promote poverty alleviation, the aims were to improve accessing, titling and registration of land; to provide security of land tenure; and to increase agricultural activity and increase incomes. Selected families were given a grant of USD 1,050 for meeting the cost of buying land, resettlement and farm development;⁷³

community experiences around Kayelekera Uranium Mine from interviews with Paramount Chief Kyungu (15 July 2014) and gathered from Centre for Environmental Policy and Advocacy staff (15 July 2014) on resettlement of communities around the Nacala Corridor Project where Brazilian mining company Vale is investing in the rehabilitation and construction of railway line linking a coal town in Moatize in Mozambique through the Nacala corridor to the port in Nacala, which cuts across southern Malawi. This project, agreed with the Ministry of Transport and Public Works in 2010 and subcontracted to Mota-Engil, has involved the displacement of communities in southern Malawi; and

interview with Paladin Africa (18 July 2014) on resettlement and compensation experiences in relation to the resettlement of 5 households around the Kayelekera mine site and resettlement as a result of extending the airstrip at Karonga Airport. Please consult Annex 6.2 for a list of interviews conducted.

Table 3: Overview of Main Issues in Resettlement, Compensation and Displacement in Malawi

Social	Cultural
<p>Gender: different experiences of resettlement by men and women; potential loss of male relatives which particularly affects single women who usually depend on male in-laws to help with manual labour (e.g. building houses, digging pit latrines, clearing land for cultivation) and are not able to pay for hired labour; this is sometimes resolved by marrying men in the host community within a year of relocation.</p> <p>Host community hostility: resettled communities perceived as strangers and face marginalisation or hostility (e.g. crop thefts, verbal abuse, exclusion from relief items and other donations), and resettled households relocated to land that has religious significance to the host community or is held by customary heirs.</p> <p>Disruption of social networks reduces people's ability to rely on each other during times of distress and hardship (e.g. during times of food shortage, illness and bereavement); family disputes around compensation payouts.</p> <p>Children: school dropout risk is increased.</p>	<p>Kinship structures: differences between resettled and host communities (e.g. Ngoni settlers from patrilineal societies resettled amongst the Yao or Lhomwe with matrilineal descent and inheritance and uxorial⁷⁴ marriage).</p> <p>Traditional leadership: different leadership structures (village headman or chief) in resettled and host communities.</p> <p>Loss of identity through loss of ancestral land and graveyards can contribute to having a psychological impact on resettled communities.</p>

Social	Cultural
	<p>Religion: resettled and host communities of different religion (e.g. Christians experienced problems resettling in a predominantly Muslim area when raising pigs for consumption⁷⁵).</p>
Economic	Environmental and Health
<p>Higher production costs for farmers: fragmentation of families reduce the number of people to work on farms, while hiring labour is expensive.</p> <p>Loss of livelihoods: displaced communities not familiar with soil conditions and rainfall patterns in host community thus find it difficult to cultivate crops; also relocation timing disrupts farming calendar.</p> <p>Compensation not transparently calculated, discretionary and eligibility criteria not clear and sometimes compensation does not reach intended recipients.</p> <p>Restoration of livelihoods is unlikely where communities are offered compensation only and no support in resettlement, (e.g. displaced communities were given compensation in Nacala Corridor Project but provided with no support in using cash compensation).</p>	<p>Environmental degradation due to mining operations can have health and livelihood risks for communities</p> <p>Lack of healthcare support for those affected by mining operations.</p>
Stakeholder Relations	Legal
<p>No free, prior and informed consent</p> <p>Timing: resettlement takes place without informed public participation; mining project decided before communities to be resettled are engaged.</p> <p>Unclear expectations: community, company and government stakeholders differ on provision for communities in terms of corporate social responsibility.</p> <p>Public perception and media coverage: attributing sickness (e.g. deformity and blindness) to radiation⁷⁶ and differences between public perceptions, the government's position and company response reflect differences in expectation and perception.</p> <p>Unclear accountability and division of responsibilities between government and company from the perspective of communities.</p> <p>Government responsible for getting consent and approval, however, failure to do so may result in blame being placed on company.</p> <p>Community leaders selected to represent communities may be opportunistic and not fairly represent or communicate clearly with displaced communities.</p>	<p>Legal literacy: families are not clear about the processes, are inhibited by costs or do not see the relevance of land registration and titling.</p> <p>Lack of clear procedures for administering compensation means that some community members are marginalised.</p>

3.1.2 Botswana

Extractive Industries

Diamond production is the foundation of Botswana's economy. In 2011, Botswana was the leading producer of diamonds,⁷⁷ which accounted for 81% of mineral contributions to GDP in 2012.⁷⁸ Production and processing of copper, gold and nickel, cobalt and coal also contribute to the economy.⁷⁹ The government has large equity stakes in many of the largest mining companies. The country has experienced significant economic growth since independence which has seen it move from a low to an upper-middle income country although income distribution remains unequal, unemployment is high and the HIV/AIDS rate is among the highest in the world. The small domestic market and transportation costs to ports are high, but the country is attractive for foreign mineral investment due to the investment climate, low tax rates and political stability as outlined in the Mineral Investment Promotion Policy (2008). The country is said to have largely benefitted from the minerals through fiscal saving, ensuring a surplus on the current account of the balance of payments and investing in infrastructure and human capital.⁸⁰

Resettlement and Land Tenure

Botswana has a dual system of land tenure and ownership which includes state land, owned by the Government of Botswana,⁸¹ privately owned land (through freehold tenure), and tribal land, which is held and administered under customary law. Tribal land in Botswana is distinct from customary land ownership in the surrounding countries as it is under the administration of decentralised land boards set up under the Tribal Land Act;⁸² the area of tribal land has been increased since independence to over 70%.⁸³ Subject to approval by the Ministry of Land and Housing, the Board can allocate land to citizens and non-citizens. At independence, mineral rights were held by landowners, including the state, private farmers and tribal authorities, but these were transferred to the state by the first president. While the country has experienced sustained economic growth, incomes and human development are far lower in rural areas; vulnerable groups (including women, ethnic minorities and people living with HIV/AIDS) often lack power and representation especially in access to land.⁸⁴

Antagonism between the ruling Tswana and the minority San coupled with the potential for mineral extraction, particularly diamond mining, have resulted in **land displacement of the San communities**, which has affected the rights of the indigenous peoples, cultural heritage and nature conservation.⁸⁵ Since 1996, many San communities have been forced out of the Central Kalahari Game Reserve on the grounds of conservation. The reserve was set up in 1961 by the British Protectorate to protect these hunter-gatherer communities and the natural environment on which they depended. In 2007, Gem Diamonds Botswana, a subsidiary of Gem Diamonds, acquired Ghaghoo Diamond Mine in the reserve, contradicting the environmental reasons the government gave for evicting the San. Nevertheless, the government is protected by the law for its actions as rights of ownership to minerals are vested in the state regardless of the holder of surface rights.⁸⁶ Earlier, in 2002, the San took the government to court to contest the relocation from the reserve; this was ruled against on technical grounds. Two years later, the case was sent back to the High Court from the Court of Appeal and the San won the case although this did not address diamond mining and only applied to the 189 original applicants. Yet a few weeks after the ruling, the government showed unwillingness to comply with it; park officials refused to allow a group of San to enter the reserve, the ban on using existing boreholes for water continued and the San were not issued hunting permits.⁸⁷ In 2010, the High Court of Botswana ruled against the San who had requested that either existing boreholes on their land be reopened or they be allowed to drill new ones, which is indicative of the broader infringement of rights.⁸⁸

This case illustrates the challenges of dispossession marginalised communities face when they occupy land required by the state for mineral development. Often indigenous communities bear disproportionate costs from the resource-intensive and resource-extractive industries.⁸⁹ The UN Declaration on the Rights of Indigenous Peoples provides guidance on this and states that people cannot be moved from their land for any purpose without their free, prior and informed consent although this practice is not normalised in Southern Africa. The case points to the need for stakeholders, especially government and civil society, to engage with communities to determine ways to ensure joint land use and to address social, economic and political marginalisation and racism. Court rulings in the favour of the San, and indeed in favour of other marginalised groups, will not be effective until the deeper structural subordination is challenged.⁹⁰

3.1.3 Mozambique

Extractive Industries

Growth rates in Mozambique have been high following the end of civil war in 1992, driven by capital-intensive projects, especially in the extractive industries. Agriculture remains the mainstay of the Mozambican economy and employs the majority of the labour force. Mozambique's mining sector is expanding; it currently contributes less than 5% to GDP although aluminium accounted for almost half of national exports in 2011.⁹¹ Increased production is expected for gold, ilmenite, rutile, zirconium, cement, niobium and tantalum, hydrocarbons and coal. The country could become one of the 10 largest coal exporters by 2017 although lack of infrastructure (inadequate railways and electricity provision) affects the mining sector.⁹² Economic growth has been non-inclusive, except for the area around the capital city Maputo; growth has been concentrated in urban regions and southern Mozambique.⁹³

Resettlement and Land Tenure

Land was nationalised in Mozambique after independence and since then state-granted land right; the *direito de uso e aproveitamento da terra* (DUAT) is the only recognised form of land tenure. Property rights can be secured in different

ways depending on the type of land user; land tenure rights can be acquired by local communities who occupy land according to customary practices.⁹⁴ This type of land tenure is legally recognised even when it is not formalised in the National Land Cadastre. Land rights can also be acquired by good faith occupation for ten years,⁹⁵ and secure tenure for national or foreign, individuals or companies is provided through a 50-year state leasehold.⁹⁶ In practice, most residents access land through informal land markets. Good faith occupants also enjoy full legal recognition and this is the main way rural communities obtain access to land. However, primarily through donor-led initiatives, the country is formalising the registration of landholdings because of concerns about the threats to tenure security by the trend of large-scale land acquisition.⁹⁷ Resettlement is currently a major issue for communities, local authorities and human rights organisations, affecting the reputation of companies and their social licence to operate.⁹⁸

In Tete province, in western Mozambique, many people were resettled between 2009 and 2011 from their land because the mining law allows a mining concession to be given priority while “fair and reasonable indemnity” is extended to the existing user of the land or occupant. In January 2012, residents from the Vale resettlement village Cateme protested the situation by blocking the railroad linking the mine to the port. In 2012 the Southern Africa Resource Watch⁹⁹ and in 2013 the Human Rights Watch¹⁰⁰ each produced a study of the **mining-induced displacement around coal operations in Tete by Rio Tinto and Vale**. Both companies responded to these reports. According to the reports, the land given to relocated communities has uneven quality, unreliable access to water, with fewer key sources of non-farming income and is further away from the markets in the district capital Moatize.

Affected people have lacked adequate access to responsive mechanisms for participatory decision-making and for addressing complaints and grievances. In response to the protests, the government approved the Regulation for the Resettlement Resulting from Economic Activities in 2012. Through this, companies are responsible for providing the necessary infrastructure and proper and sufficient space to pursue economic activities, including farming, in the resettled areas.¹⁰¹ However, the Human Rights Watch called for this to be revised with greater consultation to include the guiding principle that resettlement should be avoided when possible, clearer guidelines on the restoration of livelihoods, accessible mechanisms for grievance redress and robust monitoring. This is targeted at governmental responsibilities in resettlement as the Mozambican government is ultimately responsible, and not the companies, for resettlement of its citizens.

3.1.4 South Africa

Extractive Industries

South Africa, an important country in the global mining value chain, is one of Africa’s most significant mining countries due to the variety and quantity of resources produced. South Africa is also a global leader in suppliers of some mining equipment and services. Some value is added to mining exports which reflects the industry’s long history, local ownership and backward integration in the economy.¹⁰² Internationally, the country is a leading producer of chromium, ferrochrome, platinum, manganese, vanadium, and vermiculite.¹⁰³ Mining contributed 9.6% to the GDP in 2012, it accounts for over 16% of formal sector employment, and tax from mining and quarrying made up 11% of total tax revenue in 2011, while labour unrest affected the performance of this sector.¹⁰⁴ Unemployment reflects growing income inequality in the country which exerts pressure on politics and the legal and policy framework guiding the private sector.¹⁰⁵ The structural inequalities caused by the apartheid government are addressed through the Black Economic Empowerment (BEE) programme, which requires black ownership of mining companies to reach 26%, and for mining companies to purchase 70% of their services, 50% of their consumable goods and 40% of their capital goods from BEE entities by 2014.¹⁰⁶

Resettlement and Land Tenure

South Africa has a recent history of land reform following the end of the apartheid regime, marked by the first non-racial democratic elections in April 1994. At the end of apartheid, 87% of the land was owned by the minority white South Africans and the new government had a mandate to redistribute land more equitably. Due to an ongoing redistribution policy,¹⁰⁷ land tenure in South Africa is difficult to categorise. 67% of land can be described as commercial agricultural land, 15% as communal areas or former “homelands” mostly state owned and held under various forms of customary tenure, 10% is other state-owned land set aside for public purposes and the remaining 8% can be categorised as urban areas.¹⁰⁸

Almost 10,000 people from Ga-Pila, relocated in 1990s, and Motlhotlo, relocated from 2007, were **resettled by Anglo Platinum near its Mogalakwena mine.**¹⁰⁹ In 2008, ActionAid released the report “Precious Metal: The Impact of Anglo Platinum on Poor Communities in Limpopo, South Africa” which claims that communities were offered little compensation and insufficient ways to make a living and lost access to clean water and that protests have been met with policy brutality and legal action by the company. On recommendation of this report, the South African Human Rights Commission investigated the case and found that the company did not commit human rights violations but could improve resettlement activities and community engagement.¹¹⁰

A corporate governance case study¹¹¹ on Anglo Platinum and its Mogalakwena mine highlights the following issues in resettlement and community relations that are typical of cases where resettlement has not been managed well from the perspective of all stakeholders. The research was supported by a grant from the University of Stellenbosch Business School and received positively by Anglo Platinum;¹¹² it was later published in Resources Policy.¹¹³

Resettlement processes and standards: EIA prepared for the 2002 mine expansion did not result in a formal Resettlement Action Plan (RAP) or other comprehensive social management plan. It was later prepared once resettlement was about to commence but the RAP was not shared widely nor used, however, some residents refused to relocate calling into question the assertion that “consent” was given by all to relocate. The company left monitoring of the restoration of livelihoods to the municipality and the project team managing relocation were wrongly incentivised with higher payment to complete relocation as quickly as possible

Distrusted community representation: Community members selected community representatives who reached an agreement on the relocation process in 2002. In 2003, these committees were converted to form a Section 21 company in order to enter legal contracts with the company as representative structures of villages; however, the paying of stipends and lack of formal and democratic governance structures undermined community trust in the committees and resulted in the creation of splinter community groups and in constraints on information the company received from other community stakeholders. The Section 21 trustees were disbanded and stipends ceased. Instead the company proposed setting up a trust for each village with transparent allocation of financial support through new, improved representation structures.

Unclear accountability and benefit sharing: Anglo Platinum trust established for community development, with payments made to the Local Magistrate Court for the benefit of Mapela Tribal Authority, did not incorporate accountability mechanisms or explicit transparency provisions. In addition, the traditional authority was not transparent to its members so the community was unable to track spending and there was a complex and conflict-prone relationship between traditional authorities and the local government. Furthermore, BEE was perceived to be benefiting small black elite rather than mining community.

Unclear division of responsibilities between local government and the company on livelihoods restoration, service provision and local social and economic development.

Disputes and grievances inadequately handled: Protesting communities opposed to relocating in May 2007 were met with rubber bullets. The Premier’s Office set up a task team to reach an agreement on resettlement, but it lost its relevance and did not have a neutral third party observer as a result communities took out lawsuits against the company with the help of an independent lawyer and human rights advocate but these were all thrown out by the court, while the company responded antagonistically rather than through negotiation. New complaints and grievance procedures have been since set up.

Lack of unified, consistent company message on resettlement standards applied by company: In some instances the company committed to comply with the World Bank OP 4.12 on Involuntary Resettlement and at other times it stated it would aim to comply; IFC standards were only applied after relocations started.

Relationships between company and watchdogs: The company’s antagonistic response to ActionAid’s report, which informed an investigation by the South African Human Rights Commission, was followed by a more conciliatory reception to the Human Rights Commission report and a recent shift to proactive engagement with stakeholders.

3.1.5 Zambia

Extractive Industries

Zambia’s mineral industry is dominated by copper mining and refining, with government retaining minority interests in most large copper projects.¹¹⁴ It is an internationally significant producer of copper, cobalt and semiprecious gemstones.¹¹⁵ Mining drives other sectors, particularly construction, transport and energy (consuming over 50% of the energy supply).¹¹⁶ The country’s coal industry has been identified as a key growth sector and is expected to alleviate

Zambia's electricity deficit.¹¹⁷ Agriculture informally employs 60% and formally employs 8% of the populations so it remains the most important sector from a socio-economic standpoint.¹¹⁸

Resettlement and Land Tenure

Land in Zambia is vested in the president for the people¹¹⁹ and categories of land tenure recognised are: customary land held in customary areas¹²⁰ under customary law and culture, estimated at 94%¹²¹, state land, which is any land not situated in a customary area¹²² and land which is privatised through leaseholding,¹²³ estimated at 6%.¹²⁴ Under these two categories, land is also categorised as reserve land which is allocated to nature, forest and wildlife sanctuaries.¹²⁵

The most well-known and researched case of resettlement in Zambia is the **displacement of over 140 households** in January and February 2002 due to the raising of Lubengele tailings dam at **Konkola Copper Mines**. IFC guidelines were used to implement this resettlement as IFC financed Anglo American, the lead of the consortium. Delays were experienced in the development of the RAP, its implementation, and the transition to the Social Development Plan.¹²⁶ However, in January 2002, Anglo American pulled out from the mine which resulted in IFC's exit without completion of many commitments of the final Environmental and Social Management Plan.

A complaint was lodged with the Office of the Compliance Advisor/Ombudsman of the IFC and the Multilateral Investment Agency by Zambian NGO Citizens for a Better Environment, on behalf of residents of the new resettlements located in the Konkola mine area of the Zambian Copperbelt.¹²⁷ The complainant argued that the IFC prematurely abandoned the project before implementation of the RAP and failed to monitor this or consult or disclose the exit and mitigation plan to affected communities especially in terms of specific promised project post-relocation economic and social service benefits (e.g. alternative income earning strategies, access to training, employment and credit, etc.). According to the report of the Ombudsman, the following factors were the cause of the delays in delivering key socio-economic aspects of the RAP: weak monitoring and absence of pressure by former international institutional investors; poor communication; lack of trained staff within the mine; weak social infrastructure and community leadership; and bureaucratic delays in government agencies/ministries. In another resettlement case in Zambia, the local government and company were unable to agree on who should pay for the resettlement, the land or the land-titling process.¹²⁸

4 Regional Comparison of Land Displacement, Resettlement and Compensation

In this section, the policy and legal framework in Malawi, Botswana, Mozambique,¹²⁹ South Africa and Zambia for land displacement, resettlement and compensation is compared. Southern Africa countries do not have a clear national resettlement policy or single law to guide development project induced resettlement. Mozambique is the only country examined below that has regulations to guide resettlement related to the demand for natural resources. Zimbabwe and Namibia have resettlement policy frameworks but these are aimed to "eradicate inequitable access to land" resulting from discriminatory colonial laws and policies and typically guide voluntary resettlement of landless or land-constrained households.¹³⁰ Internationally, India (2007)¹³¹ has a standalone national resettlement and rehabilitation policy.

Resettlement is, in practice, dealt with through a collection of laws (e.g. on land and acquisition, expropriation of assets, minerals and environmental management, sustainable development and public participation) and a number of different actors are involved. This means that the different components of displacement, resettlement and compensation are often not clearly defined and subsequently neglected, which adversely affects the displaced and host communities as well as the mining company's social licence to operate.¹³² These feed into the recommendations for Malawi in Chapter 5.

4.1 Policy Trends

Within the examined policy documents, forced land acquisition, displacement, resettlement and compensation are only briefly addressed. Nonetheless, the following short discussion on policy documents gives an indication of the approach the countries take to communities and sustainable development in relation to resettlement, land and mining.

Malawi does not have a national resettlement policy although displacement, resettlement and compensation are reflected in the Mines and Minerals Policy (2013)¹³³ and the National Land Policy (2002). The Mines and Minerals Policy commits the country's mining sector to socio-economic development and poverty alleviation, it highlights issues in and

policy recommendations for the following areas: social, environmental, governance, investment and sector development. “Compensation and resettlement of land owners and communities affected by mining” is identified as a social issue that the government will “adequately address”.

Malawi’s National Land Policy provides more detailed guidance on land acquisition, consultation, compensation and dispute resolution. All land acquisition, including the acquisition of customary land, by the government requires negotiation and the payment of compensation at fair market prices for the land and for permanent improvements on the land. Any land or property can be acquired in the public interest by government through the principle of eminent domain by virtue of its sovereign authority. Chapter 5 of the policy focuses on land distribution and resettlement as a government-led initiative of community-based land acquisition and land development programmes. This is aimed to relieve smallholder land pressure by supporting households willing to relocate through establishing a social development fund to provide basic social and economic infrastructure and employment relief. The policy also suggests a clear model for dispute resettlement based on land tribunals at the village, traditional authority, district and national level,¹³⁴ which would require the enactment of the Customary Land Dispute Settlement Act. A short section (9.10) on mining and minerals indicates commitment to the EIA before a mining right is awarded, and the responsibility for a holder of mining rights to set aside funds for compensation of those adversely affected by the activity (i.e. economic and physical displacement) and to meet the costs of reclaiming land.

In contrast, the focus of **Botswana’s** mining policy (Mineral Investment Promotion Policy 2008)¹³⁵ is on creating an investor-friendly climate which aims to maximise the economic benefits for the sector while enabling private investors to earn competitive returns. The fiscal regime is outlined, while communities, land acquisition and broad-based socio-economic development do not feature in the policy. Instead guidance for ensuring that economic development is equitable and improves the lives of citizens is found in the Citizen Economic Empowerment Policy (2012), which indicates that it is based on and continues the work of other policies, schemes and agencies, such as the Localisation Policy, Citizen Entrepreneurial Development Agency and the Economic Diversification Drive. Indicators of empowerment, as specified by the policy, include the ownership of land, property and businesses by citizens, and capacity development and skills training, amongst others. Within this framework, ensuring resources will be used in a sustainable manner for future generations of Botswana and citizen participation through joint ventures are also emphasised. This remains a policy and not a law as the country wants to continue to position itself competitively as an investor-friendly nation.¹³⁶

In 2002, the government launched a review of the main issues for the National Land Policy.¹³⁷ This made recommendations for promoting the rights of women and minority groups in land ownership and use. Compensation – ensuring it is given at market value and establishing a valuation tribunal to hear disputes, grievances and appeals – was advised since acquisition of tribal land under the Tribal Land Act only provides for compensation of standing crops and improvements but not for the value of the land itself. It also started the discussion about whether a dispossessed person should receive more than the market value for the existing use of land with actual future use being considered.

A clear rights-based approach to guaranteeing land for **Mozambican** nationals and supporting rural community land rights was approved in the 1995 National Land Policy which has been expressed in subsequent land laws and regulation.¹³⁸ Like Botswana, this policy is investor friendly but does not exclude national socio-economic development; “investment in sustainable and equitable use of these resources”. Mozambique is the only country examined here with specific legislation on resettlement, Regulations for the Resettlement Process Resulting from Economic Activities(2012), discussed in the following section. This was developed to standardise resettlement, to ensure socio-economic and cultural features are observed, and to guarantee a better quality of life for affected populations.

South Africa’s Department of Mineral Resources created the Mineral Policy and Promotion branch in 2005, which is responsible for developing mineral policies, norms and standards and for drafting and amending mineral and related legislation. The country’s policy is set out in the Minerals and Mining Policy 1998,¹³⁹ which, like other countries in the region, focuses on development of the sector for the benefit of citizens, highlighting the development of the country’s mineral value chains (cf. A Beneficiation Strategy for the Minerals Industry of South Africa (2011))¹⁴⁰ and national ownership and participation of historically disadvantaged South Africans.

In 2010, the amended Broad Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry (“Charter”) was adopted and gazetted, amending the 2002 Charter, which gives effect to Section 100(2)(a) of the Minerals and Petroleum Resources Development Act and section 9 of the Constitution. The aim of the Charter is to redress historical, social and economic inequalities through promoting equitable access to the nation’s mineral resources to all people of South Africa, including setting a framework, target and timetable for substantially and meaningfully expanding opportunities for historically disadvantaged South Africans to enter the mining and minerals industry and to benefit from the exploitation of the nation’s mineral resources. Mining companies are assessed on their performance each year.

The Charter outlines the engagement of mining companies with community development:

Engagement must be consistent with best practice in terms of rules of engagement and guidelines.

Companies must invest in ethnographic community consultative and collaborative process prior to the implementation/development of mining projects.

Companies must conduct an assessment in collaboration with mining communities to determine developmental needs.

Companies must identify projects within the needs analysis for their contribution to community development in line with development plans.

The cost of contribution should be proportionate to the size of investment.

Every company and other stakeholders (including, among others, the Department of Mineral Resources, the National Union of Mine Workers, the Chamber of Mines of South Africa, and the South African Mineral Development Association) are required to implement sustainable development commitments in compliance with all relevant legislation and in the Stakeholders’ Declaration on Strategy for the Sustainable Growth and Meaningful Transformation of South Africa’s Mining Industry (2010).

Like mineral policy, land policy in South Africa seeks to redress historical inequalities. This is through land restitution, redistribution and tenure reform as outlined in the White Paper on South African Land Policy (1997); no attention is paid here to resettlement caused by mining. South Africa does not have a resettlement policy, but in Mogalakwena Local Municipality, where Anglo Platinum’s aforementioned activities resulted in resettlement and compensation of communities, a Resettlement Manual was developed by the local government in an attempt to coordinate and clarify the process as the Municipality was driving and managing the resettlement process and responsible for public participation in the process. This municipal manual was based on international best practice, South Africa’s legal framework and results from the Mining Minerals Sustainable Development Southern Africa research on involuntary resettlement in Southern Africa.¹⁴¹

Like Malawi, **Zambia** launched its new Mineral Resources Development Policy¹⁴² last year. This focuses on strengthening the capture of mining revenue (through reducing capital flight), facilitating transparency and accountability through closer monitoring of mineral exports, and prompting mining diversification by exploiting the potential of non-traditional resources.¹⁴³ Sustainable development is a guiding principle yet increasing investments in the mining sector and ensuring its transition to a self-sustaining mineral-based industry are prioritised.¹⁴⁴ The National Land Administration and Management Policy (in draft form since 2006) focuses on privatisation of customary land and large-scale investment without providing enough protection for populations that depend on rural land and access to natural resources, according to CSOs.¹⁴⁵ However, it emphasises the empowerment of socially disadvantaged groups and the use of land for sustainable socio-economic development. It notes the need to reorganise the administration and management of land including resettlement. While the definition of land includes minerals, acquisition of mineral rights excludes land, which is a source of conflict in administration of land that requires an effective administrative mechanism to coordinate the implementation of the Mines and Minerals Act, according to the land policy. A Land Tribunal is set up to manage land disputes, however, the policy highlights that there is limited awareness about its existence, it does not have a mandate to arbitrate over land disputes in customary areas where most vulnerable groups live and there is a lack of capacity. Further changes to this land policy and legislation will be made once the final version of the Constitution is approved by parliament.

4.2 Land Displacement

In this section, laws from each country are compared using the key components explained in Section 1.3 Methodology. Key legal provisions have been provided in the Annex 6.5.

	Malawi	Botswana	Mozambique	South Africa	Zambia
Vesting of mineral rights					
Constitution	Guarantees land as a basic resource for all social and economic assets for Malawians, guarantees security of tenure and vests all land and territory in the republic but is silent on natural resources and mineral rights.	Rights of ownership in minerals vested in the republic.	The state retains absolute control of land and determines the conditions the conditions for use and ownership of land.	The constitutional court in Agri SA ¹⁴⁶ ruled that the state was the custodian of mineral rights.	The land is vested in the president and held by the president in trust for, and on behalf of, the people of Zambia. (See below in Mining Law).
Land Law	The minister is to control customary land mineral rights for the benefit of the Malawian people (LA Section 26).		The land is the property of the state and cannot be sold or otherwise alienated, mortgaged or encumbered (LL Article 3).		
Mining Law	The mineral rights are approved by the minister (MMA Section 14).	Mineral rights are vested in the republic but per Section 5(3) tribes are not prevented from taking minerals from land if it has been their custom to do so (MMA Section 3). Pursuant to the Mineral Rights in Tribal Territories Act, ¹⁴⁷ the rights to minerals situated on tribal land and in tribal territories are vested in the state.	The state owns property in mineral resources under Article 4 ML.	MPRDA establishes the state as the custodian of all mineral rights in section 3. This was a change from former position under the 1991 mining legislation where individuals could hold mineral rights under Section 5 (1) (then the mineral right was a limited real right in respect to the land it relates to).	All mineral rights are vested in the President (MMDA Section 3).
How mineral rights are granted					
Land Law	The minister administers mineral rights (LA Section 26).	Mineral rights are granted with the written consent of the president, and cannot be exercised without the written consent of the lawful occupier. (Cultural) restrictions are placed on the exercise of mineral rights by stating that mineral rights cannot be exercised on land dedicated as a place of burial or that contains an ancient monument or relic.	The LL requires licensing of mineral rights (Article 20). Approval of right to land use also requires licences and authorisations required under legislation applicable to mining and the environment under 20(a). The technical annex to the LL Regulations provides detailed provisions on what is required to apply for right to land use when a target area occupied by a local communities (see Annex 6.5). Key features include recognition of	The right to hold mining rights is reverted to the state with the new law without loss of tenure (Section 5 (1)) and under 5 (3)(a) the holder of the mining rights may enter the land with plant and machinery.	

	Malawi	Botswana	Mozambique	South Africa	Zambia
			customary rights after land has been occupied for ten years (evidence of this can be given orally) and the requirement for information dissemination and participatory appraisal as part of the process.		
Mining Law	Section 10 of the MMA allows the minister to enter into an agreement with any person and grant them a mineral right; applications are made to the minister with Section 14 stating the mineral right will be in the form the minister approves.	Mineral rights are granted by licence or concession by the government under the MMA Section 5.	MLR (Granting of Mining Titles and Permits) sets out different licences required and the National Directorate of Mines is responsible for conducting a bidding process for exploration licences and mining concessions.	The MPRDA allows the minister to administer the granting of mineral rights	Mineral rights are granted by the government through a licence under the MMDA Section 4 and 6.
Expropriation of property/compulsory acquisition					
Constitution	The Constitution sets the benchmark for land acquisition denying the arbitrary deprivation of property. It states that compulsory acquisition is only permissible for 'public utility'. ¹⁴⁸	Section 9 of the Constitution prohibits the compulsorily taking possession of interests or rights in property except if it is to secure the development or utilisation of the mineral resources of Botswana and unless provision is made by the law applicable to the acquisition and only with the prompt payment of adequate compensation.	Compulsory acquisition takes place on the grounds of 'public need' ¹⁴⁹ and recognises the right to ownership of property.	The Constitution under Section 26(3) prohibits the eviction of people from their homes without a court order considering all the relevant circumstances. (See Annex 6.5 for distinction between expropriation and deprivation of property).	Section 42 (2) prohibits the state or a person from arbitrarily depriving a person of property. The state shall not compulsorily acquire property unless the acquisition is in the public interest. If a person's property is compulsorily acquired, prompt, adequate and effective compensation shall be paid and the land owner/holder has right of access to court. Section 5 recognises compensation for customary land owners. (See Annex 6.5 for full provisions).
Land Law	The minister can declare any customary land as public land if it is for a 'public purpose' (Section 27(1) LA). Land may be acquired if it is in the interests of the country and subject to compensation (LAA Section 3).	APA gives the president right to acquire property in order to secure the development of that property or for a public purpose (Section 3(1)(2)). ¹⁵⁰	Under LL, no compulsory acquisition is allowed per se but DUATs intended for "economic uses" (by foreign entities or market-oriented activities carried out by Mozambican nationals) are subject to a maximum period of 50 years and renewable. Once an application for a DUAT has been submitted, a provisional authorisation	The EA gives power to the minister to expropriate property for public and certain other purposes and to take the right to use property for public purposes. The minister may, subject to an obligation to pay compensation, expropriate any property for public purposes or take the right to use temporarily any	Land may be transferred for sale by the state under Section 3 of the LA, but land that is held under customary land shall not be transferred a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act; (b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of

	Malawi	Botswana	Mozambique	South Africa	Zambia
			of no more than 5 years (for Mozambican nationals) or 2 years (for foreigners) is issued, allowing land developments to begin. After this period, a title is issued.	property for public purposes.	a game management area, the Director of National Parks and Wildlife Service shall identify the piece of land to be alienated; and (c) without consulting any other person or body whose interest might be affected by the grant.
Mining Law	The MMA (Section 20 on acquisition of land) indicates that where the president considers that any land is required to secure the development or utilisation of the mineral resources, s/he may direct that the land be compulsorily acquired under the Lands Acquisition Act. Cap. 58:04.	Under the MMA Section 64(2), acquisition of land is deemed to be for a public purpose in terms of the provisions of the Cap. 2:10 Acquisition of Property Act and any acquisition under this section shall be effected in accordance with the provisions of that Act.		According to Section 55 of MPRDA, the minister has the power to expropriate property for purpose of prospecting or mining. The Act stipulates that (1) if it is necessary for the achievement of the objects referred to in section 2 (d), (e), (f), (g) and (h) the Minister may, in accordance with section 25 (2) and (3) of the Constitution, expropriate any land or any right therein and pay compensation in respect thereof.	
Other				Extension of Security of Tenure Act ¹⁵¹ outlines the termination of right of residence.	
Conditions for exercise of mineral rights					
Land Law	LA will not prejudice the exercise of mineral licence rights under the Mines and Minerals Act (Section 44 LA).		Land requires registration of licence in a manner established by the law (LL Article 12 Acquisition 12c). (Full provisions showing manners of acquisition of land rights can be found in Annex 6.5). Exploitation plans are required under Article 24 (2) of the Land Law Regulations ¹⁵² where use of land is intended for economic activities.		
Mining Law	MMA places limitations on exercise of mineral rights by companies (Section 120); ¹⁵³ graveyards and places of religious significance are permitted without the written consent of the	Section 60(1) of the MMA requires the written consent of any lawful occupier of a house within 200 metres, of ploughed land within 50 meters, of land which the year before reaped crop and any land within 100 of private water tank	Article 25 of ML of June 26 provides that the Government may, exceptionally and taking into account the size of the project, enter into a Mining Contract with the holder of an	The Minister has the right to cancel or suspend a mineral right in specified circumstances. These include: contravening the MPRDA while conducting mining related	Mineral rights will only be exercised with the written consent of the appropriate authority on land dedicated as a place of burial and on land containing ancient monuments (Section 127(1)(a)(i)). Where land is occupied as a

	Malawi	Botswana	Mozambique	South Africa	Zambia
	<p>lawful occupant where land is within 200 metres of a house or building whether occupied or unoccupied, land is within 50 metres of ploughed land, land was reaped the previous year and land is within 100 metres of a water source. However, where the government thinks consent is unreasonably withheld they may direct that there is no need for consent.</p>	<p>include a cattle dip tank is required before the exercise of mineral rights.¹⁵⁴</p> <p>Under MMA Section 61(3) rights under mineral concession shall be exercised reasonably in a manner that least affects the lawful occupier of the land and under Section 61(4), holders of mineral concessions are prevented from creating hazards that are likely to damage crops and animals.</p> <p>MMA Section 65(4) requires restoration of surface after mining operations to a condition in which it was before mining activities, disputes shall be settled by arbitration, and the developer shall incur a debt with the government upon failure to pay under Subsection (6).</p>	<p>exploration licence or mining concession.</p> <p>MLR Article 107 gives the holder of the mining title strict liability for damage caused to crops, constructions and upgrading as well as the resettlement of any occupiers of the land as a result of their mining right, it also explicitly holds the mining title holder as strictly liable for any compensation arising from loss or damage (see Annex 6.5 for full provisions).</p>	<p>operations; breaching any material term or condition of a mineral right; contravening an approved environmental management programme; or submitting inaccurate or misleading information to the Department of Mineral Resources.</p> <p>Section 5 MPRDA sets out a list of exactly what the holder of a prospecting right, mining right, exploration right or production right is allowed to do in relation to the land subject to the right. Detailed Sections 13 to 27 on the provision requirements are also included in the acts.</p> <p>Section 48 provides a prohibition against prospecting and mining on land that is a residential area and only allows it under (2)(a) when regard has been made to the sustainable development of the mineral resources involved and the national interest.</p>	<p>village, the written consent of the chief is required (Section 127(1)(c)) and written consent of the landowner of any house within 180 metre, within 45 metres of ploughed land and within 90 metres of a water source is required (Section 127 (1)(b)).</p> <p>MMDA Section 123 stipulates that (1) A holder shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and compensation will be due; (2) ;liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage; and (4) where any harm or damage is caused to the environment or biological diversity, compensation shall include the cost of reinstatement, rehabilitation or clean-up measures which are incurred and where applicable, the costs of preventive measures.</p> <p>Under Subsection (5) the liability shall include inter alia harm or damage caused directly or indirectly on the economy or social cultural conditions, on livelihoods or indigenous knowledge systems though limitation is placed upon right to action to within a 'reasonable time' under Subsection (6). (See Annex 6.5 for detailed provisions).</p>
Other	The Chiefs Act Section 7 gives Chiefs power to assist in general administration of the district.				
Environmental Impact Assessment (EIA) requirements					
Mining Law	MMA Section 94 (3) indicates that the minister may, pursuant to section 38 (3), require environmental impact studies to be carried out. The following section, Section 95, sets out	MMA Section 65 (2) stipulates that in accordance with good international mining industry standards, the applicant for a mining licence or retention licence or any renewal of either shall prepare and submit a	ML ARTICLE 36 lists environmental management tools as follows: the EIA, environmental management programme, EMP, environmental monitoring programme, mine closure	Section 37 MPDRA prescribes that all mining operations must be carried out in a manner consistent with the NEMA. See Section 23(b) which specifically deals with impacts on	MMDA Section 82 (3) indicates that the applicant shall commission and produce to the Director of Geological Survey an environmental impact study on the proposed mineral processing operations approved by

	Malawi	Botswana	Mozambique	South Africa	Zambia
	<p>the conditions for the protection of the environment, etc. This states that "There may be included in a Mineral Right conditions with respect to: (a) the prevention, limitation or treatment of pollution and (b) the minimisation of the effects of mining on adjoining or neighbouring areas and their inhabitants".</p>	<p>comprehensive EIA as part of the Project Feasibility Study Report.</p>	<p>programme, and environmental audit.</p>	<p>socio-economic conditions and cultural heritage.</p> <p>Section 38 MPDRA gives the licence holder direct responsibility over environmental management.</p> <p>Section 39 requires an EIA and an environmental management programme with detailed instructions on what it should contain including baseline information concerning affected environment and socio-economic conditions, description of mitigating activities, which is subject to ministerial approval. (See Annex 6.5 for detailed provisions).</p> <p>Section 41 makes compulsory for a financial provision for the rehabilitation of negative environmental impacts.</p>	<p>the Environmental Council of Zambia.</p>
Other	<p>EMA under Section 24 requires an EIA for projects that are likely to have a significant impact on the environment.</p>	<p>Detailed requirements for an EIA are under the EAA: EIA Regulations 2012 (draft regulations, Schedule 2, Form B) indicate that "An EMP will usually be necessary where the proposed project does not qualify for the undertaking of a detailed environmental impact assessment study, but by virtue of the associated impacts would require the development of an environmental management programme to manage the implementation of the project. The EMP may also be required for projects which were implemented prior to the enactment of the EIA legislation but would have otherwise required a detailed assessment prior to their implementation".</p>	<p>ERMA¹⁵⁵ states that EIAs must be undertaken by an environmental specialist licensed by the Ministry of Coordination of Environmental Affairs (MICOA) and carried out during the feasibility stage of the project.</p> <p>Article 8 para 3 and Article 9 and 10 indicate that the EIA report must include an environmental management programme. This programme shall include environmental, biophysical, social, economic, and cultural aspects as well as an environmental monitoring and a mine closure plan.</p>	<p>Section 27(5)(a) requires the submission of an EMP and in NEMA Section 2, the principles of environmental management must place the people and their needs at the forefront of its concern. (See Annex 6.5 for detailed provisions).</p> <p>Section 23 (2)(b) indicates that environmental management must identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts,</p>	<p>EPPA sets up an Environment Council and part of their role is to identify projects which require impact assessments. The Act contains the EPPCR which provides detailed guidelines and regulations for EIAs including provision of project briefs which must include socio-economic impact of the project (4) and an environmental impact statement (11). (See Annex 6.5).</p>

	Malawi	Botswana	Mozambique	South Africa	Zambia
				maximising benefits, and under 24(1) impact on socio-economic conditions and the cultural heritage must be taken into account.	
Public participation, consultation and information disclosure					
Constitution				Section 32 states that everyone has the right of access to information that is held by another person and that is required for the exercise or protection of any rights.	
Land Law			<p>LL outlines community consultation in the process of ensuring land is “free and without occupants” and delineating community lands is required. Consultation in areas occupied by local communities must include men and women, diverse socio-economic and age groups and neighbours, and be signed by 3–9 men and women selected in public meetings (Technical Annex, Land Law Regulations, 2000).</p> <p>LL Article 24 requires rural communities to participate in the management of natural resources and the resolution of conflicts.</p> <p>The “community’s own mechanisms for representation and action” are fixed by law to ensure “representativeness of results and consensus</p>	<p>Interim Protection of Informal Land Rights Act¹⁵⁶ Section 2 stipulates the consent required in the deprivation of informal rights to land. It reads,“(1) Subject to the provisions of subsection (4), and the provisions of the EA, 1975 (Act No. 63 of 1975), or any other law which provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent”.</p> <p>This section further makes provision for, under subsection (2), the rights held on a communal basis to be deprived from a person under the customs of the community, and compensation must be paid. Custom and usage will include the principle that only a majority of the community can make a decision to dispose of the property at a meeting held for that purpose, and members must be given sufficient notice and a reasonable opportunity to participate. (See Annex 6.5 for detailed laws).</p>	<p>LA subsection 4 indicates that, notwithstanding subsection (3), the President shall not alienate any land situated in a district or an area where land is held under customary tenure-</p> <p>(a) without taking into consideration the local customary law on land tenure which is not in conflict with this Act;</p> <p>(b) without consulting the Chief and the local authority in the area in which the land to be alienated is situated, and in the case of a game management area, and the Director of National Parks and Wildlife Service, who shall identify the piece of land to be alienated.</p>

	Malawi	Botswana	Mozambique	South Africa	Zambia
Mining Law				Important part of South Africa's public participation is the legal requirement to disclose information under the mining law under section 30 MPRDA.	
	<p>According to the EMA, public hearings must be conducted to assess the public opinion of EIA and can require the developer to either redesign the project or to conduct further impact assessments following the concerns raised.</p>	<p>Under Section 7 (1) of the EAA, a publicised scoping exercise is required, announcing its effects and benefits in the mass media using the official languages for a period of not less than 21 days; and following that the holding of consultation meetings with affected people to explain the nature of the activity and its effects.</p> <p>Public impact assessments must also be gazetted under Section 10(1) and be circulated in a newspaper once a week in the official languages for four weeks.</p>	<p>In the EIA process, public participation is required for all projects causing dislocation of communities or leading to restrictions in natural resource use.</p>	<p>NEMA Section 24 (7) states that processes for investigation of environmental impact activities must ensure, under (d), public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts.</p> <p>Detailed procedures for public participation and governance are set out in Sections 16 to 18 of the Local Government Municipal Systems Act (2000). It ensures participation of the local community in the affairs of the municipality and further provides for public communication of information concerning community participation in the vernacular language.</p>	<p>EPPCR contains detailed regulations on public participation guiding the EIA. Section 8 (2) stipulates that public views are taken into account during the preparation of the terms of reference: the developer shall organise a public consultation process, involving Government agencies, local authorities, non-governmental and community-based organisations and interested and affected parties, to help determine the scope of the work to be done in the conduct of the EIA and in the preparation of the environmental impact statement. The project must be publicised in the mass media, meetings must be held with the affected community, views of the people consulted must be considered, copies of the EIA must be placed in convenient places, a description of the socio-economic impacts must be included, notifications must be placed in two national newspapers and broadcast on the radio of where the EIA is available (must be in the local language). Further processes to address concerns raised are described in detail in Section 18 and transparency is ensured under Section 16.</p> <p>Documents submitted to the council, including project briefs, impact assessments, terms of reference, public comments, reports, letter and any other information, are public under the act (Section 26).</p>
Recognition of informal tenure					

	Malawi	Botswana	Mozambique	South Africa	Zambia
Land Law	<p>No recognition of acquisition of customary land by prescription per Section 34 LA.</p> <p>Section 27 (2) stipulates that whenever any customary land is required for temporary use for a public purpose, for a period of no more than seven years, the land will remain as customary land throughout the period of use. Under Section 29 where land is no longer needed for public purpose it shall revert back to customary land.</p>	<p>TLA Regulations makes provision for granting of customary land under part III; it shall be made verbally or in writing to the subordinate land board where the land is situated.</p>	<p>Under Article 9, local communities who occupy land according to customary practices shall acquire the right of land use and benefit over that land. Areas over which a right of land use and benefit has been acquired by occupancy according to customary practices may, when necessary or at the request of the local communities, be identified and recorded in the National Land Cadastre, in accordance with requirements defined in a Technical Annex .</p>	<p>Money will be given to people who need long term security of tenure to acquire rights in land from a parliamentary fund under section 4(1). Customary rights per se will not be registered under the act.</p>	<p>Customary land holdings are recognised under LA Section 7 (1) and (2). The latter provides 'Notwithstanding section thirty-two, the rights and privileges of any person to hold land under customary tenure shall be recognised and any such holding under the customary law applicable to the area in which a person has settled or intends to settle shall not be construed as an infringement of any provision of this Act or any other law except for a right or obligation which may arise under any other law'.</p> <p>Section (9) prohibits the unlawful occupation of vacant land and allows for eviction of people under unlawful occupation.</p>

4.3 Resettlement

	Malawi	Botswana	Mozambique	South Africa	Zambia
Compliance, reporting, monitoring and supervision					
Constitution				<p>Section 26 of the Constitution gives everyone the right to adequate housing and under (2) states that the state should ensure this right is realised.</p>	
Mining Law	<p>Mineral rights will be suspended under Section 57 where the holder a) fails to use in good faith the land subject to the licence for the purpose for which the licence was granted; (b) uses that land for any purpose other than the purpose for which the licence was granted; (c) fails to comply with the act; (d) fails to comply with a condition of a licence; (e) fails to comply with lawful directions under the act; and (f) fails to adhere to any relevant agreement</p>	<p>Under MMA Section 73, the minister may, from time to time, make reasonable arrangements to secure that the holders of mineral concessions comply with the provisions of the act, and this will include obtaining guarantees from shareholders.</p>	<p>Section 36 MML focuses on environmental management tools, which contains an environmental monitoring programme and environmental audit. The environmental monitoring programme includes a set of methods and procedures for the monitoring of environmental objectives and goals, including social, economic and cultural aspects.</p>	<p>MPRDA creates a Mineral and Mining Development Board which is clearly active on the Department of Mineral resources website, the Board's role is to advise the minister on the sustainable development of the nation's mineral resources and dispute resolution.</p>	<p>Cancellation of a licence under MMDA Section 102 (1) will be in the event of (a) contravention of a condition of the mining right or non-mining right, (b) failure to comply with requirements, [...]and (e) in the case of a large-scale mining licence or large-scale gemstone licence, the holder has failed to carry on mining operations in accordance with the proposed plan of mining operations and the gross proceeds of sale of minerals from an area subject to such licence in each of any three successive years is less than half of the deemed turnover application to that</p>

	Malawi	Botswana	Mozambique	South Africa	Zambia
Other	<p>The EMA states that the government should monitor the impact of the sustainable utilisation of natural resources on the environment.</p>	<p>Under Section 18 EAA,(1) the relevant technical department, local authority or developer, is responsible for , monitoring the implementation of the activity to determine compliance with the agreed mitigation measures. Subsection (2) requires the submission of an evaluation report upon demand from the competent authority, (3)(1)(a) allows the authority to set mitigation measures and (4) sets provision for suspension by mining authority following non-compliance. (See Annex 6.5 for detailed provisions)</p>	<p>Regulations for the Resettlement Process from Economic Activities Decree 31/2012 set out resettlement procedures for public or private economic activities.</p> <p>Article 7 sets out the functions of the Technical Committee which include monitoring and supervision and making recommendations for the entire resettlement process. Stakeholders in the resettlement process must include five representatives of the affected population and a representative from civil society (Article 8).</p> <p>Article 10 stipulates the rights of the affected population to an equal or above previous level of income, reinstatement or improvement of standard of living, transportation to the new location, to live in a place with infrastructure and social facilities, to have space for subsistence living, and to give their opinion about the resettlement process (See Resettlement Regulations in Annex 6.6).</p> <p>EMPs required for both the full EIA and simplified environmental assessment, require self-monitoring; MICOA is also responsible for inspection and enforcement, and may require environmental audits (Environmental Impact Assessment Regulations, 2004).</p>	<p>NEMA Section 3(2)(b)(ii) establishes the National Advisory Forum inter alia to advise the government on monitoring and compliance with the principles of environmental management which include principles in Section (2).</p>	<p>licence in each of those years.</p> <p>Section 28 EPPCR requires the developer to conduct an “environmental audit” linked to the impact assessment submitted after 12 months, and thereafter whenever requested. Inspectors can enter the land at any time to investigate implementation of conditions following an environmental audit (Section 29).</p> <p>Any investment licence that breaches or fails to comply with the environmental audit requirements can be suspended by the Zambia Development Agency.¹⁵⁷ Furthermore, the director will reject an application for renewal of an artisan’s mining right where the development of the mining area has not proceeded with reasonable diligence (MMDA 2008 Section 77 (3)).</p>

	Malawi	Botswana	Mozambique	South Africa	Zambia
			Provisional land authorisation (max. 2 years for foreigners) may be revoked if development plans are not carried out and there is no reasonable justification.		
Remedy available, dispute resolution and other grievance mechanisms					
Constitution				Section 34 of the Constitution gives people the right to go to court to have any dispute resolved by the application of law.	
Land Law	LL Section 36 indicates that recourse to traditional court or magistrate court is only available for trespass and unlawful occupation.	APA (Section 11) sets up a Board of Assessment specifically to settle disputes about the amount of compensation or, titles, while legality of compulsory acquisition can be referred to the High Court.	Disputes on the legality of compulsory acquisition can be taken to the High Court (LA Section 8).	EA Section 14 stipulates that in the absence of agreement between the parties the determination of compensation shall be made by the supreme court or by arbitration.	Under LAA Section 11 (1) (2), any compensation disputes which are not settled after six weeks can be taken to a court for determination. The Compensation Advisory Board advises and assists the Minister in the assessment of any compensation payable under the Act (LAA Section 21). Section 20 establishes a land tribunal and under 22 which will settle disputes and award compensation under the act.
Mining Law	Under MMA disputes as to whether land is occupied by the lawful occupier shall be decided by the government. Further disputes about the limitations of the exercise of mineral rights falling under MMA Section 103 (1) (b) shall also be determined by the government, with no right of appeal. Section 110 gives the government power to decide disputes concerning land boundaries and any wrongful acts committed during mining operations between mining companies among themselves and third parties (except for the government); orders made by the government in dispute resolution shall be enforced by the high court through certification of the order by the commissioner (Section 111). However, Section 113(1) excludes the jurisdiction of the high court from	MMA Section 62 (2) stipulates that if the holder of a mineral concession does not pay compensation as demanded then the dispute will be settled using arbitration processes. The claim for payment of compensation should be made within four years from the date of the claim.	MLR indicates that where both parties do not agree on the amount of compensation they can request mediation services and they may also use other remedies available to them including high court. ¹⁵⁸ Article 107(6) places everyone applying for mining title directly under the jurisdiction of Mozambican courts in relation to all actions and obligations resulting from the duty of compensation.	Section 57 MPRDA establishes a Minerals and Mining Development Board which advises the minister on sustainable development of nation's mineral resources and under 58(1)(a)(i)(iv) on dispute resolution.	Under MMDA (6), where a holder of a mining right fails to pay compensation when demanded, or where the owner or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration. Section (7) stipulates that a claim for compensation under the provisions of subsection (1) should be made within three years of the date the payment accrued.

	Malawi	Botswana	Mozambique	South Africa	Zambia
	disputes under 110(1).				
Other	<p>The EMA¹⁵⁹ under Section 68 gives the government immunity from legal proceedings against anything done under the act, instead an Environmental Appeals Tribunal is set up to consider appeals under any decision made under the act.</p> <p>Where jurisdiction has not been excluded, complaints may be launched using the usual court system or through the office of the Ombudsman but these avenues are costly.</p>		LL Article 21 states that the right of land use and benefit may be proved inter alia by testimonial evidence submitted by someone who has knowledge of the acquisition of the right by occupancy.		<p>Non-compliance with the environmental regulations is a criminal offence under section 34 (EPPCR).</p> <p>Any person aggrieved with a direction or decision of a person in authority may apply to the Lands Tribunal for determination at their own expense; persons aggrieved by decisions of the Tribunal may appeal to the Supreme Court within 30 days according to the Lands Tribunal Rules.¹⁶⁰</p>

4.4 Compensation

	Malawi	Botswana	Mozambique	South Africa	Zambia
Compensation for disturbance of surface rights (Timing of payments and Completion of compensation and resettlement)					
Constitution	'Fair and adequate' compensation must be given in the event of compulsory acquisition.	Compensation for acquisition must be 'prompt' under Section 8 and can be paid to any country outside Botswana deduction tax free.	Section 2 provides for 'just' compensation for expropriation of property.	Section 25 (1)(b) states that expropriations are subject to compensation.	Section 42 (5) indicates that the state shall provide compensation to occupants when the State compulsorily acquires land from occupants who have acquired the land in good faith and who do not hold titles to the land.
Land Law	Under the LA (Section 28) in the case of customary land, occupants who suffer loss or damage to their interest in land shall be paid 'reasonable' compensation.	Land Acquisition law provides for paying of compensation as may be agreed for compulsory acquisition. Dispute as to the amount of compensation payable and title will be settled under the terms of the Act.	Under LL Article 17, the owner of a right of land will be compensated for loss of use when part of the land is needed for mining purposes, the amount of compensation will be the actual loss of the affected part, and the use of the land by the mining company will be registered as servitude. ¹⁶¹		LA Section 10 stipulates that compensation will be paid on an amount agreed or where there is no agreement compensation will be paid according to the provisions of the LA.

	Malawi	Botswana	Mozambique	South Africa	Zambia
Mining Law	<p>Under the MMA, only lawful occupiers of land under a mining authority retain rights to graze livestock and cultivate the land as long as it does not interfere with the mining activities and consent to erect buildings is required from the holder of the mining licence.</p> <p>MMA (Section 105) provides for 'fair and reasonable compensation' for disturbance of land rights and damage to any crops, trees, buildings, stock, etc. Compensation is assessed by the Lands Commissioner or through an agreement between the parties.</p>	<p>Section 61 MMA enables the owner or lawful occupier to retain grazing and cultivation rights as long as they do not interfere with mining purposes.</p> <p>MMA Section 63 stipulates that mineral concession holders will pay reasonable compensation for disturbance of rights, for any surface damage, and for any damage done to trees, buildings or works – this compensation will only be paid on demand by the owner.</p>	<p>ML Article 43 terminates previous owner's land right once fair and reasonable compensation has been paid – this does not apply to concessions arising out of exploration licences.</p> <p>Decree 28 of 2003 gives the holder to the mining title direct responsibility for the compensation of resettled people, and furthermore, the mining title holder and the operator are jointly responsible for any compensation for losses or damages resulting from the mining activities.</p>	<p>Surface rights cannot be used in a way that impedes mining activities under the act (Section 53 MPRDA).</p> <p>MRPDA does not require compensation for disturbance of surface rights just notification before entry under section 5 (4) (c).</p> <p>Further, under section 54, the owner of the property is not allowed to refuse the mineral right holder access to land and place 'unreasonable demands in return for access to land'. However, Section 54 (3) stipulates that if the regional manager finds that the occupier has suffered or is likely to suffer damage following events in Section 54 (1) and (2) the parties must agree on compensation.</p> <p>Compensation by government is payable only when loss or damage occurs during investigation into mineral formations on land Section 50 (1)(b).</p>	<p>MMDA 123. (1) indicates that a holder shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom the harm or damage is caused.</p> <p>Under (2) the person who caused the harm will be directly liable, liability shall be joint and several, environmental damage will be included in liability and will include the cost of reinstatement, rehabilitation or clean up measures, importantly liability will also extend to harm caused to social cultural conditions and negative impacts on livelihood or indigenous knowledge, the agricultural system, the yields of the community and ecological damage.</p> <p>Under 123(1) the mining company will be liable for medical expenses for medical harm to humans and animals and under 132(1), compensation will be prompt, reasonable and fair for disturbance of land rights and (2) compensation will be calculated taking into account improvements and market value of the land (See Annex 6.5 for detailed provisions).</p>
Other			<p>According to Article 107 on the liability for losses and damages of the Mining Regulations, the mining title holder is responsible for damages to crops, constructions and any upgrading, and damages and ceasing profits which must be paid before resettlement. Any disputes will be referred to mediation or to court. (See Annex 6.5 for detailed regulations).</p>		
Matters to be considered in determining compensation (Calculation and valuation of payments)					

	Malawi	Botswana	Mozambique	South Africa	Zambia
Constitution				Section 25(3) list factors to be taken into account including current use of the property, history of the acquisition and use of property, market value of property, extent and direct state investment and beneficial capital improvement of the property and purpose of the expropriation.	
Land Law	<p>LA Grants of land to investors will not be for an estate greater than a lease of 50 years unless a greater estate is required for the realization of investment.¹⁶²</p> <p>LAA gives the government the power to buy customary land whenever it is needed for a public purpose and makes particular reference to land acquisition for securing exploitation of mineral resources at section 120. The LA¹⁶³ under section 9 prescribes 'fair' compensation following compulsory acquisition, if compensation is not agreed by the parties it will be assessed by the Government. The matters to be considered when calculating compensation will be; the value of the land, the value of the improvements made to the land and how much the land as appreciated in value since the land was originally acquired; under subsection 6 the assessment of compensation must not exceed the current value of the land.</p>	<p>Under the APA, the president has the power to acquire property and under Section 3 (b) this can be done in order to secure that property for a purpose beneficial to the community.</p> <p>APA Section 16 indicates that the matters to be considered in determining compensation will include under (1) - (a) the market value (b) increase in value (c) damage sustained from severing land from land owner (e) incidental expenses of change of residence or place of business (see Annex 5 for detailed provisions).</p> <p>Section 26 notes that claims for delay in payment of compensation can be brought to the High Court. Interest can be paid under section 33 of APA.</p>	<p>LL Article 18 stipulates that fair indemnification and/or compensation will be paid before the termination of the right of land use and benefit</p> <p>Article 14 provides that holders of the right of land use and benefit, whether acquired by occupancy or by authorisation of an application, will receive just compensation while observing the following duties: d) to allow the execution of operations and/or the installation of accessories and equipment conducted under prospecting and reconnaissance mining licenses, mining concessions or mining certificates.</p> <p>Article 19 (3) of the LL highlights that payment of compensation for expropriation shall be before the right to land use is terminated.</p> <p>MLR states that compensation should be determined by taking into account damages and ceasing profits, should be the product of negotiation and importantly states the timing of the payment of the compensation should be made prior to the removal or the</p>	<p>Compensation required under EA Section (2) for 'public and certain other purposes,' and land owners can write to dispute compensation offered and proffer an amount 9(a) or can claim an amount in compensation. This claim for compensation shall include particulars of the improvements that affect the value of the land, and unregistered leases are also subject to compensation. According to Section 11, 80% payment of the compensation has to be paid on the date upon which the state takes possession of the property.</p> <p>Section 12 stipulates the basis on which compensation is determined; it shall not exceed the value of the property but must be an amount to make good the actual loss cause by the expropriation. Where property does not have an open market, compensation will be determined by looking at the basis of the amount it would cost to replace the improvements on the property expropriated, considering the depreciation thereof for any reason, as determined on the date of notice; or (b) in any other suitable manner. Additionally there shall be added to the total amount an amount totalled by the following calculation; 11 (a) ten per cent of such</p>	<p>LAA Section 3 gives the President rights, in the interests of the Republic, to compulsorily acquire any property of any description (See Annex 6.5 for conditions on acquisition). Section 21 establishes the Compensation Advisory Board to advise and assist the Minister in the assessment of any compensation payable under the Act.</p> <p>While assessing compensation will not take into account compulsory nature of the acquisition, and open market value (Section 12) 'the following will be deducted (i) any returns and assessments of capital value for taxation made or acquiesced in by the claimant: (ii) any money granted by the Government for the development of the property or any other investment or donations made by the Government, or deemed to have been made or granted; or any investment or donation, whether in the form of money, services, equipment or any other contribution, made by a company or any other body, unless any contributor indicates in writing that the contribution was specifically made for the use and benefit of the registered owner'.</p>

	Malawi	Botswana	Mozambique resettlement. ¹⁶⁴	South Africa	Zambia
				total amount, if it does not exceed R100 000; plus (b) five per cent of the amount by which it exceeds R100 000, if it does not exceed R500 000; plus (c) three per cent of the amount by which it exceeds R500 000, if it does not exceed R1 000 000; plus (d) one per cent (but not amounting to more than R10 000) of the amount by which it exceeds R1 000 000. Interest is also provided for under Section 3 and unregistered leases will also be subject to compensation per section 13.	
Mining Law	The MMA does not state which matters are to be considered but instead Section 105(2) stipulates that the mining authority and the occupant should come to an agreement on the amount of compensation.	Section 62 of the MMA stipulates that mining licence holders may obtain a lease for a right to use part of the mining permit area – rent is paid to the relevant local land board. While Section 63 deals with compensation where payment of rent under provisions of section 62 shall be deemed to be adequate compensation for deprivation of the use of land. Calculating compensation includes any improvement effected by the holder of the mineral concession, the benefit of which has or will ensure to the owner or lawful occupier thereof; (iii) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land has been reduced by damage, but without taking into account any enhanced value due to the presence of minerals.	ML Article 43 2) stipulates that land use for mining operations shall have priority over other land and under 43(4), previous rights to land are terminated by granting a DUAT under this section subject to payment of compensation. ML Article 33 3 indicates that the expropriation of private property goods and rights within the context of the mining title can only occur owing to public interest and shall be subject to the payment of a fair indemnity.	Section 55 of the MPRDA gives the Minister power to expropriate property for purpose of prospecting or mining where necessary and compensation is to be paid; the government must comply with Constitutional provisions for compensation under Section 25 Constitution.	MMDA 132.(1) stipulates that a holder of a mining right shall on demand by the owner promptly pay fair and reasonable compensation for any disturbance of the rights and for any damage done to the surface, damage to trees and crops, trees and buildings (2). In assessing the compensation (1), Improvements shall be taken into account and (3) the compensation payable for damage to the surface of any land shall be the extent to which the reduced market value following mining but will not take into account increased value because of minerals. (4) No demand made in terms of this section shall entitle the owner or lawful occupier to prevent or hinder the exercise by the holder of rights under the mining right pending the determination of compensation to be paid.

5 Recommendations

In this section, the key recommendations for Malawi are described and discussed in light of the comparison with the legal and policy frameworks of Botswana, Mozambique, South Africa and Zambia and international best practice (including the World Bank OP 4.12 on Involuntary Resettlement and the IFC's Performance Standard 5 on Land Acquisition and Involuntary Resettlement).

5.1 Overall

A National Resettlement Policy (NRP) should be developed to guide all resettlement in Malawi in a uniform and equitable manner. While international companies and projects financed by international lending institutions often (aim to) comply with international best practice which usually exceeds the framework provided by national laws and policy, a NRP will be useful in educating communities on the responsible institutions and procedures and empowering them with an understanding of what to expect of government, it will provide clear instruction for investors on requirements and it will inform the updating of the different pieces of relevant legislation.

In the absence of a NRP, international best practice (especially the World Bank OP 4.12 and the IFC Performance Standard 5) should guide government-led displacement, resettlement and compensation and be used as a basis for educating communities in negotiating resettlement arrangements. This is only a temporary measure since these guidelines are only as effective as the national frameworks, legislation and capacity to implement and monitor their application to involuntary resettlement.

In line with current national policy documents, such as the MDGS II (2012-2016) and the Mines and Minerals Policy (2013), the promotion of sustainable development should be the guiding principle for this policy.

Apply the principles that livelihoods and standards of living of displaced persons should be at least restored, if not improved, with the provision of security of tenure at resettlement sites, in line with IFC and World Bank standards.

World Bank and IFC standards on the need to avoid and minimise land acquisition and avoid forced eviction should be incorporated.

The policy should be aimed to provide sufficient compensation, assistance, rehabilitation and development opportunities to project affected people. It should also include objectives on dispute resolution, the institutional framework with a

focus on implementation of the policy and executing agencies as well as other stakeholders (e.g. NGOs and traditional leaders), public participation and consultation and reporting, planning and documentation requirements and monitoring.

The policy should pay particular attention to vulnerable groups, including women, children, the elderly and people with disabilities, both in the resettled and host communities.

The policy should provide the basis for enacting resettlement legislation and/or regulations. Mozambique's regulations have been provided in Annex 6.6.

Further study of land displacement, resettlement and compensation is vital, particularly in assessing how the legal and policy framework is interpreted, enacted and perceived by different stakeholders in Malawi (especially by companies, communities, traditional leaders and government officials). This will enhance the findings of this desktop comparative analysis. This study also highlights the need for a broad examination of land practices, policy and legislation in Malawi and not only focussed on displacement, resettlement and compensation.

In the following section on Land Displacement, Resettlement and Compensation, key elements and principles for the NRP and legislation reform and civil society activity in these areas are highlighted. They have been informed by the desktop comparison of law and policy in the region

5.2 Land Displacement

Constitutional mineral, environmental and social rights

In Malawi and Zambia, land and mining law vests mineral rights in the president, and Botswana, Mozambique and South Africa constitutionally guarantee mineral rights are for the benefit of the people. By holding mineral rights, governments have the power to set conditions under which mineral rights are administered and managed and in all the countries examined. In Zambia, Botswana, Mozambique and South Africa, these powers are tempered by relevant and effective institutional capacity; the Zambia Development Agency, the Mineral and Mining Development Board in South Africa, technical departments under Botswana's environmental legislation, and environmental technical support from MICOA in Mozambique. Malawi has limited institutional oversight for governmental and ministerial actions. All the governments have the power to change law and policy and furthermore, the separation of land

rights and mining rights gives rise to compensation liability when land is expropriated.

Best practice can be drawn from:

Botswana, which vests ownership in the Republic, if there is no compensation for expropriation it is unconstitutional and can be challenged creating legal liabilities for the state.

Countries that constitutionally guarantee social, cultural and economic rights, as they influence the way extractives industries deal with the rights of the people; CSOs and community groups may also use the constitutional provisions to protect the rights of communities and hold governments accountable through public interest litigation.

South Africa that has strong institutions which contribute to and oversee sustainable development and transparency in government dealings in the mining sector.

Recommendations

For Legislators

1. Constitutionally guarantee social, cultural and economic rights of communities.
2. Introduce institutions for oversight under key legislation.

For Civil Society

1. Reach out to legislators for constitutional reform.
2. Advocate for delimiting Presidential and Ministerial monopoly of power within the mining sector.

Granting of mineral rights

All countries through mining and land laws require licensing of mineral rights through stated procedures; in Malawi the procedures are underdeveloped, lack detail.

Best Practice can be drawn from:

Mozambican land law which states procedures for investors when applying for right to use land when the land is occupied by customary right holders thus taking into account their livelihoods; it does not require customary right holders to register their right which saves them money and also includes a participatory process at the land securing stage.

Mozambique which incorporates a bidding process for granting of mineral rights under concession or exploration licence.

Botswana which requires written consent of the 'lawful' owner and mineral rights cannot be exercised on land dedicated as a place of burial, taking into account cultural and social sensitivities.

Recommendations

For Legislators

1. Promote transparency in awarding mineral concessions and in application process; introduce bidding process for mining concessions.
2. Legislate for protection of customary rights and preservation of cultural and social traditions.
3. Legislate for stakeholder engagement at securing stage.

For Civil Society

1. Anticipate the potential socio-cultural features that may be affected by the granting of mineral rights through a broad study of the impact of displacement, not just mining-induced displacement, on communities in Malawi.
2. Participate in the identification of socio-cultural disturbances due to mining and bring to the attention of government.
3. Continue to support and lobby new mining legislation that takes into account local livelihoods of affected community.
4. Promote fairer contract negotiation and transparency.
5. Promote consultation of socio-cultural institutions in contractual negotiations.

Expropriation of property/compulsory acquisition

All constitutions allow for government acquisition only for public interest and public need, and in Botswana specifically for the utilisation of mineral resources. Mozambique has a different system that allows for right to use of land provisionally for foreign investors for two years, only after this period a title to use of land is issued.

Best practice can be drawn from:

Access to court for compulsory acquisition and recognition of people without formal land rights and their right to compensation are constitutional rights.

Mozambique and Zambia's provisions for prompt compensation also provided for Mozambique and Zambia.

Zambia where land held under customary tenure cannot be alienated without consulting the chief or the local authority in the area; people who will be affected by the transaction must also be consulted.

Recommendations

For Legislators

1. Amend Mines and Minerals Act to include mandatory compensation for compulsory acquisition for deprivation of use of land due to reconnaissance, exploration or mining.
2. Amend Land Acquisition Act to involve consultation with the local community prior to acquisition. Draw on the principle of Free, Prior

and Informed Consent as outlined in the UN Declaration on the Rights of Indigenous Peoples.

3. Clarify “public interest” or “public purpose” and the procedure for determining land or assets to be necessary for these purposes.

For Civil Society

1. Lobby government for legal amendments with emphasis on compensation for deprivation of land for mining activities for all land occupants.
2. Monitor acquisition that is justified by government on the grounds of public purpose.

Conditions for exercise of mineral right

In Malawi, land provisions will not prejudice the exercise of mineral rights. Lack of adequate legal guidelines and provision in mining legislation also means that mining agreements are mainly negotiated by independent contract unlike Botswana and South Africa which contain more substantive provisions on the conditions of exercise of mineral rights under mining law. These include detailed requirements for holders of mining right under licence, requirements that the lawful occupier of the land must be protected, and restrictions on damage to crops and the environment.

Best practice can be drawn from:

South Africa which gives the minister the right to cancel or suspend a mineral right in circumstances which include breaching the MPRDA and contravening an environmental management programme.

Recommendations

For Legislators

1. Legislate for increased participation of the community in mining contracts.
2. Legislate for detailed guidelines for contractual content and liability.
3. Seek civil society advice for social background and experience in local areas subject to mining licence to improve positive outcomes for both the community and investor.

For Civil Society

1. Maintain pressure for transparency, accountability and freedom of information in granting mineral rights.
2. Publicise restrictions to freedom of information and encourage public accountability.

Environmental Impact Assessment requirements

All the mining laws make a requirement for EIAs to be carried out though the requirements differ in detail and quality.

Best practice can be drawn from:

Botswana which recognises adherence to international mining industry standards in its legislation.

South Africa which states that the principles of environmental management must place the people and their needs at the forefront and specifically deals with impacts on socio-economic conditions and cultural heritage in its mining law and contains detailed provisions on what the EIA should contain within the mining law including compulsory financial provision for rehabilitation of negative impacts.

Zambia which requires approval of the EIA by the Environmental Council and incorporates public views and consultation processes, and EIA level projects must be made public and published in mass media in the vernacular language; this is all contained within the mining law.

Mozambique which states that EIAs should be carried out by a licensed specialist registered with the Ministry of Coordination of Environmental Affairs.

Recommendations

For Legislators

1. Develop EIA regulations under the Mines and Minerals Act specific to prospecting and mining licences in line with international best practice.
2. Develop a council or environmental agency to oversee, monitor and implement the regulations.
3. Develop principles of environmental management that take into account the socio-economic and cultural needs of the affected population.

For Civil Society

1. Support and promote the establishment of an environmental regulatory body.
2. Engage the Environmental Affairs Department to give greater access to and to proactively provide information on environmental monitoring of mining projects.

Public participation, consultation and information disclosure

Land laws in Mozambique, South Africa and Zambia include requirements for community consultations in acquiring/dealing with land rights thereby promoting protection of customary land rights within land law. Public consultation and participation are required by all countries to varying degrees in the EIA process under environmental legislation. South Africa has the constitutional requirement for the right of access to information.

Best practice can be drawn from:

South Africa which requires the land owner’s consent for deprivation of informal land rights

when land loss is not administered under the expropriation laws, South Africa also demands adherence with local customs and practice when land deprivation occurs outside expropriation laws and where land is communally held any person deprived of property shall be paid compensation by the community and the property shall be deprived under customary rules. Community members shall be given a reasonable opportunity to participate and a majority will make the decision. Local government legislation sets out detailed procedures for governance and public participation of community's and public communication in the vernacular language.

Zambia which similarly requires customary law procedures; when the government alienates land held under customary tenure, the chief of the area must always be consulted.

South Africa's legal requirement to disclose information.

Mozambique where the affected community's own mechanisms for representation and action is applied and women must be included in the process by law.

Zambia which provides detailed guidance on public hearings, the documents required and venue of hearings, and all information submitted is open to the public for viewing.

Recommendations

For Legislators

1. Constitutionally guarantee the legal right to information.
2. Enact access to information legislation to improve transparency and accountability.
3. Amend mining and land laws to include increased public participation of the affected communities including vulnerable groups.
4. Develop a culture of free, prior and informed consent within laws and regulations.
5. Legislate community participation including members of the community as part of the consultation process not only at chief consultation level.
6. Legislate for timing of consultation to be at investor planning and securing stage.
7. Officially begin EITI candidacy process.

For Civil Society

1. Engage parliament and Law Commission on the importance of introducing right and access to information law.
2. Clarify the concept of free, prior and informed consent to the general public and lobby for the inclusion of this principle within laws and policy.

3. Lobby government to have wide publicity ahead of land acquisition in order to make it transparent and democratic.
4. Promote inclusion of women and vulnerable groups in public participation processes.
5. Encourage communication in the vernacular language.
6. Discourage direct corporate engagement with local communities without local CSO intermediaries.
7. Develop legal literacy guidelines for local communities in contact with mining companies.
8. Engage in capacity building of communities to be able to negotiate resettlement
9. Monitor and encourage participation of community representatives who have broad support.
10. Join the EITI, participate in the multi-stakeholder group, lobby for government candidacy and compliance, and raise awareness about the purpose and use of the EITI among the general public and mining-affected communities.

Recognition of customary rights

All land law (except in Malawi) include provisions which promote formal recognition of customary rights.

Best practice can be drawn from:

Botswana which recognises and grants customary rights under land law.

Mozambique's land law which provides that land may be occupied by communities under customary practices, and this land at the request of the community may be recorded in the land register.

South Africa which provides a fund for occupiers who need long-term security of tenure to acquire land rights.

Zambia which recognises customary tenure holding in accordance with the customs applicable in the relevant area.

Recommendations

For Legislators

1. Reform land law to include formal recognition of unregistered customary tenure.
2. Legalise recognition of customary tenure based on occupancy.

For Civil Society

1. Conduct a study on land tenure and rights in practice and policy in Malawi to inform advocacy work and project implementation in the area of land rights.
2. Support and engage Law Commission on land policy reform and development.
3. Provide legal land literacy material to communities and engage in capacity building of

traditional leaders on land rights and responsibilities.

5.3 Resettlement

Compliance, reporting, monitoring and supervision

Environmental legislation in all countries makes a provision for monitoring.

Best practice can be drawn from:

Botswana's requirement for the submission of an evaluation report and an environmental audit by the competent government authority which may result in specific mitigation measures being given to developers, in the event of non-compliance authorisation may be revoked.

Mozambique which is the only country to have regulations for resettlement of people for activities arising from economic activities and this includes detailed information on resettlement standards, compliance and monitoring.

South Africa's mining law which creates a board that advises on sustainable development and is the only country with a constitutional requirement for adequate housing.

Recommendations

For Legislators

1. Enact resettlement regulations with detailed standards for compliance and monitoring; put in verification processes to ensure conditions are met.
2. Constitutionally guarantee sustainable development principles in the mining industry.
3. Enact supplementary legislation to environmental impact mitigation which addresses compliance with socio-economic mitigation.

For Civil Society

1. Translate Resettlement Policy Frameworks and Resettlement Action Plans into a community-friendly document for project-affected people.
2. Access any compliance reports (environmental or otherwise) and communicate these results in a clear way to the public and affected communities.
3. Work with the media to promote accurate, evidence-based reporting that uses government and company reports and sources as well as conducting ethical, rigorous research among affected communities.
4. Develop and conduct activities to inform the public about the role they can play in ensuring compliance.
5. Relevant networks should organise collaborative CSO monitoring of displacement, resettlement and compensation for projects and verify that all conditions have been met according to documentation such as the EIA, Resettlement

Policy Framework, Resettlement Action Plan and Livelihoods Restoration Plan (the latter is used when only economic displacement will occur according to IFC Performance Standards).

6. Hold companies accountable on the international principles they subscribe to (such as the Equator Principles) and bodies they are part of (such as ICMM).

Remedy available, dispute resolution and other grievance mechanisms

The right to legal remedy to any dispute is recognised in the Constitution of South Africa and land law in all countries, bar Malawi, which provides for recourse to Court for acquisition disputes.

Mining law in Malawi has restricted dispute resolution mechanisms; disputes about the lawful owner of land determined by the government with no right of appeal and jurisdiction of High Court is excluded for wrongful acts committed between mining companies and third parties, and further Malawi's environmental law gives the government immunity from legal proceedings for legal contraventions committed under the Environmental Management Act.

Best practice can be drawn from:

Botswana's Board of Assessment that specifically settles disputes on the amount of compensation payable.

Mozambique which makes provisions in the mining law for remedies on compensation to be determined by the High Court, and states that right to land use and benefit can be proved through testimonial evidence.

Recommendations

For Legislators

1. Repeal law excluding High Court from proceedings for wrongful acts brought under Mines and Minerals Act.
2. Enact laws that provide alternative and accessible dispute resolution mechanisms at community level.

For Civil Society

1. Monitor any disputes and outcomes of resolution mechanisms.
2. Support communities in educating on how to address grievances and complaints; engage traditional leaders to help promote fair and transparent representation of the community.
3. Provide capacity building for communities to ensure that they are able to access the judicial system and not only grievance mechanisms that may be introduced by the company or investor.

5.4 Compensation

Compensation for distribution of surface rights

All constitutions provide for equitable compensation for compulsory acquisition. Mining law in most countries is restrictive on compensation, and in all countries, the exercise of surface rights must not interfere with mining operations.

Best practice can be drawn from:

Zambia which holds mining companies strictly liable for any harm or damage caused by mining operations and compensation includes the cost of rehabilitation and negative impacts on indigenous livelihoods.

Mozambique which takes into account emerging damages and ceasing profits suffered and payment for this; compensation must be made prior to the removal of goods or resettlement.

Recommendations

For Legislators

1. Repeal mining law that only provides for compensation of surface rights, enact less discretionary compensation rules.
2. Enact strict liability laws for damage to surface of land previously occupied by communities.
3. Enact laws that take into account emerging damages, ceasing profits and need to relocate.

For Civil Society

1. Promote legal literacy, transparency and accountability in compensation process.
2. Support law reform by highlighting case study information showing unfair and unreasonable compensation that is unconstitutional.
3. Challenge constitutionality of compensation awards in identified cases of inadequacy.
4. Lobby for change in scope of compensation to ensure that it improves or restores people's livelihoods, and includes loss of common assets (include grazing land and water bodies) and for community benefit-sharing mechanisms from mining projects.

Matters to be considered in determining compensation for compulsory acquisition

All countries indicate that compensation should be fair and it is provided for in the event of compulsory acquisition, however, there is often little regulation or guidance on how compensation should be calculated or administered. Mining laws address compensation in a restrictive manner in most cases.

Best practice can be drawn from:

South Africa which provides for 80% of payment to be paid upon date which state takes possession of

property in the case of compulsory acquisition. Constitution makes provision for assessing compensation amount for compulsory acquisition; compensation is calculated on actual financial loss and open market value of the property.

Botswana where people aggrieved by delays in payment of compensation may apply to the high court for reprieve.

Recommendations

For Legislators

1. Enact laws introducing an amount on top of compensation to be calculated to cover ancillary costs.
2. Reform land law to include at least market value compensation for unregistered customary land holdings.
3. Reform law to ensure both economic and physical displacement are compensated for.
4. Base compensation valuation on international best practice: compensation for loss of assets at full replacement cost; where livelihoods of displaced people are land based or land is collectively owned, land-based compensation should be offered; compensation should improve or restore livelihoods; investors and government should provide opportunities for displaced communities to benefit from project; and investors and government should only acquire land and related assets once compensation is available (cf. World Bank OP 4.12 and IFC Performance Standard 5).
5. Enact legislation to require compensation money to be given in a lump sum to ensure full disbursement of compensation.

For Civil Society

1. In cases where displacement and thus compensation are likely, provide civic education on compensation rights by law as well as on international best practice as many companies and government projects that are financed by international institutions are bound by financing institutions' policies on compensation; also work with communities to ensure all affected people have been identified, both the economically and physically displaced.
2. Advocate for transparency in resettlement budget and schedule of payments by investor and/or government.
3. Lobby for relaxing requirements for receiving and award of compensation to the greatest extent possible as titling is not always a common practice, especially in rural areas.
4. Support communities post-compensation and resettlement especially if communities are only paid cash compensation.

6 Annexes

The following annexes are provided in a separate document and should be referred to in reading this report.

6.1 Annex 6.1: Selection Criteria for Countries

6.2 Annex 6.2: Interviews

6.3 Annex 6.3: Implications of Displacement

6.4 Annex 6.4: International Initiatives and Policies

6.5 Annex 6.5: Key Legal Provisions

6.6 Annex 6.6: Mozambique Resettlement Regulations

7 End Notes and References

¹ International Institute for Environment and Development/World Business Council for Sustainable Development. 2002. *Breaking New Ground: Mining, Minerals and Sustainable Development*. Earthscan Publications.

² The phrase ‘resource curse’ according was first used by Richard M. Auty (1993) *Sustaining Development in Mineral Economies: The Resource Curse Thesis*. It is commonly used in literature that explores the relationship between sustainable development and mining.

³ Terminski, B. 2012. *Mining-induced displacement and resettlement: social problem and human rights issue*.

⁴ Government of Malawi. 2013. *Mines and Minerals Policy*.

⁵ World Bank. July 2009. *Malawi Mineral Sector Review: Source of Economic Growth and Development*.

⁶ Tilitonse Fund. May 2013. *Political Economy Analysis of Mining in Malawi*.

⁷ Figures provided by the Mineral Rights Section, Department of Mining for October 2013. In May 2014, a new round of licence applications were screened but these figures are not yet available.

⁸ Ministry of Industry and Trade. 2013. Annex 8 – Support Plans for Tobacco, Mining, Tourism, Tea and Service. *Malawi National Export Strategy 2013-2018*.

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¹⁰ International Institute for Environment and Development/World Business Council for Sustainable Development. 2002. *Breaking New Ground: Mining, Minerals and Sustainable Development*. Earthscan Publications.

¹¹ Brundtland GH, & World Commission on Environment and Development. 1987. *Our Common Future: Report of the World Commission on Environment and Development*. Oxford University

¹² Africa Progress Panel. 2013. *Africa Progress Report 2013: Equity in Extractives: Stewarding Africa’s Natural Resources for All*.

¹³ Bryan, S., and B. Hofmann (eds.). 2007. *Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature*.

¹⁴ International Institute for Environment and Development/World Business Council for Sustainable Development. 2002. *Breaking New Ground: Mining, Minerals and Sustainable Development*. Earthscan Publications.

¹⁵ German, L., G. Schoneveld, and E. Mwangi. 2013. *Contemporary Processes of Large-Scale Land Acquisition in Sub-Saharan Africa: Legal Deficiency or Elite Capture of the Rule of Law?* *World Development* 18: 1-18.

¹⁶ Sonnenberg, D. and F. Münster. August 2001. *Research Topic 3: Mining and Society: Involuntary Resettlement*. *Mining Minerals and Sustainable Development in Southern Africa*. Africa Institute of Corporate Citizenship.

¹⁷ Terminski, B. 2012. *Mining-induced displacement and resettlement: social problem and human rights issue*.

¹⁸ Most of these infrastructure projects in Malawi are financed by international lending institutions, such as the World Bank, which have policies to guide resettlement and compensation that are binding for project implementation. For

- ⁹¹ Yager, T.R. 2013. The Mineral Industry of Mozambique. 2011 Minerals Yearbook. United States Geological Survey.
- ⁹² KPMG. 2013. Mozambique: Country Mining Guide. Strategy Series.
- ⁹³ Locke, A. 2014. Mozambique Land Policy Development Case Study. Overseas Development Institute.
- ⁹⁴ Article 9 Land Law
- ⁹⁵ Article 10 Land Law
- ⁹⁶ Article 11 Land Law
- ⁹⁷ Locke, A. 2014. Mozambique Land Policy Development Case Study. Overseas Development Institute.
- ⁹⁸ KPMG. 2013. Mozambique: Country Mining Guide. Strategy Series.
- ⁹⁹ Kabemba, C. and C. Nhancale. 2012. Coal Versus Communities: Exposing Poor Practices by Vale and Rio Tinto in Mozambique.
- ¹⁰⁰ Human Rights Watch 2013. "What is a House without Food?": Mozambique's Coal Mining Boom and Resettlements.
- ¹⁰¹ Locke, A. 2014. Mozambique Land Policy Development Case Study. Overseas Development Institute.
- ¹⁰² Kumo, W.L., Rieländer, J. and B. Omilola. 2014. South Africa 2014. African Economic Outlook. AfDB/OECD/UNDP.
- ¹⁰³ Extractive Industries SourceBook. 2014. South Africa: Mining.
- ¹⁰⁴ Kumo, W.L., Rieländer, J. and B. Omilola. 2014. South Africa 2014. African Economic Outlook. AfDB/OECD/UNDP.
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- ¹⁰⁷ Land redistribution. 2003. Jacobs, P., Lahiff, E. and R. Hall. Programme for Land Agrarian Studies, School of Government, University of the Western Cape: The land reform program aimed to address the problems of unequal land ownership in South Africa due to oppressive white rule, the land reform program encompasses land restitution, tenure reform and redistribution, supporting legislation includes the Constitution of South Africa, the Provision of Land and Assistance Act 126 of 1993 and the Restitution of Land Rights Act 22 of 1994.
- ¹⁰⁸ Walker, C. and A. Dubb. 2012. The Distribution of Land in South Africa: An Overview. Institute for Poverty, Land and Agrarian Studies. University of the Western Cape.
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- ¹¹¹ Farrell, L., Mackres, E. and R. Hamann. 2009. A Clash of Cultures (and Lawyers): A Case Study of Anglo Platinum and its Mogalakwena Mine in Limpopo, South Africa. Corporate Governance in Africa Case Study Series 1. Unit for Corporate Governance in Africa, University of Stellenbosch Business School.
- ¹¹² Anglo Platinum. 2009. Anglo Platinum's Response to: "A clash of cultures (and lawyers): A case study of Anglo Platinum and its Mogalakwena mine in Limpopo, South Africa"
- ¹¹³ Farrell, L.A., Mackres, E. and R. Hamann. 2012. A Clash of Cultures (and Lawyers): Anglo Platinum and Mine-Affected Communities in Limpopo Province, South Africa. Resources Policy 37: 194-204.
- ¹¹⁴ Mobbs, P. 2012. The Mineral Industry of Zambia. 2011 Minerals Yearbook. United States Geological Survey.
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- ¹¹⁶ Rasmussen, P.E., Munkoni, K. And G. Lwanda. 2014. Zambia 2014. African Economic Outlook. AfDB/OECD/UNDP.
- ¹¹⁷ KPMG. 2013. Zambia: Country Mining Guide. Strategy Series.
- ¹¹⁸ Rasmussen, P.E., Munkoni, K. And G. Lwanda. 2014. Zambia 2014. African Economic Outlook. AfDB/OECD/UNDP.
- ¹¹⁹ Lands Act Section 3(1)
- ¹²⁰ Customary areas are set out Schedules to the Zambia (State Lands and Reserves) Orders; 1928 to 1964 and the Zambia (Trust Land) Orders 1947 to 1964 .
- ¹²¹ UN. 2007. National Report: Zambia. Available from:
http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf
- ¹²² Lands Act
- ¹²³ Lands and Deeds Registry Act Cap 185
- ¹²⁴ UN. 2007. National Report: Zambia. Available from:
http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf
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http://www.un.org/esa/dsd/dsd_aofw_ni/ni_pdfs/NationalReports/zambia/Land.pdf
- ¹²⁶ Compliance Advisor Ombudsman. November 2003. Assessment Report: Complaint filed to the CAO regarding the Zambia Konkola Copper Mine (KCM) Project. Office of the Compliance Advisor/Ombudsman of the International Finance Corporation and the Multilateral Investment Agency.
- ¹²⁷ Sinkamba, P. 1 July 2003. Complaint Letter to the Compliance Advisor/Ombudsman from Citizens for a Better Environment.

6 Annexes

The annexes have been compiled to provide CCJP with supplementary information on the approach and findings of the comparative analysis. Each annex is referred to specifically in the main report.

6.1 Annex 6.1: Selection Criteria for Countries

In order to conduct the regional comparative analysis of the legal and policy framework on mining-induced land displacements, resettlement and compensation practices, the following 14 countries from Southern Africa were selected for criteria testing: **Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.**

Malawi is automatically included as the consultancy is intended to inform CCJP's engagement with stakeholders in the country that affect or may be affected by land displacement, resettlement and/or compensation practices. Following the testing of criteria (described below), **Mozambique, South Africa, Zambia and Botswana** were selected; Zimbabwe and Tanzania followed closely behind.

The selection criteria, with a short description, are:

1. **Availability of laws and inclusion of resettlement, land displacement and compensation in legal framework:** extractive industry related laws (especially, mining, oil & gas) and ancillary laws are readily available in English.
1. **Availability of policy information and inclusion of resettlement, land displacement and compensation:** mining policies and other policies relating to land displacements, resettlement and compensation practices are readily available in English.
2. **Country's extractive industries experience, status and history:** experience with large scale mining projects, number of years with mining industry, cases of land displacement, resettlement and compensation.
3. **Availability of information on regulating and managing displacement, resettlement and compensation:** availability of case study material (published and grey literature) representing company, civil society and government perspectives.

Criteria were evaluated using a point system of 1 to 5, where 1 indicates that a country is unsuitable for comparative analysis and 5 indicates a country is a suitable comparison using the selection criteria. The maximum score is 20. The five countries with the highest scores were selected. The summarised results are presented in a table below. A second table presents some of the key resources used to gain an initial overview of hotspots of mining-induced displacement, resettlement and compensation in the region. Country-specific resources were collected for each country to assess the criteria; these are not listed below.

All the web addresses listed in the tables were accessed between 20 June and 30 July 2014.

According to these criteria, the countries are ranked as follows.

Rank	Country	Score	Rationale
1	Mozambique	20	Growing mining industry has been accompanied by recent and ongoing cases of resettlement and displacement especially around Tete and the coal mining development which is well documented; the government has since introduced regulations to govern resettlement caused by economic activity.
1	South Africa	20	South Africa has a well-established mining industry with a robust legislative and regulatory framework. There are a large number of resettlement cases that are well documented, particularly more recently around Anglo Platinum's activities in the Limpopo area and the lawsuit against the company over resettlement and compensation.
3	Zambia	19	Zambia has been involved in copper mining for the last century and its mining sector continues to grow. There are a number of cases of resettlement that

Rank	Country	Score	Rationale
			highlight the approach taken by international financing institutions (such as the International Finance Corporation at Konkola Copper Mines); literature is more difficult to source than the top two countries selected.
3	Botswana	19	The Government of Botswana's Department of Mines has an up-to-date website with laws and guidance documents; Botswana is considered to have one of the best legal and regulatory frameworks for mining in the continent; resettlement of indigenous people groups from the Kalahari due to mining and tourism is well documented.
5	Zimbabwe	18	Development of diamond fields in Zimbabwe have required the relocation of many communities; some companies, like Rio Tinto, have managed this well, while other actors in resettlement have not been so successful; literature provides a comprehensive picture of the impact of diamond mining on communities in Marange district.
5	Tanzania	18	Tanzania has up-to-date laws that address compensation and has experience with resettlement around large scale gold mines and is in the process of resettling communities due to the development of liquefied natural gas in the county.
7	Namibia	16	While Namibia has an established mining sector and legislative and policy framework, most resettlement has focussed on ensuring the equitable distribution of land following racist policies up until the 1990s; data on mining-induced resettlement and compensation is not readily available.
7	Madagascar	16	Madagascar's mining sector is growing (especially with the development with petroleum projects); mining codes are in place; well-known cases of community resettlement and compensation with ongoing tension around Fort Dauphin (Rio-Tinto and the Government's joint venture QIT Madagascar Minerals).
9	Lesotho	13	Very small mining industry; most cases of displacement are related to mining projects; government currently working on developing a mines and minerals policy.
9	Angola	13	Laws and policies are largely only available in Portuguese; case study information on mining-induced land displacement, resettlement and compensation is limited; majority of cases focus on resettlement caused by civil war, conflict and agricultural expansion.
11	Democratic Republic of the Congo	10	Laws are largely only available in French; several examples of mining-induced displacement, however, the ongoing conflict and lack of legitimate government and governance of the extractives makes the DRC a poor comparative example for Malawi, with minimal examples of best practice.
12	Swaziland	6	Small and shrinking mining sector; only one active mine in 2011.
13	Seychelles	4	Petroleum potential, exploration continues; outdated Minerals Act (1962).
14	Mauritius	0	Negligible industry.

In the following tables, the key general resources available for the region are listed. The specific resources for the selected countries are cited in the main report.

REGIONAL RESOURCES		
Selection Criteria	Information Sources	Relevant Countries
Laws, Policy and Regulation in Mining in Africa	DLA PIPER. 2012. Mining in Africa: A Legal Overview. http://www.dlapiper.com/~/media/Files/Insights/Publications/2012/11/Mining%20in%20Africa%20A%20Legal%20Overview/Files/mininginafrica/FileAttachment/mininginafrica.PDF	Angola, Botswana, DRC, Mozambique, South Africa, Tanzania, Zambia, Zimbabwe
	NSI. May 2013. Mining Codes in Africa: Emergence of a “Fourth” generation. http://www.nsi-ins.ca/wp-content/uploads/2013/03/Mining-Codes-in-Africa-Report-Hany.pdf	Angola, DRC, Madagascar, Mozambique, South Africa, Tanzania, Zambia, Zimbabwe
	Bryan, Shari, and Barrie Hofmann (eds.). 2007. Transparency and Accountability in Africa’s Extractive Industries: The Role of the Legislature. https://www.ndi.org/files/2191_extractive_080807.pdf	Angola, Botswana, DRC, South Africa
Case Studies on Resettlement	Terminksi, Bogumil. 2012. Mining-induced displacement and resettlement: social problem and human rights issue. http://www.ssoar.info/ssoar/bitstream/handle/document/32777/ssoar-2012-terminski-Mining-induced_displacement_and_resettlement_social.pdf?sequence=1	Botswana, DRC, Mozambique, South Africa, Tanzania, Zambia, Zimbabwe
Research on Resettlement, Displacement and Compensation	Scmidt-Soltau, Kai, and Dan Brockington. 2007. Protected Areas and Resettlement: What Scope for Voluntary Relocation? World Development 35(12). http://environmentportal.in/files/file/Protected%20Areas%20and%20Resettlement.pdf	
	Sonnenberg, Dan, and Frauke Muenster. 2001. Research Topic 3: Mining and Society - Involuntary Resettlement. Mining Minerals Sustainable Development Southern Africa. http://pubs.iied.org/pdfs/G00600.pdf	Mozambique, South Africa, Tanzania, Zambia
Research on Mining and CSR	Hamann, Ralph, and Paul Kapelus. 2004. Corporate Social Responsibility in Mining in Southern Africa: Fair accountability or just greenwash? Development 47(3): 85-92. http://www.dlist.org/sites/default/files/doclib/Corporate%20Social%20Responsibility%20in%20Mining%20in%20Southern%20Africa.pdf	

6.2 Annex 6.2: Interviews

Although the comparative analysis of the legal and policy frameworks is a desktop study, limited primary research was conducted to understand the main issues related to settlement and to ground truth literature collected and reviewed in the paper. As indicated in the recommendations, a full ethnographic study should be conducted in Malawi to better understand displacement, resettlement and compensation in practice and to understand how the legal and policy framework examined here are translated in practice.

Company/Organisation	Interviewee(s)	Position	Contact details
Centre for Environmental Policy and Action (CEPA)	CEPA Representative	N/A	Cepa@cepa.org.mw ; +265 (0) 1823793
N/A	Chief Kyungu Karonga	Traditional Authority	N/A
Paladin Energy	Greg Walker	General Manager International Affairs	Greg.Walker@paladinenergy.com.au

6.3 Annex 6.3: Implications of Displacement

The implications of displacement as outlined in *Breaking New Ground: Mining, Minerals and Sustainable Development* (International Institute for Environment and Development/World Business Council for Sustainable Development, 2002) are presented below to reveal the potential socio-economic impacts of displacement and resettlement.

Landlessness – land that is lost has to be reconstructed or replaced with income-generating employment to avoid impoverishment and loss of capital.

Joblessness – new and sustainable job opportunities must be created. Relocation may result in loss of economic power, which may in turn lead to redundancy of skills, loss of markets, and breakdown of economic networks.

Homelessness – loss or decline in the quality of shelter is exacerbated if compensation is paid at market value rather than replacement value.

Marginalisation – relocation may result in loss of social and political status if the host community regards new arrivals as strangers or inferior.

Food insecurity – the loss of productive land may lead to a decline in available nourishment, nutrition problems, and increased mortality.

Loss of access to common resources – people may lose access to grazing land, fisheries, and forest, which may contribute to loss of income, employment, and recreation opportunities.

Loss of access to public services – access to health care, education, public transport, and other public services may be lost.

Social breakdown – there can be an erosion of social organisation, interpersonal and informal ties, and other forms of social capital.

Risks to host populations – if the resettlement site is already populated, these people may also suffer through increased pressure on social and environmental resources.

6.4 Annex 6.4: International Initiatives and Policies

The following table provides a sample of some of the most frequently cited principles, policies and initiatives by mining companies. The ones most relevant to land displacement, resettlement and compensation are listed first; the second set, indicated by a lighter background colour, include resettlement issues in a broader human rights framework, and the third set are common initiatives in the extractive industries that have little to no bearing on resettlement.

International Initiatives	Key Features	Land Displacement, Resettlement and Compensation
World Bank Operational Policy (OP) and Bank Procedures (BP) 4.12 on Involuntary Resettlement ¹	<p>The OP and BP 4.12 Involuntary Resettlement and its Annex A Involuntary Resettlement Instruments provide conduct on the World Bank's operations including projects financed by the World Bank.</p> <p>This is used as a basis for company policy and approaches to resettlement.</p>	<p>While there are differences between the World Bank OP and the IFC Performance Standard, they have similar guiding principles for involuntary resettlement. It should -</p> <ul style="list-style-type: none"> a) be avoided where feasible or minimised, exploring viable alternative project sites, b) assist displaced people in improving their livelihoods or at least to restore them to pre-project/displacement, whichever is higher, c) ensure displaced people are consulted, informed and participate in planning and implementation of resettlement programmes, d) and ensure displaced people share in project benefits.
International Finance Corporation (IFC) Sustainability Framework ³	<p>International Finance Corporation's (World Bank Group) Sustainability Framework includes 8 Performance Standards to promote sustainable development in all investments. These Performance Standards include: 1) Assessment and Management of Environmental and Social Risks and Impacts, 2) Labour and Working Conditions, 3) Resource Efficiency and Pollution Prevention, 4) Community Health, Safety, and Security, 5) Land Acquisition and Involuntary Resettlement, 6) Biodiversity Conservation and Sustainable Management of Living Natural Resources, 7) Indigenous Peoples, and 8) Cultural Heritage</p> <p>Performance Standard 1 includes an assessment of all social and environmental risks and impacts, and the other Performance Standards provide more focus for particular issues</p> <p>Performance Standard 1 provides for an Environmental and Social Management System to manage identified risks and impacts</p>	<p>They refer to both physical displacement (loss or relocation of land, shelter, other fixed assets) and economic displacement (loss of assets or access to assets that leads to loss of income sources or means of livelihood), permanently or temporarily.</p> <p>The following required measures are required:</p> <p>Consider feasible alternative project designs to avoid/minimise displacements, (e.g. through shifting project site or extraction technology)</p> <p>Particular attention to impacts on poor and vulnerable and indigenous groups</p> <p>Plans are developed by the project implementing organisation. The World Bank OP requires a Resettlement Plan or a Resettlement Policy Framework² and the IFC requires a Resettlement Action Plan (for physical displacement) and/or Livelihood Restoration Plan (economic displacement). Collaboration with responsible government agency and if permitted play an active role in resettlement planning, implementation and monitoring where affected persons reject standard compliant compensation</p> <p>Compensation for lost land (cash or in-kind payment), access to resources and other assets at full replacement cost, possession of land and other assets only taken after compensation is paid</p> <p>Displaced persons are assisted during relocation (e.g.</p>

¹ The World Bank's Operation Policy and Bank Procedures can be viewed online at:

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,menuPK:64701637~pagePK:51628525~piPK:64857279~theSitePK:502184,00.html>.

² Content of resettlement plans and policy frameworks is specified in the OP 4.12 Annex A on Involuntary Resettlement, available online at

<http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20066696~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184~isCURL:Y,00.html>.

³ For more information about the IFC's Sustainability Framework, see:

http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Sustainability+Framework/

International Initiatives	Key Features	Land Displacement, Resettlement and Compensation
		<p>moving allowance)</p> <p>Community engagement in planning, implementing, monitoring and evaluating compensation payment, livelihood restoration activities and resettlement, including disclosure of relevant information</p> <p>Grievance mechanism including recourse mechanism available from project development phases</p> <p>Monitoring of resettlement activities includes client, independent professionals and displaced persons; final impact evaluation or completion audit carried out by independent resettlement professionals once agreed monitoring period is concluded</p>
<p>Environmental Excellence in Exploration Plus (E3)⁴</p>	<p>Developed by the Prospectors and Developers Association of Canada to help exploration companies improve social, environmental and health safety performance</p> <p>Incorporated into Corporate Social Responsibility policies and programmes by companies</p> <p>8 principles for responsible exploration with guidance notes and tool-kits</p>	<p>Resettlement and compensation are addressed under the fifth principle to “engage host communities and other affected and interested parties” and they are to be consistent with the IFC Performance Standard on Land Acquisition and Involuntary Resettlement</p>
<p>Equator Principles⁵</p>	<p>Risk management framework adopted by financial institutions to assess and manage environmental and social risks in projects</p> <p>Minimum standard for due diligence to support responsible risk decision-making</p> <p>Global application to all industry sectors to financial products including project finance and loans</p> <p>10 principles with minimum reporting standards that align with IFC Performance Standards</p>	<p>Principle 2 “Environmental and Social Assessment” and Principle 4 “Environmental Social Management System and Equator Principles Action Plan” spell out specific environmental and social requirements for assessing and planning for different categories of projects (determined by level of social and environmental risks and impacts)</p> <p>Stakeholder engagement (Principle 5) and grievance mechanisms (Principle 6) are required for projects</p> <p>Projects with large-scale resettlement and potential adverse impacts on indigenous peoples must undergo an independent review (Principle 7)</p> <p>Category A Projects (highest potential for significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented) require an ESIA, specialised study (possibly) and specific human rights due diligence</p>
<p>Global Reporting Initiative⁶</p>	<p>Aims to make sustainability reporting common practice among businesses; its guidance for metals and mining stipulates that companies report publicly, for the benefit of a variety of stakeholders, on resettlement and compensation.</p>	<p>Sustainability Reporting Guidelines & Mining and Metals Sector Supplement highlight that resettlement “Sites where resettlements took place, the number of households resettled in each, and how their livelihoods were affected in the process” is one of the mining and metals sector-specific society performance indicators.</p> <p>Reporting must also include the consultation processes and measures put in place to re-establish the affected community, and any significant disputes related to resettlement and the processes employed</p>

⁴ For more information about the Environmental Excellence in Exploration Plus Framework, see <http://www.pdac.ca/programs/e3-plus>.

⁵ For more information about the Equator Principles, see www.equator-principles.com.

⁶ For more information about the Global Reporting Initiative, see www.globalreporting.org.

International Initiatives	Key Features	Land Displacement, Resettlement and Compensation
		to resolve these. Based on IFC Performance Standard.
International Council on Mining and Metals (ICMM) Principles ⁷	Council made up of mining and metals companies (including Anglo American, Barrick, Rio Tinto, Vale, Lonmin) and associations (Chamber of Mines South Africa, Chamber of Mines Zambia, World Gold Council and World Coal Council) to improve sustainable development performance. Principle 3 “Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities” addresses resettlement and compensation. The principle aims to minimise involuntary resettlement and compensate fairly for adverse effects where resettlement cannot be avoided	
Natural Resource Charter ⁸		Highlights the importance of companies upholding human rights and ensuring natural resources benefit communities; precept 5 links to resettlement and compensation.
United Nations (UN) Global Compact ⁹	Set of 10 principles that cover the human rights, labour, the environment and anti-corruption. Derived from The Universal Declaration of Human Rights, The International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work, The Rio Declaration on Environment and Development, The United Nations Convention Against Corruption, among other declarations. Companies are required to report on their commitments.	
Voluntary Principles on Security and Human Rights ¹⁰		Companies, NGOs and countries focus on ensuring that security and safety measures taken by companies and countries fall within a framework that promotes human rights.
Extractive Industries Transparency Initiative (EITI) and Publish What You Pay (PWYP) ¹¹		EITI is a coalition of governments, companies and civil society and PWYP is a coalition of over 800 civil society organisations, both of which focus on improving openness and accountable management of revenues from natural resources EITI compliant countries disclose payments received by government from oil, gas and mining companies on an annual basis.
Fairtrade Gold and Precious Metals ¹²		Focus on developing a responsible artisanal mining sector that links consumable product to source To receive Fairtrade certification, small-scale mining organisations are required to meet standards on working conditions, child labour, women’s rights, clean technology, health and safety, organisational management, democratic decision-making, transparency and traceability and responsible environmental management Miners guaranteed Fairtrade Minimum Price of 95% LBMA plus a Fairtrade Premium of USD 2000/kilogramme to invest in community or business development projects.

⁷ For more information about the ICMM, see www.icmm.com.

⁸ For more information about the Natural Resources Charter, see <http://www.resourcegovernance.org/publications/natural-resource-charter-second-edition>

⁹ For more information about the UN Global Compact, see www.unglobalcompact.org.

¹⁰ For more information about the Voluntary Principles on Security and Human Rights, see www.voluntaryprinciples.org

¹¹ For more information about EITI and Publish What You Pay, see www.eiti.org and www.publishwhatyoupay.org.

¹² For more information about the Fair-trade Gold and Precious Metals, see <http://www.fairgold.org/>.

6.5 Annex 6.5: Key Legal Provisions

Annex 6.5 contains full legal provisions referenced in Chapter 4 of the main report; these are organised by country.

Country	Component	Provision
Botswana	Conditions of Mineral Right	<p>Mines and Minerals Act</p> <p>Section 65 (4) Without prejudice to the generality of subsection 65(3), during and at the end of operations in any mine, excavation, waste dump or pond, the holder of a mineral concession shall take such measures as are required from time to time to maintain and restore the top soil of affected areas and otherwise to restore the land substantially to the condition in which it was prior to the commencement of operations.</p> <p>(5) If there is any dispute as to the extent of the measures necessary to comply with the requirements of this section, the holder of a mineral concession may refer the question to arbitration.</p> <p>(6) In the event that the holder of a mineral concession fails to fulfil his obligation under this section and without prejudice to any other remedy available or other liability the holder may otherwise incur, the Minister may, after having notified the holder of his default and having given the holder a reasonable period of time to carry out the necessary restorations, carry out the necessary restoration whereupon the cost of such restoration shall be a debt due to Government by the holder and shall be recoverable in a court of competent jurisdiction, provided that the cost of any part of the restoration determined by an arbitrator not to have been necessary in terms of subsection (3) shall be deducted from the sum payable or if paid, refunded from the sum paid.</p>
	Compliance and monitoring	<p>Expropriation Act</p> <p>Section 18 (2) The developer shall submit an evaluation report to the relevant technical department or local authority, at such times as the department or local authority, at such times as the department or local authority shall determine.</p> <p>19(1) The competent authority shall carry out or cause to be carried out at its own expense, environmental audits.</p> <p>(3) After carrying out an environmental audit under subsection (1), the competent authority may require a developer to take —</p> <ul style="list-style-type: none"> (a) specific mitigation measures to ensure compliance with predictions made in the statement; or (b) mitigation measures to address environmental impacts not anticipated at the time of the authorization <p>(4) Where the developer fails to comply with the provisions of subsection (3), the competent authority may revoke or modify the authorization.</p>
	Matters to be considered during compensation	<p>Acquisition of Property Act</p> <p>Section 16</p> <ul style="list-style-type: none"> (a) the market value of the property at the date of service of the notice of acquisition under section 5; (b) any increase in the value of any other property of any person interested likely to accrue from the use to which the property acquired will be put; (c) the damage, if any, sustained by any person interested, by reason of the severing of any land from any other land of such person; (d) the damage, if any, sustained by any person interested, by reason of the acquisition injuriously affecting any other property of such person; and (e) the reasonable expenses, if any, incidental to any change of residence or place of business of any person interested which is necessary in consequence of the acquisition:
Mozambique	How mineral rights are granted	<p>Technical Annex to the Land Law Regulations</p> <p>Chapter 1 General Provisions</p> <p>Article 1 Scope</p> <p>This Technical Annex shall apply to:</p> <ol style="list-style-type: none"> 1. The delimitation of areas which are occupied by local communities according to customary practices; 2. The delimitation of areas which are occupied in good faith for at least ten years by national individual persons; 3. The demarcation, pursuant to an application for title, of: <ul style="list-style-type: none"> a) Areas occupied by local communities according to customary practices; b) Areas occupied in good faith for at least ten years by national individual persons; c) Areas in respect of which an application for the acquisition of the right of land use and benefit has been made either by national or foreign individual or corporate persons, and where provisional authority has been issued. <p>Chapter 2 Delimitation of Areas Occupied by Local Communities</p> <p>Article 5 Phases of delimitation</p>

Country	Component	Provision
		<p>1.The delimitation of areas occupied by local communities comprises the following:</p> <ol style="list-style-type: none"> a) Information and dissemination; b) Participatory appraisal; c) The sketch and descriptive report; d) Feedback; e) Entry into the National Land Cadastre <p>2. To ensure representativity of results and consensus regarding the delimitation, in the aforementioned phases (a) to (d) in paragraph 1 of this article, the working group that assists in the demarcation shall work with men and women and with different socio-economic and age groups within local communities.</p> <p>3. The neighbours participate in the delimitation, as their participation is mandatory in drawing up the sketch and its descriptive report as well as in the Feedback.</p>
	Acquisition of Land Rights	<p>Land Law</p> <p>Article 12. The right of land use and benefit is acquired by:</p> <ol style="list-style-type: none"> a) occupancy by individual persons and by local communities, in accordance with customary norms and practices which do not contradiction the Constitution; b) occupancy by individual national persons who have been using the land in good faith for at least ten years; c) authorization of an application submitted by an individual or corporate person in the manner established by this Law.
	Conditions for grant of mineral right	<p>Mining Law Regulations</p> <p>Article 107. Liability for Losses and Damages</p> <ol style="list-style-type: none"> 1. The holder of the mining title is liable for any damages caused to crops, constructions and any upgrading, as well as by the resettlement of any occupiers of the land resulting from the exercise of his rights under the respective title or permit, and shall compensate the owner of the referred goods or the resettled people. 2. The compensation shall be determined having into account the emerging damages and ceasing profits, through negotiation, under the law, and the payment of the referred compensation shall be made prior to the removal of goods or resettlement. 3. The holder of the mining title and the respective operator are jointly responsible for any compensation for losses and damages resulting from the mining activities. 4. If the parties involved do not agree in relation to the terms of compensation, both parties may request the mediation of the Ministry of Mineral Resources and Energy or other means of resolution of conflicts established by law.
	Granting of mining titles and permits	<p>Mining Law Regulations</p> <p>Article 8</p> <ol style="list-style-type: none"> 1. The reconnaissance license, mining certificate and mining pass are granted upon request from whoever concerned. 2. The exploration license and mining concession are granted upon request from whoever concerned or through a public bid in the case referred in number 1 of article 11 of these Regulations. 3. The National Directorate of Mines is responsible for conducting the bidding process defined in the previous number, setting the rules, deadlines and further terms and conditions for the effect.
	Compensation for disturbance of surface rights	<p>Mining Law Regulations</p> <p>Article 107</p> <ol style="list-style-type: none"> 1. The holder of the mining title is liable for any damages caused to crops, constructions and any upgrading, as well as by the resettlement of any occupiers of the land resulting from the exercise of his rights under the respective title or permit, and shall compensate the owner of the referred goods or the resettled people. 2. The compensation shall be determined having into account the emerging damages and ceasing profits, through negotiation, under the law, and the payment of the referred compensation shall be made prior to the removal of goods or resettlement. 3. The holder of the mining title and the respective operator are jointly responsible for any compensation for losses and damages resulting from the mining activities. 4. If the parties involved do not agree in relation to the terms of compensation, both parties may request the mediation of the Ministry of Mineral Resources and Energy or other means of resolution of conflicts established by law.
South Africa	Expropriation of property and	Note traditional distinction in South Africa between expropriation and deprivation of property, expropriation involved 'acquisition of rights in property by public authority...deprivation falls short of compulsory

Country	Component	Provision
	compulsory Acquisition	acquisition.’ ‘The purpose of the distinction between expropriation and deprivation by law is to allow the state to use property for public good without fear of incurring liability to owners of property. ¹³
South Africa	EIA requirements	<p>National Environmental Management Act</p> <p>Section 39 Environmental management programme and environmental management plan</p> <p>(1) Every person who has applied for a mining right in terms of section 22 must conduct an environmental impact assessment and submit an environmental management programme within 180 days of the date on which he or she is notified by the Regional Manager to do so. (2) Any person who applies for a reconnaissance permission, prospecting right or mining permit must submit an environmental management plan as prescribed.</p> <p>(3) An applicant who prepares an environmental management programme or an environmental management plan must-</p> <ul style="list-style-type: none"> (a) establish baseline information concerning the affected environment to determine protection, remedial measures and environmental management objectives; (b) investigate, assess and evaluate the impact of his or her proposed prospecting or mining operations on- <ul style="list-style-type: none"> (i) the environment; (ii) the socio-economic conditions of any person who might be directly affected by the prospecting or mining operation; and (iii) any national estate referred to in section 3 (2) of the National Heritage Resources Act, 1999 (Act 25 of 1999), with the exception of the national estate contemplated in section 3 (2) (i) (vi) and (vii) of that Act; (c) develop an environmental awareness plan describing the manner in which the applicant intends to inform his or her employees of any environmental risks which may result from their work and the manner in which the risks must be dealt with in order to avoid pollution or the degradation of the environment; and (d) describe the manner in which he or she intends to- <ul style="list-style-type: none"> (i) modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation; (ii) contain or remedy the cause of pollution or degradation and migration of pollutants; and (iii) comply with any prescribed waste standard or management standards or practices. <p>(4) (a) Subject to paragraph (b), the Minister must, within 120 days from the lodgement of the environmental</p> <p>Section 25 Management programme or the environmental management plan, approve the same, if-</p> <ul style="list-style-type: none"> (i) it complies with the requirements of subsection (3); (ii) the applicant has complied with section 41 (1); and (iii) the applicant has the capacity, or has provided for the capacity, to rehabilitate and manage negative impacts on the environment. <p>(b) The Minister may not approve the environmental management programme or the environmental management plan unless he or she has considered-</p> <ul style="list-style-type: none"> (i) any recommendation by the Regional Mining Development and Environmental Committee; and (ii) the comments of any State department charged with the administration of any law which relates to matters affecting the environment. <p>(5) The Minister may call for additional information from the person contemplated in subsection (1) or (2) and may direct that the environmental management programme or environmental management plan in question be adjusted in such way as the Minister may require.</p> <p>(6) (a) The Minister may at any time after he or she has approved an environmental management programme or environmental management plan and after consultation with the holder of the reconnaissance permission, prospecting right, mining right or mining permit concerned, approve an amended environmental management plan or environmental management programme. (b) For the purposes of paragraph (a), subsection (4) applies with the necessary changes.</p> <p>(7) The provisions of subsection (3) (b) (ii) and the subsection (3) (c) do not apply to the applications for reconnaissance permissions, prospecting rights or mining permits.</p> <p>Section 40 Consultation with State departments</p> <p>(1) When considering an environmental management plan or environmental management programme in terms of section 39, the Minister must consult with any State department which administers any law relating</p>

¹³ Van der Vyver, J. 2012. Nationalisation of Mineral Rights in South Africa. De Jure Law Journal South Africa 2012.

Country	Component	Provision
		<p>to matters affecting the environment.</p> <p>National Environmental Management Act Principles Appendix 2</p> <p>Section 2.2. (1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and –</p> <p>(a) shall apply alongside all other appropriate and relevant considerations, including the State’s responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;</p> <p>(b) serve as the general framework within which environmental management and implementation plans must be formulated;</p> <p>(c) serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;</p> <p>(d) serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and 45</p> <p>(e) guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.</p> <p>(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.</p> <p>(3) Development must be socially, environmentally and economically sustainable.</p> <p>(4) (a) Sustainable development requires the consideration of all relevant factors including the following:</p> <ul style="list-style-type: none"> (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied; (ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied; (iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied; (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner; (v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource; (vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised; (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied. <p>(b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.</p> <p>(c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.</p> <p>(d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair 30 discrimination.</p> <p>(e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.</p> <p>(f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation and participation by vulnerable and disadvantaged persons must be ensured.</p> <p>(g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognizing all forms of knowledge, including traditional and ordinary knowledge.</p> <p>(h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.</p> <p>(i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration</p>

Country	Component	Provision
		<p>and assessment.</p> <p>j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.</p> <p>(k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.</p> <p>(l) There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.</p> <p>(m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.</p> <p>(n) Global and international responsibilities relating to the environment must be discharged in the national interest.</p> <p>(o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.</p> <p>(p) The costs of remedying pollution, environmental degradation consequent adverse health effects and of preventing, controlling or pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.</p> <p>(q) Development must be recognised and their full participation therein must be promoted.</p> <p>(r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.</p>
South Africa	Public participation in municipal governance	<p>Local Government: Municipal Systems Act</p> <p>Section 16. Development of culture of community participation</p> <p>(1) A municipality must develop a culture of municipal governance that complements formal representative government with a system of participatory 5 governance, and must for this purpose-</p> <p>(a) encourage, and create conditions for, the local community to participate in the affairs of the municipality, including in—</p> <p>(b)</p> <p>(i) the preparation, implementation and review of its integrated development plan in terms of Chapter 5;</p> <p>(ii) the establishment, implementation and review of its performance management system in terms of Chapter 6;</p> <p>(iii) the monitoring and review of its performance, including the outcomes and impact of such performance;</p> <p>(iv) the preparation of its budget; and</p> <p>(v) strategic decisions relating to the provision of municipal services in terms of Chapter 8; contribute to building the capacity of—</p> <p>(i) the local community to enable it to participate in the affairs of the municipality; and 20</p> <p>(ii) councillors and staff to foster community participation; and</p> <p>(c) use its resources, and annually allocate funds in its budget, as may be appropriate for the purpose of implementing paragraphs (a) and (b).</p> <p>(2) Subsection (1) must not be interpreted as permitting interference with a municipal council's right to govern and to exercise the executive and legislative authority of the municipality.</p> <p>Section 17. Mechanisms, processes and procedures for community participation</p> <p>(1) Participation by the local community in the affairs of the municipality, governance established in terms of this Act;</p> <p>(a) political structures for participation in terms of the Municipal Structures Act;</p> <p>(b) the mechanisms, processes and procedures for participation in municipal governance established in terms of this Act;</p> <p>(c) other appropriate mechanisms, processes and procedures established by the municipality;</p> <p>(d) councillors; and</p> <p>(e) generally applying the provisions for participation as provided for in this Act.</p> <p>(2) A municipality must establish appropriate mechanisms, processes and procedures to enable the local community to participate in the affairs of the municipality, and must for this purpose provide for —</p> <p>(a) the receipt, processing and consideration of petitions and complaints lodged by members of the local community;</p>

Country	Component	Provision
		<p>(b) notification and public comment procedures, when appropriate;</p> <p>(c) public meetings and hearings by the municipal council and other political structures and political office bearers of the municipality, when appropriate;</p> <p>(d) consultative sessions with locally recognised community organisations and, where appropriate, traditional authorities; and</p> <p>(e) report-back to the local community.</p> <p>(3) When establishing mechanisms, processes and procedures in terms of subsection, the municipality must take into account the special needs of—</p> <p>(a) people who cannot read or write;</p> <p>(b) people with disabilities;</p> <p>(c) women; and</p> <p>(d) other disadvantaged groups.</p> <p>(4) A municipal council may establish one or more advisory committees consisting of persons who are not councillors to advise the council on any matter within the council's 55 competence. Wiwn appointing the members of such a committee, gender representivity must be taken into account.</p> <p>Section 18. Communication of information concerning community participation</p> <p>(1) A municipality must communicate to its community information concerning—</p> <p>(a) the available mechanisms, processes and procedures to encourage and facilitate community participation;</p> <p>(b) the matters with regard to which community participation is encouraged;</p> <p>(c) the rights and duties of members of the local community; and</p> <p>(d) municipal governance, management and development.</p> <p>(2) When communicating the information mentioned in subsection (1), a municipality must take into account—</p> <p>(a) language preferences and usage in the municipality; and</p> <p>(b) the special needs of people who cannot read or write.</p>
South Africa	Public participation and consultation	<p>Interim Protection of Informal Land Rights Act¹⁴</p> <p>Section 2 Deprivation of informal rights to land</p> <p>(1) Subject to the provisions of subsection (4), and the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975), or any other law that provides for the expropriation of land or rights in land, no person may be deprived of any informal right to land without his or her consent.</p> <p>(2) Where land is held on a communal basis, a person may, subject to subsection (4), be deprived of such land or right in land in accordance with the custom and usage of that community.</p> <p>(3) Where the deprivation of a right in land in terms of subsection (2) is caused by a disposal of the land or a right in land by the community, the community shall pay appropriate compensation to any person who is deprived of an informal right to land as a result of such disposal.</p> <p>(4) For the purposes of this section the custom and usage of a community shall be deemed to include the principle that a decision to dispose of any such right may only be taken by a majority of the holders of such rights present or represented at a meeting convened for the purpose of considering such disposal and of which they have been given sufficient notice, and in which they have had a reasonable opportunity to participate.</p>
Zambia	Expropriation of property and compulsory acquisition	<p>Constitution</p> <p>Section 42(2) (4) Where a person's property is compulsorily acquired</p> <p>(a) the State shall promptly, adequately and effectively compensate that person; and</p> <p>(b) that person, or any person who has an interest in or right over that property, has a right of access to a court.</p> <p>(5) Where the State compulsorily acquires land from occupants who have acquired the land in good faith and who do not hold title to the land, the State shall provide for compensation to be paid to the occupants, as prescribed.</p> <p>(6) The rights under this Article do not extend to property unlawfully acquired.</p>
	Acquisition under mining law	<p>Land Acquisition Act</p> <p>Section 5</p> <p>(1) If the President resolves that it is desirable or expedient in the interests of the Republic to acquire any</p>

¹⁴ 31 of 1996

Country	Component	Provision
		<p>property, the Minister shall give notice in the prescribed form to the persons interested in such property and to the persons entitled to transfer the same or to such of them as shall after reasonable inquiry be known to him.</p> <p>(2) Every such notice shall, in addition, invite any person claiming to be interested in such property to submit such claim to the Minister within four weeks of the publication of the Gazette notice in terms of section seven.</p> <p>Lands Act Section (7) In alienating land the President shall take such measures as shall be necessary to-</p> <p>(a) control settlements, methods of cultivation and utilisation of land as may be necessary for the preservation of the natural resources on that land; and</p>
Zambia	Conditions for exercise of mineral rights	<p>Minerals and Mining Development Act</p> <p>Section 123</p> <p>(1) A holder shall be strictly liable for any harm or damage caused by mining operations or mineral processing operations and shall compensate any person to whom the harm or damage is caused.</p> <p>(2) Liability shall attach to the person who directly contributes to the act or omission which results in the harm or damage.</p> <p>(3) Where there is more than one person responsible for the harm or damage, the liability shall be joint and several.</p> <p>(4) Where any harm or damage is caused to the environment or biological diversity, compensation shall include the cost of reinstatement, rehabilitation or clean-up measures which are incurred and where applicable, the costs of preventive measures.</p> <p>(5) Liability shall also extend to—</p> <ul style="list-style-type: none"> (a) any harm or damage caused directly or indirectly by the mining operations or mineral processing operations to the economy or social cultural conditions; (b) any negative impact on the livelihood or indigenous knowledge systems or technologies of any community; (c) any disruption or damage to any production or agricultural system; (d) any reduction in yields of the local community; (e) any air, water or soil contamination or damage to biological diversity; (f) any damage to the economy of an area or community; or (g) any other consequential disorder
Zambia	EIA requirements	<p>Environmental Protection and Pollution Act and Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations direct that public views are taken into account and that a developer must take organise a public consultation process involving all the stakeholders.</p> <p>Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations Under Section 10 the project must be publicised in the mass media in the local language for a period of not less than 15 days and subsequently at regular intervals throughout the process – after 15 days of publishing the developer must hold meeting with the affected community to present information on the project and obtain the views of the people consulted.</p> <p>Under Section 11 (h) the EIA must include a description the socio-economic impacts of the project such as resettlement of the affected people</p> <p>Section 16</p> <p>(1) place a notification in at least two national newspapers three times per week for two consecutive weeks and broadcast a notification on national radio, detailing the place and times where copies of an environmental impact statement are available for inspection and the procedure for submitting comments</p> <p>(2) The Council may organise, or cause to be organised, public meetings in the locality of the proposed project.</p> <p>(3) Any person wishing to make a comment on any copy of an environmental impact statement shall send comments to the Council, within twenty days from the date of the last notification issued in accordance with paragraph (c) of sub-regulation (1).</p> <p>(4) The Council may extend the period for receipt of written comments up to a maximum of fifteen days, if the Council considers that-</p> <ul style="list-style-type: none"> (a) many contentious issues have arisen indicating the sensitive nature of the project; or (b) the remoteness of the project location causes logistical problems for the consultation process. <p>Further processes to address concerns raised are described in detail at Section 18 and transparency is ensured under section 16</p>
Zambia	EIA requirements and public participation	<p>Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations</p> <p>Section 18 (1) Whenever a public hearing is to be conducted under these Regulations-</p>

Country	Component	Provision
		<p>(a) a notice of the hearing shall be published three times a week for two consecutive weeks in national papers at least fifteen days prior to the public hearing; and all expenses of the notices shall be incurred by the project proponent;</p> <p>(b) all documents shall, from the end of the period of the public review until the end of the public hearing remain available for public inspection accompanied by all written comments at the location specified under regulation 16;</p> <p>(c) such hearings shall begin not take place later than twenty-five days after the last public notification: Provided that if the Council determines that the number and complexity of the issues, to be considered at a hearing, require additional preparation time, on the part of those wishing to make a presentation to the hearing, it may extend this period up to maximum of ten days;</p> <p>(d) the Council shall, where it feels, necessary and appropriate request any relevant persons to be present at the public hearing to make comments or solicit, in writing, for comments from other Government agencies which have expertise or regulatory power over the proposed project, as well as from the authorising agency.</p> <p>(2) The Council shall appoint a person who, in its opinion, is suitable qualified to preside over the public hearing and who shall serve on such terms and conditions as may be agreed between the Council and the person so appointed.</p> <p>(3) A public hearing shall be conducted at a venue which shall be convenient and accessible to those persons who are likely to be specifically affected by the project.</p> <p>(4) On the conclusion of a public hearing the person presiding at the hearing shall, within fifteen days from the termination of the public hearing, make a report of his findings to the Council.</p> <p>Fourth Schedule Guidelines for Developers in Conducting EIA</p> <p><u>Stage 1: Preliminary Actions</u></p> <p>(1) The description of the project which is done in the project brief submitted to the Council under regulation 5.</p> <p>(2) The developer appoints a co-ordinator for the environmental impact study. The qualification of the co-ordinator depends on the nature of the project.</p> <p>(3) Together with the co-ordinator the developer selects the experts that will comprise the team that will undertake the study. Preference should be given to experts with specific knowledge of local or similar conditions. The team shall include at least one person resident in the potentially affected area.</p> <p>(4) The co-ordinator allocates work to the team member of the purpose of carrying out the scoping exercise.</p> <p>(5) The team reviews and determines the applicable laws, regulations and standards.</p> <p>(6) The developer, the co-ordinator and the team identify the various alternatives for the development of the project (sites, technology and design).</p> <p><u>Stage 2: Scoping (or identification of impacts)</u></p> <p>(1) The team under the guidance of the co-ordinator identifies all the possible environmental impacts of the project.</p> <p>(2) The co-ordinator, the team and the Council determines which of the impacts shall be the subject of the study based on the following criteria:</p> <ul style="list-style-type: none"> (a) magnitude, including the impact of the project on environmental resources; (b) extent, including the geographical extent of the impact; (c) significance, including the actual effects of the impacts on the environmental resource; and (d) special sensitivity, including impacts which are significant in the specific local economic, social and ecological setting (see Regulation 8). <p>(3) The developer submits the names and qualifications of all persons to carry out the study to the Council for approval.</p> <p><u>Stage 3: Baseline Study</u></p> <p>The team undertakes a detailed description of the existing environment including the social and economic activities of the population resident in the potentially affected area.</p> <p><u>Stage 4: Impact Evaluation</u></p> <p>The team predicts and evaluates the various predicted impacts and ranks them in order of importance on the basis of two criteria:</p> <ul style="list-style-type: none"> (1) Quantitative change where change can be quantified. (2) Qualitative change where change cannot be quantified, but instead the impact of the project depends on the environmental acceptability of the project. <p><u>Stage 5: Public Participation in Environmental Impact Study</u></p> <p>(1) The team seeks the view of the communities which are likely to be affected by the project.</p>

Country	Component	Provision
		<p>(2) The views sought in (1) are considered in the development of mitigation measures (regulation 11).</p> <p><u>Stage 6: Identification of Mitigation Measures</u></p> <p>(1) The team identifies measures for the elimination (where possible), or reduction, of environmental impact for the various alternatives identified in the study such as:</p> <ul style="list-style-type: none"> (a) engineering works in noise reduction, prior treatment of effluent air pollution reduction measures and solid waste minimisation through reclamation, recycling and any other appropriate measures. (b) management measures especially in the areas of natural resources, reforestation, control of soil erosion, desalinisation, desilting. <p>(2) The team includes the cost mitigation measures into the impact evaluation.</p> <p>(3) Where necessary the team will create a new alternative based on the mitigation.</p> <p><u>Stage 7: Assessment (or Comparison of Alternatives)</u></p> <p>(1) The team compares all alternatives on the basis of economic, socio-cultural and environmental gains and costs.</p> <p>(2) The team ranks and recommends the various alternatives to the developer on the basis of sound environmental and economic analysis.</p> <p><u>Stage 8: Decision Making by the Developer</u></p> <p>The developer makes a decision choosing one alternative and giving reasons for the rejecting of other alternatives.</p> <p><u>Stage 9: Submission of the report to the Council</u></p> <p>(1) The team completes the environmental impact statement (see regulations 11 and 12).</p> <p>(2) The developer submits the report to the Council.</p> <p><u>Stage 10: Implementation of the Project and Post Assessment Audits</u></p> <p>(1) If the Council approves the environmental impact statement (under regulation 21) the developer may implement the project.</p> <p>(2) The team shall carry out a post assessment environmental audit between 12-36 months of the commencement of the project (see regulation 28).</p>
	<p>Compensation for disturbance of surface rights</p>	<p>Minerals and Mining Development Act</p> <p>Section 123 (5)</p> <ul style="list-style-type: none"> (a) any harm or damage caused directly or indirectly by the mining operations or mineral processing operations to the economy or social cultural conditions; (b) any negative impact on the livelihood or indigenous knowledge systems or technologies of any community; (c) any disruption or damage to any production or agricultural system; (d) any reduction in yields of the local community; (e) any air, water or soil contamination or damage to biological diversity; (f) any damage to the economy of an area or community; or (g) any other consequential disorder. <p>Section 123 (9) Where any harm or damage is caused to human and animal health by mining operations or mineral processing operations, compensation shall include—</p> <ul style="list-style-type: none"> (a) any costs and medical expenses; (b) compensation for any disability suffered; and (c) compensation for loss of life. <p>Section 132.(1) A holder of a mining right shall, on demand being made by the owner or lawful occupier of any land subject to the mining right, promptly pay the owner, or occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier and for any damage done to the surface of the land by the operations and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of the operations, pay compensation for the damage.</p> <p>(2) In assessing the compensation payable under subsection (1), account shall be taken of any improvement effected by the holder of the mining right or by the holder's predecessor in title, the benefit of which has or will ensure to the owner or lawful occupier thereof.</p> <p>(3) The compensation payable for damage to the surface of any land shall be the extent to which the market value of the land (for which purpose it shall be deemed saleable) upon which the damage has occurred has been reduced by reason of such damage, but without taking into account any enhanced value due to the presence of minerals.</p>

6.6 Annex 6.6: Mozambique Resettlement Regulations

The following Mozambican Regulations for the Resettlement Process Resulting from Economic Activities (2012) has been included as an example of model resettlement guidelines currently in force in the region.

A translated version of these Regulations has been downloaded from:

<http://www.acismoz.com/lib/services/translations/Regulamento%20de%20Reassentamento%20August%20as%20publiched%20JO.pdf>

Regulations for the Resettlement Process Resulting from Economic Activities Decree 31/2012 of 8 August COUNCIL OF MINISTERS

Decree 31/2012 of 8 August

The growing demand for natural resources in the country has brought about a need for more physical space for the establishment of economic undertakings, which imply the resettlement of members of the population in other areas, without observance of socioeconomic and cultural aspects.

As there is a need to standardise the resettlement process, the Council of Ministers decrees, under the provisions of article 30 of Law 19/2007 of 18 July, which approves the Territorial Planning Law:

Article 1 Approval

The Regulations for Resettlement Resulting from Economic Activities, as attached to this Decree, are hereby approved and constitute an integral part thereof.

Article 2 Creation

The Technical Resettlement Monitoring and Supervision Committee is hereby created, as a multisectoral technical advisory body for the Minister supervising the Territorial Planning area.

While due care was used in preparing this translation, there is a possibility that it may contain discrepancies or defects. Therefore please consult the original text and seek professional advice for the interpretation of this legislation. ACIS shall not be liable for any damage or loss arising from or in connection with the use of this translation.

Article 3 Competences

1. The Minister supervising the Territorial Planning area is competent to:
 - a) Indicate the members of the Technical Resettlement Monitoring and Supervision Committee;
 - b) Appoint the chairman of the Technical Resettlement Monitoring and Supervision Committee, from among its members.
 - c) Approve and order the publication of the Internal Regulations of the Technical Resettlement Monitoring and Supervision Committee and other complementary standards;
 - d) Approve the final evaluation report of the entire process.

Approved by the Council of Ministers, on 15 May 2012. To be published.

The Prime Minister, Aires Goncalves.

Regulations for the Resettlement Process Resulting from Economic Activities

CHAPTER I General Provisions

Article 1 Definitions

For the purpose of these Regulations, the following definitions apply:

- a) **Activity** – any public or private action, project or undertaking related to the use or exploitation of environmental components, the application of technologies or productive processes, plans, programmes, legislative or regulatory acts, which affect or may affect the territory;
- b) **Tangible Goods** – all individual or collective measurable goods, such as crops, immovable property and improvements made in the expropriated area;
- c) **Intangible Goods** – all individual or collective non-measurable goods, such as communication routes, sacred forests, sites of historical interest, tombs and access to means of transport, basic services and others;

- d) Social Facilities** – all priority social infrastructures of a day-to-day nature, such as schools, day-care centres, health units, squares, marketplaces, worship and meeting places;
- e) Resettlement Plan** – the instrument defining in detail the type of occupation of any specific area, establishing the environmental design, determining soil uses and general building conditions, communication route design, and the network, infrastructure and service characteristics;
- f) Affected Population** – people living in the area covered by a certain public or private activity, which is susceptible to cause their displacement from one point of the national territory to another;
- g) Directly Affected Population** – people who have lost all their goods, such as houses, means of subsistence and other types of infrastructures;
- h) Indirectly Affected Population** – people who have suffered permanent or temporary interruption of their productive activity;
- i) Temporarily Affected Population** – people who have suffered non-pecuniary losses during the works execution period;
- j) Resettlement** – the displacement or transfer of the affected population from one point of the national territory to another, accompanied by the re-establishment or creation of conditions equal to or above their previous standard of living;
- k) Plot with Infrastructures** – a demarcated physical space in a housing area having a street layout, piped water and electricity supply systems and sanitation;
- l) Housing Unit** – a set of 400 medium-level plots between a district and a block of houses, suitable for the construction or establishment of dwellings and related infra-structures.

Article 2 Object

These Regulations stipulate the basic rules and principles of the resettlement process, on account of economic activities of public or private initiative, performed by national or foreign, natural or legal persons, with a view to the promotion of the citizens' quality of life and the protection of the environment.

Article 3 Scope

The provisions of these Regulations apply to the entire national territory and to national or foreign, public or private, natural or legal persons, involved in the resettlement process.

Article 4 Principles

The resettlement process resulting from public and private activities is based on the following principles:

- a) **Principle of Social Cohesion** – the resettlement shall guarantee social integration and re-establish the standard of living of the affected people, to a higher level;
- b) **Principle of Social Equality** – all those affected by the resettlement process are entitled to the re-establishment or creation of conditions equal or above their previous standard of living;
- c) **Principle of Direct Benefit** – the affected people shall be given the possibility to benefit directly from the undertaking and its socio-economic impacts;
- d) **Principle of Social Equity** – the resettlement of populations in new areas shall take into account access to the available means of subsistence, social services and resources;
- e) **Principle of Non-Alteration of the Income Level** – the resettled people shall have the possibility to re-establish their previous basic income level;
- f) **Principle of Public Participation** – in the resettlement process there shall be hearings of local communities and other parties interested in and affected by the activity;
- g) **Principle of Environmental Accountability** – whoever pollutes or in any other way degrades the environment has always the obligation to repair or compensate the resulting damages;
- h) **Principle of Social Responsibility** – the investor must create social infrastructures, which promote learning, leisure, sports, health, culture and other projects of community interest.

Article 5

Purpose of the Resettlement

The resettlement aims at stimulating the socio-economic development of the country and guaranteeing a better quality of life of the affected population and social equity, taking into account the sustainability of the physical, environmental, social and economic aspects.

Article 6

Composition of the Technical Committee

1. The Technical Resettlement Monitoring and Supervision Committee includes representatives of the following sectors:

- a) Two members of the Territorial Planning sector;
 - b) One member of the Local Administration sector;
 - c) One member of the Public Works and Housing sector;
 - d) One member of the Agricultural sector;
 - d) One member of the related area;
 - e) One member of the Provincial Government; f) One member of the District Government.
2. Whenever justified by the nature of the work, representatives of other sectors, specialists or individuals of acknowledged merits may be invited to participate in the sessions.

Article 7

Functions of the Technical Committee

1. As a multi-sectoral and technical advisory body, the Technical Committee has the following functions:
 - a) To monitor, supervise and make methodological recommendations for the entire resettlement process;
 - b) To issue technical opinions about the resettlement plans;
 - c) To prepare monitoring and evaluation reports of the resettlement process, taking into account the previously approved plans;
 - d) To propose the notification of the proponent of an activity to provide information about the progress of the resettlement process;
 - e) To prepare the draft Internal Regulations of the Committee;
 - f) To propose complementary rules for the implementation of these Regulations.
2. The organization and functioning of the Committee is governed by its Internal Regulations, to be approved by the Minister supervising the Territorial Planning area.

Article 8

Other Stakeholders of the Resettlement Process

1. Without prejudice to the Technical Resettlement Monitoring and Supervision Committee, the following stakeholders participate in the resettlement process:
 - a) Five representatives of the affected population; b) One representative of Civil Society;
 - c) Three community leaders;
 - d) Two representatives of the private sector.
 1. The participation of the stakeholders referred to in the previous paragraph aims at the following:
 2. Mobilization and awareness-raising of the population regarding the resettlement process;
 3. Intervention during all phases of the resettlement process, including the respective supervision;
 4. Awareness-raising about their rights and obligations resulting from the resettlement process;
 5. Informing the competent authorities about any irregularities or illegalities detected during the resettlement.

Article 9

Approval of the Resettlement Plan

1. The District Government is competent to approve the resettlement plans.
2. The approval of the resettlement plans is preceded by an opinion of conformity issued by the sector supervising the Territorial Planning area, after having heard the Agriculture, Local Administration, Public Works and Housing sectors.

Article 10

Rights of the affected population

1. The rights of the directly affected population are:
 1. a) To have their income level re-established, equal to or above the previous level;
 2. b) To have their standard of living re-established, equal to or above the previous level;
 3. c) To be transported with their goods to the new place of residence;
 4. d) To live in a physical space with infrastructures and social facilities;
 5. e) To have space to perform their subsistence activities;
 6. f) To give their opinion about the entire resettlement process.

Article 11

Responsibility of the proponent of the activity

The responsibilities of the proponent of the activity are the following:

- a) To prepare and implement the Resettlement Plan;

- b) To participate, whenever convened, in meetings of the Technical Resettlement Monitoring and Supervision Committee;
- c) To implement the resettlement project in conformity with the approved Resettlement Plan, specific regulations and according to the recommendations resulting from the process;
- d) To bear the charges related to the preparation and implementation of the Resettlement Plan;
- e) To facilitate the resettlement monitoring and evaluation activities performed by the Technical Resettlement Monitoring and Supervision Committee.

Article 12 Responsibilities at central and local level

1. The responsibilities of the Territorial Planning sector in the resettlement process are the following:
 - a) To define regulatory instructions, parameters and methodologies for the resettlement process;
 - b) To provide technical assistance to the implementation bodies in land use planning matters;
 - c) To chair the activities of the Technical Resettlement Monitoring and Supervision Committee;
 - d) To monitor the resettlement processes and disseminate good practise.
2. The responsibilities of the Local Administration sector in the resettlement process are the following:
 - a) To raise the awareness of local bodies regarding the implementation of the resettlement programmes;
 - b) To supervise the implementation of the resettlement plans;
 - c) To monitor the performance and implementation of the resettlement plans.
3. The responsibilities of the Public Works and Housing sector in the resettlement process are the following:
 - a) To guide and monitor the establishment and development of infrastructures, namely, for access, water and electricity supply, sanitation, drainage, and for opening or improving access roads;
 - b) To guide and monitor the construction of public buildings;
 - c) To approve the house-building standards according to the socio-economic profile of the affected population;
 - d) To guarantee compliance with the building standards in force in the country.

The responsibilities of the Agriculture sector in the resettlement process are to provide technical assistance to the implementation bodies in land register organization matters.

The responsibilities of the District Government in the resettlement process are the following:

- a) To make spaces available for the resettlement of the affected families;
- b) To guarantee the regularization of the occupation of the lots;
- c) To inspect the implementation of the resettlement plans;
- d) To make spaces available for the practice of subsistence activities.

Article 13 Public Participation

1. Public participation is guaranteed during the entire preparation and implementation process of the resettlement plans.
2. Public participation includes public consultation and hearings and comprises:
 - a) Requests for clarification;
 - b) Formulation of suggestions and recommendations;
 - c) Interventions in public meetings.
3. Public consultations are held through public meetings, according to the nature of the issues, for analysis of the local dimensions of the environmental planning and national-level coordination strategies, for harmonization of the strategies and evaluation of their suitability for the evolution of reality.
4. Public hearings are held with a periodicity defined according to the nature of each process, properly advertised in the main media, addressed to the interested and affected parties, and in other adequate media, so that these parties can express their opinion regarding any proposals that have been or will be made.
5. The conclusions and recommendations of the public consultations and hearings referred to in this article, which are included in the Resettlement Plan, take the form of minutes.
6. The minutes of the public consultations and hearings are approved by the competent bodies, referred to in article 10 of these Regulations.
7. The approval or disapproval of the conclusions and recommendations of the minutes referred to in the previous paragraph shall be justified, through an opinion of the body supervising the Territorial Planning area, after having heard the Technical Resettlement Monitoring and Supervision Committee.

Article 14 Right to Information

1. The interested and affected parties have the right to information about the contents of the studies with respect to the resettlement process.

2. In order to stimulate and allow public participation in the process, the entities responsible for its preparation shall disseminate the main aspects of the plan in question, through adequate means of information for each context and provide all relevant documentation for consultation by the interested parties.
3. The Public Administration bodies have the obligation to respond to the requests for clarification referred to in the previous paragraph, in the same way in which these were presented to them, as well as to examine and take a position on the observations, suggestions and recommendations presented during the public participation process, within fifteen working days from the date of the request.
4. The dissemination of the following aspects is compulsory, through all means deemed necessary:
 - a) The decision to start the process, identifying the objectives to be aimed at;
 - b) Information to the Territorial Planning sector about the start of the resettlement process;
 - c) The start and duration of the public consultation phase and the respective conclusions;
 - d) The implementation mechanisms used.

CHAPTER II

Procedures for the Preparation of a Resettlement Plan SECTION I

Procedures

Article 15 Resettlement Plan

1. The preparation and approval of a Resettlement Plan precedes the issue of an environmental licence under the environmental legislation.
2. For the purpose of these Regulations and with adequate adaptations, the Resettlement Plan is equivalent to the Detailed Plan defined under the Territorial Planning legislation.
3. The Resettlement Plan is an integral part of the Environmental Impact Assessment Process, according to Appendix I of Decree 45/2004 of 29 September, which approves the Environmental Impact Assessment Regulations.

Article 16 Resettlement Model

1. The resettlement process is subject to the following model:
 - a) Organised housing plot with infrastructures;
 - b) Housing with at least type III characteristics (three bedrooms), with an area of 70 m².
2. The houses defined in the previous paragraph are built with conventional material (stonework) and according to an approved design.
3. The housing projects shall follow the social and cultural characteristics of the resettlement place.
4. During house building the preservation of the vegetation shall be guaranteed.
5. The continuation of the performance of subsistence activities shall be guaranteed in the resettlement places, according to the cases, or income generation programmes shall be defined.
6. The resettlement process is accompanied by the establishment of access roads, a water supply system, sanitation, electrification, health post, school, day-care centre, market, shops, police station, leisure and recreation sites, sports facilities, worship and meeting places.
7. In resettlement places there shall be areas reserved for the practice of agriculture, cattle breeding and other activities.

SECTION II

Environmental Characteristics and Criteria for the Definition of Plots

Article 17 Environmental Characteristics

1. The environmental characteristics to be considered in the resettlement place are the following:
 - a) Soil permeability;
 - b) Water table level;
 - c) Inclination of the terrain;
 - d) Storm water drainage;
 - e) Soil fertility.
2. Resettlement is prohibited in:
 - a) Areas with significant environmental impacts, such as the occurrence of erosion and areas prone to being flooded;
 - b) Protected areas under specific legislation.

Article 18

Criteria for the Definition of the Housing Plot in the New Area

1. The following criteria are considered for the definition of the size of the housing plot:
 - a) Suitability for construction, with an inclination not higher than 10%, areas without a high water table;
 - b) In urban areas the area of the plot shall not be less than 800 m²;
 - c) In rural areas the area of the plot shall not be less than 5,000 m²;
 - d) Front access to the access road;
 - e) Natural ventilation;
 - f) Access to water and other infrastructures;
 - g) Access to social facilities.
2. In case the physical-natural conditions are not favourable for the establishment of a drinking-water supply system, an improved latrine shall be built at a minimum distance of 10 metres from the house.
3. In rural areas physical spaces for vegetable production and the breeding of poultry and other animals shall be guaranteed.

SECTION III

Phases for the preparation of the Resettlement Plan

Article 19

Preparation of the Resettlement Plan

The phases for the preparation of the Resettlement Plan are the following:

- a) Collection and analysis of physical and socioeconomic data;
- b) Preparation of the Resettlement Plan;
- c) Preparation of the Action Plan for the implementation of the resettlement project.

Article 20

Data Collection and Analysis

1. Data collection in the area of the project or undertaking includes the following aspects:
 - a) Identification and demarcation of the area of intervention, considering whenever possible the areas that are nearest the area of the project or undertaking;
 - b) Quantification of the affected families and their socioeconomic profile;
 - c) Physical-environmental characterization;
 - d) Current occupancy;
 - e) Identification of the needs and preferences of the affected population.
2. The socioeconomic studies to be carried out shall focus on:
 - a) The current situation of the affected families;
 - b) Social organization and leadership structure of the community of which the affected families are part;
 - c) Vulnerable and dependent groups;
 - d) Standard characteristics of the families, including a description of the organization of the production systems, work and basic information about the way of life;
 - e) Potential social impacts of the resettlement.
3. In the scope of the provisions of clause d) of the previous paragraph, the following relevant data are included:
 - a) production and income levels obtained from formal and informal economic activities, as well as the standards of living, without prejudice to the health status of the population to be resettled;
 - b) size of the expected total or partial losses of the assets, the physical or economic size of the affected people;
 - c) survey of the forms of access to land, housing, water, roads, social services, schools and health centres;
 - d) quantification of the family members and their degree of kinship;
 - e) family and/or social relationship between them;
 - f) system of occupancy of the building (owner, occupier, lodger, granted);
 - g) verification of the number of families under the same roof;
 - h) length of stay in the house;
 - i) number of contributors to family income;
 - j) sex of the household head;
 - k) schooling of the occupiers of the house, emphasizing those contributing to family income;
 - l) number of children, elderly and disabled persons;
 - m) the most vulnerable groups, elderly, households headed by women, widows and youths, shall be heard in order to guarantee their rights;

- n) type of fuel used for the preparation of food;
- o) participation of the family in the social organization of the community.

Article 21

Preparation of the Resettlement Plan

1. The preparation of the Resettlement Plan includes the following aspects:
 - a) Analysis of the socioeconomic profile of the affected households; b) Evaluation and analysis of their tangible and intangible goods;
 - c) Definition of the quantitative and qualitative degree of damage; d) Definition of the compensation criteria;
 - e) Presentation of solutions and technically and economically viable alternatives that allow the continuation or improvement of the affected households' current standard of living.
2. For the purpose of the provisions of clause a) of the previous paragraph, affected households refer to households of the departure site and of the resettlement place.

Article 22

Action Plan for the Implementation of the Resettlement Plan

The preparation of the Action Plan shall include the following items:

- a) Institutional Matrix – shall present the bodies involved in the preparation and implementation of the plan, their competences and responsibilities, clearly specified and disseminated in the community;
- b) Schedule – shall present the time for carrying out the tasks and shall serve as an important control, monitoring and evaluation instrument for the resettlement process;
- c) Budget – in addition to the expenses concerning the construction of groups of houses and infrastructures, the budget shall include the payment of indemnities and other charges inherent in the process.

Article 23 Public Consultation

1. The preparation and implementation of the Resettlement Plan includes the organisation of at least four public consultations, advertised in the main media and at the intervention sites.
2. The dissemination of this process, through the means deemed adequate to guarantee public participation, with a view to collect comments, suggestions or recommendations concerning the draft Resettlement Plan, constitutes a guarantee of citizens' right to information, particularly on the part of the affected or interested people.
3. For each public consultation the respective minutes shall be drawn up and signed by the members of the Technical Resettlement Monitoring and Supervision Committee, representatives of the affected persons and the proponents, and shall be posted in the usual places for public information.

CHAPTER III

INSPECTION, TRANSGRESSIONS AND PENALTIES

Article 24

Inspection

The resettlement process is subject to inspections carried out by the Environmental Inspection, without prejudice to other inspections in the light of specific issues.

Article 25 Transgressions

1. The violation of the provisions of these Regulations constitutes an administrative transgression.
2. An administrative transgression, punishable with a fine and without prejudice to the application of other sanctions stipulated in the general law, occurs in the following cases:
 - a) Hampering or obstruction of an inspection – fine at the value of 500,000.00 MT to 1,000,000.00 MT;
 - b) Resettlement without due authorization from the competent authorities – fine at the value of 2,000,000.00 MT to 5,000,000.00 MT;
 - c) Non-fulfilment of the approved Resettlement Plan – fine at the value 10% of the value of the project or undertaking.

Article 26 (Scaling of the fines)

1. When applying administrative sanctions, aggravating and mitigating circumstances of the transgression are taken into consideration.

2. Aggravating circumstances of a transgression are the following:
 - a) The seriousness of the transgression;
 - b) Recidivism in the practice of the transgression, in similar projects;
 - c) When the Resettlement Plan is not implemented due to the exclusive fault of the transgressor.
3. Mitigating circumstances of a transgression are the following:
 - a) The agent is a first-time transgressor;
 - b) Prompt collaboration with the agents of authority.
4. Should any of the above-mentioned circumstances occur, the punishment applicable to the transgression is doubled or halved.

Article 27 Collection of the fines

1. The payment of the fines is made in the respective tax area through the presentation of the appropriate form.
2. The transgressor has thirty days to pay the applied fine, from the date of reception of the notification, under penalty of the case being forwarded to the tax collection court, for the purpose of enforced collection.

Article 28

Updating and destination of the fines

1. The amounts of the fines stipulated in these Regulations are updated by the Ministers supervising the Territorial Planning and Finance sectors.
2. The amounts obtained from the payment of fines have the following destination:
 - a) 40% for the State Budget;
 - b) 60% for the Environment Fund.
3. The Environment Fund subsidizes the expenses of the Technical Resettlement Monitoring and Supervision Committee, up to 20% of the percentage defined in clause b) of paragraph 2 of this article.

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