



Horizon Europe Framework Programme (HORIZON)

D4.1 - Report on mining regimes with respect to the ESG objectives

WP4 - Task 4.1

Version 1 [May 2023]

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Funded by
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Document information

Grant Agreement / Proposal ID	101057832
Project Title	EU-Africa Partnership on Raw Material Value chains
Project Acronym	AfricaMaVal
Project Coordinator	Guillaneau Jean-Claude (jc.guillaneau@brgm.fr) - BRGM
Project starting date (duration)	1 June 2022 (42 months)
Related Work Package	WP4
Related Task(s)	Task 4.1
Lead Organisation	AWIMA
Contributing Partner(s)	INTRAW, NUST, SSSA, WRFA, BRGM
Due Date	31 May 2023
Submission Date	25 May 2023
Dissemination level	



History

Date	Version	Submitted by	Reviewed by	Comments
6 May 2023	V0	Zenzi Awases	Eberhard Falck	Various editorial comments were made, but there are also various questions remaining that need to be addressed.
25 May 2021	V1	Zenzi Awases	Carol Zammit	A few comments regarding the contents of the case studies, the references and some very specifics information to be checked.

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Abbreviations and Acronyms

Acronym	Description
ASM	Artisanal and Small-Scale Mining
CEMAC	COMMUNAUTE ECONOMIQUE ET MONETAIRE DE L'AFRIQUE CENTRALE
EITI	Extractive Industries Transparency Initiative
ESG	Environment, Societal, Governance
ESIA	Environmental and Social Impact Assessment
DRC	Democratic Republic of Congo
GDP	Gross Domestic Product
IGF	Intergovernmental Forum on Mining Minerals, metals and Sustainable Development
IMF	International Monetary Fund
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
UNESCO	United Nations Educational, Scientific and Cultural Organization
USAID	United States Agency for International Development
WP	Work Package

Executive Summary

The AfricaMaVal project aims to develop an EU-Africa partnership that ensures responsible sourcing of mineral resources for the European industry while granting a sustainable local co-development in the best Environmental, Social and Governance (ESG) conditions which would lead to a long-term sustainable business environment for European and African companies.

The Association of Women Mining in Africa (AWIMA) is the lead for Work Package 4 (WP4). AWIMA is a network of African women in mining, oil and gas. WP4 aims to: contribute to informing the assessment of investment opportunities with Environmental, Social, and Governance (ESG) country data, and by so doing, enable the development of strategic partnerships for EU-Africa industrial value chain integration; contribute to improving the environmental and social sustainability of the minerals value chains in Africa, and to eradicate illegal and ethically doubtful practices; promote responsible mining practices, in particular, for the informal mining sector (ASSM), and to strengthen the local governance and business environment; foster civil society participation to ensure that investment recommendations align with society's needs, values, and expectations and encourage social innovation, when change, new practices, or ownership models are required.

With Task 4.1., the AfricaMaVal project aims to conduct country-level assessments of the ESG challenges in the mining industry across Africa. These assessments include a high- and in-depth level review of the pertinent minerals policies, regulations, agreements, community engagement and consultation, land ownership and mineral rights, land-use and tenure, health and safety of workforces and communities, environmental management, distribution/attribution of royalties and regulation across the continent.

Methodology

A Guidance Document was developed by the project team (Appendix A). This Guidance Document, describing what data will be collected and for what purpose the data is collected, was used to design an interview script and an online survey for data collection. The Guidance Document was also used to conduct desktop studies.

AWIMA partnered with its network of Women in Mining organisations in the 10 pilot countries to identify and engage the relevant stakeholders in the mining sector as well as to conduct workshops in these countries. The aim of these workshops was to conduct in-depth assessment of the mining sector through presentations and focus group discussions. Subsequently, face-to-face interviews were conducted with selected stakeholders, and workshop participants were invited to complete the online survey (Appendix B) as well as distribute it to other stakeholders in the mining sector. The target stakeholders included, but was not limited to: relevant senior officials in relevant government ministries, public institutions, private sector organisations, small- and large-scale mining operators, individuals in the mining sector as well as members from the civic societies. The 10 pilot countries analysed in this report are Democratic Republic of Congo, Gabon, Madagascar, Morocco, Mozambique, Namibia, Senegal, South Africa, Tanzania and Zimbabwe. The ongoing review of the African countries not included in the pilot study will be incorporated into this report at a later stage.



Result

Deliverable 4.1 presents the results of the country-level assessments of the mining regimes in Africa with respect to ESG objectives. The assessments are based on the feedback from the interviews, questions posed to the workshop participants as well as a review of the desktop study. These assessments will complement country-level assessments on investment climates by other organisations and other Work Packages on the AfricaMaVal project.

Keywords

Country profile, mining sector, governance, environmental regulations, social impacts, labour practices, artisanal small-scale miners, responsible sourcing, business environment, co-development, ESG assessment.



Acknowledgement

AWIMA and contributing partners has conducted country-level assessments of key issues covered by ESG measures. This involved a meta-level assessment of ESG components on the African continent, a desk review and analysis of various mining laws and policies as well as a quantitative and qualitative data collection exercise in ten of the countries identified under the project. The countries participating in this assessment are: Senegal, Gabon, Tanzania, Democratic Republic of Congo, Mozambique, Zimbabwe, Madagascar, South Africa, Morocco, and Namibia.

We could not have achieved these results without the participation and contribution of many people from the governments of the countries visited, mining companies, civil society organizations whom we would like to thank for their invaluable contributions at different stages.

We would particularly like to thank Ministers Olivier Herindrainy RAKOTOMALALA and Elvis OSSINDJI respectively Minister of Mines and Strategic Resources of Madagascar and Minister of Mines of Gabon, who by their presence at the opening of the workshops enhanced the quality and level of the exchanges.

We would also like to thank our members of the host countries of the workshops, their contribution is undeniable by the choice of stakeholders in the various workshops but also in the follow-up of the online surveys. They are Madames Aida Diop from Senegal, Eulalie Tanteliniony and Hérizo Harimalala from Madagascar, Salma Kundi Judith Karangi from Tanzania, Dorothee Masele from DRC, Patricia Ossou from Gabon, Fatima SBAI from Morocco, Blessing Hungwe and Kundai Chikonzo from Zimbabwe and Kerusha Pillay From South Africa.

I cannot end without thanking the AWIMA team (Zenzi AWASES, Georgette BARNES SAKYI-ADDO and Monica GIHUCHI) and its partners (INTRAW, NUST, SSSA, WRFA, BRGM), for the constructive exchanges we had, which contributed greatly to the improvement and the quality of this report.

Balbine Pascaline MAKANI OMGBA, AWIMA President



Introduction

Mining is one of the key contributors to the GDP in many countries, thus making it one of the most important industries in Africa. This is because many African countries are heavily reliant on exports of natural resources to generate revenue, employment and foreign exchange earnings. Consequently, the mining industry has been a major driver of improved socioeconomic indicators across the continent.

Africa's overall share in global production and exports of minerals containing critical raw materials of strategic and critical importance to the EU are rather limited, although there is a potential to produce more of these raw materials. This potential is undoubtedly enormous, as much of the continent is still unexplored. Just as raw materials are essential for the development of the EU, they are equally essential and even more so for Africa, considering the development needs of the continent. Many African countries are now expressing their willingness to take development measures they deem necessary to add value and develop downstream industries that would create jobs and diversify their production and export base. However, Africa also recognises foreign investment as a key element to take these development measures, and by so doing promote the continent's economic and social growth. Simultaneously, both internal (locals) and external (foreign investment) are increasing demand on ESG related matters and data.

This report provides an assessment of mining regimes in Africa with respect to Environmental, Social and Governance objectives per country. An overview of the mining regime is provided looking at the mineral and mining policies and regulations of the country. Environmental criteria considered includes how a country safeguards its environment, including policies addressing pollution, water resources, mine closure and its cultural heritage; Social criteria examined how a country manages its land and mineral rights, Artisanal Small-Scale Miners, labour, societal and community aspects as well as occupational health and safety and public health and safety. Governance deals with the governance of the country and also looks at taxation and royalties paid as well as requirements for foreign investment.

Country-level assessment in the 10 pilot countries was done by first undertaking a desktop study, using the guidance document that was produced by the project team. The desktop study was followed up with workshops where policy makers and stakeholders of the raw material value chain gave presentations on the ESG framework of the country. A survey was distributed and interviews were made to gain additional information. The results presented in this report are primarily based on the desktop studies complemented by the outputs of the workshops.



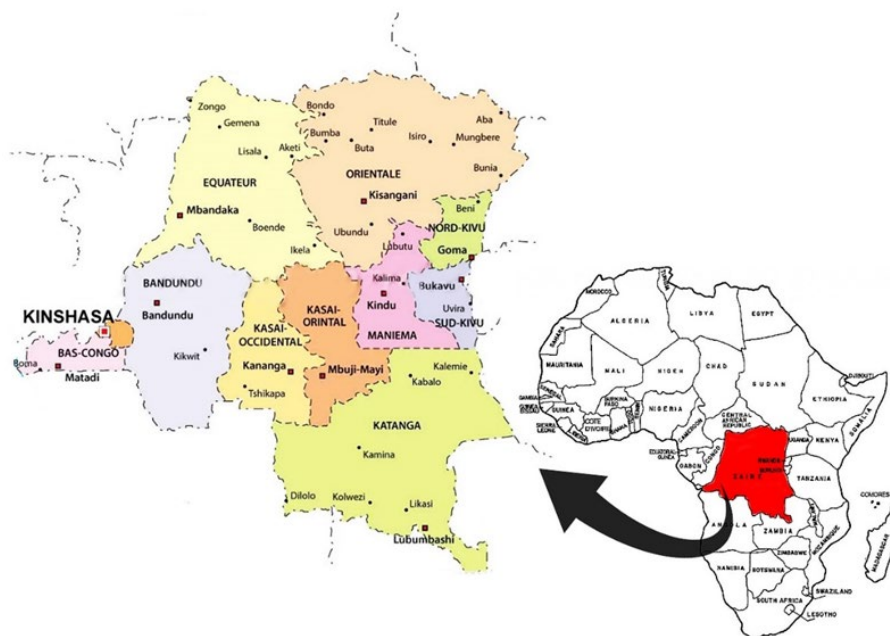
Mining Regimes in Africa with Respect to Environment, Social, and Governance Objectives



1 Democratic Republic of Congo (DRC)

1.1 Country Profile

The Democratic Republic of Congo (DRC) formerly known as Zaire is a country situated in Central Africa, straddling the equator and is the second largest country in Africa after Algeria. It stretches from the Atlantic Ocean to the Eastern Plateau and corresponds to most of the Congo River Basin and is considered to be one of the mineral-richest countries in Africa. The country shares borders with the enclave of Cabinda (Angola) to the west-southwest, the Republic of Congo to the west, the Central African Republic to the north, South Sudan to the northeast, Uganda to the east-northeast, Rwanda and Burundi to the east, Tanzania to the east-southeast, Zambia to the south-southeast and Angola to the southwest.



The country covers an area of 2.345.410 Km², hosting a population of approximately 98.37 million (estimated in 2019), with an estimated population growth rate of 3.2%. Nearly half of the population is relatively young with 48% of Congolese being under 15 years old, 48% being between 15 and 59 years old, and 4% being 60 years old and over - women represent 51% of the population (INS, 2021). The country's capital-city is Kinshasa, located along the south bank of the Congo River, downstream on the Pool Malebo. French is the official language of DRC; Kituba (Kikongo), Lingala, Swahili, and Tshiluba are other main national languages of the country.

The GDP of DRC is one of the lowest in the world, making it one of the poorest countries in the world and one of the least developed countries ranking at 86. In 2021, the GDP was estimated to be \$55.35 billion with a \$577.21 GDP per capita. In recent years, the government has made efforts to diversify its economy through agriculture, energy, and forestry.

1.2 Overview of the Mining Sector

The country is very rich in natural resources, thus the mining sector plays a major role in the economy and currently represents more than 20% of the Country's GDP and constitutes almost a third of State revenue. The country is the world's largest producer of cobalt and the second-largest producer of copper. Mineral exports, mainly copper and cobalt, account for approximately 95% of the DRC's export earnings. DRC's

mineral reserves include: copper, cobalt, diamonds, gold, silver, zinc, manganese, tin, tungsten, tantalum, and niobium but much of the country is under-explored.

Almost all the elements of the periodic table are found in the DRC, holding no less than 60% cobalt of the world's resources this puts the DRC at the centre of the transition to decarbonisation. The country is aware of the decisive role it can play, particularly in the race towards the search for these metals for the protection of the environment.

The DRC is ranked among the top 10 producers of artisanal gold in the world (IPIS, 2017). Artisanal mining holds an important place in the mining sector of the DRC with more than 2 million people involved and also several other metals exploited such as gold, tin, niobium-tantalum, tungsten, and cobalt. Artisanal mining in the DRC remained informal despite the creation of the Artisanal and Small-Scale Mining Assistance and Supervision Service (SAEMAPE), as well as in the Artisanal Exploitation Zones (ZEA) not accessible to all artisans. Gold remains the substance mostly exploited by artisans and especially in the west of the country. Other operations are widespread throughout the country and sometimes in conflict zones where they fuel armed conflicts, and are even a source of conflict with neighbouring countries (Rwanda, Uganda).

In line with the African mining vision (AMV), the DRC implements the local processing of mining products. On the 29th April 2022, the country has signed an agreement¹ with Zambia for the manufacture of battery precursors in order to add value to the minerals exploited in the country and create new job opportunities for young people.

1.3 Governance

1.3.1 Mineral and Mining Policies

The legal and regulatory framework of the mining sector in the DRC is based on six (6) pillars:

- The parties involved in the management of the Mining Code;
- Management of the Mining Domain;
- Management of Mining Titles;
- Socio-Environmental Responsibility (specifications, contribution to local development of 0.3% minimum of turnover, etc.);
- Taxation
- Governance and Transparency.

¹ Mining Weekly, 2023, US, DRC and Zambia sign MoU to strengthen EV battery value chain, available on <https://www.miningweekly.com/article/us-drc-and-zambia-sign-mou-to-strengthen-ev-battery-value-chain-2023-01-19>, accessed on 26 May 2023

The Government of the DRC through the revision of the Mining Code in 2018² has made a commitment to implement the principles of the EITI and to deepen collaboration (Partnership) with all Stakeholders. This resulted in the integration of several EITI standards into the new Mining Code and Regulations:

- Art.1 Point 53 bis: Traceability;
- Art.1 Point 54 bis: Transparency;
- Art.7 ter: Transparency, Traceability and Certification;
- Art.7 quater: Publication of contracts;
- Art. 311 ter: Sanctions for hindering transparency and traceability in extractive industry.

The principles of transparency, traceability and certification are reinforced. The mining contracts are published in the official journal and on the website of the Ministry of Mines³ within sixty days of the date of their signature.

The aspects of good governance are reflected in the ASM sector by the efforts to formalise the ASM sector in the Mining Code through the institution of SAEMAPE, Comptoirs, Cooperatives, Negociant Cart, the artisanal miner card, the creation of the Artisanal Mining Zone ("*Zone d'exploitation artisanale*" - ZEA).

The mining sector in DRC is governed by:

- Law N° 007/2002⁴ of July 11, 2002 on the mining code, that amended and supplemented by
- Law N° 18/001⁵ of March 09, 2018 as well as
- The ministerial decrees supporting and / or domesticating the national and/or regional mineral traceability initiatives, ratified texts and sub-regional and international commitments (EITI, Kimberley Process).

Mineral resources are the exclusive property of the Congolese State. However, holders of mining rights acquire ownership of market rights by virtue of their right. Mineral resources are classified into mines and quarries (Article 3, mining Code). Any legal person is authorised after acquisition of mining rights to engage in research or exploitation of mineral substances, especially the extent of the territory. But only natural persons of Congolese nationality are authorised to practice artisanal mining (Article 5, mining Code). The State under its discretionary law and in view of the particular circumstances may declare a strategic substance with a particular legal regime or reserved subject to special rules. Uranium and

² Investment Policy Hub, 2018, DRC adoption of a new mining code, available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measures/3227/adoption-of-a-mining-code#:~:text=The%20President%20of%20the%20Democratic,deemed%20a%20%22strategic%20substance%22,> accessed on 26 May 2023

³ <https://mines-rdc.cd/fr/>

⁴ Natural Resources Governance Institute, LAW No. 007/2002 of JULY 11, 2002 RELATING TO THE MINING CODE, available from <https://www.resourcegovernance.org/sites/default/files/Mining%20Code.pdf>, accessed on 26 May 2023

⁵ Leganet.cd, **Law No. 18/001 of March 09, 2018 amending and supplementing Law No. 007/2002 of July 11, 2002 on the Mining Code** <https://www.leganet.cd/Legislation/Droit%20economique/Code%20Minier/Loi.18.001.09.03.2018.html> accessed on 26 May 2023

thorium ores and, in general, all radioactive minerals are placed under the regime of reserved mineral substances (Art 7 and 7 bis)

The role of the State is to promote and regulate the development of the mining sector (Art.6) and to ensure development by appealing in particular to private initiative. Decisions can be taken at the central level (Prime Minister, Minister, Administration of Mines competent in the granting of mining rights, Art.8 to 14 of the mining regulations (Mining Regulations)) and/or at the Provincial level (Provincial Governor, Minister Provincial, Provincial Division).

Public establishment in charge of the management of the mining domain as well as those of mining titles and quarries, the Mining Cadastre (CAMI)⁶ is placed under the supervision of the Minister of Mines. To cover its operating costs, the CAMI is authorised to use funds provided by payment costs of filing documents and payment of annual surface rights. The CAMI is governed by Law No. 08/008 and its organisation and operation are set by Decree No. 17/005 of April 3, 2017. The CAMI is accessible online and is regularly updated.

1.3.2 Mining Regulations

The mining rights may be allocated in accordance with the Mining Code and the mining regulations adopted for its application (Article 50 and following). The various licence types for the mining sector of DRC are listed and summarised in Table 1.

Table 1: The various licence and claims types available for the mining sector of DRC

Licence Type	Description	Duration (years)	Renewable	Restriction
Exploration Permit	Exclusive, assignable and transferable right: Area of max 400 Km ²	5	Renewable once for a period of 5 years, at least 3 months and not more than 6 months before date	A person and his associates cannot hold more than 50 permits (less than 20,000 Km ²)
Mining Exploitation licence	Exclusive, assignable, transferable and possible Rental/ Lease contract Derived from the area of the Exploration Licence	25	Renewal for periods of 15 years each. Application for renewal to be submitted to the CAMI at least one year and not more than five years before the expiry date of the operating permit.	Obligation of the applicant to treat and process in the DRC the substances that he exploits. Participation

⁶ DRC Mining Cadastre Portal available on http://drclicences.cami.cd/fr/?_gl=1*yI93ou*_ga*NjQwOTM5NTk1LjE2ODUwOTA3NjU.*_ga_7CFN8CS08Y*MTY4NTA5MDc2NC4xLjAuMTY4NTA5MDc2NC4wLjAuMA..&_ga=2.165078454.88486431.1685090765-640939595.1685090765, accessed on 26 May 2023

				of natural persons of Congolese nationality in the share capital up to 10%
Authorisation for processing or beneficiation	The processing or beneficiation of mineral substances is carried out either by the holder of the Exploitation Permit or by a beneficiating entity.	-	-	-
Tailing operating certificate	Same right as the mining licence	5	Renewable several times over the same period	Surface mining, excluding underground mining
Small Mine Licence	Exclusive Right	5	Renewable once for the same period: But the Minister may extend the duration beyond 10 years	

The procedure for granting mining rights and issuing titles is strict and is as follows:

- **Call for tenders**

- The Government, through the Minister of Mines, submits an open or a restricted invitation to tender the mining rights related to any deposit studied, documented or possibly developed by the State through its services.
- The Minister reserves, by decree, the mining rights of the deposit to be submitted to the call for tenders.
- The tenders submitted are promptly examined by an inter-ministerial commission whose members are appointed and convened by the Minister in order to select the best tender.

The invitation to tender is in accordance with the procedure provided by Congolese legislation on the award of public contracts, which is generally accepted or recognized by the international mining practice. At the end of the call for tenders' procedure, the Minister publishes the result of the selection and releases the area that was under reservation. When the mining title obtained by the call for tenders has been studied by the State, access to the deposit is conditional on the payment by the holder of a tax representing 1% of the value of the deposit. These amounts are entirely paid to the state or to a public company representing the state, when it exists (GECAMINES).

- **Application for mining rights**

Any request for mining rights is written on a form to be obtained from CAMI for the right concerned. The application file is accepted by CAMI after verification of the existence of the required information (proof of payment of filing fees, tax number, identification and Trade Register number). The cadastral instruction



is 20 days maximum. The technical examination is carried out by the Directorate of Mines which determines whether the conditions for granting the mining right are satisfactory within a maximum period of 5 days.

The instruction of the Environmental and Social Impact Assessment (ESIA), the ESMP (Social Environmental Management) and the RAP (Mitigation and Rehabilitation Plan) relating to the request for mining rights as well as the plan for the contribution of the project to the development of the surrounding communities is provided by the Congolese Environment Agency (ACE), the national promotion and social service department, in collaboration with the Department for the Protection of the Mining Environment (DPEM).

An environmental certificate is sent to CAMI within the prescribed time for each type of mining right and a copy is reserved for the applicant. The notification and the transmission of the environmental certificate are governed by article 456 of the Mining Regulation (RM). Upon receipt of the application file with cadastral opinion and, where applicable, favourable technical, environmental and social assessment, the competent authority takes and communicates its decision to grant the mining right within the decision period prescribed for each type of mining right application. In this case, CAMI registers the right granted to the notification of the granting decision to the applicant, displays the notice in a room determined by the mining regulations, as well as on the Mining Cadastre website. In the event that the competent authority does not transmit its decision in accordance with the law, the granting of the mining right is deemed granted.

1.3.3 Taxation and Royalties

The fiscal, customs and tax regime applicable to the mining activities of the holder on the national territory is defined exclusively and exhaustively in the **Mining Code (Title IX)**. It concerns taxes, duties, royalties and other parafiscal levies collected both for the benefit of the Government and for that of the provinces and decentralised territorial entities.

Although mining royalties are deductible expenses for the determination of corporate income tax, they are due regardless of the mining company's profitability (Article 255). Royalties become due at the exploitation phase and are payable at the leaving of the goods from the exploitation or processing site of the project. Royalty rates differ according to metal or mineral type as shown in Table 2.

Table 2: Royalty rates per mineral category

Mineral	Royalty rate (%)
Iron or Ferrous metals	3.5
Non-Ferrous metals	3.5
Precious metals	3.5
Gemstones	6
Industrial minerals	1
Common construction materials	0
Strategic minerals determined by the government (i.e., copper, cobalt, coltan, germanium)	10

The corporate income tax rate is set at 30% of turnover, as it is the case under the DRC's common regime. Specific taxes are subject to the standard or common tax regime, such as taxes on rental revenues, real estate contributions (for surfaces falling outside the scope of the mining surface taxes or rights) and taxes on vehicles and roads.

Mining companies employing expatriates are subject to payment of an exceptional tax on the basic salary of these employees. The tax rate on remunerations for mining companies employing expatriates' is set at 25%.

The Mining Code has further implemented a super profit tax at a rate of 50%. The super profit tax is due when the commodity prices rise by 25 % in comparison to those referred to in the feasibility study. The revenues subject to the super profit tax are then exempted from the profit tax (i.e., the corporate income tax at 30 %).

This regime has been extended to subcontractors, to holders of a Permanent Quarry Exploitation Authorisation (AECF) other than those for building materials in common use and to holders of approvals for approved processing entities.

Mining companies seeking to invest in the DRC must note that, pursuant to the New Mining Code, subcontracting activities in the mining sector are subject to Act No. 17/001 of 8 February 2017 establishing the rules applicable to subcontracting in the private sector (the Subcontracting Act). The Subcontracting Act notably provides that:

- activities can only be subcontracted to Congolese-owned companies or by Congolese nationals (with strictly limited exceptions);
- all companies established on Congolese national territory must put in place, internally, a policy of training that should allow Congolese nationals to acquire the technical know-how and the qualifications necessary to accomplish certain activities; and
- companies may not subcontract more than 40% of the value of a contract.

In this respect, whereas local content requirements were already imposed on subcontracting activities in the mining sector by a Ministerial Decree, the Subcontracting Act's implementation measures impose rather unclear obligations on mining operators and subcontractors. Furthermore, the subcontracting authority has recently increased the frequency of its on-the-ground visits to control compliance of the mining actors with the Subcontracting Act and related regulations

Generally, there are no legal restrictions on **foreign investment** in the mining sector, and currency exchange provisions are quite liberal.

There are, however, some basic obligations with which operators must comply. The DRC adopted new Exchange Control Regulations on 25 March 2014, which have been in force since 24 September 2014. Their main characteristics are as follows:

- the export or import of funds equal to or above US\$10,000 is subject to a licence called 'Modèle RC' issued by the Central Bank as an approved intermediary; certain documents justifying the transfer will need to be provided;

- subject to the relevant tax being paid, the filing of the “Modèle RC” form and the delivery of other supporting documents required by the Central Bank, commercial banks in the DRC are authorised to transfer dividends, capital gains, interest, principal, fees and commissions on foreign loans outside the DRC. There is no exchange control restriction on transfers abroad of profit by a foreign company;
- there is a restriction for the payment in cash of amounts above or equal to US\$10,000;
- repatriation of incomes is within 60 days;
- transactions are paid for in local currency, unless otherwise agreed; and
- taxes are paid in local currency.

1.4 Environment

1.4.1 Environmental Regulations

The Mitigation and Rehabilitation Plan (RAP) as well as the Environmental and Social Impact Assessment (ESIA)/Social Environmental Management Plan (ESMP) are developed in accordance with the directives contained in the Mining Regulations. These regulations require any mining project to present an environmental plan and have it validated by the competent services before the actual start of its activities. For reasons of national security, public security or environmental preservation, areas may be classified as prohibited areas without time limit, and mining rights may not be granted in a protected area (**Article 6, mining Code**).

As for the artisanal mining, it is governed by the code of good conduct (Annex IV of the RM) to which the operator is subject under the supervision of SAEMAPE. Both the RAP and the ESIA/ESMP are prepared in accordance with the guidelines contained in the Mining Regulations.

1.4.2 Tangible and Intangible Cultural Heritage

The protection of cultural heritage falls to the Congolese State. The holder of a mining right is required to inform the local administrative authority and the authority in charge of culture, Arts and Museums, of the discovery of archaeological evidence if this research or exploitation work reveals the existence of these indices (Art.205 of the Mining law)

In the event of updating elements of the national cultural heritage, movable property and others, the holder of a mining right is prohibited from moving these objects. In this case, he should inform in writing and without delay, the local administrative authority and the authority in charge of culture, arts and museums.

The holder of a mining right is required to remove, secure and preserve, as the case may be, these elements of the national cultural heritage at the expense and on behalf of the State, if the local administrative authority and the authority responsible for culture does not remove them or secure them within sixty days of the notice notifying the discovery (Art.206 of the Mining law).

Additional provisions of the Mining Code are intended to ensure the conservation of any archaeological findings that occur during the course of the project.

1.4.3 Mine Closure

Mining exploration and exploitation operations must be the subject of a Mitigation and Rehabilitation Plan (PAR) previously drawn up and approved in accordance with the provisions of Chapter IV of the Mining Regulations. According to The Regulations, the PAR must include carrying out backfilling, erection of reinforced slabs, construction of a fence and signalling of dangers signs on the area of the proposed activity.⁷

For mining exploration operations, the Mitigation Plan and Rehabilitation is submitted after the granting of the Exploration Permit. Its approval by the Congolese Environment Agency in collaboration with the Department responsible for the Protection of the Mining Environment is a prerequisite for the start of research operations.

For exploitation operations, the Mitigation Plan and Rehabilitation is filed at the same time, as the application for the proposed activity and its approval, by the competent authority, is a condition of the permit.

Pursuant to Article 204, paragraph 4 of the Mining Code, any person carrying out exploration or mining operations is required to constitute a financial security for the rehabilitation of the environment in order to ensure or cover the cost of the environmental rehabilitation measures.

1.4.4 Water

The texts that regulate water management, protection and development in DRC is Law No. 15/026 of December 31, 2015 relating to water.

The Democratic Republic of the Congo (DRC) has an abundance of water resources. Over 50% of Africa's surface water reserves and approximately 25% of the continent's water resources are in DRC. The total volume of freshwater withdrawn by major economic sectors is 0.2 percent of the total resource endowment and total annual renewable water resources per person is 15,773 m³, far exceeding the Falkenmark Water Stress Index⁸ threshold for water stress. The vast resources of the Congo Basin contribute to year-round surface water flows. Approximately 30 % of water resources originate in neighboring countries.

The Congolese legislation regulating the mining sector is fairly developed and obliges companies to make sure that they do not pollute water resources as part of their operations. DRC has no national water quality monitoring programmes. The lack of data limits regulatory capacity and enforcement and increases vulnerability to water-related environmental and public health safety risks.

Surface and groundwater pollution pose a risk to public health and biodiversity. Mining in the southern Copperbelt of Katanga has increased concentrations of trace metals and pollutants such as mercury, lead, cadmium, and copper in surface waters. High concentrations of fecal coliforms from poor sanitation

⁷ Mining Laws and Regulations Congo DR, Environmental, 2023, available on <https://iclg.com/practice-areas/mining-laws-and-regulations/congo-d-r>, accessed on 30 May 2023.

⁸ Water Resources Profile Series, Democratic Republic of the Congo Water Resources Profile Overview, https://winrock.org/wp-content/uploads/2021/08/DRC_Country_Profile_Final.pdf. Accessed: 12 August 2020



systems and unprotected drinking water sources have contaminated drinking water, especially near large urban centers like Kinshasa. Deforestation has led to sedimentation of surface waters, especially along the eastern border and near Kinshasa⁹

1.5 Social

The exploitation of mineral resources has been the engine or the accelerator of the economic growth of the DRC for several years now, especially during periods of high mineral prices on the world market. Periods of improvement, such as the last base metals super-cycle of 2009-2013, and even the current rise, constitute opportunities for a country rich in resources to transform not only its economy but also its local community.

The holder of the mining rights must comply with the labour legislation (Law No. 015/2002 of October 16, 2002 on the Labor Code)¹⁰ in terms of employment, more particularly the regulation of the work of foreigners with regard to the authorised percentages that fix the list of jobs prohibited to foreigners as well as the regulations determining the conditions of engagement of foreigners.

With equal skills, the holder of the mining rights has to recruit nationals in priority. The holder also has to implement training programmes for Congolese personnel identified by the needs. They must cover all levels of qualification, to enable them to acquire skills required for the management of the company, in order to occupy management and supervisory positions within ten years, following the date of the start of commercial production, in accordance with the quota set out in Article 405 quinquies.

The mining company establishes and transmits to the CTCPM¹¹ (**Cellule Technique de Coordination et de Planification Minière**), for information and monitoring, their staff training and development plan. This plan includes a component of training courses for pupils and students of Universities, Technical Higher Education Establishments whose school and academic curriculum, as the case may be, covers mining sciences and techniques as well as jobs in the mining sector.

1.5.1 Land-use and Mineral Rights

Under the Mining Code, occupants of the land covered by a mining permit have a right to be indemnified when their activities (such as agriculture) are affected by a mining project, in accordance with the conditions set out in the New Mining Code. Other rights include an obligation for the operator to consult with local authorities.

⁹ USAID, Water Resources Profile Series, Democratic Republic of the Congo Water Resources Profile Overview, available on https://winrock.org/wp-content/uploads/2021/08/DRC_Country_Profile_Final.pdf, accessed on 30 May 2023

¹⁰ ILO, Journal Officiel de la République Démocratique du Congo, Loi No 015/2002 du 16 Octobre 2002 available on <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/62645/77450/F-485769511/COD-62645.pdf>, accessed on 30 May 2023.

¹¹ <https://ctcpm.cd/fr/>

1.5.2 Artisanal and Small-Scale Mining

The Assistance and Supervision Service for Artisanal and Small-Scale Mining¹² (SAEMAPE) was created under **Decree No. 17/009 of April 04, 2017**. SAEMAPE is Technical Service in charge with administrative and financial autonomy with the following functions:

- assist and supervise the artisanal and small-scale exploitation of mineral substances;
- encourage and ensure the grouping of artisanal miners of mineral substances or quarry products in mining cooperatives;
- formalise all artisanal or semi-industrial mining activities, quarry products in the official production and marketing circuit;
- request from the Ministry of Mines the establishment of an artisanal mining area
- receive notification of the establishment of a ZEA for the supervision and assistance of artisanal miners affiliated with an approved mining cooperative, in particular;
- to issue:
 - the closure of a ZEA;
 - the request for prior authorisation for the processing of products by the mining cooperative or quarry products;
- inform mining cooperatives of approved quarry products of the closure of a ZEA and, possibly, take charge of relocation to another legally established ZEA;
- ensure compliance with standards in terms of safety, hygiene, use of water and protection of the environment that apply to the operation of the mining cooperative or quarry products and the artisanal miner;
- collect the production statistics of cooperatives and/or approved quarry products and ensure the compensation of farmers for any damage caused by the cooperative activity, under penalty of withdrawal of approval by the Minister.

The Mining Code contains specific provisions with respect to artisanal or small to very small-scale mining rights (Comptoirs, Cooperatives, Negotiant Cart, the artisanal miner card, the creation of ZEAs).

The 2018 Mining Code recognises artisanal mining as a legal activity. The aspects in the Mining Code pertaining to artisanal mining are:

- artisanal miners must register and restrict their activity to certain designated areas (artisanal exploitation zones (ZEA));
- be affiliated with a cooperative to be able to work in ZEAs (Ministerial Order, 2010) and
- any actor involved in the chains of Mineral sourcing is required to adhere to the OECD Due Diligence Guidelines¹³ as well as the ICGLR Regional Certification Scheme (Ministerial Order, 2012).
- ASM activities are reserved for Congolese nationals and limited in scope and equipment.

¹² http://www.saesscam.cd/SAESSCAM_New/

¹³ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

- they are governed by a code of conduct with safety, health and environmental requirements.
- ASM licences (“carte d’artisanal miner”) must be renewed annually.
- local mineral traders must be in possession of a trading licence (“carte de négociant”) and sell their minerals to designated buying establishments (the so-called “comptoirs” or “processing entities”). The latter are the only entities officially authorised to export minerals from artisanal production.

The ASM sector in DRC is subject to a variety of risks, including conflict funding, smuggling, child labour and forced labor, unsafe working conditions, and adverse environmental impacts. A recent ministerial decree adopted on 2 February 2022 introduced the Trading Centre (“Centre de Négoce”)¹⁴, which takes the form of a public centre for artisanal miners with adequate infrastructure to regulate and facilitate activities related to the sale of mineral substances from areas open to artisanal mining.

1.5.3 Labour Practices

All aspects related to labour practices in the DRC are governed by Law No 015/2002 of October 16, 2002 on the Labour Code. The holder of the mining and/or quarry right is required to repair any damage caused by diseases attributable to the mining activity in accordance with the common law rules. The list of illnesses attributable to mining activity is determined in the Mining Regulations (Article 258 bis).

1.5.4 Societal and Community Aspects

Mining has a significant impact on the daily life of the community in which it operates in terms of revenue to finance social services and infrastructure. Chapter IV of Title XI of the 2018 Mining Code governs all the social and community aspects related to mining activities. The highlights are discussed below and visually illustrated in Figure 1:

- the holder of mining exploitation rights is required to contribute, during the period of his project, to the definition and implementation of socio-economic and industrial development projects for local communities affected by the project activities on the basis of specifications for the improvement of the living conditions of the said communities.
- the institution of specifications to serve as a framework of agreement allowing the realisation of development actions aimed at improving the economic, social and cultural well-being of local populations affected by the mining activities of the holders of mining exploitation rights during and after exploitation.
- a mining fund is established for future generations. The resources of the mining fund for future generations consist of a portion of the mining royalty. A decree from the Prime Minister, deliberated in the Council of Ministers, creates and organises the mining fund for future generations.
- the holder of a mining exploitation right is required to constitute, free of tax on profits and profits, an endowment for contribution to community development projects, the minimum amount of

¹⁴ <https://www.legavox.fr/blog/yav-associates/exploitation-miniére-artisanale-creation-centre-29393.htm>

which is equal to 0.3% of the turnover of the financial year during which it is constituted. The endowment must be fully made available to local communities before the expiry of the financial year following that in which it was incorporated (Article 285 octies).

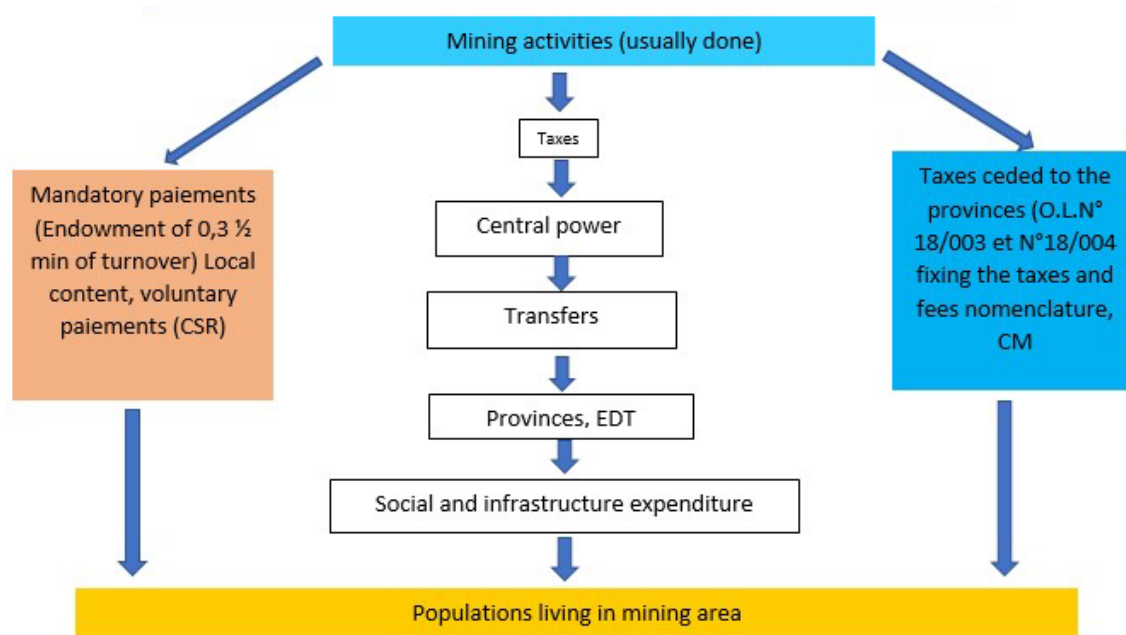


Figure 1: Revenue sharing through fiscal decentralisation, Mining Code 2018

1.5.5 Operational Health and Safety (OHS) and Labour Regulations

Mining activities are subject to safety, health and protection measures enacted by special regulations (labour law). The holder of the mining rights must comply with the measures that are ordered by the Ministry of mines in order to prevent or remove the causes of the dangers mining activities poses to public safety and health, to services, water and public roads.

In case of emergency or refusal by the holder of the mining right to comply with the measures, they are taken and executed automatically at the expense of the holder mining right. In the event of imminent danger, the agents of the administration of the mines authorised for this purpose immediately take the necessary measures to avert the danger and can, if necessary, make for this purpose all useful requisitions from the local authorities and from the operators. These agents have the status of Judicial Police Officer (Article.208 of the Mining law)

Any serious or fatal accident occurring in a mine must be brought, immediately and by the fastest means of communication, to the attention of the Directorate of Mines and the administrative and judicial authorities of jurisdiction (Article 209 of the Mining law). Any holder of a mining right is required to publish the safety instructions with regard to the specific conditions of its exploitation (Art. 210 Mining Law, detail in the Mining regulation). Any holder of a mining right making use of explosives is subject to special regulations (Mining Regulations).

1.5.6 Public Health and Safety

The 2018 Mining Code has no indication regarding public health issues. All questions relating to health are governed by Law No. 18/035 of December 13, 2018 laying down the fundamental principles relating to the organisation of public health.

1.6 Assessment of the Mining Regime of the DRC with respect to ESG objectives

1.6.1 Environment

The Mining Code conditioned the granting of a mining license to the development and prior implementation of an ESIA, as well as an environmental management plan. ESIA's are, in most cases carried out, however, based on the presentation given at the stakeholder engagement workshop, the following points are highlighted:

- lack of consultation of the populations concerned during the preparation of the studies;
- lack of monitoring by the authorities during the implementation phase due to financial and human resources shortage;
- consultation of local populations as a prerequisite for the granting of mining license also seems to pose many problems. In general, the local populations are not effectively involved in decision-making that affects them. Furthermore, these people suffer numerous violations of their rights as a result of mining activities in their territories. These violations include uncompensated relocations and pollution of rivers. In some cases, these violations have led to severe social conflicts.

Furthermore, the Natural Resource Governance Institute has noted the non-disclosure of environmental and social management plans¹⁵. However, the general consensus of the stakeholder engagement workshop was that the government is fully aware of the increasing pressure on improving the environmental management in the mining sector. The workshop concluded that the sustainable development in DRC mining sector is the responsibility of all stakeholders to ensure the prevention and protection of the environment.

1.6.2 Social

In 2014, the DRC became the biggest African producer of copper as well as the biggest world exporter of cobalt. However, according to the EITI, despite the country's vast natural resources, two-thirds of the Congolese citizens were living below the poverty line in 2021¹⁶. According to the World Bank¹⁷, the DRC ranks 164 out of 174 countries on the 2020 Human Capital Index, reflecting decades of conflict and fragility, and constraining development. Human rights violations - results of armed conflict - especially of

¹⁵ Democratic Republic of Congo country profile, mining, 2021. <https://resourcegovernanceindex.org/country-profiles/COD/mining?years=2021>. Accessed on 12 August 2021

¹⁶ Overview and role of EITI, Democratic Republic of Congo, <https://eiti.org/countries/democratic-republic-congo>.

¹⁷ The World Bank in DRC, <https://www.worldbank.org/en/country/drc/overview>. Accessed on 12 August 2021



children and women have repercussions within the population. Many people still face marked inequality because most of the wealth is held by a minority, despite the mining sectors contribution of more than 20% to the economy of the country.

Many abuses of the rights of DRC nationals are linked both to the abundance of natural resources and the lack of effective law enforcement in the mining sector. Although the legislative framework is provided, however due to a lack of proper implementation, it fails to protect the DRC nationals allow receipts in the coffers of the State which would be proportional to the size of the sector. This, if rigorously managed, could however contribute to lifting the country out of poverty.

1.6.3 Governance

Despite a sound legal and regulatory framework for the mining sector, DRC remains one of the poorest countries in the world. This is mostly attributed to the lack of implementation of certain legal and regulatory provisions in terms of transparency. This situation is further worsened by the following factors:

- Large number of stakeholders (most of them unqualified),
- Mining fraud and smuggling (sometimes with the complicity of agents),
- Weak technical and human capacities of tax base services and tax administrations;
- Multiplication of traceability and certification initiatives to prevent the flow of conflict minerals;
- Lack of Transparency

The revision of the legislative framework for the mining sector in 2018 demonstrated the state's commitment for the country's natural resources to benefits its people. The revenue sharing through fiscal decentralisation is an attempt to address this situation. When properly implemented and monitored, it will have a very positive affect on the livelihood of DRC citizens. Moreover, the state is committed to making the management of the natural resources more transparent as outlined in the 2019 EITI Standards.

2 Gabon

2.1 Country Profile

Gabon is a country located in Central Africa along the Equator, covering a land area of 267,670 km² and hosting a population of approximately 2.3 million people. The country is mostly covered by dense tropical rainforest and with a coastline of approximately 800 km along the Atlantic Ocean. It is bordered by Equatorial Guinea to the northwest, Cameroon to the north, the Republic of the Congo to the east and south. The official language is French, and several other languages including Fang, Myene, and Bateke are also spoken. The capital and largest city is Libreville



Gabon's GDP is estimated to be around \$24.6 billion as of 2020. Gabon has a high-income economy, with nearly 80% of its export revenue and over half of its GDP coming from the exploitation of its oil reserves. The country also hosts national branches of several large multinational corporations, including Total, Shell, and Perenco. Other significant sectors of the Gabonese economy include timber and agricultural products. Gabon aims to diversify its economy by promoting the development of other sectors, including tourism and services. Despite some economic challenges, Gabon remains one of the wealthiest countries in Africa in terms of GDP per capita.

2.2 Overview of the mining Sector

The oil and gas industry has been the main contributor to the economy of Gabon. However, the mining industry in Gabon has experienced some development in recent years and represents about 4% of the GDP, 6.4% of the country's exports and employs 2,000 people ("Société Equatoriale des Mines" (SEM)). The country is the world's fourth-largest producer of manganese. Gabon also has significant reserves of iron ore, and a range of other base and rare-earth minerals, including lead, zinc, copper, diamonds, niobium and titanium.

The government has implemented policies to increase investment in the mining sector, including the creation of a free-trade zone in the mining sector, the simplification of administrative procedures, and the establishment of a national mining company. The policies fall under the Industrial Pillar of the Strategic

Plan for Emerging Gabon¹⁸ (PSGE). The PSGE covers the period 2010-2025 and outlines the path towards the emergence of the country. The Industrial Gabon Pillar is based on greater development of the wealth of Gabon's subsoil, in order to derive more revenue and spin-offs for the national economy. The strategic objectives of the Industrial Pillar are: reviving oil production and optimising revenues from hydrocarbons and related industries, developing mining potential and building a clean metallurgy sector, and promoting the development of support industries.

2.3 Governance

Good governance is a major pillar in the development of the Gabonese mining sector and it is outlined in Chapter II of the Mining Code. Gabon has subscribed to the majority of transparency initiatives, such as the EITI. It is well supervised at the administrative level and at the level of mining companies holding exploration permits. Articles 46-49 of the Mining Code stipulates that the administrative governance of the mining sector is exercised at the level of all Acts related to the mining regulation (attribution, renewal, leasing, transfer, transmission or transformation of authorisations and mining titles).

It is also committed under the IMF's (International Monetary Fund) economic and financial programme concluded for the period from 2021 to 2024, to promote the transparency and accountability of stakeholders in the mining sub-sector in accordance with the reporting requirements of the EITI.

2.3.1 Mineral and Mining Policies

The **Mining Code** is the main legal mechanism controlling the allocation of mineral rights in Gabon and was adopted in 2019. According to King & Spalding (2015)¹⁹, the adoption of a new mining code, enacted through law no. 017/2014 dated 30 January 2015 and published in the Official Journal on 29 May 2015 (the "New Mining Code"), is intended to give a major boost to investments in this sector. The 2019 Mining Code regulates the institutional, technical, economic, and fiscal legal regime of mining activities and operations in Gabon. This New Mining Code is supported both by the government as well as the Gabonese citizens²⁰.

Within the framework of the examination of requests in a multidisciplinary regime, an ad hoc committee may be set up, at the request of the operator or in the interest of a quality public service, placed under the authority of the Minister in charge of Mines. The ad hoc committee only decides as an independent expert. Its opinions are reasoned. The composition, the functioning as well as the procedure for examining requests in the commission are fixed by regulation (Article 50, Mining Code).

Any legal entity wishing to carry out mining activities under the mining regime must constitute itself in the form of a public limited company. However, small-scale mining activities can be carried out in the form

¹⁸ https://www.cafi.org/sites/default/files/2021-02/Gabon_2015_SM%20A_PlanStrategiqueGabonEmergent.pdf

¹⁹ Ruxandra Lazar, 2015. New Mining Code in Gabon to give a major boost to investments, <https://kslawemail.com/77/429/pages/article7.asp>, Accessed on 23 May 2023

²⁰ African Mining Legislation Atlas, Gabon, <https://a-mla.org/en/country/Gabon>.



of a limited liability company. Research activities may be carried out in one of the forms of companies provided for by the texts in force.

In application of the precautionary principle, the State watches over the morality and reputation of the leaders of the corporate bodies of the companies holding mining titles in the mining regime. The State has the right to control international recruitment, in accordance with the provisions of the Labour Code (Article 52).

Any company holding a mining title under the mining regime is required to have a governance model in accordance with the provisions of the Organisation for the Harmonisation of corporate Law in Africa (OHADA) uniform act relating to the law of commercial companies and the Economic Interest Grouping. Any holder of a mining title referred to in paragraph 1 of the above must have in particular an identifiable head office allowing the administration in charge of mines to carry out checks and audits. Any decision taken in violation of the statutes constitutes a governance fault for the operator (Article 53 of the Mining Code).

The mining title may be suspended if the effects of the governance fault are likely to compromise the mining activities, in particular production, as well as the related investments. The effects of governance faults cannot be invoked against the State.

The State has the right to information, in particular concerning stipulations of Article 54 of the Mining Code on:

- the level of investments made, the state of financing and the outlook for the mining activities concerned, the performance of production and the results achieved;
- policies for the development and competitiveness of mining activities;
- agreements with partners, in particular for the purposes of operational performance, restructuring, change of control or industrial necessity.

The State benefits from a mandatory right to information in the event of a proposed change of control of the majority shareholder(s) of a company holding a mining authorisation or title. The obligation to inform entitles the State to a communication relating in particular to the terms of the planned operation and the identity of the new prospective shareholder(s), made at least three months before the final completion of this planned operation. Within the above deadline, the new prospective shareholder(s) must communicate to the State the strategic direction they intend to give to the company holding the authorisation or the mining title, in particular to increase its performance (article 55 of the mining code).

The New Mining Code provides that the State shall have the right – which can be waived - to systematically hold a 10% mandatory interest in the share capital of holders of exploitation permits. Such interest shall be free from all charges / encumbrances and is non-dilutable. In addition, the State shall have the right to acquire at market value up to 25% of the share capital of the holder of an exploitation permit. In case of sale or assignment of a mining title (except where such transaction takes place between affiliates), the State has a pre-emption right.

The mining sector in Gabon is governed by international texts and commitments and by various Law:

- Law No. 037/2018 of June 11, 2019 regulating the mining sector in the Gabonese Republic;
- Finance Law No. 031/2021 of March 23, 2022 determining the resources and expenses of the State;
- Decree No. 0023/PR/MPGM/ of 22 January 2021 setting the rules relating to the contribution of mining activity to local development in the Gabonese Republic; -
- Decree No. 00022/PR/MPGHM on the creation, powers and organisation of the General Directorate of Mines and Geology; -
- Order No. 001118/MMEPRH/SG/DGMG/DMC of 04 January 2007, setting the price of quarry materials used as the basis for establishing the extraction tax.

Natural resources, including all mineral substances contained in the soil, subsoil, continental waters and in the marine domain of national territory, remain the property of the State (Article 7, Mining law). The national mining sector policy is based on the following principles (Article 5, Mining law):

- good governance and transparency in the management and exercise of mining activities;
- respect for human rights impacted by mine exploitation activities;
- mandatory compensation for damage caused by mining activities;
- the social responsibility of operators and local development;
- compliance with hygiene, health, safety and environmental protection standards;
- equal treatment of operators;
- the standardisation of authorisations and mining titles by regime and by activity;
- the application of production sharing in the operating phase
- sustainable exploitation and reasonable local transformation of mineral substances extracted from the national territory;
- the training of nationals in the programs the mining sector;
- progressive and total rehabilitation of mining sites;
- the development and supervision of artisanal mining.

The New Mining Code provides for a list of strategic minerals. Included in the strategic minerals are: uranium, thorium, niobium, tantalum, lithium and rare earths. The State may declare that other substances are of economical or geostrategic interest. Classification as a strategic substance has no impact on the validity of a mining title, nor on its fiscal terms. However, the Minister in charge of Mines may impose, for economic reasons, that the holders of mining titles respect, for strategic substances, specific requirements relating to the construction and operation of the various structures and facilities. The State may build up stocks of strategic substances and set out production thresholds for such substances.

2.3.2 Mining Regulations

Applications for authorisation and mining titles are addressed to the Minister in charge of Mines. They must be registered with the service in charge of the mining cadastre or the mining property. Monitoring and issuance of authorisations and mining titles are carried out by this same service.

After their delivery, the authorisations and mining titles subjected to the surface royalty are obligatorily transmitted to the Official Journal, within thirty days, for publication. The directory of authorisations and



mining titles, with a cartographic representation allowing them to be located on the national territory, is made available to the public for consultation by any interested person.

The various licence and permit types available for the mining sector of Gabon are described below and summarised in Table 3..

The Geological and Mining Reconnaissance Authorisation

This authorisation is issued by the Minister in charge of Mines, and on his delegation, by the competent general manager, in the forms and conditions set by Article 100 of the Mining law. The administration in charge of the mines must notify the holder of a reconnaissance licence of any request for an exploration permit made by a third party, when it totally or partially covers the area covered by this reconnaissance licence. The holder of the reconnaissance licence has a period of one month from the date of notification to file an application for transformation of his reconnaissance licence into an exploration permit. This application must comply with the conditions applicable to mining exploration permits. In the event of filing of a request for transformation, the two requests are subject to competition, in accordance with the provisions of this law (Article 103, Mining Code)

In the absence of a request for conversion or if this is not presented in the required forms and deadlines, the requested surface may be allocated to the third-party applicant, without compensation for the first occupant of the perimeter, provided that his application meets the required conditions.

If the deposit is economically exploitable, the holder of the exploration permit is guaranteed the allocation of an exploitation permit, in the forms and conditions provided for by this law and its implementing texts.

Research permit:

The research permit is issued by order of the Minister in charge of Mines, for a period of three years, renewable twice for the same period, in the forms and conditions set by regulation. It confers on its holder, within the limits of its perimeter and indefinitely in depth, the exclusive right to prospect and search for mineral substances.

At the expiry of an exploration permit whose holder does not request renewal, or at the expiry of the last period of validity of the exploration permit not followed by a request for the allocation of an exploitation title, the perimeter concerned becomes free of all rights. The data and information collected as well as the studies and work carried out are acquired by the State. (Article 107, mining code)

Small scale mining:

Small-scale mining is exclusively reserved for companies with the required technical capacities and whose capital is held at least to 35% by natural or legal persons of Gabonese nationality. (Article 116, mining code). The small-scale mining permit can only be granted to the holder of an exploration permit.

Under penalty of rejection, any application for the allocation of a small-scale mining permit must be accompanied by a feasibility study and an environmental impact study (Article 117). It is submitted for validation to the competent services of the Ministry in charge of Mines and the Ministry in charge of the Economy. The environmental impact study incorporates the elements determined by the provisions of the texts in force. It is validated by the competent services of the administration in charge of the environment.



The small-scale mining permit is issued by order of the Minister in charge of Mines for a period of five years, renewable for periods of three years, as many times as necessary. This duration is two years renewable for certain types of deposits of mineral substances whose duration is deemed limited due to their specificity (Article 118, Mining Code).

Large-Scale Mining (Article 120 and following)

The large-scale mining permit is issued by decree of the President of the Republic, on the proposal of the Minister in charge of Mines. On pain of rejection, any application for the allocation of a large-scale mining permit must be accompanied by a feasibility study and an environmental impact study

The large-scale mining permit is transferable and can be leased, subject to a prior authorisation of the Minister in charge of Mines, after consulting the competent departments of the administration in charge of mines, which rule in particular on the legal, technical and of the purchaser and in accordance with the provisions of article 15 of this law.

Exploitation of Mining Waste

The tailings exploitation permit is granted to a legal entity, whose share capital is held at least to 25% by nationals, unless waived by the Minister in charge of Mines. The right granted to the holder of an aforementioned permit does not extend beyond this.

An environmental inspection must take place before the attribution of a mining title of exploitation of the residues. The exploitation permit for mining waste may be subject to withdrawal by the Minister in charge of Mines, in the event of non-compliance by the holder with his obligations.

Table 3 : The various licence and permit types and authorisations available for the mining sector of Gabon

Licence Type or Authorisation	Description	Duration	Renewable	Restriction
Geological reconnaissance authorisation	Not exclusive Maximum area 3 000 Km ²	1 year	Non-renewable	Geological reconnaissance authorisation
Exploration Permit	Exclusive right of prospecting and research, resulting from a reconnaissance licence	3 years	renewable two (2) times for a period of three (3) years each renewal	No more than 4 permits per operator
Small-scale mining licence	50 km ² , Exclusive right of prospecting, research and exploitation, 35% of national investments	5 years	2 years for certain substances depending on their specificity	
Large-scale mining licence	Determined by the volume of investments.	10 years 20 years	Per 5 years period Per 10 years period	
Exploitation licence for mining waste	Granted to a legal entity, whose share capital is held at least to 25% by nationals, unless waived	5 years	As many times as necessary	

	by the Minister in charge of Mines			
Collective Artisanal Mining Authorisation	Not assignable or transferable	2 years	Renewable if in compliance with general principles	
Individual Artisanal Mining Authorisation	Not transferable or transferable over 5 Km ²	2 years	Renewable if in compliance with general principles	

The allocation, renewal, transformation, leasing and similar operations, the transfer, as well as the transmission of authorisations and mining titles give rise to the payment of fixed fees according to Table 4.

Table 4: Summary of costs for mining permits in franc de la Communauté Financière Africaine (XAF)*

Licence Type or Authorisation	Granting (XAF)	First Renewal (XAF)	Second Renewal (XAF)	Amodian ir cession (XAF)
Geological reconnaissance authorisation	500 000	-	-	
Exploration Permit	1 500 000	1 500 000	3 000 000	10 % of transaction Value
Small-scale mining licence	7 500 000	15 000 000	15 000 000	15 % of transaction Value
Large-scale mining licence /Exploration Permit	15 000 000 – 30 000 000	30 000 000 – 60 000 000	-	15 % of transaction Value
Exploitation licence for mining waste/tailings	3 500 000	5 000 000	-	15 % of transaction Value
Collective Artisanal Mining Authorisation	250 000	500 000	-	-
Individual Artisanal Mining Authorisation	50 000	100 000	-	-

* 1 XAF = 0.0015 EUR (11.05.23)

2.3.3 Taxation and Royalties

The research, exploitation, collection and marketing of mineral substances under the mining regime, on the national territory, give rise to the collection of duties, taxes, royalties and penalties according to the



terms of assessment, liquidation and collection as fixed by this law. Unless otherwise provided, any administrative act which confers mining rights gives rise to the collection of the aforementioned taxes (Article 189, Mining Code).

According to Article 196 of the Mining Code, the surface tax is due at the beginning of each year and is determined on the basis of the surface area as well as the authorisations and mining titles held. The rates of rates of the Ad Valorem tax applicable to the mining titles of exploitation of the mining regime are fixed in the mining agreement shown in Table 5.

Table 5: Ad Valorem tax per mineral category

Mineral	Royalty rate (%)
Base and other substances	5 - 10
Precious metals	5-8

The mineral substances of the mining operation, with the exception of those placed in stock on the extraction sites, are subject to a mining royalty proportional to their value at the extraction sites. The proportional mining royalty is due by any holder of an exploitation title under the mining regime Article 202.

- Products resulting from local processing are not subject to the proportional mining royalty.
- The export, import, collection and marketing of precious substances as well as the manufacture and transformation of works in precious metals give rise to the payment of a tax, the rate of which is set in the following table:

	Royalties Amount in XAF
Export or commercialization	5% of market value
-Precious metals	
- Precious stones	
Import	
- Diamond	10% of market value
- Other substances	8% of market value
Certificate of origin	
- Diamond	1 000 000
- Other valuable substances	5 000

The rate of exit duties applicable to the export of mineral substances cannot be greater than 1%.

Customs and Excise duties relating to permits



Exploration phase:

- Equipment, materials, supplies, machines, tools and capital goods included in the programme approved by the Ministry in charge of Mines as well as commercial vehicles, except those intended for the transport of persons, temporarily imported into Gabon by Holders of mining agreements are admitted to the normal temporary admission regime, in accordance with the provisions of Article 166 of the CEMAC Customs Code (Article 227, Mining law).
- Equipment, materials, supplies, machines, tools, and products directly necessary for geological and mining research, including those intended for constructions and installations, are admitted free of customs duties and taxes in accordance with the provisions of Article 276 of the CEMAC Customs Code. This exemption also extends to spare parts exclusively intended for machinery and equipment imported as part of mining reconnaissance or research activities (Article 228, Mining law).

Operation phase:

- Machines, devices and gears temporarily imported into Gabon by mining companies during the exploitation phase are admitted to the special temporary admission regime, in accordance with Article 171 of the CEMAC Customs Code (Article 231, Mining law)
- Materials, machines, equipment, tools and materials intended directly and definitively for mining benefit, on importation, from a reduced rate of 5%. Inputs used exclusively in the local transformation process benefit from an exemption from customs duties and taxes. The list of products and inputs referred to above eligible for the exemption from duties and taxes above, is indicated in the mining agreement. It is regularly updated at the initiative of the operator. The duration of the period of realisation of the investment extends from the date of signature of the mining convention of exploitation to the realisation of the first commercial product sale (Article 232, Mining law).

Exemptions

The **New Mining Code** stipulates that the following exemptions will apply for mining title holders and their sub-contractors:

- **Exploration phase:**
 - domestic VAT in respect of certain goods for carrying out geological and mining activities, as set out by a ministerial order;
 - the corporation tax;
 - the flat minimum corporation tax (*impôt minimum forfaitaire*);
 - the business licence tax;
 - property tax on property other than houses; and
 - registration fees on deeds bearing capital increase and on professional leases.
- During the Operation phase, holders of mining titles relating to projects having an exploitation period of at least 10 years, and their sub-contractors, will be exempted from the payment of the

corporation tax and the flat minimum corporation tax during the first 5 years after the commencement of the exploitation phase. This tax holiday can be up to 8 years for the most important mining projects, *i.e.* those having a lifespan of 20 years or more. However, the tax holiday would cease to apply to those mining title holders who get a return on investment during the exemption period.

2.4 Environment

The “Gabon Vert”²¹ or “Green Gabon” operational plan, a major pillar of the PGSE, advocates the sustainable use of natural resources to ensure the preservation of its natural capital for current and future generations. The Mining Law in its Article 162 prescribes, that holders of authorisations and titles mining companies are required:

- to draw up and have validated the plans for the prevention of industrial risks by the administration in charge of mines and any other competent administration;
- to establish and regularly update plans with a view to organising the means, equipment and methods of intervention in the event of a disaster in a facility.

The measures provided for in the emergency plans are subject to regular tests by the holder of the authorisation or the mining title. These plans are forwarded to the Minister responsible for Mines, to the competent administrations, as well as to the authorities of the local communities concerned.

Holders of authorisations and titles mining companies are required to conduct all operations governed by this law in a sustainable manner and responsible, in particular by using means efficient and rational in order to ensure optimal management of the resources exploited, in strict compliance with the environment in accordance with the regulations in vigor. Holders of authorisations and mining titles are required to rehabilitate mining sites as and as research and operating (Article 163, Mining law).

Holders of authorisations and mining titles, mining companies are required to establish and update regularly the environmental and social management plan, as defined in the texts in force in the matter. These plans are forwarded to the Minister responsible for Mines, the Minister in charge of the Environment and the other competent administrations as well as to the authorities concerned, to monitor its application effectiveness (Article 164, Mining law)

The Gabonese government has expressed an interest in developing ASM in alignment with its ‘Green Gabon’ vision, but there is no mention of any environmental obligation with respect to the practice of artisanal mining. In general, ASM’s main impacts in critical ecosystems in Gabon appear to relate to impacts on biodiversity, forest and water.

2.4.1 Environmental Regulations

Framework law n°007/2014 relating to the Protection of the Environment in the Gabonese Republic.

²¹ <https://gabonvert.com/gabon-vert/>



This law defines the principles and means of environmental protection in Gabon, including the preservation and sustainable use of natural resources, pollution control, environmental education, and environmental information and monitoring. It refers to a series of pertaining plans and tools, such as a climate action plan, a national environmental plan and an environmental information system.

The regulation establishes the requirement of conducting an environmental impact assessment for developments that may harm the environment. This supports the necessary project appraisal with due public consultation. There are also provisions concerning auditing, information provision, sanctions, and transitory dispositions.

This law also refers to air quality standards, emissions monitoring, inventorying of air pollutants, air monitoring as well as requirements related to waste reduction and reuse.

2.4.2 Tangible and Intangible Cultural Heritage

Tangible and intangible cultural heritage are not mentioned in the laws and regulations governing the mining sector. Cultural heritage sites are governed by specific laws.

Mining activities can have significant impacts on the cultural heritage of a region. In Gabon, mining has been identified as a potential threat to the country's cultural heritage due to the potential destruction of sacred sites and the displacement of indigenous communities.

The Minkébé National Park in Gabon, which is home to several indigenous communities and contains important cultural heritage sites, has been identified as particularly vulnerable to mining activities. A study by Laurance et al. (2015)²² found that mining could cause significant damage to the park's ecosystems and cultural heritage sites, and recommended that mining in the area be prohibited to preserve the park's cultural and environmental values.

In addition to the potential physical destruction of cultural heritage sites, mining can also have indirect impacts on cultural heritage through the displacement of indigenous communities. The Belinga iron ore deposit, for example, is located in an area that is home to several indigenous communities, including the Bagyeli and Bakoya peoples. The construction of mining infrastructure and the influx of outside workers can disrupt traditional livelihoods and social structures, potentially leading to the loss of cultural heritage (Bretzel et al., 2014)²³.

2.4.3 Mine Closure

Articles 153, 154 and 155 of the Mining Code prescribe that any holder of an authorisation or a mining title is required to implement preventive rehabilitation measures. Any holder of an authorisation or a

²² Laurance, W. F., et al. (2015), "Averting Biodiversity Collapse in Tropical Forest Protected Areas", *Nature*, Vol. 489, No. 7415, pp. 290-294.

²³ Bretzel, F., et al. (2014), "The Belinga Iron Ore Deposit in The Bélinga Massif, Northeast Gabon: Potential Impact on the Socioeconomic Fabric and The Environment", *Resources Policy*, Vol. 39, pp. 31-42.

mining title is required to define a plan for monitoring and quality monitoring of mine site rehabilitation, in accordance with the closure plan.

Before ceasing to use the facilities or before the end of each phase of work or, at the latest, before the final cessation of work, the operator must produce a closure plan including the measures they plan to implement, in order to guarantee the respect of its obligations towards environment, safety and public health. The closure plan must be submitted to the administration in charge of mines and the administration in charge of the environment, at least three years before the definitive cessation of mining activities.

At the end of the rehabilitation works at the mine sites, and when such work has been carried out in accordance with the closure plan, the Minister in charge of Mines issues a receipt for the successful completion of the works. This receipt is issued after the administrations in charge of mining as well as the environment have signed it off. The mine site closure plan must guarantee the transfer to the State of social infrastructure. The content of the monitoring and surveillance plan is defined by regulation. Article 156 of the Mining Code authorises mining companies to constitute a financial provision for the rehabilitation of mining sites. The financial provision referred to in the above paragraph is to be deposited in a local bank accredited to international standards. This provision can be used by the holder of an authorisation or a mining title at any time for the sole purpose of fulfilling the rehabilitation obligations at the respective mining sites.

2.4.4 Water

The various texts regulating the water sector in Gabon include:

- Law No. 024/2016 of December 29, 2016 establishing the legal regime for the production, transport and distribution of electrical energy and drinking water in the Gabonese Republic.
- Decree No. 0598/PR of 29 December 2016 promulgating Law No. 024/2016 establishing the legal regime for the production, transport and distribution of electrical energy and drinking water in the Gabonese Republic;

Gabon is a country with large quantities of renewable water. The dense hydrographic system is made up of an abundant network of permanent waterways. This resource is used in agriculture, for domestic uses and in industry.

Water resources are of great importance in Gabon and the mining industry can have significant impacts on the quantity and quality of water in the country. The sector is relatively small, but it still requires significant amounts of water for operations such as processing and dust suppression.

Mining operations can consume vast quantities of water, leading to water scarcity in areas where water is already limited. Furthermore, mining activities can pollute nearby water resources through the discharge of chemicals, waste materials, and heavy metals, potentially affecting the health of both humans and aquatic life. The impact of mining on water resources has been researched on by Kanik et al. (2019)²⁴, who examined the Mabounié district. The authors found that mining activities have significant

²⁴ Kanik, E. M., de Wit, M. J., Ngome, I. E., & Ngome, M. D. (2019), "The Impact of Mining on Water Resources in Gabon: Mabounié District Case Study", *Journal of Geochemical Exploration*, Vol. 203, pp. 50-63.



impacts on water resources in the district, including reduced access to clean water, increased water pollution, and decreased water availability for agriculture and other uses. The study highlighted the need for improved water management practices in the mining sector to minimise the negative impacts on water resources and host communities.

To address these issues, many mining companies are implementing water management strategies that focus on reducing water consumption, minimising pollution, and recycling water where possible. This includes the use of advanced water treatment technologies, such as reverse osmosis and desalination, to clean and reuse water.

Water management practices in the mining sector in Gabon have been studied by Obame et al. (2020)²⁵. The authors noted that there is a need for more stringent regulations and monitoring to ensure the safety and environmental performance of tailings dams.

Water recycling and reuse are also being considered in the Gabonese mining industry as a way to reduce water consumption and improve environmental performance. However, the adoption of water recycling and reuse is still in its early stages, and there are several challenges to implementation, including the lack of technical expertise and the high cost of implementation (Obame et al., 2020)

2.5 Social

2.5.1 Land-use and Mineral Rights

The mining exploitation title is equivalent to a declaration of public utility, from the date of its publication in the Official Journal. Before the expropriation procedure, an assessment of the property and rights is carried out, including the damages that may be suffered by the occupants of the area of influence of the mining title. Their indemnification or compensation must take place before the effectiveness of the expropriation. The expropriation procedure is conducted by the State within a maximum period of one year, after compensation, when the expropriation does not concern dwellings.

Compensation or indemnities paid to third parties affected by the expropriation measure are the responsibility of the holder of the mining exploitation title. The terms and conditions of compensation payments applicable in the mining sector, for the holder of the mining title, are fixed by decree. In the absence of specific regulatory provisions applicable to the mining sector, the terms and conditions of compensation are governed by the provisions of common law. No compensation is due to any third party who occupied illegally the areas covered by the declaration of public utility.

The National Land Allocation Commission (CNAT)²⁶ created by decree N°00212/MEPPDD of July 21, 2017. The main objective of CNAT is to develop the Land Allocation Plan, supervise and define the use of the territory in order to guarantee the compatibility of the socio-economic activities, environmental integrity and optimisation of natural resource management.

²⁵ Obame, R., Madiangué, L. and Djieto-Lordon, C. (2020), "Water Management Practices in the Mining Sector in Gabon, Journal of African Earth Sciences, Vol. 162, Issue, 103670.

²⁶ <https://www.cnat-gabon.com/?lang=en>



The objective of CNAT's National Land Allocation Plan is to resolve the problems of overlapping permits between mining and logging. The Land Allocation Plan also affects sectors such as agriculture. This plan considers three aspects, two of which relate to land issues:

- **the social component:** the participatory mapping of all the villages to determine the delimitation of the permits and the use of the land by the villagers, and to draw up the national law on the allocation of the land. There are cities entirely covered by permits, which complicates the cohabitation between farmers and populations deprived of their agricultural lands and cultural sites. This leads to conflicts. Populations must be protected when granting permits.
- **the land component:** the country has also made commitments to preserve nature. Forest permits are therefore FSC certified and mining in specified forest areas is prohibited. This leads to conflicts between the two types of land-use.

Appropriate arrangements need to be put in place to allow all these activities to be undertaken without affecting each other and in a sustainable manner. Gabon is committed to securing rural land.

2.5.2 Artisanal and Small-Scale Miners

Article 4 of the Gabonese Mining Code stipulates that ASM is any operation which is involved in extracting useful mineral substances by rudimentary, manual, traditional or semi-mechanised methods and processes. Furthermore, Article 4 of the Mining Code also states that artisanal mining activities are conducted in accordance with the following general principles:

- the prohibition of the possession and use of chemicals and explosives on the sites;
- the exclusive allocation to nationals of authorisations mining;
- the prohibition of any semi-mechanised artisanal mining on the perimeter of a permit of research;
- the prohibition of artisanal mining of any kind on the perimeter covered by an operating title;
- the ban on the use of labour that is below age (child labour).

The holder of an operating ASM authorisation is required to:

- to start operations within three months, following the date of allocation of the exploitation right;
- to declare its production quarterly to the administration in charge of mines and keep a register of production and sales;
- to comply with the obligations relating to the protection of the environment;
- to explore and exploit the resource in the rules of art;
- to sell its production only to approved physical and moral persons (Gold Buying Centres "Comptoir")

The holder of an operating ASM licence is subject to the quarterly payment of 5% of the market value of its production except derogation granted by the Minister in charge of Mines under the conditions set by regulation. To practice ASM in Gabon, there are two types of authorisations required:

- **individual ASM Authorisation**, also called an expert card, is issued by the administration in charge of mines for a period of two years renewable. It confers on its holder, within the limits of its perimeter, the right to exploit the mineral substance precisely for which it is attributed.
- **collective ASM Authorisation** is only open to mining cooperatives, cooperative societies and assimilated. Artisanal miners can join together in a mining cooperative. The authorisation is

granted by order of the Minister in charge of Mines for a period of two years, renewable, in the forms and conditions set by regulatory route. It confers on its holder, within the limits of its perimeter, the right to exploit the mineral substance precisely for which it is attributed. The area of an operating permit collective ASM cannot exceed 5 Km². The holder of a collective artisanal mining licence is subject to mining taxation.

2.5.3 Labour Practices

The Labour Code of 1992 sets out standards for working conditions and the protection of workers' rights, including measures to prevent accidents and occupational diseases.

2.5.4 Societal and Community Aspects

The proceeds from mining revenues go into several funds, including the local community development fund intended to finance socio-economic projects for the benefit of local communities in the region where the mining sites are located. It is also used to finance economic reconversion programmes in the locality concerned. The achievements made in the context of the development of local communities are subject to an obligation of traceability and appear in an annual report prepared by the Minister of Mines and presented to Parliament.

The holder of a mining exploitation title, according to his possibilities, must carry out other actions, which include Corporate Social Responsibility (CSR) within the framework of his policy of social responsibility, validated by the Minister in charge of Mines and appended to his mining agreement. The amounts allocated to the realisation of these actions are tax deductible.

The sums intended to supply the local community development fund are liquidated each year by the administration in charge of the mines. The determined amounts are managed jointly by the administration in charge of the mines and the mining company concerned under the conditions provided for by the mining agreement.

The allocation of resources for the local community development fund is decided by a management committee which includes:

- the administration in charge of mines;
- the administration in charge of the economy;
- the local authorities concerned;
- the holder of the mining title concerned;
- representatives of local populations

The **New Mining Code** stipulates the following Local Content requirements:

- mining title holders must contribute to a training fund and to a mining support fund;
- in terms of employment of national workers, the title holder and its sub-contractors must:
 - hire in priority Gabonese workers with equal qualifications and experience;
 - set up an annual training program for their employees;
 - create internship positions; and

- set up a plan for the transfer of know-how and the increase of the number of Gabonese workers in the company.
- preference to be given by mining title holders and their subcontractors to Gabonese companies provided that they offer equivalent prices, quantities and delivery terms. It is worth noting that the New Mining Code provides that preference for Gabonese companies is the counterpart of the tax and customs benefits granted under the mining code. It can be inferred from this provision that such benefits could be suspended, should the mining title holder not comply with the requirement relating to preference to be given to Gabonese companies;
- minimum portion of activity to be set aside for small and medium-sized companies owned or controlled by Gabonese companies to be clarified by a regulation. Such minimum portion shall range between 5% (during exploration, development and between the 5th and the 10th year of exploitation) and 15% (beyond the 25th year of exploitation); and
- mining conventions may set out the share of the production which is to be transformed in Gabon.

2.5.5 Operational Health and Safety (OHS) and Labour Regulations

The Gabonese mining sector is subject to Occupational Health and Safety (OHS) and labour regulations aimed at protecting the well-being of workers and ensuring fair labour practices. The government has also developed partnerships with international organisations to support the implementation of OHS and labour regulations in the mining sector. For example, the International Labor Organization (ILO) has worked with the Gabonese government to improve labour inspection and enforcement mechanisms (ILO, 2021).

In addition, any holder of a mining authorisation or title is required to repair the damage caused to persons, property and the environment as a result of his mining operations.

The mining activities not subject to industrial civil liability are fixed by decree. The liability of the holder of a mining authorisation or title is also engaged in the event of direct or indirect contamination, due to mining operations having an impact on human health or resulting in particular in the degradation of the environment, in accordance with the regulations in force (Article 166).

The coverage of work accidents occurring during mining activities is governed by the provisions of this law and common law. A list of occupational diseases attributable to mining activity, regularly updated, is drawn up in accordance with the provisions of the texts in force, in consultation with the Minister in charge of Mines (Article 167).

2.5.6 Public Health and Safety

The Ministry of Health is responsible for overseeing public health in Gabon. It has developed policies and programs to address various public health concerns, including malaria and communicable diseases such as and HIV/AIDS, as well as non-communicable diseases such as diabetes and hypertension. The government has also established health centres throughout the country, providing access to medical care and treatment to communities.

In addition, the Gabonese government has implemented regulations to ensure public health and safety in the mining sector. Holders of mining authorisations and titles are required to take the necessary measures

to ensure the safety and protect the health of workers. These measures include medical follow up, risk prevention actions professionals, information and training actions for workers, the establishment of organisations and means guaranteeing a better level of protection of the health and safety of workers. These measures must be scalable to adapt to changing circumstances, respecting all environmental provisions and actions relevant in this regard (Art. 160, Mining Law).

2.6 Assessment of the Mining Regime of Gabon with respect to ESG objectives

The ESG framework of Gabon is still in its early stages of development, but the government and various stakeholders are making efforts to improve the sustainability of the country's economic activities. Legal and regulatory frameworks are implemented to promote sustainable development and address ESG issues in the mining industry. Overall, the Gabonese ESG framework in the mining industry is focused on promoting sustainable development, protecting the environment, and ensuring that mining activities benefit local communities and the Gabonese people.

2.6.1 Environment

The government has implemented environmental regulations that require mining companies to conduct environmental impact assessments and adopt mitigation measures. Generally, Gabon's environmental policies aim to balance the country's economic development with the need to protect its rich natural resources and biodiversity. These policies have helped to mitigate the impact of mining activities on the environment and ensure that the mining industry operates in a sustainable and responsible manner.

2.6.2 Social

The Gabonese government has established requirements for mining companies to engage with local communities and obtain their consent for mining activities. The government has also established a framework for community development agreements that require mining companies to invest in local development initiatives.

The government has established labour standards that require mining companies to adhere to international labour conventions and local labour laws. The government also promotes the development of local skills and capacity-building in the mining industry.

2.6.3 Governance

The 2019 Mining Code encourages transparency and a thriving mineral ecosystem. Gabon is a member of the Extractive Industries Transparency Initiative (EITI), which aims to promote transparency and accountability in the extractive industries. The government also requires mining companies to disclose their payments to government entities. The Gabonese government is working to strengthen its institutional capacity to regulate the mining industry and address ESG issues. The government has established a regulatory agency, the Mining Regulator (REGOM), to oversee the implementation of mining regulations and promote sustainable development.

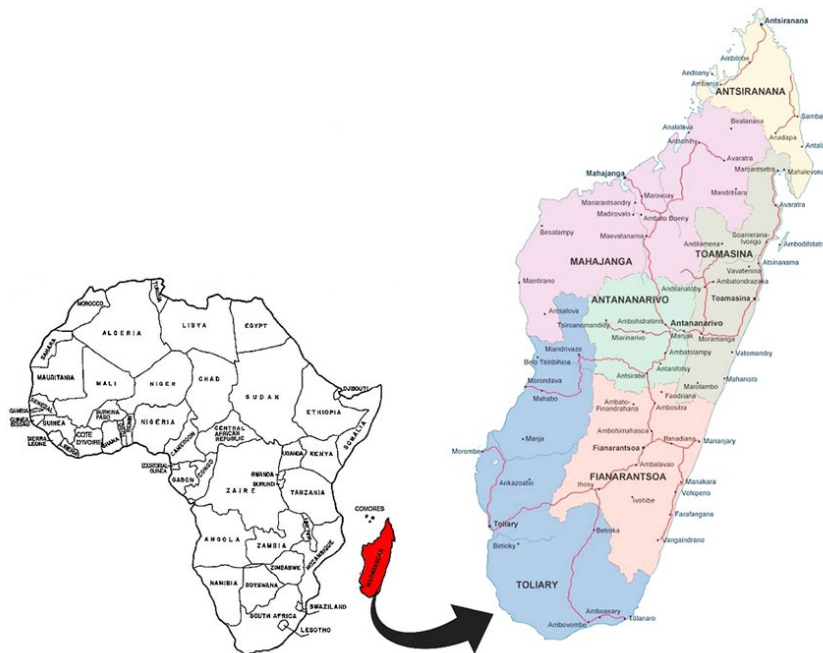
3 Madagascar

3.1 Country Profile

Madagascar is an African island country of 581,540 square kilometres located in the Indian Ocean off the coast of Southeast Africa. The population of Madagascar is estimated to be 29 million (2022 estimates), with the majority of the population residing in rural areas. The capital city of Madagascar is Antananarivo. It is located in the central highlands region of Madagascar. The official languages of Madagascar are Malagasy and French.

Madagascar's GDP is estimated at US\$ 14.47 billion (2021, World bank). The economy of Madagascar is primarily based on agriculture, with the main crops being rice, cassava, and coffee.

Madagascar is also known to have significant mining potential, with a variety of minerals being commercially exploited. One of the most prominent minerals mined in Madagascar is graphite. The country has the world's third-largest known graphite reserve, with deposits mostly found in the south-eastern region.



3.2 Overview of the mining Sector

The mining industry plays an important role in the Malagasy economy, with two or three significant exploitation projects and a large number of operators conducting exploration activities. Madagascar has significant mining potential. However, the development of the sector has been slowed down by successive political crises (the most recent of these being in 2009).

Madagascar also has significant deposits of minerals such as ilmenite, chromite, coal, nickel, zircon and graphite. The Ambatovy nickel mine, located in the eastern part of the country, is the largest foreign investment in Madagascar's mining sector. The mine produces nickel and cobalt, which are mainly exported to China, Japan, and Europe. In addition to minerals, Madagascar also has significant gemstone deposits, including sapphires, rubies, and emeralds. These gemstones are mainly mined via traditional methods by local communities and are also exported to various countries worldwide.

The key institution governing the mining sector of Madagascar is the Ministry of Mines and Strategic Resources²⁷. Through the Mining General Management Office, the Ministry of Mines and Strategic Resources is responsible for the management, supervision and control of mining activities. In addition, the Ministry of Mines and Strategic Resources, the Bureau du Cadastre Minier de Madagascar/ Madagascar Mining Cadastre Office (BCMM) is the other key government stakeholder in the management of the mining sector. The BCMM is responsible for the management and control of mining permits and the mining registry, including the preparation and documentation of the grant, renewal, transformation, transfer and cancellation of mining permits

3.3 Governance

The governance of the mining sector has been deeply disrupted following numerous crises that the country has experienced periodically from 1972 - 2009. However, the government of Madagascar has collaborated with various partners in acting to reverse this trend. The Africa Development Bank's country strategy paper 2005-2009, assessed Madagascar's governance profile according to the main elements of governance identified in the Bank Group policy adopted in 1999²⁸. These elements are accountability, transparency, stakeholder participation, anti-corruption and the legal and judicial framework. This assessment showed that the Republic of Madagascar has made progress in promoting good governance in recent years. This progress was attributed, in particular, to:

- the creation of new institutions responsible for promoting good governance,
- the improvement of the legal framework in several areas, and
- the preparation of development strategies integrating the promotion of good governance among the priorities of the country.

This assessment also found that, in general, and despite this progress, much remains to be done to establish good governance in all aspects of the country's management. The 2022-2026 Country strategic document highlighted that: previous strategies contributed to addressing the challenges of governance and fragility²⁹. To this end, the strategy considers reforms aimed at improving the mobilization of domestic resources and building capacities to combat corruption. In addition to improving sector governance in the two (2) priority areas, the Bank's support through budget support and institutional support will also support reforms in order to promote enabling environment to attract private sector investment. As part

²⁷ <https://mmrs.gov.mg/>

²⁸ African Development Bank Group, 2005-2009- Madagascar Country Strategy Paper, <https://www.afdb.org/en/documents/document/2005-2009-madagascar-country-strategy-paper-13007>

²⁹ African Development Bank Group, 2022-2026, Madagascar Country Strategy Paper, <https://www.afdb.org/en/documents/madagascar-country-strategy-paper-2022-2026>



of the political dialogue in synergy with the other partners, emphasis will be placed on strengthening budget transparency and the effectiveness of public expenditure management.

In general, and despite this progress, much remains to be done to establish good governance in all aspects of the country's management. Furthermore, the Mining Code of 2005 does not include any transparency measures. However, Madagascar joined the EITI in 2008 and has made meaningful progress (EITI, 2020). On 30 March 2023, The Council of Ministers adopted the decree governing the granting of legal status to Extractive Industries Transparency Initiative - Madagascar (EITI Madagascar). EITI Madagascar is responsible for compliance with international standards to be applied by all EITI member countries in the oil and mining sectors.

3.3.1 Mineral and Mining Policies

The Malagasy legal framework relating to the mining sector comprises the following statutes:

- Law 005-022 dated 17 October 2005 amending Law 2001-031 dated 8 October 2002 establishing a special regime for large-scale investments in the Malagasy mining sector (LGIM);
- Law 99-022 dated 19 August 1999 on the Mining Code, amended by Law 2005-021 dated 17 October 2005 relating to the Mining Code;
- Decree 2006-910 dated 19 December 2006 implementing the Mining Code amended by Decree 2010-023 dated 25 January 2010;
- Decree 2003-784 dated 8 January 2003 implementing the LGIM; and
- Inter-ministerial Order 12032/2000 dated 6 November 2000 regulating the protection of the environment in the mining sector.

The draft Mining Code under review was validated by the Council of Ministers on April 12, 2023 and will be presented to Parliament in May 2022. The major changes concerns were:

- the halving of permit area and duration of mining permits,
- The mining taxation (significant increase in mining royalties and rebates which are now set at 5% of the FOB (Free On Board) value,
- the creation of the mining fund for social and community investment,
- the constitution of mineral substances,
- the introduction of a quarry regime,
- the establishment of a central agency (Centrale de l'or de Madagascar "COM") for the sale and purchase of gold
- the establishment of precious gems counters,
- introduction of special measures concerning governance, respect for human rights, gender and environmental protection.
- the following in the Draft Mining Code is also highlighted:

- at the Institutional Level, the draft law affirms the authority of the mining minister and establishes a structure of state bodies to oversee and administer different aspects of the country's mining activity.
 - the law gives the CNM (National Mining Committee -Comité National des Mines), which was created under the existing legislation, a more active role by insisting on its synergising powers to ensure that central and local government and the private sector work together effectively to develop the country's mining sector.
 - the law also introduces a newly named Mining Brigade (Brigade minière) responsible for policing mining activities, including uncovering and recording mining offences. The bill proposes some new structures, too.
 - the Geology Bureau of Madagascar (Bureau de Géologie de Madagascar) is tasked with managing geological data relating to the country's mining potential.
 - a National Mining Fund (Fonds Minier National) is created for the purpose of channelling part of the State's revenue from mining activities into national and local development programmes.
 - the law also establishes a special body to represent the State in transactions relating to the sale and processing of gold.

The draft law also identifies Strategic Mining Substances (SMS) as all substances that, depending on the national and international economic situation at the time, are of particular interest to the Nation with regard to their critical nature and the geostrategic context. The list of strategic substances is fixed by regulation, after consultation with the CNM or, failing that, the groups of mining operators. The holder of a permit containing strategic mining substances is authorised to sell on the national market or to export its production at the market price. However, the State reserves the right to determine the production quota that the holder must sell to domestic industry, based on actual needs.

3.3.2 Mining Regulations

In regulating the mining sector, the Ministry of Mines and Strategic Resources and the BCMM have paid special attention to the following points:

- maximisation of state revenues;
- community development;
- proper management and rehabilitation of the environment;
- promotion of the use of local goods and services;
- creation of jobs and valorisation of national skills;
- proper governance of the mining sector; and
- a policy of first come, first served with respect to the grant of mining permits.

The granting, renewal, transfer and other related activities, suspended since 2010, have been lifted by the Council of Ministers on 30 March 2023. This was done in order to concretise the President of Madagascar Solemn Promise (velirano number 10), which relates to the sustainable management of natural resources



in Madagascar. The Board approved the gradual review of mining permit applications that are pending at the BCMM.

Standard permits are issued by the Minister in charge of Mines. According Article 42 of the Mining Code, the Minister can delegate his power. The permits for Small Operators (“PRE”) are granted by the Interregional Director of the Ministry in charge of Mines. Any request for a mining permit is written on a form to be obtained from the Mining Cadastre office. After correctly completing the form, the applicant submits the application to the said office against receipt indicating the day, hour and minute of deposit, which are authentic (Article 43, Mining Code).

Only Malagasy registered entities can own mining rights. No restrictions apply regarding foreign ownership of mining companies. However, this may change depending on the outcome of the ongoing revisions to the Mining Code.

The Ministry of Mines and Strategic Resources plan to establish a Priority Plan. With the Priority Plan, the renewal of permits for small operators (PRE) will be examined first, followed by mining permits for research or (PR) and finally operating permits for large industries or (PE). The renewal of the PREAs are prioritised because these permits are the majority. Furthermore, the plan to clean up the Mining Cadastre will be implemented.

According to the Law 99-022 dated 19 August 1999 of the Mining Code, amended by Law 2005-021 dated 17 October 2005 relating to the Mining Code, the following mining permits may be allocated: Exploration Permit, Research Permit and Exploitation Permit. These permits are defined below and summarised in Table 6.

The Exploration Permit (“PR” permit):

- This permit gives the holder the exclusive right to carry out prospecting and research activities within a defined area.
- Does not vary depending on the type of mineral or the location of the activity. The main principle set out by the Mining Code is the ‘first come, first served’ approach. In addition to this, the following requirements should be satisfied:
 - Only Malagasy registered entities can acquire exploration permits (justified by the certificate of incorporation and memorandum and articles of association).
 - The applicant must provide proof of its capacity to carry out the activities (e.g., that it is not subject to any ban).
 - The applicant must pay the annual mining administration fees corresponding to the requested squares metres 25% of the fees as a processing fee upon filing the application dossier;
 - 56% of the fees 20 days after filing the application; and
 - 19% of the fees within five days of the BCMM decision to grant the permit (failure to pay results in cancellation of the granting decision).
 - The requested square metres must be confirmed as available (subject to a BCMM check based on the exact location of the squares provided by the applicant).
 - The limits on the number of squares the applicant can request must be observed (i.e., an entity can own several R permits, but the R permits cannot cover more than 10,000 square kilometres or 25,600 squares).



- The references of the permits held by the applicant must be confirmed.
- An investment plan and exploration programme, duly signed by the applicant, must be submitted.
- An environmental commitment letter must be submitted confirming that the applicant will not commence activities until it has obtained the necessary environmental authorisation.
- The Exploration Permit covering a defined area will be granted by order of the Minister of Mines or his representative, within 30 working days, to the first eligible person to submit an application dossier that fulfils all requirements.
- The Exploration Permit may be transferred. The transfer agreement is signed and filed together with any relevant paperwork (e.g., corporate authorisations) at the BCMM, which then passes the transfer file to Ministry of Mines. In theory, approval is granted within 35 days.

The Exploitation Permit (“PE” permit):

- Covers the minerals mentioned in the permit that exist within the permit area for which it is granted. However, if the permit holder discovers a new mineral that was not initially mentioned in the exploration permit, they may request an extension of the permit to cover the discovery.
- Gives the holder the exclusive right to undertake exploitation and exploration within the defined perimeter.
 - Any application for an E permit for which an environmental impact study is required must be accompanied by a letter of commitment not to start any mining activity before obtaining the environmental permit, after approval of the environmental impact assessment document prepared by the applicant in accordance with the environmental regulations in force.
- is issued within 30 working days of submission of the application to the BCMM.

The Research Permit and Operating Permit

This permit confers on the holder, within the limits of its perimeter and for the period of its validity, a right of priority to apply for an **Exploitation Permit** or ‘E’ permit covering all or part of the perimeter covered by the R permit.

Table 6: The various licence and permit types and authorisations available for the mining sector of Madagascar

Licence Type or Authorisation	Description	Duration	Renewable	Restriction
Exclusive authorisation for Perimeter(AERPs)	Exclusive prospecting right maximum Area 15 000 Km ² equivalent 38 400 square	3 months	Not Renewable	
Exploration Permit « R »	Exclusive right of prospecting and research. Maximum Area: 1 000Km ² equivalent to 2 560 square	5 years	renewable two (2) times for a period of three (3) years each renewal	

Exploitation Permit « E »	Exclusive right of prospecting, research and mining. Maximum Area: 10 000Km ² equivalent to 25 600 square	40 years	renewable one or more times for a period of twenty (20) years for each renewal	
Research and Operating Permit for Small Operator “PRE”	Exclusive right of prospecting, research and mining Maximum Area: 100 Km ² equivalent to 256 square	8 years	Renewable one or more times for a period of four (4) years for each renewal.	

3.3.3 Taxation and Royalties

On the fiscal front, the draft Mining Code stipulate that mining operators are subject to the ordinary tax regime as shown in the table below

Tax Type	Tax Rate
Income Tax	20% of the net profit
Non-Income Tax	20% of the net profit
Non-Resident Income Tax	Withholding tax of 10% of any income realised in Madagascar by a non-resident
Tax on dividends	10% with respect to dividends paid to non-resident shareholders
Salary Income Tax	20% of the salary
Tax on income from movable capital (Impôt sur les revenus des capitaux mobiliers)	20% on loan proceeds
Value-Added Tax	20%
Registration fees	From 0.5 to 5%, depending on the nature of the transaction

Mining Royalty

Mining royalties are payable on the sale of the mineral and differ according to metal or mineral type as shown in the table below:

Mineral/Metal	Royalty Rate (%) -2005 Mining Code
Industrial Stones (cut)	3
Industrial Stones (uncut)	6

Precious Stones (cut)	4
Precious Stones (uncut)	8
Minerals such as Nickel & cobalt	4
Precious Metals	4

Mining royalties are a tax levied on operators' Gross profit, levied on the first invoicing of mining transactions and the rate of which is 2% according to Article 117 of the mining code. They are divided into mining royalties (0.60%) collected on behalf of various administrations and other central organisations, and in the rest rebate (1.40%) collected for the benefit of the Autonomous Provinces, Regions and Communes. The rates of distribution of revenue from mining royalties are set as follows:

- 10% for the Mining Cadastre office
- 15% for the Gold Agency;
- 10% for the National Mines Committee;
- 65% for the general budget on behalf of the Central Department in charge of Mines, the Interregional Directorate in charge of Mines concerned and the entity in charge of the Mining.

Taxes to be paid by foreigners engaged in the marketing or export of stones precious stones are levied at the rate of 6% and are distributed as follows by DSTM:

- 2% mining royalty;
- 2% entering from the General Budget and
- The remaining 2% is intended for the Ministries concerned, in particular the Ministry of Energy

In addition to the two categories of taxes, there is a specific internal taxation which governs especially in the mining sector. These are the Excise Duty (DA) and the Special Duty on Mining Transactions (DSTM). This DA is a duty levied on harvested products, extracted, manufactured or imported in Madagascar. In the case of mineral substances, this duty applies to precious stones and semi-precious stones, precious metals, i.e. luxury products, as well as certain industrial stones necessary for the high-tech industry. The DSTM is a fee withheld in advance and non-refundable and often qualified as a mining parafiscal tax.

Following the granting of an operating permit, the BCMM charges a fee corresponding to the category and the number of years of possession of the permit. The value of this levy is fixed by interministerial order while its recovery is effected by the antennas of BCMM in provincial capitals. Hence, this central management holds 60% of these values and is distributed between the decentralised territorial community and the general budget.

Tax Incentive

Law 005-022 dated 17 October 2005 amending Law 2001-031 dated 8 October 2002 establishing a special regime for large-scale investments in the Malagasy mining sector (LGIM) introduced a specific incentive regime for large-scale investment projects involving an investment of more than MGA 50 billion³⁰, once

³⁰ 1 ariary = 0,00021 € on 15.05.23

certification has been granted by way of government decree. The LGIM regime mainly consists of a legal, financial and tax stability guarantee; the possibility to take advantage of any more favourable measures; and certain tax and financial exemptions, under certain conditions.

The draft law includes some provisions particularly relevant to companies. Any company holding a permit will be obliged to notify the land registry of any changes to its by-laws within thirty days of such changes being made, and any failure to do so will be treated as an infringement of the permit's specifications. Also, registration duties will be payable in the event that rights accorded under mining permits are passed on through negotiation or transmission. The duty will be 5 per cent of the amount of an investment in the case of the sale or purchase of a company or company shares, changes to a company's name or its shareholders, or transfers by inheritance; and 10 per cent of the value of the right affected in the case of farm-outs, pledges, and partnering operations.

3.4 Environment

The Ministry in charge of Mines and the Ministry is in charge of the Environment to ensure compliance with the rules aimed at the environmental protection by the holders of mining permits (Article 98, Mining Code)

Any natural or legal person who carries out mining activities has the obligation to take the necessary protective measures to minimise and repair any damage that may result from the work conducted in the course of its activity. This person is responsible for any degradation of the environment as a result of its work. This liability is limited only to the extent that the person concerned exercises in compliance with the laws and regulations governing mining activities as well as those aimed at protecting the environment. Any execution of work related to mining activities, including the construction and maintenance of infrastructure necessary for this purpose, is made in accordance with the commitments in the environmental plan or the study of its impact on the environment previously elaborated according to the methods provided for by the relevant legal and regulatory provisions. (Articles 99 and 100).

3.4.1 Environmental Regulations

Any request for an operating licence is accompanied by a letter of commitment to start no mining activity before obtaining an environmental authorisation after approval of the Environmental Impact Assessment (EIA) document established by the applicant.

This authorisation or environmental permit is issued by the National Office for the Environment (ONE), after a favourable assessment in the EIA. Basis is the technical opinions of the CTE following the evaluation of the EIA of the project and the results of a public consultation (Article 6 of the Mecie Decree). This environmental permit must be included in any request for authorisation, approval or approval of work, works and developments projected (art 27 of the Mecie decree). The PRE licence request is also subject to an environmental commitment plan. The National Office was created in 1990, and is governed by Decree No. 2008-600 of June 23, 2008.

According to Chapter 2 of the Mining Code, 2005, a mining permit must be always be accompanied by an environmental licence to motivate the establishment and the start of the operating work of the project. The environmental licence, forms part of the prerequisites for the commencement of a mining activity. established in the Mining Code for constituting an authorisation or approval by the competent and



mandated public power, conditions the beginning or not of any work. The environmental licence is issued by a competent and mandated public power.

The environmental impact assessment study report approved by the National Office for Environment sets out the environmental specifications of the project.

3.4.2 Tangible and Intangible Cultural Heritage

The Mining Code does not mention tangible and intangible heritage, but specific laws and regulations govern the tangible and intangible heritage of Madagascar.

- Law No. 82-030 of December 9, 1982 ratifying Ordinance No. 82-029 of November 6, 1982 relating to the Safeguarding, Protection, and Conservation of National Heritage;
- Ordinance No. 82-029 of November 6, 1982 relating to the Safeguarding, Protection, and Conservation of National Heritage;
- Decree No. 83-116 of March 31, 1983 setting the terms of applying Ordinance No. 82-029 of 06 November 1982 on the safeguarding, protection and conservation of the National Heritage;
- Decree No. 91-017 of January 15, 1991 amending and supplementing certain provisions of Decree No. 83-116 of March 31, 1983 setting the terms of application of Ordinance No. 82-029 of 06 November 1982 on the safeguarding, protection and conservation of national heritage;
- Decree No. 2014-001 of January 7, 2014 creating, organisation and functioning of the National Heritage Office (ONP) and amending and supplementing certain provisions of Decree No. 2003-1041 of October 14, 2003 on the creation, organisation and operation of the Fund for the protection and development of Malagasy culture called "RAVAKA". On the proposal of the Minister of Culture and Heritage; In Council of the Government;

The Ministry of Communication, Culture and National Heritage Office (ONP) are responsible for the implementation of the national cultural heritage policy.

3.4.3 -Mine Closure

Prior to commencing any mine closure works, the holder of an E permit must submit the following documents to the regional department of the Ministry of Mines:

- a topographical map of the mine works to be closed;
- a plan of the underground galleries and the drilled holes to be closed;
- the techniques to be adopted for undertaking the closing works; and
- the techniques to be adopted to mitigate environmental impacts.

The regional department of the ministry must issue its approval or refusal within 15 days of submission of the above documents. A refusal must be explained and the permit holder will be given the opportunity to adjust the relevant document(s) accordingly.

Furthermore, the environmental impact study also must detail plans for the eventual closure and rehabilitation. The environmental impact study report sets out the environmental specifications of the project and includes:

- all environmental measures that must be completed by the permit holder during the life of the project until the definitive closure of the mine, including all works;
- the financing and budget for mitigation and restoration measures; and

- provision for the mitigation and rehabilitation works, along with any security or guarantee in favour of the state. This could take the form of funds deposited in a bank account in Madagascar in order to finance the rehabilitation works. Use of the funds will be subject to certain conditions, such as the following:
 - The funds must be used exclusively for the rehabilitation works;
 - Further deposits must be made if necessary to cover any changes to the rehabilitation works/measures; and
 - The funds will be under the control of the Ministry of Mines, the Ministry of Environment and the National Office for Environment, which can use the funds to finance any rehabilitation works as and when needed.

Before the effective closure of the mine, the permit holder must recruit an independent auditor duly approved by the National Office for Environment in order to conduct an audit of the performance and completion of all mitigation and rehabilitation works foreseen in the environmental specifications. The audit report is subject to the approval of the National Office for Environment, which will issue the definitive environmental clearance (*quitus environnemental*) that releases the permit holder from all its environmental obligations.

3.4.4 Water

According to the USAID 2021 report on the Water for the World Act High Priority Areas³¹, Madagascar is water abundant and is not considered water-stressed at a national scale; however, there are regional water availability and water quality challenges. According to this report, the total annual renewable water resources endowment per person is just over 13,000 m³, approximately eight times higher than the Falkenmark Water Stress Index threshold for water stress. Similarly, the total volume of freshwater withdrawn by major economic sectors amounts to only 11 % of its total resource endowment. However, the south is considerably drier, and more water-stressed than northern and central Madagascar. Most rivers in southern Madagascar disappear during the dry season and alternative groundwater sources are not always viable. The climate change-induced droughts also increase water-stress.

Deforestation in the Central Highlands from slash and burn agriculture, logging, animal husbandry, and firewood collection contribute to some of the highest levels of erosion in the world as well as extreme flooding. Naturally high precipitation rates, especially on the northern half of the island, and the presence of steep gullies called lavakas throughout the western central plateau compound these risks and impact surface water quality and biodiversity.

Inadequate municipal sanitation systems, including in Antananarivo, have resulted in fecal contamination of groundwater. Additionally, small-scale gold and gemstone mining, and larger nickel, chromium, and cobalt mines have contributed to chemical contamination of groundwater.

More intense cyclones and rising sea levels caused by climate change directly threaten coastal communities and intensify flooding and erosion in coastal areas. Further, rising sea levels are contributing to increased saline intrusion in low-lying coastal alluvial aquifers.

³¹ Madagascar Water Resources Profile Overview, USAID, 2021. https://winrock.org/wp-content/uploads/2021/08/Madagascar_Country_Profile-Final.pdf



Surface and groundwater quality and hydrometric data are not comprehensive or routinely collected, which impedes decision-making for Integrated Water Resources Management (IWRM), particularly at the “commune” level.

Water resources management is decentralised; however, key IWRM decisions are still taken by the central government due to funding and human resources constraints within sub-national institutions. Water resources management is decentralised; however, key IWRM decisions are still taken by the central government due to funding and human resources constraints within sub-national institutions.

3.5 Social

3.5.1 Land-use and Mineral Rights

All deposits of mineral substances located in surface, underground, waters and seabed of the National Territory are state properties (Article 3. Mining law), but the mining permit holder must enter into a lease agreement with the landowner with respect to:

- the use of land;
- the right to establish all constructions and infrastructure that may be necessary to conduct the exploration/exploitation activities; and
- the right to remove trees and other assets on the land.

The operator must maintain good neighbour relations with the landowner. Thus, the operator must:

- inform the landowner of its right to occupy the land parcel covered by the mining permit;
- obtain the landowner's authorisation before starting work on the land; and
- enter into a lease agreement or any other form of contract with the landowner to cover all compensation for the use of the land and any damage caused to the property as a result of the mining activities.

If the landowner refuses to enter into an agreement with the permit holder, the latter may submit a request to the Ministry of Mines in order to arrange for the project to be declared a public utility project and to initiate an expropriation procedure. Expropriation is a detailed and time-consuming process that can last for a year or even more.

The concept of native title is broadly recognised. In this regard, even occupants without formal land titles must be considered by the permit holder. In principle, local communities must always be consulted whenever their land may be affected by a given project. Under these circumstances, their consent is generally required before any project can proceed. Consent is required regardless of the type of activity (exploration or exploitation).

In addition, the Ministry of Mines and Strategic Resources, the Bureau du Cadastre Minier de Madagascar/ Madagascar Mining Cadastre Office (BCMM) is the other key government stakeholder in the management of the mining sector. The BCMM is responsible for the management and control of mining permits and the mining registry, including the preparation and documentation of the grant, renewal, transformation, transfer and cancellation of mining permits.



3.5.2 Artisanal Small-Scale Miners

The artisanal mining sector is one of the largest providers of employment in Madagascar, with an estimated 500,000 full-time and seasonal artisanal miners taking part in gold and precious stone extraction, recycle sterile beryl waste to collect low-grade beryls to extract beryllium, and any other substances remaining in the waste such as mica and coltan. Some substances are exclusively exploited by ASM such as lepidolite, spodumene, coltan, bauxite, galena, manganese. This is less than the agricultural sector, but more than the textile and clothing industry.

Despite significant contributions to the Madagascar's economy and local livelihoods, artisanal mining has also been associated with considerable adverse impacts on health, safety, social harmony, the environment, taxation revenue, as well as corruption and illicit trade.

Article 11-1. of the 2005 Mining Code stipulate that "ASM and gold panners may regroup and constitute, respectively, groups of small operators or local groups of artisanal gold miners, depending on the case." The groups thus formed constitute associations volunteers of individuals working in the same community. They have intended to serve as a framework for grouping the interests of their respective members and to facilitate the formalisation and supervision of their mining or gold panning activities. Any Group formed must be declared by its founders with the Town Hall of the local community and will be issued a receipt.

Any duly constituted and declared grouping is provided with its own legal personality and may, without further particular authorisation, pass all civil, commercial acts, administrative and other that it deems necessary in the exercise of his activities. Its operation is more or less similar to that of a non-governmental organisation (NGO) such as defined by the laws and regulations in force. An order of the Minister in charge of Mines fixes the standard statutes respective of these groups.

The "PREA" permit, exploration and exploitation permit reserved for smallholders, confers on its holder, within the perimeter which is the subject of it and during its validity, the exclusive right to carry out the prospecting, research and exploitation of the substance(s) for which the permit was issued, in accordance with the commitments contained in the plan annexed to the request. However, the start of exploration and exploitation work is preceded by approval by the competent authority in accordance with industry regulations on environmental protection, commitments contained in the environmental commitment plan, which is submitted to the department responsible for the environment Ministry of Mines.

Nevertheless, an environmental impact study, the terms of which are specified by regulation, may be required in the event of a concentration of applications for "PRE" permits in an area. The period of validity of the exploration and exploitation permit for small operators is eight (8) years. It is renewable once or several times for a period of four (4) years for each renewal. Subject, where applicable, to the prior agreement of the owner of the land, the right conferred by the "PRE" permit includes the right to build the necessary infrastructures and to use the wood and the waters which are within the perimeter in accordance with the laws and regulations in force.

If an ASM is no longer limited to the use of artisanal techniques in the execution of its research work and/or of mining operations, this then entails for him the obligation to request the transformation of his "PREA" permit into a standard permit "PR". (2005 Mining Code, Article 39).

3.5.3 Labour Practices

Madagascar major Legislation on Employment and Labour include:

- Law No. 2003-044 of July 28, 2004 on the Labour Code
- Decree No. 69-145 of 8 April, on the Social Insurance Code
- Law No. 94-026 of 17 November, on the Social Protection Code
- Decree No. 68-172 of April 18, 1968 regulating overtime and setting salary increases for night work, Sundays and public holidays, amended and supplemented by Decree No. 72-226 of July 6, 1972 ;
- Decree No. 2013- 476 Fixing the indices and minimum wages for hiring and seniority by professional category.

Madagascar has ratified many conventions relating to regular pay and wage protection: Conventions 95 (1949) and 117(1962); Night work: Convention 171 (1990), Convention 132 (1970) on Holidays with Pay.

3.5.4 Societal and Community Aspects

The local populations inside the perimeter of the object of the mining permit are the land owners. The permit holder must identify the owner of the plot in the first place. In cases where the permit holder cannot identify or locate the owner, the municipality concerned launches the official identification and research process. The identification and research process involve:

- communication to the chiefs and officials of the village and the municipality,
- by the display of the research notice at the Office of the Commune and its insertion into the newspapers with wide dissemination,
- by the development of a document noting the rights claimed and reported the evidence offered during the research period and finally by publication and display of the list of persons claiming a right.

The main law from which these persons benefit is the right to be compensated due to the use of the soil by the operator. However, this right is subject to the traditional occupant and the usufructuary at the conclusion of a good and due form with the operator. They must also clearly identify themselves during the identification procedure, provide proof of the rights invoked, constitute themselves in association of their choice and designates their representatives who will deal with the mining permit holder.

The draft Mining law is in favour of the promotion of human rights, children's rights and gender equality; the elimination of all discrimination based on race, sex, origin, religion, trade union membership and political opinions in matters of employment and profession and the appointment of social leaders and other stakeholders; respect for equal treatment of all personnel: employee, corporate officer and other stakeholders in accordance with the spirit of "equal work, equal pay", regardless of the physical abilities, disability, age or sex of the employees and respect for human rights throughout the value chain.

Any mining operator, at the time of issuing his PREA and/or PE, contributes to a Mining Fund for Social and Community Investment (FMISC). The contribution received for the benefit of the said Fund is: For PREAs: a lump sum set by regulation; For PEs: a rate of 3% of the amount of direct investment provided for in the pre-feasibility study submitted with the permit application for the development and initial equipment of the mine.

Following the granting of an operating permit, the BCMM charges a fee corresponding to the category and the number of years of possession of the permit. The value of this levy is fixed by inter-ministerial order while its recovery is effected by the antennas of BCMM in provincial capitals. Hence, this central management holds 60% of these values and is distributed between the decentralised territorial community and the general budget. The draft Mining Code also requires that a once-off payment towards national development be paid by permit holders on being granted their permits (MGA 2 billion for exploitation permits and 200 million ariary for exploration permits, revisable upwards depending on the substance mined, environmental factors, and the size of the investment);

3.5.5 Operational Health and Safety (OHS) and Labour Regulations

Workers' law is provided for in articles 108 to 111 of the 2005 Mining Code. It's particularly about security relating to safety, hygiene, protection against accidents of work. Paragraph 2 of article 108 provides that "for the conduct of mines or quarries, to ensure surface security and environmental protection, safety and the hygiene of the personnel employed, as well as the conservation of the mine or the neighbouring mines.

The following requirements apply to operators to establish and maintain healthcare systems and health facilities, taking into account:

- preventive measures for the health of workers and their families;
- first aid care in case of illness affecting workers;
- primary healthcare for workers and their families;
- water treatment and regular supplies of drinking water to workers and their families; and
- arrangements for medical evacuation, where necessary;
 - to establish periodically revised hygiene and health rules and set up a hygiene and health service;
 - to establish suitable medical centres;
 - to ensure adequate supplies of equipment, medical products and medicines and the presence of medical staff;
 - to conduct periodic medical examinations and provide reports on the state of health of the workers and their families; and
 - to create individual record sheets, including medical information on each worker.

The operator must report any accident at the mine, within 10 days of its occurrence, to the Ministry of Mines, the Ministry of Labour and Ministry of Public Health, as well as to the territorially competent *gendarmerie*. This report must detail the circumstances and consequences of the accident, including the date, the damage and relief measures undertaken. Breach of these requirements is punishable by the temporary and immediate suspension of work, after formal notice by the Ministry of



Mines. The permit/authorisation may also be suspended. The company may also incur civil liability and the managers and directors civil and criminal liability, depending on the nature of the breach.

Madagascar law does not prevent mining companies from implementing any available health and safety standards, as long as these do not constitute a breach of the national legislation.

3.5.6 Public Health and Safety

The Ministry of Public Health and the Ministry of Labour, Civil Service and Social Laws are responsible for the enforcement of health and safety obligations. The ministries and their departments play an active role in regulating the mining sector from a health and safety perspective. This may involve anything from simple inspections to the application of sanctions where required.

3.6 Assessment of the Mining Regime of Madagascar with respect to ESG objectives

Madagascar is one of the most fragile countries in the world, showing socioeconomic indicators similar to those of areas facing protracted conflicts. It is a land endowed with abundant natural resources that, if managed responsibly, could generate sustainable growth and development. However, lack of transparency, high levels of corruption, land disputes, and human rights violations affect the extractive sector. The mining industry of Madagascar has the potential to grow. Therefore, mining is the key pillar in Madagascar development strategy. Furthermore, as part of the Madagascar Vision 2030/2040/2063, governance issues are widely considered in the medium, short and long-term strategic orientations.

3.6.1 Environment

The environmental management of the mining sector in Madagascar is based on precise principles and rules. In addition, Madagascar has developed an Integrated Environmental Management System (SIGE) at the Ministry of Mine with ramifications in the Regions and in connection with the Office National de l'Environnement, it makes it possible to monitor the environmental obligations of mining projects.

Despite this regulatory framework and existing systems, examples of conflicts between Mines and the Environment are not lacking. The mining cadastre grants mining titles according to legal and regulatory procedures, by fixed coordinates, and in a transparent manner. On the other hand, there is no similar precise delimitation for protected areas. It therefore remains difficult to identify possible overlaps.

3.6.2 Social

The allocation of mining royalties requires at the very least a clear, pragmatic, and official distribution. The Malagasy mining sector suffers from the lack of skilled manpower, insufficient training infrastructure, and inadequate higher education programmes.

Many social issues were raised such as land grabbing, child labour with more than 500,000 small informal miners, Dutch Syndrome (Inflation, local migration and unemployment), political harassment, impunity, lack of public consultation, popular uprisings, the energy crisis/climate crisis/poverty, etc.

3.6.3 Governance

The texts concerning the mining sector are generally adequate, but there are often shortcomings in their application. The granting of mining titles is ensured by the Mining Cadastre, but some consider the prices irregular, excessive practices in the sale of cadastral data have affected its reputation in recent years and

undermined its credibility. In addition, it is important for investors to know in advance the "rules of the game" and to ensure that they will not change during project since its viability depends on it.

The allocation of mining royalties requires, at the very least, a clear, pragmatic, and official distribution. Currently, the collection of taxes and royalties presents a double challenge that varies according to the type of mining project: 1) to improve practices in the artisanal sector, which is largely informal; and 2) to develop a close partnership between the tax administrations and the major mining projects so as to monitor and anticipate their tax payments. The latter will involve coordination between the administrations concerned, with regard to the royalty.

The Ministry of Mines is responsible for setting the level of taxation while the Ministry of Finance is responsible for the recovery. This duality requires real collaboration and capacity building between the services concerned. The representatives from the Ministry of Mines stated that the Ministry is challenged with insufficient human and financial resources to monitor and evaluate the activities in the field. The challenges include ageing of managers and that the Ministry was not able to recruit new staff for decades now.

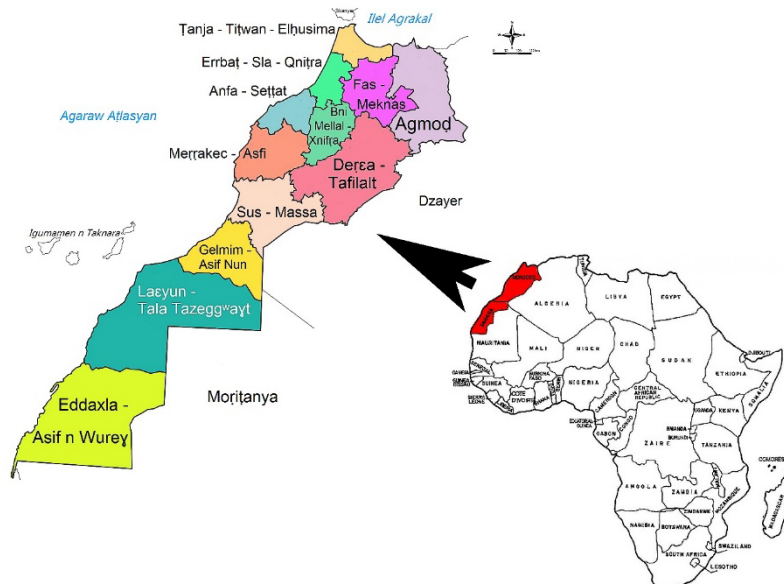
The 2005 Mining law is in revision and Government with the new mining Code in preparation need to find balance between social, economic and environmental interests to better manage future projects and reframe current projects. The 2005 mining code has been suspended since 2010. However the new government has been revising the draft of the new Mining Code which has been validated by Ministers' council of 12 April 2023.



4 Morocco

4.1 Country Profile

Morocco is a country located in North Africa, bordering the Atlantic Ocean and the Mediterranean Sea. Algeria and Western Sahara are the land borders to the south and east. Principal cities in Morocco are Rabat (capital), Casablanca, Marrakech, Fès, Oujda, Agadir, Tanger, Laayoune, Meknès, El Jadida, Safi. The country covers an area of 710.85 km². The country's population is estimated at 33.84 million with a 60.3% urban rate. (HCP, 2014). Official languages of Morocco are Arab and Tamazight and the commonly used foreign languages are French, English and Spanish. Morocco is a constitutional monarchy, with a king acting as the head of state. The current monarch is King Mohammed VI. The capital city of Morocco, Rabat lies in the northern part of Morocco, a short distance to the Atlantic coast. Islam is the predominant religion in Morocco, with more than 99% of the population identifying as Muslim.



Morocco's Gross Domestic Product (GDP) was approximately \$118 billion in 2020, with a real growth rate of -7% due to the COVID-19 pandemic. The Moroccan economy is mainly focused on agriculture, with key crops being citrus fruits, olives, and cereals.

4.2 Overview of the mining Sector

The mining sector plays a vital role in the country's socio-economic development, contributing close to 10% to its GDP and providing employment opportunities with 49,572 people directly employed in the sector. The country is known for its vast mineral deposits, including phosphates, zinc, copper, lead, silver, and gold. Morocco is major producer of phosphates (Pistilli, 2021)³², and in 2021, the country was ranked as the world's second-largest producer of this mineral..

Phosphate mining accounts for a significant portion of the country's export revenue and employs thousands of people across the country.

In 2021, the total volume of mining production amounted to 41 million tonnes, of which, 38 million tonnes was from phosphates. Total turnover for the year was approximately 100 billion MAD (\$9.57 billion). The total contribution to Morocco's exports was 26% of which 19.3% was phosphate in 2021.

The Moroccan Government has set out a national strategy for the development of its mining sector (excluding phosphates) with the goal of tripling the mining sector's turnover to more than MAD15 billion by 2025. This would involve multiplying the volume of investment in mining exploration and research tenfold to nearly MAD4 billion, and doubling the jobs generated by the sector.

The key institution governing the mining sector of Morocco is the **Ministry of Energy, Mines and Sustainable Development (MEM)**³³.

The MEM has delegated authority to:

- the Walis (representative of the central government in the local region) for the award of exploitation authorisations for projects of a value less than MAD200 million; and
- Regional Directors of the Energy and Mines Department of the MEM for the award of research permits. (Order of the MEM No 2360-16 dated 9 December 2016.)

In addition to the MEM, other key stakeholders in the mining sector of Morocco are:

- The **National Office of Hydrocarbons and Mines (ONHYM)**. The ONHYM is subject to the state supervision and financial controls applicable to Moroccan public establishments. ONHYM's mission is to:
 - carry out in the authorised zones, all studies, research and prospecting activities for the discovery of hydrocarbons deposits or any other fuel, mining deposits or any mineral substance, with the exception of phosphates;
 - undertake in the authorised areas, the development and exploitation of hydrocarbon or mining deposits or mineral substances, and to carry out all related activities, in particular ensuring the transport and upgrading of hydrocarbons and mining products in accordance with the regulations in force; and
 - promote any action likely to contribute to the development of hydrocarbon, mining and mineral products' exploration and exploitation.
- **Land Registry**. The Land Registry (ANCFCC: Agence Nationale de la Conservation Foncière du Cadastre et de la Cartographie) is a public establishment (établissement public) regulated by Law No 58-00, promulgated by Dahir No 1-02-125 dated 13 June 2002. It is subject to the state supervision and financial controls applicable to Moroccan public establishments. The Land Registry is in charge of the issuance of special titles (titres spécial) relating to each mining title registered with it.

³³ <https://www.mem.gov.ma/Pages/index.aspx>

4.3 Governance

In 2012, Morocco launched the Moroccan Code for Good Governance Practices in public enterprises and institutions³⁴, with the aim of ensuring the transparent and accountable management of public institutions and enterprises (MEF, 2020). This Code was created by a working group from the National Governance Commission, led by the Ministry of Economy and Finance through the Department of Public Enterprises and Privatisation, and involved many institutional actors and public enterprises

Morocco is signatory to and has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Award. This establishes a framework for enforcement of foreign arbitral awards, although the enforcement process is submitted to local law.

Morocco has not signed on to EITI as a member. However, the OCP group joined EITI in September 2022 as a supporting company demonstrating their commitment to good governance in the extractive sector³⁵. The OCP group (former Office Chérifien des Phosphates)³⁶, founded in 1920, is a state-owned phosphate rock miner, phosphoric acid manufacturer and fertilizer producer.

Morocco is a party to bilateral investment treaties with several countries, including free trade agreements with the US, European Union and major Arab, African and south-eastern Asian countries.

There is also an oversight committee set up to help resolve issues that may arise around mineral operations.

4.3.1 Mineral and Mining Policies

Mining resources belong to the Moroccan state (Article 3). Mining is categorised into Mining resources and Quarries (Article 2). Exploration, Prospecting and production should all be done within the confines of the law.

The regulatory framework for the Moroccan mining sector is mainly based on the following laws and regulations:

- Law No 33-13 Related to Mines (The **Mining Law** and **Mining Decree**)³⁷, which set out the:
 - administrative regime applicable to the award of mining titles;
 - main rights and obligations of mining title holders in the context of exploration, research or exploitation activities;

³⁴ Launch of the Moroccan Code for good governance practices in Public enterprises and institutions, Ministry of Economics and Finance, available on <https://www.finances.gov.ma/en/Pages/detail-actualite.aspx?fiche=2931> (Accessed 24 May 2023)

³⁵ <https://african.business/2022/09/resources/ocp-group-joins-eiti-as-supporting-company>

³⁶ <https://www.ocpgroup.ma/>

³⁷ Law No 33-13 Relating to Mines, available on: https://www.mem.gov.ma/Lists/Lst_Textes_Reglementaires/Attachments/164/Loi_33-13., Accessed on 24 May 2023.



- rules governing relations between mining title holders and landowners;
 - rules applicable to the supervision of mining activities by the competent authorities; and
 - administrative and criminal sanctions applicable to mining operators for violation of their statutory obligations.
- Law No 74-15 (**Tafilalet and Figuig Mining Law**)³⁸, which sets out the rules applicable to traditional mining activities in the Tafilalet and Figuig regions. The establishment of a specific regulatory framework for mining activities carried out in these regions results from the existence of material mining opportunities that are not fully exploited because of non-structured mining activities. The specific regulatory framework aims to promote co-operation agreements between local operators and foreign investors and supervise mining activities through the creation of a dedicated public entity, the CADETAF³⁹ (Central Buying and Development of the mining region of Tafilalet and Figuig)
 - **Vizirial Order** dated 18 February 1938 Establishing Internal Rules for the Exploitation of Mining Products Other Than Combustibles (as amended by Vizirial Order dated 9 September 1953), which sets out in particular health and security requirements for mining exploitation sites.
 - **Dahir** dated 21 August 1940 Relating to Pledges on Mining Products, which sets out the applicable rules and formalities to grant a pledge on mining products

The Mining Law and Mining Decree replaced old legislation dating back to the 1950s and adapt the regulatory framework to new market trends at an international level.

The reform had the following main impacts:

- Extending the application of mining legislation to all mineral substances used in industry, other than construction and civil engineering materials.
- Establishing the new mining title of exploration authorisation, allowing investors to develop exploration programmes over a wider area.
- Introducing an operating licence for tailings and slag heaps that are planned for enrichment and/or for recovery of masses consisting of waste and residues from mining products.
- Provisions relating to natural or artificial cavities for the underground storage of liquefied or gaseous natural gas and liquid hydrocarbons, or chemicals for industrial use.

³⁸ “Dahir” (Royal Decree) number 1-16-131 of 21 Kaada 1437 (August 25. 2016) promulgating the law n° 74-15 relating to the region of Tafilalet and Figuig, available on : [https://www.mem.gov.ma/Lists/Lst_Textes_Reglementaires/Attachments/163/Loi74-15\(CADEFAT\)fr.pdf](https://www.mem.gov.ma/Lists/Lst_Textes_Reglementaires/Attachments/163/Loi74-15(CADEFAT)fr.pdf), Accessed on 24 May 2023

³⁹ <https://cadetaf.com/fr/>



- Introducing express provisions relating to environmental impact assessments and the requirement to implement a closure plan dealing with post-exploitation phases.

In addition to the abovementioned mining related regulations, Morocco has implemented a range of policies to regulate and promote sustainable development in its mineral and mining sector. These policies include the National Strategy for Mining Sector Development⁴⁰, the National Charter for the Environment and Sustainable Development⁴¹, the National Water Plan⁴², the Renewable Energy Policy, and Social and Environmental Impact Assessments (SEIAs).

4.3.2 Mining Regulations

The main law regulating the exploration and extraction of mineral resources in Morocco is the Mining Law, which requires the obtaining of a mining title before commencing mining activities. It distinguishes between exploration, research and exploitation activities as follows:

- **Prospecting:** This refers to geological, geothermic and geophysical works and studies by excavation, drilling and sounding assessment carried out on the ground and/or in the water, or by airborne methods, to identify sites or zones with a mining potential. Such works may result in the issuance of a research permit. Mining exploration activities require an exploration authorisation.
- **Exploration:** This refers to studies and works relating to geology, geophysical and geochemistry, and research, extraction and processing trials, aimed at the determination of mineral deposits. Mining research activities require a research permit.
- **Mine exploitation:** This refers to studies and work related to the extraction, processing, upgrading and marketing of mining products. Mining exploitation activities require an operating licence.

For each of these activities, Article 4 of the Mining Law sets out an administrative regime that describes the process for obtaining the relevant mining title and the rights and obligations associated with each mining title. The application for exploration authorisation, research permit or mine operating licence must be filed with the administration responsible for mines. The process is described below and summarised Table 7.

- **Application & Renewal for Exploration Licence & Research Permit (Section 2 Chpt 1, Decret 2-15-807)**
 - The application for an Exploration Licence is done with the date and exact hour at the relevant authority an agreement should be established, prior to the granting of the exploration authorisation.

⁴⁰ The National Strategy for Mining Sector Development, available on <https://www.mem.gov.ma/en/Pages/secteur.aspx?e=7>, accessed on 24 May 2023

⁴¹ National Charter for the Environment and Sustainable Development, available on: <https://www.lse.ac.uk/GranthamInstitute/wp-content/uploads/2015/05/MOROCCO.pdf>, Accessed on 24 May 2023

⁴² Morocco: Country Commercial Guide, Water, available on: <https://www.trade.gov/country-commercial-guides/morocco-water>, Accessed on 24 May 2023



- **Application & Renewal for Mining Licence (Section 2 Chapter 1 & 2, Decret 2-15-807)**
 - The application to upgrade an exploration permit into a mining licence must be filed with the administration in charge of mines no later than three (3) months before the expiry of the validity period of the exploration permit.
 - The formal request is registered on the date of its filing in a register kept for this purpose by the administration unit in charge of mines.
 - The government authority in charge of mines or the person delegated by it for this purpose carries out an investigation to verify the consistency of the work carried out on the area(s) covered by the exploration permit(s), which is subject of the application for the mining licence.
 - The governmental authority in charge of mines or the person delegated by Authority for this purpose must notify the applicant for the mining exploitation licence within two (2) months from the date of filing of the application.

Table 7: The various licence / permit types / authorisations available for the mining sector of Morocco.

Licence Type or Authorisation	Description	Duration	Renewable	Restriction
Exploration Permit	Legal Person, Exclusive rights (article 22) Area btwn 100sqkm and 600sqkm.	2 years (Art 26)	Renewal once for one year (article 26)	A holder cannot have more than 4 exploration licences
Research Permit (Article 31)	Legal Person, Exclusive rights. Area for this permit cannot be more than for exploration but it is determined by the Holder. It should cover at least 4 km in length.	Valid for 3 years (Article 37)	Renewal once for a 4-year period	This is dependent on field work, reporting and financial expenditure for the planned field work (article 37)
Mining Licence	Legal Moroccan Entity (Art 46)	10 years	Renewable for 10 years till exhaustion of resource	You can only have a mining licence if you had the Exploration & Research permit

Each licence type attracts different permitting fee as detailed below:

Table 8: Permit fees per licence type

Licence Type	Amount	Details
Exploration	MAD2,000	Exploration authorisations are subject to the performance of a minimum amount of work per square kilometre ranging between MAD10,000 and MAD66,000
Research	MAD50 per square kilometre	Research permits are subject to the performance of a minimum amount of work per square kilometre ranging between MAD10,000 and MAD66,000

Mining	MAD 18,000	A local annual tax applicable to mining exploitation activities is payable to the relevant region under Article 4 of Law No 47-06 related to local taxes, promulgated by Dahir No 1-07-195 dated 30 November 2007
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4.3.3 Taxation and Royalties

Mining companies are subject to a corporate income tax rate of 17.5%, which is the standard rate for all companies in the country. Additionally, mining companies are subject to a resource tax, which is calculated based on the quantity and value of the minerals extracted. The resource tax rate varies depending on the type of mineral, and ranges from 2.5% to 10% of the value of the extracted minerals (Mining Code, 2015).

The granting and renewal of mining permits are subject to the payment of certain application fees, which have been revised by the New Mining Code and the Decree. In addition to the taxes stipulated by the Tax Code that are applicable to all economic activities in Morocco, a local annual tax applicable to mining exploitation activities is payable to the relevant region (under Article 4 of Law No 47-06 related to Local Taxes, promulgated by Dahir No 1-07-195 dated 30 November 2007).

The amount of this tax is based on the quantity of mining products extracted during mining exploitation. The rate varies depending on the extraction region between MAD1 and MAD3 per ton extracted. The taxpayer is either the concessionaire or the owner of the mining activity.

The Finance Law for the 2023 budget year confirms the continuation of the implementation of the roadmap outlined by Framework Law No. 69-19 on tax reform and advocates for its gradual implementation by 2026. The tax measures instituted by the Finance Act⁴³ are thus structured around the following advances:

- Corporate tax reform,
- Reform of Income Tax Regimes
- Value Added Tax
- Rationalisation of tax incentives.

In 2022 corporate tax (IS) was calculated, according to several rates (10%, 15%, 20%, 26%, 31% and 37%), depending on the amount of profit made, the nature of the activity carried out or of the economic sector concerned.

Royalties

The Mining Law does not stipulate any further taxes or royalties. Royalties are only applicable in the ASM sector if and when production happens.

⁴³ Ernst and Young (2023) *Morocco enacts finance law 2023: A review of Key Tax Measures*. Ernst and Young Global. Available at: https://www.ey.com/en_gl/tax-alerts/morocco-enacts-finance-law-2023-a-review-of-key-tax-measures (Accessed: 21 May 2023).



Foreign Direct Investment

There is no restriction on the nationality of shareholders of a company engaging in mining activities in Morocco. It is not necessary to have a majority of local managers or directors, and there is no particular balance required with respect to the nationality of the members of the board or managers. As there is no citizenship requirement, shareholders are free to have exclusively foreign directors and/or managers.

In December 2022, Morocco adopted an Investment Charter⁴⁴ that repealed the Investment Charter No. 1-95-213 of 8 November 1995. This charter is the principal regulatory document for foreign and domestic investments with an exception to investment in agriculture, as well as the exclusion of real estate and commercial sector investors from some provisions of the charter⁴⁵.

The charter:

- Aims at reducing regional disparities in investment attraction
- Acknowledges the values of freedom in the market and equal treatment of investors regardless of nationality
- Establishes investment support mechanisms for projects executed in regions and in priority sectors as well as offers incentives to strategic investment small enterprises and SMEs

The Moroccan government can sign specific agreements and contracts with investors, providing subsidies for certain expenses, custom duty and VAT exemptions when the agreed criteria are met. Morocco has ratified 72 investment treaties for the promotion and protection of investments and 62 economic agreements, including with the United States and most EU nations, that aim to eliminate the double taxation of income or gains.

4.4 Environment

Dahir no. 1-03-59 promulgating Law no. 11-03 relating to the protection and enhancement of the environment lays out basic rules and general principles of national policy on protection and development of the environment. Within this law is the establishment of a specific requirement, guaranteeing the repair of damage to the environment and the compensation of victims.

A very important policy is the requirement of an Environmental Impact Assessment (EIA). Under Law No 12-03 Relating to Environmental Impact Assessment (Law 12-03), mining activities are subject to a prior authorisation granted based on both, an:

- environmental impact study prepared by the promoter of the project, which is reviewed by the national or regional committee on environmental impact studies.

⁴⁴ Official Bulletin, Charte de l'investissement, http://www.sgg.gov.ma/BO/FR/2873/2022/BO_7152_Fr.pdf, 12 Dec 2022, accessed on 21 May 2023

⁴⁵ Morocco Adopts a new Investment Charter, UNCTAD, available on <https://investmentpolicy.unctad.org/investment-policy-monitor/measure/4186/morocco-adopts-a-new-investment-charter>, accessed on 21 May 2023



- environmental acceptability decision (décision d'acceptabilité environnementale) granted by the governmental authority in charge of the environment (autorité gouvernementale en charge de l'environnement).

The EIA process includes public consultations to ensure that stakeholders are informed and involved in the decision-making process. For example, the Environmental Impact Assessment Law No. 01-09 of 2010 requires an EIA for all mining projects, including exploration, exploitation, and mine closure plans.

4.4.1 Environmental Regulations

Moroccan environmental regulations provide for specific further rules:

- waste management is regulated by Law No 28-00 dated 22 November 2006 Relating to Waste Management and Disposal.
- sewage water use or discharge is regulated by Law No 36-15 Related to Water, promulgated by Dahir No 1-16-113 dated 10 August 2016.
- air pollution is regulated by Law No 13-03 Related to Air Pollution Control promulgated by Dahir No 1-03-61 dated 12 May 2003. This forbids discharges, emissions and release into the air of pollutants that do not comply with the quantities and concentration limits set out in Decree No 2-09-631 dated 6 July 2010.

Mining companies must assess the potential impacts of their activities on biodiversity and develop measures to mitigate these impacts. The biodiversity assessments involve identifying the affected habitats and species, and proposing measures to avoid, minimise, and mitigate impacts. For example, the Moroccan government's guidelines on environmental and social impact assessments require mining companies to assess the potential impacts on biodiversity and propose measures to mitigate them.

Mining Operators must restore or compensate for any loss of biodiversity resulting from their activities. The Moroccan government requires mining companies to restore degraded habitats, including reforestation, rehabilitation of wetlands, and restoration of rivers and streams.

To mitigate the environmental impacts of mine waste, the Moroccan government has implemented regulations and guidelines for waste management in the mining industry. The Ministry of Energy, Mines, and **Sustainable Development** has issued regulations that require mining companies to submit waste management plans before beginning operations. These plans must include measures for waste reduction, segregation, storage, and disposal. The regulations also require mining companies to conduct environmental impact assessments and to monitor the quality of surface- and groundwater in the vicinity of their operations.

4.4.2 Tangible and Intangible Cultural Heritage

The Kingdom of Morocco has a rich cultural heritage, both tangible and intangible. Law 22-80, promulgated in 1981 and supplemented by law 19-05 is the primary framework that regulates the conservation of the country's cultural heritage (Royaume de Maroc, 2021). In 2021, the Ministry of Culture, Youth and Sports in partnership with the Foundation for the Safeguarding of Heritage Culture of Rabat organised a roundtable alongside international and local cultural experts to deliberate on ways to



strengthen the national legislation in accordance with global standards. Recommendations at the end of the discussion included the creation of a single national code including all cultural heritage and accompanying regulations, updates introducing new concepts and universal terminology as well as the introduction of mechanisms supporting the inclusion of civil society in the management and protection of its heritage (ibid.).

According to UNESCO, Morocco has nine sites inscribed on the World Heritage Site list⁴⁶ including the historic city of Rabat (2012) and the Archaeological site of Volubilis (1997). The country also has 13 elements inscribed under Intangible World Heritage ranging from Arabic calligraphy to knowledge about the production and consumption of couscous.

To contribute to the protection and development of its culture and heritage, Morocco has ratified/acceded to approximately 19 UNESCO conventions. Amongst these are the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (deposited in 2003), the Convention concerning the Protection of the World Cultural and Natural Heritage (deposited in 1975), and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (deposited in 1968).

Morocco's adherence to international cultural conventions demonstrates its reverence and commitment to safeguarding its heritage. Of the nine properties inscribed, 33 State of Conservation reports have been presented on six of them. Threats highlighted in these reports include the impacts of tourism, commercial development, and erosion. The World Heritage Convention (1972) classifies mining activities on inscribed sites as one of the threats to the integrity of sites and requires "forward planning and risk preparedness" (UNESCO, 2008, p. 128) statements from adhering member states.

Recent efforts in line with the protection of cultural heritage include a 5-year agreement signed between UNESCO and the Foundation for the Safeguarding of the Cultural Heritage of Rabat. The agreement involves embarking on educational efforts to raise awareness of the country's heritage and the wider African continent. "Je decouvre mon patrimoine", which translates to "I discover my heritage", is an educational kit that has been created to support this programme executed in partnership with the Ministry of National Education, Preschool and Sports, and the Ministry of Youth, Culture, and Communication⁴⁷.

⁴⁶ World Heritage Convention, States Parties, Morocco, available on <https://whc.unesco.org/en/statesparties/ma> accessed on 21 May 2023

⁴⁷ UNESCO (2008). Operational Guidelines for the Implementation of the World Heritage Convention publication. UNESCO World Heritage Centre. Available at: <https://whc.unesco.org/archive/opguide08-en.pdf#annex1> (Accessed: April 29, 2023).



4.4.3 Mine Closure

The Mining Law also requires the holder of an operating licence to prepare a Mine Closure Plan⁴⁸. Mining companies must develop a plan to manage the environmental impacts of mine closure, including the reclamation and rehabilitation of the land.

The mine closure plan must be submitted to the Ministry of Energy, Mines and **Sustainable Development** for approval. The Environmental and Social Impact Assessment Guidelines for Mining Projects, published in 2018, require mining companies to develop a mine closure plan that includes measures to minimise soil erosion and water pollution.

4.4.4 Water

Morocco is among the world's most water-stressed countries, says a World Bank report⁴⁹. At 600 cubic metres of water annually per capita per year, the country is already well below the water scarcity threshold of 1,700 cubic metres, according to the World Health Organization⁵⁰.

The National Water Plan (NWP), adopted in 2009, is a policy initiative aimed at promoting sustainable water management practices in the mining industry. The plan recognises the importance of water as a critical resource for the mining sector and the need for efficient and sustainable use of it.

The NWP in the mining sector aims to improve water resource management by promoting the use of advanced technologies and techniques to minimise water consumption and reduce water pollution. The plan also emphasises the importance of stakeholder engagement and public participation in decision-making processes related to water management in the mining sector.

⁴⁸ *Loi No.33 – 13 Relative aux Mines*. Ministry of Energy, Transition and Sustainable Development.

Available at:

https://www.mem.gov.ma/Lists/Lst_Textes_Reglementaires/Attachments/174/Loi%2033.13%20sur%20les%20Mines%20%20français.pdf (Accessed: 21 May 2023).

⁴⁹ *Climate Investments will reap big dividends for Morocco, says World Bank Report*. World Bank Group. World Bank (2022). Available at: <https://www.worldbank.org/en/news/press-release/2022/11/03/climate-investments-will-reap-big-dividends-for-morocco-says-world-bank-report#:~:text=Morocco%20is%20a%20climate%20hotspot%20and%20one%20of,source%20of%20macroeconomic%20volatility%20and%20threaten%20food%20security>. (Accessed: 21 May 2023).

⁵⁰ Delpuech, A. and Poletti, A. (2022) '*Preserving oases*': *The fight for water by Morocco Farmers*, Al Jazeera. Al Jazeera Media Network. Available at: <https://www.aljazeera.com/news/2022/11/11/preserving-oases-the-fight-for-water-for-morocco-farmers> (Accessed: April 20, 2023).



The successful implementation of the NWP will require active participation from stakeholders, effective management of potential social and environmental risks, and adequate financial resources to support the implementation of sustainable water management practices.

4.5 Social

Social issues in Morocco include unemployment, poor education, and regional disparities (Kabis-Kechrid, 2015)⁵¹. With more than 50% of its population made up of youth, this demographic is disproportionately affected by these issues, resulting in youth marginalization (USAID, 2012)⁵².

A National Framework Law NO: 09.21⁵³ on social protection was adopted in March 2021. The scope of the framework includes:

- The generalisation of the compulsory health insurance (AMO) by the end of 2022, by broadening the base of beneficiaries of this insurance to include vulnerable categories benefiting from the Medical Assistance Scheme (RAMED) and the category of self-employed and non-salaried professionals, so that an additional 22 million people benefit from AMO, which covers the costs of treatment, medicines and hospitalisation.
- The generalisation of family allowances by 2023/2024, enabling households not receiving these allowances to receive benefits covering child-related risks, or lump-sum benefits for protection against child-related dangers (school drop-out) for 7 million school-age children.
- Broadening the pension schemes coverage in 2025 to include around 5 million people who are employed and not receiving a pension, through the inclusion of self-employed professionals and informal economy workers.
- The generalisation of the unemployment benefit scheme (Indemnité pour pert d'emploi-IPE) in 2025 to cover all persons in stable employment through the simplification of the eligibility conditions and the extension of beneficiaries.

4.5.1 Land-use and Mineral Rights

Land Use and Mineral Rights are governed by a legal framework that includes the Mining Code and several other laws and regulations. The Mining Code provides for the exploration, exploitation, and processing of mineral resources, while also setting out the rights and obligations of mining companies.

⁵¹ Kabis-Kechrid L. *Introduction*, in Fakoussa D. and Kabis-Kechrid L. L. (ed.) *Socio-Economic Challenges in Morocco: Migration, Education, and Employment – Perspectives from the Region and Europe*. German

⁵² USAID, Community Resilience, Morocco, available on <https://www.usaid.gov/morocco/community-resilience>, accessed on 25 May 2023

⁵³ Ministry of Economy and Finance, 2019, PROJET DE POLITIQUE PUBLIQUE INTEGREE DE LA PROTECTION SOCIALE 2020 – 2030, Available on https://www.social-protection.org/gimi/RessourcePDF.action;jsessionid=E-ROAdnix7SAq4wLwds5tgrd0FK0PrMfqko7Qr88TA_bKItuF9x12010050948?id=57530 (Accessed: 21 May 2023).



Under the Mining Code, mineral rights are owned by the state, and mining companies must obtain exploration and mining licences in order to carry out mining activities. The licence application process includes a review of the mining company's technical and financial capabilities, as well as an assessment of the potential environmental and social impacts of the proposed mining activities.

Once a mining licence is granted, the mining company has the right to explore and extract minerals within the designated area, subject to compliance with all applicable laws and regulations. However, the government retains the right to terminate the licence if the mining company is found to be in violation of any of its obligations.

In addition to the Mining Code, land use is governed by several other laws and regulations, including the Land Use Planning Law and the Environmental Protection Law. These laws are designed to ensure that land use and mining activities are carried out in a sustainable manner, with due regard for environmental protection, social responsibility, and the rights of local communities.

Generally, the legal framework governing land use and mineral rights is designed to promote sustainable mining practices and protect the rights and interests of all stakeholders. However, there are ongoing debates over the allocation of mineral rights and the potential impact of mining activities on local communities and the environment, which continue to be the subject of research and policy discussions (El-Baraka and Kasmi, 2016; Bechri *et al.*, 2018).⁵⁴

4.5.2 Artisanal and Small-Scale Mining

The Artisanal and Small-Scale Mining sector in Morocco is localised in the mining region of Tafilalet and Figuig covering an area of 60,000 km² and the minerals involved are Lead, Zinc and Barytine. This is regulated with the Mining Law (ASM) Dahir No 1 -16-131 du 21 Kaada 1437 (25 August 2016) promulgating the Law 74-15 referring to the mining region of Tafilalet and Figuig.

Moroccan Artisanal and Small-Scale Mining is managed by The Central Buying & Development Organisation of Tafilalet and Figuig region (CADETAF). For better efficiency and productivity, the government amended the 1960 law governing mining in Tafilalet and Figuig to allow larger private investors to form partnerships with artisanal miners and develop exploration and extraction activities.

4.5.3 Operational Health and Safety (OHS) and Labour Regulations

The holder of a mining title must operate mining activities in compliance with laws and regulations related to health, hygiene and environmental protection (Article 56, Mining Law). Vizirial Order dated 18 February 1938 Forming Internal Rules for the Exploitation of Mining Products Other Than Combustibles Mining

⁵⁴ El-Baraka, H. and Kasmi, A. (2016), *Public participation in the environmental and social impact assessment process in the mining sector in Morocco*, *Natural Resources Forum*, Vol. 40, No. 4, pp. 232-241.

Products (as amended by Vizirial Order dated 9 September 1953) sets out detailed health and safety requirements for carrying out exploitation activities, including obligations to:

- Maintain work areas in a constant state of cleanliness and to respect the hygiene and sanitary conditions necessary to preserve employees' health.
- Make devices such as telephones or acoustic pipes available in underground circulating areas to enable communication between employees, supervisors and extraction technicians.
- Take measures to prevent water stagnation and the accumulation of mud in the working area and galleries.

4.5.4 Public Health and Safety

Public health and safety in the Moroccan mining sector is a top priority for the government and stakeholders involved (Mining Technology, 2021)⁵⁵. The sector poses significant risks to workers and local communities due to exposure to harmful chemicals and physical hazards. Therefore, regulatory policies have been implemented to mitigate these risks and ensure the safety of everyone involved.

4.5.5 Labour Practices

Labour unions represent the interests of workers in the mining sector and advocate for their rights and welfare. The General Confederation of Moroccan Workers (CGTM) is the largest labour union in the country and represents workers in the mining sector, among others.

It is stated in the Regulatory, status of personnel of mining companies (Article 21) that women may not go underground and secondly that in the small-scale sector the socio-cultural view is that women should only undertake work relating to catering, sorting and cleaning minerals. However, the mining sector in Morocco especially the formal sector has very skilled and high-profile women involved. There is currently an upward trend in the number of women in the mining industry. Under the supervision of the Ministry of Mines and the Academic level. In the "Ecole Nationale Supérieure" des Mines de Rabat, for the 2020-2021 academic year, out of a total of 825 future engineers, there were 415 female and 410 male engineering students.

There is renewed interest in mining subjects by girls and since 2019, there has been an evolution in the number of female students at the Institutes of Mines of Marrakech, which has increased from 29% in 2019 to 44% in 2021. For the 2022 academic year girls enrolment was 48% at the "Institut des Mines de Touissit".

4.5.6 Societal and Community Aspects

Morocco has a legal framework for Social and Environmental Impact Assessments (SEIAs) in the minerals and mining industry. The SEIA process is intended to ensure that mining projects are carried out in a socially and environmentally responsible manner, and to minimise any negative impacts of mining activities on local communities and the environment.

⁵⁵ Mining Technology (2021), *Mining in Morocco*, <https://www.mining-technology.com/projects/morocco-mining/>. Accessed: March 26, 2023.

The SEIA process in Morocco involves the identification and assessment of potential impacts of mining activities, as well as the development and implementation of measures to mitigate any negative impacts. The SEIA process also involves the consultation and participation of local communities and other stakeholders in the decision-making process.

4.6 Assessment of the Mining Regime of Morocco with respect to ESG objectives

Morocco has put in place all the necessary laws and regulations for the management of their mining sector. However, the implementation and monitoring of the various regulations and their impact is key to achieving maximum benefit for the industry and communities.

The Mining Strategic Plans are dynamic and regularly reviewed. Currently the outlook is to look closely at the following:

- Mining and energy transition
- Strategic and critical minerals,
- Local Content
- Reclamation and rehabilitation of old mines (mining legacies and/or abandoned mines)

4.6.1 Environment

The key issues in the environmental management of the mining sector in Morocco are related to water, air and biodiversity as well as how to implement and monitor the various activities to deliver the desired results for relevant stakeholders. Mining operations can be water-intensive, and in Morocco, water resources are already under pressure due to a combination of factors including climate change, population growth, and agricultural demands. Mining companies operating need to pay attention to the National Water Plan and to implementing water conservation and management practices to reduce their impact on the local water supply. Companies should consider implementing measures to reduce dust emissions and monitor air quality to ensure that emissions remain within acceptable levels. Companies should implement measures to minimize their impact on local flora and fauna. The regulations and various strategic plans already make these recommendations and companies need to implement and adhere to them. Activities and actions around these issues implemented need to be communicated to communities affected by mining.

4.6.2 Social

Overall, the SEIA process in the mining industry is an important mechanism for ensuring that mining activities are carried out in a socially and environmentally responsible manner. However, there are challenges in the implementation of SEIA recommendations, and there is a need for better monitoring

and evaluation of SEIA outcomes to ensure that the SEIA process is effective in minimising the negative impacts of mining activities on local communities and the environment.

Workers in Morocco are allowed to join unions and the biggest union in Morocco is the Union Marocaine de travail (UMT). The union offers workers a structured approach to protest against unsatisfactory working conditions and issues. There are several civil society organisations in Morocco also, who voice out issues around community and environment degradation.

Value Addition activity is important as it offers an opportunity to create more jobs and possibly employ more people from the host communities to satisfy local content regulations and contribute to communities' acceptance of mining operations.

Mining companies also have corporate social responsibility projects in communities to help project their image and support, build and develop host communities.

Continuous engagement with host communities, awareness creation on mining activities, regulations, permitting and pertinent information go a long way to create, build and maintain social licence to operate.

4.6.3 Governance

Governance plays a crucial role in natural resource management. Organisations such as Transparency International include Morocco in their work, which gives an opportunity to have an external opinion on corruption and governance.

Morocco is a politically stable constitutional monarchy and this stability helps in the promotion of investment and business in this North African country. According to the Ministry of Energy, Mines and Sustainable Development, their strategic plan is to closely look at the issues of mining and energy transition, strategic and critical minerals, local content, and reclamation and rehabilitation of old mines.

In order to enhance on the governance of the natural resources of Morocco, the mining companies must comply with local laws and regulations. Moreover, Morocco should be encouraged to sign up with the EITI and follow the international standards for governance of natural resources.

5 Mozambique

5.1 Country Profile

Mozambique is a country located on the southeastern coast of Africa, covering a total land area of 801,590 km². It shares borders with Tanzania to the north, Malawi, and Zambia to the northwest, Zimbabwe to the west, Eswatini (Swaziland), and South Africa to the southwest. The country is characterised by a long Indian Ocean coastline (2,500 km) east of the country. Mozambique has a population of approximately 30 million people, making it one of the most populous countries in Africa. The capital city is Maputo, which lies along the north bank of Espírito Santo Estuary of Delagoa Bay, an inlet of the Indian Ocean. The official language is Portuguese, although many people speak other regional languages such as Swahili and Shangaan.



In 2019, Mozambique's Gross Domestic Product (GDP) was estimated to be \$15.7 billion. The World Bank reported that the Mozambican economy is recovering from the protracted slowdown in recent years, with growth reaching 4.4% in the first half of 2022⁵⁶. The economy is largely based on agriculture, with cashew nuts, cotton, and sugar being among the major cash crops. Fishing is also an important industry due to its long coastline.

5.2 Overview of the mining Sector

The Mozambique mining industry is rapidly developing and its mineral potential is still largely untapped. The sector has played a significant role in the country's economy, contributing to approximately 7% of the nation's gross domestic product (GDP) and 6% of the government's total revenues in 2019.

⁵⁶ The World Bank in Mozambique, <https://www.worldbank.org/en/country/mozambique/overview>, accessed on 24 May 2023.

Mozambique is expected to have produced about 34 percent of the global tantalum production during 2012⁵⁷ and has significant untapped reserves of high-grade coal, gold, graphite, and other minerals. Coal mining is the dominant industry in Mozambique, with the country having one of the largest coal deposits in the world. Gold mining is also a significant industry in Mozambique, with the country believed to have vast, untapped reserves of the precious metal. Other minerals of high economic value include: heavy mineral sands (silica, ilmenite, rutile and zircon), graphite, limestone, marble, specialty clays, ilmenite, precious and semi-precious stones (such as ruby, garnet and tourmaline), and diamonds.

The announcements by TotalEnergies, France's largest energy company, that Saipem, an Italian energy services group, will restart the country's first onshore development of a Liquefied Natural Gas (LNG) plant in July 2022 with a contractual value of 3.5 billion euros (USD 3.72 billion) indicate the growth potential of the extractive sector in Mozambique⁵⁸.

The Mozambican mining sector has great potential in the emerging market of graphite production and export. Total graphite deposits are estimated at 700,000 tons from 5.4 metric tons of ore, with an associated vanadium content of the ore estimated at up to 1.02%⁵⁹. Baobab Resources (Australia) is developing a pig iron project in Tete Province to supply iron and steel for regional infrastructure projects⁶⁰. In order to attract the much-needed capital, the government has implemented a softer political stance towards the mining sector, offering tax incentives and allowing for full repatriation of profits. With the presence of important Australian mining companies such as Triton Minerals, Mustang Resources, and Battery Minerals, the mining sector promises to be a major source of income for Mozambique in the years to come and a major boon for the country's struggling economy.

As graphite takes the commodities world by storm, Mozambique hopes to capitalise on its vast, high-quality deposits and use them to help to turn its economy around. The government is counting on mining to help get the economy running again after it borrowed \$2bn for dubious purposes (see TAR101, June 2018). It is seeking to profit both mining a pollutant (coal) and the race to develop sustainable and renewable energy sources.⁶¹

⁵⁷ KPMG, Mining, Mozambique, Country mining guide available on <https://assets.kpmg.com/content/dam/kpmg/pdf/2013/10/Mozambique-mining-country-guide.pdf>, accessed on 30 May 2023

⁵⁸ Saipem to restart Mozambique LNG project for Total in July, available on <https://www.reuters.com/business/energy/saipem-restart-mozambique-lng-project-total-july-2023-02-28/>, Accessed on 21 May 2023.

⁵⁹ Privacy Shield Framework, Mozambique Country Commercial Guide, Mozambique Mining and Mineral Resources, available on <https://www.privacyshield.gov/article?id=Mozambique-Mining>, accessed on 31 May 2023.

⁶⁰ Mozambique - Mining and Mineral Resources, **available on** <https://www.privacyshield.gov/article?id=Mozambique-Mining>, **accessed on 21 May 2021**

⁶¹ **The Africa Report ; Mozambique's glittering graphite mining boom, available on** <https://www.theafricareport.com/412/mining-mozambique-glittering-graphite/>, accessed on 21 May 2023



The mining sector revitalization started but remains slow, the opening of the Nacala rail line was a big step towards revival of Tete's coal sector. Mining in Mozambique is starting to get more attention from the national government's key authorities, particularly because it is seen as a critical source of revenue and employment which help the economy in both the short-run to the medium-run. Mozambique has hundreds of mines, majority of which are small- and medium-scale, which require, but currently lack, supervision and oversight and proper enforcement of regulations. Mining sector employment is about 19,000 in large-scale mining sector and 120,000 in artisanal and small-scale sector (about 3% of the country's total "formal" employment).⁶²

Special Economic Zones

Mozambique's mining sector possess an immense impact on the country's Special Economic Zones, including the Nacala Special Economic Zone, the Maputo Special Economic Zone, and the Nacala Logistics Platform. Investing in Mozambique's mining projects is driving growth and job creation within the SEZs. In addition, the sector is providing resources for infrastructure development, and helping boost trade, investment and business opportunities in the zones. Furthermore, local businesses are able to benefit from value-added services related to the mining sector as a result of being located in the SEZs, such as maintenance, production, and transportation of goods. The Nacala Logistics Platform has become a conduit linking Mozambique's mining centres with global markets, providing a platform for increased trade and investment opportunities both domestically and internationally. Together, all of these factors are driving economic growth and development in Mozambique, and helping to improve the lives of people across the country.

5.3 Governance

The Ministry of Mineral Resources and Energy (MIREME) is in charge of enforcing the Mining Law, whilst events and incidents are simultaneously monitored by the Ministry of Lands, Environment and Rural Development (MTERD). The other key stakeholder in the Mozambican mining sector are: National Institute of Mines (INAMI), National Directorate of Geology and Mines (DNGM), Ministry of Land and Environment (MTA), Tax Authority of Mozambique, Bank of Mozambique and the High Authority of Extractive Industry (established by the Mining Law in 2014, this regulatory authority is not operational yet).

⁶² Canadian Mining Journal, New risks brings new opportunity, available on <https://www.canadianminingjournal.com/featured-article/mining-in-mozambique/#:~:text=Mozambique%20has%20commercially%20important%20deposits,gold%2C%20rubies%2C%20and%20tantalum>, accessed on 21 May 2023



Mozambique is a member of the Extractive Industries Transparency Initiative (EITI) since 2009⁶³, a global standard for the good governance of oil, gas and mineral resources. The aim of the initiative is to promote better governance, transparency and accountability within resource-rich countries.

The EITI provides a platform to ensure that this potential for the extractive industry is ethically achieved, as a lack of transparency in the extractive sector can have serious implications for both the environment and local communities. The process is encouraging a range of organisations, such as companies, government and civil society, to work together to drive the necessary governance reforms and increase effective engagement with key stakeholders.

5.3.1 Mineral and Mining Policies

Mozambique's mining sector is governed mainly by nationwide laws and implementing regulations. Some of the specific laws and regulations governing the country's mining sector include:

- Mining Law (Law 18/2014, of 19 August 2014): This law provides for the definition, rights and duties of holders of mining titles, concession and licences, as well as the legal framework for the exploitation, production and transport of minerals in Mozambique.
- Environmental Law (Law 7/2018, of 22 August 2018): This law seeks to ensure the protection of the environment and the balanced and sustainable use of natural resources, as well as the safety and health of people.
- Customs Clearance Regulations (Decree 9/2017, of 6 April 2017): This law regulates the import and export of goods, provides for customs exemptions and establishes a preferential customs regime for the import of goods intended for use in the mining operations.
- Council of Ministers Decree 23/2018, of 3 May: This decree aims to support and promote green projects, programmes and activities in order to contribute to the control and reduction of greenhouse gas emissions.
- Regulations on the Hiring of Expatriates for the Petroleum and Mining Sectors (Decree 63/2011, of 7 December 2011): This decree regulates the employment of foreign personnel in Mozambique, as well as the procedures for the notification and authorisation of the hiring of foreigners.
- Regulations on Marketing of Mineral Products (Decree 22/2009, of 6 April 2009): This decree sets the ground-rules for the marketing of mineral products in Mozambique for entities that do not hold mineral titles.
- Regulations on Marketing of Diamonds, Precious Metals and Gems (Decree 39/2007, of 11 December 2007): This decree establishes the specific rules for the marketing of diamonds, precious metals and gems.

⁶³ EITI, Mozambique, available on <https://eiti.org/countries/mozambique>, accessed on 24 May 2023



- Resettlement Regulations (Decree 31/2012, of 8 August 2012): This decree sets out the measures to be taken in order to ensure the protection of the rights of all persons affected by a project or an activity.
- Environmental Regulations for Mining Activities (Decree 11/2006, of 31 March 2006): This decree establishes the requirements to ensure the compliance with environmental regulations in the mining sector.
- Law on the Taxation and Fiscal Benefits of Mining Operations (Law 28/2014, of 23 September 2014): This law regulates the taxation system applied to mining operations.

5.3.2 Mining Regulations

Mozambique's mining regulations are mainly set out by nationwide laws and implementing regulations. Mining rights and required licences and permits are awarded by the Ministry of Mineral Resources and Energy on a first come, first served basis. Any legal person established and registered in Mozambique can hold a mining title, if they have proven their competence and have the technical and financial capacity to undertake mining operations. Rights of use and enjoyment of mineral resources are granted by the State by means of a mining title.

Mozambique's Ministry of Mineral Resources and Energy (MIREME) has recently engaged Spatial Dimension, a Trimble Company, to upgrade its mining cadastre system. The National Institute of Mines (INAMI) is the implementing agency. The aim of the upgrade is to transition to an e-government based mining cadastre system, which will increase the efficiency of the licensing process and improve revenue collection.⁶⁴

Apart from mapping mineral resources, the system also facilitates the submission of applications and management of licences online, as well as other statutory processes, such as executing payments, submitting reports and undertaking renewals.

The e-government based mining cadastre system significantly enhances revenue collection from the mining sector in Mozambique. As such, it undoubtedly has a positive impact on the industry and aids economic growth in the country by making it easier for investors to explore and obtain relevant licensure in the nation's mining sector.

The exploration and the mining concession are most usually mining titles and are summarised in Table 9.

Table 9: The various licence types available for the mining sector of Mozambique.

Licence Type	Description	Duration	Renewable	Restriction
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⁶⁴ Trimble, **Mozambique to upgrade to an Online Mining Cadastre System, available on:** <https://landadmin.trimble.com/2020/06/02/mozambique-to-upgrade-to-an-online-mining-cadastre-system/>, accessed on 21 May 2023



Exploration Licence	This grants the rights to undertake exploration and prospecting to assess whether there are mineral resources; it may not exceed 19998 ha.	5 years	Renewable for an additional 3 year period.	
Mining Concession	This grants concessionaires the right to undertake mining operations and the right to dispose of minerals found;	25 years	Mining concessions are granted for 25 years and may be extended once, for another 25-year period. Extensions must be requested within 365 days prior to its due date.	The area of the concession must exceed that which is reasonably necessary for the mining operation.

For large-scale projects, the State and the mining concessionaire may enter into a mining contract. A mining contract is a framework for agreeing further rights but not mandatory unless the project value exceeds USD500 million, in which case the government can demand the conclusion of a mining contract. The contents of a mining contract cannot be in conflict with any Mozambican mining and other applicable legislation. The main terms of a mining contract must be published in the Official Gazette (Boletim da República), except confidential, strategic and competitively sensitive information. Mining contracts are broad and diverse, but they must include provisions on the following: the State's share in the undertaking, dispute resolution mechanisms, and minimum plan to benefit local communities.

A **Mining Contract** may be entered into between the exploration licence holder and the mining concession holder. For the conclusion of the contract, the following factors are considered: size of the project, investment amount, and strategic minerals.

Other mining titles are:

- Mining certificate (Certificado Mineiro). The mining certificate is relevant mainly to small-scale artisanal mining activities
- Mining pass (Senha Mineira). The mining pass is also relevant mainly to small-scale artisanal mining activities.
- Mineral treatment licence (Licença de Tratamento Mineiro).
- Mineral processing licence (Licença de Processamento Mineiro).
- Mineral products trade licence (Licença de Comercialização de Produtos Minerais).

Under the Mega Projects Law (which potentially applies to large-scale mining projects), the State reserves the right to obtain up to 5% in the share capital of the project for free (at any point of the project) in mining projects under a mining concession. Between 5% and 20% of the capital of the project company or consortium must be reserved for placement, on commercial terms, on the Mozambique Stock Exchange within five years of commencing the activity, for "social inclusion".

Requirements for Mining Rights Holders:

- Holders of mining rights must observe several environment-related obligations. For the purposes of defining the environmental requirements applicable to each case, mining operations are classified into three levels according to the scope, scale and sophistication of the equipment to be used.⁶⁵
- Mining titleholders, regardless of the type of mining title they hold, must provide a bank or parent company guarantee for the minimum value defined in the work programme, or the investment forecast in the economic feasibility study. The performance bond is to ensure compliance with the terms and conditions of the mining titles. The performance bond can be withdrawn after a certain period has elapsed (depending on the type of mining title and if certain requirements are met). Alternatively, the bond can be called by the State for any breach that otherwise allows it to revoke the mining title.
- Mining Concession titleholders must conduct environmental and social impact assessments, prioritise local content and economic development, consult and engage with local communities, pay royalties and taxes, comply with safety and health standards, and adhere to regulations governing mineral exports. The concession holder is also required to submit regular reports to the government on its activities and comply with all relevant laws and regulations
- Undertake the mining activities in accordance with the applicable legislation and set out social and environmental practices by law
- Respect local communities and contribute to their socio-cultural preservation by implementing corporate social responsibility projects.
- Compensate land owners for damages caused to their land or property as a result of the mining activity.
- Rehabilitate the environment in the area subject to the mining activity and repair any damage caused by it.
- Communicate the discovery of minerals to the government in accordance with the applicable regulations and before making any public announcement.
- Insure the site/infrastructure in accordance with the applicable legislation in relation to the following risks:
 - damage to the site/infrastructure;
 - liability towards third parties; and

⁶⁵ Lexology, Environmental regulations for mining activities in Mozambique, available on: <https://www.lexology.com/library/detail.aspx?g=e504d7d1-dbf7-46af-8557-40793d85bba5>, accessed on 21 May 2023



- work accidents of the personnel.
- Sell mineral products in Mozambique for industrial development (whenever necessary).
- List the mining company on the Mozambique Stock Exchange.

Renewal and Transfer of Mining Titles

Under the Mining Law, the mining titles and shares in the company holding mining titles can be transferred, subject to the prior approval of the government (represented by MIREME). Another restriction is that the mining rights cannot be leased by the titleholder. However, the titleholder can contract out the obligations of a mining operator to a third company to perform the mining operations on its behalf. Mining operators must be registered with MIREME in respect of a specific mining title.

The procedure and requirements are summarised below:

- Holders of prospecting and exploration licences must apply for an extension at least 60 days prior to the due date of the licence, being subject to the payment of a fee (when applied within less than 60 days) and submission of the following documents to the Ministry of Mineral Resources and Energy: tax clearance certificate, report detailing the activities carried out during the initial phase, work programme covering the extension period.
- The Ministry of Mineral Resources and Energy may, subject to the opinion of the National Institute of Mines, approve an extension of the licence for the requested period, provided that the licence holder has complied with all its obligations.
- Transfer of prospecting and exploration licences, as well as the direct or indirect transfer of the licence holder's shares, is subject to prior approval by the Ministry of Mineral Resources and Energy.

A **Mining Permit** is required for the following activities: extraction of mineral resources for construction of public interest works, geological research, and removal of fossils or geological findings.

Documentation required

The documentation required for each mining title are described below:

- **Processing and Mineral Treatment Licence**
 - Right to use and benefit from land
 - Techno-Economic Feasibility Study
 - Environmental Impact Study
- **Mining Certificate**
 - Application addressed to the Minister of Mineral Resources and Energy or Province Governor (For Construction Materials)
 - Certificate of Criminal Record

- Techno-Economic Feasibility Study
- **Mining Pass**
 - Application Addressed to the Province Governor (for Construction Materials)
 - Liability note in Relation to Workers to be employed in the designated Area
- **Trading Licence**
 - Marketing Plan
 - Identification Document of the Trading Operator
 - Liability note in relation to operators to be employed

5.3.3 Taxation and Royalties

Article 57 of the Mining Law establishes that whenever the availability of the resource and economic viability justify it, the processing of the minerals exploited in Mozambique must be carried out in the country.

Mozambique's mining regulations on taxation and royalties provide for a special value added tax regime for mining companies in the production stage, alongside a mining production tax and surface tax applicable to mining operations. Tax exemptions and modifications to applicable administrative and labour regimes may be included in mining contracts. Foreign applicants must also keep in mind that mining certificates, mining passes and mining concessions may only be awarded to Mozambicans and Mozambican companies. As regards the protection of mineral rights, Mozambique has an independent judicial system that observes the rule of law and due process and international arbitration is available as an alternative to local judicial courts.

Moreover, collateral environmental liabilities must be considered, as companies are required to provide a financial bond or insurance in order to cover potential costs associated with any damage caused by their operations. Lastly, capital gains taxes may be payable on the transfer of equity interests and other rights or participating interests in mining assets or rights located in Mozambique.

Taxes that specifically apply to mining activities are:

- **Royalties (also referred to a Mining Production Rates)**
 - Royalty rates are calculated different per mineral category and are shown in Table 10.

Table 10: Royalty rates per mineral category

Mineral	Royalty rate (%)
Diamonds	8
Precious metals (gold, silver and platinum)	6
Precious stones and semi-precious stones	6

Sand and Stones	1.5
Base minerals and coal	3
Other minerals not included in other categories	3

- **Surface tax**

- The annual surface tax rates are calculated per mining title and is shown in Table 11.

Table 11: Annual Surface tax rate per mining title

Mining Title	Surface Tax (MZN⁶⁶ per hectare)
Exploration Licence	17.5 for the 1 st and 2 nd year
	43.75 for the first year
	91 for the 4 th and 5 th year
	105 for the 6 th year
	210 for the 7 th and 8 th year
Mining Concession	30 from the 1 st to 5 th year
	60 from the 6 th year onwards

- **Mineral Resource Rent Tax (MRRT)**

- MRRT is a tax on the net cash flow under a mining title and applies to mining projects that have realised net revenues (cash gains) during a fiscal year. It is payable at the rate of 20% from the moment that the cash flow reaches an internal return rate of at least 18% (before corporate income tax).

The other general applicable taxes are:

- Corporate income tax
- Value added tax and customs duties;
- Windfall profits tax;
- Capital gains tax on the transfer of equity interests; and

These regulations serve to promote both foreign and local investment and ensure the government of Mozambique is actively involved in the economic development of the country.

Export Levy

Mozambique's export levy policies are largely determined by the Consolidation Law on Export Tax⁶⁷, which states that commodities extracted by industrial or artisanal miners are subject to the export levy.

⁶⁶ 1 MZN = 0.014 € on 16.05.2023

⁶⁷ **PWC Mozambique corporate taxes, available on:**

<https://taxsummaries.pwc.com/mozambique/corporate/other-taxes>, accessed on 21 May 2021



Depending on the type of minerals extracted, varying levy rates are applied. For example, diamonds are taxed at 8%, while base metals and coal are charged 3%. A portion of the export levies is allocated to provincial and district development funds, as well as employee education and training programmes. The export levies are seen as an important source of government revenue, and facilitate the reinvestment of funds into the local economy. The levy also has social objectives, such as reducing the health and safety risks associated with mining activities, as well as providing educational and training opportunities for Mozambicans. Furthermore, Mozambique has established a process for receiving and responding to complaints from citizens affected by the export levy policy. In this way, the government is helping to ensure that the levies are applied equitably and fairly.

5.4 Environment

Mozambique has set a goal of environmental sustainability in mining. The government is beginning to prioritize environmental protection as they recognize the need to balance the economic benefits of mining with the preservation of natural resources.

5.4.1 Environmental Regulations

The Environmental **Regulations for Mining Activity (2006)** sets out the environmental requirements for environmental sustainability in mining. This legislation regulates environmental assessments, social and environmental impact studies, environmental permits and audits. Additionally, the **Mine Health and Safety Act** requires mining companies to implement safety measures and inform workers about the risks of mining activities.

Holders of mining rights must observe several environment-related obligations. For the purposes of defining the environmental requirements applicable to each case, mining operations are classified into three levels according to the scope, scale and sophistication of the equipment to be used.

If the activities foreseen are deemed to fall under Level I activities, the mining project will merely be subject to the Basic Rules on Environmental Management for Mining Activity, which are aimed at mitigating any environmental damages or socio-economic impacts possibly arising from mining activities by ensuring that these respect simple methods intended to prevent air, soil and water pollution, as well as damage to flora and fauna, and to protect human health.

If the activities foreseen are deemed to fall under either Level II or Level III activities, the specific regime set out in the Environmental Regulations for Mining Activity will apply. Mining operations falling under Level II activities, including those carried out in quarries or which involve the extraction and mining of other mineral resources for construction, exploration and mining activities involving mechanised equipment, as well as pilot-projects, must mandatorily submit an environmental management plan (EM plan) and an emergency and risk situation control programme.⁶⁸

The government also requires mining ventures with a net return before taxes of at least 18% to be assessed for windfall profits tax. This is their way of preventing over-mining and depletion of resources by

⁶⁸ Lexology, **Environmental regulations for mining activities in Mozambique**

<https://www.lexology.com/library/detail.aspx?g=e504d7d1-dbf7-46af-8557-40793d85bba5>



controlling the amount a company can yield from an area. Moreover, financial bonds are also required from Level II and Level III operations in order to cover any decommissioning costs. This will ensure that the company is held accountable for any damage caused to the environment. In this way, Mozambique is demonstrating its commitment to environmental sustainability in the mining sector.

5.4.2 Tangible and Intangible Cultural Heritage

Mozambique is renowned for its rich blend of tangible and intangible cultural heritage. This is aided by its diverse population, with many different ethnicities and languages creating a unique cultural tapestry. Mozambique's literature is also very varied and includes, for instance, the works of Sterio Afonso and the oral stories of Machiana.

Mining plays an important role in preserving this heritage. It can stimulate economic growth and provide resources that allow communities to maintain their traditions. With the constant growth of the sector, there is a need for greater understanding and appreciation of Mozambique's cultural heritage so that it is respected and preserved. This can be done through initiatives, such as making sure that culturally sensitive sites and activities are respected, or by providing recreational spaces for local cultural activities. By doing so, the mining sector can make a significant contribution to preserving Mozambique's rich cultural heritage.

5.4.3 Mine Closure

The legal framework in Mozambique for mine closure and relinquishment is largely governed by the **Mining Law of 2014**, which sets out the process and requirements to protect the environment, ensure local communities are properly compensated for their losses or damage due to mining operations, and to rehabilitate the environment to its original state. The Mining Law includes provisions for the closure and rehabilitation operations, the required documentation, and the overall mine closure and relinquishment process which must occur when operations cease.

The **Framework for Mine Closure and Relinquishment** details the process by which each mining operation must be closed, and the documents needed to ensure legal compliance. The documents include an Environmental Impact Study, a Closure Plan, and a Financial Security Declaration. The Closure Plan must outline the steps necessary to rehabilitate the land and is submitted to the Ministry of Mineral Resources and Energy for approval. Lastly, the **Financial Security Declaration** must be submitted, which shows that the mine operator can cover the costs of any necessary remediation and redevelopment of the land, so the environment and people's quality of life are preserved long after the operations end.

5.4.4 Water

Mozambique has implemented a legal framework to ensure both efficient use of water resources and protection of water bodies along with the sustainable development of the mining industry. The **Mining Law (2014)** and its regulations provide for the obligation of mining operators to take measures to protect the quality and quantity of water resources and to properly manage the use and conservation of water.

Furthermore, the **Environmental Regulations for Mining Activity** require mining operators to submit environmental impact studies and execution of programmes for the use and protection of water resources that must be approved by the competent authorities in order to launch any mining activity. In addition, the **National Legal Framework for Integrated Water Resources Management**, as well as its regulatory



decrees, includes the principles for sustainable management of natural water resources and protection of water bodies, such as the necessity of obtaining a water use licence to be able to use, physically alter, control or dam water sources, especially in areas where water scarcity is an issue. The framework emphasises the public right to free access to adequate and safe water resources and prevention of water pollution, among other principles and measures

5.5 Social

5.5.1 Land-use and Mineral Rights

Mozambique's land rates and mining rights are subject to the Mining Law and are determined on a case-by-case basis. Along with royalties, surface tax and corporate income tax are also applicable. Surface tax is a fixed amount per square kilometre of land and corporate income tax is 32% on profits generated. Surface tax is a fixed amount per square kilometre of land-

The Mining Law strives to protect the local communities and to safeguard the environment hence enabling them to benefit from their mineral-rich territories. To this end, holders of mining rights are obliged to ensure appropriate resettlement plans are prepared and any affected populations are duly compensated or resettled

5.5.2 Artisanal and Small-Scale Mining

Mozambique is home to a robust and vibrant ASM sector comprising of more than 53 registered and active associations across the nation. With gold production reaching 197 kg in 2014, Mozambique's ASM sector is an increasingly important component of the nation's economy, accounting for around 3.2% of all exports. The sector is largely composed of artisanal miners involved in the production of both precious metals and stones, with gold production as the main activity.

The Mozambican government is committed to a transparent and equitable exploitation of mineral resources and the adoption of the 2013 African Mining Vision has seen ASM formalised and integrated into the Mozambique economy. This is evidenced by the measures taken to create designated ASM areas and registered associations as well as government loan facilities aimed at the ASM sector.

One third of the labour force is women and children and higher level of activity in ASM is observed during lower agricultural production indicating a degree of livelihood diversification from miners⁶⁹. The sector, however, does face some challenges and is strongly associated with deforestation, wildfires and soil degradation, all of which have a negative impact on the environment.

The government has taken steps to address and mitigate the negative impacts of ASM in the country, such as the establishment of The Mining Development Fund, tasked with promoting and assisting ASM financially and technically. Another recent initiative is the creation of the Gemmological Institute, aimed at promoting value addition and proper valuation of gemstones of ASM origin. The government also offers

⁶⁹ United Nations Economic Commission for Africa, ASM Country Profile, Mozambique, available on <https://knowledge.uneca.org/ASM/mozambique>, accessed on 31 May 2023.

loan facilities and incentivises value addition by allowing a 50% tax reduction on production when used in the local industry.

5.5.3 Operational Health and Safety (OHS) and Labour Regulations

Mozambique's policy on Operational Health and Safety (OHS) in the Mining sector is guided by the provisions of the Mining Law, which sets out the general principles for the promotion of health and safety in the workplace and the prevention of work-related incidents and risks. Pursuant to the Mining Law, mining operations are subject to the Regulations on the Hiring of Expatriates for the Petroleum and Mining Sectors (Decree 63/2011, of 7 December 2011), the Environmental Regulations for Mining Activity, and the Basic Rules on Environmental Management for Mining Activity.

In order to comply with health and safety regulations, holders of mining titles are required to prepare and submit plans to MIREME and the Ministry of Labour on matters related to risk assessment, potential sources of fire or explosion, the use and maintenance of equipment, working conditions, and measures to prevent risks, accidents, and occupational diseases. The health and safety plans must cover all operations and activities on the mining site, and include information on safe working procedures, personal protective equipment, emergency and evacuation plans, and health and safety monitoring.

To ensure continuous improvements are made to health and safety management systems, MIREME also requires that mining concession holders produce bi-annual environmental management reports consisting of environmental audits of the operations, and an emergency and risk situation control programme. Assessments made by these reports must be taken into consideration for the renewal of the licences and for any other decision regarding the management of the concession. Operators must also conduct regular site visits and inspections to ensure that the hazards and risks associated with the site are identified and addressed.

To this end, holders of mining rights are obliged to ensure appropriate resettlement plans are prepared and any affected populations are duly compensated or resettled. Finally, Mozambique's policy on public health and safety in the mining industry is complimented by several tax, customs and trade regulations. Particularly, foreign personnel are subject to authorisation by the Ministry of Labour or the Rules on the Hiring of Expatriates, after filing a corresponding application, specifying the roles and functions of the expatriate

5.5.4 Public Health and Safety

Mozambique's policy on public health and safety in the mining industry is largely governed by the **Mining Law (No. 30/2011, of 11 October 2011)**. The Mining Law focuses on mitigating any risks and harm to the public, notably by setting forth safety measures and regulations.

Mozambique has adopted a proactive policy to ensure the compensation schemes for potential long-term health impacts on local communities are well addressed. The government understands the potential adverse health impacts posed by mining activities, and has put in place measures to address this. In 2019, the Government of Mozambique, in partnership with the International Finance Corporation (IFC), launched a project to fund health and safety initiatives in mining communities and to compensate workers in case of any long-term health impacts caused by mining activities.



The compensation scheme for local communities includes the provision of medical and financial support to those who experience health impact due to significant environmental, economic or environmental-related risks associated with mining activities. The scheme also covers the assessment and management of environmental, economic and social risks related to mining activities, such as air quality, dust and noise levels, health and safety issues, and access to alternative sources of water. The scheme also promotes public awareness and educational programmes regarding health and safety issues and the correct disposal of industrial waste and chemicals generated by mining activities. It further also supports the setting up of an independent environmental and health monitoring committee, which undertakes an assessment of the environmental and economic impact of each mining activity and the performance of the social aspect of the operation.

5.5.5 Labour Practices

Mozambique, in accordance with the country's Labour Constitution and its Labour Code, affirms that employees have the right to form or join a trade union and to peaceful assembly in order to defend their rights and interests. The country's policy on the role of trade unions in the mining industry is defined in Law No. 16/2004 and covers various topics such as establishing, registering, and amending the statutes of trade unions; protecting the rights, freedoms and interests of trade unions; restricting the possibilities of raising funds from the miners; and outlining how the trade union executives may be appointed and dismissed. Mozambique's legislation grants trade unions the right to safeguard workers' rights, as well as to take measures to ensure compliance with agreed labour conditions. Some of these measures may include the promotion of collective bargaining and other negotiations concerning workers' remuneration and working conditions, as well as the right to take legal action in the defence of their members' interests. Additionally, workers have the right to form or join a trade union committee, which is in charge of representing the workers in the process of negotiating and signing collective employment agreements.

Mozambique's Constitution also provides for the establishment of trade union centres. The trade union centres, in turn, have the capacity to coordinate, direct and control their affiliated unions' action and to promote and supervise their legal, professional and social actions within the framework of the Labour Code and other applicable regulations. Moreover, trade union centres are permitted to draw up guidelines on collective bargaining and other negotiations, as well as to provide appropriate legal assistance to trade unions in their activities.

Most crucially, trade unions in Mozambique are granted the right to participate in the life of the organisation. For instance, they have the right to organise electoral campaigns, to discuss issues and organise activities related to the defence of their members' interests. In addition, the law states that trade unions should be consulted regarding any measures that may affect the interests of their members.

5.5.6 Societal and Community Aspects

One of the main aspects of Mozambique's policy on mining is its commitment to upholding the rights of communities and local governments near mines. Governmental regulations such as the Mining Law, the Resettlement Regulations and the Environmental Regulations for Mining Activity, create an overarching framework that seeks to prevent any risk or harm to the environment and the communities around each



mining site. This includes both, proactive and precautionary measures for the safety and security of communities, such as the requirement for mining concessions to have an environmental license prior to operation and environmental management plans in place. In addition to this, all mining operations must conduct a comprehensive public consultation process involving affected communities prior to commencement.

Another key aspect of Mozambique's policy on mining is its focus on promoting sustainable development and protecting the environment. This includes several regulatory provisions covering a wide range of issues, from air and soil pollution, to the prevention of flora and fauna damage and potential risks to human health. Other regulatory measures include the establishment of the National Sustainable Development Fund, created by the Ministry of Land and Environment in 2016, to support and finance programs with a sustainable focus. Finally, Mozambique's policy on mining is also highly focused on the promotion of foreign direct investment and the development of the local economy. This is achieved through a range of measures, including the provision of customs exemptions to foreign investors on equipment and materials imported for use in mining operations and labor measures allowing the hiring of foreign personnel. In addition to this, the taxation system applicable to the industry has been designed to be competitive, with royalty and corporate income tax rates varying depending on the type of mineral and phase of the operation

5.6 Assessment of the Mozambican Mining Regime with Respect to ESG objectives

The Government of Mozambique has employed the ESG (environmental, social, and governance) framework in the mining sector since the early 2000s. This framework is based on the main principles of sustainability, and has served as a basis for the development of more detailed regulations at both the national and provincial levels. The framework includes a number of key provisions in order to ensure that the industry is compliant with local and international standards of environmental protection. Although the current mining regime is quite recent (in force since the end of 2014), there was a government intention to review the registration requirement of mining companies in the stock market under the Mining Law. However, that has not been developed or discussed yet. It is also on the government's agenda to revise the Megaprojects Law (which also applies to mining projects).

5.6.1 Environment

The Environmental Regulations for Mining Activity provide that all operations must be classified onto one of three levels based on their potential environmental impact (Level A, B, or C). Level A operations must carry out an environmental impact assessment (EIA), Level B operations have a simplified EIA, and Level C operations have an environmental management plan. Additionally, holders of mining titles are also required to prepare and submit health and safety plans to MIREME and the Ministry of Labour. This demonstration of commitment towards global strategies for decreasing greenhouse gas emissions is supported by the creation of the National Sustainable Development Fund, which is used to support and finance programmes with sustainable priorities such as environmental management and conservation of biodiversity.



5.6.2 Social

The Resettlement Regulations dictate that holders of mining titles must prepare a resettlement plan for local communities that are affected by their operations. The resettlement plan must effectively restore the cultural, social, and economic conditions of the affected community. Furthermore, the Environmental Regulations for Mining Activity also encourage stakeholders to enter into a memorandum of understanding that outlines the management of environmental, social, economic, biophysical and cultural matters during both operation and decommissioning. As such, due consideration is given to environmental compliance, third-party rights, and social issues when developing and operating a mining project. These provisions, when taken together, represent a coherent and well-structured policy on the ESG framework in the mining sector of Mozambique.

Artisinal Small-scale mining has a negative impact on Mozambique's society, economy and environment. However, despite the challenges the sector faces, ASM remains an important component of Mozambique's economy and society, contributing employment and income to those in rural areas. With the right policy initiatives, ASM can be a viable and valuable development alternative helping to eradicate poverty and promote national economic growth.

5.6.3 Governance

Despite a very good legal and regulatory framework, practical implementation of some of the laws are lacking and/or require strengthening.

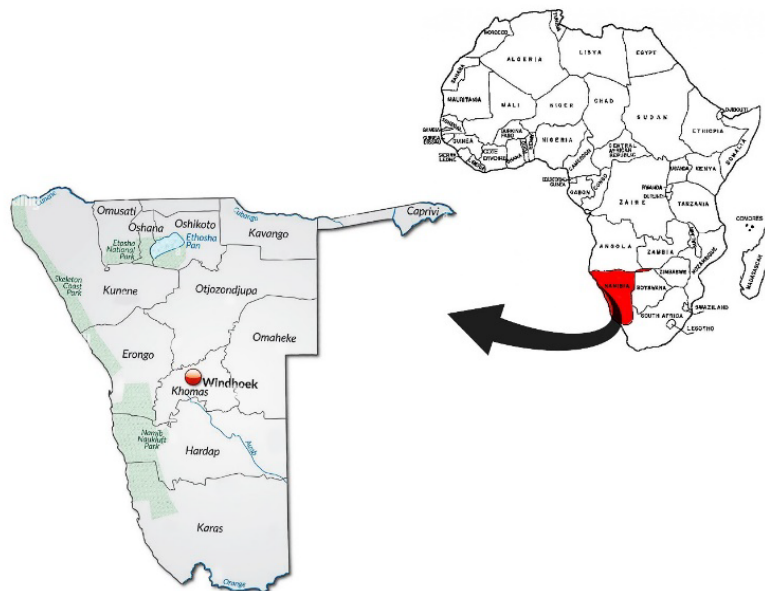
The regulations for awarding licensing are quite rigorous and are being implemented well and this works well for the governance of the natural resources of Mozambique. This is due mostly to an excellent cadastre system, good pre- and post-licensing practices and contract disclosure rules and practices. The government intends to review the registration requirement of mining companies in the stock market under the Mining Law. However, that has not been developed or discussed yet. It is also on the government's agenda to revise the Megaprojects Law (which also applies to mining projects).



6 Namibia

6.1 Country Profile

Namibia is a southwestern African country that covers a total land area of 824 292 km². It is bordered by Angola, Zambia, Botswana, South Africa, and the Atlantic Ocean. Its capital and largest city is Windhoek, located in central Namibia in the Khomas Highland plateau area. The country has a population of approximately 2.5 million people, with more than 11 different ethnic groups, including the San, Herero, Ovambo, and Himba. Extensively used languages include Afrikaans and Oshiwambo in addition to English, which is the official language. In 2019, the country's GDP was estimated to be approximately \$15.42 billion. According to the World Bank, GDP growth in 2022 reached 3.5%, driven by mining (especially the growth of diamond production), manufacturing, and the continued recovery of services⁷⁰. The economy is heavily dependent on mining, agriculture, fisheries, and tourism.



6.2 Overview of the Mining Sector

The mining sector is the largest contributor to Namibia's GDP, accounting for about 12.5% of the country's total production. The mining sector's contribution to the country's Gross Domestic Product (GDP) is largely through Large Scale Mining (LSM) activities. Domestic Product (GDP) and also accounts for at least 50% of the foreign exchange over the past decade (Chamber of Mines Namibia, 2022)⁷¹. The contribution of Artisanal and Small-Scale mining to the GDP is not only negligible, but it cannot be measured because the ASM is not fully integrated into the regular economy.

Namibia's mining industry is primarily focused on diamond, uranium and copper mining. Diamonds remain the country's most important mineral export, accounting for more than 50% of the country's export earnings. The diamond mines in Namibia are mostly located in the southwestern region of the country. In 2022, Namibia was ranked as the world's fourth-largest producer of uranium oxide⁷². The Rossing Uranium mine, also situated in the Namibian desert, is the fifth-largest producer of uranium oxide in the

⁷⁰ The World Bank in Namibia, available on

<https://www.worldbank.org/en/country/namibia/overview#:~:text=The%20lingering%20impacts%20of%20the,the%20continued%20recovery%20of%20services.>, accessed on 24 May 2023

⁷¹ Annual Review, 2022, Chamber of Mines of Namibia, available on <https://chamberofmines.org.na/wp-content/uploads/2023/04/2022-Chamber-of-Mines-Annual-Review.pdf>, Accessed on 6 March 2023.

⁷² International Trade Administration, Namibia Country Commercial Guide, Mining and Minerals, available on <https://www.trade.gov/country-commercial-guides/namibia-mining-and-minerals>, accessed on 31 May 2023.

world. The mine contains the largest uranium deposit in the world associated with igneous rock and is majority owned by China National Uranium Corporation (CNUC)⁷³. Namibia also produces a wide variety of industrial minerals, including graphite, wollastonite, bentonite, salt, semi-precious stones, and others. Namibia is an up-and-coming source country for critical minerals essential for renewable energy technologies. Namibia is the fourth largest exporter of non-fuel minerals in Africa (KPMG report, 2014).⁷⁴

Battery minerals, notably lithium, graphite and cobalt, and rare earths have been found in Namibia, but they are currently not being mined at full scale. These minerals present opportunities for mining and beneficiation, thus significantly contributing to the manufacture of various components used in electric vehicles and the storage of relatively large amounts of energy for longer periods, especially from renewable sources such as solar, for which Namibia has a comparative advantage due to long hours of sunshine.

Namibia's mining sector's contribution to the GDP has not yet reached its full potential in terms of converting Namibia's extensive mineral endowment to create corresponding advances in social and economic development across the country. This is mainly due to Namibia's inability to beneficiate mineral commodities into more valuable refined products that can serve as feedstock for a competitive manufacturing industry. The exporting of raw or semi-processed mineral products exposes them to market price fluctuations, which do not usually apply to end products. Namibia's options for beneficiation/manufacturing are constrained by economic, technological, market, environmental and social factors, as well as the lack of adequate infrastructure (transport, water and energy), which can threaten long-term competitiveness.

The key institution governing the mining sector of Namibia is the Ministry of Mines and Energy⁷⁵ (MME). MME is responsible for:

- Attracting private investment in resource exploration and development through the provision of geological and geochemical information on minerals and energy resources, as well as through the management of an equitable and secure system of licences for the mining, energy and geothermal industries.
- Regulating the industries and ensuring that health, safety and environmental standards are in place and consistent with other Namibian legislation, policies and regulations

⁷³ International Trade Administration, Namibia Country Commercial Guide, Mining and Minerals, available on <https://www.trade.gov/country-commercial-guides/namibia-mining-and-minerals>, accessed on 31 May 2023.

⁷⁴ KPMG Report, (2014) KPMG Global Mining Institute, Namibia Country Mining Guide. Retrieved April 4, 2023

⁷⁵ <https://www.mme.gov.na/>



- The collection of royalties from the mining and energy sectors; upon collection, the royalties are transferred to the national treasury.

In addition to the MME, the following key government stakeholders in the management of the mining sector are: The Ministry of Environment and Tourism (MET), Ministry of Finance (MoF), Ministry of Industrialisation, Trade and Small and Medium Sized Enterprise Development (MITSMED), Ministry of Agriculture, Water and Forestry (MAWF), the Ministry of Fisheries and Marine Resources (MFMR), the Ministry of Gender Equality and Child Welfare, the Ministry of Health and Social Services, the Ministry of Labour and Social Welfare, and the Ministry of Justice and the National Planning Commission.

6.3 Governance

Best Practice in governance in Namibia has been identified as a priority by the Namibian government. The Harambee Prosperity Plan (HPP) is a targeted Action Plan to accelerate development in clearly defined priority areas, which lay the basis for attaining prosperity in Namibia. The Harambee Prosperity Plan II⁷⁶(2021-2025), aims at implementing policy programmes that enhance service delivery and economic recovery to strengthen Namibia in terms of socioeconomic challenges and preparing it for global opportunities in relation with the Covid-19 pandemic. The HPP2 is based on 4 pillars and the first pillar, Effective Governance, focusses on continuously improving accountability and transparency in order to strengthen the national anti-corruption mechanisms.

The **Corporate Governance Code for Namibia (NamCode)**⁷⁷ is a corporate governance manifesto for companies incorporated under the Companies Act 28 (2004)⁷⁸ as well as entities incorporated by statute (i.e., so called incorporation by act of parliament. The code was prepared and drafted by the Namibian Stock Exchange with support from FNB Namibia Holdings Limited. The principles of this NamCode apply to Namibian entities (large private and listed companies across all industries) on a ‘apply or explain’ basis and that the best practice recommendations are provided as guidance for the application of the principles of this NamCode.

Namibia has the **Anticorruption Act 8 of 2003**⁷⁹ to lead the fight against corruption through effective law enforcement and preventative measures. In addition to this, the Anti-Corruption Commission has set out the National Anti-Corruption Strategy and Action Plan (NACSAP) that serves as a tool for fostering cooperation and continued synergy across all sectors and spheres of society in Namibia in attaining the national vision for a corruption-free Namibia.

The following sections in the **Mineral (Prospecting and Mining) Act of 1992** make specific regulatory provisions for transparency in the mining industry of Namibia: 45, 66, 76, 89 and 101. According to these

⁷⁶ <https://hppii.gov.na/>

⁷⁷ Namibian Stock Exchange, The Namcode, available on <http://nsx.com.na/images/reports/Namcode-Inside.pdf>, accessed on 20 March 2023

⁷⁸ Legal Assistance Centre of Namibia, Companies Act 28 of 2004, available on <http://www.lac.org.na/laws/annoSTAT/Companies%20Act%2028%20of%202004.pdf>, accessed on 24 May 2023.

⁷⁹ Legal Assistance Centre of Namibia, Anti-Corruption Act 8 of 2003, available on <https://www.lac.org.na/laws/annoSTAT/Anti-Corruption%20Act%208%20of%202003.pdf>, accessed on 24 May 2023.



sections, the following disclosures are mandatory: production records, production plans, records and financial statements and reports. These disclosures are to be submitted to the MME by the holders of mining claims, reconnaissance licences, exclusive prospecting licences, mineral deposit retention licences and mining licences. Although Mineral (Prospecting and Mining) Act of 1992 make provision for transparency, there is no monitoring body to monitor the implementation of this legislation.

Namibia has not joined the Extractive Industries Transparency Initiative (EITI) to improve transparency in the mineral industry. However, the country is in the process of establishing a position on joining it.

6.3.1 Mineral and Mining Policies

The **Minerals (Prospecting and Mining) Act 33 of 1992** is the main legal mechanism controlling the allocation of mineral rights in Namibia. The act outlines the mineral rights in the country, describes how the industry will be administered, and lays out the processes, procedures, rights, and obligations relating to the various mining claims and licences available in Namibia. It also includes information on royalty rates and penalties for any infractions, sets mine closure requirements, and establishes a Minerals Ancillary Rights Commission to help those licence holders who cannot exercise their rights due to land disputes. Minerals (Prospecting and Mining) Act, 1992 provides for the reconnaissance, prospecting, and mining for, and disposal of, and exercising control over, minerals.

The **Minerals Policy of Namibia (2003)** sets out guiding principles and directions while communicating the values of the Namibian people in pursuit of the development of the mining sector. The Minerals Policy of Namibia (2003) was developed to achieve a high level of responsible development of national resources in which Namibia becomes a significant producer of mineral products while ensuring maximum sustainable contribution to the country's socio-economic development.

Both, the Minerals (Prospecting and Mining) Act and Mining Policy are currently under review to incorporate changing knowledge and best practice.

The **Mineral Beneficiation Strategy for Namibia (2021)** was developed as an inclusive long-term modernisation and economic transformation programme that enables substantive and sustained raising of living standards, intensifying structural change and accelerating Namibia's industrialisation. The strategy seeks to complement key national development initiatives by creating a conducive environment for investment and value-addition through the provision of mineral-based feedstock for a competitive manufacturing sector in an environmentally sustainable way. It aims to address critical intervention areas in order to direct Namibia's mineral endowment and outputs towards enhanced economic development and social progression. The mineral beneficiation strategy provides a blueprint for Namibia to improve competitiveness as an investment destination. This competitiveness, coupled with considerable natural endowment in mineral resources, provides a platform for increased beneficiation, leading to the realisation of more economic value from the various mineral commodities in the country. The Namibian government has unquestionable commitment to working with the role players in the minerals industry to create the investment in infrastructure that is necessary for beneficiation to reach its full potential and



contribute to the industrialisation of the country as outlined in Vision 2030 and the National Development Plans (NDP5 and beyond).⁸⁰

6.3.2 Mining Regulations

The Minerals (Prospecting and Mining) Act stipulates a fair and transparent process for licencing. The Act clarifies data and reporting requirements for permits and mining claim applicants. According to the Minerals (Prospecting and Mining) Act, 1992, section 47, with the approval of the minister, mineral licence can be amended or transferred upon cession or assignment of any interest in any mineral licence or to be joined as a joint holder of a mineral licence. and if the applicants are not satisfied with the outcome, they can appeal to Mining Minister and up to the level of the High Court of Namibia. The Chief Inspector is responsible for compliance audits and mine visits. If the companies are in non-compliance with the mineral act, the Mining Commissioner has the right to issue a notice of intention to cancel the licence.

The Mining Commissioner, through the Division of Mineral Rights and Resource Development at the MEM is responsible for issuing licences. The application forms are located on the MEM's website⁸¹ and contains all the information needed for the application. The following information about the application is available on the website for the Mining Cadastre Portal⁸²:

- Licence type
- Name of the applicant
- Date of application
- Date of issuance
- Date of Expiry
- Commodities
- Size of the license area

The information is typically updated on each business day. The various licence and claims types for the mining sector of Namibia are listed and summarised in Table 8.

Table 12: The various licence and claims types available for the mining sector of Namibia

Licence type	Description	Duration	Renewable	Restrictions
Non-exclusive prospecting licence (NEPL)	Gives the right to prospect on any land for any mineral or group of minerals.	12 months	No	Anyone over the age of 18 can apply; non-transferable.
Mining claims	For Namibians, mining on a small scale.	3 years	2-year extension, unlimited (Providing the claim is being worked on)	A maximum of 10 claims can be held at any one time. Available to Namibian citizens only.

⁸⁰ Ministry of Industrialization and Trade, 2021, Mineral Beneficiation Strategy for Namibia, available on <https://mit.gov.na/documents/41692/88507/Mineral+Beneficiation+Strategy+for+Namibia+2021.pdf/df535451-9bb1-3bf6-20b9-f36f0aecbb75?version=1.0&t=1617718580899&download=true>, accessed on 20 March 2023

⁸¹ <https://www.mme.gov.na/mines/mrrd/>

⁸² <https://maps.landfolio.com/Namibia/>

Reconnaissance licence	Regional, mainly remote sensing exploration for identification of exploration targets.	6 months	No	Not transferable.
Exclusive prospecting licence (EPL)	For an area of up to 1,000 km ² (100,000 ha). Granted for a specific mineral or group of minerals.	3 years	Twice for 2-year periods, with the area decreasing by 25 percent with each renewal	Exclusive exploration rights to the land. (Renewals beyond seven years require special approval by the Minister).
Mineral deposit retention licence	Allows exploration company to retain tenure on exclusive prospecting licence, mining licence or mining claim without any mining obligations.	5 years	2-year periods	Must meet work and expenditure obligations and submit regular project reviews.
Mining licence (ML)	Exclusive rights to the mining area.	25 years or life of Mine	15-year periods	Must demonstrate financial and technical ability to develop and operate a mine.

Key pieces of legislation and Policy, including the Minerals (Prospecting and Mining) Act, the Minerals Policy, and the Water Act, require revision or are in the process of revision that is often seen as too lengthy and opaque (IGF, 2018)⁸³.

It is a requirement for foreign investors in mining that the company has at least 5% of Namibian ownership and 20% of the management structure consists of Namibians. Foreign investors cannot own mining claims; however, they can enter into a joint venture with Namibians.

6.3.3 Taxation and Royalties

Namibia operates a modern system of taxation that is reasonably competitive by international standards and is modified and updated on a regular basis usually, but not always, following announcements in the national budget speech. The basic system has remained fairly simple and satisfies a vital governance aspect in that the policies and regulations are stable, predictable, and transparently implemented. Tax administration is carried out primarily by the Directorates of Inland Revenue and Customs and Excise within the Ministry of Finance, which administer the Income Tax Act, Value Added Tax Act, Stamp Duty Act, Transfer Duty Act, as well as parts of the Petroleum Taxation Act. Some mining taxes, however, are the responsibility of the Ministry of Mines and Energy. Taxation for mining and quarrying, as well as that for oil and gas companies is different to other companies.

The mining sector generates significant revenue for Namibia through various mechanisms (including taxes, royalties, equity, fees, and levies). The rates are generally fair, regionally competitive, and equitably applied across the sector. The Ministry of Finance has divisions investigating large taxpayers and combatting transfer pricing. Policies on taxation and royalties can be decisive elements to attract or deter foreign investment but are also essential instruments to ensure that a fair share of the wealth generated by extraction remains in the source country. Mining companies pay royalties to the government. That

⁸³ IGF Mining Policy Framework Assessment, Namibia, 2018, available on <https://www.iisd.org/system/files/publications/namibia-mining-policy-framework-assessment-en.pdf>, accessed on 24 May 2023.

said, local communities do not directly get a share of the royalties paid by the mining companies. Royalty rates differ according to metal or mineral type as shown in Table 13.

Table 13: Royalty rates per mineral category

Mineral	Royalty rate (%)
Semi-precious stones	2
Dimension stones	5
Base and rare metals	3
Precious metals	3
Diamonds	10
Industrial minerals	2
Non-nuclear fuels	2
Nuclear fuels	2

Taxation for the income from exploration and mining companies is done according to the **Income Tax Act, 1981 (Act 24 of 1981)**. There is no restriction on repatriating profits for foreign investors. Namibia Revenue Agency (NamRA) is the nation's tax-collecting authority, while MME is the Royalty collecting authority.

The **Export Levy Act 2 of 2016** to provide for the imposition of an export levy on certain goods to improve Namibia's value share in its resource base, to encourage further processing or beneficiation of or value addition to such goods, to support national or regional industrial development, to promote the development of regional value chains and to meet revenue needs; and to provide for incidental matters. The export levy is higher for raw minerals than for processed or finished goods.

There are laws in place that allow for adequate protection of the rights of investors. The state may lawfully expropriate property owned by foreign national in the public interest, provided that it is done in accordance with the law. Findings show that value addition plays a huge role even in cases of expropriation, as people who add value to their property are well compensated.

Namibia's **National Special Economic Zone Policy (SEZ)** expands and subsumes the existing **Export Processing Regime (EPZ)** by strengthening key provisions, such as expanded sectoral focus and a transparent monitoring and evaluation framework. The SEZ policy was finalised and adopted in August 2022 but the SEZ Act will only be enacted in 2023. The expected outcome of the National Special Economic Zone Policy is to bring about successful industrialisation. The Ministry of Industrialization and Trade (MIT) will review the SEZ policy every five years to incorporate new market dynamics and developments. The SEZ expects to yield the following outcomes: A regulatory framework that optimises the development and attainment of an inclusive SEZ regime in Namibia; a regionally balanced operation of SEZ across Namibia; attraction of both, qualitative and quantitative investments into the SEZ across industrial and services sectors; fostering key cross-border regional and bilateral value chains development through SEZ; creation of industrial hubs and technical skills development, and enhanced developmental impact of the SEZ regime. The SEZ policy has made a provision for both fiscal and non-fiscal investment incentives for various investment categories among others, exporters and manufacturers. Some of the identified, but not limited to, incentives are: lower Corporate Income Tax rates; reduced import duties/customs tariffs;

Capital Deductions Allowance; Research and Development Allowance; establishment of One-Stop Shop to support the facilitation of incentives for investors in the SEZ; Competitive Utility Tariffs; and supportive and directed approach to provision of visa for non-resident foreign investors.

The Income Tax Amendment Act, 2020 repealed the provisions relating to **tax incentives** for manufacturers. These special income tax incentives granted to registered manufacturers by the time of the amendment in 2020, in relation to the above will continue to apply until the end of the 2025 tax year in respect of each registered manufacturer. The Ministry of Industrialisation and Trade, the Ministry of Finance and Namibia Investment Promotion and Development Board (NIPDB) are in the process of developing new incentives schemes for various investments outside the Special Economic Zones. The new incentives scheme is expected to be in place together with the **Special Economic Zones Incentives Scheme** by mid-year 2023.

6.3.4 International Commitments

- Signatory to the Treaty on Non-Proliferation of Nuclear Weapons (NPT)
- Kimberley Process Certification

Namibia is a signatory to the following international regulations: UN Framework Convention on Climate Change (ratified 1995), The Paris Accord (2016), The Convention on Biological Diversity (1997), The Ramsar Convention on Wetlands (1995), The UN Convention to Combat Desertification (1997), The Convention on the Illegal Trade in Endangered Species of Wild Fauna and Flora (1990, accession), The Basel Convention for Controlling Transboundary Movements of Hazardous Wastes and their Disposal (1995, accession), The Stockholm Convention on Protecting Human Health, The Environment from Persistent Organic Pollutants (2005, accession), Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (2005, ratification), Namibia ratified the Minamata Convention on Mercury in 2017.

6.4 Environment

Namibia is one of the few countries incorporating environmental sustainability in her constitution. The government institution responsible for the protection and management of Namibia's natural environment is the **Ministry of Environment and Tourism (MET)**. The **Department of Environmental Affairs (DEA)** is responsible for granting Environmental Clearance Certificates (ECC), the administration of Environmental Impact Assessments (EIA), and enforcement of regulations such as on pollution control and waste management). A valid ECC is required for the application for various mining licences and licence renewals. The DEA is also responsible for ensuring that mining companies comply with the EIA-related obligations that allow them to maintain their exploration or mining licence, through regular monitoring and inspection.

6.4.1 Environmental Regulations

The environmental aspects of the mining life-cycle are governed by the **Environmental Management Act No 7, 2007 (EMA)** and the **Environmental Impact Assessment Regulations: Environmental Management Act, 2007 (EIA)**. This includes exploration, construction, production, closure and post-closure.



In addition to the EMA and EIA Regulations, the following key laws and policies play an important role in the environmental aspects of the mining cycle:

- Environmental Assessment Policy, 1995
- The National Drought Policy and Strategy, 1997
- Namibia's Climate Change Policy, 2011
- Nature Conservation Ordinance, 1975

The EMA and its regulations are vital to the environmental management of Namibia's natural resources and the MET proactively continues to try to improve upon it. These regulations include the requirements around the development of Environmental Impact Assessments (EIAs) and Environmental Management Plans (EMPs), as well as The Environmental Clearance Certificate (ECC) process. Special and stringent conditions are placed on ECCs for projects with high or significant social or environmental risks. The EMP should include measures to be taken to eliminate, offset, or reduce to acceptable levels adverse environmental impacts of mining across the mine life-cycle (EMA, 2007).

Through the EIA process, the EMA requires that mining companies identify and minimise their operations' local and transboundary impacts. Continued pressure from the public and interested and affected parties helps reinforce the importance of companies consistently working to prevent adverse environmental impacts beyond their mines' boundaries. The effluent permitting process for mining entities is inconsistently applied; some companies have the permits required to ensure that the quality and quantity of mine effluent discharged into the environment is managed and treated to meet established effluent discharge guideline values. In contrast, others can operate without these permits.

Depending on the size of the operation, the following mining activities require an EIA: mineral exploration, mine development and exploitation, landfilling and mine closure/reclamation. The EMA empowers the Environmental Commissioner to monitor compliance with the act and conditions stipulated in ECCs. An EMP must be developed and submitted as part of the ECC application and reviewed and resubmitted every three years for the renewal of the ECC. The monitoring of the environmental performance and the enforcement of environmental provisions is fairly good. However, this is not the case in the case of ASSM. The legislation dealing with environmental issues in terms of ASSM is fragmented (Leonard et al, 2011).⁸⁴

There are a number of no-go areas for mining in Namibia. Namibia's mineral endowment implies that mining and the environment will continue to interact and hence the need to work together to achieve prosperity in a sustainable manner. The legislation does not offer adequate protections for biodiversity in the face of mine construction and operation. The **Forestry Act No. 12, 2001** provides provisions for

⁸⁴ An Artisanal Mining Environmental Code of Practice for Namibia, 2011. Leonard, Rosina Ndahafa, Hauptfleisch, Morgan, Ellmies, Rainer, Czech Geological Survey, ISBN 978-807075119-0, available on http://the-eis.com/elibrary/sites/default/files/downloads/literature/An%20Artisanal%20Mining%20Environmental%20Code%20of%20Practice%20for%20Namibia_2011.pdf, accessed on 24 May 2023.

removing vegetation and protected trees. At the same time, the draft **Parks and Wildlife Bill** would address biodiversity holistically but has yet to be adopted.

6.4.2 Tangible and Intangible Cultural Heritage

The Environmental Management Act, through the EIA regulations, caters to what to do should archaeological or fossil remains be encountered during mining activities. Extraction projects may affect tangible or intangible cultural heritage sites, such as archaeological sites or sites of spiritual value. The EIA addresses the protection of cultural heritage and national monuments in the permit application process. The **National Heritage Act No. 27, 2004**, is the law dealing with protecting such cultural heritage.

The **National Policy on Prospecting and Mining in Protected Areas (2018⁸⁵)** aims to ensure that exploration and mining within protected areas are undertaken within the environmental and economic regulatory framework that exists and that mineral development only commences in these protected areas once the impacts have been assessed. This policy also aims to develop integrated and sustainable prospecting and mining in Namibia to support economic growth, whilst maintaining the integrity of ecosystems and natural resources, and avoiding degradation of areas highly sensitive for their ecological, social and/or cultural heritage value. Based on the best available information, the Policy also establishes "no-go areas" where exploration and mining will not be permitted due to high conservation and/or aesthetic land tourism value. Mining activities are only allowed in these areas under conditions of strict environmental management and after the completion of a full EIA.

6.4.3 Mine Closure

The Minerals (Prospecting and Mining) Act No. 33, 1992 has no provisions for financial concepts for mine closure, such as costs related to mine closure, accounting and reporting requirements and the purpose of each. The Minerals Act also has no provision to secure funds for closure. The EMA and the Minerals Policy explicitly refer to rehabilitation as a requirement but, lack a specific regulation, authorised agency, and sufficient resources to implement these requirements. There is no formal system for handling the approval of closure plans. There is no mandatory financial assurance mechanism to cover mine closure costs. The Minerals Act is being revised, and in line with recommendations from the Mining Policy Framework Assessment, the Government is at an advanced stage in adopting a mine closure framework.

6.4.4 Water

Namibia is known as a water-stressed country with a limited amount of fresh water. Therefore, water use is essential to the country's development agenda (Musiyarira et al., 2018⁸⁶). The Environmental

⁸⁵ TheEnvironmental Information Services Namibia. available on http://the-eis.com/elibrary/sites/default/files/downloads/literature/National%20policy%20on%20prospecting%20and%20mining%20in%20Protected%20Areas_2018.pdf

⁸⁶ Musiyarira, H, 2017., An analysis of water management practices in Uranium mines in Namibia, International Journal of Georesources and Environment 3 (4), available on



Management Act (EMA)⁸⁷ is in line with modern legislative trends, including; adherence to the polluter pays principle, the inherent need to incorporate adequate provisions to achieve "reduction-at-source" in the areas of pollution control and waste management, and the need to consider alternatives and to avoid or minimise adverse impacts wherever possible. Before a mine can commence with its activities, it must obtain a Record of the Decision and a Letter of Authorisation. However, the Letter of Authorisation from the MEFT is not a blanket permission to implement the project; the applicant is still required to obtain a sectoral licence or permit, depending on the nature of the envisaged project. Individual mines are responsible for managing their wastewater and industrial effluents. The implementation of the effluent permitting process for mining entities is inconsistently applied. Namibia does not have effluent discharge guidelines, which are not included in the Water Act of 1956, and relies on the South African standard. Companies have no legal requirement to comply with international standards or guidelines for key environmental risk areas, including the design, placement, or closure of tailings storage facilities. The mining entities report compliance with these standards on a biannual basis to the MET, but the DEA has limited resources to give these biannual reports the attention they need.

Appropriate environmental management measures for the use of surface and groundwater are implemented through the EIA process and are partially controlled by the DEA's compliance division. However, most sites report that the DEA does not conduct compliance audits. Furthermore, the MEFT does not have a laboratory to analyse samples to verify a site's performance independently. The overlapping mandates with other ministries and limited resources often result in either a duplication of effort or neither ministries adequately ensuring compliance. Section 17 of Part V of the EMA empowers the Environmental Commissioner to conduct inspections to monitor compliance with the Act and conditions stipulated in the Environmental Clearance Certificate. There are no regulations related to water recycling in mining sites, but most mines recycle their water as part of their sustainability programmes. The Water Act of 1956, which governs the use of water resources, is outdated, and the Water Resources Management Act (2013) was passed, but is not enforced.

6.5 Social

6.5.1 Land-use and Mineral Rights

There are four main categories of land in Namibia, namely: State land (land owned by the State and used for nature conservation or military bases; Urban land (this land can be owned by the State, by a local authority or by private individuals inside the boundaries of local and regional authorities; Commercial farmland (this is agricultural land held under a freehold title); and Communal land (land held in trust by the State for the benefit of the communities living on it). Mineral explorers have to negotiate a contract with landowners to gain access for exploration or mining purposes. Communities have also expressed a desire to have a share of the fees paid to the Government regarding communal land used for mining

https://www.researchgate.net/publication/321258581_An_Analysis_of_Water_Management_Practices_in_Uraniu_m_Mines_in_Namibia, accessed on 24 May 2023.

⁸⁷ Legal Assistance Centre of Namibia, Environmental Management Act 7 of 2007 available on <https://www.lac.org.na/laws/annoSTAT/Environmental%20Management%20Act%207%20of%202007.pdf>



purposes. If disputes arise, the **Minerals Ancillary Rights Commission (MARC)**⁸⁸ offers an opportunity to implement a cooperative and consultative process between mineral explorers and landowners. The MARC is regulated by the Minerals (Prospecting and Mining) Act and makes provisions for agreement between landowners and mineral explorers. To further empower the MARC, there is a need to develop guidelines to assist in settlement of land disputes.

Although public protests against extractive operations are allowed in Namibia, there has been no such protests over the last five years. In cases where these protests have occurred, it was mostly due to water use conflicts (e.g., impacts on water availability and quality), labour disputes (e.g., strikes, wages, health and safety), or influence of NGOs.

6.5.2 Artisanal and Small-Scale Mining

Artisanal or Small-Scale Mining in Namibia is conducted in an informal manner and has not fully been integrated in the Namibia's national economy. ASM mining is mainly concentrated in the Erongo Region as well as the northwestern and southern parts of Namibia. The ASM activity is mainly on the mining of accessory minerals such as topaz, quartz, tourmaline, aquamarine, beryl, fluorite, apatite, dimension stone and building materials (Leonard et al., 2011)⁸⁹.

The Minerals (Prospecting and Mining) Act makes provisions for small-scale miners' activities. The Government has introduced a simplified and centralised claim registration system for ASM, which involves pegging and registering mining claims. MME's Small-scale Mining Division offers training and technical support to the ASM sector and is working toward decentralising the licensing process. Artisanal mining's contribution to GDP is negligible since ASM is not fully integrated into the regular economy.

In order to undertake mineral prospecting and mining operations, small scale miners (SSMs) must adhere to an environmental contract, issued by Ministry of Environment and Tourism (MET) in consultation with MME. Additionally, SSMs also had to adhere to the Communal Land Reform Act 5 of 2002, the Soil Conservation Act No 76 of 1969, the Soil Conservation Amendment Act No 38 of 1971, the Nature Conservation Ordinance 4 of 1975, the Water Act 54 of 1956, and the National Heritage Act 27 of 2004.

6.5.3 Operational Health and Safety (OHS) and Labour Regulations.

Occupational Health and Safety in Namibia is governed by the **Labour Act (2007)** in conjunction with the **"Regulations Relating to the Health and Safety of Employees at Work" (Regulation 156)**. The Labour Act

⁸⁸ The Ministry of Mines and Energy, Minerals Ancillary Rights Commission (MARC), available on <https://www.mme.gov.na/mines/marc/#:~:text=MARC%20is%20regulated%20by%20the,provide%20for%20matter%20incidental%20thereto>

⁸⁹ An Artisanal Mining Environmental Code of Practice for Namibia, 2011. Leonard, Rosina Ndahafa, Hauptfleisch, Morgan, Ellmies, Rainer, Czech Geological Survey, ISBN 978-807075119-0, available on http://the-eis.com/elibrary/sites/default/files/downloads/literature/An%20Artisanal%20Mining%20Environmental%20Code%20of%20Practice%20for%20Namibia_2011.pdf, accessed on 24 May 2023.

does not contain specific provisions to regulate mining operations' technical and high-risk occupational health and safety risks. Protection of the health and safety of workers in the extractive industries is a continuing challenge worldwide. Legislation on occupational health and safety for mining is outdated (Mines, Works and Minerals Ordinance 20 of 1968, section 95). The enforcement of this legislation is limited, and it does not reflect the unique operating risks of the mining sector. Regulations protecting the health and safety of persons employed or otherwise present in or at mines, made initially under the Minerals Act, are not yet finalised and are in their 10th revision.

The Ministry of Labour has general regulations on occupational health and safety. It has Safety Officers/Inspectors who conduct such audits, and the Ministry of Mines has a Chief Inspector of Mines focusing on mining safety. The MME enforces the legal framework for occupational health and safety in the mining sector through the Chief Inspector of Mines.

The Minerals (Prospecting and Mining) Act requires mine sites to have an emergency response plan; however, this typically relates to human emergency response rather than a plan to ensure emergency preparedness programmes are in place for critical environmental impacts or natural disasters. Passing the draft Pollution Control and Waste Management Bill would be a significant step toward ensuring a more effective instrument drawing together the waste management and pollution control functions from all ministries involved.

In collaboration with UNDP, under their Small-Scale Mining Division, the Ministry of Mines and Energy has developed occupational health and safety guidelines for the ASM sector. The Minerals Policy outlines the requirements and mechanisms for educating ASM workers on better mining and processing practices.

6.5.4 Public Health and Safety

Extractive operations can have significant off-site effects and impacts. To a great extent, these are covered by the relevant environmental legislation. Still, other bodies of legislation, such as the Labour Act for Namibia's case, may cover certain aspects. There is no legislation governing noise and dust pollution in Namibia. The country relies on the South African National Standard (SANS) and South African guidelines without these laws.

Mining-related traffic on public roads is regulated under the Road Traffic and Transport Act 22 of 1999. Potentially affected stakeholders are consulted and involved in developing and maintaining emergency preparedness planning. There are set requirements for public disclosure and access to information, at least for the immediate communities, of the possible dangers or health impact in place (should there be, e.g., dam failure or a release of contaminated dust or water into the environment, etc.). Currently, community members are not monitored for potential long-term health impacts, but compensation schemes for road and workplace injuries or accidents are in place.

6.5.5 Labour Practices

The employment and contract rules in Namibia are governed by the Labour Act 11 of 2007. The Labour Act and regulations deal with resolving labour conflicts, including strikes and walk-outs. The role of trade



unions in the mining industry is mainly to negotiate wages, employee benefits, and working conditions, including occupational health and safety.

Local procurement and contracts for service provision are promoted through the Minerals Policy and are supported through the Public Procurement Act (2015) and the Affirmative Action Act. Mining companies often use local suppliers or make use of local procurement. Regulatory provisions exist for complaints and arbitration during the EIA process and the mining cycle. Provisions in the Minerals Policy and the special conditions attached to EPLs and mining licences direct mining companies to prioritise the employment of Namibians in their operations, particularly women and formerly disadvantaged people. The Affirmative Action Act (1998) further supports these provisions in the Mining Policy, which aims to address racial and gender discrimination and achieve equal employment opportunities as per the Namibian Constitution.

The Mining Policy also prioritises strengthening the domestic skill base to ensure that Namibians can engage with the sector. The Mining Policy makes specific mention of the need to increase the opportunities available for women in the sector and to also seeks to promote and encourage local participation in exploration and mining. The 2018 Employment Equity Commission reported that the mining sector employed approximately 9000 people in the formal sector (large scale mining). Of these 9000 employees, approximately 2000 were women with 4 out of 40 women in Executive Directorship level. The establishment of the Women in Mining Association of Namibia (WiMAN) in 2017, whose main objective is to forge meaningful equal participation of women in the mining industry. WiMAN continuously highlights this gender inequality as well as the importance of including women in the leadership positions. A marked improvement of these numbers has been reported. WiMAN is supported by the Chamber of Mines of Namibia as well as by the Ministry of Mines and Energy.

6.5.6 Societal and Community Aspects

Communities are affected by extractive operations in a wide variety of ways. There can be both positive and negative impacts. Local communities are sometimes supported by mining companies once mining activities have ceased in their area.

The Environmental Impact Assessment regulations outline the processes for public participation. There are no requirements in the Minerals Policy for building the capacities of communities to understand the potential environmental and socio-economic impacts presented during the EIA process. Some stakeholders are generally well-informed, but while the main socio-economic focus of the mining sector tends to be job creation, there is often limited information on other socio-economic factors, such as gender inclusivity or the promotion of local content.

There are no specific regulations related to the involvement of local communities in perceiving economic benefits or incentives for mining activities. The Minister can impose special conditions before granting a mining licence or EPL, including provisions to improve Namibia's socio-economic context. Socio-economic planning is integrated into the EIA process but it is not reported regularly. Mining permits and licence applicants must also identify their mining project's socio-economic benefits and include them in their submissions.

Child labour is not prevalent in the ASM sector in Namibia. Before the start of the any mining activities on a specific land, local communities are often supported by specific measures or programmes. This however not the case in the case of ASSM.



Namibia is a signatory to the following international regulations: Universal Declaration of Human Rights (1990), United Nations (UN) Convention on the Elimination of All Forms of Discrimination Against Women (ratified 1992), UN Convention on the Rights of the Child (ratified 1990), Freedom of Association and Protection of the Right to Organise Convention (1995), The Right to Organise and Collective Bargaining Convention (1995), The Forced Labour Convention (2000), The Abolition of Forced Labour Convention (2000), The Worst Forms of Child Labour Convention (2000), The Minimum Age Convention (2000), The Discrimination (Employment and Occupation) Convention (2001), The Equal Remuneration Convention (2010).

6.6 Assessment of the Namibian Mining Regime with respect to ESG objectives

6.6.1 Environment

Namibia's environment management system conforms to internationally established norms in terms of the formal laws, regulations and procedures. It is found, however, that the implementation of these laws, regulations and procedures in practice, is sometimes lacking. The environmental authority lacks capacity, both in staffing and expertise.

6.6.2 Social

Despite over a century of mining, people in some regions in Namibia live under abject poverty. This is especially in regions where mining activities take place. Furthermore, although the process has commenced to draft a local content policy, there is no indication as to when it will be implemented. In recent years, mining companies in Namibia implemented Corporate Social Responsibilities (CSR) as part of the Balance Score Cards. However, CSR is not sufficient and should be supplemented by royalties from mining activity in the country.

Nevertheless, Namibia has good labour relations. There is a large output of university graduates, but there is a need for artisans and skilled labourers. The process for obtaining work permits could be better streamlined as there are sometimes delays in the processing and approval of permits, and the process is not always as straightforward as it could be.

6.6.3 Governance

Namibia has a strong legal and regulatory framework for its mining industry, but a lack of monitoring and evaluation of the existing legal and regulatory framework. Furthermore, the delays in the amendment of the Minerals (Prospecting and Mining) Act and Mining Policy have introduced regulatory uncertainty in the sector. These weaknesses are further worsened by the fact that the Ministry is challenged with insufficient human and financial resources to monitor and evaluate the activities in the field.

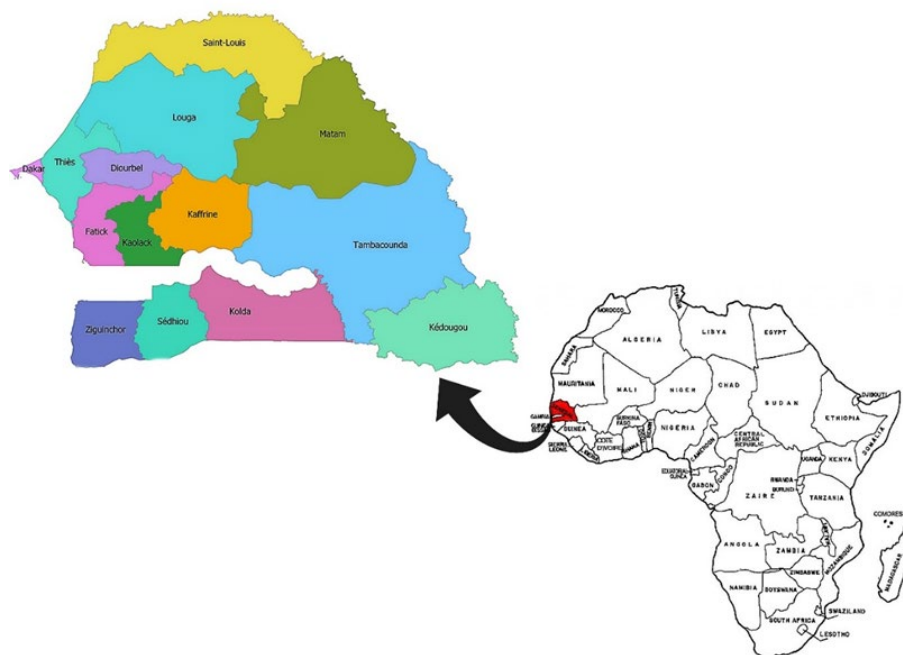
Namibia also performs satisfactorily in terms of taxation but its payments collected on a company-by-company basis is not always disclosed. . Data for reserves, exports and productions is also not published.



7 Senegal

7.1 Country Profile

Senegal is a country located in West Africa that covers a total land area of 196,722 km². It shares borders with Mauritania to the north, Mali to the east, Guinea to the southeast, Guinea-Bissau to the southwest, and the Atlantic Ocean to the west. The official language is French, while the most widely spoken African languages are Wolof, Pulaar, Serer, and Mandinka. Senegal has a population of around 16.7 million people, with the majority residing in urban areas. Its capital city is Dakar, located midway between the mouths of the Gambia and S n gal rivers on the southeastern side of the Cape Verde Peninsula.



In 2019, Senegal's GDP was approximately USD 24.5 billion. Senegal's economy is mostly based on agriculture, fishing, and tourism. More than 70% of the labour is employed in agriculture. In addition to producing millet, sorghum, and rice, the nation is one of the largest peanut exporters in the world. Also significant is the fishing industry, which employs over 500,000 people. Senegal's tourist sector is expanding as a result of the country's stunning coastline, wildlife parks, and rich cultural history.

7.2 Overview of the mining Sector

In 2020, The Mining sector represented about 6% of State Revenue and contributed 4% to the GDP, as well as accounted for approximately 38% of exports. Phosphate is the main mineral produced in Senegal, as well as manganese, gold, and construction minerals. Senegal's phosphate reserves are estimated at approximately 750 million tons, making them among the largest in the world. Senegal also has significant iron ore resources. The Fal m  mine, located in the southeastern part of the country, has an estimated reserve of over 750 million tons of high-grade iron ore. Finally, uranium mining is also present in Senegal, with the Mkuju River Project being one of the country's most important deposits estimated to hold approximately 6,500 tonnes of uranium oxide.

The key institution governing the mining sector of Senegal is the Ministry of Mines and Geology⁹⁰. The Ministry of Mines is responsible for:

- Drafting and enforcing laws for developing the mining sector;
- Signing mining conventions; and
- Controlling mining activities.

The Directorate for Control and Supervisions of Mining Operations is responsible for controlling and monitoring the execution of research and exploitation operations as well as for collecting related data throughout the territory.

In addition to the Ministry of Mines and the Directorate for Control and Supervisions of Mining Operations, the following key government stakeholders in the management of the mining sector are: The Ministry of Environment (through the Department of Environment and Classified Establishments as well as through the Environmental Impact Assessment Division), the regional mining services, the Police, the Ministry of Labour, and the Ministry of Finance.

7.3 Governance

7.3.1 Mineral and Mining Policies

Since 2012, The government of Senegal has made efforts in reforming the legislative and regulatory framework of the mining sector with the aim of improving the governance of mineral resources and securing its interests with a strong national private sector. The State adopted:

- the Law on the Code of Transparency in the Management of Public Finances with a new General Tax Code;
- the consecration of the right to own natural resources to the people with a constitutional requirement for transparent management of resources through the Constitutional reforms of March 2016; and
- adoption of Law No. 2016-32 of 8 November 2016 on the Mining Code for a better rebalancing of the governance of mineral resources, with the aim of maintaining the attractiveness of the national mining sector and promoting a mutually beneficial partnership between the State, the private investor and the host communities.

The New Mining Code came into force on 8 November 2016 and has replaced the Mining Code of 2003. Whilst the framework of the former code remains substantially the same, the New Mining Code implements many important changes that follow those introduced elsewhere in Africa during recent years. These changes include the introduction of a production sharing agreement, local development provisions, increased transparency obligations, and changes to royalties and taxes calculations. The former code will continue to govern existing mining titles, while the New Code only applies to those acquired after 8 November 2016 (once the implementation decree has been published).

⁹⁰ <https://www.minesgeologie.gouv.sn/>



The new mining code has brought major innovations:

- **Increased Benefit from Mining through,**
 - A variable mining royalty rate according to the degree of recovery of the substance
 - Reintroduction of the surface tax
 - Broadening the mining royalty base
 - Introduction of the principle of production sharing applicable in special government designated areas
 - Strengthening Control
 - Promotion of local content
- **Redistribution of Mining Revenues** between the communities impacted by mining (through the Local Development Support Fund Support and Equalization Fund for Local Authorities), the State and the mining administration (through the Mining Sector Support Fund) in order to strengthen its means and allow a better knowledge of the mineral resources. Mining title holders must now contribute annually to the Local Development Support Fund, levied at 0.5% of sales after tax.
- The Local Development Support Fund promotes the economic and social development of local communities residing near mining areas and must include women's empowerment projects.
- **Environmental Management** through: clarification of the requirement to conduct environmental assessments and the extension of the rehabilitation obligation to all holders of mining titles

The Mining Sector Development Policy

The objectives of the Mining Sector Development Policy are:

- Proposal of strategies for the development of the gold, phosphate, zircon, and iron sectors with a view to achieving annual production objectives and, above all, promoting local processing, a source of wealth creation and employment.
- Development and validation of a national strategy for the development of local content in the sector for an increase in local added value and job creation throughout the mining value chain
- Optimisation of monitoring and control of mining operations by modernised tools.

The Mining Sector Development Policy of Senegal is based on two levers, namely:

- the Emerging Senegal Plan, which places the mining sector in the priority areas that can bring the country's growth to 7% by 2023; and
- the Sectoral Policy Letter for the period 2021-2025 in order to have a single, effective reference framework for the development of the mining and geology sector and to ensure better support for objectives outlined in defined in The Adjusted and Accelerated Action Plan (Plan d'actions prioritaires 2 Ajusté et Accéléré (PAP 2 A)⁹¹
- Regarding critical minerals, a strategy for the development of the phosphate and iron sectors (in a general framework including gold and zircon) given their high probability of contributing to the

⁹¹ http://www.finances.gouv.sn/wp-content/uploads/2021/04/PAP2A_FINAL_VFINALE_14_12_WEB.pdf



national economy through local processing as well as wealth and job creation is being developed. This local transformation also involves the development of local content, justifying for this purpose the development and validation of a national strategy for the development of local content in the sector in 2021.

Senegal joined EITI in October 2013 and regulated by the Mining Code of Senegal 2016 (Chapter IV Art. 95).

7.3.2 Mining Regulations

In order to conduct mining activities in Senegal, either a Small Mine Permit or Mining Permit is required. Mining companies must enter into a mining agreement with the State, detailing the terms and conditions of their activities and guaranteeing the stability of the legal conditions. The mining agreement must:

- Be published on the Official Gazette
- Not derogate from the New Mining Code (but may supplement its provisions)

Foreign Investment in a Senegalese company is encouraged, provided that the mining title is held by a locally registered Senegalese company.

Licences and Permits are issued by the Government, through the Ministry of Mines and Geology. The various licence and claims types for the mining sector of Senegal are listed and summarised in Table 14.



mining sector of Senegal

Table 14: The various licence, permit and authorisations and claims types available for the

Licence type	Description	Duration	Renewable	Restrictions
Prospecting Authorisation	A non-exclusive right to prospect for the mineral substances covered by the authorisation throughout the authorised area. A prospecting authorisation can cover any type of mineral (with the exception of minerals found in quarries) and is not generally subject to location restrictions. However, the Ministry of Mines can prohibit, in the public interest, prospecting for one or several minerals in all or part of the territory of Senegal for a specified period	Granted for a period which cannot exceed six months	Renewable once, with no fee required The renewal application must be filed with the mining administration at least seven days prior to expiry of the authorisation	Does not confer any pre-emptive rights on its beneficiary. Not transferable and does not give rise to any fiscal exemptions. The beneficiary must communicate the results of its research to the Director of Mines and Geology
Exploration Permit	An exploration permit confers on the holder the exclusive right to explore for the mineral substances for which it is issued. An exploration permit can cover any type of mineral, with the exception of minerals found in quarries, which are subject to separate authorisation.	Granted for an initial period of 4 years	Renewable for 2 more times renewal application must be filed at least two months prior to expiry of the permit Each renewal of an exploration permit results in the reduction by one-quarter of the area covered by the permit	Not subject to location restrictions, unless it is granted within a promotional zone following a tender launched by the state. A company cannot hold more than two exploration permits for the same mineral. Transferable, except during its first validity period. Transfer is subject to the approval of the minister of mines subject to the registration formalities and the payment of capital gains tax with the tax authority
Exclusive Exploration Authorisation	A production sharing agreement (PSA) entered into between the Ministry of Mines and a contractor grants the contractor an exclusive exploration	The Mining Code and its implementing decree are silent on the duration of an	PSAs are not subject to renewal. Instead, the Mining Code provides that the procedure for renewing an exclusive	A PSA can be granted only for promotional zones, unless the holder of a permit for a mining area located outside a promotional zone opts to conduct the mining activities



	authorisation to carry out its obligations thereunder.	exclusive exploration authorisation The duration is specific to the agreement	exploration authorisation (the permit that comes with a PSA) is the same as that for the exploration permit	under a PSA. The PSA is approved by way of a decree and contains its validity period which is set by the parties. the transfer of an exclusive exploration authorisation is the same as that for the transfer of an exploration permit.
Small Mine Permit	Limited to 500 ha;	5 years	renewable for five years at a time without limit on the number of renewals	Small Mine Permit holders must commence mining within three months of the permit grant; daily treatment capacity must not exceed 500 tonnes of mineral.
Semi-Mechanised Mining Authorisation	For investors who want to carry out operations on an area less than 50 ha..	Issued for an initial period of up to three years. Issued for an initial period of up to three years.	It may be renewed for further periods of the same duration. The renewal application must be filed with the Ministry of Mines at least two months prior to its expiry	Applicants must have sufficient technical and financial capacity to carry out the works. They must also pay the applicable fees. Entry fees are paid amounting to XAF 1.5 million and a surface royalty amounting to XAF 50,000 per hectare, per year
Mining Permit	No limitations on the scale of its operations.	5 – 20 years (depending on the mineral and investment required)	renewable as many times as necessary until the resource is exhausted	Mining permit holders must commence operations as soon as possible and, if operations have not commenced within one year from the date of the grant, the permit holder will be liable to penalties of USD 100 000 per month for the first 3 months and increasing thereafter.; The State may revoke the permit if the holder has not commenced work within 24 months.



7.3.3 Taxation and Royalties

Revenue sharing was introduced in the sector to mark the State's desire to better distribute revenues between itself, local authorities and local communities living in the places where the resource is exploited.

Local Government draws from the exploitation of the resources and the equalisation funds by taking 20% of the mining and surface royalties and fixed rights.

The Mining title holder is exempted from most taxes and fees including VAT and the Senegalese Shippers Council COSEC port charge during the “investment period”.

Mining royalty: Royalties are compulsory, but there can be some exemptions, as in the case where there is a production sharing agreement with the State. Royalties are calculated quarterly, and for domestic products it is calculated on the market value and for exports calculation is on the free on-board values. Annual surface royalty for a ‘small mine permit’ is FCFA 50,000⁹² per hectare and for a ‘mining permit’ is FCFA 250,000 per square kilometre.

The rates per mineral type is shown in Table 15.

Table 15: Royalty rates per mineral type

Mineral	Royalty rate (%)
Calcium Aluminate Phosphate	5
Lime Phosphate	5
Phosphoric Acid	1.5
Cement	1
Iron Ore	5
Ore for local processing into steel	2
Basemetals for radioactive substances concentrated ore	3.5
Base metals for local processing	1.5
Gold (raw and refined abroad)	5
Gold refined in Senegal	3.5
Zircon, Limenite and other heavy minerals	5
Diamond and other gems (raw)	5
Diamonds and other gems (cut)	3
Alkaline Salts	3

Stability clause: guarantee granted to the investor to protect him against a possible increase in the tax burden. The State undertakes that the taxation applicable to a mining project will no longer vary and will remain as provided for when the mining agreement was signed or the exploitation permit was granted. Only, the clauses can be perceived as legitimate from the point of view of the investor. But they pose a problem for the States since they prevent the revision of taxation that would be unsuitable.

⁹² 1 FCFA = 0.0015 € on 17.05.2023

Fixed fees: taxes generally due when a mining title is granted or renewed. Since 2016, the allocation and renewal of a mining licence in Senegal is subject to the payment of a fixed fee of 10 million FCFA.

Rent: rent is defined as “the amount, by which revenues exceed all production costs, including those of discovery and exploitation, as well as the return on capital”.

Other taxations include:

- The state has a 10% free participation in the mining company at the exploitation stage and may negotiate for itself additional participation in the capital of the mining company.
- Tax on corporate profits of up to 30%.
- VAT is 18% for all products and services.
- Fixed payroll (personnel) tax of 3% of taxable gross salary.
- The local development fund (0.5% of the turnover before taxation) in accordance with the mining code.

Foreign Direct Investment

Foreigners can invest just like Senegalese natural or legal persons, and are subject to the same duties and obligations under the laws of Senegal, subject to reciprocity and without prejudice to measures that may concern all foreign nationals or result from the provisions of treaties or agreements to which the Republic of Senegal is a party. Any liquidation of foreign investments, direct or otherwise, which is between non-residents and residents, must be reported to the authorised intermediary in charge of the settlement, with the supporting documents of the liquidation.

In the case of transfer of the mining title, taxes such as registration fees of 5% on the transfer amount are payable, as well as land registration fees of 1% of the value at which the mining title is transferred, or the agreed market value.

If the company realises a capital gain on the transfer, it will be subject to corporate income tax (30%) and real estate capital gains tax (10%) on the profit realised. However, if the transferor is domiciled in Senegal, the capital gains tax paid can be deducted from the income tax payable and carried forward for three years (three successive fiscal years) without being refunded.

Where the transfer is made through a company located outside the jurisdiction, the ordinary law regime is, in principle, applicable, subject to the existence of a double taxation treaty which determines the rules for taxation of the capital gain realised by the foreign company.

7.1 Environment

Environmental provisions in the mining sector are framed at the national level by Law 15-1-2001 on the Environmental Code and Decree No 2001-282 of 12 April 2001 on the application of the Environmental



Code, as well as Law No 2016-32 of 8 November 2016 on the Mining Code and its implementing decree – Decree No 2017-459 of 20 March 2017

An **Environmental and Social Impact Study** (ESIA) funded by the mining permit holder is a legal requirement of the Environmental Code to allow the potential environmental and social impacts that different project activities can generate, be examined throughout the project's lifetime.

The validation of the study by the project notice is sent to the Department of the Environment and Classified Establishments DEEC, the management makes a preliminary sorting to determine the scope of the environmental impact study. After the report is produced, the technical committee meeting takes precedence over the public hearing or public consultations, which gives communities the opportunity to engage directly with the mining operator and express their concerns and opinions in relation to the impacts. potential of the project on their experience and mainly their main means of subsistence.

The validated ESIA's are accessible at the level of the Department of the Environment and Classified Establishments of the Ministry of the Environment but also, some companies are part of a dynamic to put their ESIA's online, such as the Petowal Mining Company and Woodside.

The public consultation process is regulated in Senegal through Ministerial Order No. 9468 MJEHP-DEEC dated November 28, 2001, regulating public participation in the impact study aimed at the adoption of a participatory approach in the decision-making processes of operations. This process is highlighted in the following Articles of this Ministerial Order:

- Art. 2: The law on the Environmental Code authorises public participation at all stages of the environmental impact study of projects to ensure better decision-making.
- Art. 3. - The technical committee after the scoping must inform (by posting, press release etc.) the public concerned about the environmental impact study in progress, to allow it to have access to technical information, to express its opinion and highlight the collective values to be considered in decision-making
- Art. 4. - Public information is the responsibility of the promoter and involves the technical committee, the host decentralised community and the promoter. The terms of execution of the public hearing will be adopted by mutual agreement with the various parties involved.

Consultations and public participation are organized before the implementation of mining projects in the form of public hearings for consultation and validation of ESIA's, very early in the planning stage. This process helps in the societal acceptance of the mining project.

7.1.1 Environmental Regulations

The Ministry of Environment is responsible for regulating the environment. The sector is regulated with the Environment Code Law 2001- 01. The code recognises the environment as a national and international patrimony. It establishes that all citizens have the right to live in a healthy environment, but citizens are also responsible for the protection of the environment.

Other regulations and conventions that regulates the sector include:

- Legal protection (Forest Code)
- International protection (ex IUCN Conventions)



- Community Protection (ICCA, Sacred Forest)
- In situ conservation
- Biodiversity Act (Ongoing)

Senegal has a Country Environmental Analysis (CEA), which aims to reinforce the ongoing dialogue on environmental issues between the World Bank and the Government of Senegal. The department of Environment and Classified Establishments under the Ministry of Environment is responsible for the prevention and control of all environmental pollution. The regional mining services under the Ministry of Environment validates the terms of reference for all environmental impact assessments for mining projects and monitors the implementation of environmental management plans drawn up by mining companies. The Environmental Impact Assessment Division is responsible for enforcing laws and regulations relating to the mining sector in their respective localities under a decentralised system.

7.1.2 Tangible and Intangible Cultural Heritage

Senegal has been working with UNESCO to take inventory of their intangible cultural heritage and to provide safeguarding measures to preserve their heritage. There are seven heritage sites⁹³ in Senegal. The Bassari, Fula and Bedik cultural landscapes, The Island of Goree, The island of Saint Louis, The Saloum Delta, The Stone circles of Senegambia, The Sjouidi National Bird Sanctuary and The Niokolo- Koba National Park. There are currently no known protected people. Special dispensation needs to be sought to work in protected areas.

7.1.3 Mine Closure

Permit holders are required to carry out necessary rehabilitation works on their mining site and repair any environmental damage caused by the mining activities. According to Decree no. 2009-1335 of 30 November 2009, mine permit holders are required to open, in consultation with Authorities, an escrow account and deposit funds in this for the future rehabilitation costs of their mine.

7.1.4 Water

According to a world bank report⁹⁴, Senegal is already water stressed and current water withdrawals are projected to increase by 30 to 60% by 2035. Water-related extreme events and pollution already cost Senegal over 10% of GDP every year, threatening the country's ambition to become an emerging country,

The Dakar area is especially at risk, concentrating 50% of Senegal's GDP production and close to a third of its population, and will need to diversify water sources and improve cross-sectoral coordination. Senegal urgently needs to prioritise water security to achieve and sustain its development objectives as outlined in the "Plan Senegal Emergeant" (PSE 2019 – 2023) Transboundary cooperation is vital to Senegal's water security, as 34% of the country's water originates outside the country. Senegal has signed six multilateral agreements covering the Senegal River Basin alone, as well as other international agreements, such as the Special Establishment Convention to implement The Gambia River Basin Development Organisation Energy Project (OMVG) which involves 4 countries, namely The Gambia, Senegal, Guinea- Bissau and Guinea, and the United Nations Economic Commission for Europe's (UNECE) Water Convention.^{72–74.}

⁹³ <https://whc.unesco.org/fr/etatsparties/sn>

⁹⁴ <https://documents1.worldbank.org/curated/en/099625203082232347/pdf/P17223301605d00ed0af590aabc6bf858c8.pdf>



International agreements governing the Senegal and Gambia Rivers provide a basis for countries to address water allocation, environmental preservation, and hydraulic and energy infrastructure⁹⁵.

7.2 Social

Mining in Senegal has brought about wealth by creating jobs and business opportunities for host communities. On the other hand, there are issues with displacement and resettlement of communities that do not always result in positive outcomes.

The new mining code places emphasis on the need for respect and protection of rights needs to be continuously monitored to help ensure social cohesion.

The 1963 Constitution proclaimed respect for freedom and liberties for the protection of all Senegalese people. The Constitution protects the political liberties, the right to form trade unions, rights of the individual, freedom of worship, right to property and other economic and social rights.

7.2.1 Land-use and Mineral Rights

Land related rights and regulations are set out in the requirements of their relevant permit/licence. The permit holders are required to:

- Respect, protect and implement human rights in areas affected by mining operations.
- Respect the principles and obligations under the Extractive Industries Transparency Initiative (EITI), such as declaring all payments made to the State to the EITI.
- The permit holder must pay compensation for any damages caused to the landowner and/or the occupants of the land.

For **Titled Land**, the compensation is agreed between the landowner and the permit holder. If the parties fail to reach agreement, the compensation is set by the competent court in accordance with the law on expropriation.

For **Public Land**, the compensation is agreed between the permit holder and the local community. If the parties fail to reach agreement, the compensation is set by a committee comprised of the local authorities and representatives of the ministries at the regional level (e.g., the Ministries of Mines, Forests, Land and Environment).

If the compensation is not agreed within six months of the issue of the decree or order authorising the occupation, the Minister of Mines is entitled to allow the permit holder to occupy the land subject to payment of provisional compensation, which will be determined by the committee and held in escrow with a public accounting department until an agreement is reached or the court has issued its judgment. If the provisional compensation exceeds the definitive compensation amount, the excess will be returned to the permit holder.

A decree is issued designating the land affected by the expropriation, if the decree declaring the project a project of public utility did not specify the relevant parcels of land. This decree is registered with the land authority and the landowner and/or occupants are notified and given 15 days in which to submit

⁹⁵ https://winrock.org/wp-content/uploads/2021/08/Senegal_Country_Profile-Final.pdf



their opinion. Interested parties are convened in order to reach agreement on the compensation amount with the permit holder. If the parties fail to reach agreement, the expropriation and the compensation are pronounced by the court

The construction of infrastructure is subject to the issue of building permits. The state assists the mining permit holder with paper work when applying for such permits. The exploration permit provides very technical information, which is therefore not easily accessible to local communities. Moreover, public participation is only guaranteed at the ESIA stage. Communities are often excluded during prospecting, while the areas of access often include their land resources from which they derive their income through agriculture, livestock or gold panning activities. The principle of free, prior and informed consent is poorly considered.

7.2.2 Artisanal and Small-Scale Mining

The Artisanal and Small Scale Mining sector is regulated by the below Acts :

- Ministerial Order No. 009249/MEM/DMG of 14 June 2013 on the organisation of gold panning activity;
- Ministerial Order No. 02472/MIM/DMG of 10 February 2014 defining the “gold panning corridor”;
- Interministerial Order No. 09931/MIM/MEF/MCESI of 18 June 2014 setting the procedures for opening and operating counters for the marketing of precious metals and precious stones.

Despite the above legislation, the sector is largely informal and plagued with environmental degradation and social issues. ASM Gold production alone was estimated at 4.3 t between April 2016 and April 2018, i.e. a value of 86 billion CFA. Its contribution to job creation is extremely important, the sub-sector employs more than 32,500 people in the Kedougou mining region alone.

Going forward, the Directorate for Small Scale Mining is proposing an inclusive and participatory national ASM management strategy considering the legal, socio-economic and geo-environmental dimensions is underway. This strategy includes short-term actions such as the formalisation process and the establishment of an integrated artisanal mining management centre (CIEEMA), which included the construction of infrastructure that will house 420 treatment units on a 10 ha area. . This centre will aim to collect and process minerals from artisanal mining within a radius of 5 km around the centre. This centre aims at eliminating the dumping of chemicals such as cyanide and mercury in the environment.

7.2.3 Labour Practices

The legal working age in Senegal is 18 years and 16 years for apprenticeships. These details are captured in the labour code.

All sectors must adhere to the National labour laws.

Labour Act No. 97-17 of 1 December 1997⁹⁶.

⁹⁶ • [Law 2016-11 of 4 July 2016 repealing and superseding Art. L 85 bis of Law 97-17 of 1st December 1997 on the Senegalese Labour Code 20160806](#)



General Order No. 5253 I.G.T.L.S/A.O.F of 19 July 1954 pursuant to the provisions of Article 134 of the Overseas Labour Code. Decree No. 2006-1261 of 15 November 2006 laying down general health and safety measures for all types of establishments. Senegal has ratified the following International Labour Organisation conventions:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – ratified in 1960
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Ratified in 1961

The largest workers union in Senegal is the National Confederation of Senegalese Workers (CNTS). The CNTS is the overall body that brings together other smaller unions. The CNTS is a powerful group that is able to bring workers issues to government and public attention.

As part of efforts to promote local content in the mining sector under a local development approach Mining companies are encouraged to, where possible:

- give preference, with equal qualifications, to Senegalese nationals;
- incorporate training and professional development plans encompassing all aspects of professional mining for the Senegalese labour force;
- promote equal employment opportunities for both male and females;
- guarantee salary equity between female and male employees with equal qualifications.

The state may issue further decrees depending on the country's prevailing economic, demographic and social needs and in such an instance these might be applicable to mining permit holders and their service providers.

The state can, with a view to the full employment of the citizenry, prohibit or limit the hiring of foreign workers for certain professions or certain levels of professional qualification

7.2.4 Societal and Community Aspects

Mining title holders have to contribute annually to a local development fund with an amount of 0.5% of their sales to promote the economic and social development of host communities and must include women's empowerment projects

Communities develop mechanisms of resilience by setting up more or less structured associated networks, which include the national network of People Affected by Mining Operations (PAPOM) who actively participate in negotiations with the companies especially where it involves displacement and relocation.

7.2.5 Operational Health and Safety (OHS) and Labour Regulations

As in many other sectors, mining work must be carried out in a way that guarantees the safety of individuals and property. The following health and safety requirements generally apply to operators in



Senegal: to ensure the regular maintenance of workplaces and installations, to safeguard the health and safety of employees; and to ensure the proper maintenance of safety devices.

In the situation of serious incident or accident, the operator must inform the Department for the Environment and Classified Establishments within 72 hours and submit a report within 15 days. In addition, operators must inform the emergency services as soon as possible (e.g., the emergency medical services and the emergency fire services)

7.2.6 Public Health and Safety

In 1989 Senegal adopted The National Health Policy⁹⁷. The Country's Ministry of health was in charge of the ground work, and developed a national health sector development plan. In 2019 a term plan for 2019 to 2028 was launched. The major pillars for this plan are financing and governance, provision of health and social action services and social protection.

7.3 Assessment of the Mining Regime of Senegal with Respect to ESG objectives

7.3.1 Environment

The new mining code adopted in 2016 is an indication of the Government's commitment to Environment, Social and Governance issues in the mining sector and their interest to develop and attract investment.

Environmental regulations need to be dynamic and communication lines between all parties should be maintained to allow for quick resolutions of issues. With the large production of phosphate, quarry and other bulk products, a large number of the population are exposed to both production and transportation impacts of this sector. And regulators need to keep an eye on this to prevent future unprecedented public issues.

Activities of the ASM sector that involve the destruction of vegetation cover and the excessive cutting of wood also cause enormous difficulties. The sector needs be rigorously supervised to make it responsible, and its regulatory framework updated by integrating internal operational plans to secure communities' habitats and livelihoods.

The indiscriminate use of chemicals and their discharge into the environment should be closely monitored and the introduction of the dedicated small-scale processing centres would go a long way to control this phenomenon.

Wildlife crime also deserves to be highlighted, especially since there is no provision in the ASM regulations in Senegal for the rehabilitation of ASM gold panning sites.

In the quarrying areas, road insecurity is very frequent with the passage of lorries, for example in Ngoundiane in the Thiès region where the quarries are located, loaded lorry buckets, are sometimes not

⁹⁷ <https://www.sante.gouv.sn/Actualites/une-loi-pour-rendre-effectif-le-droit-constitutionnel-a-la-santé-en-gestation>

adequately contained, leading to content exposure to the elements posing a danger to wildlife and other road users.

Water is a critical issue for the country as a whole and the mining sector needs to put in place specific solutions to help alleviate the issues.

Natural gas forms a large part of Senegal's climate targets and lies at heart of the country's 2018 Gas-to-Power strategy. Current projects include The Great Ahmeyim Turtle (GTA) natural gas project⁹⁸ and the Cap des Biches gas plant⁹⁹. In 2020 the Country launched its wind farm project, the biggest in West Africa, namely: the Taiba N'Diaye Wind Farm¹⁰⁰.

7.3.2 Social

Approximately 70% of the working population of Senegal are in agriculture. Hence the destruction of farming and forest gatherers livelihoods with the issue of resettlements can have negative effects on communities such as the loss of agricultural areas and grazing corridors.

An influx of migrants from neighbouring countries working in the artisanal mining sector puts a strain on the limited social amenities and habitats. It also exacerbates other social vices and public health issues and this is a situation that should be closely monitored and could be mitigated with the current plans by the State to enforce formalisation of the small-scale mining sector.

Despite the labour code prescribing the working age in Senegal as 18+ this seems to work mainly for the formal sector and the informal small-scale mining sector has incidents of child labour that needs to be controlled.

Environmental impact studies report that are submitted to the authorities could also be made accessible online in an abridged and with a summarised version to make it easily accessible and understood by a vast majority of people.

Traditional authorities and opinion leaders from host communities should have access to reports and information concerning permits in their localities to assist in dissemination to host communities.

The introduction of a social impact assessment, that includes gender and youth as part of the permitting process could be beneficial in safeguarding the rights and opportunities for youth and women.

7.3.3 Governance

Senegal is described as a politically stable west African country, an important requirement for long-term investments, such as mining.

⁹⁸ <https://www.nsenegybusiness.com/projects/greater-tortue-ahmeyim-lng-project/>

⁹⁹ <https://www.nsenegybusiness.com/projects/cap-des-biches-combined-cycle-power-plant/>

¹⁰⁰ <https://www.nsenegybusiness.com/projects/taiba-ndiaye-wind-farm-senegal/>

The 9th EITI Global Conference in mid-2023 will provide an opportunity to improve the current EITI Standards especially around transparency of ownerships and contracts.

According to the African Mining Vision, inadequate governance can limit the benefits of the mining sector, especially for the communities hosting the companies. The general perception around corruption in the mining sector regarding permitting and licensing and its possible risks should be managed with more information sharing and open forums in the communities on the various regulations.

Accountability and the push for transparency in all operations is continuously demanded by the stakeholders, in particular civil society organisations, non-governmental organisations, communities, trade unions as well as media houses. And this is a great resource for Senegal. Women in Mining Senegal, a local non for profit organisation advocating for the participation of women in the extractives push sector is a powerful group that continues to push for gender and inclusion in the sector.

In terms of community participation, consultations with communities reveal their sometimes-limited knowledge of mining in their area, particularly on environmental, social and even economic issues.

EITI Senegal have stated that the below issues need to be worked on going forward:

- (i) Continuation of reforms with rigorous monitoring of operations by Regulators;
- (ii) Implementation of the provisions of the mining and environmental codes for the preservation of the ecosystems and the mitigation of environmental risks;
- (iii) Build information systems that are open and focused on user needs (cadastres and public portals) in order to strengthen systematic disclosures;
- (iv) Tax and economic modelling for better revenue mobilisation: Management of Exemptions and Capacity Building for regulators.

Ongoing regulatory activity

Revision of certain provisions of the Mining Code and the Model Mining Convention for better protection of the economic interests of the State (the duration of the research phase and the treatment of research expenses, stability, acquisition, merger -absorption of mining companies, distribution of priority dividends, additional participation and processing of mining products at the local level);

Mitigation of environmental impacts through the rehabilitation of mining sites and the operationalisation of the fund for the rehabilitation of mining and quarry sites;

Finalisation of the new decree setting the conditions for supplying and operating the Fund for the rehabilitation of mining and quarry sites;

Finalisation of the revision process of Decree No. 89-1539 of December 19, 1989 regulating explosives for civil use;



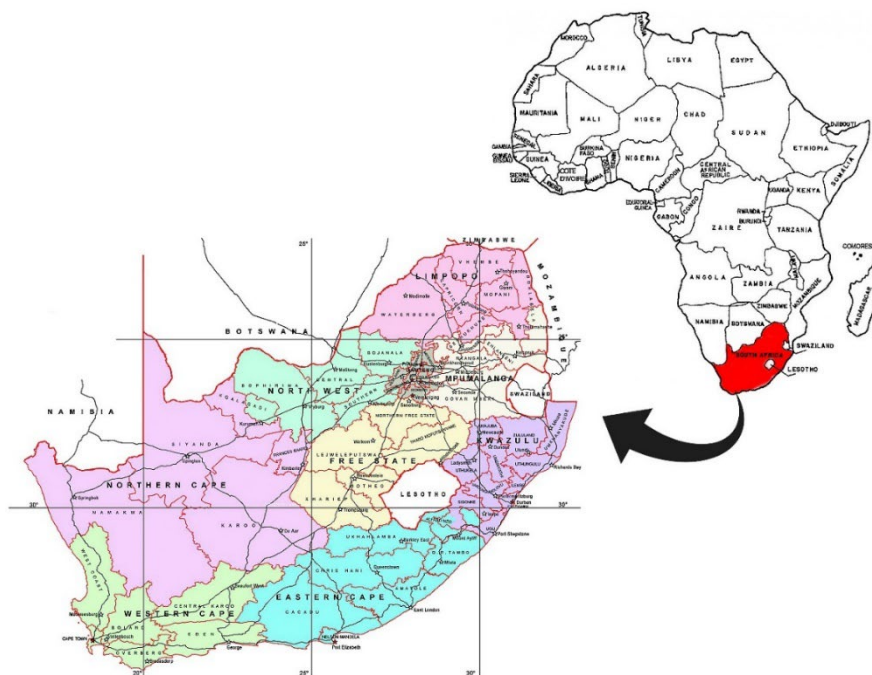
The release of a decree setting the rules for the organisation and operation of the National Counter for the marketing of gold in Senegal (CNCORS).



8 South Africa

8.1 Country Profile

South Africa is a country located at the southernmost tip of Africa. It is the second-largest country in Africa by land area, covering an area of approximately 1,221,037 km² and has a population of approximately 60 million people, with a diverse mix of ethnic groups and languages. The most common languages spoken as a first language by South Africans is English, Zulu, Xhosa, and Afrikaans. The country's capital city is Pretoria, which is located in the northern part of Gauteng Province, in the north-east of South Africa, while its largest city and economic hub is Johannesburg.



In 2021, South Africa's GDP was estimated to be \$419 billion, ranking it as the second-largest economy in Africa after Nigeria. South Africa's economy is a mix of developed and developing industries, with sectors such as mining, agriculture, manufacturing, and services making up a significant portion of its GDP. The mining industry, in particular, contributes significantly to the country's GDP accounting for around 8%, with the production of platinum, gold, diamonds, coal, manganese, and chrome.

8.2 Overview of the mining Sector

The mining industry is a significant sector of the South African economy and has played a crucial role in the country's history. Statistics from the South African Department of Mineral Resources ¹⁰¹ and the US Geological Survey indicate that South Africa possesses ore reserves amounting to a value of more than US\$2.5 trillion¹⁰², with 16 commodities ranked in the Top 10 internationally. South Africa has the largest reserves of Platinum-group metals (PGMs; 88%), Manganese (80%), Chromite (72%) and Gold (13%) known reserves in the world. It is ranked second in Titanium minerals (10%), Zirconium (25%), Vanadium

¹⁰¹ <https://www.dmr.gov.za/LinkClick.aspx?fileticket=Yp939PhQ8lQ%3D&portalid=0>

¹⁰² Mining and minerals in South Africa. Available from <http://www.southafrica.info/business/economy/sectors/mining.htm#.V6vx0Y9OKUk>, accessed 11/08/2016, accessed on 21 May 2023

(32%), Vermiculite (40%) and Fluorspar (17%). In addition, the country contains 17% of the world's antimony reserves¹⁰³.

The country is dominated by large mining companies, both local and international, that operate in various regions across the country. Some of the major mining companies in South Africa include Anglo American, Exxaro Resources, Sasol, Sibanye-Stillwater, Gold Fields, and Glencore, among others. However, the mining industry in South Africa has faced challenges due to labour unrest, low commodity prices, and declining reserves. Despite these challenges, the South African government is committed to ensuring the sustainability and growth of the mining sector.

Currently, the mining sector remains an important engine of South Africa's economy, contributing ~8% of GDP and providing direct employment to roughly half a million people¹⁰⁴. The contribution of the South African Mining sector to the nation's GDP in December 2021 is presented in Table 16.

Table 16: Mining Industry Contribution to South Africa's Economy in 2021

Type of contribution	
Direct GDP Contribution	ZAR ¹⁰⁵ 480.9 Billion
% GDP contribution	8.7
Mineral Exports	ZAR 841.6 Billion
Employment	458 954
Employee Earnings	ZAR 158.8 Billion
VAT paid	ZAR 15.4 Billion
Corporate Income Tax paid	ZAR 78.1 Billion
Royalties paid	ZAR 27.9 Billion

The South African mining sector also has the capacity to contribute to future growth: as developed economies seek to diversify their supply of critical minerals away from Russia and China, and with its variety of mineral deposits, South Africa has the clear potential to strengthen its position as a supplier of critical minerals, such as PGMs, vanadium, manganese, copper, and nickel. Additionally, early exploration has indicated that there might be potential endowments of future-relevant resources, such as cobalt and magnesium¹⁰⁶. Despite the opportunities presented by the mining sector, the industry faces enormous challenges as it seeks to sustain and grow its position. Large-scale investments and strategic partnerships will be required to unlock the value at stake in the mining sector, and certain prevailing roadblocks must be mitigated (Möncks, et al, 2023)¹⁰⁷.

¹⁰³ University of Witwatersrand, The South African Mining Sector, available on https://www.wits.ac.za/wmi/about-us/the-south-african-mining-sector/#_ftn1, accessed on 21 May 2023

¹⁰⁴ Boston Consulting Group, An Untapped Goldmine: Opportunities for South African Mining (<https://www.bcg.com/publications/2023/an-untapped-goldmine-opportunities-for-south-african-mining>), accessed on 21 May 2023

¹⁰⁵ 1 ZAR = 0,048 € on 17.05.2023

¹⁰⁶ Mineral and Petroleum Resources Development Act of 2002 (https://www.gov.za/sites/default/files/gcis_document/201409/a28-02ocr.pdf), accessed on 21 May 2023

¹⁰⁷ Möncks, T, Clearkin, P., Kuipers, H., Laabi, A., Detry, E., Pocquet, M., 2023, An untapped goldmine: opportunities for South African mining, available on <https://media-publications.bcg.com/south-africa-untapped-goldmine-opportunities-for-mining.pdf>, accessed on 21 May 2023.

South Africa is a signatory to numerous international conventions relevant to mineral extraction. These include: the United Nations Convention on the Law of the Sea (UNCLOS); the Convention on Biological Diversity (CBD); the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal; the MARPOL Convention; the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter; the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses; the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; and the United Nations Convention to Combat Desertification. In addition, South Africa has ratified the United Nations Convention on the Rights of Persons with Disabilities. These international conventions and other related legislation help ensure that appropriate standards are maintained in relation to mining activities, and serve as a frame of reference for South African mining regulations.

8.3 Governance

The governance of the South African mining industry is regulated by a combination of laws, regulations, policies, and institutions, which work together to ensure that mining activities are conducted in a transparent, responsible, and sustainable manner. These provisions promote transparency and accountability in the sector and aim to prevent corruption and other illicit activities. For instance, The **Prevention and Combating of Corrupt Activities Act** of 2004 criminalises bribery, corruption, and other corrupt activities and applies to all individuals and organisations, including those in the mining industry. In addition to this Act, various other measures are in place to combat bribery and corruption in South Africa's mining industry. These include establishing the **Mining Industry Task Team on the Prevention of Corruption**, created in 2010 to investigate and prosecute crime in the industry. While corruption remains a challenge in South Africa, the government and other stakeholders are actively working to prevent it in the mining industry and other sectors.

One critical provision is the requirement for mining companies to disclose certain information about their operations publicly. For example, the Mineral and Petroleum Resources Development Act of 2002 requires mining companies to submit annual reports to the Department of Mineral Resources and Energy, including information about their financial performance, production volumes, and employment practices. In addition, the Act requires mining companies to submit social and labour plans that outline their commitments to local communities and workers.

Another vital provision is the requirement for mining companies to obtain various permits and licences from government agencies, that are subject to public scrutiny. For example, the application process for mining licences must be advertised publicly and interested parties can submit comments or objections. This approach helps ensure that mining licences are awarded fairly and transparently.



8.3.1 Mineral and Mining Policies

South Africa has a well-established mining and minerals policy framework that seeks to balance economic development with social and environmental considerations. The mining industry in South Africa is regulated by various laws and regulations, including the Mineral and Petroleum Resources Development Act (MPRDA), the Mineral and Petroleum Resources Royalty Act (MPRRA), the Mining Charter, and other environmental, health and safety, and labour regulations. These regulations aim to govern mineral exploration, extraction, processing, and beneficiation, and promote sustainable mining practices, social and economic development, and environmental protection.

The **Mineral and Petroleum Resources Development Act (MPRDA)**¹⁰⁸ of 2002 is the primary legislation governing the mining and minerals sector in South Africa. The MPRDA:

- provides the legal framework for the exploration, exploitation, and beneficiation of mineral resources in the country.
- sets out the rights and responsibilities of mineral rights holders, outlines the requirements for obtaining and maintaining mining and exploration rights, and sets the rules for environmental protection, health and safety, and community engagement in mining activities.
- encourages the cession of financial interests other than shares to communities, in particular, land restitution and land redistribution programmes, beneficiation of minerals in South Africa, job creation and skills development programmes targeting Historically Disadvantaged South African (HDSA) workers, participation of HDSA's in capital projects and technology transfers
- gives the State the right to exercise its sovereign power by, for example, re-allocating a prospecting right or mining right, imposing a moratorium on exploration follow-up and/or adopting a policy of preferred prospector status with respect to certain minerals.

The **Broad-Based Black Economic Empowerment (B-BBEE)** policy aims to promote economic empowerment and participation of previously disadvantaged groups, including Black South Africans, in the mining and minerals sector. B-BBEE policies require mining companies to meet certain ownership, management, and procurement targets to ensure that the benefits of mining are shared more equitably among the population. These BEE requirements include a general requirement that at least 26% of the shares of such a company must be held by Historically Disadvantaged South African (HDSA) shareholders.

The **Mining Charter** formulates the transformation imperatives for the mining industry and sets the guiding principles for Black Economic Empowerment (BEE) in the sector. The Mining Charter further strengthens the BEE requirements in B-BBEE policy, mandating that the HDSA shareholding must be increased to at least 30%. The mining policies are reviewed and updated on an annual basis, usually through the South African Mining Charter. The mining policies are reviewed annually to keep it updated in line with the changing socio-economic landscape and regulations. These include labour laws and

¹⁰⁸ <https://www.gov.za/documents/mineral-and-petroleum-resources-development-ac>



policies, taxation laws, land reform laws, and other laws. The annual review also allows stakeholders to provide feedback to ensure it remains aligned with the interests of relevant stakeholders.

The **National Environmental Management Act (NEMA)** of 1998 provides for the protection and management of the environment, including environmental impact assessments (EIAs) for mining and minerals projects. It sets out the requirements for environmental authorisations, monitoring, and rehabilitation of mining sites to minimise the impact of mining activities on the environment.

Furthermore, **Social and Labour Plans (SLPs)** require mining companies to develop and implement SLPs as part of their mining rights applications and renewals under the MPRDA. SLPs are aimed at promoting social and economic development in mining-affected communities, including provisions for housing, health, education, and local economic development.

The **Mine Health and Safety Act (MHSA)** of 1996 sets out the health and safety standards for the mining industry in South Africa, with the goal of ensuring the health and safety of mine workers and preventing accidents and occupational diseases in mining operations.

The **Precious Metals Act** of 2005 regulates the exploration, production, refining, and trading of precious metals, including gold and platinum, in South Africa.

8.3.2 Mining Regulations

Mining regulations in South Africa are designed to govern the exploration, extraction, processing, and utilisation of mineral resources in a responsible, transparent, and sustainable manner. Mining and exploration licences are granted by the Department of Mineral Resources and Energy ¹⁰⁹(DMRE) through a competitive application process. The process is governed by the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) and the regulations promulgated under the Act. The application must include information on the proposed mining or exploration activities, the technical and financial capacity of the applicant, and the social and environmental impact of the proposed activities.

Under the Mineral and Petroleum Resources Development Act, 2002 (MPRDA), any person who is aggrieved by a decision of the Department of Mineral Resources and Energy (DMRE) in relation to a mining right, mining permit, or prospecting right may appeal the decision to the Minister of Mineral Resources and Energy. The appeal must be made within 30 days of the decision being communicated to the appellant, and must be in writing and accompanied by any relevant documents or information.

The Mineral and Petroleum Resources Development Act, 2002 (MPRDA) requires the Department of Mineral Resources and Energy (DMRE) to consult with interested and affected parties, including communities and other stakeholders, during the permitting process for mining activities. The DMRE is required to consult with interested and affected parties at various stages of the permitting process,

¹⁰⁹ <https://www.dmr.gov.za/>



including during the application for a prospecting right or mining permit, the granting of a mining right, and the renewal or amendment of a mining right. In addition to the requirements under the MPRDA, the South African mining industry has developed a number of industry standards and guidelines for community and stakeholder engagement, such as the Mining Charter and the International Council on Mining and Metals' (ICMM) Sustainable Development Framework.

The mining codes and standards in South Africa are generally comparable to those in the EU in terms of environmental and social responsibility. South Africa and the EU have established legal frameworks that aim to promote sustainable mining practices and protect the environment and human rights. For instance, South Africa's Mineral and Petroleum Resources Development Act, 2002 (MPRDA) includes provisions for environmental protection, rehabilitation of mining areas, and the rights of communities and other stakeholders.

On assurance and verification systems in place, South Africa has the **Independent Competent Person (ICP)** system, which requires mining companies to appoint independent experts to assess and report on the technical and financial viability of their mining projects. The ICP reports are reviewed and approved by the Department of Mineral Resources and Energy (DMRE) before mining activities can commence. This system helps to ensure that mining projects are based on sound technical and financial principles, and that they are compliant with applicable laws and regulations.

The management of tailings is regulated by the Mine Health and Safety Act, 1996 (MHSA), which requires that all mining operations implement measures to manage the environmental and health risks associated with tailings storage. The Department of Mineral Resources and Energy (DMRE) has also issued guidelines on tailings storage and management, which set out specific requirements for the construction and operation of tailings dams and the disposal of tailings. These guidelines provide guidance on the design, construction, and operation of tailings dams, as well as the monitoring and management of tailings.

The use of mercury in ASM is regulated under the Hazardous Substances Act, 1973 and the Mine Health and Safety Act, 1996. The use of mercury is also restricted under the Minamata Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, which South Africa is a signatory to. Under these regulations, the use of mercury is prohibited in ASM activities, except where it is authorised by the relevant regulatory authority. In such cases, the use of mercury is subject to strict conditions, including the use of appropriate protective equipment and measures to prevent environmental contamination.

Regulations on Wastes and Residues Containing Naturally Occurring Radioactive Materials (NORM). The National Nuclear Regulator (NNR) is the regulatory body responsible for overseeing the safe use of radioactive materials in South Africa. The NNR has published guidelines and regulations related to NORM wastes and residues, which are based on international best practices.

Licences issued by Department of Mineral Resources and Energy (DMRE) and are summarised below in Table 17.



Table 17: Various licence types in the mining industry of South Africa

Licence type	Description	Duration	Renewable	Restrictions
Mining Right	This type is a full mining right, allowing the holder to conduct all mining activities in a given area.	30	Prospecting rights are granted for a maximum period of five years, renewable for a further single period not exceeding three years	It restricts the type of activities that can be carried out, the size of the operation, the duration of the licence, the amount of land that can be mined, and even the species of animals and plants that are allowed to be disturbed.
Mining Permit	This policy is a temporary mining right that allows the holder to conduct small-scale mining activities in a given area for a period of up to two years.	2	Mining Permit is renewed for three more periods of no more than a year each.	Allows the holder to conduct small-scale mining operations in an area that does not exceed 1.5 hectares.
Mining Lease	This type of licence allows the holder to conduct large-scale mining activities in a given area	30	The lease may be renewed for successive periods of up to 30 years. Renewal applications must be submitted at least six months before the expiry of the current lease.	A mining lease in South Africa restricts people from conducting any activity unrelated to mining, such as removing trees or disturbing wildlife
Mining Claim	A mining claim is a parcel of land for which the claimant has asserted a right of possession and the right to develop and extract a discovered, valuable, mineral deposit.	5	Mining claim is not renewable and must be relinquished once the three months have expired.	Access to land: When a mining company is granted a claim, it can restrict access to the land for local communities and other stakeholders. This can limit their ability to farm, graze livestock, or use the land for other purposes.

8.3.3 Taxation and Royalties

In South Africa, taxation and royalties on mineral resources are regulated by various laws and regulations. The Tax Administration Act (TAA) of 2011 and the South African Revenue Service (SARS) customs and excise regulations regulate the collection of taxes in South Africa. The TAA provides for the appointment of a commissioner by the Minister of Finance, to be responsible for administering existing tax legislation, levying and collecting taxes, and auditing, monitoring, and controlling the collection of taxes.

The Commissioner is assisted by SARS, which is the operational arm of the Commissioner. SARS is the government body charged with the enforcement of the nation's tax laws, collection of taxes, management of the South African Revenue Fund, and other matters specified by the Act.

Below are some key aspects related to taxation and royalties for mineral classification:

- **Income Tax:** Mining companies are subject to corporate income tax on their profits, which is governed by the South African Income Tax Act of 1962. The current corporate income tax rate in South Africa is 28% for mining companies.
- **Value Added Tax (VAT):** Mining companies are also subject to VAT on their taxable supplies of goods and services, which is governed by the Value Added Tax Act of 1991. The standard VAT rate in South Africa is currently 15%.
- **Mineral and Petroleum Resources Royalty (MPRR):** The MPRR is a royalty that is payable to the government on the extraction of mineral and petroleum resources in South Africa. It is governed by the Mineral and Petroleum Resources Royalty Act, 2008. The MPRR is calculated based on the gross sales of the mineral or petroleum product, and the royalty rates vary depending on the type of mineral or petroleum resource.
- **Royalties on specific minerals:** In addition to the MPRR, there may be specific royalties or levies applicable to certain minerals or resources. For example, there are separate regulations and royalties for diamonds, gold, and coal, among others, under the Diamonds Act of 1986, the Precious Metals Act of 2005, and the Mineral and Petroleum Resources Development Act of 2002 respectively.
- **Transfer Pricing:** Transfer pricing rules may also apply to mining companies in South Africa. These rules regulate the pricing of transactions between related parties, such as sales of minerals or services, and aim to prevent tax evasion through transfer pricing manipulation.
- **Tax Incentives:** The South African government provides certain tax incentives to promote investment in the mining sector, such as accelerated depreciation allowances, tax incentives for exploration and development expenditures, and tax incentives for small-scale mining operations.
- **Compliance and Reporting:** Mining companies are required to comply with tax regulations, maintain proper accounting records, and file regular tax returns with the South African Revenue Service (SARS). Non-compliance can result in penalties, fines, or other consequences.

Special Tax Provisions for Foreign Investors



Foreign investors are eligible for relief from Customs and Excise duty on the importation of products necessary for the establishment and/or running of their business operations.

- Tax holidays and reduced tax rates may be considered, both on an individual basis and through approved tax incentive schemes, such as the Section 12J and Special Enterprise Zone incentive schemes.
- Companies located in Special Economic Zones are eligible for accelerated depreciation allowances, which may be applied to reduce taxable incomes.
- Companies registered with the Companies and Intellectual Property Commission (CIPC) enjoy a reduced rate of tax on all their dividends and capital gains.
- Tax exemptions are available for certain types of business income including dividends and shares, royalties, winnings and betting stakes, and income derived by certain non-residents and certain South African resident natural persons who are temporarily or permanently resident outside of the country.
- SMMEs (Small, Medium, and Micro-sized Enterprises) are also eligible for tax relief in terms of the National Small Business Act 102 of 1996. This includes tax relief on a variety of business income such as distributions, capital gains and trade income, and deductions for certain expenditure.

Systems for Tax Revenue Reinvestment

- The South African Department of Mineral Resources and Energy has established the Mining Qualification Authority (MQA) to promote safety, health and environmental protection, as well as to help mining communities achieve better living and working standards.
- The Mineral and Petroleum Resources Development Amendment Act of 2014 has imposed B-BBEE requirements for investors in oil and gas exploration and production activities, including a commitment to reinvest in the local communities and to ensure that the benefits of investment are shared by those living and working in the area.
- Government of South Africa's (GoSA) Vision 2030 seeks to create an environment for equitable growth and develop South Africa's mineral resources.
- The Mineral Regulation Program (MRP) provides resources to promote the establishment of responsible and sustainable small-scale or artisanal mining across the nation.
- The Department of Mineral Resources and Energy (DMRE) has developed the Local Economic Empowerment of the Artisanal and Small-Scale Mining Sector (LEAMSS) program to support the formalisation and inclusion of artisanal and small-scale mining operations in the South African economy. The programme provides capacity training, mentorship and financial support to qualifying applicants.
- The Department of Basic Education funds several initiatives to promote the education of artisanal mining communities, including the Minerals Education and Training Authority (META). META works with mining companies, unions, and other stakeholders to promote mining education and capacity building in the artisanal mining community.
- The Department of Mineral Resources and Energy's Integrated Mining-Related Technology Program (IMRT) provides funding and support to technology and research initiatives to promote the adoption of safer and more efficient mining practices.



- The National Union of Mine Workers of South Africa (NUMSA) provides training and capacity building programmes to promote safe and legal mining methods among artisanal and small-scale miners.

The Tax/Royalty Rules Pertaining to Mines Under Care and Maintenance.

- Under the terms of the Mineral and Petroleum Resources Royalty Act 2008 (the Royalty Act), a person who wins or recovers a mineral resource in South Africa (an extractor) must pay a royalty for the benefit of the National Revenue Fund in respect of the transfer of that mineral resource to another party.
- The maximum royalty in respect of refined mineral resources is 5%, and the maximum royalty in respect of unrefined mineral resources is 7%.
- If gross sales, in respect of mineral resources, won or recovered by the extractor for purposes of testing, identification, analysis, and sampling pursuant to prospecting or exploration right, do not exceed 100,000 Rand during a year of assessment, an extractor is exempt from the imposed royalty.
- Mining companies are subject to standard income tax on companies, withholding taxes on dividends to shareholders, value added tax (in certain circumstances), transfer duties in respect of transfers of land or prospecting and mining rights and as from 1 June 2019, carbon tax (if the taxpayer conducts a prescribed listed activity and such activity exceeds the prescribed greenhouse gas emissions threshold).
- However, mining companies may deduct large portions of capital expenditure against their taxes and may ring-fence capital expenditure and taxable income in respect of distinct mining operations (redemption allowance). Moreover, gold mining companies enjoy a special tax dispensation whereby income tax rates increase as the company's profits increase.

8.4 Environment

8.4.1 Environmental Regulations

The **National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)** is the primary legislation regulating the protection of biodiversity in South Africa. This Act provides for the protection and conservation of ecosystems, species, and genetic diversity within the country.

Other relevant laws include:

- the **National Forests Act, 1998** (Act No. 84 of 1998), which provides for the protection and sustainable management of South Africa's forests;
- the **Protected Areas Act, 2003** (Act No. 57 of 2003), which provides for the establishment and management of protected areas;
- the **National Environmental Management Act, 1998** (Act No. 107 of 1998) which provides for the protection of the environment, which includes biodiversity and forest protection,
- the **Mineral and Petroleum Resources Development Act, 2002** (Act No. 28 of 2002) which requires mining companies to minimize their impact on the environment, including biodiversity and forest protection.



Furthermore, wetlands are protected under the National Environmental Management: Biodiversity Act, 2004, National Water Act, 1998, Integrated Coastal Management Act, 2008, Protected Areas Act, 2003 and Wetlands Conservation and Management Act, 1986.

To protect the country's flora and fauna, the use of specific equipment and heavy machinery for ecological or habitat protection reasons in the mining industry in South Africa is subject to specific regulations and laws set out in the minerals and mining legislation of the country. These laws involve restrictions on the types and volumes of explosives used for mining operations, as well as special provisions for dust or fume containment. Additionally, the internationally recognised ISO 14001 standard requires mining operations to apply management systems to ensure that operations are conducted in a manner that contributes to effective protection of the environment.

The ISO 14001 standard also sets out specific provisions related to environmental audits and reviews, as well as the control of waste and their disposal measures. Finally, the National Environmental Management Act (NEMA) of South Africa contains specific regulations related to the environmental management of mining operations, including the requirement for environmental impact assessments and comprehensive environmental monitoring programmes.

Regulatory Requirements for Emergency Preparedness Plans and Response Programs

The Mine Health and Safety Act (MHSA) requires mine operators to have an emergency preparedness plan in place, which must be reviewed and updated regularly. The plan must identify potential emergency situations and describe how they will be managed, including the roles and responsibilities of those involved in emergency response. The plan must also outline the measures that will be taken to mitigate the effects of an emergency on employees, nearby communities, and the environment. In addition, the National Environmental Management Act (NEMA) requires companies to develop emergency response plans as part of their environmental management plans. These plans must identify potential environmental emergencies and describe how they will be managed, including the roles and responsibilities of those involved in emergency response. The Department of Mineral Resources and Energy (DMRE) is responsible for monitoring compliance with the MHSA, while the Department of Environment, Forestry and Fisheries (DEFF) is responsible for monitoring compliance with NEMA. Failure to comply with these regulations can result in fines, imprisonment, or the suspension or revocation of a mining license.

Laws on Air Emissions and Extractive Waste Management Sites

- **The National Environmental Management: Air Quality Act (NEM: AQA)** of 2004 regulates air emissions, including those from mining operations and extractive waste management sites. The act requires all listed activities, including mining, to comply with national air quality standards and emission limits. The act also establishes a permitting system for activities that emit pollutants, and the permit holder must ensure compliance with the emission standards and reporting requirements.



- In addition to NEM: AQA, there are other regulations that apply to specific emissions. For example, **the National Environmental Management: Waste Act (NEM: WA)** of 2008 regulates the management of hazardous waste, which includes the handling and disposal of tailings. The act requires that tailings are managed in a way that does not cause pollution or harm to human health, and that any emissions from the storage or treatment of tailings comply with the relevant air quality standards. Furthermore, the South African government has recently published draft regulations on per- and polyfluoroalkyl substances (PFAS), which are a group of emerging contaminants of concern. The draft regulations aim to establish emission standards for PFAS and require the reporting of emissions and the implementation of best available techniques to minimize or prevent PFAS emissions.

Enforcement of these regulations is the responsibility of the Department of Environment, Forestry and Fisheries (DEFF) and its provincial counterparts. The DEFF may conduct inspections, issue compliance notices, and take enforcement action, including fines or legal action, for non-compliance with the regulations.

Laws on Soil Protection and Downstream Monitoring

The **National Environmental Management: Integrated Coastal Management Act** (No. 24 of 2008) and the **National Environmental Management: Biodiversity Act** (No. 10 of 2004) provide for soil protection. These laws require that all activities that may impact on soil health and functioning must be authorized by the relevant authorities and must comply with the relevant regulations and guidelines. The **National Environmental Management Act** (No. 107 of 1998) also includes provisions for soil protection. For example, the Act requires that landowners and occupiers must prevent or remedy soil degradation on their land, and must take steps to minimise the impact of activities on soil quality. The Department of Environment, Forestry and Fisheries (DEFF) is responsible for the implementation and enforcement of soil protection laws and regulations in South Africa. The department has a number of programmes and initiatives aimed at promoting sustainable soil management practices and protecting soil quality in the country.

Similarly, The **National Environmental Management Act (NEMA)** provides the legal framework for the management and monitoring of soil contamination. The Department of Environmental Affairs is responsible for the enforcement of NEMA. In addition, the Department of Mineral Resources and Energy (DMRE) has published guidelines for the management of tailings storage facilities (TSFs) to prevent the release of tailings and seepage into the surrounding environment. These guidelines require that mining companies conduct regular monitoring of soil and water downstream from TSFs to ensure that there is no contamination. The South African National Standard (SANS) also provides guidelines for the management of contaminated land and requires that contaminated land be identified, assessed, and managed to prevent harm to human health and the environment. Mining companies are required to conduct environmental impact assessments (EIAs) and submit environmental management plans (EMPs) to the relevant authorities. The EMPs must include provisions for the monitoring and management of soil and groundwater contamination, and the results of this monitoring must be reported to the relevant authorities.



Policies on Climate Change Resilience of Operational and Remediated Sites

South Africa has policies in place on climate change resilience of operational or closed/remediated sites in some jurisdictions. For instance, the National Climate Change Adaptation Strategy (NCCAS) provides guidelines on how to incorporate climate change considerations into mining and other industries. The NCCAS requires industries to develop adaptation plans that consider the potential impacts of climate change, including increased flooding, drought, and extreme weather events, and to take steps to reduce their vulnerability and build resilience. Moreover, some companies have voluntarily committed to reducing their carbon footprint and transitioning to renewable energy sources to reduce their contribution to climate change. These efforts may include installing solar panels, wind turbines, or other renewable energy sources at their operations, as well as implementing energy efficiency measures and reducing their reliance on fossil fuels.

Laws and Regulations on Energy Consumption in Mining Operations

The National Energy Regulator of South Africa (NERSA) is responsible for regulating the electricity, piped gas, and petroleum pipeline industries in South Africa, including the mining sector. NERSA sets energy efficiency targets and provides guidelines on energy management plans for large energy users, including mining companies. The Department of Mineral Resources and Energy (DMRE) also plays a role in regulating energy consumption in mining operations. The DMRE requires mining companies to submit energy efficiency plans as part of their mining right applications, and failure to comply with energy efficiency targets can result in the suspension or revocation of mining rights. Additionally, the Carbon Tax Act, which was enacted in 2019, imposes a carbon tax on certain activities, including the combustion of fossil fuels, which may impact the energy consumption of mining operations.

In 2019, the Department of Mineral Resources and Energy (DMRE) introduced the Integrated Resource Plan (IRP) 2019, which outlines the country's energy mix and transition to renewable energy. The IRP 2019 aims to increase the share of renewable energy in South Africa's energy mix to 25% by 2030. In addition to the IRP, the National Energy Regulator of South Africa (NERSA) has also developed regulations for the licensing of small-scale embedded generation (SSEG) projects, which includes renewable energy projects. This allows mining companies to generate their own electricity using renewable energy sources and feed excess energy back into the grid. Further, the South African government has implemented a tax incentive scheme, known as the Section 12B tax incentive, for companies investing in renewable energy projects. This tax incentive is applicable to mining companies that invest in renewable energy projects and aims to encourage the transition to renewable energy sources.

Regulations That Prevent/Limit Exploration/Mining Near to Or in Protected Areas

- Mining and Biodiversity Guidelines (2004): The Department of Mineral Resources has issued a set of guidelines, which provide guidance and advice on how the mining industry can best manage the impacts of mining on biodiversity. These guidelines, among other things, state that mining activities should not be conducted in or near to protected areas, such as natural reserves, national parks, and World Heritage Sites.

- The National Environmental Management: Protected Areas Act 57 of 2003 protects, amongst other things, the integrity of natural and cultural heritage sites. The Act seeks to conserve the environment, promote social justice, and contribute to sustainable development. This Act protects these areas from the impacts of mining activities through potentially prohibiting or limiting such activities.
- The National Environmental Management: Biodiversity Act 10 of 2004 is also designed to protect South Africa's biodiversity by recognizing and managing the impacts of exploitation of natural resources and the effects of activities that are harmful to biodiversity. This Act lists a number of biodiversity management areas where certain activities (including mining) are prohibited or restricted.
- The Mineral and Petroleum Resources Development Act (Act No. 28 of 2002); This Act provides for the sustainable development of the country's mineral and petroleum resources and seeks to conserve the environment, promote social justice and contribute to sustainable socio-economic development. This Act also seeks to protect cultural heritage sites from the negative impacts of mining by, amongst other things, prohibiting or restricting mining activities in such areas.
- Relevant Provincial Legislation: Many of the South Africa's nine provinces have enacted legislation that includes provisions for the protection of ecological sensitive areas from the impacts of mining activities. An example of this is the Eastern Cape's Mineral and Petroleum Resources Development Act (Act No. 4 of 2011). This Act, among other things, prohibits certain mining activities in certain ecological sensitive areas.

8.4.2 Tangible and Intangible Cultural Heritage

The South African government has made significant efforts to protect the country's cultural heritage through a combination of legislative and policy frameworks. Some of the protected areas include four cultural sites and five natural sites. The cultural sites are:

- Fossil Hominid Sites of South Africa (inscribed in 1999)
- Mapungubwe Cultural Landscape (inscribed in 2003)
- Richtersveld Cultural and Botanical Landscape (inscribed in 2007)
- Robben Island Museum (inscribed in 1999)

The natural sites are:

- Cape Floral Region Protected Areas (inscribed in 2004)
- iSimangaliso Wetland Park (inscribed in 1999)
- Maloti-Drakensberg Park (inscribed in 2000, shared with Lesotho)
- Vredefort Dome (inscribed in 2005)
- Barberton Makhonjwa Mountains (inscribed in 2018)



These sites are recognised by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) as being of outstanding value to humanity and are protected under international law. As a result, there are laws, regulations, and standards of practice in South Africa that require mining companies to take measures to protect and preserve any archaeological or fossil remains that may be encountered during mining activities.

- The National Heritage Resources Act (NHRA) of 1999 is the primary legislation that requires that any person or organisation conducting an activity that may impact on heritage resources, including mining activities, must obtain a permit from the South African Heritage Resources Agency (SAHRA).
- The Mining Charter of 2018 requires mining companies to undertake a social and labour plan, which must include provisions for the protection of cultural heritage resources.
- The South African Council for Professional and Technical Surveyors (PLATO) also has guidelines for the management of heritage resources in the mining industry, which provide a framework for the identification, management, and protection of heritage resources.

8.4.3 Mine Closure

On Mine Closure, Care and Maintenance, MPRDA requires mining companies to prepare and implement plans for mine closure and rehabilitation. These plans must be submitted to the Department of Mineral Resources and Energy (DMRE) for approval, and must include provisions for the progressive closure and rehabilitation of the mine during its operational life and after closure. The National Environmental Management Act, 1998 (NEMA) and the National Water Act, 1998 (NWA) require mining companies to prepare environmental management plans and to obtain water use licences, which include provisions for mine closure and rehabilitation. Additionally, the Act (MPRDA, 2002) requires mining companies to ensure that mines are properly closed, decommissioned to appropriate standards, or put into a state of care and maintenance, if necessary, to prevent environmental damage and ensure public safety.

8.4.4 Water

South Africa is a water-scarce country with limited water resources, and some regions, particularly the Western Cape and parts of the Eastern Cape, experience periodic droughts. Climate change, increasing water demand from growing populations and economic activities, and inefficient water management practices are some of the factors that contribute to water scarcity. To manage the limited resource, South Africa has a number of water resources policies in place, including:

- **National Water Act (1998):** This is the primary legislation governing the management of South Africa's water resources. The act aims to ensure that South Africa's water resources are protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner.
- **Water Services Act (1997):** This act provides for the provision of water services by municipalities and other service providers. The act aims to ensure that all South Africans have access to a basic level of water supply and sanitation services.
- **National Water Resource Strategy (2013):** This is a policy document that sets out the government's vision for the management of South Africa's water resources. The strategy aims to



ensure that water is managed in an integrated and sustainable manner, and that the needs of all water users are considered.

- **National Water and Sanitation Master Plan (2020):** This plan sets out the government's strategy for meeting the water and sanitation needs of South Africans over the next 10 years. The plan includes targets for increasing access to water and sanitation services, improving water quality, and increasing water use efficiency.
- **Water Allocation Reform Policy (2003):** This policy aims to redress historical imbalances in the allocation of water resources in South Africa. The policy provides for the reallocation of water rights to previously disadvantaged individuals and communities.
- **Strategic Framework for Water Services (2003):** This framework sets out the government's approach to the provision of water services in South Africa. The framework aims to ensure that water services are provided in a sustainable, equitable and efficient manner.
- **National Environmental Management: Integrated Coastal Management Act (2008):** This act provides for the management and protection of South Africa's coastal zone, including its water resources. The act aims to establish a system of integrated coastal and estuarine management in the South Africa, including norms, standards and policies, in order to promote the conservation of the coastal environment, and maintain the natural attributes of coastal landscapes and seascapes, and to ensure that development and the use of natural resources within the coastal zone is socially and economically justifiable and ecologically sustainable;

These policies and regulations aim to ensure the sustainable management and protection of South Africa's water resources for the benefit of all stakeholders, including the mining industry.

8.5 Social

8.5.1 Land-use and Mineral Rights

Any person (including the owner of the surface rights) who wishes to exploit mineral resources in South Africa is required first to apply for and obtain the appropriate right under the Mineral and Petroleum Resources Development Act, No. 28 of 2002 (MPRDA). The Minister is authorised to grant or refuse applications for rights under the MPRDA. The holder of a mining right is entitled to prospect for minerals, mine for minerals, and apply for the renewal of the mining right. The holder of a mining right has the exclusive right to apply for and be granted a renewal of the mining right in respect of the mineral and mining area.

Similarly, the Mineral and Petroleum Resources Development Act (MPRDA) of 2002 states that an application for a mining right must not be made in “an area in which an armed conflict is taking place or is likely to take place”. Furthermore, the Minister of Mineral Resources must consider the potential for harm to the environment and to the health, safety, and welfare of persons in the vicinity prior to the granting of a mining right. The Act also states that all exploration, extraction and operating activities must be done “in compliance with open person principles” which means that people have the right to free, prior and informed consent when their rights are affected.



On the other hand, South Africa has numerous regulations, policies and initiatives surrounding the exploration of native land. These include the **Native Land and Mineral Properties Act** of 1982, the **Interim Protection of Informal Land Rights Act** of 1996 and the **National Framework for Social and Environmental Assessment of Mining in South Africa**. The Department of Mineral and Energy has also established the Mining Charter, which sets out principles for responsible and sustainable mining in South Africa. The charter also outlines the mineral rights and obligations of companies operating on native land.

South Africa's Mineral and Petroleum Resources Development Act, 2008 (MPRDA) contains the provisions for **Free Prior and Informed Consent (FPIC)**. FPIC is an international human rights standard that requires governments to obtain the explicit and voluntary consent of Indigenous Peoples before approving projects on their traditional lands. According to the MPRDA, any land required for mineral and petroleum exploration and production activities can only be acquired by government after getting Free Prior and Informed Consent (FPIC) of the affected local communities. The law also states that prior to land acquisition, the affected local communities must be adequately consulted to ensure they understand the potential benefits, costs and risks associated with the proposed project. This consultation must consider the cultural, social and economic interests of the local communities.

8.5.2 Artisanal and Small-Scale Mining

Artisanal and small-scale mining (ASM) in South Africa is often informal, and in most cases, illegal. This means that ASM activities may not be integrated into the regular economy, and may not be taxed or regulated in the same way as larger-scale mining operations. However, the South African government has taken steps to formalise and regulate ASM activities.

Under the Mineral and Petroleum Resources Development Act (MPRDA), the government provides for the issuing of permits and licences for small-scale mining operations, which are subject to certain regulations and requirements. The ASM activities that occur without a mining permit are illegal and criminalised. Illegal miners, known as “zama zamas”, are often heavily armed and, when trespassing on operating mines, set ambushes and booby traps for employees, security, and rival groups of illegal artisanal miners. . The current Artisanal and Small Scale Mining Policy ¹¹⁰ of 2022 recognizes artisanal mining and not zama-zama mining. In South Africa, most artisanal mining is on mine tailings, surface or shallow depth (50m). The critical minerals mined by ASM include chromium, bauxite, manganese and the PGM's

The Department of Mineral Resources and Energy (DMRE) has established the Small-Scale Mining Directorate, which is responsible for promoting the development of artisanal and small-scale mining activities in a sustainable and responsible manner. The directorate provides technical assistance, training, and support to artisanal miners, as well as assisting them in obtaining legal and regulatory compliance.

Additionally, the government has established programmes to support and promote the formalisation of ASM activities, including training and capacity-building for ASM operators, and support for the development of cooperative structures to improve access to markets and financing. Despite these efforts,

¹¹⁰ <https://www.gov.za/documents/mineral-and-petroleum-resources-development-act-artisanal-and-small-scale-mining-policy>



informal ASM activities continue to occur, particularly in remote areas where formal economic opportunities are limited.

8.5.3 Labour Practices

The Employment Equity Act of 1998 requires employers to implement affirmative action measures to promote the equitable representation of designated groups, including black people, women, and people with disabilities, in the workplace. Indigenous people in South Africa are generally included under the black people designation, which includes African, Coloured, and Indian people who were discriminated against under apartheid.

Protection of the Workforce's Human Rights

The Constitution of South Africa guarantees certain basic rights to all individuals, including those working in the mining sector. These include the right to equality, human dignity, fair labour practices, and the right to form and join trade unions.

- The Labour Relations Act of 1995 sets out the legal framework for labour relations in South Africa, and provides for the protection of workers' rights to organise, bargain collectively, and engage in protected industrial action.
- The Basic Conditions of the Employment Act of 1997 sets out minimum standards for working conditions, including working hours, rest periods, and leave entitlements.
- The Occupational Health and Safety Act of 1993 sets out legal requirements for the health and safety of workers in the mining industry, including requirements for risk assessments, safety equipment, and training.
- The Mine Health and Safety Act of 1996 provides additional measures specifically for the mining industry, including requirements for mine design, ventilation, and emergency preparedness.
- The Mining Charter of 2018 includes provisions aimed at promoting the protection of workers' human rights. These include provisions for the promotion of safe and healthy working conditions, the prohibition of discrimination in the workplace, and the promotion of the right to freedom of association and collective bargaining.

Regulations for Female Workforce Participation and Child labour

The Employment Equity Act of 1998 sets out the legal framework for promoting equality in the workplace, including measures aimed at addressing discrimination on the basis of gender. The Act requires employers to develop and implement affirmative action measures to address employment equity imbalances, including imbalances based on gender. Furthermore, the Department of Mineral Resources and Energy has established the Women in Mining Forum, which aims to promote the participation of women in the mining industry and to address the barriers to women's participation.

Additionally, South Africa has signed and ratified the International Conventions on Child Labour, including the International Labour Organisation's Convention on the Worst Forms of Child Labour. The Basic Conditions of Employment Act of 1997 sets the minimum age for employment at 15 years old, with some exceptions for work performed in a family business or in the context of vocational training. The Employment of Children Regulations of 2010 also provides specific guidelines and requirements related to the employment of children, including restrictions on the types of work that can be performed by



children and requirements for the provision of appropriate working conditions and protection for child workers.

8.5.4 Societal and Community Aspects

The Mineral and Petroleum Resources Development Act (MPRDA) of 2002 requires mining companies to take measures to promote the social and economic development of communities in the areas where they operate. The MPRDA requires mining companies to enter into agreements with affected communities, which are commonly referred to as Social and Labour Plans (SLPs). The SLPs are legally binding agreements that outline the mining company's commitments to promote local economic development, including job creation, skills development, and procurement of goods and services from local suppliers.

Similarly, under the NEMA regulations, the public must be given an opportunity to participate in the environmental impact assessment (EIA) process required for most extractive operations. This includes the opportunity to review and comment on the environmental impact report (EIR) that is prepared by the mining company as part of the EIA process.

8.5.5 Operational Health and Safety (OHS) and Labour Regulations

The Occupational Health and Safety (OHS) laws and regulations that are relevant to the mining industry in South Africa include:

- Mine Health and Safety Act (MHSA) of 1996 - This Act provides the legal framework for promoting safety, health and environmental protection in the mining industry. It requires mining companies to establish and implement safety and health management systems, conduct risk assessments, and provide appropriate training and equipment to employees.
- Occupational Health and Safety Act (OHSA) of 1993 - This Act provides the legal framework for promoting safety, health and environmental protection in all workplaces in South Africa. It requires employers to identify and manage workplace hazards, provide appropriate training and equipment to employees, and establish safety committees to address safety and health issues.
- Mineral and Petroleum Resources Development Act (MPRDA) of 2002 - This Act regulates the development and exploitation of mineral and petroleum resources in South Africa. It requires mining companies to submit detailed mine work programmes and environmental management plans, conduct environmental impact assessments, and take steps to minimise the impact of mining activities on the environment and local communities.
- Compensation for Occupational Injuries and Diseases Act (COIDA) of 1993 - This Act provides for the compensation of employees who are injured or contract a disease as a result of their work. It requires employers to register with the Compensation Fund and to report workplace injuries and diseases to the fund.

The MHSA is enforced by the Department of Mineral Resources and Energy (DMRE) through its Mine Health and Safety Inspectorate. The Inspectorate is responsible for conducting regular inspections of mining operations to ensure compliance with the MHSA and other relevant regulations. If a mining company is found to be in violation of the MHSA or other relevant regulations, the Inspectorate can issue fines or other penalties, such as suspension of operations or the revocation of mining licences. In serious cases where there is a risk to the safety and health of workers or the public, the Inspectorate can order the immediate suspension of mining operations.



8.5.6 Public Health and Safety

The regulation of mining-related traffic on public roads is intended to ensure the safety of all road users, including workers, motorists, and pedestrians, and to minimise the risk of accidents and other incidents associated with mining operations. Mining-related traffic on public roads is regulated in South Africa by the National Road Traffic Act, 1996 (NRTA) and the South African Road Traffic Signs Manual (SARTSM).

Under the NRTA, all vehicles operating on public roads are subject to certain safety requirements, such as the requirement to have a valid driver's licence, a roadworthy vehicle, and the necessary safety equipment. The Act also provides for the regulation of vehicle dimensions and weights, as well as speed limits and other traffic rules. The SARTSM provides guidance on the design, placement, and use of road signs and markings, including those that relate to mining-related traffic.

Mining companies are also required to comply with the Mine Health and Safety Act, which includes provisions for the safe transportation of materials and equipment to and from mining sites. The Act requires mining companies to implement appropriate measures to ensure the safety of workers and the public during transportation activities, including the use of appropriate vehicles and equipment, and the implementation of appropriate traffic management plans.

8.6 Assessment of the Mining Regime of South Africa with respect to ESG objectives

In South Africa, there are no specific regulations or requirements regarding the type of Environmental, Social, and Governance (ESG) performance reporting and assessment practices that mining companies must use. Nevertheless, the mining industry operates within a robust legal and regulatory framework that covers various aspects of Environmental, Social, and Governance (ESG) concerns in South Africa.

Mining companies are encouraged to report on their ESG performance through various voluntary frameworks, such as the Global Reporting Initiative (GRI) or the Sustainability Accounting Standards Board (SASB). These frameworks guide how to report on ESG issues consistently and transparently. They typically require companies to register on various ESG issues, such as environmental impacts, labour practices, human rights, and community engagement.

8.6.1 Environment

Environmental protection regulations include laws for air quality, water use, waste management, and rehabilitation of disturbed land. There are also regulations that require the mining industry to address climate change, biodiversity loss, and the protection of cultural heritage.

8.6.2 Social and Governance

It is important to note that the governance of the South African mining industry is an ongoing process, and the regulatory landscape may change over time as the country's social, economic, and environmental priorities evolve. It is always recommended for mining companies and stakeholders to stay updated with the latest laws, regulations, and policies governing the mining industry in South Africa.

Social and governance aspects are also addressed through regulations that require mining companies to engage with local communities, implement measures to promote social inclusion, protect human rights,



and prevent child labour. There are also laws and policies that regulate labour practices, including health and safety, and trade union participation.

In terms of governance, mining companies in South Africa are subject to various laws and regulations related to corporate governance, including requirements for transparency, disclosure, and reporting. There are also provisions for promoting responsible investment, and regulations that require the development of emergency preparedness planning, including public disclosure of information on potential hazards. While corruption remains a challenge in South Africa, the government and other stakeholders are actively working to prevent it in the mining industry and other sectors.

Furthermore, South Africa has implemented the Extractive Industries Transparency Initiative (EITI), a global standard for the transparent and accountable management of natural resources. EITI requires mining companies to disclose information about their payments to governments publicly and for governments to disclose their revenues from the mining sector publicly. This approach helps ensure that mining revenues are managed transparently and that the public knows how these revenues are being used. These regulatory provisions help promote transparency in the mining industry in South Africa and are an essential tool in preventing corruption and other illicit activities.

In South Africa, there are no specific regulations or requirements regarding the type of Environmental, Social, and Governance (ESG) performance reporting and assessment practices that mining companies must use. However, mining companies are encouraged to report on their ESG performance through various voluntary frameworks, such as the Global Reporting Initiative (GRI) or the Sustainability Accounting Standards Board (SASB). These frameworks guide how to report on ESG issues consistently and transparently. They typically require companies to register on various ESG issues, such as environmental impacts, labour practices, human rights, and community engagement.

In summary, South Africa's ESG framework in the mining sector is comprehensive and reflects the government's commitment to ensuring that the mining industry operates in a socially responsible and sustainable manner. However, there are still challenges related to the implementation and enforcement of these regulations, and ongoing efforts are needed to ensure that mining activities in the country are conducted in an environmentally and socially responsible manner.



9 Tanzania

9.1 Country Profile

Tanzania is a country in East Africa that covers a total land area of 945,087 km². Its capital city is Dodoma, located in the centre of the country. It is bordered by Kenya and Uganda, to the north, Rwanda, Burundi and Democratic Republic of the Congo, to the west, and Zambia, Malawi and Mozambique to the south. The country includes the island of Zanzibar. The country has a population of over 58 million people and is home to more than 120 ethnic groups who speak Swahili, English, and other local languages.



In 2021, Tanzania's GDP was estimated to be approximately \$63 billion. The country's economy relies heavily on agriculture, which accounts for around 25% of the GDP and employs over 75% of the population. Other major sectors include mining, tourism, and manufacturing. Tanzania has recently experienced economic growth, with an average annual growth rate of approximately 6.5% over the past decade. Despite this, Tanzania remains one of the poorest countries in Africa, with a significant portion of the population living in poverty.

9.2 Overview of the mining Sector

The mining sector in Tanzania plays a significant role in the country's economy. The country has diverse mineral resources, including gold, diamonds, iron ore, base metals, and industrial minerals. In the first quarter of 2021, the mining sector recorded 10.2 % of the GDP equivalent to 1,473,804 million TZS¹¹¹. However, the specific contribution of artisanal mining to these figures is not specified.

Tanzania earned around 2.3 billion U.S. dollars with minerals exports in 2019, a significant increase over 2018 level of 1.6 billion U.S. dollars¹¹². Gold had the highest contribution to the value of mineral exports. Tanzania is the 4th largest gold producer in Africa after South Africa, Ghana and Mali and is the world's sole producer of the precious stone Tanzanite. Gold production currently stands at roughly 40 tonnes a year, copper at 2980 tonnes, silver at 10 tonnes and diamond at 112,670 carats.

¹¹¹ 1 ZYS = 0,00039 € on 18.05.2023

¹¹² Tanzania – Country Commercial Guide, available on <https://www.trade.gov/country-commercial-guides/tanzania-mining>, accessed on 25 May 2023

The sector is regulated by the Ministry of Minerals, which is responsible for overseeing the development and management of the country's mineral resources. The Mining Act 2010 governs the granting of mining licenses and the obligations of mining companies¹¹³.

The mining sector has undergone significant reforms in recent years, aimed at increasing the contribution of the sector to the country's economy while also promoting sustainable mining practices. These reforms include increasing the government's stake in mining operations, imposing higher royalties and taxes on mining companies, and promoting local content and beneficiation.

However, the industry also faces several challenges, including illegal mining activities, environmental degradation, and social conflicts. The government has taken steps to address these challenges, including cracking down on illegal mining and promoting sustainable mining practices through the development of policies and guidelines.

The key institution governing the mining sector of Tanzania is the Ministry of Minerals¹¹⁴. The Mining Commission, an Institution under the Ministry of Energy and Minerals, regulates the mining activities such as exploration, mining, processing, mineral trading, and issuance of different mineral rights and its regulations thereto. The Mining Commission is composed of: Ministry of Lands, Ministry of Defense, Ministry responsible for Local Governments, Attorney General, Federation of Miners Association in Tanzania, Small-Scale miners and mineral dealers, Ministry of Environmental protection, and Institution for Higher Education.

In addition to the Ministry of Minerals, the following key government stakeholders in the management of the mining sector are: The Attorney General's Office, Minister of Constitutional Affairs, The Judiciary of Tanzania, Commissioner for Minerals, Mines Resident Officers, and The Geological Survey of Tanzania.

9.3 Governance

The government of Tanzania has also established various anti-corruption agencies and mechanisms, such as the Ethics Secretariat and the Public Procurement Regulatory Authority, to promote accountability and transparency in public and private sector activities. Furthermore, the laws and measures against corruption include:

- Prevention and Combating of Corruption Bureau (PCCB) Act, 2007
- Whistleblower Protection Act;
- Public Procurement Act, 2011: This law requires transparency and competition in the procurement of goods and services, including those related to the mining sector.

¹¹³ Tanzania Mining Act, 2010 , available on (<https://www.madini.go.tz/media/The-Mining-Act-2010.pdf>), accessed on 21 May 2023

¹¹⁴ <https://www.madini.go.tz/>



- Code of Ethics for the Mining Industry, 2018: This code provides guidelines for ethical behaviour in the mining sector, including transparency and accountability in financial reporting.

Regulatory Provisions for Transparency in Mining Industry

- The Mining Act, 2010 - This law requires mining companies to maintain accurate records of all transactions related to mining operations, including the extraction, sale, and export of minerals.
- The Mining (Mineral Rights) Regulations, 2018 - These regulations require mining companies to disclose their beneficial ownership information to the government.
- The Code of Ethics for the Mining Industry, 2018 - This code provides guidelines for ethical behaviour in the mining sector, including transparency and accountability in financial reporting.
- The Public Procurement Act, 2011 – The law requires transparency and competition in the procurement of goods and services, including those related to the mining sector.

Assessment of Transparency and Comprehensiveness of Disclosures

Tanzania has been a member of the Extractive Industries Transparency Initiative (EITI) in 2009 as a candidate country, and was subsequently declared EITI compliant in 2012. Tanzania joined EITI in order to improve transparency and accountability in the country's mining sector, and to ensure that the benefits of mining are shared fairly among all stakeholders. The EITI is a global standard that promotes transparency and accountability in the management of natural resources, and encourages the disclosure of information about payments made by mining companies to governments and the revenues that governments receive from the mining sector.

By joining the EITI, Tanzania committed to publishing regular reports on its mining sector, including information about revenues received from mining companies and payments made by those companies to the government. This information is published on the EITI website, and is also made available to the public in Tanzania. The EITI also provides a platform for dialogue between mining companies, government, and civil society organizations, which helps to promote greater cooperation and understanding among these stakeholders. Overall, Tanzania's membership in the EITI has helped to improve transparency and accountability in the country's mining sector, and has contributed to the more sustainable and equitable management of its natural resources.

- Government oversight - The government is responsible for reviewing the disclosures made by mining companies and ensuring that they comply with the relevant laws and regulations.
- Civil society monitoring - Civil society organisations and non-governmental organisations (NGOs) also play a role in monitoring the disclosures made by mining companies.
- International benchmarks – For example, the Global Reporting Initiative (GRI) and the Sustainability Accounting Standards Board (SASB), which provide guidelines for companies to disclose their environmental, social, and governance (ESG) performance.



9.3.1 Mineral and Mining Policies

The Ministry of Minerals oversees the mining sector in Tanzania. The country has several laws and regulations that govern the mining industry and they include the following:

- The **Mineral Policy of Tanzania, 2009**¹¹⁵ provides guidelines for the management of mineral resources in Tanzania. It emphasises the need for sustainable development of the mining sector and the promotion of social and economic benefits for local communities. The policy sets out the vision for the next 25 to 30 years for the Mineral Sector as to have a strong, vibrant, well-organized large and small-scale mining industry conducted in a safe and environmentally sound manner with a public-private partnership.
- The **Mining Act, 2010**¹¹⁶: sets out the legal framework governing mineral exploration, exploitation and marketing. It provides for the issuance of mining licenses, the rights and obligations of miners, and the regulation of all mining activities in the country.
- **The Explosives Act, 1963**¹¹⁷; outlines the requirements manufacturing, importing, exporting, buying /acquiring, selling and disposing of explosives in Tanzania⁶

Local Policies and Equity Sharing Between Investors the Tanzanian Government

Under the Mining Act, 2010 and the Mineral Policy, 2009, mining companies are required to have a minimum of 16% equity participation by the Government of Tanzania or Tanzanian citizens. In addition, the **Mining (Local Content) Regulations, 2018** require mining companies to give priority to Tanzanian citizens and companies owned by Tanzanian citizens in the award of mining licences and contracts. The Mining (Local Content) Regulations, 2021 require mining companies to submit local content plans that include provisions for the transfer of technology and skills to Tanzanian citizens and companies owned by Tanzanian citizens.

9.3.2 Mining Regulations

The following regulations are made under the Mining Act; 2010:

- The Mining (Mineral Rights) Regulations, 2010
- The Mining (Environmental Protection for Small Scale Mining) Regulations, 2010
- The Mining (Safety, Occupational, Health and Environmental protection) Regulations, 2010
- The Mining (Mineral Beneficiation) Regulations, 2010
- The Mining (Mineral Trading) Regulations, 2010
- The Mining (Radioactive Minerals) Regulations, 2010

¹¹⁵ The Minerals Policy of Tanzania, 2009, available on

https://www.madini.go.tz/media/Mineral_Policy_of_Tanzania_2009_sw.pdf, accessed on 25 May 2023

¹¹⁶ The Mining Act, 2010, available on <https://www.madini.go.tz/media/The-Mining-Act-2010.pdf>, accessed on 25 May 2023.

¹¹⁷ The Explosive Act, 1964, available on https://www.madini.go.tz/media/Explosives_Act_1963_ac5S004.pdf, accessed on 25 May 2023



- The Explosives Regulations, 1964

The **Mining (Mineral Rights) Regulations, 2018** provide guidelines for the issuance of mineral rights and the management of mineral resources. The **Mining (Mineral Rights) Regulations, 2018** also:

- provide for the renewal and transfer of mineral rights and the payment of royalties.
- require the mining company to demonstrate that it has the financial capacity to carry out mining activities and comply with the terms of the mining licence.
- require the mining company to demonstrate that it has the technical competence to carry out mining activities and comply with the terms of the mining licence.
- state that the transfer of mineral rights must be in the national interest of Tanzania. The Mining Commission may refuse to approve a transfer if it is not in the national interest.
- require the mining company to be following all applicable laws and regulations in order for a transfer to be approved.
- require mining companies to disclose their beneficial ownership information to the government.

The **Mining (Local Content) Regulations, 2018** require mining companies to prioritise the use of local goods and services in their operations. Mining companies are required to give preference to local employees and provide training and capacity-building opportunities. The **Mining (Local Content) Regulations, 2021** provide further guidance on local content requirements in the mining sector. They require mining companies to submit local content plans and to report on their compliance with local content requirements.

The **Mining (State Participation) Regulation, 2022** require mining licence holders to initiate negotiations with the Mining Commission to enable the government to acquire a shareholding in the project venture. This is intended to ensure that the government and local communities benefit from the mining activities taking place in their areas.

The **Mining (Mineral Beneficiation) Regulations, 2018** and the **Mining (Mineral Trading) Regulations, 2010** outline the restrictions on the export of minerals from Tanzania. Under these regulations, mining companies are required to have their minerals processed or refined in Tanzania before exporting. They also require mining companies to apply for a special permit for the export of minerals that have not been processed or refined in Tanzania. All minerals are to be exported through authorised mineral dealers and quarterly reports on their mineral sales and exports must be submitted. Mining companies are required to submit beneficiation plans for approval by the Mining Commission. Mining companies in Tanzania are encouraged to add value to minerals mined within Tanzania to increase revenue and create jobs for Tanzanian citizens.

Special Rules and Restrictions for Foreign Investors in Mining Projects

- Licensing: Foreign mining investors must obtain the necessary licences and permits from the government before commencing mining operations in Tanzania.
- Local content requirements: Mining companies are required to give priority to Tanzanian citizens and companies owned by Tanzanian citizens in the award of mining licences and contracts.



- **Taxation:** Foreign mining investors are subject to Tanzanian tax laws and regulations. Tanzania imposes corporate income tax on mining companies at a rate of 30%.
- **Employment of foreign workers:** Foreign mining investors are required to comply with Tanzanian laws on employment of foreign workers. These laws include obtaining work permits and complying with minimum wage requirements.

In Tanzania, there are several types of mining licences that can be issued to individuals or companies for the purpose of conducting mining activities. These are summarised in Table 18.



Table 18: Licence types applicable in the mining industry of Tanzania

Licence type	Description	Duration	Renewable	Restrictions
Prospecting License	This license is issued for the exploration and identification of minerals within a specified area	4	The initial duration of a prospecting license is four years and is renewable for a further three years.	It may be applied for and issued for minerals falling under groups as specified under Mining Act (metallic minerals, energy minerals, gemstones excluding kimberlitic diamond, industrial minerals or building materials) -minimum expenditure under a prospecting licence is US\$100 for industrial minerals and building materials and US\$250 for prospecting for gemstones. -At each renewal at least 50% of the area is relinquished.
Primary mining license	confers on the holder the exclusive right to carry on prospecting and mining operations in the mining area.	7	The law does not specify either the number of years for which the licence may be renewed or the number of times that it may be renewed. In practice,	This type of licence is granted only to citizens of Tanzania or to companies that are exclusively composed of Tanzanians, whose directors are

			however, a primary mining licence is normally renewed for the same period as the initial period for which it was granted.	Tanzanians and in which control of the company is exercised from within Tanzania by persons who are all citizens of Tanzania.
Mining License	A mining licence confers on the holder the exclusive right to carry on mining operations in the mining area for minerals specified in the licence,	10	may be renewed once for a period not exceeding 10 years	granted for operations for which the capital investment is between US\$100,000 and US\$100 million.
Special Mining License	A special mining licence will be granted for large-scale mining operations in which capital investment exceeds US\$100 million.	It is granted for the estimated life of the ore body indicated in the feasibility study or any other such period as the licensee request, whichever is shorter.	A special mining licence is renewable, and an application for renewal may be submitted at any time, but no later than one year before expiry of the licence.	The license also imposes obligations on the holder to comply with all applicable laws, regulations, and environmental standards, and to provide employment and training opportunities for Tanzanian citizens.



9.3.3 Taxation and Royalties

The Tanzania Revenue Authority (TRA) is the body responsible for the administration and management of taxes in Tanzania. In particular, the TRA administers and manages the collection of taxes in relation to the transfer of mineral rights, such as stamp duty, VAT, withholding tax, and corporate income tax, as provided for in the Mining (Mineral Rights) Regulations, 2018 and the Mining (Local Content) Regulations, 2021. The TRA is also responsible for the assessment and collection of royalties for the extraction of certain minerals.

Mining companies are subject to a special mining tax regime, which includes a corporate income tax rate of 30% and royalties are charged on Gross Value for different mineral commodities as follows: diamonds and gemstone – 6%; Uranium – 6%; precious metals (gold, silver, copper, platinum etc.) - 6%; polished and cut gemstones – 1%; and others (building materials, salt, industrial minerals) – 3% and Inspection and clearance fees which is applied to all minerals – 1. Recent changes to Tanzania's mining laws have increased local content requirements and the use of local goods and services in mining operations, creating challenges for companies that rely heavily on imported goods and services. Under the Mining (Reinvestment of Profits) Regulations, 2018, mining companies are also required to reinvest at least 5% of their profits in the mining sector in Tanzania.

Under the Mining Act, 2010 and the Mining (Mineral Rights) Regulations, 2018, the transfer of mineral rights is subject to the payment of taxes. In particular, the transfer of a mineral right is subject to stamp duty in accordance with the Stamp Duty Act, 1992.

Under the Income Tax Act, 2004, the Mining Act, 2010, and the Special Economic Zones Act, 2019, investors in Tanzania may be eligible for a range of tax incentives, depending on the type of project and the applicable laws and regulations. In particular, foreign investors may be eligible for special tax incentives and reductions, including income tax exemptions, corporate income tax reductions, and tax holidays. Investors may also be eligible for duty-free imports of certain goods and services to support their operations in Tanzania. In addition, the Special Economic Zones Act, 2019 provides for a range of tax and customs incentives for investors in special economic zones in Tanzania.

Under the Investment Act, 1997 and the Capital Market and Securities Regulations, 2004, foreign investors are permitted to repatriate profits subject to certain conditions. For example, foreign investors are required to submit an audited statement of their accounts prior to the repatriation of profits, as well as proof of taxes paid.

The Mining (Local Content) Regulations, 2021 require mining companies to submit local content plans that include provisions for the repatriation of profits. They also require mining companies to report on their compliance with local content requirements, including the repatriation of profits.

Listing Requirements for Mining Companies on Local Stock Exchange

The Dar es Salaam Stock Exchange (DSE) has listing rules that govern the admission of securities to its market. These rules outline the eligibility criteria for securities to be listed on the DSE, the application process, disclosure requirements, ongoing obligations for listed companies, and the sanctions for non-compliance. The DSE's listing rules cover various types of securities, including



equity securities, corporate bonds, government bonds, and other debt securities. Some of the eligibility criteria for listing on the DSE include the minimum size of the securities issue, the length of time the company has been operating, and the company's financial stability and profitability.

The DSE's disclosure requirements include providing regular financial reports, material information about the company's operations, and other relevant information that may affect the security's value. Ongoing obligations for listed companies include maintaining the minimum listing requirements, notifying the DSE of any material events that may affect the security's value, and complying with all applicable laws and regulations. However, the DSE has sanctions for non-compliance with its listing rules, which may include fines, suspension, or delisting of the security from the market.

9.4 Environment

The relevant laws in the protection and preservation of biodiversity, forests, and other natural resources in Tanzania include;

- National Environmental Management Act, 2004
- Forest Act No. 14 of 2002
- Wildlife Conservation Act No. 5 of 2003
- Water Resources Management Act No. 8 of 2009.

9.4.1 Environmental Regulations

The **Environmental Management Act, 2004 (EMA)** is a framework legislation governing environmental aspects in Tanzania. It includes provisions for sustainable management of the environment, prevention and control of pollution, environmental quality standards, public participation, and the basis for the implementation of international environmental agreements. The Act sets out the mandates of various actors to undertake enforcement and exercise general supervision and coordination matters relating to the environment. The EMA has established environment units in all ministries and environmental committees at the regional, district and village levels. Within each ministry, it is the Environmental Section's responsibility to ensure that environmental concerns are integrated into the ministry's developmental planning and project implementation in a way that protects the environment. It requires project developers to develop and implement Environmental Management Plans (EMP) as well as monitor any identified environmental issues associated with their project.

The **National Environment Management Council (NEMC)** is the responsible authority for the enforcement, compliance, review and monitoring of Environmental Impact Assessments (EIA), including facilitation of public participation processes in environmental decision-making. NEMC undertakes the following activities: Performs environmental surveys and advises the government on all relevant matters; enforces pollution control, ensures compliance of the national environmental quality standards and performs the technical arbitration role in the undertaking of EIAs; identifies projects and programmes or types of projects and programmes for which environmental audit or environmental monitoring must be



conducted under this Act; initiates and evolves procedures and safeguards for the prevention of accidents which may cause environmental degradation and remedial measures where accidents occur; publishes and disseminates manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation.

The **National Environment Policy, 1997** provides the framework for incorporating and mainstreaming environmental and social considerations into decision-making in Tanzania. It is a comprehensive attempt to guide the conservation and management of natural resources and the environment and provides for cross-sectoral and sectoral policy guidelines, instruments for environmental policy, and the institutional arrangements for environmental management for determining priority actions and monitoring.

The **Environmental Impact Assessment and Audit Regulations, 2005** require an environmental impact assessment to be conducted before mining operations commence. An in-depth study is required to determine the scale, extent and significance of the impacts and to identify appropriate mitigation if the project is deemed likely to have significant adverse environmental impacts. ASM is included in the schedule of small-scale industries that require a Preliminary Environmental Assessment. This preliminary assessment decides whether the Project needs a full environmental impact assessment, if the Project is likely to have some significant adverse environmental impacts, but the magnitude of the impacts are not well-known. If there is a change in ownership of the mining rights, a new environmental impact assessment may be required.

The **Mining (Environmental Protection for Small Scale Mining) Regulations, 2019**, provide guidelines for the protection of the environment in small-scale mining activities. The regulations require miners to submit environmental impact assessments before commencing mining activities and to implement measures to minimise the environmental impact of their activities.

The Energy and Water Utilities Regulatory Authority (EWURA) regulates the emissions of GHGs and particulates from thermal energy power plants. Moreover, Tanzania Petroleum Development Corporation (TPDC) implements emissions standards for oil refineries. On the other hand, National Environment Management Council (NEMC) regulates emissions standards for a variety of sources, such as chemical plants, oil refineries, automobiles, industry-specific equipment, and tailings dams.

The NEMC has adopted cyanide air quality standards in order to protect human health and the environment. Tanzania has also taken steps to regulate mercury and vapour emissions, and has established a limit for volatile organic compounds (VOCs). Tanzania signed the Minamata convention in 2013, and in the ratification process⁴. The government has also adopted dioxin, Polychlorinated biphenyls (PCBs), and Per- and polyfluoroalkyl substances (PFAS) regulations and established air quality standards.

Tanzania's 2012 National Climate Change Strategy (NCCS) aims to enable the country to effectively adapt to climate change and participate in global efforts to mitigate climate change, whilst also achieving sustainable development. The NCCS includes policies and programmes aimed at institutional strengthening, technology transfer, drought and flood management, and risk management. The Tanzania Forest Services (TFS) Agency also adopted objectives to improve forest management systems and promote conservation and efficient use of forests.



9.4.2 Tangible and Intangible Cultural Heritage

The Antiquities Act of 1964 (Act No. 10 of 1964 Cap 333) is the principal legislation that provides legal protection to Tanzania's cultural heritage resources. This act is further supported by the Antiquities (Amendment) Act of 1979 (Act No. 20 of 1979) and the Rules and Regulations of 1981, 1991, 1995, and 2002. Tanzania is also a signatory to several international agreements and protocols, including the Declaration of the States of Africa, the Caribbean, and the Pacific (ACP) on the return or restitution of cultural property. Moreover, Tanzania has a culture policy that recognises visual arts, music, film, and performing arts managed by the National Arts Council and the Tanzania Film Board.

Some of the UN world cultural heritage sites in the country include the following;

- The cultural sites are Kondoa Rock-Art Sites, Ruins of Kilwa Kisiwani and Ruins of Songo Mnara, and Stone Town of Zanzibar.
- The natural sites are Kilimanjaro National Park, Selous Game Reserve, and Serengeti National Park.
- A mixed site is the Ngorongoro Conservation Area.

The country does not have any specific laws, regulations, or standards of practice in for what to do in case of any archaeological or fossil remains encountered during mining activities. However, there are some laws related to mining and environmental management. These include Sections 4 and 5 of the Sovereignty Act of 2017[19], the Environmental Management (Registration and Practice of Environmental Experts) Act of 2005 and the Mining Act of 2010 provides for the regulation of minerals mining, trading, and any other relevant matters.

9.4.3 Mine Closure

The laws, policies and requirements for mine closure and remediation in Tanzania are set out in the **Mining Act, 2010** and the **Mineral Policy, 2009** of Tanzania. Under these legislations, mining companies must provide a decommissioning plan prior to the commencement of mining activities. Furthermore, the regulations require mining companies to set aside sufficient funds to ensure that all decommissioning, closure and remediation costs are covered. Bonding arrangements are also used to ensure that sufficient funds are available for mine closure and remediation.

9.4.4 Water

In Tanzania, the Water Resources Management Act of 2009 provides the legal framework for the management, use, and protection of water resources including water courses, surface water, groundwater, and estuary waters⁸. The UNEP's Law and Environment Assistance Platform (UNEP-LEAP) provides technical assistance to member states, including Tanzania, in the field of environmental law. Furthermore, the United Nations Environment Programme (UNEP) works to protect and restore freshwater ecosystems to sustain their services for generations to come and advance integrated water resources management, including monitoring water quality.

9.5 Social

9.5.1 Land-use and Mineral Rights

The policy and laws emanating from the **Land Policy, 1997**, address issues of land tenure, promotion of equitable distribution of land access by all citizens; improvement of land delivery systems; fair and prompt compensation when land rights are taken over or interfered with by the government; promotion of sound land information management; recognition of rights in unplanned areas; establishment of cost effective mechanisms of land survey and housing for low income families; improvement of efficiency in land management and administration of land disputes resolution, and protection of land resources from degradation for sustainable development.

The major function of the Land Act is to promote the fundamentals of the National Land Policy by giving clear classification and tenure of land, land administration procedures, rights and incidents of land occupation, granted rights of occupancy, conversion of interests in land, dispositions affecting land, land leases, mortgaging of land, easements and analogous rights, co-occupation and partitioning and settlement of land disputes. Tanzanian land falls into three categories, namely:

- **Reserved Land:** set aside for wildlife, forests, marine parks, etc.
- **Village Land:** includes all land inside the boundaries of registered villages, with Village Councils and Village Assemblies given power to manage them. The Village Land Act, Cap 114 governs the land and gives details of how this is to be done.
- **General Land:** is neither reserved land nor village land and is therefore governed by the Land Act and managed by the Commissioner.

The **Land Acquisition Act, 1999**, is the principal legislation governing the compulsory acquisition of land in Tanzania. Sections 3-18 of the Act empower the President to acquire land, and provide the procedures to be followed when doing so. The President is empowered to acquire land in any locality provided that such land is required for public purposes, and those who will be adversely affected to the acquiring of land by the government are eligible for the payment of compensation.

Mining activities may require the acquisition of land or the use of land belonging to others. Consent may be required from the landowners or relevant authorities before mining activities can commence. The holder of an exploration or mining right must obtain the permission of the owner or occupier of the surface rights before exercising any rights to use the surface. In addition, the following are the surface use rights applicable to exploration and mining operations:

- The holder of the exploration or mining right will be liable for the payment of annual rental fees or compensation in cash or kind to the owner or occupier of the surface rights.
- The holder of the exploration or mining right must ensure the safe and successful development of the project, bearing any costs associated with rehabilitation of the surface.
- The holder of the exploration or mining right must take all necessary steps to ensure the strict adherence to all laws and regulations applicable and shall act with due care and diligence.



- The holder of the exploration or mining right must maintain records of all works done under the right and must act in a responsible manner to minimise the effect of their operations on the environment, public health and safety, and the livelihoods of local people

9.5.2 Artisanal and Small-Scale Mining

The definition of Artisanal and Small-scale mining (ASM) in the Tanzanian context is not conclusive. Mining legislation in Tanzania does not give a direct definition of ‘artisanal’, ‘small-scale mining’ or ‘artisanal and small-scale mining’. Section 4 of the Mining Act, 2010 defines a primary mining licence as a licence for ‘small-scale mining’ operations, whose capital investment is less than USD 100,000 or its equivalent in Tanzanian shillings. Therefore, by law, small-scale miners are those operating with a PML and with capital of less than USD 100,000.

ASM activities are often informal and miners work independently without official employment by a mining company. This often leads to unregulated and untaxed activities. For instance, the mining and quarrying industry is estimated to have employed over 310,000 people in Tanzania as of 2019. Since 2010, the number of working-age Tanzanians that during a specified period worked within the mining industry has been increasing. That year, around 170,200 individuals had paid employment or were self-employed in mining.

The regulations starting from Mining Act 1998 and 2010 recognised ASM as an activity that could be recognised legally, if environmental and social due diligences requirements are met. This allows small miners to get PMLs, which then get registered in the cadaster system. The Mining Cadastral Information Management System (MCIMS) allows for improved transparency in the sector along with integration of an environmental and social database.

Tanzania has specific laws and policies that apply to artisanal and small-scale mining (ASM) activities. The Mining Act, 2010 provides for the licensing and regulation of ASM activities in Tanzania. The Act provides for the issuance of a primary mining licence for ASM operators and is granted for a period of up to five years, renewable upon application. The licence provides ASM operators with legal recognition and access to mineral resources, which can be used as collateral for loans and investment. In addition, the Mineral Rights Board is responsible for the issuance of mining licences, including primary mining licences for ASM operators, and to ensure compliance with the relevant laws and policies governing the mining sector, including ASM activities.

The **Mining (Mineral Rights) Regulations, 2018**, provides specific regulations for the allocation of areas for ASM activities, including the requirement for ASM operators to obtain a certificate of entry and work plan approval. The work plan should include environmental management, health and safety measures, and social responsibility. Moreover, The **National Mineral Policy (2009)** recognises ASM activities as an important contributor to the country’s mineral sector and provides for the development of sustainable ASM practices. In 2020, the government launched the **National Action Plan for the Formalisation of Artisanal and Small-Scale Mining**, which provides a framework for the formalisation and regulation of ASM activities.

In addition to these laws, ASM activities are also highlighted in the following:



- The **Mining (Local Content) Regulations, 2018**: These regulations require mining companies to give priority to local ASM operators and provide them with opportunities to participate in the mining value chain.
- The **Mining (Safety, Occupational Health and Environment) Regulations, 2018**: These regulations provide for safety, health, and environmental protection in ASM activities.
- The **Income Tax Act, 2004**: This Act provides for tax exemptions for small-scale miners who meet certain criteria, such as those with annual sales below a certain threshold.

The **State Mining Corporation (STAMICO)** provides professional mineral services, which include drilling (for mineral and water), land and mine surveying, mineral exploration and investment promotion, promotion and modernisation of the small-scale mining sub-sector, promotion of industrial minerals development, and mineral consultancy. Its capacity could be strengthened to improve consultation and involvement with stakeholders.

The Governments' drive to formalise prospecting and Primary Mining Licences and to stimulate formation of associations of small-scale miners has been effective in giving the small-scale sector a stronger voice and further influence over policy, legislation and implementation procedures.

The Mining (Local Content) Regulations, 2021 require mining companies to submit local content plans that should include provisions for the reinvestment of revenue in education of local ASM communities as well as the promotion of better and safer mining practices. The Tanzania Minerals Regulation Office (TAMRO) is responsible for the implementation of the Mining (Local Content) Regulations, 2021. TAMRO is also responsible for promoting best practices in the mining sector, including the promotion of safer mining practices and the protection of the environment.

9.5.3 Operational Health and Safety (OHS) and Labour Regulations

The **Occupational Health and Safety Act No. 5 of 2003** aims to improve health, safety, and general wellbeing of workers and workplaces by promoting occupational health and safe practices in order to eliminate occupational accidents and diseases, hence achieve better productivity in the workplaces.

The Occupational Safety and Health Authority (OSHA) was set up in 2001 under the Ministry of Labour and Employment to administer occupational health and safety at workplaces in the country. The Ministry of Labour and Employment is the main actor with the oversight role of ensuring that decent work is practiced and maintained in Tanzania. It provides directives, technical advice, enforces legislations, proposes amendments, allocates resources, oversees all activities carried out by OSHA and ensures that OHS rules and regulations are adhered to and maintained at workplaces.

Additionally, the Occupational Health and Safety Act of 2003 requires employers to consult with employees and their representatives on health and safety matters, including emergency preparedness.

The Occupational Safety and Health Authority (OSHA) is responsible for enforcing OHS legislation. OSHA has the power to inspect workplaces, investigate accidents, issue fines, and even close down unsafe worksites. Employers are required to report workplace accidents to OSHA within 24 hours, and failure to do so can result in fines or imprisonment.

Some of the policies to foster compliance with OHS enforced by OSHA include the following;



- 1 Inspections: OSHA carries out routine inspections in workplaces to check for compliance with OHS regulations and to identify potential hazards and risks.
- 2 Education and training: OSHA provides education and training to employers, workers, and the public to promote awareness of OHS standards and regulations.
- 3 Sanctions: OSHA can impose sanctions on employers who do not comply with OHS regulations. Sanctions can include fines, legal proceedings, and even imprisonment.
- 4 Collaboration: OSHA collaborates with other government agencies, trade unions, and industry bodies to promote compliance with OHS legislation.

Reporting mechanisms: OSHA has established a reporting mechanism for workplace accidents and incidents to ensure that employers comply with reporting requirements and to monitor trends in workplace accidents and incidents.

9.5.4 Public Health and Safety

The Tanzanian Road Traffic Act or other related laws may have provisions related to the safe use of public roads by mining-related vehicles.

In the emergency preparedness planning of and the involvement of the affected stakeholders, Tanzanian Mining Act of 2010 requires mining companies to have an emergency response plan and to submit it to the Chief Inspector of Mines for approval.

9.5.5 Labour Practices

The **Employment and Labour Relations Act** sets out provisions for fundamental rights and protections, which include forced labour, child labour, discrimination, and freedom of association. It also sets out employment standards, wage parameters, working hours, and dispute regulations, among others. Tanzania overhauled its employment and labour laws in 2004 when it enacted **the Employment and Labour Relations Act, Act No. 6 of 2004** and the **Labour Institutions Act, Act No. 7 of 2004**. While the Employment Act provides for labour standards, rights and duties, the Labour Institutions Act constitutes the governmental organs charged with the task of administering the labour laws. Subsequently, in 2007 several pieces of subsidiary legislation were promulgated to facilitate the enforcement of labour rights and standards stipulated in the Employment Act. The new laws further enact employment and labour standards which, by and large, conform to the labour standards set by the International Labour Organisation (ILO).

There are a number of policies positively impacting gender. Important among them include the following: (i) Gender Policy, (ii) Affirmative Action Policy, (iii) Sexual Offenses Act (1998), and (iv) Action Plan against Gender Based Violence (since 2010). Tanzania is a signatory to the Convention on the Rights of the Child.

There are no specific regulations related to female workforce participation (gender mainstreaming) in the country. However, the Mineral Sector Development Project, with support from the World Bank, has been working to promote the inclusion of women in the sector. The influence of individual societies, associations, faith groups and other organisations is recognised by government and the mining sector and some bodies, such as the Lawyers Environmental Action Team and Policy Forum, have played key roles in

advocating changes to recent draft legislation. Groups such as the Tanzanian Women in Mining Association (TAWOMA) have lobbied for fairer treatment of women miners and processors.

Tanzania has established laws and regulations related to child labour, although gaps exist in the legal framework to adequately protect children from the worst forms of child labour, including the minimum age for work and compulsory education age. It is worth noting that the Tanzanian government has ratified the International Labour Organization's Minimum Age Convention, which sets the minimum age for admission to employment or work at 15 years old, with a minimum age of 18 years old for hazardous work.

9.5.6 Societal and Community Aspects

The Mining Act, 2010 requires mining companies to prepare and submit an Environmental and Social Impact Assessment (ESIA) report to the government before commencing mining operations. Furthermore, the Code of Ethics for the Mining Industry, 2018, requires mining companies to engage with local communities and other stakeholders and to disclose information related to their community engagement activities.

The **Local Government Act of 1982** provides for the establishment of local governance bodies to represent local communities. These bodies are known as "Village Councils" and they are responsible for advising the government on matters related to the local community.

The Mining Act (2010) and the Mineral Policy of Tanzania (2009) require mining companies to consult with local communities prior to commencement of mining activities. Additionally, the Mining (Local Content) Regulations (2018) require mining companies to set up Local Mining Committees (LMCs) in consultation with local communities as well as for mineral right holders to consult with local governments on the planned development, production and utilisation of mineral resources.

The Mining (Revenue Sharing) Regulations, 2016, require mining companies to share a portion of their revenues with the local communities in which they operate. The revenue sharing is based on the profits of the mining company and the type of mineral resources being extracted.

In addition, the Mining (Local Content) Regulations, 2021 require mining companies to submit local content plans that include provisions for the reinvestment of taxes and mining royalties into the local mining communities. Such reinvestment can include investment in local infrastructure enhancements (utilities, roads), support to local businesses, and capacity-building initiatives.

9.6 Assessment of the Tanzanian Mining Regime with respect to ESG objectives

In Tanzania, the ESG framework in the mining sector is primarily governed by the Mining Act of 2010, with a focus on environmental management, community development, and occupational health and safety. The Act requires mining companies to prepare and submit environmental impact assessments and develop plans to manage and mitigate environmental risks associated with mining operations. Additionally, the Act mandates community development agreements to be in place, which require companies to engage with local communities to promote sustainable development initiatives.

In terms of occupational health and safety, the Act mandates mining companies to ensure safe and healthy working conditions for their employees and take steps to minimise the impact of mining activities on the health and safety of surrounding communities. Specific regulations and guidelines exist for areas such as mine safety, personal data protection, and labour standards. While there are mechanisms in place for education and training on better mining practices, there are also concerns around ASM worker safety and the use of harmful mining practices, such as the use of mercury in gold mining.

There are also requirements for emergency preparedness planning and consultation with potentially affected stakeholders, as well as for public disclosure of information on potential health impacts and access to compensation schemes.

Overall, the ESG framework in the mining sector in Tanzania is designed to promote responsible mining practices that balance economic development with social and environmental considerations. In Tanzania, there are no specific regulations or requirements regarding the type of ESG performance reporting and assessment practices that mining companies must use. However, as mentioned earlier, Tanzania is a member of EITI, which requires companies to disclose certain information on their ESG performance.

9.6.1 Environment

Environmental provisions are stipulated when a mining permit is given. Furthermore, the mining and environmental inspectorates are effective in the enforcement of the environmental protection provisions. An Environmental Impact Study is always required for mineral exploration, mine development and exploitation and mine closure/requirement. The environmental performance of mining activities and enforcement of environmental provisions are fairly good when mining is performed by a private international company, a private national company or a public company. However, in the case of ASM, this process almost does not exist. Information about the environmental performance of mining activities is not always publicly available although there is some information available and easy to understand.

9.6.2 Governance

The complex tax environment in Tanzania requires careful planning and management to ensure compliance and maintain profitability. Developing tax planning strategies and building strong relationships with local suppliers and service providers are essential for mining companies to navigate the challenges posed by the tax environment and achieve success in Tanzania's mineral-rich economy. By working closely with tax advisors and local stakeholders, exploration and mining companies can stay abreast of changes in the tax environment and develop effective tax planning strategies that enable them to achieve long-term success in Tanzania.



10 Zimbabwe

10.1 Country Profile

Zimbabwe is a landlocked country in southern Africa that covers a total land area of 390,757 km². It is bordered by South Africa, Mozambique, Zambia, and Botswana. Its capital city is Harare located north-eastern in the country's Mashonaland region. With a population of over 14 million people, Zimbabwe is home to various ethnic groups including the majority Shona and Ndebele people, as well as smaller groups such as the Venda, Kalanga, and Tonga. The official languages are English, Shona, and Ndebele.



In 2020, the Gross Domestic Product (GDP) of Zimbabwe was estimated to be \$21.44 billion, with a growth rate of -4.1%. Zimbabwe has a diverse economy with agriculture, mining, and tourism as its major industries. The country is known for its production of tobacco, cotton, and maize, as well as minerals such as gold, platinum, and diamonds. Zimbabwe's natural beauty, wildlife, and cultural legacy have made it a popular tourist destination.

10.2 Overview of the mining Sector

Zimbabwe's rich and diverse mining sector accounts for a significant portion of the country's GDP. The sector produces a variety of minerals including gold, platinum, chrome, diamonds, nickel, coal, and iron ore. The country boasts the world's second-largest platinum deposit¹¹⁸ and high-grade chromium ores, with approximately 2.8 billion tons of PGM and 10 billion tons of chromium ore. Gold is the largest mineral export and is mined by both large-scale mining companies and small-scale miners. Diamonds are also an important export, mainly found in the Marange diamond fields, which are set to produce 16.9 million carats in 2013 as the highest producing diamond fields in the world.

The country's total expenditure for 2023 is forecast to more than double to 4.2 trillion Zimbabwe dollars (USD 6.5 billion), with a majority of the funds going to social services and infrastructure. Zimbabwe is

¹¹⁸ Zimbabwe country commercial guide

<https://www.trade.gov/country-commercial-guides/zimbabwe-mining-and-minerals>

estimated to have 3.8% economic growth in 2023 while global economic growth is expected to slow to 2.7% (Bloomberg)¹¹⁹.

The sector accounts for about 12% of the country's gross domestic product (GDP) and employing over 45,000 people directly and up to 300,000 indirectly. The minister of mines claims the sector has the potential to generate US\$12 billion annually by 2023 if the government addresses challenges, such as persistent power shortages, foreign currency shortages, and policy uncertainties. In recent years, there has been a growing interest in lithium mining in Zimbabwe, with the country having some of the world's largest lithium reserves.

However, the government has implemented reforms to attract investment and increase transparency in the sector. In 2019, the government launched a new mining policy that seeks to increase production, attract investment, and promote sustainable mining practices. Overall, the Zimbabwe mining sector has significant potential for growth and development, but will require continued investment and reforms to address the challenges facing the industry.

10.3 Governance

10.3.1 Mineral and Mining Policies

In Zimbabwe, mining is regulated by the **Ministry of Mines and Mining Development**¹²⁰. The Ministry is responsible for the administration of mining laws and policies in the country, including the issuance of mining licences and permits. The Ministry's mandate includes the promotion of investment in the mining sector, the development of mining infrastructure, and the promotion of sustainable mining practices.

The mining sector in Zimbabwe is regulated by the **Mines and Minerals Act**, which provides for the exploration, mining, and processing of minerals. The Act also:

- outlines the responsibilities of the government and mining companies in ensuring that mining activities are carried out in a safe and sustainable manner;
- vests all minerals in the President;
- requires any person who wishes to prospect, explore or mine for minerals to apply for a mining title or permit.

In addition to the Mines and Minerals Act, Zimbabwe has the following laws and regulations to promote transparency, accountability, good governance, and equity in the distribution of resources for all Zimbabweans:

- Precious Stones Trade Act,
- Mines and Minerals (Minerals Unit) Regulations,
- Regulatory Framework,
- Zimbabwe Mining Development Corporation Act,
- Environmental Management Act and its related regulations,

¹¹⁹ Bloomberg, 2022, Zimbabwe doubles spending plans for 2023 to revive economy, available on <https://dailyinvestor.com/world/5980/zimbabwe-doubles-spending-plans-for-2023-to-revive-economy/>, accessed on 25 May 2023.

¹²⁰ <http://www.mines.gov.zw/index.php/en/>



- Gold Trade Act,
- Indigenisation and Economic Empowerment Act,
- Communal Lands Act.

Furthermore, the government of Zimbabwe has also implemented a number of other policies and initiatives to promote the development of the mining sector. These include:

- **National Mineral Policy**, which was launched in 2013 and seeks to promote sustainable development of the sector while ensuring that the benefits of mining are shared equitably among all stakeholders.
- **Zimbabwe Mining Development Corporation (ZMDC) Act**, is the government's investment arm in the sector, and aims to develop the mining sector in the national interest
- The establishment of the **Zimbabwe Mining Development Corporation (ZMDC)** to fulfill the mandate of the ZMDC Act;
- **Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZimAsset)**, which aims to transform the country's economy through the development of key sectors, including mining.
- The establishment of the **Mineral Marketing Corporation of Zimbabwe (MMCZ)** under the **Mineral Marketing Corporation of Zimbabwe Act**.
- **Indigenisation and Economic Empowerment Act** requires that foreign-owned mining companies in Zimbabwe transfer a majority of their shares to local investors.
- Local value addition and beneficiation of minerals are incentivised through a complete rebate on minerals consumed in Zimbabwe.
- a proportionate royalty rebate is given to approved mineral beneficiation plants.

10.3.2 Mining Regulations

The process for mining and prospecting licensing involves the submission of various documents and approvals, including exploration and mining plans, environmental impact assessments, and proof of financial and technical capacity to carry out mining operations. Zimbabwe is running an online mining cadastre¹²¹ which is accessible after registration: Officials from the **Ministry of Mines and Mining Development** conduct site visits and consultations with local communities and other stakeholders before deciding on the issuance of mining licences.

If a licence is granted, the applicant will need to pay the required fees and sign a licence agreement. Further, mining licences are issued for a specific period, after which they need to be renewed. The licence holder is also required to comply with various regulatory requirements, including environmental regulations and reporting requirements. It is important to note that the licensing process can vary depending on the type of licence being applied for and the specific requirements of the Ministry of Mines and Mining Development.

¹²¹ <http://portal.miningcadastre.org/zw/CustomHtml.aspx?PageID=d7f3f61d-4689-4280-a59a-b865f002dd60>



There are several types of mining and prospecting licences that are issued in Zimbabwe under the Mines and Minerals Act. The various licence and claims types for the mining sector of Zimbabwe are listed and summarised in Table 19.

Table 19 : The various licence and claims types available for the mining sector of Zimbabwe

Licence Type	Description	Duration (years)	Renewable	Restriction
Ordinary /Special Prospecting License	This license allows the holder to prospect for all minerals in a designated area except coal	2	It can be renewed for a further two years.	-10ha precious metals and Stones -25ha Base Metals - Applicant can be any person above 18 years or a corporate body
Exclusive Prospecting Order	This is a more advanced license that allows the holder to prospect for minerals in a larger area. Applicable to any defined area (including reserved).	3	It can be renewed for a further three years.	-65,000 ha -Any person or corporate body
Special Grant	This license allows the holder to explore and mine for minerals in a designated area. Applicable to all minerals	5	Perpetual annual renewal	Area to be situated in reserved ground 200,000ha for coal and 100,000ha for coal bed methane and Natural Gas
Mining Lease	This license can be issued for all categories of minerals and is issued for amalgamation of contiguous mining locations	25	Perpetual annual renewal	Holder of registered mining location
Special Mining Lease	Issued for all categories of minerals	25	It can be renewed for a further 25 years	Holder of mining block applies for mining rights for a development wholly or mainly in foreign currency with the mine output intended mainly for export

10.3.3 Taxation and Royalties

The taxation regime applicable to the mining sector in Zimbabwe is mainly governed by the **Income Tax Act (Chapter 23:06)** and is administered by the Zimbabwe Revenue Authority (ZIMRA). According to the Act, mining companies are required to pay corporate income tax, mineral royalties, withholding tax and



capital gains tax on mining operations. Other taxes applicable to mining operations include Value Added Tax (VAT), customs duty, and excise duty.

While the Income Tax Act guarantees that royalties due to the state are paid, while also allowing deductions by mining companies, the government of Zimbabwe has also introduced a number of incentives to attract investment in the mining sector, including tax breaks, investment guarantees, and simplified regulations.

Mineral Royalties

Zimbabwe announced their new Mineral Royalty Policy in October 2020, requiring miners to pay 50% of royalties in mineral form, 40% in local currency, and 10% in foreign-currency cash. This is in line with government policy to preserve value and mitigate revenue losses and the miners have agreed to comply.

The royalty payment must be made within 30 days from the date of delivery of minerals to the boundary of Zimbabwe. At any given time, the Minister of Mines may appoint an auditor to verify the accuracy and correctness of a miner's royalty statement.

Mineral royalties are payable to the Government of Zimbabwe on all minerals extracted from the ground. All minerals have a fixed royalty rate, differentiated according to mineral value. The highest rate applies to diamonds and other precious stones. However, according to the set royalty rates for the minerals, Gold attracts a flexible royalty rate of 5% if the international market price is above US\$1,200 per ounce and if it is below that 3%, applying to large-scale miners only. Royalty rates differ according to metal or mineral type as shown in Table 20.

Table 20: Zimbabwean royalty rates per mineral category

Mineral	Royalty rate (%)
Diamond & semi-precious stones	10
Platinum	5
Gold	5 (flexible)
Industrial Metals	2
Coal	1

The artisanal and small-scale mining community enjoy a fixed 1% preferential rate.

Royalty revenue from mining is more predictable because it is precipitated by the marketing of minerals, therefore, payable regardless of profits or losses incurred by the mining company.

Generally, royalties are paid at the rates specified in the Mining Laws and are calculated based on the gross sales or market value of the minerals. The Ministry of Mines and Mining Development is responsible for collecting and ascertaining the payable amount of mineral royalties.

Special Tax Provisions For (Foreign) Investors

The government of Zimbabwe has also introduced a number of incentives to attract investment in the mining sector, including tax breaks, investment guarantees, and simplified regulations. These tax incentives include:

- a five-year tax holiday for investments in industrial parks and tourism development zones,
- reduced corporation tax for exporters of 50% or more of output, and
- exemptions from import duties on capital goods.

Investors in the Build, Own, Operate and Transfer (BOOT) and Build, Operate, and Transfer (BOT) joint ventures are exempt from taxes for the first five years and are then taxed at 15%. In addition to these discounted tax rates, potential investors in the mining sector should be aware of the other general incentives available to them, such as exemptions from import duties on raw materials used in exports and the ability to carry forward losses indefinitely. Finally, investors should be aware of the regulations regarding foreign investment, as certain sectors are reserved for Zimbabweans

10.4 Environment

The **Environmental Management Act (EMA) of 1996**, is concerned with the overall management of the environment and with the implementation of policies and protocols to ensure the sustainability of resources. The Environmental Management Act [Chapter 20:27] provides for the establishment of the National Environmental Council, Environmental Management Agency, Environment Management Board, and the Standards and Enforcement Committee. It also stipulates general principles of environmental management, quality standards, environmental plans, environmental impact assessments and audits. Section 4 of this Act outlines environmental rights and principles of environmental management while Section 5 defines the general functions of the Minister of Environment and Tourism. Under this Act, the Minister may delegate to the Environmental Management Agency or National Environment Council such of his functions as he thinks fit.

Other key legislation governing the environmental regulation in Zimbabwe's mining sector include:

- Water Act [Chapter 20:24],
- Forest Act [Chapter 19:05],
- Agricultural Land Settlement Act [Chapter 20:01],
- Communal Land Act [Chapter 20:04],
- Parks and Wild Life Act [Chapter 20:14], and
- the Rural Land Act [Chapter 20:18]

These legislations are intended to promote sustainable management of natural resources and protection of the environment, prevention of pollution, preparation of environmental plans and establishment of government agencies such as the Environmental Management Agency and the Environment Fund.



All exploration, reconnaissance, and mining operations must be approved by the Environmental Management Agency (EMA) and an Environmental Impact Assessment Certificate must be approved before any of these operations may commence. As part of the EMA requirements, plans must be submitted outlining how tailings and other waste products will be stored and how the area will be rehabilitated and returned to its original state once the operation is complete.

10.4.1 Environmental Regulations

Environmental regulations in Zimbabwe are administered under the Environmental Management Act (EMA), which was enacted in 1996. As such, all mining activities need to adhere to the regulations of the EMA and obtain an Environmental Impact Assessment Certificate prior to the commencement of operations.

The Environment Management Act (Hazardous Substances, Pesticides and other Toxic Substances) Regulations, 2007 and the Environment Management Act (Hazardous Waste Management) Regulations, 2007 prescribe standards and regulations for hazardous substances and hazardous waste.

The Environmental Management (Control of Alluvial Mining) Regulations, 2014, the Environmental Management (Importation and Transit of Hazardous Substances and Waste) Regulations, 2009, the Environment Management Act (Environmental Impact Assessment & Ecosystems Protection) Regulations, 2007, the Environment Management Act (Effluents and Solid Waste Disposal) Regulations, 2007, the Environment Management Act (Atmospheric Pollution Control) Regulations, 2009 and the Environmental Management (Control of Hazardous Substances) (General) Regulations, 2018 provide for the control of alluvial mining, the import and transit of hazardous substances and waste, environmental impact assessments and ecosystems protection, effluents and solid waste disposal, atmospheric pollution control and the control of hazardous substances respectively.

Other licence requirements for the mining sector include Waste Disposal Licences, Effluent Discharge Licences, Emission Licences, and Import/Export Licences for controlled substances. In addition to these, the closure obligations of the holder of a reconnaissance right, exploration right or mining right need to be adhered to, including restoring the land to its original state and removing any hazardous structures, equipment, and disused surface pipes, pump stations, and facilities.

10.4.2 Tangible and Intangible Cultural Heritage

Zimbabwe is home to a rich and diverse culture that has been shaped by its diverse population. This culture is an integral part of the nation's identity, with traditional practices and beliefs being passed down from one generation to the next. Zimbabwe's cultural heritage, both tangible and intangible, is intricately linked with the country's rich natural resources and mining sector. From the ancient rock paintings of the Matobo Hills, the monumental Great Zimbabwe Ruins, to the many domains of Shona tradition and storytelling, Zimbabwe's cultural heritage is a testament to the generations that have inhabited, protected and sustained its land for many centuries. Despite increased mining activity, Zimbabwe remains highly committed to the preservation and conservation of its tangible and intangible cultural heritage and works to ensure it remains a part of its long, valuable history.



Over the years, the Zimbabwean government has taken steps to protect and preserve the abundance of cultural heritage. Heritage sites such as its monuments, forts, and archaeological sites are protected through the Monuments and Relics Act of 1979. This Act seeks to safeguard these sites from destruction, illegal excavation, and vandalism. The Act is accompanied by the National Museums and Monuments of Zimbabwe, which oversees the implementation of this law.

To safeguard both tangible and intangible cultural heritage, the government has also recognised the need to safeguard knowledge, strengthen cultural expressions and participation, and build capacity. Zimbabwe has also ratified instruments such as the UNESCO 2003 Convention for the Safeguarding of Intangible Cultural Heritage that aims to promote and protect intangible heritage around the world.

10.4.3 Mine Closure

In Zimbabwe, mine closure is governed by the Mines and Minerals Act and the Environmental Management Act, which provide guidelines and regulations for mine closure and site rehabilitation. The main requirements for mine closure include the preparation of a mine closure plan, the implementation of environmental management plans, the decommissioning of mining infrastructure, and the restoration of the land to its pre-mining state. These requirements are briefly described below:

- **Mine Closure Plan:** The Mines and Minerals Act requires mining companies to prepare a mine closure plan that details the steps to be taken to restore the mine site to its pre-mining state. The plan must include provisions for the management of waste, the closure of mine shafts, and the restoration of the land. The plan must be submitted to the Mines and Minerals Board for approval before mining operations can commence.
- **Environmental Management Plan:** The Environmental Management Act requires mining companies to prepare an environmental management plan that details the steps to be taken to manage environmental risks and restore the mine site to its pre-mining state. The plan must include provisions for the management of water, air, and soil pollution, as well as the rehabilitation of the land. The plan must be submitted to the Environmental Management Agency for approval before mining operations can commence.
- **Decommissioning of Mining Infrastructure:** Mining companies are required to decommission mining infrastructure, such as mine shafts, after the completion of mining activities. The Mines and Minerals Act requires mining companies to submit a decommissioning plan that details the steps to be taken to decommission mining infrastructure and restore the land.
- **Restoration of the Land:** Mining companies are required to restore the land to its pre-mining state after the completion of mining activities. The Mines and Minerals Act requires mining companies to submit a reclamation plan that details the steps to be taken to restore the land. The plan must include provisions for the rehabilitation of soil, the planting of vegetation, and the management of erosion.
- **Financial Assurance:** Mining companies may be required to provide financial assurance to cover the cost of mine closure and site rehabilitation. The Mines and Minerals Act requires mining companies to submit a financial assurance plan that details the amount of financial assurance required and the form in which it will be provided.



Overall, the requirements for mine closure in Zimbabwe are aimed at ensuring that mining companies take responsibility for the rehabilitation of mine sites after the completion of mining activities. The regulations governing mine closure are aimed at minimising the environmental impact of mining and ensuring the long-term sustainability of the mining sector.

10.4.4 Water

The mining sector in Zimbabwe has seen a surge in unregulated and illegal mining activities that have caused extensive environmental degradation and compromised access to safe water for the local population. Women, who often bear the burden of collecting and managing water for their families, have had to resort to various coping mechanisms to survive amidst this hazardous environment.

The main causes of water contamination are attributed to the use of mercury and cyanide by illegal gold panners and artisanal miners. Poor policing of the environment, coupled with a failing economy and lack of access to formal employment opportunities, has further exacerbated the situation. Factors such as political populism and a disregard for responsibilities by companies operating mining, construction and other enterprises have contributed to the gradual destruction and pollution of fresh water bodies.

The legislative framework in place to protect the environment has been largely inadequate, with the Mines and Minerals Act (21:05) being the primary legislation in force. This Act outlines the requirement for a prospector's licence, an approved prospector to perform statutory pegging and registration, notifications to government agencies, a working plan for approval by The Ministry of Mines and a comprehensive Environmental Impact Assessment. While large-scale miners are required to adhere to these regulations, there has been limited oversight to ensure that artisanal miners are held accountable.

10.5 Social

10.5.1 Land-use and Mineral Rights

In Zimbabwe, land use and mineral rights are governed by the Mines and Minerals Act and the Land Acquisition Act. These laws provide for the ownership, use, and exploitation of mineral resources on land.

Under the Mines and Minerals Act, the state owns all mineral resources in the country and grants rights to individuals and companies to explore and mine those resources. The Act provides for the granting of mining leases, prospecting licences, and other forms of mineral rights to interested parties. The Act also sets out the terms and conditions for the grant of mineral rights, including the payment of fees and royalties.

The Land Acquisition Act, on the other hand, governs the ownership and use of land in Zimbabwe. The Act provides for the acquisition of land by the state for various purposes, including mining activities. The state can acquire land either by agreement with the landowner or through compulsory acquisition. In cases of compulsory acquisition, the state is required to pay fair compensation to the landowner.

10.5.2 Artisanal and Small-Scale Mining

Artisanal and small-scale mining (ASM) plays a significant role in the Zimbabwean economy, both in terms of employment and production. According to the Zimbabwe Miners Federation (ZMF), an estimated 500,000 Zimbabweans engage in ASM directly and at least 1.5 million people benefit from it directly and



indirectly (Nyavaya, K, 2021)¹²². ASM provides employment opportunities for many Zimbabweans, especially in rural areas, where formal employment opportunities are limited

According to the Ministry of Mines and Mining Development, ASM accounted for over 60% of gold deliveries to Fidelity Printers and Refiners in 2020. The sector also contributes significantly to chromium production, with estimates suggesting that it accounts for up to 50% of chromium production. Moreover, ASM also contributes to the Zimbabwean economy through the payment of taxes and royalties. The government has introduced various measures to formalise the ASM sector and ensure that ASM miners pay taxes and royalties. In 2020, the government introduced a gold support price of US\$45 per gram, which was aimed at increasing gold deliveries to Fidelity Printers and Refiners and reducing smuggling.

A 2016 report from PACT¹²³ found that by 2016, artisanal gold mining was the third-largest contributor to national GDP from the mining sector in Zimbabwe, responsible for 21% of value, behind just Platinum Group of Metals (PGM) mining (32%) and large-scale gold mining (26%). According to Fidelity Printers and Refiners (FPR), a subsidiary of the Reserve Bank of Zimbabwe and sole legal buyer of the precious metal, local gold production has been increasing over the years mainly due to ASM. In 2018, FPR said that ASM produced 21.7 tons compared to mining companies' 11.5 tons. This is notwithstanding huge gold leakages that come through individuals selling to a lucrative black market where the precious metal is believed to be then smuggled to neighbouring countries. For instance, in September 2020, the Minister of Home Affairs alluded that the country is losing an estimated US\$100 million worth of gold every month due to rampant smuggling through the country's porous points of entry and this translate to US\$1.2 billion per year. To support this, gold export earnings decreased from US\$1.3 billion in 2018 to US\$946 million in 2019, perhaps an ominous sign that the gold smuggling problem is festering.

In addition, the ASM sector in Zimbabwe faces other challenges, including the lack of access to finance, inadequate technical expertise, and limited access to markets. There are also concerns about the environmental and social impact of ASM, as many ASM miners operate in an informal and unregulated environment.

Overall, the ASM sector in Zimbabwe plays an important role in the country's economy, and there is a need for the government to support the formalisation of the sector and address the challenges faced by ASM miners. This will enable ASM to contribute more effectively to the country's economy while minimizing its environmental and social impact.

10.5.3 Labour Practices

Labour practices in the mining sector in Zimbabwe are governed by various laws and regulations, including the Labour Act, the Mines and Minerals Act, and various statutory instruments.

The **Labour Act** provides for the regulation of employment relationships, including the rights and obligations of employers and employees, the regulation of working conditions, and the resolution of disputes. The Act provides for the establishment of the National Employment Councils (NECs), which are

¹²² Nyavaya, K, 2021. Zimbabwe's rugged artisanal & small scale mining sector, Rosa Luxemburg Stiftung South Africa, available on <https://www.rosalux.de/fileadmin/images/EnglishWS/Africa/ZimbabweMines/Zimbabwe-Artisanal-Mining-Sector.pdf>, accessed on 25 May 2023.

¹²³ PACT annual report, 2016, available on <https://www.pactworld.org/library/pacts-annual-report-2016>, accessed on 25 May 2025.



responsible for negotiating and setting minimum wages and conditions of employment for various industries, including the mining sector. Similarly, the **Mines and Minerals Act** also includes provisions on labour practices, including the requirement for mining companies to provide safe and healthy working conditions for their employees. The Act also provides for the appointment of safety officers and the establishment of safety committees to oversee safety and health issues in the workplace.

In addition to these laws and regulations, the government of Zimbabwe has introduced various policies and initiatives aimed at promoting labour practices in the mining sector. For example, the government has introduced a policy requiring mining companies to prioritise the hiring of local workers and to provide training and skills development opportunities for local communities.

Despite these laws and policies, however, there have been concerns about labour practices in the mining sector in Zimbabwe, including issues of exploitation, inadequate safety measures, and inadequate compensation for workers. According to ZELA (Zimbabwe Environmental Lawyers Association), most mine workers were at risk of fatal accidents, citing the 2019 Battlefields mine disaster, where over 20 artisanal miners died in a mineshaft. The environmental lawyers also cited cases of child labour, saying they were rampant in the mining (ASM) sector. Most mining sector workers are among the least-paid, despite working under hazardous conditions that threaten their lives and health.

Recently, companies such as Anglo Platinum, Impala Platinum, and Caledonia Mining Corporation awarded an 80% wage increase to their workers, which saw their salaries rising from a minimum wage of ZWL\$262,32 to ZWL\$468,58.

However, despite having one of the best Constitutions, the state of workers in Zimbabwe is disheartening and workers in the mining industry are currently the lowest paid, despite the fact that this is an industry that is labour intensive and is highly risky and hazardous to health.

10.5.4 Societal and Community Aspects

The mining sector in Zimbabwe provides both opportunities and challenges to the country's citizens. On the one hand, mining offers potential sources of income and foreign exchange earnings while, on the other hand, it presents risks to the environment, human rights and social welfare.

The government of Zimbabwe, in collaboration with local and international companies, has sought to increase government revenue from the mining sector. In doing so, communities living close to mining sites have encountered a number of environmental and human rights violations. These include disruption of local ecosystems, pollution of water sources, land degradation, and the displacement of already marginalised communities.

In recent years, local Civil Society Organisations, in collaboration with the Government of Zimbabwe and local mining companies, have worked to protect the rights and lives of communities living close to mining sites. These efforts have included raising awareness of the dangers that mining poses, enhancing government regulations and oversight of the mining industry, and advocating for fair compensation for affected communities. In addition, the government has taken steps to encourage full-scale local participation and action in mining projects through the establishment of mineral chipping and allocation



of Community Share Ownership Trusts. These initiatives recognise the importance of local knowledge and input to natural resource management and are key tools for assuring that the benefits of mining are shared equitably throughout the country.

10.5.5 Operational Health and Safety (OHS) and Labour Regulations

Zimbabwe's Occupational Health and Safety (OHS) laws and regulations pertinent to the mining and quarrying industry require that mining and quarrying businesses comply with rules and regulations and provide a safe work environment. It is worthwhile to note that occupational health and safety laws in Zimbabwe are fragmented, but there is a legislative policy that serves as a cornerstone for the industry. This legislation outlines and guides the enforcement of safety legislation and various other rule-making, inspections, and monitoring of safety conditions. All mining and quarrying businesses are required to obtain the necessary licences and permits issued by relevant authorities and to comply with the relevant laws and regulations.

Some of the key OHS legislations include:

- The Mines and Mineral Act
 - Chapter 21:05, which
 - requires mining operators to provide safe and healthy working conditions for employees;
 - require companies to carry out a health and safety risk assessment prior to the start of mining operations;
 - require mining operators to appoint a safety officer in each mining facility and to report instances of serious injury or fatality in the workplace;
 - sets out the requirements for mine safety inspections, safety audit reports and annual safety action plans;
 - Chapter 21:22, which sets out the requirements for approving hazard alert notices and permits from the relevant safety authority;
- The National Social Security Authority Act, Chapter 17:04, which requires the employer to make a payment to the funds on a monthly basis and obtain a certificate of financial capacity to operate a mining facility.
- The Factories and Shops Act, Chapter 14:05, which requires employers to provide employees with protective clothing and equipment.
- The Occupational Safety, Health and Environment Act, Chapter 15:09, which sets out the general obligations of employers to create and maintain a safe and healthy working environment.
- The Employment Act (Chapter 28:01) which requires employers to provide workers with safe working conditions and provide adequate training on occupational health and safety matters.

These legislations make it mandatory for mining and quarrying businesses in Zimbabwe to take the steps necessary to ensure that their workplaces are safe and healthy. The application of these laws calls for the establishment of good workplace practices and the adoption of safety systems and programmes that reduce risks associated with workplace dangers.



10.5.6 Public Health and Safety

Public health and safety are important considerations in the mining sector in Zimbabwe, given the potential risks associated with mining activities. The government has implemented various policies and regulations aimed at promoting the health and safety of workers and local communities affected by mining activities.

The Mines and Minerals Act, for instance, requires mining companies to comply with health and safety regulations, including the provision of protective equipment and training to workers. The Act also requires mining companies to submit mine plans and conduct regular inspections to ensure compliance with health and safety regulations. In addition to the health and safety of workers, the government is also concerned with the health and safety of local communities affected by mining activities. The Environmental Management Act requires mining companies to conduct environmental impact assessments and implement mitigation measures to minimise the impact of mining activities on local communities.

The government has also implemented various policies aimed at promoting the health and well-being of local communities, including the requirement for mining companies to provide social and economic benefits to affected communities. These benefits may include the provision of health services, clean water, and other basic services. Overall, public health and safety are critical considerations in the mining sector in Zimbabwe, and the government has implemented various policies and regulations aimed at promoting responsible mining practices that protect the health and well-being of workers and local communities.

10.6 Assessment of the Mining Regime of Zimbabwe with Respect to ESG objectives

Environmental, social, and governance (ESG) considerations have become increasingly important in the mining sector in Zimbabwe. The government has recognized the importance of sustainable mining practices and has implemented various policies and regulations aimed at promoting responsible mining activities. Overall, the ESG framework in the mining sector in Zimbabwe is aimed at promoting sustainable and responsible mining practices, while also ensuring that mining activities contribute to the economic and social development of the country.

10.6.1 Environment

The government requires mining companies to comply with various environmental regulations, including the submission of environmental impact assessments and the implementation of mitigation measures to minimize the impact of mining activities on the environment. Similarly, Mining companies are also required to consider the social impact of their activities and engage with local communities. However, there are very few regulations specifically governing environmental accounting in the Zimbabwean mining sector. The government has not provided enough financial and human resources for research and development of environmental accounting practices, nor have government organizations monitored and controlled the activities of mines in a meaningful way.



10.6.2 Social

The government has implemented policies aimed at promoting community development and empowerment, including the requirement for mining companies to provide social and economic benefits to local communities.

10.6.3 Governance

The government has implemented various regulations aimed at promoting good governance in the mining sector, including the requirement for mining companies to comply with transparency and anti-corruption measures. However, there are a number of issues that have hampered good governance of Zimbabwe's mining sector, such as opaque involvement by senior public officials, compromised frameworks for the allocation of mineral rights, weak mechanisms for the distribution of mining revenue or royalties to local communities, weak mechanisms for contract and revenue disclosure, confidentiality clauses that are too wide, weak institutions that are not accountable to the people, and a lack of legislation on corporate social responsibility or mechanisms for its enforcement. As a result, there are also gaps in the extractives legislation, an absence of remedies or grievance redress mechanisms and complaints procedures, stock-piling of claims by mining companies and individuals, lack of public disclosure and information systems and a lack of a cadastral information system. These issues have hampered the effective governance of the sector, highlighting the need for necessary reforms to ensure that all Zimbabweans benefit fairly from the sector.



Appendix A – Guidance for Collecting Information

Introduction

This task of AfricaMaVal aims to undertake a meta-level review of the pertinent minerals policies, regulations, agreements on community engagement and consultation, land ownership and mineral rights, land-use and tenure, health and safety of workforces and communities, environmental management, and regulation across the continent, as well as the distribution/attribution and use of royalties.

This guidance document describes what data and for what purpose are to be collected. It will aid local contacts in the participating countries in this task. This task will complement country-level assessments on investment climates by other organizations and other WPs.

The below categories are indicative, as the structure of the country-specific rules and regulations may vary and may be covered by different sets of laws in each country. There may be also not so clear delimitation between different laws and policy documents.

There are also a number of questions that specifically concern Artisanal and Small-scale Mining (ASM)

It is not expected that all questions are being addressed, however, the relatively detailed questions below intend to indicate what kind of information is thought. Respondents can ignore questions for which they are not competent or to which they have no answer.

Mineral and mining policies

The overarching policy document is the African Mining Vision (African Union, 2009) and different countries will have developed their own strategic policy documents. These should be listed and summarised. Please provide information on the responsible bodies (e.g. the competent ministry) with contact information. Policy questions to address also include:

- Which laws regulate ownership and group structures?
- Are there any requirements in relation to the holding of equity in exploration and mining projects by local people e.g., is an investor required to allocate or cede shares to local owners?
- Are there any special rules or restrictions applicable to foreign investors?
- Identify any rights that the State may have e.g., does the State have any rights to equity in mining projects?
- Are there any requirement for listing on the local stock exchange
- Are there any requirements to beneficiate/process minerals mined within the country?
- Are there any restrictions on the export of minerals?
- Are there any statutory consents required to dispose of rights to explore and mine?
- Are there any restrictions on disposals of controlling interests in entities holding exploration or mining rights?
- Are there any requirements to periodically renew mining or exploration licenses?



- Are there any special laws and policies applicable to specific commodities (e.g., diamonds, precious metals, nuclear fuel cycle elements)?
- Are there any special laws and policies applicable to artisanal and small-scale (ASM) mining?
- Are there any policy provisions aiming at licensing and formalisation of ASM stakeholders?
- How often the policies are reviewed and updated?
- Is the country signatory to any international conventions relevant to mineral extraction (e.g., Aarhus-, Basel-, London-, MARPOL-, Minamata-, UNECE Water-, or the UN Conventions on Combatting Desertification and on Biodiversity)?

Governance

Governance within the mining industry itself and that pertaining to the government-industry relationship is a key factor to ensure corporate sustainability and responsible operations. Therefore, it is of high the assessment of the legislative requirements on corporate structure, and mandatory disclosures.

- Are there any laws and measures against bribery and corruption?
- Are there any specific regulatory provisions for transparency in the mining industry?
- Has the country joined EITI, and if not, what are the reasons for not joining?
- Which types of disclosures are mandatory?
- How are the transparency and comprehensiveness of disclosures assessed?
- Are there regulations or requirements on the type of ESG performance reporting and assessment practices (self-reported performance or third party rating)?
- Are there any regulatory provisions for board independence?
- Are there any regulatory provisions aimed at considering and balancing interests of stakeholders (different from shareholders)?
- Are there regulations that reserve the Government participation into governance bodies (ie. Golden share)?
- Are there regulations that favour the participation of local communities in governance bodies?

Mining regulations

Please describe the pertinent laws on exploitation of mineral raw materials re. minerals rights, code of mining etc.

- How are exploration licenses granted, what mechanisms are applied?
- How are mining licenses granted, what mechanisms are applied?
- Are there administrative appeals in the mining law?
- What requirements exist for community and stakeholder consultation during the permitting processes?
- Are the mining codes and standards comparable to those in the EU?

- Are there assurance and verification systems in place to ensure implementation of the mining standards?
- What are the laws, policies, requirements for provisions pertaining to mine closure and remediation, including the provisions of bonds?
- What are the law and policies pertaining to mine care and maintenance?
- What are the instruments and means for monitoring regulatory compliance of mining and exploration operations?
- Are there laws, regulations, or rules in place the type of tailings storage or disposal (e.g., dewatered tailings piles, construction of tailings dams)?
- Are there any regulations on the use of mercury (Hg), specifically in ASM? What are the means of enforcement?
- Are there any regulations on wastes and residues containing Naturally Occurring Radioactive Materials (NORM), e.g. Tantalum waste, Tin slags?
- Is the regulator for NORM different from the mining or environmental regulator?
- What are the means to sanction non-compliance?
- Which organisation is responsible for monitoring regulatory compliance?
- Are there any legal requirements for the procurement of local goods and services by mining operations?

Taxation and Royalties

Policies on taxation and royalties can be decisive elements to attract or deter foreign investment, but are also important instruments to ensure that a fair share of the wealth generated by extraction remains in the source country. An important governance aspect is also, whether the respective policies and regulations are stable and predictable and are implemented in a transparent way.

- Are there special rules applicable to the taxation of exploration and mining companies?
- Is the transfer of mining rights subject to the payment of taxes?
- Are there any royalties payable to the State over and above any taxes?
- Are there restrictions on repatriating profits for foreign investors?
- What systems are in place to administrate and and manage the collection of the taxes?
- Is there a set percentage of profits that the mining sector is mandated to reinvest into the sector?
- Are there any provisions for (foreign) investors, such as tax exemptions, tax holidays, tax reductions?
- What are the regulations or systems in place for the reinvestment of taxes and mining royalties into the local mining communities, for example, reinvestment into local infrastructure enhancements (utilities, roads)?
- What are the systems in place for reinvestment of tax revenue into education of local ASM communities and promotion of better and safer mining practices?
- What are the tax/royalty rules pertaining to mines under care and maintenance?



Land-use and mineral rights

Please describe the rules and regulations with respect to land ownership and mineral rights, land-use and tenure

- Which are the relevant land-use planning and zoning regulations?
- Are maps available that clearly indicate the zoning and protected areas (see below)?
- What are the rights of the holder of an exploration right or mining right to use the surface necessary or incidental to an exploration or mining operation?
- Are there any native land titles or regulations that have implications for exploration and the mining industry?
- Are there provisions for Free Prior and Informed Consent (FPIC) when acquiring land for mining from the people.
- Is there a constitution that has an impact upon rights to prospect and mine?
- Are there restrictions in place on the use of specific equipment or heavy machinery for ecological or habitat protection reasons?
- Are there any land-use restrictions with respect to the type of mining method (e.g., open-pit vs. underground mining)?
- Are there any specific regulations that prevent or limit exploration or mining near to or in protected areas (ecological sensitive areas, nature reserves, Natura 2000 sites, cultural heritage sites, etc.)?
- Are any sites in the country inscribed on UN World Natural Heritage List?
- Are there any regulations which prevent or limit mining rights near to areas of conflict?

Environment

Please describe the pertinent environmental legislation, including how this legislation is applied and by which responsible body.

- Which are the relevant laws on the protection of biodiversity including forest protection?
- Which are the laws on wetland protection?
- If the country is a signatory to certain UN conventions pertaining to the environment (see above), how is compliance monitored and non-compliance sanctioned?
- Are there regulatory requirements to have emergency preparedness plans and response programmes in place and are these revised regularly?
- Which are the laws on air emissions to the environment (GHGs, particulates, cyanide, Hg, vapour, VOCs, dioxins, PCBs, including emerging substances such as PFAS, etc.) for operations and extractive waste management sites including tailings dams?
- Which are the laws on soil protection?



- What are the regulations for soil monitoring down stream from mining activities or around extractive waste management sites, including tailings dams re. contamination by eroded material or dust?
- Are there any policies in place on climate change resilience of operational or closed/ remediated sites?
- What are the laws and regulations for (hazardous, non-hazardous) extractive waste management (disposal, re-use)?
- Are mining operations required to periodically review their environmental and extractive waste management plans?
- Which are the policies and regulations on mine-closure and environmental remediation of closed or abandoned mines (mining legacies)?
- Are there regulatory provisions for the life-cycle management of extractive operations that cover the long-term management of extractive waste (stewardship) and community sustainability after the end of mining?
- Are there regulatory provisions the reprocessing of legacy tailings stored/disposed on site re., for instance, the creation of potentially contaminated dust or releases of contaminated effluents)?
- Are there any laws or regulations on energy consumption in mining operations?
- Are there any specific regulations related to the use of renewable energy in mining operations?

Water

Water resources management is an overarching task and relevant from both, the aspect of protection and the availability for the mining operation. In many African countries surface and groundwater resources are limited due to climatological limitation and competition between mining and drinking or irrigation water can be a limiting factor.

- What are the water resources policies of the country?
- How is competition between (prospective) users of groundwater and surface waters resolved to ensure fair use (wetland protection, irrigation rights, clean drinking water for humans and animals, processing waters, etc.)?
- What are the laws and regulations on the protection of groundwater and surface water resources?
- Are water resources included in the environmental legislation or separate?
- Which are the regulations on water emissions (acid rock drainage, heavy metals, arsenic, cyanide, radionuclides, etc.) to the environment from mine operations?
- Are there regulations or standards of practice for the environmental monitoring of aqueous emissions (e.g. dissolved constituents such as heavy metals, radionuclides, arsenic, cyanide, and pH) from extractive waste disposal sites, including tailings dams?
- Are there any regulations related to the recycling of water in mining sites?
- Are there any regulations related to wastewater disposal?

Tangible and Intangible Cultural Heritage

Extraction projects may affect sites of tangible or intangible cultural heritage, such as archaeological sites or sites of spiritual value.

- Which are the laws and policies on the protection of such cultural heritage?
- Are any sites in the country inscribed on UN World Cultural Heritage List?
- Are there laws, regulations or standards of practice for what to do should any archaeological or fossil remains be encountered during mining activities?

Societal and Community Aspects

Communities are affected by extractive operations in a wide variety of ways. There can be both, positive and negative impacts.

- Is there any legislation on the protection of information (like the EU GDPR)?
- What are the regulatory provisions, if any, for public participation in decision-finding processes, e.g. permitting, on extractive operations?
- Are there any specific regulations related to involvement of local communities in order to perceive economic benefits or incentives to mining activities?
- Are there any regulatory provisions for complaints and arbitration?
- Is there any artisanal mining and what is the percentage contribution to GDP?
- Is artisanal mining integrated into the regular economy or untaxed and unregulated?
- Are there data/statistics on jobs (primary/secondary) in the mining sector?
- Is there information on social conflicts in the mining areas?
- Are there any regulatory provisions for fostering actions that enhance social inclusion, protect the members of community involved in the artisanal mining?
- Are there any requirements or programmes to ensure awareness raising and access to information for the local community?
- Are there any regulatory provisions for indigenous workforce participation?
- Are there any regulatory or policy provisions to encourage mining companies to provide for training in local communities and to encourage their participation in related economic activities?
- Are there any regulatory provisions for the protection of the workforce's human rights?
- Are there any specific regulations related to female workforce participation (gender mainstreaming)?
- Are there any specific regulations related to the prevention of child labour?

Operational Health and Safety (OHS) and labour regulations

Protection of the health and safety of workers in the extractive industries is a continuing challenge world-wide.

- Which are the relevant OHS laws and regulations?
- Is there mining-specific OHS legislation?
- How is the OHS legislation enforced?
- What policies to foster compliance are in place?
- Which body is responsible for the implementation and supervision of this legislation?

- What is the role of trade unions in the mining industry?
- Which are the laws and regulations on the resolutions of labour conflicts, including strikes and walk-outs?
- What are the regulations and/or standards of practice or provisions to ensure in particular ASM workers' safety?
- Are there requirements and mechanisms for the education of ASM workers on better mining and processing practices, in particular also for gold mining without the use of Hg?

Public Health and Safety

Extractive operations can have significant off-site effects and impacts. To a great extent these are covered by the relevant environmental legislation, but certain aspect may be covered by other bodies of legislation.

- Which is the legislation that covers the protection of the public from emission (e.g. dust)?
- Is the mining-related traffic on public roads regulated in any specific way (e.g. road safety codes)?
- Are potentially affected stakeholders consulted and involved in the development and maintenance of emergency preparedness planning?
- Are there any requirements for public disclosure and access to information, at least for the immediate communities of the possible dangers or health impact in place (should there be e.g. dam failure or a release of contaminated dust or water into the environment, etc)?
- Are local community members monitored for potential long-term health impacts and are any specific compensation schemes in place?

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Appendix B - On-line Data Collection Tools

10.7 Screen-shots from the guided interview template (English)



AfricaMaVal: ESG assesement across Africa

PLEASE READ THIS TO THE PERSON YOU'RE INTERVIEWING

You have been invited to participate in an interview for a research project called AfricaMaVal. Before deciding whether you want to participate, please listen the information below carefully.



AfricaMaVal is funded by the European Union (EU). It aims to develop EU-Africa partnerships that will foster the responsible sourcing of mineral resources for the European industry while supporting Africa's local and regional development in the best Environmental, Social and Governance (ESG) practices. For more information about AfricaMaVal please consult the project website at <https://africamaval.eu/>.

This activity is coordinated by the Association of Women in Mining in Africa (AWIMA). AWIMA is a network of African women in mining, oil and gas national associations. It was created in 2015 in Nairobi, Kenya, during the African Women Business Linkages Forum organised by the African Union Commission.

The interviews will be held over six months (from October 2022 to March 2023) and will cover most African countries. Some questions may include words that you do not understand. If this is the case, please ask the interviewer to fully explain the meaning of the word or piece of information you do not accurately understand. At all times, we assure compliance with the current legislation.

Please ask the interviewer from AWIMA all the questions you may have so you can be entirely sure to understand all the survey proceedings, including risks and benefits. In case of questions or issues related to your participation in this research, you are invited to contact the AWIMA representative, Ms Zenzi Awases (zenzi.awases@outlook.com). If you have questions about data processing, don't hesitate to contact the Data Privacy Officer representative of AWIMA, Mr Kauruumbua Koujo (koujokay@gmail.com).

We appreciate your cooperation!

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AfricaMaVal: ESG assesement across Africa

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PLEASE READ THIS TO THE PERSON YOU'RE INTERVIEWING

Confidentiality statement
This interview is confidential. We take respondents privacy seriously and process all data according to the European Union's General Data Protection Regulation. The responses (not the respondents personal information) will be used for implementing the AfricaMaVal project objectives and may be included in project-related publications, presentations and reports. The respondents experience reported in these questions will not be transferred to anyone else outside of the AfricaMaVal consortium.

If you (as respondent) choose to further assist the project, you are asked to provide your personal contact information at the end of the interview. This is optional, and personal data will be protected and processed in connection with the AfricaMaVal project purpose. If you have questions about data processing, don't hesitate to contact the Data Privacy Officer representative of the AfricaMaVal project, Ms Carol Zammit (c.zammit@brgm.fr).

Benefits to you and AfricaMaVal
You will not receive any personal benefit for participating in this interview besides learning more about AfricaMaVal. However, your participation will substantially contribute to this research and the African mining community.

Risks or consequences
Due to your participation, no risk or inconvenience is foreseen. You are only requested to be available to participate. If you feel uncomfortable answering a question, please simply decline the question without justification. This will have no consequences.

Zurück
Weiter


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AfricaMaVal: ESG assesement across Africa

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PLEASE READ THIS TO THE PERSON YOU'RE INTERVIEWING

Informed consent for guided interview
 Your participation in this interview is only possible if you freely and independently signed the consent form provided by the interviewer authorising AfricaMaVal to use the data and information you provide. If you did not signed the form, please do not participate in this study.

QUESTION TO THE INTERVIEWER *
 Please identify the country being assessed in this interview:

Meine Antwort _____

INSTRUCTIONS FOR THE INTERVIEWER
 The interview has several topics. Please ask the interviewee only to respond to questions related with his/her expertise. At the end of each section the interviewee can either choose a new topic or decide to close the interview.

- Mineral and mining policies
- Governance
- Mining regulations
- Taxation and royalties
- Land-use and mineral rights
- Environment
- Water
- Cultural heritage
- Societal and community aspects
- Operational health and safety
- Public health and safety

The interview is completed and I want to close it and collect contact details of the interviewee


Proceed to closure

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Water

What are the water resources policies of your country? Please detail.

Meine Antwort _____

What are the laws and regulations on the protection of groundwater and surface water resources, and in particular on the fair use of water (wetland protection, irrigation rights, clean drinking water for humans and animals, processing waters, etc.)? Please detail.

Meine Antwort _____

Are water resources included in the environmental legislation or separate? Please detail.

Meine Antwort _____

Which are the regulations on water emissions (acid rock drainage, heavy metals, arsenic, cyanide, radionuclides, etc.) to the environment from mine operations? Please detail.

Meine Antwort _____

Are there regulations or standards of practice for the environmental monitoring of aqueous emissions (e.g. dissolved constituents, such as heavy metals, radionuclides, arsenic, cyanide, and pH) from extractive waste disposal sites, including tailings dams? Please detail.

Meine Antwort _____

Are there any regulations related to the recycling of water at mining sites? Please detail.

Meine Antwort _____

Are there any regulations related to wastewater discharge? Please detail.

Meine Antwort _____


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10.8 Screen-shots from the on-line survey (French)



AfricaMaVal : Évaluation des critères environnementaux, sociaux et de gouvernance (ESG) dans le secteur minier en Afrique

Vous avez été invité(e) à participer à une enquête pour un projet de recherche intitulé AfricaMaVal. Avant de décider si vous souhaitez participer, veuillez lire attentivement les informations ci-dessous.

AfricaMaVal est financé par l'Union Européenne (UE). Il vise à développer des partenariats UE-Afrique qui favoriseront l'approvisionnement responsable en ressources minérales pour l'industrie européenne tout en soutenant le développement local et régional de l'Afrique dans les meilleures pratiques environnementales, sociales et de gouvernance (ESG). Pour plus d'informations sur AfricaMaVal, veuillez consulter le site Web du projet à l'adresse <https://africamaval.eu/>.


Cette activité est coordonnée par l'Association des femmes du secteur minier en Afrique (AWIMA). AWIMA est un réseau d'associations nationales de femmes africaines dans les mines, le pétrole et le gaz. Il a été créé en 2015 à Nairobi, au Kenya, lors du Forum sur les liens entre les femmes d'affaires africaines organisé par la Commission de l'Union africaine.

L'enquête se déroulera sur six mois (d'octobre 2022 à mars 2023) et sera accessible aux répondants de tous les pays africains. Certaines questions peuvent inclure des mots que vous ne comprenez pas. Si tel est le cas, veuillez demander à notre enquêteur ou à tout autre membre de l'équipe projet d'expliquer pleinement la signification du mot ou de l'information que vous ne comprenez pas exactement. A tout moment, nous assurons le respect de la législation en vigueur.

Veuillez adresser au membre de l'équipe projet de AWIMA toutes les questions que vous pourriez avoir, afin d'être entièrement sûr de comprendre toutes les procédures de l'enquête, y compris les risques et les avantages. En cas de questions ou de problèmes liés à votre participation à cette recherche, vous êtes invité à contacter la représentante de l'AWIMA, Madame Zenzi Awases (zenzi.awases@outlook.com).

Si vous avez des questions liées au traitement des données, n'hésitez pas à contacter le délégué à la protection des données représentant l'AWIMA, M. Kaurumbua Koujo (koujokay@gmail.com).

Le temps estimé pour répondre à cette enquête est de 20 minutes. Nous vous remercions votre coopération!




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AfricaMaVal : Évaluation des critères environnementaux, sociaux et de gouvernance (ESG) dans le secteur minier en Afrique



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Consentement éclairé

Votre participation à cette enquête n'est possible que si vous cochez librement et indépendamment toutes les cases de ce consentement à participer et autorisez AfricaMaVal à utiliser les données et informations que vous fournissez. Si vous ne souhaitez pas signer ce consentement, vous ne pouvez pas participer à cette étude.

*
 Je déclare par la présente

J'ai plus de 18 ans et je suis apte à donner mon consentement.

J'ai reçu la fiche d'information et j'ai été pleinement informé(e) des objectifs et finalités du projet AfricaMaVal et plus particulièrement concernant les enjeux ESG et l'activité à laquelle je suis invité(e).

Je comprends qu'il n'y a aucune obligation de participer au projet AfricaMaVal et, si je choisis de participer, j'ai la possibilité à tout moment de me retirer du projet.

J'ai lu, ou on a apporté à ma connaissance, un document fournissant des informations sur cette recherche et ce formulaire de consentement. J'ai eu l'occasion de poser des questions et on a répondu à toutes mes questions de manière satisfaisante et je comprends la description du projet de recherche qui m'est fournie.

J'accepte que mes données personnelles soient utilisées à des fins scientifiques et je n'ai aucune objection à ce qu'elles soient publiées dans des publications scientifiques d'une manière qui ne révèle pas mon identité.

Je comprends que, sous réserve des contraintes ci-dessus, aucun enregistrement ne sera « joué » en public ou mis à la disposition d'un public autre que les chercheurs/l'équipe de recherche du présent projet.

J'accepte librement et volontairement de faire partie de cette étude de recherche, mais sans préjudice de mes droits légaux et éthiques.

Je comprends que je peux refuser de répondre à n'importe quelle question et que je peux me retirer à tout moment sans pénalité.

Je comprends que ma participation est



AfricaMaVal : Évaluation des critères environnementaux, sociaux et de gouvernance (ESG) dans le secteur minier en Afrique

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Aspects environnementaux

L'exploitation minière peut contaminer/polluer l'air et l'eau potable, nuire à la faune et à l'habitat et marquer de façon permanente les paysages naturels. Néanmoins, les méthodes modernes d'exploitation minière peuvent limiter et même inverser la plupart des impacts négatifs des activités minières sur les écosystèmes naturels.

Y a-t-il des restrictions à l'exploitation minière dans les zones environnementalement protégées de votre pays ?

1 2 3 4

Non, cela est évalué au cas par cas. Oui, il existe plusieurs zones interdites pour l'exploitation minière.

Quels types d'activités minières exigent une étude préalable d'impact environnemental ?

	Jamais	Parfois (selon la taille de l'opération)	Toujours
L'exploration minière ;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Le développement et exploitation des mines ;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Le stockage des déchets miniers ;	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
La fermeture/réhabilitation des mines.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Lorsqu'un permis minier est délivré, contient-il des dispositions environnementales ?

1 2 3 4

Non, cet aspect n'est pas pris en compte ; Oui, et elles sont dûment appliquées.

Quelle est l'efficacité du monitoring de la performance environnementale pour les activités minières et celle de l'application des dispositions environnementales ?

Nulle à insatisfaisante Passable Bien Excellent

