

# SITUATIONAL ANALYSIS OF MINING COMMUNITIES IN THE GHANZI AND NORTHWEST DISTRICTS OF BOTSWANA



A situational analysis and recommendations by:



**BOCONGO**  
BOTSWANA COUNCIL OF  
NON-GOVERNMENTAL ORGANISATIONS



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# Contents

<b>Acknowledgements</b> .....	<b>4</b>
<b>Disclaimer</b> .....	<b>4</b>
<b>Acronyms</b> .....	<b>5</b>
<b>1. Introduction</b> .....	<b>6</b>
1.1 Aims and objectives .....	6
1.2 Problem statement .....	6
<b>2. The situation in the Ghanzi and Northwest districts of Botswana</b> .....	<b>8</b>
2.1 Introduction .....	8
2.2 Indigenous Peoples in the Ghanzi and Northwest districts of Botswana .....	8
2.3 Mining activities in the Ghanzi and Northwest districts of Botswana .....	9
<b>3. Key issues affecting the mining communities in the Ghanzi and Northwest districts of Botswana</b> .....	<b>11</b>
3.1 Lack of and/or limited community consultation and engagement .....	11
3.2 Land alienation and dispossession .....	12
3.3 Restricted employment opportunities .....	13
3.4. Negative social impacts of the mines .....	15
3.5 Environmental degradation and livelihood impacts .....	15
3.6 Corporate social responsibility and procurement policies .....	16
4.1 Limited community consultation and engagement by the mining companies .....	18
4.3 Weak recognition of informal land tenure rights and poor protection of customary land .....	19
4.4 Adverse livelihood impacts .....	20
4.5 Inadequate local development .....	21
4.6 Inadequate or undisclosed environmental and social impact assessment findings .....	22
4.7 Changing community structure .....	22
4.8 Inadequate and undelivered corporate social responsibility .....	23
<b>Annex A. Research methodology</b> .....	<b>24</b>
1. Research design .....	24
2. Case study areas .....	24
3. Methods of data collection .....	24
3.1 Key informant interviews .....	24
3.2 Focus group discussions .....	25
4. Data analysis and interpretation .....	25
<b>Annex B. Relevant international standards</b> .....	<b>26</b>
1. Community consultation and engagement .....	26
2. Access to information .....	30

<b>3. Recognition of informal land tenure and protection for customary tenure .....</b>	<b>34</b>
<b>4. Livelihood impacts .....</b>	<b>37</b>
<b>5. Local development .....</b>	<b>42</b>
<b>6. Environmental and social impact assessment findings .....</b>	<b>44</b>
<b>7. Community structure .....</b>	<b>47</b>
<b>8. Corporate social responsibility .....</b>	<b>48</b>
<b><i>Annex C. Relevant comparative constitutional provisions .....</i></b>	<b><i>50</i></b>
<b>1. Community consultation and engagement .....</b>	<b>51</b>
<b>2. Access to information.....</b>	<b>54</b>
<b>3. Recognition for informal land tenure rights and protection of customary land .....</b>	<b>57</b>
<b>4. Livelihood impacts .....</b>	<b>72</b>
<b>5. Local development .....</b>	<b>77</b>
<b>6. Environmental and social impact assessment findings .....</b>	<b>84</b>
<b>7. Community structure .....</b>	<b>85</b>
<b>8. Corporate social responsibility .....</b>	<b>87</b>

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### Disclaimer

This material has been produced as part of ALIGN by **BOCONGO**, **DITSHWANELO** and **BWO**; however, the views expressed do not necessarily reflect the official views or policies of ALIGN, its partners or the project funder. Further, this document does not represent legal advice; the views, opinions, findings, conclusions and recommendations are strictly those of the authors and those individuals, communities and representatives engaged with.

## Acronyms

<b>ACHPR</b>	African Commission of Human and Peoples' Rights
<b>ALIGN</b>	Advancing Land-based Investment Governance project
<b>AMS</b>	African Mining Services
<b>BOCONGO</b>	Botswana Council of Non-Governmental Organizations
<b>BWO</b>	Botswana Watch Organization
<b>CBD</b>	Convention on Biological Diversity
<b>CCSI</b>	Columbia Center on Sustainable Investment
<b>CERD</b>	Committee on the Elimination of Racial Discrimination
<b>CKGR</b>	Central Kgalagadi Game Reserve
<b>CSO</b>	Civil society organization
<b>CSR</b>	Corporate social responsibility
<b>EIA</b>	Environmental impact assessment
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>ESIA</b>	Environmental and social impact assessment
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FGD</b>	Focus group discussion
<b>FPIC</b>	Free, prior and informed consent
<b>GNOCS</b>	Ghanzi Network of Civil Society Organizations
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICMM</b>	International Council on Mining & Metals
<b>IFC</b>	International Finance Corporation
<b>IGF</b>	Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development
<b>IIED</b>	International Institute for Environment and Development
<b>KCB</b>	Kalahari Copper Belt
<b>LSLBI</b>	Large-scale land-based investments
<b>PS</b>	Performance Standard (IFC)
<b>RAD</b>	Remote area dwellers
<b>SLP</b>	Social and labour plan
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNDRIP</b>	United Nations Declaration on the Rights of Indigenous Peoples
<b>UNDROP</b>	United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas
<b>VDC</b>	Village development committee
<b>VGGT</b>	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

# 1. Introduction

Botswana is endowed with diverse mineral resources and is often seen as one of the few success stories for avoiding the natural resource curse.<sup>1</sup> The country has been able to use its natural resources to grow the economy and improve the lives of many of its citizens. For the individuals and communities living close to the sites of extraction, the host communities as they are often referred to, the impacts often are not as positive.<sup>2</sup>

Botswana is not alone in experiencing this situation. Land dispossession and evictions, lost livelihoods and cultural heritage, environmental destruction and the loss of social cohesion have all been associated with the extractive industries across the globe. Increasingly, many of the areas where mining takes place are on lands used by rural and traditional communities, many of which are comprised of minority Indigenous groups.<sup>3</sup> The impact of mining activities on these communities can be particularly severe.

The recent discovery and continuing exploration of copper deposits in the Ghanzi and Northwest districts of Botswana, as well as the establishment of several new mines in the area, are the context in which this situational analysis took place. The document looks at the lived realities of the people living in these areas and attempts to capture the concerns and challenges they face. From this information, emerging themes and limited recommendations, rooted in the ongoing constitutional review process, are highlighted.

## 1.1 Aims and objectives

The primary aim of this work was to understand the lived realities and daily experiences of those communities and individuals living in proximity to the rapidly developing extractive industry within the Ghanzi and Northwest districts. The intention of this situational analysis is:

- To document the lived realities and experiences of those communities and individuals impacted by the increasing mining activities in the area.
- To identify emerging development issues and practices relevant to the area and the experiences shared with us.
- To consider those experiences in the light of ongoing discussions around Botswana's constitutional review process and identify comparative constitutional provisions relevant to the experiences observed and communicated.
- To highlight relevant international and sectoral standards, good practice and guidance.
- To provide often marginalized communities in the area with an opportunity to express their views, concerns and experiences.

## 1.2 Problem statement

The mining sector in Botswana has dominated the country's economy for several decades. Historically oriented toward diamonds, other minerals, including those needed for the just energy

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<sup>1</sup> Acemoglu & Robinson, *Why Nations Fail* 2012; [Lewin 2011](#); [Sebudubudu & Mooketsane 2016](#).

<sup>2</sup> [Minority Rights Group International 2012](#).

<sup>3</sup> [Anaya 2013](#).

transition such as nickel and copper, are emerging as key minerals in Botswana's extractives industry.

Income derived from diamond mining, spread widely enough, is anecdotally credited with providing almost half the Botswana population with middle-class lives.<sup>4</sup> It has also been credited with contributing to the development of State infrastructure and a centralized bureaucracy.<sup>5</sup> While the exploitation of primary resources has contributed towards economic growth in Botswana, as in other countries within the region, questions remain on whether natural resource growth has substantially improved living standards for those directly impacted by mining activities.<sup>6</sup>

With the shift toward new commodities and the development of the Botswana extractive industry into new areas, the potential impact of mining activities on local communities could be significant. Some of the new mineral deposits being developed in the Ghanzi and Northwest districts of Botswana are located in areas where minority Indigenous communities reside. These are among some of the most vulnerable and marginalized groups in Botswana. The close connection of their livelihoods to the land and natural environment makes these communities particularly vulnerable to the negative impacts of mining activities – even small changes to customary land use, environmental pollution or increased water scarcity could have negative sustainable development outcomes that limited employment opportunities or community development projects cannot offset.<sup>7</sup>

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<sup>4</sup> [Economist 2013.](#)

<sup>5</sup> [Acemoglu, Johnson & Robinson 2001.](#)

<sup>6</sup> [Chuhan-Pole, Dabalen & Land 2017.](#)

<sup>7</sup> [Anaya 2013.](#)

## 2. The situation in the Ghanzi and Northwest districts of Botswana

### 2.1 Introduction

The majority of people living within the region of Ghanzi and the Northwest district are classified as remote area dwellers (RADs). The area is sparsely populated, with most inhabitants living on rural farms. Ghanzi and Maun are the major towns and administrative centres in the area. The villages of D'kar, Qabo, GrootLaagte, Kuke and Toteng are smaller and classified as remote area dweller settlements or settlements on private farms.

Economic opportunities are limited and many of those residing in the area maintain livelihoods through a combination of subsistence activities such as hunting and gathering, casual labour, craft production and small-stock farming. Government support also plays an important part in supporting livelihoods.<sup>8</sup> Unemployment levels are high and there is limited commercial or industrial activity. The agricultural, retail and public sectors provide the bulk of formal employment opportunities, with cattle ranching as the dominant economic sector. Very few families in the area, however, own cattle themselves. The nomadic lifestyle of many of the inhabitants of the region, or residence on private farms, is largely regarded as an obstacle to formal government assistance.

The inhabitants of the area come from a diverse range of ethnic and cultural groups, including the Bakgalagadi, Batawana, Nama, Herero, Barolong, Afrikaner and English, among others. The largest ethnic group in Ghanzi district is likely to be the San, of which the Naro form the majority. Government census data is not disaggregated by ethnicity and only to a limited extent by language; however "Sesarwa", referring to a San language, was the most spoken in 2011.<sup>9</sup> Of the San groups, the Naro reside in the northern areas of the district and the Ts'ao or Tsaokhoe (differentiated speakers of a Naro dialect) reside in the southern and central areas of the district, where some !Xoõ speakers are also found. The Gana and Gwi tend to reside in the northern areas and can also be found in Kuke and Rooibrak. The land rights of the San are tenuous, and many reside as workers with their families on private freehold farms.<sup>10</sup>

### 2.2 Indigenous Peoples in the Ghanzi and Northwest districts of Botswana

Approximately 3.2% of Botswana's population identify as being part of what are considered internationally as Indigenous communities. The San, the Balala, the Nama and their sub-groups reside largely in rural areas of the country and are some of the most marginalized groups of people within Botswana. Many of these groups reside in the Kalahari Desert region of Botswana.

The San's historical semi-nomadic hunter-gatherer livelihoods did not demarcate territories, and cultural practices and a lack of agricultural and livestock practices in the past meant the land use rights of these communities were not recognized by other groups, and are still not formally recognized today. While traditionally hunter-gathers, most members of the communities are now considered small-scale agro-pastoralists. Many government programmes fail to reach or meet their needs. The engagement and participation of these groups in formal government institutions,

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<sup>8</sup> [Ghanzi District Development Plan 2003.](#)

<sup>9</sup> Ghanzi Sub District Population and Housing Census 2011, Statistics Botswana.

<sup>10</sup> [Cassidy, Good, Mazonde & Rivers 2001.](#)

as well as their political representation, are limited.<sup>11</sup> Botswana has been dominated by the majority Setswana-speaking population in nearly all areas of politics and the economy. Little regard to minority ethnic groups has been given until recently, and though changes in discourse and policies have recently been seen, the level of inclusion of non-Setswana-speaking groups across public life is unlikely to change rapidly.

Botswana has adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) but has not signed the International Labour Organization Convention 169 on Indigenous and Tribal Peoples. A key reason for this is, as in many other African countries, the government's assertion that all citizens of Botswana are Indigenous. UNDRIP embodies to some extent general principles of international law; its adoption by the UN General Assembly also represents a commitment on the part of Botswana to respect, protect and fulfil its provisions, within the framework of the obligations established by the UN Charter to promote and protect human rights on a non-discriminatory basis.<sup>12</sup> Under UNDRIP, the principles of which, as a signatory, Botswana has accepted, there is a positive obligation on the State to provide effective mechanisms to prevent and redress, among others, any actions that may have the effect of depriving Indigenous Peoples of their integrity as distinct peoples, or dispossessing them of their land, territories or resources.<sup>13</sup> This means the State should recognize and protect the unique characteristics of all Indigenous ethnic groups within the country, including the San.

### 2.3 Mining activities in the Ghanzi and Northwest districts of Botswana

In recent years there has been an increase in mining activities in the area. The Kalahari Copper Belt (KCB) has attracted significant exploration interest and is regarded as largely under-explored and a key emerging global trend.<sup>14</sup> During the visits to Ghanzi and Northwest districts, community concerns were focused on the Sandfire Motheo mine and the Khoemacau mine.

The **Sandfire Motheo mine** is owned by an Australian company, Sandfire Resources, and activities within Botswana include the construction of the Motheo copper mine, as well as a comprehensive exploration programme of the KCB.<sup>15</sup> The Motheo mine is understood to be held by a Sandfire subsidiary, Tshukudu Metals Botswana (Pty) Ltd, and is the first of what Sandfire anticipates being numerous projects for the company within the KCB.<sup>16</sup>

The Motheo mine itself is located on the T3 deposit, approximately 45km from the western boundary of the Central Kalahari Game Reserve (CKGR), near the Kuke settlement. It is understood

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<sup>11</sup> [The Indigenous World 2016](#) (pp.439-447) and [The Indigenous World 2022](#).

<sup>12</sup> [Anaya 2008](#).

<sup>13</sup> Article 8 of UNDRIP. Article 9 confirms that Indigenous Peoples have the right to belong to an Indigenous community in accordance with the traditions and customs of the community or nation concerned. Article 10 prohibits the forced removal of Indigenous Peoples from their lands and their relocation without their free, prior and informed consent (FPIC). Articles 11(2) and 28(1) require States to provide redress in relation to (i) their rights to practise culture and (ii) their lands which have been interfered with without their FPIC respectively. Pursuant to Article 32, Indigenous Peoples have the right to determine priorities and strategies for the development of their lands, and States are required to obtain their FPIC prior to the approval of any project affecting their lands and to provide effective redress mechanisms for any such activities. [United Nations General Assembly 2017](#), specifically see Resolution 61/295.

<sup>14</sup> [Kavango Resources](#) (last accessed 28 March 2023).

<sup>15</sup> Exploration activities include Namibia: [Sandfire Motheo](#) (last accessed 15 January 2023).

<sup>16</sup> [Sandfire Motheo](#) (last accessed 15 January 2023).

that the mine will be an open-pit surface mine and that mining services are being offered by African Mining Services (AMS).<sup>17</sup>

The **Khoemacau copper mine** is held by the private company Cuprous Capital Limited, which in turn is majority held by Cupric Canyon Capital LP, which is a company majority held by funds managed by Global Natural Resource Investments and Resource Capital Fund VII LP.<sup>18</sup>

The mine is located on the Zone 5 deposit, approximately 120km from the Sandfire Motheo mine, close to Toteng and east of Kgwebe Hills. The surrounding communities became aware of development in 2018, which, it is understood, was completed in June 2021. The mine has an expected life of twenty-two (22) years.

In addition to the mine itself, Khoemacau has refurbished and enhanced a processing plant, which it acquired from Discovery Metals' Boseto mine and is located near Toteng village. It is understood that the mine is an underground mine and that mining services are being offered by Barmenco.<sup>19</sup> Ore concentrate will be transported by road to port for shipping and sale on international markets.

Both mining companies note the potential of the KCB and the planned expansion of activities. In addition, Khoemacau highlights that the nature of the deposit makes it ideal for highly productive mechanized mining. The Botswana government has noted the significance of the copper deposits in the Ghanzi area and the continued vigorous prospecting for copper, nickel and silver.<sup>20</sup>

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<sup>17</sup> [AMS](#) (last accessed 15 January 2023).

<sup>18</sup> [AMS](#) (last accessed 15 January 2023).

<sup>19</sup> [Barmenco](#) (last accessed 15 January 2023).

<sup>20</sup> [Mid-term Review 2020](#) (p.47) (last accessed 15 January 2023).

### 3. Key issues affecting the mining communities in the Ghanzi and Northwest districts of Botswana

The overarching themes set out below highlight the precarious position occupied by the mining-affected communities within the identified areas. Minority and under-protected groups such as the San communities, youth and women are in particularly difficult positions as they stand to be disproportionately affected by mining operations. In what follows, a more in-depth summary of some of the issues that emerged from the perspective of those consulted with is set out. It is important to note that many of these issues are cross-cutting. For more information on methodology and approaches see Annex A.

#### 3.1 Lack of and/or limited community consultation and engagement

During the visit to the identified areas, one of the main issues raised was a lack of consultation by the mining companies. This was a concern raised by community members, traditional structures and local officials. The concern was raised across the six areas visited. The complaint related to both the adequacy of consultations (limited or no consultations at all), as well as to the meaningfulness of the consultations that did take place (stakeholder concerns or requests were not taken into account). These concerns related to both consultations that should have taken place prior to mining activities commencing, as well as to a lack of consultations once mining activities had commenced. The absence of communication channels or grievance mechanisms through which communities could raise concerns and obtain information was also raised and a desire for more transparency was expressed. The communities highlighted numerous issues as regards the lack of and/or limited consultation and engagement including the following:

- **Mining companies had used communities to acquire mining licences from the government, after which they were simply ignored.** In the Ghanzi region, the community stated that the former mining company, Tshukudu Metals (now Sandfire Mine),<sup>21</sup> did initially talk to them but only to inform them. The mine representatives allegedly called for a community meeting and they gathered in a “kgotla” – communal area – where the mine representatives informed them that a mine would be established next to the Kuke settlement. The community claimed they were told the mine would boost the local economy, that most of the community members would be employed by the mine and that the mine would support development in the area. These promises had apparently not materialized. The community members expressed that they felt they could not question what they were told by the mining companies.
- **The mining company did not listen to what they wanted.** In Kuke, solar panels for the community office were allegedly requested but the mine delivered a signboard for the kgotla instead. In GrootLaagte, a beekeeping project was established at the school. This was not what the community had wanted and was causing difficulties for the community.
- **Communities in Ghanzi were never informed of the change in name of the company and remained uncertain as to what the current situation was.**
- **In GrootLaagte, residents never saw the mining companies in their kgotla.** Residents claimed that the consultations only involved the Kgosi and the village development committee (VDC), and that consultation with the community members did not happen. The community

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<sup>21</sup> This reflects the understanding of the community. From the online information, Tshukudu Metals Botswana (Pty) Ltd is a wholly owned subsidiary of Sandfire Resources Ltd: [Sandfire Motheo](#) (last accessed 7 December 2022).

members stated that they simply woke up one day to find the mining company's trucks in the area.

- **In Qabo, there was no formal consultation with or notification of traditional structures regarding the mine.** The VDC stated that there had been initial consultations by Tshukudu Metals and they had been promised schools, boreholes and employment opportunities. These had not materialized. Communities claimed they had not been consulted or informed about the change in company from Tshukudu Metals to Sandfire Mine and were uncertain who was responsible for the ongoing activities.
- A number of community members made the following statements:

*"This mine used us to acquire their mining licence and after the government has approved it, they dumped us. We really feel used." – Ghanzi township*

*"The mine promised a lot of things that are not happening." – Kuke village*

*"The mine disrespects the villagers. We are told nothing and there is a lot of confusion." – Toteng village*

### 3.2 Land alienation and dispossession

Many of the community members within the mining-affected areas visited come from San communities. Issues concerning land and natural resource dispossession have been persistent and the arrival of the mines has created further pressures on these communities. Consulted communities raised concerns about previous removals from the Central Kalahari Game Reserve (CKGR), as well as the current insecure tenure of the San communities residing within the mining-affected areas. Anecdotal evidence from engagements with the communities suggests that some of the San communities removed from the CKGR and resettled in the areas are now being affected by the mining activities. Community members were weary of further potential relocations or loss of established land use practices.

For others residing within the area visited, current land tenure insecurities apparently arose when the land was demarcated and sold through the conversion and establishment of freehold title. Communities who had been residing on and using the land through customary practices remained on the land but with no formally recognized rights. Many of these communities were required to provide labour to the new formal title holders if they wished to remain on their ancestral lands. The arrival of mining activities in the area, and the apparent transfer of land to the mining companies, are further increasing the precarious nature of the communities' land tenure. Except for one area (D'kar), those areas exercising communal land rights believed there was encroachment onto common lands:<sup>22</sup>

- In Ghanzi, residents stated that the issues around land rights and Indigenous Peoples are very sensitive given the history of the area. Feelings of disempowerment and exclusion from formal State recognition were also articulated.
- In Qabo and GrootLaagte, similar concerns regarding land dispossession were raised. Insecure tenure on privately owned farms was a major concern. People feared that the arrival of the mines would result in the sale of these farms and the final dispossession and removal of the original inhabitants of the land. The communities pointed to an example of where a farm

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<sup>22</sup> All areas visited for purposes of this situational analysis, with the exception of D'kar, were considered communal by those consulted. Ghanzi is a demarcated township.

owner allegedly sold a farm to Sandfire Mine and the residents were allegedly evicted from the land.

- In Kuke, residents claimed that five families had been forcibly evicted in the 1990s to make way for the Sandfire Mine. According to the community, this occurred at the time of the sale of the farm to the mine. The communities consulted did not have information about what had happened to the families and there was general concern regarding their wellbeing.<sup>23</sup> In addition, there was fear others residing on privately owned farms in the area would face a similar fate.
- In Toteng, complaints were raised regarding the loss of customary land use rights and livestock grazing in communal areas. Reduced access to and use, as well as environmental damage to communal trust land, was something the community from this area raised.
- In D'kar the situation was somewhat different. This was due to the nature and history of the land. D'kar is a private farm, which is apparently owned and controlled by the Dutch Reformed Church Council. The farm did not remove the original inhabitants but instead created a community, allocating residential and commercial land and providing access to resources such as water. Unlike the other areas visited, here the community did not complain about encroachment.
- A number of community members made the following statements:  
*"We have witnessed our grandparents and forefathers being unfairly treated by this government. A case in point was when they were forcibly removed from their ancestral land when it was declared a national game reserve. Now the mines are repeating the same thing that the government did. Will we ever get rest?" – Ghanzi township*

*"I consider myself an Indigenous person and for the longest time we have been regarded as the minority tribe in Botswana." – CSO representative in Ghanzi township*

*"Right now my Omang [national identification card] states that I come from Ghanzi but this is not true as I originate from a different settlement. This really makes me feel totally disempowered." – Qabo village*

*"Currently there is an ongoing land demarcation in GH10 concession area which belongs to a certain community trust in preparation for land allocation. My suspicion is, the land will be allocated to certain people and not the Indigenous people. This is a live example of land dispossession of the Indigenous people." – Ghanzi township*

### **3.3 Restricted employment opportunities**

A common complaint across the areas visited was dissatisfaction with what was perceived to be unequal employment opportunities and broken promises. Concerns around the limited number of jobs offered, the recruitment process and the exclusion of certain groups were some of the issues raised. The communities consulted indicated that they had expected the mines to generate employment opportunities. These expectations were based on what they had apparently been promised before mining activities commenced. These opportunities have, according to those consulted with, not materialized, and their concerns include the following:

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<sup>23</sup> The team made enquires as to the where these families could be found but were unable to locate them.

- **The outsourcing of employment and the bringing in of mine workers from other areas.** In Ghanzi, African Mining Services was singled out as an entity that had been appointed to handle employment for Sandfire Mine and that had allegedly brought in workers from another mining area (Majwe mine) rather than offer employment opportunities to the mining-affected communities. Communities in all six areas visited felt that jobs with the mining companies were preserved for people from areas outside of the Ghanzi and Northwest districts.
- **A lack of clarity around the recruitment process was highlighted.** Community members claimed that there is no clear recruitment procedure and employment opportunities are not advertised to the mining-affected communities. The traditional structures and VDC were allegedly not provided with information, nor were they informed when employment opportunities arose. In Ghanzi and Toteng, the community members claimed that the mine had agreed to inform the VDC and traditional structures when employment or sub-contracting opportunities, such as electrician or mechanic positions, were available. Apparently, this was not happening. Community members further highlighted complaints that, because agreed procedures are not followed, certain mining sub-contractors employed youth on an informal basis by picking them up from the roadside and then refusing to pay them. Community members claim that when they attempted to engage the Khoemacau mine regarding this issue, they were told it is not the mining company that is responsible.
- **The very low number of people employed by the mines and the short duration of the jobs.** In Ghanzi, those who had been offered employment were allegedly only employed for six months. When inquiries were made the community was allegedly informed that the Sandfire Mine was not obliged to employ members of the community. In Qabo, the community claimed that there had initially been a box where they could make applications. Two people had previously been employed in this way, but positions were no longer advertised. In GrootLaagte, the community claimed that only two youths had been employed by the mine and in Kuke the estimated number was three.
- **The mine's failure to abide by initial agreements that it would provide transportation to and from work for those community members employed at the mine.** In Kuke, the community claimed that such transportation was only provided for a short time. The mine then complained about the petrol costs and stopped providing transport.
- **Allegations that the mine had refused to employ San people because they were deemed "not educated", "lazy", "alcoholic" and "weak".** Concerns regarding the lack in diversity of employment opportunities (only unskilled mining work), as well as the age and gender of those employed (mostly males and the youth under thirty-five), were flagged.
- A number of community members made the following statements or statements along those lines:

*"The mine only employed youth born from 2000 going up. No one from 1999 down." – GrootLaagte, Qabo and Kuke*

*"The mine hires its own people. They even bring workers outside this region to come and take our jobs. Even the sub-contracts are sourced outside." – Ghanzi township*

*"We have a lot of unemployed young people here. The mine does not want to hire them stating that most of them are lazy and alcoholic. They say that most of them miss work after payment." – Ghanzi, GrootLaagte, Qabo, D'kar, Kuke and Toteng*

### 3.4. Negative social impacts of the mines

Many of the community members in the areas visited felt that the challenges caused by the mines outweighed the benefits they had delivered. Concerns focused on the negative social, cultural and economic impacts communities were experiencing. Civil society organizations indicated that they struggled to meet with mine officials to discuss the growing issues. They raised the following concerns:

- **Increased prostitution and survival sex, particularly among underage girls.** In Ghanzi, community members highlighted the trucks that parked overnight at the fuel station as a particular concern. The community members claimed that young girls were often found there. Increased incidences of HIV and other sexually transmitted diseases, as well as teenage pregnancy, were raised.
- **An increase in the number of domestic violence cases reported to traditional structures.** In D'kar, the presence of the mines was allegedly having an impact on family structures and causing increased gender-based violence. In Kuke, the change in social structures was noted. Many youths were emigrating to other areas in search of employment as their way of life became increasingly commodified. This was leaving the elderly to care for households.
- **Conflicts within the community caused by the mines.** Initially, in Ghanzi, the traditional structures had been included and several promises were made. The mines have allegedly failed to deliver on the promises and have not engaged the community leadership. This is causing tension between the community members and the leadership structures as the community members expect them to have answers.
- **Increased migration of people in search of economic opportunities to the Ghanzi and Kuke area that was believed to be impacting the social fabric of the community.** Those moving into the area were mostly men without families who built their own informal settlements and did not integrate into the communities. According to the community members, this was impacting cultural identity and cohesion and placing a strain on existing infrastructure. In Qabo and GrootLaagte, community members raised concerns about the migration of residents out of the settlements to search for employment opportunities.
- **Increased road traffic and the speed at which the mine vehicles travelled through the area.** In Toteng, this was raised as a concern as it was causing a safety hazard for children. There were general concerns across the area that mining activities were either placing increased strain or destroying existing infrastructure.
- A number of community members made the following statements:

*“These mine trucks have really destroyed our roads and they kill our cattle as they drive at high speed in the village. Our children are in danger of being knocked down.” – Toteng village*

*“People concentrate on employment but effects on communities are not included in the impact assessment.” – Toteng village*

### 3.5 Environmental degradation and livelihood impacts

Some of the respondents from the mining-affected communities highlighted their concerns regarding environmental degradation and the impact this is having on the livelihoods and health of the surrounding communities. Issues related to water scarcity, the loss of vegetation, the use of unknown chemicals and increased dust were raised across the areas visited. The highlighted issues include the following:

- **The dropping water table and a need to drill deeper boreholes to access water resources.** In Ghanzi and Kuke, the need to drill deeper boreholes meant increased costs and less water accessibility for surrounding communities. Civil society organizations noted the challenges for the mining-affected communities who now had to wait for long periods of time in order to access new boreholes.
- **Increased air pollution and the challenges caused by the increased amount of dust.** In Kuke, community members complained about this dust, which apparently covered much of the vegetation in the area, and claimed it was killing the trees and impacting the availability of grazing and food production in the area. Conflicts between mining activities and community members' livestock were also flagged.
- **The mine's disposal of wastewater and chemical release.** In Toteng, community members expressed concern regarding the chemicals they said were being sprayed onto the roads. In Qabo, the consulted community members stated that they were informed there would be no negative consequences as a result of the mine and that the chemicals used were not harmful. These members doubted this was true.
- A number of community members made the following statements, or statements along those lines:

*"If you can move around along the gravel road, most of the trees have changed colours, they are covered with dust, some of them have died." – Toteng village*

*"Most of us here in Toteng, we cook and do laundry in the evenings to avoid dust caused by the mine trucks during the day." – Toteng village*

*"Farmers' boreholes are now being drained by the fact that their water goes to the mines and made their boreholes drain quickly." – Ghanzi township and Toteng village*

*"Indigenous Peoples are being made to queue for the boreholes because other people are already in the way." – Ghanzi township*

*"When we asked if the consequences would be bad, [the mine] said there will be no bad effect. [They said] their chemicals are good here." – Qabo village*

### **3.6 Corporate social responsibility and procurement policies**

Communities across the six areas visited expressed concerns regarding the failure of the mines to ensure positive development within the mining-affected communities. Many of the concerns highlighted a lack of transparency, failure to deliver on promises made during initial consultations, and corporate social responsibility projects that failed to substantively improve local development or community livelihoods. The communities' lack of relevant skills and a lack of support to develop these skills were also raised. They highlighted the following issues:

- **The failure of the mines to use local businesses for sub-contracting or procurement.** In Ghanzi, the community members consulted with expressed frustration that catering services were sub-contracted to businesses from Gaborone. Community members in other areas also expressed a lack of awareness of how they could engage with the mining companies regarding business opportunities. They highlighted that the mine requirements were different from what local businesses were equipped for and that there was no effort to involve them. In

GrootLaagte, there were complaints that sub-contracts from the mine are not offered to local businesses.

- **The mine's failure to deliver on promises for community improvements and development.** In Toteng, promises of paved roads, information centres with computers and an internet café, a vegetable garden and improvement to the school were promised. Those consulted with stated that development remained close to zero. Community members were also apparently told they would be supported through small-scale agriculture and business development, which has not materialized. In Kuke, an evaporation system that would produce water for the community and cultivation was promised but not delivered. In GrootLaagte, a beekeeping project was started at the school. Community members stated they were not consulted about it and were unclear on the intended purpose. School pupils get stung, and the community has not seen any economic benefit.
- **The construction of new homes that were never rented by mine workers.** In Toteng, people were told the incoming mine workers would rent these houses. The community built the houses, but the promised tenants never arrived. The mine workers and sub-contractors instead stay in housing built by the mine.
- **A lack of transparency in the mine's distribution of financial donations.** In Ghanzi, the mine reportedly donated 50,000 Pula to the umbrella VDC. This amount was to be distributed among the VDC's eight members, which would each have the discretion to determine which projects to direct the funds towards. The formula for determining the distribution across the different member structures was however not disclosed and it is unclear how the final distributions took place.
- A number of community members made the following statements, or statements along those lines:

*"The mine already has a procurement plan." – Ghanzi township*

*"In Ghanzi we were just in agriculture, now we are in mines and now we have a mine company in, and we realize our children are not qualified for mine issues." – Ghanzi township*

*"There is no development at all." – Ghanzi township, Qabo, D'kar, GrootLaagte and Toteng*

*"The mine brought beekeeping project in GrootLaagte without consulting us, now those bees have started terrorizing pupils. They should come and take their bees." – GrootLaagte*

## **4. Situational assessment: key findings and recommendations**

This section provides a high-level summary of some of the key issues that emerged during the visit to the identified areas and recommendations for how these issues may be addressed.

For each issue set out below, we have highlighted (i) recommendations and comments and (ii) relevant constitutional provisions that could provide for steps to address the issues identified (at least in part). These provisions are supported by relevant international standards, and/or good international practice and guidance, as set out in detail and arranged by issue in Annex B. Relevant comparative constitutional provisions from other countries are in Annex C. Annexes B and C both follow the same structure as Section 4 (this section) in terms of the eight main themes emerging from of the situational assessment.

Key recommendations, contextualized and set out in greater detail below, include that constitutional and statutory measures should:

- Require mining companies to seek FPIC and engage meaningfully with affected communities throughout the life cycle of mining operations.
- Require the State and mining companies to provide for mechanisms for the public and affected communities to access all relevant information regarding proposed and ongoing mining operations.
- Recognize and protect customary tenure, informal land rights and the land rights of Indigenous communities in Botswana.
- Affirm that natural resources of Botswana belong to the citizens of Botswana and are to be used for their benefit.
- Require meaningful local benefits and efforts to mitigate adverse impacts to be prerequisites for the ongoing operation of any mine in Botswana.
- Require robust environmental and social impact assessment and monitoring processes, which centre around meaningful public participation and participation of groups and individuals who stand to be disproportionately impacted by mining operations.
- Recognize and respect the right to culture in Botswana and take steps to ensure that mining operations account for the way that mining operations can disrupt the way of life and social fabric of a community.
- Require mining companies to co-design meaningful corporate social responsibility plans and grievance and remedy mechanisms together with affected communities; and promote the preferential use of Botswana labour, domestic materials and locally produced goods.

### **4.1 Limited community consultation and engagement by the mining companies**

Communities and affected individuals are not adequately consulted regarding planned mining developments in the area. This constitutes a failure to implement the principles of free, prior and informed consent (FPIC), an increased risk of costly community-company conflicts, misinformation, negative impacts on communities, potential reputational damage for the companies and the government, as well as poor development outcomes for Botswana.

### ***Recommendations and comments***

- The FPIC of all communities and affected individuals directly or indirectly impacted by mining operations should be obtained.
- Negotiations between mining companies and communities should be carried out on an equal footing — which may include measures such as ensuring communities have adequate representation and technical and legal advice — and in a transparent manner, including minutes and records of any consultations.
- FPIC processes at the outset of a project should also not be seen as a one-off exercise. Close community engagement and FPIC processes should be ongoing throughout the life of the mining operation.

### ***Relevant constitutional provisions***

- Enact a constitutional right to public participation and meaningful consultation.
- Enact a constitutional right of FPIC for all individuals and communities who will be directly and indirectly impacted by investments.

## **4.2 Limited access to information**

Communities and local authorities do not have access to relevant information that would allow them to engage with the mining companies on an equal footing. The poor access to information makes it challenging for stakeholders within the areas to ensure company accountability and results in misinformation and uncertainty about the project within the surrounding communities.

### ***Recommendations and comments***

- Access to information is critical to the realization of numerous social and economic rights, the promotion of justice and environmental protection. It is a key tool for combating corruption and promoting responsible business investments and practices.
- The State should proactively make information available, as well as ensuring effective procedures for requested information to be made available.
- In practice this could include steps to ensure mining environmental and social impact assessments (ESIAs), environmental and social management plans and other relevant studies required for the mining site are published on a government website.
- Information should be made accessible to communities in a form, language and location that are accessible and comprehensible.

### ***Relevant constitutional provisions***

- Enact a constitutional right of access to information. This should at a minimum ensure general access to information held by public bodies and relevant private bodies, which can strengthen the position of communities facing potential large-scale land-based investments such as mining.

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## **4.3 Weak recognition of informal land tenure rights and poor protection of customary land**

The exceptionally long-term occupation of the area, and the existing customary land uses and forms of tenure utilized by the traditional communities residing in the area, particularly those of the San people, are not adequately considered or protected. This undermines cultural rights and individual livelihoods and contributes to the further marginalization of vulnerable groups.

The recognition of group rights and alternative forms of tenure will improve outcomes for these communities.

#### ***Recommendations and comments***

- Ancestral lands are intricately tied to the cultural survival of Indigenous Peoples and their culturally significant collective landownership practices. Recognition of ancestral lands and territories promotes Indigenous Peoples' rights to continue to exist as distinct peoples.
- Collective ownership can also provide a basis for the implementation of other rights, including autonomy and benefit-sharing for infrastructure development and natural resource use projects.

#### ***Relevant constitutional provisions***

- Enact a constitutional provision for the recognition of informal land tenure to provide tenure security for communities whose land rights are not recognized by current frameworks<sup>24</sup> or who lack access to current tenure regimes.<sup>25</sup>
- Enact a constitutional provision for the recognition of customary law as a source of land management and tenure rights.

### **4.4 Adverse livelihood impacts**

The arrival of the mining companies in the area has coincided with adverse livelihood impacts for the mining-affected communities. Established livelihood practices, mostly based on agricultural activities, are being undermined by mining within the area. The reduced availability of water and increased air pollution are impacting the ability of the surrounding communities to cultivate crops and graze livestock. Livestock have also been killed by the increased traffic the mines are bringing to the area. While communities are no longer able to sustain themselves through their previous land use strategies, mining companies have created limited employment opportunities for the mining-affected communities to make up for these impacts. Mining activities as they are currently being implemented within the area threaten to leave communities more impoverished and marginalized.

#### ***Recommendations and comments***

- For rural communities and those people who sustain subsistence livelihoods from the land and the natural resources found in the natural environment, changing land use and increasing land pressures can be particularly challenging.
- The issue of adverse livelihood impacts engages several possible constitutional rights. In particular, there should be recognition that the natural resources vested in the citizens of the country should be used for their benefit, that local communities should benefit fairly and equitably, and that Indigenous Peoples should be free to choose the extent to which they engage in development.
- Develop comprehensive social and labour plans (SLPs) prior to the commencement of any mining activities. Where mining activities have commenced, SLPs should be developed as soon as possible.
- Ensure environmental and social impact assessments (ESIA) adequately cover these issues and are properly considered (see subsection 4.6 below).

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<sup>24</sup> See, for example, South Africa's Interim Protection of Informal Land Rights Act 1996.

<sup>25</sup> See, for example, Namibia's Flexible Land Tenure Act 2012.

### ***Relevant constitutional provisions***

- Enact a constitutional provision that affirms that the natural resources of Botswana belong to the citizens of Botswana and are to be used for their benefit.
- Enact a constitutional provision that requires benefit-sharing for local communities for both natural resource use and the financial benefits such use provides.

## **4.5 Inadequate local development**

Limited benefits from mining activities are seen in the areas surrounding the mines. There is little integration of principles from the National Development Plan, nor is there adequate coordination with local government representatives. It was unclear, from the perspective of the mining-affected communities, what benefits the mining activities were bringing to the area, as well as to Botswana more generally. Adverse impacts on local infrastructure such as roads, and increased pressure on services and resources such as schools, clinics, water and sanitation, were all apparently being experienced.

### ***Recommendations and comments***

- These impacts are likely to lead to decreased positive outcomes for communities and increased long-term costs for the government that risk offsetting national income from mining.
- Adopt policies and actions to ensure greater integration of overarching sustainable development strategies within the sector.
- Ensure overarching guidance for the sector exists – for example, a mining charter and vision.
- Enact legislation that allows the government to collect royalties.
- Enact legislation to improve benefit-sharing within mining-affected communities.
- Introduce mechanisms to improve the distribution of mining benefits to the local government level and introduce requirements for the procurement of a certain percentage of goods and services from the local communities.
- Ensure mining companies provide data on local employment numbers and types of employment.
- Ensure mining companies research, address and continue to monitor indirect local community impacts of mines as a matter of urgency, especially effects on women and girls linked to sexual exploitation and abuse.

### ***Constitutional provisions***

- Enact a constitutional provision that recognizes and protects the right to a clean and healthy environment.
- Enact a constitutional provision that recognizes and protects the right to clean and safe water in adequate quantities.
- Enact a constitutional provision that requires the State to implement programmes to ensure that minorities and marginalized groups have reasonable access to clean and safe water, health services and infrastructure.
- Enact a constitutional provision that affirms that natural resources belong to the citizens of the country and shall be used for their benefit.

## **4.6 Inadequate or undisclosed environmental and social impact assessment findings**

A lack of transparency around the findings of the ESIA process has created uncertainty and confusion within the mining-affected communities. This is creating distrust and dissatisfaction within the areas visited. Concerns about the growing pressures on natural resources in the area, the use of unknown chemicals and increasing health hazards were flagged across all six areas. Uncertainty around the long-term impacts of the mines and what will happen once the mines close was also raised.

### ***Recommendations and comments***

- ESIA should be undertaken as early as possible in the decision-making process.
- ESIA should allow meaningful opportunities for the public to participate (by providing public information about the assessment and making the assessment and the final decision publicly available). This should include opportunities for participation of, and consideration of potential unique impacts for, minorities and other potentially disproportionately affected groups, such as Indigenous Peoples, youth and women.
- ESIA should consider alternatives to the proposal, and address all potential environmental and social impacts (positive and negative), including cumulative effects.
- ESIA should result in a written report that clearly describes the impacts and that is easily accessible and made available to impacted communities.
- ESIA and the final decision should be subject to review by an independent body.
- The issuing of a mining licence must be dependent on the final validation and approval of the ESIA by the impacted community.
- ESIA process should provide for monitoring of the proposal as implemented, to assess its actual impacts and the effectiveness of protective measures.
- The ESIA procedure should provide for effective legal remedies, both judicial and non-judicial.

### ***Relevant constitutional provisions***

- Enact constitutional provisions regarding the utilization of natural resources and management of the environment requiring the promotion of (i) appropriate transparent environment management systems and tools and (ii) public participation in relation to those.

## **4.7 Changing community structure**

The establishment of several mines in the area is already impacting the social and community structures. An increasing population, caused by inward migration to the area by those seeking economic opportunities, is seen to be causing numerous social difficulties, putting pressure on local infrastructure, causing the growth of informal settlements and diluting cultural cohesion. The loss of minority group cultural and spiritual practices was an area of concern.

### ***Recommendations and comments***

- Encourage local authorities to host meetings with community leadership, women and youth to identify issues and where possible provide support to reduce negative impacts.
- Request mining firms to conduct cultural sensitization and form codes of conduct for workers, which include issues of conduct beyond the workplace.

### ***Relevant constitutional provisions***

- Enact a constitutional provision that recognizes and protects the right to culture.

- Enact a constitutional provision that recognizes and protects the right to use the language and to participate in the cultural life of any person's choice.
- Enact constitutional provisions that ensure adequate inclusion of local government in national sectoral decision-making.

#### **4.8 Inadequate and undelivered corporate social responsibility**

Many of the corporate social responsibility (CSR) projects promised to the communities had not yet been delivered. Those that had been implemented were disconnected from what the communities had requested. Concerns regarding a lack of local skills and the exclusion of local businesses from the mine procurement contracts were also raised as issues of concern.

##### ***Recommendations and comments***

- Introduce legislation to ensure basic standards for CSR.
- Require mines to take a more active role in community development activities (e.g. assist in the management of veld fires, management of water resources, provisions of electricity infrastructure, responses to rapid population increases, protection and promotion of cultural heritage sites).
- Require companies to co-design effective remedy mechanisms, such as operational grievance mechanisms, together with individuals and groups affected by mining operations.
- Introduce mechanisms to enforce CSR commitments through community-based monitoring.
- Introduce local content requirements in procurement policies to ensure participation of local businesses.
- Introduce community contracts, or modified environmental and social commitment plans, to ensure measures and responsibilities in CSR terms are agreed and understood.

##### ***Relevant constitutional provisions***

- Enact constitutional provisions requiring all mining projects to contribute to the social, economic and cultural development of Botswana and providing that the State shall be entitled to terminate mining contracts that fail to do so.
- Enact constitutional provisions requiring the State to promote the preferential use of Botswana labour, domestic materials and locally produced goods.
- Enact a constitutional provision that require all persons, both natural and juristic, to respect the principles upheld in the constitution.

# **Annex A. Research methodology**

## **1. Research design**

The research design was framed broadly within a participatory qualitative research methodology. The study team visited the communities directly impacted by the identified mines to gather individual and community lived experiences. The emphasis was on capturing the “insider perspectives” of those people living within the changing mining context. This information was then analysed by the team and clustered according to common emerging themes across the six case study areas.

## **2. Case study areas**

The research focused on six specific areas, namely Ghanzi township, D’kar, Qabo, GrootLaagte and Kuke in Ghanzi district, as well as Toteng in the Northwest district. These areas were selected because mining is a relatively new phenomenon in this region. The residents of these areas are predominantly Indigenous Peoples belonging to the San communities.

The research team conducted two visits to the area. The first took place between 16 May and 23 May 2022. This visit was used to gather initial information from the key informants, conduct focus group discussions (FGDs) and gain a broad overview of the context. Questionnaires were also administered during this visit. A second visit was conducted by the research team between 17 and 25 October 2022. This visit was to validate the initial analysis of the data and discuss the identified thematic issues with impacted communities and individuals.

## **3. Methods of data collection**

The research deployed qualitative research instruments that included household questionnaires, key informant interviews and FGDs. The household questionnaires were administered across all six identified case study areas. FGDs took place within a common area of the relevant case study areas. Additional details are set out below.

The key informants for the research were the local communities and individuals most directly impacted by emerging mining activities in the area. Issues raised by these groups framed the thematic challenges identified, as well as the subsequent contextualizing engagements that took place with relevant government and community structures. Traditional representatives were engaged to gather additional understanding and contextual perspectives. Relevant VDCs, as well as civil society organizations operating within the areas, were also interviewed.

### ***3.1 Key informant interviews***

This methodology was primarily used to collect information from individuals and community members who have first-hand experience of the changes happening due to emerging mining activity in the area. 108 people were initially engaged with, 45 males and 63 females. The validation session reached out to 219 people, with 94 males and 125 females, making the total number of people reached 327 (139 males and 188 females).

Contextual perspectives were gathered from four traditional leaders or “Kgosis”, who provide community leadership; area councillors, who are the representatives within the government structures at ward level; and district commissioners, who are responsible for the coordination and administration of government projects and programmes at the district level. Five VDCs were consulted.

Experts working with CSOs focused on human rights, natural resource management, health, and youth engagement were also consulted. A total of 13 CSOs were engaged with. The second visit consulted 16 CSOs, making a total of 29 CSOs.

Only one mining company, Sandfire, responded to the research team’s request for an interview. This was conducted online one week after the first field visit.

### ***3.2 Focus group discussions***

FGDs were conducted in community kgotlas to understand community perspectives, attitudes, opinions and beliefs. These discussions focused on the impacts felt by the communities following the arrival of the mines into the area, as well as their perspective on the ongoing national constitutional review process.

Six FGDs were conducted in the study areas. Two were conducted in Ghanzi township, one with the community, traditional leader and VDC, and one with the community and local CSOs. One FGD was conducted in Qabo with the VDC. One FGD was conducted in GrootLaagte with the traditional leaders and VDC. One FGD was conducted in Toteng with the VDC and community. FGD size varied from four attendees to 23.

## **4. Data analysis and interpretation**

The information collected through the questionnaires, key informant interviews and FGDs was transcribed and analysed. The research team went through the data gathered and used narrative analysis methods to identify common issues and key emerging trends. The research team then compiled their findings and sought to provide limited high-level recommendations.

## Annex B. Relevant international standards

1. Community consultation and engagement	
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965)	- Even though the ICERD does not explicitly mention benefit-sharing and FPIC, the body monitoring the ICERD, the Committee on the Elimination of Racial Discrimination (CERD), clarified that ICERD does protect the rights of Indigenous and tribal peoples over natural resources through FPIC and benefit-sharing (see also section 4 below). <sup>26</sup>
- African Charter on Human and Peoples' Rights (1981) (African Charter)	- The African Charter guarantees the right to self-determination of Peoples (art. 20 (1)).
- African Commission on Human and Peoples' Rights (ACHPR) (2010), Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter	- The Principles and Guidelines provide that States parties should ensure the prior informed consent by Indigenous populations/communities to any exploitation of the resources of their traditional lands and that they benefit accordingly (para. 44).
- ACHPR (2012) Resolution 224(LI)2012 <sup>27</sup>	- The ACHPR called upon States Parties to confirm that "all necessary measures must be taken by the State to ensure participation, including the free, prior and informed consent of communities, in decision making related to natural resources governance" (para. ii).

<sup>26</sup> CERD, Concluding observations on the combined thirteenth to fifteenth periodic reports of Suriname, UN Doc. CERD/C/SUR/CO/13-15 (2015).

<sup>27</sup> African Commission on Human and Peoples' Rights Sessions, Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR/Res.224(LI)2012 (first published 51st Ordinary Session, 2012).

<p>- ACHPR <i>Endorois case (2010)</i><sup>28</sup></p>	<p>- ACHPR <i>Endorois case (2010)</i>: The ACHPR recalled the CERD’s recommendation that “not only [...] the prior informed consent of communities must be sought when major exploitation activities are planned in indigenous territories but also that the equitable sharing of benefits to be derived from such exploitation be ensured” (para. 296) (see also section 4 below).</p>
<p>- United Nations Declaration on the Rights of Indigenous Peoples (2007) (UNDRIP)</p>	<p>- UNDRIP requires FPIC in cases of relocation of Indigenous Peoples from their lands (arts. 10 and 28); before adopting and implementing legislative or administrative measures that may affect them (art. 19); and prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization, or exploitation of mineral, water, or other resources (art. 32(2)).</p>
<p>- United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (2018) (UNDROP)</p>	<p>- UNDROP requires States, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, to consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions, engaging with and seeking the support of peasants and other people working in rural areas who could be affected by decisions before those decisions are made, and responding to their contributions, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of</p>

<sup>28</sup> *African Commission on Human and Peoples’ Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (4 February 2010), Case 276/2003.

	<p>individuals and groups in associated decision-making processes (arts. 2.3; see also art. 10.1).</p>
<ul style="list-style-type: none"> <li>- UN Framework Principles on Human Rights and the Environment (2018)</li> </ul>	<ul style="list-style-type: none"> <li>- The UN Framework Principles on Human Rights and the Environment provide that States should ensure that they comply with their obligations to Indigenous Peoples and members of traditional communities, including by consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources (principle 15).</li> </ul>
<ul style="list-style-type: none"> <li>- UN Guiding Principles on Business and Human Rights (2011)</li> </ul>	<ul style="list-style-type: none"> <li>- In order to gauge human rights risks, the UN Guiding Principles on Business and Human Rights call on business enterprises to identify and assess any actual or potential adverse human rights impacts with which they may be involved, either through their own activities or as a result of their business relationships, and to involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation (principle 18).</li> </ul>
<ul style="list-style-type: none"> <li>- Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (2012) (VGGT)<sup>29</sup></li> </ul>	<ul style="list-style-type: none"> <li>- “Consultation and participation” are one of the principles of implementation of the VGGT. They imply engaging with and seeking the support of those who, having legitimate tenure rights, could be affected by decisions, prior to decisions being taken, and responding to their contributions; taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and</li> </ul>

<sup>29</sup> FAO, [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security](#).

	<p>groups in associated decision-making processes (para 3B.6; see also para. 9.9).</p>
<ul style="list-style-type: none"> <li>- Guiding Principles on Large Scale Land Based Investments in Africa (2014)</li> </ul>	<ul style="list-style-type: none"> <li>- Principle 9 of the Guiding Principles on Large Scale Land Based Investments in Africa requires that stakeholders affected by LSLBI, communities in particular, be provided sufficient information, consulted on their views prior to finalizing LSLBI agreements and these views taken into consideration.</li> </ul>
<ul style="list-style-type: none"> <li>- International Council on Mining &amp; Metals (ICMM)</li> </ul>	<ul style="list-style-type: none"> <li>- ICMM requires its members to work to obtain the free, prior and informed consent of Indigenous Peoples where significant adverse impacts are likely to occur, as a result of relocation, disturbance of lands and territories or of critical cultural heritage, and capture the outcomes of engagement and consent processes in agreements (principle 3.7); and to conduct stakeholder engagement based upon an analysis of the local context and provide local stakeholders with access to appropriate and effective mechanisms for seeking resolution of grievances related to the company and its activities (principle 9.3).</li> </ul>
<ul style="list-style-type: none"> <li>- Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Mining Policy Framework</li> </ul>	<ul style="list-style-type: none"> <li>- The IGF refers to a permitting process that requires mining entities to have a process of consultation that provides affected communities with an opportunity to express their views on project risks and impacts, and be consulted on the development of mitigation measures (page 7); recommends making consultation with affected stakeholders a requirement of the permitting process and at every stage of the mining cycle (page 9); and highlights informed, transparent and timely decision-making processes, stating that decision-making processes, in general and for issues specific to mining, will be as consultative as necessary and</li> </ul>

<ul style="list-style-type: none"> <li>- International Finance Corporation (IFC) Performance Standards</li> </ul>	<p>as quick as is consistent with the need for decisions to be well informed (page 24).</p> <ul style="list-style-type: none"> <li>- One of the objectives of IFC Performance Standard (PS) 5 on Land Acquisition and Involuntary Resettlement is ensuring that resettlement activities are implemented with appropriate consultation, and the informed participation of those affected (para. 3); PS 5 also requires the client to engage with affected communities, including host communities, through the process of stakeholder engagement described in PS 1 (para. 10). PS 7 requires the FPIC of Indigenous communities.</li> </ul>
<h2>2. Access to information</h2>	
<ul style="list-style-type: none"> <li>- Universal Declaration of Human Rights (UDHR) (1948)<sup>30</sup></li> <li>- Article 19 of the International Convention on Civil and Political Rights (1966) (ICCPR)<sup>31</sup></li> <li>- African Charter<sup>32</sup></li> <li>- The ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa<sup>33</sup></li> <li>- Goal 16 of the Agenda 2030 Sustainable Development Goals<sup>34</sup></li> <li>- ACHPR Model law on access to information for Africa, 2013<sup>35</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Article 19 of the UDHR provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</li> <li>- Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing</li> </ul>

<sup>30</sup> [udhr.pdf \(un.org\)](https://www.unhcr.org/refugees-and-protection/2013/12/5290909d.html).

<sup>31</sup> [ccpr.pdf \(ohchr.org\)](https://www.unhcr.org/refugees-and-protection/2013/12/5290909d.html), supported by the UN Human Rights Committee General Comment 34, 2011 (<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>), which holds that art. 19(2) of the ICCPR ensures the right to access information held by public bodies.

<sup>32</sup> The ACHPR also has a model law on access to information in Africa, which can be found here:

[https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model\\_law\\_on\\_access\\_to\\_information\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_access_to_information_en.pdf)

<sup>33</sup> Part III deals with the right of access to information. <https://achpr.au.int/en/node/902>.

<sup>34</sup> Transforming our World: the 2030 Agenda for Sustainable Development <https://sdgs.un.org/>.

<sup>35</sup> [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model\\_law\\_on\\_access\\_to\\_information\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_access_to_information_en.pdf).

<ul style="list-style-type: none"> <li>- Report of the Office of the United Nations High Commissioner for Human Rights on Freedom of opinion and expression, 2022<sup>36</sup></li> <li>- UN Framework Principles on Human Rights and the Environment<sup>37</sup></li> <li>- UNDROP<sup>38</sup></li> <li>- Guiding Principles on Large Scale Land Based Investments in Africa<sup>39</sup></li> <li>- VGGT</li> <li>- ICMIM</li> </ul>	<p>or in print, in the form of art, or through any other media of his choice.</p> <ul style="list-style-type: none"> <li>- Art. 9(1) of the African Charter provides that every individual shall have the right to receive information.</li> <li>- Target 16.10.2 of the Agenda 2030 Sustainable Development Goals calls on States to adopt laws and regulations on public access to information.</li> <li>- UN Framework Principles: States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request (principle 7).</li> <li>- UNDROP provides that peasants have the right to seek, receive, develop and impart information, including information about factors that may affect the production, processing, marketing and distribution of their products; and that States shall take appropriate measures to ensure that peasants have access to relevant, transparent, timely and adequate information in a language and form and through means adequate to their cultural methods so as to promote their empowerment and to ensure their effective participation in decision-making in matters that may affect their lives, land and livelihoods (arts. 11.1 and 11.2).</li> <li>- Guiding Principles on Large Scale Land Based Investments in Africa: Member States have the responsibility to promote</li> </ul>
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<sup>36</sup> [G2200387.pdf \(un.org\)](https://www.un.org/ga/doc/res/2022/202200387.pdf). The report discusses good practices for establishing national frameworks to facilitate access to information.

<sup>37</sup> [Framework principles on human rights and the environment](#), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Human Rights Council, Doc Number A/HRC/37/59, Annex.

<sup>38</sup> [United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), Human Rights Council, Doc Number A/HRC/RES/39/12, adopted by the UN General Assembly on 17 December 2018 (UNDROP).

<sup>39</sup> African Union (2014), [Guiding Principles on Large Scale Land Based Investments in Africa](#).

	<p>transparency of all parties throughout the investment process (principle 4).</p> <ul style="list-style-type: none"> <li>- VGGT: The principle of access to information is found throughout the VGGT. Section 12, which deals with investments (12.11), and section 9, which deals with customary tenure systems of Indigenous Peoples and other communities, are particularly relevant.</li> <li>- ICMIM members should identify and engage with key corporate level external stakeholders on sustainable development issues in an open and transparent manner (principle 10.1).</li> </ul>
<ul style="list-style-type: none"> <li>- Universal Declaration of Human Rights (UDHR) (1948)<sup>40</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Article 19 of the UDHR provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</li> </ul>
<ul style="list-style-type: none"> <li>- International Convention on Civil and Political Rights (1966) (ICCPR)<sup>41</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.</li> </ul>
<ul style="list-style-type: none"> <li>- African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- Art. 9(1) of the African Charter provides that every individual shall have the right to receive information.</li> </ul>
<ul style="list-style-type: none"> <li>- The ACHPR Declaration of Principles on Freedom of Expression and Access to Information in Africa<sup>42</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Part III deals with the right of access to information.</li> </ul>

<sup>40</sup> [udhr.pdf \(un.org\)](https://www.un.org/udhr.pdf).

<sup>41</sup> [ccpr.pdf \(ohchr.org\)](https://www2.ohchr.org/doc/doc/iccpr.pdf), supported by the UN Human Rights Committee General Comment 34, 2011 (<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>), which holds that art. 19(2) of the ICCPR ensures the right to access information held by public bodies.

<sup>42</sup> <https://achpr.au.int/en/node/902>.

<ul style="list-style-type: none"> <li>- Goal 16 of the Agenda 2030 Sustainable Development Goals<sup>43</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Target 16.10.2 of the Agenda 2030 Sustainable Development Goals calls on States to adopt laws and regulations on public access to information.</li> </ul>
<ul style="list-style-type: none"> <li>- ACHPR Model law on access to information for Africa, 2013<sup>44</sup></li> </ul>	<ul style="list-style-type: none"> <li>- The Model law refers to Article 1 of the African Charter that obliges States Parties to ‘adopt legislative, or other measures to give effect’ to the ‘rights, duties and freedoms enshrined’ therein.</li> </ul>
<ul style="list-style-type: none"> <li>- Report of the Office of the United Nations High Commissioner for Human Rights on Freedom of opinion and expression, 2022<sup>45</sup></li> </ul>	<ul style="list-style-type: none"> <li>- The report discusses good practices for establishing national frameworks to facilitate access to information.</li> </ul>
<ul style="list-style-type: none"> <li>- UN Framework Principles on Human Rights and the Environment<sup>46</sup></li> </ul>	<ul style="list-style-type: none"> <li>- UN Framework Principles: States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request (principle 7).</li> </ul>
<ul style="list-style-type: none"> <li>- UNDROP<sup>47</sup></li> </ul>	<ul style="list-style-type: none"> <li>- UNDROP provides that peasants have the right to seek, receive, develop and impart information, including information about factors that may affect the production, processing, marketing and distribution of their products; and that States shall take appropriate measures to ensure that peasants have access to relevant, transparent, timely and adequate information in a language and form and through means adequate to their cultural methods so as to promote their empowerment and to ensure their effective</li> </ul>

<sup>43</sup> Transforming our World: the 2030 Agenda for Sustainable Development <https://sdgs.un.org/>.

<sup>44</sup> [https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model\\_law\\_on\\_ati\\_in\\_africa/model\\_law\\_on\\_access\\_to\\_information\\_en.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_ati_in_africa/model_law_on_access_to_information_en.pdf).

<sup>45</sup> [G2200387.pdf](https://www.chr.up.ac.za/images/researchunits/dgdr/documents/resources/model_law_on_ati_in_africa/model_law_on_access_to_information_en.pdf) (un.org).

<sup>46</sup> [Framework principles on human rights and the environment](#), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Human Rights Council, Doc Number A/HRC/37/59, Annex.

<sup>47</sup> [United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), Human Rights Council, Doc Number A/HRC/RES/39/12, adopted by the UN General Assembly on 17 December 2018 (UNDROP).

	participation in decision-making in matters that may affect their lives, land and livelihoods (arts. 11.1 and 11.2).
- Guiding Principles on Large Scale Land Based Investments in Africa <sup>48</sup>	- Member States have the responsibility to promote transparency of all parties throughout the investment process (principle 4).
- VGGT	- The principle of access to information is found throughout the VGGT. Section 12, which deals with investments (12.11), and section 9, which deals with customary tenure systems of Indigenous Peoples and other communities, are particularly relevant.
- ICMIM	- ICMIM members should identify and engage with key corporate level external stakeholders on sustainable development issues in an open and transparent manner (principle 10.1).
<b>3. Recognition of informal land tenure and protection for customary tenure</b>	
- African Charter	- The African Charter provides that the right to property shall be guaranteed and that it may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws (art. 14).
- ACHPR (2010), Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter	- The Principles and Guidelines confirmed that protected under the right to property under article 14 of the African Charter is a right guaranteed by traditional custom and law to access to, and use of, land and other natural resources held under communal ownership. This places an obligation

<sup>48</sup> African Union (2014), [Guiding Principles on Large Scale Land Based Investments in Africa](#).

	<p>on States parties to ensure security of tenure to rural communities and their members (para 54).</p>
<p>- ACHPR (2012) Resolution 224(LI)2012<sup>49</sup></p>	<p>- The Resolution called on States Parties to ensure independent social and human rights impact assessments that guarantee [...] indigenous and customary people's rights (para. iv).</p>
<p>- UNDRIP</p>	<p>- UNDRIP protects Indigenous Peoples' customary rights including in the context of their right to land. Indigenous Peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. Indigenous Peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. States are required to give legal recognition and protection to these lands, territories and resources. Such recognition must be given with due respect to the customs, traditions and land tenure systems of the Indigenous Peoples concerned (art. 26).</p>
<p>- UNDROP</p>	<p>- UNDROP requires States to take appropriate measures to provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems; to protect legitimate tenure, and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed; and to recognize and</p>

<sup>49</sup> African Commission on Human and Peoples' Rights (2012), Resolution on a Human Rights-Based Approach to Natural Resources Governance, ACHPR/Res.224(LI)2012 (para. 4).

	protect the natural commons and their related systems of collective use and management (art. 17.3).
- UN Framework Principles on Human Rights and the Environment (2018)	- The UN Framework Principles provide that States should ensure that they comply with their obligations to Indigenous Peoples and members of traditional communities, including by recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used (principle 15). The Framework notes that recognition of the rights must be given with due respect for the customs, traditions and land tenure systems of the peoples or communities concerned.
- VGGT	- See e.g. para. 9.4 which provides that States should provide appropriate recognition and protection of the legitimate tenure rights of Indigenous Peoples and other communities with customary tenure systems.
- Guiding Principles on Large Scale Land Based Investments in Africa	- The Guiding Principles: Principle 1 requires LSLBI to respect the existing, customarily defined rights of local people and communities to land and land-related resources.
- IFC Performance Standards	- IFC PS 5 clarifies that it also applies to customary or traditional rights recognized or recognizable under the laws of the host country (para. 5, footnote 6). IFC PS 7 notes that Indigenous Peoples are often closely tied to their lands and related natural resources, that frequently these lands are traditionally owned or under customary use and that, while Indigenous Peoples may not possess legal title to these lands as defined by national law, their use of these lands, including seasonal or cyclical use, for their livelihoods or for cultural, ceremonial and spiritual purposes that define their identity and community can often be substantiated and documented (para. 13).

<ul style="list-style-type: none"> <li>- ICMIM</li> </ul>	<ul style="list-style-type: none"> <li>- ICMIM requires its members to respect human rights and the interests, cultures, customs and values of communities affected by [members'] activities (principle 3); and in particular to respect the rights, interests, aspirations, culture and natural resource-based livelihoods of Indigenous Peoples in project design, development and operation; to apply the mitigation hierarchy to address adverse impacts; and to deliver sustainable benefits for Indigenous Peoples (principle 3.6).</li> </ul>
<b>4. Livelihood impacts</b>	
<ul style="list-style-type: none"> <li>- Convention on Biological Diversity (CBD) (1992)</li> </ul>	<ul style="list-style-type: none"> <li>- CBD: Obligation to promote Indigenous Peoples' traditional knowledge with their approval and involvement and to encourage the equitable sharing of the benefits arising from the utilization of such knowledge (art. 8(j)).</li> </ul>
<ul style="list-style-type: none"> <li>- ICERD (1965)<sup>50</sup></li> </ul>	<ul style="list-style-type: none"> <li>- See section 1 above.</li> </ul>
<ul style="list-style-type: none"> <li>- African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- As noted above, the African Charter recognizes the right to property (art. 14) and the right to self-determination of peoples (art. 20.1).</li> </ul>
<ul style="list-style-type: none"> <li>- ACHPR, <i>SERAC &amp; CESR v Nigeria</i> case 155/96</li> </ul>	<ul style="list-style-type: none"> <li>- In <i>SERAC &amp; CESR v Nigeria</i>, the ACHPR held that, although the right to housing or shelter is not explicitly provided for under the African Charter, housing rights are protected through the combination of provisions protecting the right to property (art. 14), the right to enjoy the best attainable standard of mental and physical health (art. 16) and the protection accorded to the family (art. 18(1)) (Principles and Guidelines of the ACHPR, para. 77).</li> </ul>

<sup>50</sup> [International Convention on the Elimination of All Forms of Racial Discrimination](#) (ICERD) (1965).

<p>- ACHPR (2010), Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter</p>	<p>- In the context of the right to self-determination, the Principles and Guidelines provide that States parties should ensure that prior informed consent is given by Indigenous populations/communities to any exploitation of the resources of their traditional lands and that they benefit accordingly (para. 44). In the context of the right to housing, which imposes obligations on States parties as regards evictions, to ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to potable water and sanitation, basic shelter and housing, and livelihood sources (para. 79ff), and ensure the right to resettlement, which includes the right to alternative land of better or equal quality and housing that must satisfy criteria for adequacy such as accessibility, affordability, habitability, security of tenure, cultural adequacy, suitability of location, and access to essential services such as health and education. This includes the obligation to ensure that resettled persons, groups and communities are not placed in conflict with their host communities (para. 79ff).</p>
<p>- ACHPR <i>Endorois</i> case (2010)<sup>51</sup></p>	<p>- See section 1 above.</p>
<p>- UNDRIP</p>	<p>- UNDRIP provides that Indigenous Peoples have the right to the improvement of their economic and social conditions, including, <i>inter alia</i>, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security; and States must take measures to ensure continuing improvement of their economic and social conditions (art. 21.1); Indigenous Peoples have the</p>

<sup>51</sup> *African Commission on Human and Peoples' Rights, Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (4 February 2010), Case 276/2003.

	<p>right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources; States must establish and implement assistance programmes for Indigenous Peoples for such conservation and protection (art. 29.1); Indigenous Peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources; and States must consult and cooperate in good faith with the Indigenous Peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources (arts. 32.1 and 2).</p>
<p>- UNDROP</p>	<p>- UNDROP provides that States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production (art. 16.4). It further requires States to take measures to ensure that any exploitation affecting the natural resources that peasants hold or use is permitted based on modalities for the fair and equitable sharing of the benefits of such exploitation that have been established on mutually agreed terms between those exploiting the natural resources and the peasants (art. 5.2(c)).</p>

<ul style="list-style-type: none"> <li>- UN Framework Principles on Human Rights and the Environment (2018)<sup>52</sup></li> </ul>	<ul style="list-style-type: none"> <li>- The UN Framework provides that States should ensure that they comply with their obligations to Indigenous Peoples and members of traditional communities, including by ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources (Framework Principle 15.d).</li> </ul>
<ul style="list-style-type: none"> <li>- VGGT</li> </ul>	<ul style="list-style-type: none"> <li>- The VGGT provide that the allocation of tenure rights by States should not threaten the livelihoods of people by depriving them of their legitimate access to these resources (para. 8.1); responsible investments are essential to improve food security and that such investments should strive to contribute to policy objectives, such as poverty eradication; food security and sustainable use of land; support local communities; contribute to rural development; promote and secure local food production systems; enhance social and economic sustainable development; create employment; diversify livelihoods; provide benefits to the country and its people, including the poor and most vulnerable (paras. 12.1 and 12.4); States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights (para. 12.6). When investments involving large-scale transactions of tenure rights are being considered, States should strive to make provisions for different parties to conduct prior independent assessments on the potential positive and negative impacts that those investments could have on food security and the</li> </ul>

<sup>52</sup> [Framework principles on human rights and the environment](#), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Human Rights Council, Doc Number A/HRC/37/59, Annex.

	<p>progressive realization of the right to adequate food, livelihoods and the environment; States also should ensure that existing legitimate tenure rights and claims as well as the rights and livelihoods of other people also affected by the investment, such as small-scale producers, are systematically and impartially identified (para. 12.10). As regards expropriations, consultations should have regard to strategies to minimize disruption of livelihoods; and States should be sensitive where proposed expropriations involve areas of particular cultural, religious or environmental significance, or where the land, fisheries and forests in question are particularly important to the livelihoods of the poor or vulnerable (para. 16.2).</p>
<ul style="list-style-type: none"> <li>- Guiding Principles on Large Scale Land Based Investments in Africa<sup>53</sup></li> </ul>	<ul style="list-style-type: none"> <li>- Guiding Principles: LSLBI are commercially viable and profitable businesses, structured to provide maximum benefit to the national economy and improve the livelihoods of local communities (principle 14).</li> </ul>
<ul style="list-style-type: none"> <li>- ICMIM</li> </ul>	<ul style="list-style-type: none"> <li>- In the context of involuntary physical or economic displacement of families and communities that cannot be avoided, ICMIM members should apply the mitigation hierarchy and implement actions or remedies that address residual adverse effects to restore or improve livelihoods and standards of living of displaced people (principle 3.2).</li> </ul>
<ul style="list-style-type: none"> <li>- IFC Performance Standards</li> </ul>	<ul style="list-style-type: none"> <li>- IFC PS 5 states that when displacement cannot be avoided, the client will offer displaced communities and persons compensation for loss of assets at full replacement cost and other assistance to help them improve or restore their standards of living or livelihoods (para. 9).</li> </ul>

<sup>53</sup> African Union (2014) [Guiding Principles on Large Scale Land Based Investments in Africa](#).

<b>5. Local development</b>	
<ul style="list-style-type: none"> <li>- African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- Article 16 of the African Charter states that “(1). Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”</li> </ul>
<ul style="list-style-type: none"> <li>- ACHPR (2010), Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- The Principles and Guidelines state that, in the context of the right to health, the minimum core obligations include ensuring that national development plans and programmes are designed towards the realization of a healthy environment that is conducive to the right to health, for example in matters relating to water resources management and sanitation (para. 67.q). In the context of the right to housing, which imposes obligations on States parties as regards evictions, to ensure that evicted persons or groups, especially those who are unable to provide for themselves, have safe and secure access to essential food, potable water and sanitation; basic shelter and housing; appropriate clothing; essential medical services; livelihood sources; fodder for livestock and access to common property resources previously depended upon; and education for children and childcare facilities (para 79ff); ensure that all resettlement measures, such as construction of homes, provision of water, electricity, sanitation, schools, access roads and allocation of land and sites, are consistent with internationally recognized human rights principles, and completed before those who are to be evicted are moved from their original areas of dwelling (para. 79hh). While the</li> </ul>

	<p>African Charter does not directly protect the right to water and sanitation, it is implied in the protections of a number of rights, including but not limited to the rights to life, dignity, work, food, health, economic, social and cultural development and to a satisfactory environment (para. 87). The right to water and sanitation imposes the following obligations, among others, on States parties: to take steps to ensure that local government authorities and other governance entities not part of central government manage water and sanitation services in their own areas, and under their authority, so as to facilitate universal access to water and sanitation in sufficient quantity, quality and continuity, and at an affordable and equitable price. States should promote proactive citizen involvement in defining water and sanitation policies at the local level in a democratic and inclusive manner. In this regard States parties should increase financing for local water and sanitation infrastructure to address the needs of poor persons and peoples lacking access to water and sanitation; and contribute to developing local government capacity to improve effective water supply and sanitation services (para. 92.i).</p>
<p>- Special Rapporteur Anaya (2013), <i>Study on Extractive Industries and Indigenous Peoples</i><sup>54</sup></p>	<p>- Special Rapporteur Anaya noted that Indigenous Peoples should be free from pressure from State or extractive company agents to compel them to accept extractive projects and that, to this end, basic services for which the State is responsible, including for education, health and infrastructure, should not be conditioned upon acceptance of extractive projects (para. 24).</p>

<sup>54</sup> Special Rapporteur Anaya (2013), *Study on Extractive Industries and Indigenous Peoples*, UN Doc. A/HRC/24/41.

6. Environmental and social impact assessment findings	
<ul style="list-style-type: none"> <li>- CBD</li> </ul>	<ul style="list-style-type: none"> <li>- The CBD requires States to introduce appropriate procedures requiring environmental impact assessment of proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects, and to allow for public participation in such procedures (art. 14.1).</li> </ul>
<ul style="list-style-type: none"> <li>- CBD Akwé: Kon Guidelines (2004)</li> </ul>	<ul style="list-style-type: none"> <li>- Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities (2004). The Guidelines include detailed guidance to ensure the full and effective participation and involvement of Indigenous and local communities in screening, scoping and development planning exercises of ESIA's. They emphasize the need to maintain transparency and public accountability regarding the conduct of all phases of the ESIA, and in any decision-making processes (paras. 52 and 62).</li> </ul>
<ul style="list-style-type: none"> <li>- UNDROP</li> </ul>	<ul style="list-style-type: none"> <li>- UNDROP requires States to take measures to ensure that any exploitation affecting the natural resources that peasants and other people working in rural areas traditionally hold or use is permitted based on a duly conducted social and environmental impact assessment (art. 5.2).</li> </ul>

<p>- UN Framework Principles on Human Rights and the Environment<sup>55</sup></p>	<p>- Framework Principles: As noted above, States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request (principle 7); they should also require the prior assessment of the possible environmental impacts of proposed projects including their potential effects on the enjoyment of human rights (principle 8). The assessment should be undertaken as early as possible in the decision-making process for any proposal that is likely to have significant effects on the environment; the assessment should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal, and should address all potential environmental impacts, including cumulative effects that may occur as a result of the interaction of the proposal with other activities; the assessment should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body. The procedure should also provide for monitoring of the proposal as implemented, to assess its actual impacts and the effectiveness of protective measures. The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available, facilitating public participation by those who may be affected by the proposed action, and</p>
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<sup>55</sup> [Framework principles on human rights and the environment](#), Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Human Rights Council, Doc Number A/HRC/37/59, Annex.

	providing for effective legal remedies (note under principle 8).
- Guiding Principles on Large Scale Land Based Investments in Africa <sup>56</sup>	<ul style="list-style-type: none"> <li>- Guiding Principles: Results of rigorous, holistic and independent environmental and social impact assessments of LSLBI are utilized to confirm the desirability of LSLBI prior to their approval (principle 15).</li> <li>- VGGT: When investments involve large-scale transactions of tenure rights, States should strive to make provisions for different parties to conduct prior independent assessments of the potential positive and negative impacts that those investments could have on tenure rights, food security and the progressive realization of the right to adequate food, livelihoods and the environment (para. 12.10).</li> </ul>
- IFC Performance Standards	<ul style="list-style-type: none"> <li>- IFC PS 1 relating to Assessment and Management of Environmental and Social Risks and Impacts requires the client to provide affected communities with access to relevant information which includes ESIA's (para. 29).</li> </ul>
- EITI	<ul style="list-style-type: none"> <li>- EITI Standard (2019): Countries are encouraged to disclose information on the management and monitoring of the environmental impact of the extractive industries including information on environmental impact assessments (para. 6.4).</li> </ul>
- ICMIM	<ul style="list-style-type: none"> <li>- ICMIM members should assess environmental and social risks and opportunities of new projects and of significant changes to existing operations in consultation with interested and affected stakeholders, and publicly disclose assessment results (principle 4.1).</li> </ul>

<sup>56</sup> African Union (2014) Guiding Principles on Large Scale Land Based Investments in Africa.

<b>7. Community structure</b>	
<ul style="list-style-type: none"> <li>- Universal Declaration of Human Rights (UDHR)</li> </ul>	<ul style="list-style-type: none"> <li>- The right to culture is protected under international human rights law including the UDHR, which provides that everyone has the right freely to participate in the cultural life of the community (art. 27(1)).</li> </ul>
<ul style="list-style-type: none"> <li>- International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)</li> </ul>	<ul style="list-style-type: none"> <li>- The ICESCR provides that the States parties [to the ICESCR] recognize the right of everyone to take part in cultural life (art. 15(1)).</li> </ul>
<ul style="list-style-type: none"> <li>- ICCPR</li> </ul>	<ul style="list-style-type: none"> <li>- The ICCPR provides that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language (art. 27).</li> </ul>
<ul style="list-style-type: none"> <li>- African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- The African Charter provides that every individual may freely take part in the cultural life of their community and that the promotion and protection of morals and traditional values recognized by the community shall be the duty of the State (arts. 17.2 and 17.3).</li> </ul>
<ul style="list-style-type: none"> <li>- ACHPR (2010), Principles and Guidelines on Economic, Social and Cultural Rights in the African Charter</li> </ul>	<ul style="list-style-type: none"> <li>- The Principles and Guidelines provide in relation to the right to culture that States are obliged to ensure that minority and Indigenous languages are protected and promoted. States should recognize that language is an integral part of the structure of culture and that the usage of language enriches the individual and enables them to take an active part in the community and in its activities (para. 76.e).</li> </ul>
<ul style="list-style-type: none"> <li>- UNDRIP</li> </ul>	<ul style="list-style-type: none"> <li>- Indigenous Peoples' right to culture is highlighted throughout UNDRIP. In particular, they have the right to maintain, control, protect and develop their cultural</li> </ul>

	<p>heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their cultures, including oral traditions, literatures, designs, sports and traditional games and visual and performing arts. In conjunction with Indigenous Peoples, States are required to take effective measures to recognize and protect the exercise of these rights (art. 31).</p>
<ul style="list-style-type: none"> <li>- IFC PS</li> </ul>	<ul style="list-style-type: none"> <li>- One of the objectives of IFC PS 7 is to respect and preserve the culture, knowledge, and practices of Indigenous Peoples (para. 2).</li> </ul>
<p><b>8. Corporate social responsibility</b></p>	
<ul style="list-style-type: none"> <li>- UN Guiding Principles on Business and Human Rights</li> </ul>	<ul style="list-style-type: none"> <li>- UN Guiding Principles: Business enterprises have the responsibility to respect human rights and should have in place policies and processes including (a) a policy commitment to meet their responsibility to respect human rights; (b) a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; (c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (principle 15).</li> </ul>
<ul style="list-style-type: none"> <li>- Africa Mining Vision</li> </ul>	<ul style="list-style-type: none"> <li>- Africa Mining Vision (2009): The Vision notes that good governance is critical in ensuring local content minimums in resource contracts/licences and investing in the appropriate human resources development and technology development (page 14). It calls on specific action to ensure compliance of industry players with the highest standards of corporate governance, and environmental, social and material stewardship (page 4). As far as contracting between African States and transnational corporations is</li> </ul>

	<p>concerned, the Vision calls for the inclusion of provisions that safeguard transparency and good governance as well as enforcing corporate social responsibility (page 18). Specific actions from the Vision include eliminating human rights abuses and preventing natural resources from fuelling conflicts, as well as promoting environmental stewardship and social responsibility through, among other things, companies developing and adhering to/implementing corporate social responsibility charters (pages 33 and 35).</p>
<ul style="list-style-type: none"> <li>- Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), Mining Policy Framework</li> </ul>	<ul style="list-style-type: none"> <li>- The IGF Mining and Policy Framework notes that institutional capacity needs to be in place for informed and timely decisions on mining environmental and socio-economic corporate plans, and for ongoing monitoring and enforcement (at page 23).</li> </ul>

## Annex C. Relevant comparative constitutional provisions

Country	Date of Constitution
Bolivia	2009 as amended lastly in 2013 <a href="https://www.constituteproject.org/constitution/Bolivia_2009?lang=en">https://www.constituteproject.org/constitution/Bolivia_2009?lang=en</a>
Burkina Faso	1991 as amended lastly in 2012 <a href="https://adsdatabase.ohchr.org/issueLibrary/BURKINA%20FASO_Constitution.pdf">https://adsdatabase.ohchr.org/issueLibrary/BURKINA%20FASO_Constitution.pdf</a> (French) <a href="https://www.constituteproject.org/constitution/Burkina_Faso_2015.pdf?lang=en">https://www.constituteproject.org/constitution/Burkina_Faso_2015.pdf?lang=en</a> (English)
Eswatini	2005 <a href="https://www.gov.sz/images/justice/swaziland_constitution.pdf">https://www.gov.sz/images/justice/swaziland_constitution.pdf</a>
Gambia, The	1997 as amended lastly in 2018 <a href="https://faolex.fao.org/docs/pdf/gam129753.pdf">https://faolex.fao.org/docs/pdf/gam129753.pdf</a>
Ghana	1992 as amended lastly in 1996 <a href="https://www.constituteproject.org/constitution/Ghana_1996.pdf">https://www.constituteproject.org/constitution/Ghana_1996.pdf</a>
Indonesia	1945 as amended lastly in 2002 <a href="https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en">https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en</a>
Kenya	2010 <a href="http://kenyalaw.org/ki/index.php?id=398">http://kenyalaw.org/ki/index.php?id=398</a>
Mozambique	2004 as amended lastly in 2007 <a href="https://www.constituteproject.org/constitution/Mozambique_2007?lang=en">https://www.constituteproject.org/constitution/Mozambique_2007?lang=en</a>
Namibia	1990 as amended lastly in 2014 <a href="https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf">https://www.lac.org.na/laws/annoSTAT/Namibian%20Constitution.pdf</a>
Philippines	1987 <a href="https://www.officialgazette.gov.ph/constitutions/1987-constitution/">https://www.officialgazette.gov.ph/constitutions/1987-constitution/</a>
Sierra Leone	1991 as amended lastly in 2016 <a href="https://www.constituteproject.org/constitution/Sierra_Leone_2013?lang=en">https://www.constituteproject.org/constitution/Sierra_Leone_2013?lang=en</a>
South Africa	1996 as amended lastly in 2012 <a href="https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1">https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1</a>
Uganda	1995 as amended lastly in 2018 <a href="https://www.parliament.go.ug/documents/1240/constitution">https://www.parliament.go.ug/documents/1240/constitution</a>
Zambia	1991 as amended lastly in 2016 <a href="https://constituteproject.org/constitution/Zambia_2016.pdf?lang=en">https://constituteproject.org/constitution/Zambia_2016.pdf?lang=en</a>
Zimbabwe	2013 revised in 2017 <a href="https://www.constituteproject.org/constitution/Zimbabwe_2017?lang=en">https://www.constituteproject.org/constitution/Zimbabwe_2017?lang=en</a>

## 1. Community consultation and engagement

Country	Relevant provisions	Comment
Bolivia	<p><i>Article 30(II)</i>            In the framework of the unity of the State, and in accordance with this Constitution, the nations and rural native Indigenous peoples enjoy the following rights:            [...]            15. To be consulted by appropriate procedures, in particular through their institutions, each time legislative or administrative measures may be foreseen to affect them. In this framework, the right to prior obligatory consultation by the State with respect to the exploitation of non-renewable [sic] natural resources in the territory they inhabit shall be respected and guaranteed, in good faith and upon agreement.</p> <p><i>Article 352</i>            The exploitation of natural resources in a determined territory shall be subject to a process of consultation with the affected population, called by the State, which shall be free, prior in time and informed. Citizen participation is guaranteed in the process of the management of the environment, and the conservation of ecosystems shall be promoted, in accordance with the Constitution and the law. In the nations and rural native indigenous peoples, the consultation will be carried out with respect given to their own norms and procedures.</p> <p><i>Article 403(I)</i>            The integrity of rural native indigenous territory is recognized, which includes the right to land, to the use and exclusive exploitation of the renewable natural resources under conditions determined by law, to prior and informed consultation, to participation in the benefits of the exploitation of the non-renewable natural resources that are found in their territory, to the authority to apply their own norms, administered by their structures of representation, and to define their development pursuant to</p>	<p>Requirement of free, prior and informed consultation for all affected populations, not just Indigenous Peoples.</p> <p>Consultation to be carried out with respect to Indigenous Peoples' own norms and procedures.</p> <p>Free, prior and informed consultation recognized as a key element of the integrity of rural Indigenous territorial integrity.</p>

	their own cultural criteria and principles of harmonious coexistence with nature. The rural native indigenous territories may be composed of communities.	
Gambia, The	<p><i>Section 215. Economic Objectives</i></p> <p>(5) The State shall endeavour to ensure equal opportunity and full participation for women in the economic development of the country.</p> <p><i>Section 69. Obligations in respect of the environment</i></p> <p>(1) The State shall [...] (d) encourage public participation in the management, protection and conservation of the environment.</p>	<p>The State to endeavour to ensure equal opportunity and full participation for women in the economic development of the country.</p> <p>The State to encourage public participation in the management, protection and conservation of the environment.</p>
Kenya	<p><i>Article 263. Organisational Principles</i></p> <p>2. In their operation, local State bodies shall promote the use of available resources, ensure the active participation of citizens and encourage local initiative in solving problems of their communities.</p>	<p>Local State bodies to ensure the active participation of citizens and encourage local initiative in solving problems of their communities.</p>
Mozambique	<p><i>Article 271. Objectives</i></p> <p>The objective of local administration shall be to organise the participation of citizens in solving the particular problems of their community, to promote local development, and to promote the deepening and the consolidation of democracy, within the framework of unity of the Mozambican State.</p>	<p>State policy to improve the livelihoods of the people through the participation of citizens. (also relevant to subsection 4, “Livelihood impacts”, below).</p>
Uganda	<p><i>X. Role of the people in development</i></p> <p>The State shall take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them.</p> <p><i>Section 36. Protection of rights of minorities</i></p> <p>Minorities have a right to participate in decision-making processes and their views and interests shall be taken into account in the making of national plans and programmes.</p> <p><i>Article 253. Principles of land policy</i></p>	<p>The State to take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them. Minorities have a right to participate in decision-making processes.</p>
Zambia		<p>Plans for land use must be undertaken in a consultative and participatory manner; effective participation of people in the</p>

	<p>1. Land shall be held, used and managed in accordance with the following principles: [...] i. plans for land use to be done in a consultative and participatory manner.</p> <p><i>Article 255. Principles of environmental and natural resources management and development</i></p> <p>The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] I. effective participation of people in the development of relevant policies, plans and programmes.</p>	<p>development of relevant policies, plans and programmes is required.</p>
Zimbabwe	<p><i>Section 17. Gender balance</i></p> <p>1. The State must promote full gender balance in Zimbabwean society, and in particular – a. the State must promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men.</p>	<p>The State to promote the full participation of women in all spheres of Zimbabwean society on the basis of equality with men.</p>

## 2. Access to information

Country	Relevant provisions	Comment
Bolivia	<p><i>Article 21</i> Bolivians have the following rights: [...] 6. To have access to information and to interpret, analyse and communicate it freely, individually or collectively.</p>	General right of access to information.
Indonesia	<p><i>Article 28F</i> Every person shall have the right to communicate and to obtain information for the purpose of the development of his/her self and social environment, and shall have the right to seek, obtain, possess, store, process and convey information by employing all available types of channels.</p>	General right to information.
Kenya	<p><i>Section 35. Access to information</i> (1) Every citizen has the right of access to — (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom. (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person. (3) The State shall publish and publicise any important information affecting the nation.</p> <p><i>Section 60. Principles of land policy</i> (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles [...] (d) transparent and cost effective administration of land.</p>	<p>Right of access to information.</p> <p>Administration of land to be transparent.</p>
Mozambique	<p><i>Article 4</i> 1. All citizens shall have [...] the right to information. 2. The [...] exercise of the right to information shall not be restricted by censorship.</p>	Right to information.
South Africa	<p><i>Section 32</i></p>	Right of access to information.

	<p>(1) Everyone has the right of access to — (a) any information held by the state; and (b) any information that is held by another person and that is required for the exercise or protection of any rights. (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.</p>	
Uganda	<p><i>Section 41. Right of access to information</i>  1. Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. 2. Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.</p>	<p>Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State.</p>
Zambia	<p><i>Article 173. Values and principles of public service</i>  1. The guiding values and principles of the public service include the following [...] h. proactively providing the public with timely, accessible and accurate information.</p> <p><i>Article 253. Principles of land policy</i>  1. Land shall be held, used and managed in accordance with the following principles: [...] e. transparent, effective and efficient administration of land.</p> <p><i>Article 255. Principles of environmental and natural resources management and development</i>  The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] m. access to environmental information to enable people to preserve, protect and conserve the environment.</p>	<p>Providing the public with timely, accessible and accurate information is a guiding value of public service; transparent administration of land is required; access to environmental information to enable people to preserve, protect and conserve the environment is required.</p>
Zimbabwe	<p><i>Section 62. Access to information</i>  Every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in</p>	<p>Every Zimbabwean citizen has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the</p>

	<p>so far as the information is required in the interests of public accountability. Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.</p> <p><i>Section 194. Basic values and principles governing public administration</i></p> <p>1. Public administration in all tiers of government, including institutions and agencies of the State, and government-controlled entities and other public enterprises, must be governed by the democratic values and principles enshrined in this Constitution, including the following principles — [...] h. transparency must be fostered by providing the public with timely, accessible and accurate information.</p>	<p>information is required in the interests of public accountability. Transparency must be fostered by providing the public with timely, accessible and accurate information.</p>
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### 3. Recognition for informal land tenure rights and protection of customary land

Country	Relevant provisions	Comment
Burkina Faso	<p><i>Recital</i> RECOGNISING customary and traditional chieftaincy as the moral authority custodian of customs and traditions in our society.</p> <p><i>Article 7</i> Freedom of belief, of non-belief, of conscience, of religious or philosophical opinion, of worship, of assembly, the free practice of custom, as well as freedom of procession and of demonstration are guaranteed by the present Constitution, subject to respect for the law, for public order, for good morals and for the human person.</p> <p><i>Article 101</i> The law shall lay down the rules concerning: [...] the procedure by which customs shall be established and brought into harmony with the fundamental principles of the Constitution.</p>	<p>Constitution recognizes and guarantees customary practices and effectively requires the law to codify them. Customary law to be consistent with the Constitution.</p>
Gambia, The	<p><i>Section 7</i> Laws of The Gambia comprise customary law alongside acts of parliament, the common law, the Sharia (for matters of marriage, divorce and inheritance among members of the communities to which it applies) etc.</p> <p><i>Section 22.4</i> Where a compulsory acquisition of land involves the displacement of inhabitants who occupy it under customary law, the Government is required to resettle them on suitable alternative land with due regard to their economic well-being and social and cultural values.</p> <p><i>Section 33</i></p>	<p>Recognizes customary law.</p> <p>Protection against discrimination does not apply to laws providing for the application of customary law as in Sierra Leone and Zambia.</p>

	<p>Protection from discrimination (1) All persons shall be equal before the law. (2) Subject to the provisions of subsection (5), no law shall make any provision which is discriminatory either of itself or in its effect. (3) Subject to the provisions of subsection (5), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority. (4) In this section, the expression “discrimination” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or other status whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description. (5) Subsection (2) shall not apply to any law in so far as that law makes provision — [...] I with respect to adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; (d) for the application in the case of members of a particular race or tribe of customary law with respect to any matter in the case of persons who, under that law, are subject to that law.</p>	
Ghana	<p><i>Section 11</i>  THE LAWS OF GHANA 1. The laws of Ghana shall comprise [...] 2. The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. 3. For the purposes of this article, “customary law” means the rules of law which by custom are applicable to particular communities in Ghana.</p> <p><i>Section 125</i></p>	Provides for the codification of customary rules. Regulates the power and roles of customary authorities including as regards dispute resolution.

THE JUDICIAL POWER OF GHANA [...] 2. Citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems.

*Section 267*

**STOOL AND SKIN LANDS AND PROPERTY** 1. All stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for the subjects of, the stool in accordance with customary law and usage. 2. There shall be established the Office of the Administrator of Stool Lands which shall be responsible for:[] a. the establishment of a stool land account for each stool into which shall be paid all rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands; b. the collection of all such rents, dues, royalties, revenues or other payments whether in the nature of income or capital, and to account for them to the beneficiaries specified in clause (6) of this article; and c. the disbursement of such revenues as may be determined in accordance with clause (6) of this article. 3. There shall be no disposition or development of any stool land unless the Regional Lands Commission of the region in which the land is situated has certified that the disposition or development is consistent with the development plan drawn up or approved by the planning authority for the area concerned. 4. Where the Regional Lands Commission fails or refuses to give the consent and concurrence under clause (3) of this article, a person aggrieved by the failure or refusal may appeal to the High Court. 5. Subject to the provisions of this Constitution, no interest in, or right over, any stool land in Ghana shall be created which vests in any person or body of persons a freehold interest howsoever described. 6. Ten per cent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions a. twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status; b. twenty percent to the traditional authority; and c. fifty-five

percent to the District Assembly, within the area of authority of which the stool lands are situated. 7. The Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land and shall make available to them all relevant information and data. 8. The Lands Commission and the Administrator of Stool Lands shall co-ordinate with all relevant public agencies and traditional authorities and stools in preparing a policy framework for the rational and productive development and management of stool lands. 9. Parliament may provide for the establishment of Regional branches of the Office of the Administrator of Stool Lands to perform, subject to the directions of the Administrator of Stool Lands, the functions of the Administrator in the region concerned.

*Section 270*

**INSTITUTION OF CHIEFTAINCY** 1. The institution of chieftaincy, together with its traditional councils as established by customary law and usage, is hereby guaranteed. 2. Parliament shall have no power to enact any law which a. confers on any person or authority the right to accord or withdraw recognition to or from a chief for any purpose whatsoever, or b. in any way detracts or derogates from the honour and dignity of the institution of chieftaincy. 3. Nothing in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, clause (1) or (2) of this article if the law makes provision for a. the determination, in accordance with the appropriate customary law and usage, by a Traditional Council, a Regional House of Chiefs or the National House of Chiefs or a Chieftaincy Committee of any of them, of the validity of the nomination, election, selection, installation or deposition of a person as a chief; b. a Traditional Council or a Regional House of Chiefs or the National House of Chiefs to establish and operate a procedure for the registration of chiefs and the public notification in the Gazette or otherwise of the status of persons as chiefs in Ghana.

*Section 271*

NATIONAL HOUSE OF CHIEFS 1. There shall be a National House of Chiefs. 2. The House of Chiefs of each region shall elect as members of the National House of Chiefs five paramount chiefs from the region. 3. Where in a region there are fewer than five paramount chiefs, the House of Chiefs of the region shall elect such number of divisional chiefs as shall make up the required representation of chiefs for the region.

*Section 272*

FUNCTIONS OF THE NATIONAL HOUSE OF CHIEFS The National House of Chiefs shall a. advise any person or authority charged with any responsibility under this Constitution or any other law for any matter relating to or affecting chieftaincy; b. undertake the progressive study, interpretation and codification of customary law with a view to evolving, in appropriate cases, a unified system of rules of customary law, and compiling the customary laws and lines of succession applicable to each stool or skin; c. undertake an evaluation of traditional customs and usages with a view to eliminating those customs and usages that are outmoded and socially harmful; d. perform such other functions, not being inconsistent with any function assigned to the House of Chiefs of a region, as Parliament may refer to it.

*Section 277*

DEFINITION OF CHIEF In this Chapter unless the context otherwise requires, “chief” means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queen mother in accordance with the relevant customary law and usage.

	<p>[...] “paramount chief” means a person who has been nominated, elected and installed as a paramount chief in accordance with customary law and usage.</p>	
Indonesia	<p><i>Article 18B</i> [...] 2. The State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law.</p>	Broad recognition of customary rights.
Kenya	<p><i>Section 2</i> Supremacy of this Constitution [...] (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid. (5) The general rules of international law shall form part of the law of Kenya. (6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.</p>	<p>Weak protection of customary rights through the recognition of the right to culture (see subsection 7, “Community structure”, below).</p> <p>Customary law which is inconsistent with the Constitution does not apply.</p>
Namibia	<p><i>Article 66. Customary and Common Law</i> (1) Both the customary law and the common law of Namibia in force on the date of Independence shall remain valid to the extent to which such customary or common law does not conflict with this Constitution or any other statutory law.</p>	Customary law recognized to the extent not conflicting with Constitution.
Sierra Leone	<p><i>Section 27</i> Protection from discrimination Subject to the provisions of subsection (4), (5) and (7), no law shall make any provision which is discriminatory either of itself or in its effect. Subject to the provisions of subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority. In this section the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, political opinions, colour or creed whereby persons of</p>	<p>Protection against discrimination does not apply to laws providing for the application of customary law as in The Gambia and Zambia.</p> <p>Recognizes customary law and authorities. Extensive provisions on institutional arrangement for customary practices. Guarantee against abolition of customary authorities.</p>

one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject, or are accorded privileges or advantages which are not accorded to persons of another such description. (4) Subsection (1) shall not apply to any law so far as that law makes provision [...] (e) for the application in the case of members of a particular race or tribe or customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.

*Section 72*

Office of Paramount Chief 1. The institution of Chieftaincy as established by customary law and usage and its non-abolition by legislation is hereby guaranteed and preserved. 2. Without derogating from the generality of the provisions of subsection (1), no provision of law in so far as it provides for the abolition of the office of Paramount Chief as existing by customary law and usage immediately before the entry into force of this Constitution, shall have effect unless it is included in an Act of Parliament and the provisions of Section 108 shall apply in relation to the Bill for such an Act as they apply in relation to the Bill for an Act of Parliament that alters any of the provisions of this Constitution that are referred to in subsection (3) of that section. 3. Nothing contained in or done under the authority of any law shall be held to be inconsistent with, or in contravention of, the provisions of subsection (1) to the extent that the law in question makes provision for the determination, in accordance with appropriate customary law and usage, of the validity of the nomination, election, unseating or replacement of any Paramount Chief, or the question of restraining in any way the exercise of any rights, duties, privileges or functions conferred upon, or enjoyed by him, by virtue of his office or the installation or deposition of a person as a Paramount Chief. 4. A Paramount Chief may be removed from office by the President for any gross misconduct in the performance of the functions of his office if after a public inquiry conducted under the Chairmanship of a Judge of the High Court or a Justice

	<p>of Appeal or a Justice of the Supreme Court, the Commission of Inquiry makes an adverse finding against the Paramount Chief, and the President is of the opinion that it is in the public interest that the Paramount Chief should be removed. 5. Subject to the provisions of this Constitution and in furtherance of the provisions of this section, Parliament shall make laws for the qualifications, election, powers, functions, removal and other matters connected with Chieftaincy.</p> <p><i>Section 170</i> The laws of Sierra Leone shall comprise [...] the common law. 2. The common law of Sierra Leone shall comprise the rules of law generally known as the common law, the rules of law generally known as the doctrines of equity, and the rules of customary law including those determined by the Superior Court of Judicature. 3. For the purposes of this section the expression “customary law” means the rules of law which by custom are applicable to particular communities in Sierra Leone.</p> <p><i>Section 171</i> Interpretation In this Constitution unless a contrary intention appears — “Chieftom Council” means a Chieftom Council constituted under the Chieftom Councils Act; [...] ; “law” includes — any instrument having the force of law made in exercise of a power conferred by law; customary law and any other unwritten rules of law.</p>	
South Africa	<p><i>Section 9</i> (1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.</p> <p><i>Section 39</i></p>	<p>Broad recognition of customary law and authorities.</p> <p>Customary law to be consistent with Bill of Rights.</p>

(2) When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights; (3) The Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill.

*Recognition*

*Section 211*

(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution. (2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs. (3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

*Role of traditional leaders*

*Section 212*

(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities. (2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law — (a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and (b) national legislation may establish a council of traditional leaders.

*Self-determination*

*Section 235*

The right of the South African people as a whole to self-determination, as manifested in this Constitution, does not preclude, within the framework

	<p>of this right, recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way, determined by national legislation.</p> <p><i>Schedule 4: Functional Areas of Concurrent National and Provincial Legislative Competence</i></p> <p>Indigenous law and customary law, subject to Chapter 12 of the Constitution.<sup>57</sup></p>	
Uganda	<p><i>XXIV. Cultural objectives</i></p> <p>Cultural and customary values which are consistent with fundamental rights and freedoms, human dignity, democracy, and with the Constitution may be developed and incorporated in aspects of Ugandan life.</p> <p><i>Section 2. Supremacy of the Constitution</i></p> <p>This Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda. If any other law or any custom is inconsistent with any of the provisions of this Constitution, the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void.</p> <p><i>Section 32. Affirmative action in favour of marginalised groups</i></p> <p>Notwithstanding anything in this Constitution, the State shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances which exist against them. Laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group to which clause (1) relates or which undermine their status, are prohibited by this Constitution.</p>	<p>Recognition of customs and customary tenure to the extent consistent with fundamental rights and freedoms and the Constitution. Customs against the interest of women are prohibited. Women have the right to affirmative action to redress the imbalances created by custom. Regional assembly to consist of representatives of Indigenous cultural interests.</p>

<sup>57</sup> I.e. traditional leaders.

*Section 33. Rights of women*

Women shall be accorded full and equal dignity of the person with men. The State shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society. Women shall have the right to equal treatment with men and that right shall include equal opportunities in political, economic and social activities. Without prejudice to article 32 of this Constitution, women shall have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.

*Section 237. Land ownership*

1. Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution. [...] 3. Land in Uganda shall be owned in accordance with the following land tenure systems — customary; freehold; mailo; and leasehold. 4. On the coming into force of this Constitution — all Uganda citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament; and land under customary tenure may be converted to freehold land ownership by registration.

*FIFTH SCHEDULE. REGIONAL GOVERNMENTS (ARTICLE 178)*

2. Composition of Regional Assembly  
The composition of a regional assembly shall be prescribed by Act of Parliament and shall consist of [...] representatives of indigenous cultural interests in areas where there is a traditional or cultural leader, nominated by the traditional or cultural leader but not exceeding fifteen per cent of the members of the regional assembly.

<p>Zambia</p>	<p><i>Article 1. Supremacy of Constitution</i> Supremacy of Constitution 1. This Constitution is the supreme law of the Republic of Zambia and any other written law, customary law and customary practice that is inconsistent with its provisions is void to the extent of the inconsistency.</p> <p><i>Article 7. Laws of Zambia</i> Laws of Zambia The Laws of Zambia consist of [...] d. Zambian customary law which is consistent with this Constitution.</p> <p><i>Article 23. Protection from Discrimination on the Ground of Race, etc.</i> Protection from Discrimination on the Ground of Race, etc. 1. Subject to [clause] (4)[...], no law shall make any provision that is discriminatory either of itself or in its effect. [...] 4. Clause (1) shall not apply to any law so far as that law makes provision — [...] d. for the application in the case of members of a particular race or tribe, of customary law with respect to any matter to the exclusion of any law with respect to that matter which is applicable in the case of other persons.</p> <p><i>Article 165. Institution of chieftaincy and traditional institutions</i> Institution of chieftaincy and traditional institutions 1. The institution of chieftaincy and traditional institutions are guaranteed and shall exist in accordance with the culture, customs and traditions of the people to whom they apply. 2. Parliament shall not enact legislation which — a. confers on a person or authority the right to recognise or withdraw the recognition of a chief; or b. derogates from the honour and dignity of the institution of chieftaincy.</p> <p><i>Article 167. Rights and privileges of chiefs</i> Rights and privileges of chiefs A chief — a. may own property in a personal capacity; and b. shall enjoy privileges and benefits — i. bestowed on the</p>	<p>Recognizes customary law which needs to be consistent with the Constitution.</p> <p>Recognizes and regulates the power and role of customary authorities.</p> <p>Requires codification of customary law.</p> <p>Protection against discrimination does not apply to laws providing for the application of customary law as in Sierra Leone and The Gambia.</p> <p>Guarantee against abolition of customary authorities.</p>
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office of chief by or under culture, custom and tradition; and ii. Attached to the office of chief, as prescribed.

*Article 169. House of Chiefs and function*

House of Chiefs and function 1. There is established a House of Chiefs. 2. The House of Chiefs shall consist of five chiefs from each province, elected by the chiefs in a Province, as prescribed. 3. The members of the House of Chiefs shall annually elect a Chairperson and Vice Chairperson of the House of Chiefs, from amongst themselves. 4. Notwithstanding clause (3), the assumption of office as Chairperson and Vice Chairperson of the House of Chiefs shall rotate annually amongst the chiefs from each province. 5. The functions of the House of Chiefs are to — a. consider and discuss a Bill relating to custom or tradition referred to it by the President, before the Bill is introduced into the National Assembly; b. initiate, discuss and make recommendations to the National Assembly regarding socio-economic development in the Province; c. initiate, discuss and decide on matters relating to customary law and practice; d. initiate, discuss and make recommendations to a local authority regarding the welfare of communities in a local authority; e. make proposals on areas in customary law that require codification; f. advise the Government on traditional and customary matters; and g. perform other functions as prescribed.

*Article 253. Principles of land policy*

1. Land shall be held, used and managed in accordance with the following principles: [...] b. security of tenure for lawful land holders; c. recognition of indigenous cultural rites.

*Article 254. Classification and alienation of land and land tenure*

Classification and alienation of land and land tenure 1. Land shall be delimited and classified as State land, customary land and such other classification, as prescribed. 2. The President may, through the Lands

	<p>Commission, alienate land to citizens and non-citizens, as prescribed. 3. Land shall be held for a prescribed tenure.</p> <p>[...] “chief” means a person bestowed as chief and who derives allegiance from the fact of birth or descent, in accordance with the customs, traditions, usage or consent of the people in a chiefdom.</p> <p><b>ANNEX. FUNCTIONS OF NATIONAL, PROVINCIAL AND LOCAL LEVELS OF DEVOLVED GOVERNMENT (Article 147(2))</b></p> <p><b>B. Concurrent national and provincial functions</b></p> <p>[...] Customary Law.</p>	
Zimbabwe	<p><b>Section 2. Supremacy of Constitution</b></p> <p>1. This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.</p> <p><b>Section 17. Gender balance</b></p> <p>1. The State must promote full gender balance in Zimbabwean society, and in particular — [...] c. the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men.</p> <p><b>80. Rights of women</b></p> <p>1. Every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities. [...]</p> <p>3. All laws, customs, traditions and cultural practices that infringe the rights of women conferred by this Constitution are void to the extent of the infringement.</p>	<p>Recognition of customary law to the extent consistent with the Constitution. The State to promote full gender balance in Zimbabwean society and the State and all institutions and agencies of government at every level to take practical measures to ensure that women have access to resources, including land, on the basis of equality with men.</p>

	<p><b>280. Traditional leadership</b></p> <p>1. The institution, status and role of traditional leaders under customary law are recognised.</p> <p><i>Section 281. Principles to be observed by traditional leaders</i></p> <p>1. Traditional leaders must —[...] b. observe the customs pertaining to traditional leadership and exercise their functions for the purposes for which the institution of traditional leadership is recognised by this Constitution.</p> <p><i>332. Definitions</i></p> <p>[...] "law" means [...] any unwritten law in force in Zimbabwe, including customary law; and "lawful", "lawfully", "legal" and "legally" are to be construed accordingly.</p>	
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#### 4. Livelihood impacts

Country	Relevant provisions	Comment
Bolivia	<p><i>Article 353</i> The Bolivian people shall have equitable access to the benefits which come from the use of all the natural resources. Priority participation shall be assigned to the territories where these resources are found, and to the nations and rural native indigenous peoples.</p> <p><i>Article 313</i> To eliminate poverty and social and economic exclusion, and in order to achieve wellbeing in its multiple dimensions, the economic organization of Bolivia has the following goals: [...] 3. The reduction of inequality of access to productive resources. [...] 6. The active participation of the public and community economies in the productive apparatus.</p>	<p>General right to have access to benefits from the use of natural resources. Goals to achieve wellbeing include the reduction of inequality of access to productive resources and the active participation of the public and community economies in the productive apparatus.</p>
Ghana	<p><i>Section 36</i> 2. The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include a. the guarantee of a fair and realistic remuneration for production and productivity in order to encourage continued production and higher productivity; b. affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy; c. ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country.</p> <p><i>Section 267. STOOL AND SKIN LANDS AND PROPERTY</i> 6. Ten per cent of the revenue accruing from stool lands shall be paid to the office of the Administrator of Stool Lands to cover administrative expenses; and the remaining revenue shall be disbursed in the following proportions a. twenty-five percent to the stool through the traditional</p>	<p>Obligations to contribute to the overall development of the country and to share a proportion of revenue accruing from stool lands.</p>

Kenya	<p>authority for the maintenance of the stool in keeping with its status; b. twenty percent to the traditional authority; and c. fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated.</p> <p><i>Section 10</i> National values and principles of governance [...] (2) The national values and principles of governance include — [...] (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.</p> <p><i>Section 66. Regulation of land use and property</i> (1) The State may regulate the use of any land, or any interest in or right over any land, in the interest of defence, public safety, public order, public morality, public health, or land use planning. (2) Parliament shall enact legislation ensuring that investments in property<sup>58</sup> benefit local communities and their economies.</p> <p><i>Section 69. Obligations in respect of the environment</i> (1) The State shall — (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits [...];</p> <p><i>Section 174. Objects of devolution</i> The objects of the devolution of government are — [...] (g) to ensure equitable sharing of national and local resources throughout Kenya.</p> <p><i>Section 260</i> [...] “marginalised community” means — [...] (b) a traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside the integrated social and</p>	Investments in property need to benefit local communities and their economies; State to ensure the equitable sharing of the accruing benefits of the exploitation etc. of the environment; one object of the devolution of government is to ensure equitable sharing of national and local resources throughout Kenya.
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<sup>58</sup> “Property” includes any vested or contingent right to, or interest in or arising from — (a) land, or permanent fixtures on, or improvements to, land; (b) goods or personal property; (c) intellectual property; or (d) money, choses in action or negotiable instruments.

	economic life of Kenya as a whole; (c) an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy.	
Mozambique	<p><i>Article 110</i></p> <p>The State shall determine the conditions under which land may be used and enjoyed. The right to use and benefit from land shall be granted to individual or corporate persons, taking into account its social or economic purpose.</p>	Individuals have the right to benefit from land.
Uganda	<p><i>XI. Role of the State in development</i></p> <p>The State shall give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development.</p> <p><i>244. Minerals and petroleum</i></p> <p>2. Subject to this article, Parliament shall make laws regulating [...] b. the sharing of royalties arising from mineral and petroleum exploitation; c. the conditions for payment of indemnities arising out of exploitation of minerals and petroleum; [...] 3. Minerals, mineral ores and petroleum shall be exploited taking into account the interest of the individual landowners, local governments and the Government.</p>	Parliament to make laws regulating the sharing of royalties arising from mineral and petroleum exploitation and the conditions for payment of indemnities arising out of exploitation of minerals and petroleum. Minerals, mineral ores and petroleum to be exploited taking into account the interest of the individual landowners, local governments and the government. The State to give the highest priority to the enactment of legislation establishing measures that protect and enhance the right of the people to equal opportunities in development.
Zambia	<p><i>Article 151. System of local government</i></p> <p>[...] 2. The local government system shall [...] e. promote social and economic development.</p> <p><i>Article 168. Participation of chiefs in public affairs</i></p> <p>[...] The role of a chief in the management, control and sharing of natural and other resources in the Chiefdom shall be prescribed.</p> <p><i>Article 253 Principles of land policy</i></p>	Local governments to promote economic development; chiefs to play a role in the sharing of natural resources; equitable access to land and associated resources is required; investments in land must also benefit local communities and their economy; benefits accruing from the exploitation and utilization of the environment and natural resources must be shared equitably among the people of

	<p>1. Land shall be held, used and managed in accordance with the following principles: a. equitable access to land and associated resources; [...] h. investments in land to also benefit local communities and their economy.</p> <p><i>Article 255. Principles of environmental and natural resources management and development</i></p> <p>The management and development of Zambia's environment and natural resources shall be governed by the following principles: [...] f. benefits accruing from the exploitation and utilisation of the environment and natural resources shall be shared equitably amongst the people of Zambia; [...] k. equitable access to environmental resources shall be promoted.</p>	<p>Zambia; equitable access to environmental resources must be promoted.</p>
<p>Zimbabwe</p>	<p><i>Section 3. Founding values and principles</i></p> <p>[...] 2. The principles of good governance, which bind the State and all institutions and agencies of government at every level, include — [...] j. the equitable sharing of national resources, including land.</p> <p><i>Section 13. National development</i></p> <p>[...] 4. The State must ensure that local communities benefit from the resources in their areas.</p> <p><i>Section 18. Fair regional representation</i></p> <p>2. The State and all institutions and agencies of the State and government at every level must take practical measures to ensure that all local communities have equitable access to resources to promote their development.</p> <p><i>264. Devolution of governmental powers and responsibilities</i></p> <p>2. The objectives of the devolution of governmental powers and responsibilities to provincial and metropolitan councils and local authorities are — [...] e. to ensure the equitable sharing of local and national resources.</p>	<p>All institutions and agencies of government at every level are bound by principles of good governance such as the equitable sharing of national resources including land. The State and all institutions and agencies of government at every level must facilitate rapid and equitable development and foster the development of industrial and commercial enterprises in order to empower Zimbabwean citizens. The State must ensure that local communities benefit from the resources in their areas and have equitable access to them to promote their development.</p>

	<p><i>Section 289. Principles guiding policy on agricultural land</i></p> <p>1. In order to redress the unjust and unfair pattern of land ownership that was brought about by colonialism, and to bring about land reform and the equitable access by all Zimbabweans to the country's natural resources, policies regarding agricultural land must be guided by the following principles — [...] c. the allocation and distribution of agricultural land must be fair and equitable, having regard to gender balance and diverse community interests.</p>	
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## 5. Local development

Country	Relevant provisions	Comment
Bolivia	<p><i>Article 8</i> The State adopts and promotes the following as ethical, moral principles of the plural society: ama qhilla, ama llulla, ama suwa (do not be lazy, do not be a liar or a thief), suma qamaña (live well), ñandereko (live harmoniously), teko kavi (good life), ivi maraei (land without evil) and qhapaj ñan (noble path or life).</p> <p><i>Article 30(II)</i> In the framework of the unity of the State, and in accordance with this Constitution, the nations and rural native indigenous peoples enjoy the following rights: [...] 10. To live in a healthy environment, with appropriate management and exploitation of the ecosystems.</p> <p><i>Article 20</i> III. Access to water and sewer systems are human rights, neither are the object of concession or privatization, and are subject to a regimen of licensing and registration, in accordance with the law.</p> <p><i>Article 264</i> (I) The State shall establish a permanent policy of harmonic, comprehensive, sustainable and strategic development of the frontiers, for the purpose of improving the living conditions of its population, and especially the nations and rural native indigenous peoples living on the border.</p> <p><i>Article 373</i> Water constitutes a fundamental right for life, within the framework of the sovereignty of the people. The State shall promote the use and access to water on the basis of principles of solidarity, complementarity,</p>	<p>State to promote the principle of “live well” and right to a healthy environment; and State to improve living conditions of its population. Detailed provisions on the right to water.</p>

reciprocity, equity, diversity and sustainability. Water resources in all their states, surface and subterraneous, constitute finite, vulnerable, strategic resources, and serve a social, cultural and environmental function. These resources cannot be the object of private appropriation and they, as well as water services, shall not be given as concessions and are subject to a system of licensing, registration and authorization pursuant to the law.

*Article 374*

The State shall protect and guarantee the priority use of water for life. It is the duty of the State to manage, regulate, protect and plan the adequate and sustainable use of water resources, with social participation, guaranteeing access to water for all the inhabitants. The law shall establish the conditions and limitations of all the uses. The State shall recognize, respect and protect the uses and customs of the community, of its local authorities and the rural native indigenous organizations over the right, management and administration of sustainable water. The fossil, glacial, wetland, subterraneous, mineral, medicinal and other waters are priorities for the State, which must guarantee its conservation, protection, preservation, restoration, sustainable use and complete management; they are inalienable, not attachable and cannot be limited.

*Article 375*

It is the duty of the State to develop plans for the use, conservation, management and sustainable exploitation of the river basins. The State shall regulate the management and sustainable administration of the water resources and the basins for irrigation, food security and basic services, respecting the uses and customs of the communities. It is the duty of the State to carry out the studies for the identification of fossil waters and their consequent protection, management and sustainable administration.

*Article 376*

	<p>Water resources of the rivers, lakes and lagoons that form the water basins are considered strategic resources for the development and sovereignty of Bolivia because of their potential, for the variety of natural resources that they contain, and because they are a fundamental part of the ecosystems. The State shall avoid actions in the sources and intermediary zones of rivers that may cause damages to the ecosystems or diminish the flow volume, shall preserve the natural state, and shall watch over the development and welfare of the population.</p> <p><i>Article 377</i></p> <p>Every international treaty on water resources that the State signs shall guarantee the sovereignty of the country and shall prioritize the interest of the State. The State shall safeguard permanently the border and trans-border waters for the conservation of the water riches that contribute to the integration of peoples.</p>	
Burkina Faso	<p><i>Article 14</i></p> <p>The natural wealth and resources belong to the people. They are utilized for the amelioration of their conditions of life and within the respect for sustainable development.</p>	Natural resources to be used to improve the people's lives within the respect for sustainable development.
Eswatini	<p><i>Article 59 (1)</i></p> <p>The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximise the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Swaziland and to provide adequate means of livelihood and suitable employment and public assistance to the needy.</p>	The State to take all necessary action to ensure that the national economy is managed to maximize the rate of economic development and to secure the maximum welfare of every person in the country and to provide adequate means of livelihood.
Gambia, The	<p><i>Section 215. Economic Objectives</i></p> <p>(1) The State shall endeavour to create an economic environment that maximises the rate of economic growth and employment and secures the maximum welfare and prosperity for all persons in The Gambia. [...] (3) Recognising that the most secure democracy is one that assures the basic necessities of life for its people, the State shall endeavour to establish an efficient, dynamic and self-reliant economy whose underlying principles</p>	General obligation on the State to maximize welfare and economic opportunity for all and everybody to contribute to the development of the country. Underlying principles include improvement in the quality of life in rural communities and redressing economic

	shall include ensuring: (a) ample and equal economic opportunity for all citizens and a pronounced role for the private sector, and the encouragement of private initiative; (b) that persons bear their fair share of social and national responsibilities including their responsibility to contribute to the development of the country; and (c) a balanced development of all parts of The Gambia, improvement in the quality of life in rural communities and redressing economic imbalances between rural and urban communities.	imbalances between rural and urban communities.
Indonesia	<i>Article 28H</i> 1. Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.	Right to a healthy environment.
Kenya	<i>Section 43. Economic and social rights</i> (1) Every person has the right — [...] (d) to clean and safe water in adequate quantities.  <i>56. Minorities and marginalised groups</i> The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups — [...] (e) have reasonable access to water, health services and infrastructure.	Recognizes the right to clean water.  Minorities and marginalized groups to have access to water, health services and infrastructure.
Mozambique	<i>Article 96</i> The State economic policy shall be directed towards laying the fundamental bases for development, improving the living conditions of the people, strengthening the sovereignty of the State, and consolidating national unity, through the participation of citizens and the efficient use of human and material resources. Without prejudice to balanced development, the State shall guarantee the distribution of national wealth and it shall recognise and esteem the role of productive zones.	The objective of local administration to be to organize the participation of citizens in solving the particular problems of their community, to promote local development.
Namibia	<i>Article 95. Promotion of the Welfare of the People</i> The State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at the following: [...] (l) maintenance of ecosystems, essential ecological processes and biological diversity of	The State to actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at maintenance of ecosystems, essential ecological processes

	Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.	and biological diversity of Namibia and utilization of living natural resources on a sustainable basis for the benefit of all Namibians, both present and future.
South Africa	<p><i>Section 24</i> Everyone has the right — (a) to an environment that is not harmful to their health or wellbeing; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that — (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.</p> <p><i>Section 27</i> Everyone has the right to have access to [...] (b) sufficient food and water.</p>	<p>Right to an environment that is not harmful and protected against pollution; right to sustainable development; promoting economic and social development.</p> <p>Municipality to promote the social and economic development of the community; right to water.</p>
Uganda	<p><i>XII. Balanced and equitable development</i> [...] ii. The State shall take necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas. iii. The State shall take special measures in favour of the development of the least developed areas.</p> <p><i>XIII. Protection of natural resources</i> The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.</p> <p><i>XIV. General social and economic objectives</i> The State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that — all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe</p>	<p>The State to take necessary measures to bring about balanced development of the different areas of Uganda and between the rural and urban areas; and special measures in favour of the development of the least developed areas. The State to protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. All developmental efforts to be directed at ensuring the maximum social and cultural wellbeing of the people; and all Ugandans to enjoy rights and opportunities and access to clean and safe water and food security. The State to promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced</p>

	<p>water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.</p> <p><i>XXVII. The Environment</i></p> <p>The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations. The utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes. The State shall promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met. The State, including local governments, shall — create and develop parks, reserves and recreation areas and ensure the conservation of natural resources; promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda.</p>	<p>and sustainable manner for the present and future generations (relevant to subsection 4, "Livelihood impacts", above).</p>
Zambia	<p><i>Article 253 Principles of land policy</i></p> <p>1. Land shall be held, used and managed in accordance with the following principles [...] d. sustainable use of land.</p>	<p>Sustainable use of land is required.</p>
Zimbabwe	<p><i>Section 13. National development</i></p> <p>1. The State and all institutions and agencies of government at every level must endeavour to facilitate rapid and equitable development, and in particular must take measures to [...] b. bring about balanced development of the different areas of Zimbabwe, in particular a proper balance in the development of rural and urban areas.</p> <p><i>Section 73. Environmental rights</i></p> <p>1. Every person has the right — a. to an environment that is not harmful to their health or well-being; and b. to have the environment protected for the benefit of present and future generations, through reasonable</p>	<p>State to bring about equitable and balanced development of the different areas of Zimbabwe, in particular a proper balance in the development of rural and urban areas. Every person has the right to an environment that is not harmful to their health or wellbeing and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that secure ecologically sustainable development and</p>

	legislative and other measures that — i. prevent pollution and ecological degradation; ii. promote conservation; and iii. secure ecologically sustainable development and use of natural resources while promoting economic and social development.	use of natural resources while promoting economic and social development.
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## 6. Environmental and social impact assessment findings

Country	Relevant provisions	Comment
Kenya	<p><i>Section 60. Principles of land policy</i>            (1) Land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles [...] (d) transparent and cost effective administration of land.</p> <p><i>Section 69. Obligations in respect of the environment</i>            (1) The State shall — (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment.</p> <p><i>Article 257. Utilisation of natural resources and management of environment</i>            The State shall, in the utilisation of natural resources and management of the environment [...] c. promote appropriate environment management systems and tools; d. encourage public participation.</p>	<p>Administration of land to be transparent and States to establish systems of environmental impact assessment (EIA).</p>
Zambia	<p><i>Article 257. Utilisation of natural resources and management of environment</i>            The State shall, in the utilisation of natural resources and management of the environment [...] c. promote appropriate environment management systems and tools; d. encourage public participation.</p>	<p>In the utilization of natural resources and management of the environment the state must promote appropriate environment management systems and tools and encourage public participation.</p>

## 7. Community structure

Country	Relevant provisions	Comment
Gambia, The	<p><i>Section 193. System of local government</i></p> <p>(3) An Act of the National Assembly shall make provision for the functions, powers and duties of local government authorities including provision for — [...] (c) the participation of the inhabitants in the development and administration of the area; [...] (i) the promotion of Gambian traditions and culture [...]</p> <p>(4) It shall be an object of the local government system that so far as possible, issues of local policy and administration shall be decided at a local level and that local government authorities shall co-operate with the central Government in adopting a policy of decentralisation.</p>	<p>An Act of the National Assembly to make provision for the functions, powers and duties of local government authorities including for the participation of the inhabitants in the development and administration of the area and the promotion of Gambian traditions and culture.</p>
Ghana	<p><i>Section 26</i></p> <p>CULTURAL RIGHTS AND PRACTICES 1. Every person is entitled to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution. 2. All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.</p> <p><i>Section 39</i></p> <p>CULTURAL OBJECTIVES 1. Subject to clause (2) of this article, the State shall take steps to encourage the integration of appropriate customary values into the fabric of national life through formal and informal education and the conscious introduction of cultural dimensions to relevant aspects of national, planning. 2. The State shall ensure that appropriate customary and cultural values are adapted and developed as an integral part of the growing needs of the society as a whole; and in particular that traditional practices which are injurious to the health and well-being of the person are abolished.</p> <p><i>Section 11</i></p>	<p>Preserving right to culture and language.</p>
Kenya	<p><i>Section 11</i></p>	<p>Recognition of the right to culture.</p>

	<p>Culture (1) This Constitution recognises culture as the foundation of the nation and as the cumulative civilization of the Kenyan people and nation. (2) The State shall — (a) promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage; (b) recognise the role of science and indigenous technologies in the development of the nation; and (c) promote the intellectual property rights of the people of Kenya. (3) Parliament shall enact legislation to — (a) ensure that communities receive compensation or royalties for the use of their cultures and cultural heritage; and (b) recognise and protect the ownership of indigenous seeds and plant varieties, their genetic and diverse characteristics and their use by the communities of Kenya.</p> <p><i>Section 7</i> National, official and other languages (1) The national language of the Republic is Kiswahili. (2) The official languages of the Republic are Kiswahili and English. (3) The State shall — (a) promote and protect the diversity of language of the people of Kenya; and (b) promote the development and use of indigenous languages, Kenyan Sign language, Braille and other communication formats and technologies accessible to persons with disabilities.</p>	<p>Protection of the diversity of languages.</p>
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## 8. Corporate social responsibility

Country	Relevant provisions	Comment
Bolivia	<p><i>Article 370</i></p> <p>I. The State shall grant mining rights in the entire chain of production, and it shall sign mining contracts with individual and collective persons upon prior compliance with the norms established in the law. II. The State shall promote and strengthen cooperative mines so that they contribute to the social economic development of the country. III. The mining rights in the entire chain of production as well as mining contracts must fulfil a social economic function, carried out directly by their owners. IV. Mining rights, which include investments and prospecting, exploration, exploitation, concentration, industrialization or sale of minerals and metals, are controlled by the owners. The law shall define the extent of this right. V. The mining contract shall obligate the beneficiaries to develop mining activities to satisfy the social economic interest. The failure to fulfil this obligation shall lead to the immediate dissolution of the contract. VI. The State, through self-sufficient entities, shall promote and develop policies for the administration, prospecting, exploration, exploitation, industrialization, commercialization, and for technical, geological and scientific information and evaluation of non-renewable natural resources for mining development.</p>	<p>The State to promote and strengthen cooperative mines so that they contribute to the social economic development of the country. The mining rights in the entire chain of production as well as mining contracts must fulfil a social economic function, carried out directly by their owners. The mining contract to obligate the beneficiaries to develop mining activities to satisfy the social economic interest and failure to fulfil this obligation shall lead to the immediate dissolution of the contract.</p>
Philippines	<p><i>ARTICLE XII National Economy and Patrimony</i></p> <p>SECTION 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.</p>	<p>State to promote the preferential use of Filipino labour, domestic materials and locally produced goods, and adopt measures that help make them competitive.</p>



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