

SMI CSR
Centre for Social
Responsibility in Mining



THE UNIVERSITY
OF QUEENSLAND
AUSTRALIA

Comparative analysis of legal and regulatory frameworks for resettlement in the global mining industry.

www.csr.uq.edu.au

Authors

Dr Vlado Vivoda, Research Fellow, Centre for Social Responsibility in Mining (CSRM)

Associate Professor John Owen, CSRM

Professor Deanna Kemp, Director, CSRM

Citation

Vivoda, V., Owen, J. and D. Kemp (2017). Comparative analysis of legal and regulatory frameworks for resettlement in the global mining industry. Centre for Social Responsibility in Mining (CSRM), The University of Queensland: Brisbane.

Acknowledgements

This study was supported by research funds provided by The University of Queensland's Vice Chancellor's strategic fund, core operating funds from the Sustainable Minerals Institute (SMI) and pooled contributions of five mining companies: Anglo American, Newcrest, Newmont, MMG and Rio Tinto. These parties participate in the Mining, Resettlement and Livelihoods: Research and Practice Consortium, which is hosted by the Centre for Social Responsibility in Mining (CSRM), part of the SMI.

Centre for Social Responsibility in Mining
Sustainable Minerals Institute
The University of Queensland, Australia
csrm@smi.uq.edu.au
www.csr.uq.edu.au



The Centre for Social Responsibility in Mining (CSR) is a leading research centre, committed to improving the social performance of the resources industry globally.

We are part of the Sustainable Minerals Institute (SMI) at the University of Queensland, one of Australia's premier universities. SMI has a long track record of working to understand and apply the principles of sustainable development within the global resources industry.

At CSR, our focus is on the social, economic and political challenges that occur when change is brought about by resource extraction and development. We work with companies, communities and governments in mining regions all over the world to improve social performance and deliver better outcomes for companies and communities. Since 2001, we have contributed to industry change through our research, teaching and consulting.

Key terms

Compensation	Payment in land, cash or other assets given in exchange for the taking of land and buildings, in whole or in part, and all fixed assets on the land and buildings (e.g. fences, crops).
Displacement	Physical displacement occurs when there is loss of residence or assets resulting from project-related land acquisition and/or land use that require affected persons to move to another location. Economic displacement occurs where there is a loss of assets or access to assets that leads to loss of income sources or other means of a livelihood as a result of project-related land acquisition or land use.
Easement	A legal right to use of land of another, without the right to possession of that land, or to take any part of the soil or produce of such land
Eligibility framework	The types of impacts eligible for compensation and assistance, and which form the basis of negotiations
Eminent domain	The power of the state to compulsorily acquire private property. This might be done to resume (expropriate) land for highways, airports, etc. Occasionally the state extends its power to enable private sector projects to proceed when they are deemed to be in the national interest.
Entitlements	The range of compensation, assistance and mitigation measures developed to address eligible impacts
Environmental and Social Impact Assessment (ESIA)	A process for predicting and assessing the potential environmental and social impacts of a proposed project, evaluating alternatives and designing appropriate mitigation, management and monitoring measures
Fair market value (FMV)	An estimate of the market value of a property, based on what a knowledgeable, willing, and unpressured buyer would probably pay to a knowledgeable, willing, and unpressured seller in the market. To establish FMV, it must be assumed that prospective buyers and sellers are reasonably knowledgeable about the asset, they are behaving in their own best interests, they are free of undue pressure to trade and a reasonable time period is given for completing the transaction
Indigenous peoples	Distinct social and cultural groupings exhibiting the following characteristics to some extent: self-identification as a member of a distinct cultural group and recognition of this identity by others; collective attachment to a geographically-distinct habitat or ancestral territory and to the natural resources therein; customary cultural, economic, social, and/or political institutions that are separate from

those of the dominant society or culture; a language which often different from the official language of the country or region.

Involuntary land acquisition	Compulsory acquiring, or involuntary taking, of land by government for public purpose where the landowner must surrender their land involuntarily but retains the right to negotiate and appeal the amount of compensation proposed or terms on which the involuntary acquisition will take place. This includes land or assets for which the owner enjoys uncontested customary rights.
Involuntary resettlement/displacement	Direct economic and social impacts caused by the involuntary taking of land resulting in: (i) relocation or loss of shelter; (ii) loss of assets or access to assets; or (iii) loss of income sources or means of livelihood, whether or not the displaced persons must move to another location. Resettlement is involuntary when it occurs without the informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement.
Land tenure	The relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land
Legislation	Law which has been promulgated or enacted by a legislature or other governing body. It can serve many purposes: regulate, authorize, outlaw, provide (funds), sanction, grant, declare or restrict. Primary legislation generally consists of statutes or acts that set out broad outlines and principles, but delegate specific authority to an executive branch to make more specific laws under the aegis of the principal act. The executive branch can then issue secondary legislation (mainly via its regulatory agencies), creating legally-enforceable regulations and the procedures for implementing them.
Policy	The basic principles by which a government is guided; the declared objectives that a government seeks to achieve and preserve in the interest of national community
Project-affected person	Any person who, as a result of the implementation of a project, loses the right to own, use, or otherwise benefit from a built structure, land (residential, agricultural, or pasture), annual or perennial crops and trees, or any other fixed or moveable asset, either in full or in part, permanently or temporarily.
Regulation	A state-mandated piece of the secondary or delegated legislation drafted by subject matter experts to enforce a statutory instrument (primary legislation).

Relocation	A process through which physically displaced households are assisted to move from their place of origin to an alternative place of residence. Households may receive compensation for loss of assets or may be provided with replacement land or housing structures at the destination site.
Resettlement	The comprehensive process of planning, displacement, relocation, livelihood restoration and support for social integration. Involuntary resettlement occurs without the informed consent of the displaced persons or if they give their consent without having the power to refuse resettlement
Resettlement Action Plan (RAP):	The document in which a project sponsor or other responsible entity specifies the procedures that it will follow and the actions that it will take to mitigate adverse effects, compensate losses, and provide development benefits to persons and communities affected by an investment project.
Vulnerable groups	People who by virtue of gender, ethnicity, age, physical or mental disability, economic disadvantage, or social status may be more adversely affected by resettlement than others and who may be limited in their ability to claim or take advantage of resettlement assistance and related development benefits.

Contents

1. Introduction	1
1.1 Aims and approach	2
1.2 Background	3
1.3 Rationale	3
1.4 Methodology	5
1.5 Report structure	6
2 Overview of land tenure systems and national frameworks	7
2.1 Land tenure, land rights and eminent domain	8
2.2 National frameworks	8
Botswana	8
Chile	10
Côte d'Ivoire	11
Ghana	12
Papua New Guinea	13
Peru	15
3 Comparative review of national frameworks	17
3.1 Compensation	18
Botswana	19
Chile	19
Côte d'Ivoire	19
Ghana	20
Papua New Guinea	21
Peru	22
3.2 Resettlement	23
Ghana	23
3.3 Livelihoods	24
3.4 Human rights and vulnerable groups	25
3.5 Public participation, consultation and information disclosure	27
Ghana	27
Chile	28
Peru	29
3.6 Planning, monitoring and oversight	30
3.7 Dispute resolution and grievance mechanisms	32
3.8 Mining-induced resettlement and approvals/permitting process	34
Chile	35
Ghana	35
Papua New Guinea	35
3.9 Roles and responsibilities of major actors	35
4 Key findings	37
References	40
Appendix 1: List of national statutes, regulations and policies	42

INTRODUCTION

give
only child.
law /lɔː/ n 1 (C) rule of
proper regulation of a c
conduct in life
and signo

1. Introduction

Recent decades have witnessed significant growth in international and national level instruments relating to resettlement. During this time, the international setting has evolved from a set of prescriptions by international finance institutions (IFIs) targeting country-level infrastructure development to a suite of safeguard policy frameworks and performance standards extending to both public and private sector organisations. Policy frameworks directed at safeguarding against known sets of resettlement risks have, in a sense, become mainstream. What began with the World Bank's Operational Policy (4.12) on Involuntary Resettlement, is now reflected in the World Bank's private investment arm the International Finance Corporation (IFC) Performance Standards, along with the multiple region based IFI policies, e.g. Asian Development Bank (ADB), African Development Bank (AfDB). In the last decade, this uptake of safeguard and performance standards has extended to the corporate policies of multinational mining corporations and peak industry organisations, such as the International Council on Mining and Metals (ICMM).

Translating international safeguard standards into national legislation has been a focal area for both the World Bank and for the various regional lenders mentioned above. The focus of this report is to understand the extent to which key resettlement risks are recognised or safeguarded against in specific national jurisdictions. The review centres on general sets of resettlement-related instruments, as well as instruments developed exclusively for the mining sector. Examining the extent to which national-level systems are responding to pressure from the international lender community is of interest for two reasons: first, these developments indicate the level of alignment between lenders and sovereign governments on the importance of codifying safeguard standards and procedures into national law and regulation. Second, the extent to which national-level instruments align with global safeguard frameworks provides valuable insight into the likely difficulties that lenders, companies, governments and local citizens will face when negotiating how resettlement events are designed, planned, and implemented.

While there is an increasing literature base on the practical functionality of the international standards, there is equally a growing consciousness on the need for greater legislative and regulatory capacity at the national level. The lack of alignment or coherence across the various institutional actors, and jurisdictions in which these actors operate, has been identified as a major forward challenge. For the purposes of this study, Botswana, Chile, Côte d'Ivoire, Ghana, Papua New Guinea and Peru were selected as comparative case examples. These countries provide a workable sample of established and emerging mining economies with varying levels of legislative maturity in terms of mining generally, and for resettlement more specifically.

1.1 Aims and approach

The primary aim of this study is to understand the mechanisms and instruments that governments are using to manage resettlement risks in the mining sector. The study authors compare rules and regulations related to mining induced displacement and resettlement (MIDR) across six mining jurisdictions, and benchmark these against international norms and standards. The report examines legally binding instruments, which establish legal rights and entitlements for affected people across the six selected jurisdictions.

1.2 Background

The governance frameworks reviewed include: legislation, regulations, government policy documents, and international standards. Mining statutes typically indicate procedures and limitations for the general conditions of exploitation and for the granting of concessions and licences, mineral rights and permits. Financial and company statutes, tax structures and laws governing land, employment, the environment and occupational health and safety often supplement statutory provisions contained in the mining code. In many jurisdictions, mining codes are accompanied by application decrees or regulations. For the purposes of understanding the legal requirements in a particular jurisdiction these instruments can be as important as the mining code.

The distinction between law and policy is relevant for this study. National policy outlines the aspirations of the executive branch of government. To achieve the aims set out in policy, the legislature may need to pass laws. That is, statute enacted by the legislature is binding and enforceable, whereas policy created by executive branches of government, private industry actors and international organisations is unenforceable, bearing no statutory force. Policies can change from one government to another and have in some cases proven to be non-compelling, even for the governments that have issued them. In short, policies are not justiciable and a claim against a policy statement has no standing in court. Thus, this report focuses primarily on legally binding instruments and the degree to which international norms and standards have been incorporated into national law and regulation.

It is common for resettlement related issues to be managed by the state through a collection of laws and regulations (e.g. on land and acquisition, expropriation of assets, mineral exploitation and environmental management, and public participation) with many different departments, institutions and individual actors involved in the process.

International standards (see Box 1) contain specific provisions for displacement, resettlement and compensation that are often absent in national laws. Recent work demonstrates that mining companies routinely fail to identify and manage known resettlement risks, or calculate the full cost of resettlement when allocating resources.¹ Thus, relying exclusively on mining companies to manage resettlement in the absence of national laws leaves too wide a margin of discretion for an activity that is known to carry potentially severe risks and impacts.²

1.3 Rationale

The scope of laws and regulations, as they relate to MIDR, varies across jurisdictions. In jurisdictions where there are considerable gaps between the national law and international safeguards, little clarity is provided in national legislation about what is practically expected of companies undertaking resettlement activities. The gaps between the national law on land access and international best practice are perhaps best illustrated in a recent paper that

¹ Owen, J.R., & Kemp, D. (2016a). [The Weakness of Resettlement Safeguards in Mining](#). *Forced Migration Review*, 52: 79.

² Owen, J.R. & Kemp, D. (2015). [Mining-induced Displacement and Resettlement: A Critical Appraisal](#). *Journal of Cleaner Production*, 87: 480.

Box 1. International standards

The major international financial institutions, including the World Bank, International Finance Corporation (part of the World Bank Group), African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development and Inter-American Development Bank, have their own involuntary resettlement policies for projects for which they provide finance. These policies have most frequently been applied in the last two decades in dam development and are integral parts of the approach these lending institutions take to manage risk for project financing. In mining, endorsement of international standards and safeguards is largely via International Finance Corporation's Performance Standard 5 (PS 5) on Land Acquisition and Involuntary Resettlement.³ There is a practical acceptance that these standards provide a minimum for protecting affected populations from known resettlement risks.⁴ Numerous global mining companies have endorsed the principles, even where they do not have an institutional relationship with the IFC as a lender or equity partner.⁵

analysed whether national legal frameworks for valuing compensation for expropriated land in 50 countries comply with international standards. The results of that study show that most of the countries assessed do not have national laws that comply with internationally recognised standards on the valuation of compensation.⁶ In order to bridge gaps between the national law and international best practice, several countries have recently updated, or are in the process of updating, national frameworks that govern MIDR and/or broader development induced displacement and resettlement (DIDR) activities. For example:

- India introduced a standalone national resettlement and rehabilitation policy (2007) and implemented associated legislation (2013)⁷
- Ghana implemented regulations to guide compensation and resettlement in the minerals and mining sector (2012)⁸
- Mozambique implemented regulations to guide resettlement resulting from economic activities (2012)⁹ and

³ Owen & Kemp (2015): 480; and Kemp, D., Owen, J.R. & Collins, N. (2017). [Global Perspectives on the State of Resettlement Practice in Mining](#). *Impact Assessment and Project Appraisal*, 35(1): 22. IFC's PS 5 sets out requirements for both the processes to be followed and the outcomes to be achieved with the objective of improving, or restoring, the livelihoods and standards of living of displaced persons and the living conditions among physically displaced persons through the provision of adequate housing with security of tenure at resettlement sites. For more detail, see [IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement](#).

⁴ Owen & Kemp (2016a): 79.

⁵ The IFC PS5, for example, is referenced in the corporate policy statements of Anglo American, Rio Tinto, Glencore, BHP Billiton, AngloGold Ashanti, Newmont and Barrick Gold. See Owen, J.R. & Kemp, D. (2016b). [Can Planning Safeguard against Mining and Resettlement Risks?](#) *Journal of Cleaner Production*, 133: 1229.

⁶ Tagliarino, N.K. (2017). [The Status of National Legal Frameworks for Valuing Compensation for Expropriated Land: An Analysis of Whether National Laws in 50 Countries/Regions across Asia, Africa, and Latin America Comply with International Standards on Compensation Valuation](#). *Land*, 6(2).

⁷ [The National Rehabilitation and Resettlement Policy \(2007\)](#) and [The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act \(2013\)](#).

⁸ [Minerals and Mining \(Compensation and Resettlements\) Regulations \(2012\)](#).

⁹ [Regulations for the Resettlement Process Resulting from Economic Activities, Decree 31/2012](#).

- Papua New Guinea and Uganda are currently developing new resettlement policies.¹⁰

These cases demonstrate a trend towards improving national level standards on resettlement. Many countries, however, continue to operate without clear objectives or standards for managing mine-induced resettlement events. Monitoring these developments is important as IFIs are actively promoting improved regulatory frameworks. The ADB, for example, has recently reviewed Indonesia’s suite of displacement and resettlement laws for material compatibility with the ADB’s safeguards policies. This review signals an increased push by IFIs to formally recognise national level legislation as having the equivalent status as the international suite of instruments. Under the Country Safeguard System (CSS), once a country’s legal and regulatory mechanisms have “graduated”, the national standards can then be used as a proxy for IFI or other safeguards-based finance. The results of the ADB technical review paper found Indonesian laws, regulations and procedures to be “broadly aligned with the objectives, scope and triggers” of the ADB safeguards.¹¹ The International Network for Displacement and Resettlement (INDR) subsequently examined and contested the findings of the review, calling on the ADB to undertake a more rigorous approach to testing for equivalence.¹²

1.4 Methodology

The comparative analysis of the legal, regulatory and policy frameworks that relate to resettlement in the mining sector focuses on six mature mining jurisdictions: Botswana, Chile, Côte d’Ivoire, Ghana, Papua New Guinea and Peru. All of these jurisdictions have hosted mining projects which have displaced people and/or are hosting projects that will necessitate displacement in the future. These jurisdictions also exhibit, to varying degrees, the factors identified by Downing (2002) as heightening the potential risks associated with MIDR:

...rich mineral deposits are found in areas with relatively low land acquisition costs that are being exploited with open-cast mining and are located in regions of high population density—especially on fertile and urban lands—with poor definitions of land tenure and politically weak and powerless populations, especially indigenous peoples.¹³

The comparative analysis of laws, regulations and policies related to resettlement in the mining sector across these jurisdictions was informed by the following research questions:

- To what extent are international safeguards present or absent across six case studies?
- What are the most significant gaps between legal and regulatory frameworks and prevailing international norms?

¹⁰ Papua New Guinea’s ‘Mining Involuntary Resettlement Policy’ and Uganda’s ‘Land Acquisition, Resettlement and Rehabilitation Policy’, respectively.

¹¹ See Asian Development Bank (ADB) (2017). [Country Safeguards Review: Indonesia Consultation Draft](#). March.

¹² See The International Network for Displacement and Resettlement (INDR) (2017). [INDR Comments on the Asian Development Bank’s Country Safeguards Review: Indonesia Consultation Draft](#). 31 April.

¹³ Downing, T.E. (2002). [Avoiding New Poverty: Mining-Induced Displacement and Resettlement](#). Mining, Minerals and Sustainable Development (MMSD), No. 58, April, p. 6.

- What lessons can be learnt for mining companies operating in country contexts where international safeguard policies and national legislation do not align?

A content analysis was used to assess legislative and regulatory provisions in each country to understand the approach to mineral extraction and surface and sub-surface land use, and how these provisions consider communities and resettlement issues within these guiding documents (refer to Appendix 1 for a list of 102 laws, regulations and policies that were scrutinised; these documents can be downloaded [via this link](#)). The study process included:

- scoping and sourcing relevant legislation and regulation;
- drawing out relevant legal and regulatory provisions and organising these thematically in tables;
- comparatively analysing relevant provisions across six case studies; and
- writing up the findings to be included in the report.

As discussed above, international standards contain provisions that may be absent in national law. International standards for planned resettlement require developers to consult with affected people, analyse the context, identify replacement settlement sites, and negotiate replacement land, prepare housing and other infrastructure ahead of physical displacement taking place, and as well as making allowances for food and water security, in addition to other livelihood essentials.¹⁴ Key requirements stated in the international standards for planned resettlement served as the basis for the selection of themes for assessing national law and regulation across the selected jurisdictions. The following themes were selected for comparative analysis:

- requirements for compensation (including matters considered when making a determination);
- requirements for resettlement;
- approach to livelihoods (e.g. compensate, restore and/or improve);
- approach to human rights and vulnerable groups (e.g. indigenous people, women, etc.);
- requirements for public participation, stakeholder consultation / engagement and information disclosure;
- planning, compliance, reporting, monitoring and supervision requirements (e.g. RAP);
- dispute resolution and other grievance mechanisms;
- relationship of mining-induced resettlement to approvals/permitting process; and
- roles and responsibilities of major actors in the event of resettlement.

1.5 Report structure

Following this overview, Section two describes land tenure systems and national frameworks for each selected country. The brief summary of national frameworks provides the foundation for section three; a comparative review of legal and regulatory frameworks for resettlement across nine themes. Section four summarises the key findings of the comparative review. In most instances throughout the report country analysis is presented in alphabetical order.

¹⁴ Owen & Kemp (2016b): 1228.

OVERVIEW OF LAND TENURE SYSTEMS AND NATIONAL FRAMEWORKS

Give
only child.
law /lɔ:/ n 1 (C) rule
proper regulation of a c
ect conduct in life
and signo

2 Overview of land tenure systems and national frameworks

This section provides the basic information regarding land tenure systems and national legal and regulatory frameworks in the mining sector, without specific reference to resettlement. Its purpose is to set the context for an in-depth analysis in Section three.

2.1 Land tenure, land rights and eminent domain

Security of tenure, either through the registration of formal title for customary land or the recognition of customary rights through statutes that validate customary tenure, is an important matter when considering the legislative foundations of mining-induced displacement and resettlement. Legal protection and the buyer's legal liabilities in each jurisdiction are dependent on the category of land tenure held by the people being displaced. In many countries, lack of clarity frequently leads to disputes about the type of land tenure system in question. It is not surprising that national level frameworks guiding resettlement are similarly weak or non-existent. In this legal and regulatory vacuum, development induced displacement and resettlement is guided (if at all) by the piecemeal application of land, environmental and planning legislation which has not been specifically designed to cover mining-related resettlement.

Ownership of the rights to land, and the right to access and use sub-surface minerals, is often held separately and by different parties. Under private or customary ownership, surface rights to land allow communities to occupy and use land and natural resources, while sub-surface mineral rights are vested in the state. As the custodian of mineral rights, it is the state alone that has the right to grant licences and permits to mining companies. Often communities have no legal involvement in making decisions about the land and its use, and governments in charge of enabling and promoting mining activities do not need to seek the permission of communities that depend on the land for their livelihoods and survival.

The process that allows the state direct access to private or customary land is enabled by the doctrine of 'eminent domain'. Eminent domain gives governments the power to acquire private land for a 'public purpose' or the 'public good' without the consent of its owner or occupant. The principle of compulsory acquisition has been established in most legal systems. Reprieve from this type of government action is difficult to realise under the law. All of the case study countries have constitutional provisions to guide the government in taking land for public interest purposes, including development projects, where no viable alternatives exist.

2.2 National frameworks

BOTSWANA

The framework for the licensing of mineral development in Botswana is set out in the Mines and Minerals Act (1999). There are presently no regulations accompanying this Act. However, the Act provides a satisfactory level of detail for the awarding and managing of concessions. This additional level of detail compensates for the lack of accompanying regulation that would

otherwise be the norm in many mining jurisdictions. Several national policies, while not binding legal documents and/or specifically related to mining, provide the context for understanding the recent trajectory of Botswana's mining regime. The focus of Botswana's Mineral Investment Promotion Policy (2008) is on creating an investor-friendly climate which aims to maximise the economic benefits for the sector. Communities, land acquisition and broad-based socio-economic development do not feature as specific themes in this policy. The National Land Policy (2011) made recommendations for promoting the rights of women and minority groups in land ownership and use. It also started the discussion about whether a dispossessed person should receive more than the market value for the existing use of land with actual future use being considered. This remains a policy and has not been implemented in a law. Finally, guidance for ensuring that economic development is equitable and improves the lives of citizens is found in the Citizen Economic Empowerment Policy (2012).

Botswana's Mines and Minerals Act (1999) (s65.2) stipulates that each applicant for a mining licence must prepare and submit a comprehensive Environmental Impact Assessment (EIA) as part of the Project Feasibility Study Report. Botswana's Environmental Impact Assessment Act (2011), prescribes the requirement for an environmental impact assessment (including a mitigation plan) when proposed activities will have a serious negative impact on the environment. Detailed requirements for an EIA are stipulated in the Environmental Impact Assessment Regulations (2012). There are no legislated mechanisms that deal specifically with a developer's obligation to identify or address social impacts.

Botswana has a dual system of land tenure and ownership which includes state land, owned by the Government of Botswana, privately owned land (through freehold tenure) and tribal land, which is held and administered under customary law. Tribal land in Botswana is distinct from customary land ownership in the surrounding countries as it is under the administration of decentralised land boards set up under the Tribal Land Act (1968). This act includes provisions for the granting of customary land. Following independence, Chiefs (*dikgosi*) retained an important role in local administration and development and were represented in national political and development policy deliberations. The area of tribal land has increased since independence to over 70% of the entire area.¹⁵ The Tribal Lands Act established Tribal Land Boards to manage customary land with jurisdictions based on ethnically defined boundaries. The *dikgosi* were made ex-officio members of the Tribal Land Boards and continue to play an important role in overseeing land allocation and land use planning.¹⁶

The Acquisition of Property Act (1955) gives the President right to acquire property to secure the development of that property for a public purpose (s3.1-2). Section 9 of Botswana's Constitution (1966) prohibits the compulsory possession of interests or rights in property. The only exception is if property is required to secure the development or utilisation of the mineral resources and the acquisition is backed by an existing legal provision. Compulsory acquisition of property, according to Botswana's Constitution (1966), also requires the prompt payment of

¹⁵ Amanor, K.S. (2012). [Land Governance in Africa: How Historical Context has Shaped Key Contemporary Issues Relating to Policy on Land](#). Framing the Debate Series, no. 1. ILC, Rome, p. 28.

¹⁶ Amanor (2012): 29.

adequate levels of compensation. Any person having an interest in or right over the property has a right of access to the High Court, either direct, or on appeal from any other authority. The High Court can be accessed to determine the person's interest or right, the legality of compulsory acquisition and the amount of compensation to which they are entitled (including obtaining prompt payment). Under the Mines and Minerals Act (1999) (s64.2), acquisition of land is deemed to be for a public purpose in terms of the provisions of the Acquisition of Property Act and any acquisition is effected in accordance with the provisions of that act.

CHILE

Chile established a regime favourable to foreign mining investment with the Foreign Investment Statute (1974), with rules based on constitutionally enshrined principles of non-discrimination, neutrality and equal treatment for national and foreign investors. This statute has been replaced by the Foreign Investment Law (2016), which continues to guarantee rights and obligations of a foreign investor established in existing contracts with the government under the provisions of the previous law. The new law established a Committee of Ministers for the Promotion of Foreign Investment to give the President strategic advice on foreign investment and also created an Agency for the Promotion of Foreign Investment, which advises the Committee and implements the Committee's strategies.

The Mining Code (1983) paved the way for foreign investment in Chile's mining sector. The mining code aimed at assuring foreign mining companies of the virtual property of the mine, ensuring stability of the rules governing resource development, and allowing companies freedom in decisions regarding mine development and other business activities. Similar to the Foreign Investment Statute, the Mining Code adopted a "market-based" approach to property allocation.

The Law on the Environment (1994) brought together and modernised the previous diverse collection of environmental statutes and regulations, and EIAs have been mandatory since 1997. In 2009, Chile introduced measures to restructure and improve the institutional framework for environmental enforcement and created a Ministry of Environment, replacing CONOMA, the National Environmental Commission. In 2010 the government introduced significant reforms, creating a Ministry of Environment, an environmental assessment agency and a compliance agency – the Superintendency of the Environment (Superintendencia del Medio Ambiente; SMA). During 2010, Law 20,417 was passed, which amended Law on the Environment (1994), making especially relevant modifications to the system for overseeing compliance with environmental standards and increasing applicable fines.

There is a special status for indigenous lands and natural resources within the national territory as set out in the Indigenous Law (1993). According to this legislation, indigenous people cannot be dispossessed from their land by any means without the approval of the Indigenous Development National Corporation. In 2008, Chile ratified the International Labour Organization's (ILO) Convention 169, which promotes and protects indigenous rights over indigenous lands and territory.

Chile's Constitution (1980) identifies: (i) the purposes for which land may be compulsorily acquired, (ii) the right of property holders to contest the action in court, (iii) a framework for the calculation of compensation, (iv) the mechanisms by which the state must pay people who are deprived of their property, and (v) the timing and sequence of possession. Article 19 of the Chilean Constitution stipulates that:

In no case may anyone be deprived of his property, of the assets affected or any of the essential faculties or powers of ownership, except by virtue of a general or a special law which authorizes expropriation for the public benefit or the national interest, duly qualified by the legislator. The expropriated party may protest the legality of the expropriation action before the ordinary courts of justice and shall, at all times, have the right to indemnification for patrimonial harm actually caused, to be fixed by mutual agreement or by a sentence pronounced by said courts in accordance with the law.

CÔTE D'IVOIRE

Articles 11 of the Constitution (2016) of Côte d'Ivoire provides that "the right to property shall be guaranteed for all; no one shall be deprived of his property unless it is in the interest of a public need and a fair and prior compensation has been paid." The institutional, legislative and regulatory framework in Côte d'Ivoire includes the Mining Code (2014) (Law No. 2014-138), the Environment Code (1996) (Law No. 96-766) and associated rules and procedures for environmental impact studies (1996) (Decree No. 96-894), and the Rural Land Law (1998) (Law No. 98-750) and associated implementing rules (1999) (Decree No. 99-594). Land expropriation is governed by the Constitution (2016), regulations for expropriation for public utility and temporary occupation in French West Africa (Decree of 25 November 1930, promulgated by Order 2980 AP of 19 December 1930), and regulations for discharge of customary land rights for public interest (2013) (Decree No. 2013-224). The new Mining Code (2014) was adopted to attract more investment into the mining sector and to ensure local communities benefit from mining. The Mining Code (2014) requires holders of mining permits to prepare a community development plan and to establish a fund in order to resource the implementation of socio-economic development plans.

In Côte d'Ivoire, investment projects in energy, infrastructure, agriculture, forestry, waste management and extractive industries are required by decree to provide an Environmental Impact Study (EIS) prior to approval. As stipulated in the Mining Code (2014), Chapter VI (Article 141), every applicant for an operating license or for an industrial or semi-industrial exploitation permit, before undertaking any type of work, is obliged to conduct and submit the Environmental and Social Impact Assessment (ESIA), which must include an Environmental and Social Management Plan (ESMP). The study and a program for environmental management must be submitted for the approval of the Ministry of Mines and Industry (Ministère de l'Industrie et des Mines; MIM) and the Bureau of Environmental Impact Assessment, which is part of the Ministry of Environment (Agence Nationale de l'Environnement; ANDE).

The management of land ownership rights in Côte d'Ivoire is subject to two legal regimes that operate in parallel and with minimum interaction: custom and the law. One of the basic

foundations of customary land management in Côte d'Ivoire is that land cannot be alienated or sold. Custom makes a clear distinction between the ownership of the soil, which belongs to the community (family, lineage or village) and cannot be sold under any circumstances, and the right of use of the soil, which can be transferred or sold.

Post-independence land policies encouraged the transfer of land to foreigners to enhance the value of land for productive purposes. In 1998, the country implemented land reforms which led to the promulgation of the Rural Land Law (1998). The law formally recognised customary or user rights to land and security of customary land tenure. The law also aimed to transform customary land tenure into formal land leases. Article 1 specifies that "only the State, public authorities and national citizens of Côte d'Ivoire are permitted to (...) become landowners" of land belonging to the rural land domain. However, non-citizens can access land via rental agreements or long-term leases. Importantly, as per Article 12 of the Constitution (2016), previously acquired land rights are guaranteed. This article of the constitution protects foreign owned land that was acquired before the 1998 reform.

As per Article 2 of the Rural Land Law (1998), customary land is recognised as one of the components of the rural land domain. Customary land is made up of "customary rights in accordance with tradition" and customary rights transferred to third parties (Article 3). Therefore the law differentiates between rights in accordance with tradition, that is, "original" rights detained by the customary owner and his lineage and those transferred by a customary owner to people that do not belong to the lineage, especially migrants, irrespective of whether they are citizens. Almost two decades after the adoption of the Rural Land Law, approximately 98 per cent of land rights are held under custom, reflecting the difficulties in law enforcement.

GHANA

In Ghana, before obtaining a minerals right, a company must follow due procedure as stipulated in the Minerals and Mining Act (2006) and the Environmental Protection Agency Act (1994). Under the Minerals and Mining Act (s18 and s49.2), the mineral right holder is required to obtain the necessary approvals and permits required from the Forestry Commission and the Environmental Protection Agency (EPA) for the protection of natural resources, public health and the environment before undertaking an activity or operation under a mineral right. The Environmental Protection Act (1994) brought the EIA process into the legal framework of Ghana. Apart from extensive experiences with EIA, Ghana has a relatively high level of experience with the application of Strategic Environmental Assessment (SEA), particularly since the Environmental Assessment (Amendment) Regulations (2002) were enacted. Where the EPA is of the view that a significant adverse environmental impact is likely to result from the activities of any undertaking, the applicant is required to submit an Environmental Impact Statement.

Ghana's land is governed by a pluralistic legal system in which customary and statutory systems overlap. The Constitution (1992) distinguishes between public lands that are governed by customary tenure and those that fall exclusively under state authority. The Constitution describes the nature of customary land ownership as a social trust, whereby customary authorities (vested in stools, skins, clans and families) hold land in care for their subjects whether

living, dead and yet to be born.¹⁷ Article 40 of the Constitution of Ghana incorporates customary law as a part of the laws of Ghana.

Approximately 20 per cent of land in Ghana is officially owned by the state, although this only includes land that the state acquired legally. Most of Ghana's land is held under customary tenure and is vested in chiefs, earth priests (who hold spiritual authority over land matters because of their role as the descendants of the first village settlers) or other customary authorities. Approximately 80 per cent of land is owned predominantly by customary authorities. The customary land tenure framework includes several categories of land interest, including freehold, leasehold, licenses and easements. Customary lands are managed by a custodian (a chief or a head of family) with the principal elders of the community. Any decision taken by the custodian that affects rights and interests in the land, especially the disposition of any portion of the communal land to non-members of the landholding community, requires the agreement of the principal elders. Since chiefs have a central role in land allocation, mining companies often engage directly with the stool and the village chiefs to secure access to surface land. The well-respected authority of the chiefs makes them a preferred entry-point in negotiations with affected communities.

Article 20 of Ghana's Constitution (1992) underpins the authority of the state to compulsorily acquire landed property in the public interest. Compulsory acquisition of property by the state shall only be made under a law which makes provision for:

- the prompt payment of fair and adequate compensation; and
- a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority, for the determination of his interest or right and the amount of compensation to which he is entitled.

Ghana's State Property and Contracts Act (1960) first placed all state property in the hands of the President and granted the President the sole power to compulsorily acquire Ghanaian lands. The State Lands Act (1962), retaining the provisions of the earlier act, currently governs all compulsory acquisition and compensation.

PAPUA NEW GUINEA

Mining in Papua New Guinea (PNG) is regulated by the Mining Act (1992) and associated regulations. Under the Mining Act, the state may enter into a Mining Development Contract (MDC), consistent with the Act, to regulate a mining development. All major mining projects have been the subject of an MDC. Previously these were enacted as Acts of the National Parliament (for example, the Mining (Ok Tedi Agreement) Act) but this practice has since been discontinued. The Mining Act is currently under review and substantial changes are being considered by the current government. Under the Environment Act (2000), applications for development approval to undertake mining operations that might have an adverse impact on the environment are required to prepare and lodge an Environmental Impact Statement. This Act stipulates that

¹⁷ A stool is the traditional symbol of office for chiefs in southern Ghana and a skin is the equivalent symbol in the north. Hence, in terms of land tenure "stool" is the term used to refer to the chieftaincy or representative of the tribal system that owns land, in northern Ghana and "skin" is used for the same in southern Ghana.

Social Impact Assessment (SIA) is an integrated component of a project's EIA process. Specifically, the Act stipulates that a project's potential social impacts be identified in an Environmental Impact Statement.

Landowner issues are an important consideration in any proposal to undertake resource development in Papua New Guinea. Very little land is alienated or the subject of registered title. The majority of land country wide is managed under customary tenure. A development forum process, whereby all relevant stakeholders (including landowners, provincial government and the national government) discuss and agree on key issues for the development of a resource project, is obligatory in conjunction with the negotiation of an MDC, which is required to obtain a special mining lease. The purpose of the development forum is to negotiate a memorandum of agreement, which includes important clauses on benefit sharing.

The Land Groups Incorporation (Amendment) Act (2009) affirms rights of customary tenure and the leasehold system by which non-citizens can acquire access to land. It also recognises both ownership rights and use rights. Customary land tenure in PNG constitutes land being held by "clans, lineage, family, extended family or other groups of persons who hold, or are recognised under custom as holding rights and interests in customary land" as a communal asset, rather than by individuals. This arrangement places practical constraints on the ability of any one member to alienate or sell land. Legislation is in place that allows customary land groups to use their land in the formal economy by entering into lease arrangements with government or private sector interests. One of the most common methods is the incorporation of the customary landowner group so that it is formally recognised as a legal body by the legal system. The Incorporated Land Group (ILG) becomes the representative of the tribe in the formal legal system and is able to enter into agreements and make decisions on behalf of the customary group.¹⁸

Article 53 of Papua New Guinea's Constitution (1975) protects citizens from 'unjust deprivation of property' by limiting justification for compulsory acquisition by the State. Just compensation must be made on just terms by the expropriating authority, giving full weight to the National Goals and Directive Principles and having due regard to the national interest and to the expression of that interest by the Parliament, as well as to the persons affected. In addition to cash payment, the Constitution (1975) stipulates that just compensation can include "a fair provision for deferred payment, payment by instalments or compensation otherwise than in cash". The Land Act (1996) presents the framework for land acquisition in Papua New Guinea and, in accordance with the Constitution (1975), establishes that land may only be leased to foreign individuals or business. The State has no authority over customary land other than in the provisions spelt out in the Land Act (1996) which describes the acquisition of customary land for public purposes.

¹⁸ While this type of legal vehicle has been useful in some contexts, there have been problems when ILGs have been used as vehicles for receiving royalty and compensation payments from mining companies. For more detail, see Power, T. (2008). [Incorporated Land Groups in Papua New Guinea](#). In *Making Land Work, Volume Two: Case Studies on Customary Land and Development in the Pacific*. Canberra, Australian Agency for International Development (AusAID), pp. 3-20.

PERU

From the early 1990s, Peru became increasingly open to foreign mining investment, adapting its regulatory framework to reflect the pro-investment agenda. These reforms included the updated General Mining Law (1992), law that promoted foreign mining investment (1992), incentives for investing in natural resources (1996) and regulations that reorganised the functions of the Ministry of Energy and Mines (MINEM) (2006). In 2014, the national government enacted a raft of changes in “Law that establishes tax measures, simplifies procedures and permits for the promotion and revitalization of investments in the country” (*Ley Que Establece Medidas Tributarias, Simplificación de Procedimientos y Permisos Para la Promoción y Dinamización de la Inversión en el País*) (Law 30,230). The passing of Law 30,230 ratified the pro-investment agenda.

In addition to the General Mining Law (1992), a number of other laws and regulations regulate mining in Peru. The principal environmental laws include the General Environmental Law (2005), the Law of the National System of Environmental Management (2004), the Law of the National System of Environmental Impact Assessment (2001) and associated EIA regulations (2009). The System of Environmental Impact Assessment Law (2001) and associated regulations (2009) impose obligations on proponents of mining projects to evaluate potential environmental and social impacts, and proposes relevant prevention, mitigation or compensation measures in an EIA, which must be approved by the relevant authority (Servicio Nacional de Certificación Ambiental para las Inversiones Sostenibles; SENACE). This is a condition for the commencement of any project activity.

The Peruvian Constitution (1993) provides that native and peasant communities are autonomous in their organization, communal work and in the use and free disposal of their lands, as well as in economic and administrative matters within the framework established by law. In 1994, Peru signed and ratified the ILO 169 Convention, which gave indigenous communities the right to participate in and be consulted on issues and activities that could affect their territories and ways of life. The government strengthened this protection with passing of a supreme decree that stipulates rules and regulations for prior commitment as a requirement for the development of mining activities (2003) and the Law of the Right to Prior Consultation to Indigenous or Native Peoples (2012).

Land laws have been adopted that provide for the recognition of customary tenure. Native Community and Agrarian Development Law (1978) and General Law of Campesino Communities (1987) recognize the customs, practices and traditions of the native and peasant communities, respectively, and their rights to communal land. Law on Purchase and Sale of Land (1995) provides that beneficiaries of agrarian reforms would receive title to the allocated land and makes special provisions for recognising peasant and native communities' holdings and established quorum requirements for the sale of communal land. It permits native and peasant communities to determine how they will hold land (i.e., communally or individually). In highland communities, two-thirds majority is required in a formal assembly for the approval of the sale of land. Law 30,230 (2014) establishes a special procedure for formalising plots located within the area of influence of public and private investment projects. In the past, the Law on Purchase and Sale of Mining Land (1996) (*Servidumbre Minera*) provided the possibility to expropriate the lands

of peasant families and communities in the case they were not able to reach an agreement on compensation with the mining concessionaire.

Chapter III, Article 70, of the Peruvian Constitution (1993) stipulates that:

The right to own property is inviolable and guaranteed by the government. It is exercised in keeping with the common good and within the confines of the law. No one may be deprived of his property except for reasons of national security or public need, declared by law and following cash payment of the appraised value, which must include compensation for potential damages. Proceedings have been instituted before the Judicial Branch to challenge the value of property which the government has established in the expropriatory procedure.

COMPARATIVE REVIEW OF NATIONAL FRAMEWORKS

Give
only child.
law /lɔ:/ n 1 (C) rule
proper regulation of a c
ect conduct in life
and signo

3 Comparative review of national frameworks

3.1 Compensation

For each of the jurisdictions surveyed, the landholder is entitled to compensation for losses suffered when the government acquires land for public use. As illustrated in Section 2, all constitutions provide for the landowners' right to fair, prompt and/or adequate compensation in the event of land expropriation. In addition, national land laws also require prompt compensation for any such land-taking. The type of land rights held by citizens will determine how land is acquired and the level of compensation made by the government. Generally, where land is acquired from private owners, compensation is given to the owner for ownership interests in the land along with other elements prescribed by law. The compulsory acquisition of land from customary rights holders is less prescriptive: the outcome depends on the investor or government agency negotiating with the community and on the community's legal awareness and access to knowledge.

In Botswana, Chile, Côte d'Ivoire, Papua New Guinea and Peru, compensation is primarily based on the agreed or fair market value (FMV) of the land at the time of the acquisition. Compensation based on FMV and without additional provisions indicating that business and other economic activities are compensable, can be insufficient to cover the losses borne by affected landholders.¹⁹ Affected populations that built, used and maintained improvements on their land may receive compensation that is insufficient to cover what they spent on assets over time.²⁰ As illustrated below, Ghana has established alternative approaches to calculating compensation, which can be applied in cases where land markets are weak or non-existent.

Laws in Botswana, Côte d'Ivoire, Ghana and Papua New Guinea allow affected populations to negotiate compensation levels directly with developers. In these countries, affected populations do not necessarily have the final say regarding compensation amounts, but are granted the right to enter into negotiations with developers, submit claims for compensation and/or to reach an agreement on compensation amounts that are formally endorsed by the government. Laws in Chile and Peru do not provide affected populations with a legal basis for negotiating compensation amounts with resource developers or the state.

Amongst the sample of countries surveyed, Ghana is the only country that has laws that provide affected populations with a right to opt for alternative land instead of, or in addition to, compensation. Other surveyed countries do not have laws that explicitly or implicitly provide alternative land as a compensation option. In these countries, compensation must be paid in cash and once paid the process of compensation is considered to be complete. In all surveyed countries, informal occupants are not entitled to compensation for the expropriated land.

¹⁹ Tagliarino (2017).

²⁰ For example, in Peru, a World Bank study found that the market value approach was not always successful in ensuring that affected populations maintain their economic status after expropriation. See World Bank (2013). *Land Governance Assessment Framework: Final Report for Peru*. World Bank: Washington, DC, p. 37

BOTSWANA

In Botswana, land acquisition and compensation is administered under the Acquisition of Property Act (1955) and compensation is confined solely to the value of the property on the land. The act provides for paying of compensation as may be agreed for compulsory acquisition. Dispute as to the amount of compensation payable and title is to be settled under the terms of the act. According to s16 of the act, the matters to be considered in determining compensation for the value of the property on the land include the market value; damage sustained from alienating land from landowner; and incidental expenses associated with relocation. Botswana's Tribal Land Boards and Tribunals set out requirements for compensation when land for mining development is required.

According to Botswana's Mines and Minerals Act (1999), mineral rights cannot be exercised without the written consent of the lawful occupier. Before granting minerals permit the Minister for Minerals, Energy and Water Affairs has to determine whether the consent of the owner of the area applied for has been obtained. The act (s63) requires mineral concession holders to pay fair and reasonable compensation for any disturbance to the rights of the owner or lawful occupier. The concession holders are also required to pay for any damage done to the surface of the land or to crops, trees, buildings or other works at FMV rates. Compensation for deprivation of rights is payable only on demand by the owner or lawful occupier, and there is only a limited period of five years within which a claim can be laid. Thus, the onus is on the owner or the occupant to know and assert their rights. Calculating compensation includes any improvement effected by the holder of the mineral concession, the benefit of which has or will ensue to the owner or lawful occupier thereof.

CHILE

In Chile, landowners have the right to ask the mining concessionaire to remedy any damage caused by the operation of the mine. Mining concessionaires have preferred rights to request mining easements over surface real estates as stipulated in the Mining Code (1983).²¹ Those can be either negotiated and agreed with the surface land's owner or granted by the judicial courts in case of lack of agreement between parties, by means of an easement. In the latter case, a non-contentious legal proceeding ends with court decision granting the easement. In all cases, the judicial courts grant the easement and determine the amount of the compensation. Material possession of the expropriated property can only take place following total payment of the compensation. In case of protest regarding the justifiability of the expropriation, the judge may, on the merit of the information presented, order the suspension of the material possession.

CÔTE D'IVOIRE

According to Côte d'Ivoire's Mining Code (2014), Chapter III (Article 127), the occupation of land is subject to compensation to the landowner or the lawful occupier. As stipulated in Article 128, the use of land for prospecting, research or exploitation of mineral substances and the related industries, entitles the title holder to fair compensation if they have to abandon land because of the mining activities. For this purpose, the rights holder and landowner or lawful occupiers have

²¹ The creation of easements, the exercise thereof, the corresponding compensation for damages and other characteristics are governed by the provisions of articles 122 to 125. The easements can only be created after assessment of the damages to the owner of the lands (a122). The creation of an easement, the use thereof, and the corresponding damages to be paid shall be defined by agreement between the interested parties, evidenced by a public deed, or by court decision (a123).

to reach a mutual agreement. Such agreement should contain the amount of the compensation payable, which is determined based on an agreement between the operator and the title holder under the supervision of the Ministry of Industry and Mines (Ministère de l'Industrie et des Mines).

Several other laws and regulations govern compensation in Côte d'Ivoire. For example, the Decree of 24 August 1993 specifies that compensation for expropriation must include only actual and confirmed damages directly caused by the expropriation; it cannot extend to uncertain, contingent or indirect forms of damage. Decree No. 95-817 (1995) sets the rules for compensation for the destruction of crops. The Inter-ministerial Order No. 28 MINAGRA / MEF (1996) sets the schedule of rates for crop compensation, based on the advice provided by the Ministry of Construction and Town Planning. Decree No. 2013-224 (2013) prescribes regulations for the waiver of customary land laws for the general interest. This decree stipulates that the land rights holders will receive a fair and prior compensation. The Administrative Commission responsible for oversight of customary rights is charged with determining the proposed compensation for holders of customary rights based on FMV in accordance with the provisions of the decree.

GHANA

Ghana's State Lands Act (1962) governs all compulsory acquisition and compensation. The act mandates compensation rates and sets procedures for public land acquisitions. Compensation to the land user is based on the value of their development (such as the value of the crop), while compensation for the value of the land itself is vested in the chief as the holder of 'allodial title'.²² Compensation is paid to the holder of allodial title (usually the stool or skin) for the benefit of the community. Community members with informal land rights often do not receive payment as a result. In Ghana the state must give back the land to the owners when it is no longer used or not used for the purpose for which was compulsorily acquired. The Lands Statutory Way Leaves Act (1963) on compensation assessment includes the exemption from paying compensation when the land affected does not exceed 20 per cent of the project affected peoples' total land holdings.

Ghana's Minerals and Mining Act (2006), Chapter 1 (s2), authorises the President to compulsorily acquire or occupy land required for mineral resource development. The Act requires fair, adequate and prompt compensation to the land rights holder. If the President chooses to exercise the right of compulsory acquisition instead of authorizing the occupation and use of the land, the individual land owner is entitled to compensation and the landowner's consent is not required before the granting of the lease. If the President only authorises occupation and use of the land for exploiting minerals, the individual land owner's consent is required before the activity is started. The landowner cannot veto the state's right to exploit the resource, but can only negotiate the level of compensation for the disturbance of surface rights.

Chapter 10 (s73.1) of the Minerals and Mining Act (2006) entitles the owner or lawful occupier of land to claim compensation from the mineral right holder for the disturbance and the loss of

²² Allodial title constitutes ownership of real property (land, buildings and fixtures) that is independent of any superior landlord or government authority. Allodial title is related to the concept of land held "in allodium", or land ownership by occupancy and defence of the land. Historically, much of land was uninhabited and could therefore be held "in allodium".

assets. According to Chapter 10 (s74.1), the compensation to which an owner or lawful occupier may be entitled, may include compensation for:

- deprivation of the use or a particular use of the natural surface of the land or part of the land;
- loss of or damage to immovable properties;
- in the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land;
- loss of expected income, depending on the nature of crops on the land and their life expectancy, but claim for compensation lies, whether under the act or otherwise;
- in consideration for permitting entry to the land for mineral operations;
- in respect of the value of a mineral in, on or under the surface of the land; or
- for loss of damage for which compensation cannot be assessed according to legal principles in monetary terms.

Ghana's Land Commission is the body charged with the responsibility to ensure the judicious management of the country's land. The Land Valuation Board, a division of the Commission involved in the valuation of land and other properties, assists the mining sector in issues relating to compensation. Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012) has broadened the scope stipulated in the Minerals and Mining Act (2006) in respect of the principles that must be considered in the assessment of compensation. The regulation has extended the scope of what can be claimed under the Act: for instance, compensation for the loss of expected income from businesses, land use and expected income from crops.²³ The regulation invites the Land Valuation Board to play an active role in making valuations on behalf of claimants. Statutes on compensation explicitly define valuation methodologies and also prescribe the principle of equivalent reinstatement. Three traditional methods are predominantly employed to estimate compensation amount. These are the direct comparison method (particularly for land *per se*), the investment and replacement cost methods.

PAPUA NEW GUINEA

Papua New Guinea's law treats resettlement or relocation as 'compensation' issues. These are distinct from the distribution of 'project benefits' negotiated in a 'development forum'. The Land Act (1996) details how compensation for land must be approached and sets general principles of compensation (s23). It provides that affected persons and the Minister must reach an agreement on compensation (s21, 25-26). The Act also sets out a procedure for the negotiation of

²³ Specifically, the regulations require that the assessment of compensation is based on a four tier principle:

In respect of crops on land granted for mining purposes, the assessment must take into consideration the loss of expected income, which depends on the nature of the crops and their life expectancy; loss of earnings or sustenance suffered by the farmer under any customary tenancy or any other interest the farmer may have; and other disturbances suffered as a result of the grant of the mineral right.

With regard to the deprivation of use of the land, the Regulations provide that the assessment must take into account the disruption of the socio-economic activities of the claimant; change or conversion of use of the land after mine closure; duration of the mining lease; diminution of the value of the land as a result of the diminution of the use made of or which may be made of the land; severance of any part of the land from the other parts and any surface rights access.

Where there are commercial structures on the land subject to a mineral right, the compensation principles will be the cost of re-establishing commercial activities elsewhere in a similar locality; loss of net income during the period of transition; and the costs of the transfer and re-installation of plant, machinery and equipment.

In respect of immovable property, where there is a loss or damage, the payment of compensation must be based on full replacement cost.

compensation agreements in cases where the State exercises its power of compulsory acquisition. The procedure (s12-22) relates primarily to physical and not economic displacement. PNG law does not establish any distinctive procedures for the negotiation of agreements to compensate people for economic (rather than physical) displacement. The Land Act states that compensation must take into account both the value of land and any acquisition related depreciation of affected persons' remaining land holdings. Laws and guidelines do not prescribe measures based on 'full replacement cost' or 'standard of living'.

According to the Mining Act (1992), the holder of a tenement is liable to pay compensation to the landholders for all loss or damage suffered (or foreseen to be suffered) from mining activities (s154). Landholders are entitled to compensation for:

- deprivation of the possession or use of the natural surface of the land;
- damage to the natural surface of the land;
- severance of land or any part thereof from other land held by the landholder;
- any loss or restriction of a right of way easement or other right;
- the loss of, or damage to, improvements;
- in the case of land under cultivation, loss of earnings;
- disruption of agricultural activities on the land; and
- social disruption.

According to the Mining Act (1992), the holder of a tenement shall not enter onto or occupy any land until they have made an agreement with the landholders as to the amount, times and mode of compensation and the holder of the tenement has paid such compensation (s155). Where applicable, compensation is determined with reference to the values based on Valuer General's 'Standard Compensation Rates'. These do not include provisions for the value of economic assets aside from cash crops and fish ponds.

PERU

Peru's Legislative Decree No. 1192 (2015) has repealed the General Law of Expropriation (1999). The decree defines expropriation as:

The compulsory transfer of the right to private property, authorised only by an explicit act of Congress in favour of the State and at the government's initiative, regarding property required for the execution of infrastructure works or for other reasons of national security or public necessity declared by law; following cash payment of the appraised value including compensation for any damage to the expropriated person.

Peru's General Mining Law (1992) requires holders of mining concessions to identify the owner of the surface rights and negotiate right of access with local landowners. Law on Purchase and Sale of Land (1995) (Article 7), Law on Purchase and Sale of Mining Land (1996) (*Servidumbre Minera*) and General Mining Law (1992) (Article 37) posit that right of access can be determined by agreement (typically a contract of sale). If an agreement on compensation is not forthcoming, the concessionaire may apply to the MINEM to obtain an easement (*servidumbre*): a right-of-way permitting access to the surface-owner's property for the purposes of mining.

Law 32,230 (2014) was enacted in response to slowing annual growth rates and production of key metals. There is no provision in this law for adequate compensation or resources for relocation and a viable alternate source of income for the families relocated from state-owned land.²⁴ Instead, provisions in the law allow the government to provide lands for mining projects through “special procedures”, without defining them.²⁵

3.2 Resettlement

None of the six surveyed countries included in this study have a clear national resettlement policy or a single law to guide development project induced resettlement. PNG has a draft framework that is comprehensive but there is uncertainty over when the policy framework will be approved or whether all of the proposed elements will be incorporated into legislation once finalised.²⁶ Ghana is the only country surveyed that has regulations specifically related to resettlement in the mining sector. These were developed to standardise resettlement, to ensure socio-economic and cultural factors are considered, and to guarantee a better quality of life for affected populations. In all countries, with the exclusion of Ghana:

- mining regimes do not regulate the processes of resettlement and relocation in a clear and specific manner;
- the law is silent on whether resettlement is a measure of last resort; and
- there are no legal provisions to monitor or evaluate resettlement.

GHANA

Ghana’s Constitution (1992) is unique among surveyed countries in that it specifically requires resettlement (and not just cash compensation or relocation) where land is acquired for the public or national interest. The Constitution (1992) protects the right to private property and establishes requirements for resettlement in the event of inhabitants are displaced by the State acquisition. Article 20 (s2.a) of the Constitution stipulates:

Where a compulsory acquisition or possession of land effected by the State involves displacement of any inhabitants, the State shall resettle the displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values.

Chapter 10 (s73.4) of Ghana’s Minerals and Mining Act (2006) requires that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land. As part of the resettlement process due regard has to be given to their economic well-being and social and cultural values. According to Chapter 10 (s73.5) of the act:

²⁴ School of International and Public Affairs, Columbia University (2015), [Mining in Peru: Benefiting from Natural Resources and Preventing the Resource Curse](#), Capstone Workshop, Spring 2015, p. 23.

²⁵ Another aspect of the law is that it grants investors rights to not only the immediate area of their project, but to any area that may be indirectly impacted.

²⁶ PNG’s Involuntary Resettlement Policy (IRP) is currently in draft. The draft policy stipulates that where the EIS identifies resettlement as a potential impact, the Mineral Resources Authority (MRA) will collaborate with the Department of Environment and Conservation (DEC) to ensure that the requirements of the IRP are met. The IRP will align with future changes to the Mining Act (also in draft) and outline approaches to be used to plan, monitor, implement and evaluate potential displacement of impacted communities, as well as audit resettlement and compensation issues.

The cost of resettlement shall be borne by the holder of the mineral right, as agreed by the holder and the owner or occupier, by separate agreement with the Minister or in accordance with a determination by the Minister.²⁷

Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012) sets out the framework for resettling communities affected by mining and lists detailed and more restrictive procedures for resettlement. It requires the holder of the mining lease and inhabitants to be resettled to execute a resettlement agreement on the basis of the terms and conditions agreed on between the parties.

All **other countries** surveyed did not have a single or coherent legal framework to regulate resettlement in the mining industry or procedural guidance for companies to follow when they are required to resettle and compensate communities displaced by mining activities. In these countries laws and regulations do not provide definitions to assist in identifying physically or economically displaced persons, or offer guidance on engagement processes and procedures, financial and other assistance with resettlement, or specify which institutions have jurisdiction in the case that decisions are contested.

Laws and regulations relating to Environmental and/or Social Impact Assessment (ESIA) may include requirements for resettlement issues to be addressed for projects that trigger involuntary resettlement. Chile is the only country surveyed in which ESIA regulations make explicit reference to impacts of resettlement or to the need for avoidance or limiting of physical or economic displacement. Chile's Law of the Environment (1994) (Article 11c) outlines environmental and social impacts that trigger the preparation of an Environmental Impact Study, which include resettlement of communities or significant alteration of customs and ways of life. In addition, Chile's SEIA regulations (2013) (Article 8) establish that "the owner must present a Study of Environmental Impact if the project or activity causes resettlement of human communities or significant alteration to their cultural customs and ways of life." Chile's SEIA regulations, however, do not specify the criteria for choosing a relocation site and for determining its suitability. In other surveyed countries, ESIA guidelines and regulations do not make explicit reference to resettlement as one of potential negative impacts or to the need for avoidance or limiting of physical or economic displacement.²⁸

3.3 Livelihoods

Mining activities can affect local communities' land rights as well as their economic interests, which include loss of property, infrastructure and livelihoods. In the international arena, safeguard policies and performance standards state clearly that livelihood restoration is a central and necessary component of resettlement planning.

²⁷ The obligation to bear the cost of resettlement shall only arise upon the holder actually proceeding with the mineral operation. Moreover, if the project does not proceed, the state is obliged to give back the land to the owners.

²⁸ Laws and regulations that oblige proponents of mining projects to evaluate and mitigate environmental and/or social impacts include Botswana's Environmental Impact Assessment Act (2011) and associated regulations (2012); Côte d'Ivoire's Environmental Code (1996) and associated rules and procedures for environmental impact studies; Ghana's Environmental Protection Agency Act (1994) and Environmental Assessment Regulations (1999); PNG's Environment Act (2000); and Peru's Law of the National System of Environmental Impact Assessment (2001) and associated regulations (2009).

Ghana is the only surveyed country in which laws and regulations address livelihood restoration. Chapter ten (s73.4) of Ghana's *Minerals and Mining Act* (2006), states that:

The Minister shall ensure that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic well-being and social and cultural value, and the resettlement is carried out in accordance with the relevant town planning laws.

Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012) require that displaced people are resettled to suitable alternative land and that their livelihoods and living standards are improved. In general, the core thrust of the document is that livelihoods of resettled communities should not be worse off compared with their situation before the resettlement. As stipulated in s6.1:

...the inhabitants shall be resettled by the holder on suitable alternative land and the resettlement shall have regard to the economic well-being and sociocultural values of the persons to be resettled, with the objective to improve the livelihoods and standards of living of those persons.

Legal and regulatory instruments in other surveyed countries do not have a legal or regulatory requirement for livelihood restoration and do not prescribe measures of 'full replacement cost' or 'standard of living'. It is apparent that in these countries livelihood restoration is not considered a government priority.

3.4 Human rights and vulnerable groups

Chile and Peru are among 22 countries that have signed and ratified the ILO Convention 169 (Indigenous and Tribal Peoples Convention). Botswana, Côte d'Ivoire, Ghana and Papua New Guinea have not signed or ratified the convention.

Under ILO Convention 169, indigenous peoples have the right to be consulted on legislative or government matters that could affect them directly and can participate in the preparation, application and evaluation of development plans and programs. Convention 169 establishes a higher standard than consultation when relocation of indigenous peoples is considered necessary, stipulating that in these cases, "relocation shall take place only with their free and informed consent" (Article 16.2). Therefore, in Chile and Peru, the ILO Convention 169 requires free, prior and informed consent (FPIC) in cases involving the relocation of indigenous and tribal peoples.

In other surveyed countries, legal and regulatory systems do not provide for any form of special assistance/compensation for vulnerable groups affected by a mining project. Specifically, there is no regulation for resettlement or compensation of vulnerable groups, for example, those living below the poverty line, landless people, elderly, women and children, minorities and indigenous people. Although vulnerable groups may be identified during project socio-economic studies and census, legal and regulatory provisions do not require that they receive special assistance or treatment.

In fact, formal systems mainly favour project affected persons with legal titles to land over those who have no legal titles. Governments do not fully recognise the claims of displaced persons without recognisable legal right or claim. Project affected persons with no recognisable legal property rights are usually not engaged in resettlement negotiations. Indigenous people, pastoralists, hunters and gatherers, swidden agriculturalists, fishermen and others who depend upon access to common lands but have no legal claim receive no compensation based on these legal and regulatory frameworks. In addition, vulnerable groups often lack access to or do not have the capacity to pursue grievances through the formal judicial system. Legal systems thus pose a challenge for vulnerable groups who may not receive just treatment or compensation because they lack resources or proper legal representation.

Under national legal frameworks, customary tenure rights are often not considered “legitimate” objects of compensation. Compensation procedures are only applied to registered private property owners and other landholders with statutorily recognised tenure rights.²⁹ Such compensation procedures put unregistered customary tenure holders, including indigenous peoples and local communities, at a point of manifest disadvantage. Under such legal regimes, communities that hold land under customary tenure without statutorily recognised rights may be effectively precluded from submitting claims for compensation because registration and titling procedures can be difficult to access, costly, and time-consuming. In Peru, for example, indigenous forest communities must clear 27 bureaucratic hurdles to achieve official recognition and formal land titles; this process can take more than a decade.³⁰

In Papua New Guinea, laws provide compensation for community tenure rights regardless of whether those rights are formally registered or not. The legal frameworks of Botswana, Chile, Côte d’Ivoire, Ghana and Peru do not grant communities with unregistered customary tenure the right to obtain compensation when their land is expropriated. In these countries/regions, registration of customary tenure rights is a prerequisite to obtaining compensation.

The majority of land in Botswana, Côte d’Ivoire and Ghana is held under customary tenure. This means that access to land is largely administered by indigenous systems of land tenure and customary laws. Community-level decision making about land is the exclusive purview of chiefs, or family heads who exercise that role on behalf of the community, clan or family. In Ghana, traditional chiefs are a central part of rural civil society and have an effective control over land and natural resources. They are able to negotiate leases with investors without the participation of the land users, having a “de facto” power to expropriate customary land for the public or national interest. When combined with a notion of private land holding, this protects those who hold registered titles from expropriation of land, while enabling those who do not hold titles (the vast majority of the peasantry) to lose their land without compensation for the value of the land or the loss of livelihood.³¹

²⁹ Lindsay, J., Deininger, K. & Hilhorst, T. (2017). [Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy](#). In Iljoong Kim, Hojun Lee and Ilya Somin (eds.), *Eminent Domain: A Comparative Perspective*. Cambridge University Press: Cambridge, pp. 93-117.

³⁰ Rainforest Foundation (2015). [Peru at the Climate Crossroad](#). Rainforest Foundation: London, p. 12.

³¹ See Schoneveld, G.C. & German, L. (2014). [Translating Legal Rights into Tenure Security: Lessons from the New Commercial Pressures on Land in Ghana](#). *The Journal of Development Studies*, 50(2): 187-203; Kuusana, E.D. & Gerber, N. (2015). [Institutional Synergies in Customary Land Markets—Selected Case Studies of Large-Scale Land Acquisitions \(LSLAs\) in Ghana](#). *Land*, 4(3): 842-868.

In Botswana, chiefly interests have been represented within nationalist coalitions, and their political prominence has resulted in their ability to influence the definition and administration of customary tenure. Tribal Land Boards are able to influence land rights based on ethnicity, with the allocation of land restricted to members of a “tribe”. Specifically, the Tribal Land Boards recognise the customary laws of the dominant Tswana group above other groups and accord recognition to Tswana chiefs on the boards, while not recognising the rights of ethnic minorities. This has raised much concern, in that it is seen to be in contradiction with the constitution, which recognises the equality of all citizens. Vulnerable groups, which include women and ethnic minorities, often lack power and representation especially in access to land.³²

3.5 Public participation, consultation and information disclosure

The key indicator of inclusive decision-making processes in resettlement projects is that all affected persons are given early and informed opportunity to participate in the negotiation of the compensation packages, eligibility requirements, resettlement assistance, suitability of proposed resettlement sites and the proposed timing.

Special provisions should be applied to consultations which involve Indigenous Peoples as well as individuals belonging to vulnerable groups. Consultation and engagement should continue during the implementation, monitoring, and evaluation phases of a resettlement event. This requires meaningful and adequate systems of participation with respect for the views, opinions and livelihoods of mining-affected communities. Crucially important to the resettlement process is access to adequate information.

With the exception of Ghana in the case study countries examined, there are no legal mechanisms requiring proponents to consult with affected communities or to discuss resettlement alternatives. Legal provisions in Chile and Peru require proponents to consult with indigenous peoples on significant project impacts. The law does not single out ‘resettlement’, but it is assumed that in this case resettlement would qualify as a significant impact.

GHANA

Under Ghana’s State Lands Act (1962), compulsory acquisition procedures are publicised to attract claims from project affected persons. The principal community engagement laws applicable are the Minerals and Mining Act (2006) and the Minerals and Mining Regulations (2012). The existing legislations and institutions contain measures that support the participation of stakeholders in discussions before mining operations begin.

The Minerals and Mines (Compensation & Resettlement) Regulations (2012) describes the activities necessary to develop a resettlement plan, including stakeholder engagement. According to s2.3 of these regulations, a negotiation committee should be constituted to negotiate with the mining company on behalf of the local residents. The regulation supports the idea that communities should have access to specialists who can assist them in the process of negotiations and asset valuations. As stipulated in s7 and s8 of regulations, the holder of the mining lease is obliged to:

³² Catholic Commission for Justice and Peace (2014). [Land Displacement, Involuntary Resettlement and Compensation Practice in the Mining Sector: A Comparative Analysis of Legal and Policy Frameworks in Southern Africa](#).

- engage in prior consultations with the District Assembly, chiefs and the inhabitants to be resettled on the impending resettlement activities;
- present a draft baseline study report for discussion at a public forum of key stakeholders; and
- produce a final plan which takes into consideration the comments, suggestions and recommendations which arise out of the presentation and discussion of the draft plan by the stakeholders.

The regulation procedurally privileges the claimant by guaranteeing that evaluations and consultations are pre-financed. The opportunity to consult in order to give input is procedurally entrenched both before and during operations. Prior to project approval, a provision in the regulation requires a 21-day publication at the relevant District where the project will be sited. Subsequently, before any work can begin, all stakeholders invited to negotiate compensation. As per s2.1 of Minerals and Mines (Compensation & Resettlement) Regulations (2012), stakeholders include all persons “who claim compensation in relation to land which is subject to a mineral right or whose interest in land is affected by the grant of a mineral right.” As stipulated in s1.1 of Minerals and Mines (Compensation & Resettlement) Regulations (2012), the communities affected are informed of future mining operations within 14 days after a mineral right is granted. During the operations, stakeholders are allowed to request assistance and file complaints with the Land Valuation Board. In cases of resettlement, major stakeholders are included in the review committee.

Ghana’s Minerals and Mining (Compensation and Resettlements) Regulations (2012) recommend the fair representation of all key stakeholders in negotiations for compensation and resettlement. However, the regulations do not account for the power-relations between the communities and traditional leaders. The assumption underlying these negotiations is that traditional leaders represent the interests of their people.

Moreover, there is no provision in Ghana’s Minerals and Mining (Compensation and Resettlements) Regulations (2012) for communities to reject the request for resettlement. Neither is there a clause to reject compensation and the right to stop mining operations. The norms governing the legislation and regulations presuppose that the communities ought to accept compensation and resettlement as part of “redistribution” to correct the preeminent environmental burdens imposed by mining.

CHILE

In order to fulfil its obligations under the ILO 169, Chile has produced two separate laws (supreme decrees) regarding indigenous communities’ right to consultation and right to FPIC. Chile’s Supreme Decree 40 (2013) and Supreme Decree 66 (2014) contain provisions that specifically concern consultation with indigenous communities and regulate the consultation process. Both decrees stipulate that the responsibility for the consultation process lies with the state administration. Consultations must be performed in good faith, together with the affected indigenous community’s own representative institutions and aim to achieve an agreement or consent about the project. If resettlement of an indigenous community is considered necessary, it should only continue with FPIC from the affected group. According to these decrees, the right to consultation is respected even when the affected indigenous peoples refuse to give their

consent. While the goal of the consultation process is an agreement or consent from the indigenous peoples, failure to obtain consent is not considered problematic as long as the correct process was adhered to. In other words, if the state fails to obtain consent, resettlement can take place if the affected indigenous peoples are represented in the process. This explicit provision severely undermines the indigenous peoples' right, since it makes it unnecessary for the state to truly engage with affected indigenous groups.

PERU

Open government principles have been included as a building block of Peruvian democracy since the adoption of the Constitution (1993), where access to information was set as a fundamental right (Article 2, item 5). Citizen participation enjoys broad protections at all levels of government.³³ The Prior Consultation Law (2012) stipulates that the state must ensure that affected communities are afforded the right to prior consultation. The act, together with the implementing regulations, lays out the procedural aspects of prior consultation with indigenous peoples. It includes obligations for the state and, as in the case of Chile, is based on the ILO 169 obligations. As stipulated in this law, the purpose of the consultation is to arrive at an agreement, or gain consent between the state and indigenous or native people, through a dialogue that guarantees their inclusion in the decision that is to be taken. The law stipulates that the government controls the process of prior consultation and that consultation can be held after the mining concession has been granted. Importantly, as in the case of Chile, the law does not grant a right of veto to the indigenous communities; the state can make a decision contrary to the view of the indigenous or native people, but it must take their rights into consideration.

In **other countries**, legal requirements for consultation are limited to officially serving gazette notices to the stakeholders identified as directly affected, community consultations during preparation of ESIA,³⁴ or requirements for consultations to realise mining-affected community's socio-economic development. For example, in an effort to ensure that local communities benefit from mining, Côte d'Ivoire's Mining Code (2014) requires holders of a mining permit, in consultation with the local communities, to prepare a community development plan and an investment plan; and a fund to realise socio-economic development plans.³⁵ Papua New

³³ The principal legal community engagement and public participation instruments in Peru are the Citizen Participation Law (1994); Law of the National System of Environmental Impact Assessment (2001); Law on Transparency and Access to Public Information (2002); Law of the Right to Prior Consultation to Indigenous or Native Peoples (2012); Supreme Decree 042-2003-EM (2003), which outlines requirements for prior consultations in mining activities; Supreme Decree No. 028-2008-EM (2008), which regulates the public participation process in the mining industry; Ministerial Resolution No. 304-2008-MEM/DM (2008), which sets out specific rules of the public participation process in the mining industry; and Supreme Decree 019-2009-MINAM (2009), which regulates environmental impact assessment. According to Peru's SEIA Law (2001) and associated regulations, public participation is required both before and after the EIA is filed for approval. Therefore, the organisation of workshops and a public information strategy are required from the early stages of the EIA process. From the start of the process the proponent has to involve the various actors in the area of influence and has to prepare a public participation plan and execute it during the EIA process. EIAs are made available to the public, for observations and comments and the EIA approval is published in the media.

³⁴ Côte d'Ivoire's Environmental Code (1996) and associated regulations require project sponsors to carry out community consultations during preparation of ESIA. Each village/community affected by the project is to be consulted and their concerns need to be incorporated in the ESIA. After submission, a public hearing is organised and all related public agencies, press, NGOs and general public are invited. Project design, potential impacts and mitigation measures are explained in that meeting.

³⁵ As stipulated in Article 124, the operating license holder is required to develop a community development plan in consultation with the surrounding communities and the territorial and local administrative authorities, with specific objectives and an investment plan. This fund is intended to achieve socio-economic development projects for local communities as specified in the community development plan. According to Article 125, Mining Administration is

Guinea's Mining Act (1992) requires a development forum to be convened to address landowner issues, including a system of monitoring and evaluating social impacts. The purpose of the development forum is to negotiate a memorandum of agreement, which includes important clauses on benefit sharing.³⁶ These examples do not constitute meaningful consultation with the potentially displaced persons. In Botswana, mining companies are not obligated to consult potentially affected communities in order to obtain a mining concession. There are no provisions for dialogue and negotiation of compensation after consent is granted by groups and communities directly affected by mining.³⁷

3.6 Planning, monitoring and oversight

Government regulatory agencies are crucial actors in the planning, compliance, reporting, monitoring and supervision of Resettlement Action Plans (RAPs). The purpose of performance monitoring is to ensure that the RAP is implemented as described in the plan and in compliance with legal and regulatory requirements. In all surveyed countries, with the exception of Ghana, national laws and regulations do not make specific provisions for resettlement action planning and resettlement support, or for monitoring of resettlement activities.

Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012) pertain to planning and implementation of resettlement programmes. The regulation requires that the RAP is approved by the District Assembly (Planning Authority) and then by the Mining Minister. The regulation limits deadlines for mineral rights holders to draft resettlement and compensation plans to 60 days to ensure "prompt and adequate" compensation. If mineral rights holders fail to give prompt compensation (within three months), they must pay an interest rate of 10 per cent for each unpaid month.

According to s6.2 of Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012), the holder of a mining lease has to prepare a resettlement plan which includes:

- a) land use proposals;
- b) action programmes; and
- c) measures for the execution of the resettlement in accordance with the Local Government Act (1993), National Building Regulations (1996) and other relevant planning regulations and by-laws of the District Assembly.

According to s10.1-3 of the Minerals and Mines Regulations (2012), resettlement plan has to be approved by the district planning authority within whose jurisdiction the resettlement is to be carried out. A resettlement plan will not be approved if the authority is not satisfied with the

responsible for setting up, for each project, a mining community development committee for the implementation of economic and social development projects for local communities.

³⁶ A development forum process, under which all relevant stakeholders (including landowners, provincial government and the national government) discuss and agree on key issues for the development of a resource project, in conjunction with the negotiation of an MDC, is a requirement for obtaining a special mining lease. In addition, PNG's Organic Law on Provincial Governments and Local-level Governments (1998) requires consultation with landowners in the development of any 'natural resource' (s115-6).

³⁷ Botswana's Environmental Assessment Act (2011) stipulates a requirement for publishing summaries of the EIA in the Gazette and in local newspapers. The competent authority may hold public hearing after examining the EIA statement if it is of the opinion that the activity is of such a nature that the public should have the opportunity to make submissions or comments at a public hearing.

evidence of consultation and participation of the chiefs and inhabitants of the community to be resettled. As stipulated in s11.3 of the 2012 Regulations above, the costs for implementing the plan are borne by the mining lease holder, who is also responsible for meeting obligations imposed in the plan.

Section 12.1 of the 2012 Regulations stipulates that where the operations of a mining lease holder involve displacement of inhabitants, a Resettlement Monitoring Committee (RMC) is to be established, the costs of which are to be borne by the mining lease holder. This section of regulations also includes a list of RMC members appointed by the Minister for Mines.³⁸ As stipulated in s12.3, the Committee assists the Minister in effective monitoring of the implementation of the resettlement plan. Ghana's Minerals Commission also has well-established resettlement units for each project that are capable of overseeing the formulation and implementation of RAPs.

As per the Environmental Protection Agency Act (1994), the EPA is responsible for ensuring compliance with environmental impact assessment procedures in the planning and execution of development projects, including compliance in respect of existing projects. The environmental permit holder is required to submit an annual report to the EPA in respect of their undertaking.

In all **other countries**, the lack of specific policies or laws on involuntary resettlement means that no national institutions are directly charged with managing resettlement. Since laws and regulations do not provide for monitoring of the affected populations after resettlement/compensation, once compensation has been paid, project affected peoples are free to manage their resources as they see fit. There is no follow-up on the impacts of resettlement on project affected peoples once compensation has been paid. Instead, implementing agencies are charged with monitoring only the project's technical and financial requirements:

- Botswana's Department of Environmental Affairs is mandated with monitoring the implementation of the activity to determine compliance with the agreed mitigation measures, both during and after implementation of an activity, as stipulated in the Environmental Assessment Act (2011) and associated regulations (2012).³⁹ Botswana's legislation does not require preparation of a resettlement plan.
- Chile's Superintendency of the Environment (Superintendencia del Medio Ambiente; SMA) is charged with overseeing compliance with environmental standards as stipulated

³⁸ Members of the RMC include: (a) the District Chief Executive (DCE) of a representative of the DCE who shall be the chairperson; (b) the District Engineer; (c) the District Town and Country Planning Officer; (d) the Assembly member of the area of the mining lease; (e) the most senior chief of the area of the mining lease; (f) two persons nominated by the inhabitants to be resettled, one of whom is a woman; (g) a representative of the Regional Lands Officer; (h) a representative of the mining lease holder; and (i) a representative of the Minister.

³⁹ Under s18.1, the relevant technical department, local authority or developer, is responsible for monitoring the implementation of the activity to determine compliance with the agreed mitigation measures; s18.2 requires the submission of an evaluation report upon demand from the competent authority; s18.3 allows the authority to set mitigation measures; and s18.4 sets provision for suspension by mining authority following non-compliance.

in Law 20,417 (2010).⁴⁰ Chile's legislation does not require preparation of a resettlement plan.

- Côte d'Ivoire's National Environment Agency (Agence Nationale de l'Environnement; ANDE) has the authority to approve and monitor ESIA's. If there significant issues arise during the implementation of the project activity, ANDE can ask project sponsors to arrange an independent audit. Decree No. 2013-224 (2013) and other legislation do not require preparation of a resettlement plan. If resettlement is required by financiers as per African Development Bank, World Bank or IFC safeguard policies, the Ministry of Construction, Housing, Sanitation and Urbanization (MCLAU) validates the RAP.
- In Papua New Guinea, mining-induced displacement has principally occurred as 'relocation' based on direct agreements with landowner representatives and without legislative guidance or government oversight in the design or implementation of relocation plans. After permitting, the implementation and monitoring of relocation agreements becomes a matter for the developer and the displaced community to manage. PNG's legislation does not require preparation of a resettlement plan.
- Peru's Environmental Evaluation and Monitoring Agency (Organismo de Evaluación y Fiscalización Ambiental; OEFA) is responsible for monitoring the implementation of the recommendations of the SEA report.⁴¹ Peru's legislation does not require preparation of a resettlement plan.

3.7 Dispute resolution and grievance mechanisms

Accessible, predictable and transparent dispute resolution and grievance mechanisms are recommended by the various international safeguard policies to ensure that affected populations are able to raise concerns about compensation, or other elements of the resettlement process. Properly instituted dispute resolution mechanisms can give affected communities access to redress. The existence of local, targeted and accessible bodies to deal with grievances is considered both necessary and a minimum standard in today's international system. In general, the mechanisms for addressing land disputes and non-compliance with national laws include community level mechanisms, specialised land tribunals and the courts of the judiciary. In some countries, a combination of traditional (non-legal) and formal legal processes is used to resolve disputes that arise over compensation and resettlement issues and processes.

All case study countries have a formally constituted system to settle disputes that arise during the compensation process. If affected persons disagree with the government's final decision, they are afforded the right to appeal the compensation decision in court, before a tribunal or

⁴⁰ Pursuant to Law 20,417, the SMA is authorised to impose warnings, fines of up to approximately US\$10 million per each breach, temporary or permanent closures, and revocations of the RCAs for a catalogue of offences classified according to their seriousness.

⁴¹ The SEA study should include a Monitoring and Supervision Plan.

with the competent authority. Key dispute mechanisms from across the surveyed countries are detailed as follows:

- Botswana's Acquisition of Property Act (1955) (s11), sets up a Board of Assessment specifically to settle disputes about the amount of compensation. The legality of compulsory acquisition along with claims for delay in payment of compensation can be referred to the High Court (s26). As stipulated in Botswana's Mines and Minerals Act (1999) (s62.2), if the holder of a mineral concession does not pay compensation as demanded then the dispute will be settled using arbitration processes. The claim for payment of compensation should be made within four years from the date of the claim.
- According to Article 19 of Chilean Constitution (1980), compensation is determined by agreement or, in the absence of an agreement, by a sentence dictated by the courts and is to be paid in cash. The expropriated may protest the legality of the expropriation act before the ordinary courts and shall always have the right to be compensated for the patrimonial damage effectively caused. The taking of material possession of the expropriated asset shall take place upon payment of total compensation.
- As stipulated in Chapter III (Article 128) of Côte d'Ivoire's Mining Code (2014), grievances concerning the amount of compensation to be paid can be submitted for arbitration to the Ministry of Industry and Mines (Ministère de l'Industrie et des Mines), with conditions specified in Article 135 of the associated decree. Affected persons are only afforded the right to appeal the compensation decision with the competent authority and not in court.
- Chapter 10 (s73.3) of Ghana's Minerals and Mining Act (2006) stipulates that if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred by either party to the Mining Minister who shall, in consultation with the Land Valuation Board, determine the compensation payable by the holder of the mineral right.⁴² According to Minerals and Mining Act (2006), Chapter 10 (s75.1-2), and Minerals and Mines (Compensation & Resettlement) Regulations (2012) (s5), in the event of dissatisfaction with the terms of compensation offered by the holder of the mineral right or as determined by the Minister, claimants or the rights holder may go to High Court to resolve compensation issues, which includes a review of a determination by the Minister. According to the State Lands Act (1962) (s6.1), any aggrieved person shall have access to the High Court for redress on determining matters of ownership right and quantum of compensation.
- As stipulated in s157 of Papua New Guinea's Mining Act (1992), the holder of a tenement or landholders claiming an entitlement to compensation may, where they are unable to agree on the amount of compensation to be paid, request the Chief Warden to determine the amount payable.⁴³ According to s158, a holder of a tenement or

⁴² Ghana's Land Valuation Board, a division of the Land Commission involved in the valuation of land and other properties, assists the mining sector in issues relating to compensation.

⁴³ As specified in s154, the Warden will make a determination on the basis of the evidence presented and the argument submitted and in accordance with the principles of compensation.

landholder claiming an entitlement to compensation, aggrieved by a determination of the Warden as to the amount of compensation, may appeal to the National Court.

- As stipulated in Peru's General Mining Law (1992), the resolution issued by Ministry of Energy and Mining (MINEM) imposing the easement may be challenged through an administrative proceeding (with MINEM) and, afterwards, in the judiciary. In the judiciary, the resolution may only be challenged with regard to the amount of compensation set by MINEM.⁴⁴

None of the legal systems in the countries surveyed require developers to establish their own grievance mechanism to resolve disputes about compensation agreements. In addition, surveyed countries do not have legal or regulatory provisions which require project proponents to establish grievance mechanisms dedicated to specifically to address or investigate resettlement issues. As discussed in Section 3.4, formal dispute resolution systems mainly favour project affected peoples with legal titles to land over those without legal title.

3.8 Mining-induced resettlement and approvals/permitting process

One factor differentiating MIDR from other forms of DIDR is that resettlement can occur at any stage of the project cycle. Depending on when the demand for land emerges, displacement can occur during exploration, project design and planning, construction, or operations. Recent research based on a small number of resettlement events found that a high proportion of resettlements in mining occur in the operational phase.⁴⁵ Among surveyed countries, only Ghana's national framework has identified the need for additional resettlement planning approvals post the initial permitting process. As demonstrated in Section 3.6, in Ghana, a RAP, the primary planning document used to define and manage a resettlement process, is developed alongside an ESIA and linked to the mining contract. In all other countries surveyed, the legislation does not require the company to develop, submit or implement a RAP. In Chile and PNG, limited resettlement and/or relocation planning takes place with the state during the early stages of project design and planning, and as part of the initial approvals/permitting processes. This engagement is often not present or required in later project stages. In other countries, there are no legal requirements for resettlement planning. In Botswana, Chile, Côte d'Ivoire, Papua New Guinea and Peru, only mining operations that receive funding from international lenders, such as IFC, may be required to develop and implement a RAP in accordance with lenders' safeguard policies.⁴⁶

⁴⁴ Payment of compensation for the eminent domain must be made to the land owner(s) once the resolution issued by MINEM has been consented to, or upon exhausting all administrative remedies, whichever occurs first. Once this payment is made, MINEM grants the possession of the land to the concessionaire so that they are able to start the construction works (even if the resolution issued by MINEM is being judicially challenged). If the land-owner objects to the starting of works, the concessionaire may exercise the right granted to it assisted by public force (i.e. the police).

⁴⁵ Owen & Kemp (2015): 482.

⁴⁶ For example, if resettlement in Côte d'Ivoire is carried out in compliance with international lenders' safeguard policies, the Ministry of Construction, Housing, Sanitation and Urbanization (MCLAU) validates the RAP.

CHILE

Chile's Law on the Environment (1994) established the Environmental Impact Assessment System through which all projects or activities described in Article 10 of that law must pass. The law identifies a range of environmental and social impacts that companies must address. The concessionaire must prepare an Environmental Impact Study (EIS) if activity is likely to cause resettlement. When the EIS is approved, the government will issue the environmental permit.

GHANA

Ghana's Minerals and Mines (Compensation & Resettlement) Regulations (2012) pertain to planning and implementation of resettlement programmes. These regulations provide a list of comprehensive entitlements for communities prior to and during operations. Specifically, they require that affected people are resettled from the impacted area before work commences. As stipulated in s11.4, "an activity or operation under a mining lease shall not be undertaken by a holder of the mining lease unless the inhabitants to be displaced by the proposed mining operation have been resettled."

PAPUA NEW GUINEA

In PNG, prior to permitting, there is scope for authorities to list relocation activities in Environmental Permits, Memorandums of Agreement (MOA) or in Impact Benefit Agreements (IBA) reached at Development Forums. The Mining Act (1992) requires companies to establish and register agreements with landowners regarding compensation prior to occupying or operating on land.

3.9 Roles and responsibilities of major actors

Governance arrangements for MIDR include project developers, governments and their respective agents; affected and resettlement communities and their representatives; non-government organisations and other civil society groups.⁴⁷ Under PS 5, the IFC recognises two basic forms of governance in terms of resettlement planning and implementation. The first form of governance is led by company, which may (or may not) subsequently be supported by national legal and regulatory framework. If in place, these government systems provide the national legal context in which companies will be exercising their interests and discharging their responsibilities. The other form of governance is led by government, according to national law, and is funded by the company. The IFC recognises that host governments will often take responsibility for the resettlement of affected peoples, which may make the role of companies in the process difficult to define. Regardless of which entity takes responsibility for resettlement, the IFC requires the outcome of that resettlement to be consistent with the conditions outlined in Performance Standard 5 on Involuntary Land Acquisition and Resettlement.⁴⁸ Paragraphs 30-32 of the IFC's PS 5 and the IFC's *Handbook for Preparing a Resettlement Action Plan* describe private sector responsibilities under government-managed resettlement.⁴⁹

⁴⁷ Owen & Kemp (2015): 485.

⁴⁸ International Finance Corporation (IFC), Environment and Social Development Department (2002). [Handbook for Preparing a Resettlement Action Plan](#), p. 1.

⁴⁹ For example, according to IFC's PS 5, "where land acquisition and resettlement are the responsibility of the government, the client will collaborate with the responsible government agency, to the extent permitted by the agency, to achieve outcomes that are consistent with this Performance Standard. In addition, where government capacity is limited, the client

All of the jurisdictions surveyed for this report operate in a context where companies lead and finance the projects. In Ghana, the state delegates responsibility for managing resettlement to mining companies as a permitting condition. The state then appoints members of the Resettlement Monitoring Committee (RMC), which assists the Minister for Mines in effective monitoring of the implementation of the resettlement plan. Ghana's Minerals Commission is responsible for overseeing the formulation and implementation of RAPs with resettlement units established for each project. Mining companies have the responsibility for RAP formulation and implementation, and for funding the resettlement process.

All other countries surveyed did not have a coherent legal framework to regulate resettlement in the mining industry or procedural guidance for companies to follow when they are required to resettle communities displaced by mining activities. In all surveyed countries, sub-surface rights take precedence over surface rights. It is the responsibility of the sub-surface rights owner to negotiate rights to access the property, within the provisions of applicable laws and regulations, with the surface landowner(s). This can entail anything from surface rent arrangements and land acquisition to compensation and, in some cases, the resettlement of occupants. In all cases other than Ghana, once compensation has been paid, project affected peoples are free to manage their resources as they see fit. If the resettlement of occupants has been agreed between the sub-surface rights owner and surface landowners, the absence of laws and regulations on involuntary resettlement means that no state agencies are charged with managing resettlement. As demonstrated in previous work in the case of Vietnam, deficient resettlement legislation can create a situation where project-affected communities are placed in a particularly vulnerable position.⁵⁰

will play an active role during resettlement planning, implementation, and monitoring. In the case of acquisition of land rights or access to land through compulsory means or negotiated settlements involving physical displacement, the client will identify and describe government resettlement measures. If these measures do not meet the relevant requirements of this Performance Standard, the client will prepare a Supplemental Resettlement Plan that, together with the documents prepared by the responsible government agency, will address the relevant requirements of this Performance Standard." See [IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement](#), p. 8; and IFC (2002): 42-45.

⁵⁰ Vo, M. & Brereton, D. (2014). [Involuntary Resettlement in the Extractive Industries: Lessons from a Vietnamese Mining Project](#). In Evi Fritriani, Francisca Seda and Yesi Maryam (eds.), *Governance of Extractive Industries: Assessing National Experiences to Inform Regional Cooperation in Southeast Asia*. Jakarta, Indonesia: Penerbit Universitas Indonesia (UI Press), pp. 36-61.

KEY FINDINGS

Give
only child.
law /lɔ:/ n 1 (C) rule
proper regulation of a c
ect conduct in life
and signo

4 Key findings

The comparative review of MIDR-related laws and regulations across six mining jurisdictions in Section 3 highlights gaps between national frameworks and prevailing international norms and standards. This section summarises key findings of the comparative review.

- 1) Findings indicate that national frameworks do not align with prevailing international “soft law” instruments. The implications of this legal and regulatory “gap” are that the different components of resettlement planning are neglected, which can adversely affect communities displaced by mining activities. This suggests that efforts to use national level legislation as proxies for international standard may be premature.
- 2) Findings show that the existing international standards have been unevenly incorporated into national regulatory frameworks. In each of the countries surveyed, with the exception of Ghana, the following items were not clearly addressed in the relevant laws and regulatory mechanisms:
 - a. how affected people may gain benefits and assert rights under the law with respect to compensation, resettlement and livelihoods restoration;
 - b. the empowerment of government agencies to execute, regulate, and monitor land acquisition and resettlement;
 - c. the processes and institutions of participation and consultation; and
 - d. the assessment, decision making, timing and appeals on matters related to compensation and resettlement.
- 3) The study demonstrates that government decisions to expropriate land are often justified on the grounds of public interest. Under such circumstances, in all surveyed countries with the exception of Ghana, there is no clear obligation for governments to resettle affected persons in a manner that is consistent with the principles outlined in the international safeguard standards and policies.
- 4) Findings suggest that Ghana’s legal and regulatory framework for mining-induced resettlement is closest in content to the minimum requirements outlined in IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement.⁵¹
- 5) Findings indicate that national frameworks bias landowners over land users (i.e. occupants). In some cases, improvements in the form of structures and crops are compensated, which suggest that land users’ rights are recognised. However, the case study examples suggest that mining legislation is typically weak in terms of its ability to recognise communal land rights or to handle resettlement and compensation activities in those environments.

⁵¹ The authors note that Ghana’s Mineral and Mining Act (2006) has been criticised for not adequately protecting local communities against mining interests and impacts, and for the powers it gives the State for compulsory acquisitions. For example, Ghana’s regulation of the mining industry would be significantly improved by, as a preliminary step, directly developing a role for communities to be consulted in good faith in the text and substance of the laws and regulations. Another step would be to provide more public access to information so that impacted communities can be adequately informed and engaged.

- 6) The study demonstrates the effect of FPIC laws on engagement and consultation processes in Chile and Peru. In both countries, the right to consultation is legally respected even when the affected indigenous peoples refuse to give their consent. While the goal of the FPIC consultation process is to obtain consent from the indigenous peoples, the focus of the legislation is to ensure that correct processes of engagement were adhered to. This provision poses a risk in so far that consultations do not need to reach a substantive outcome as long as procedural requirements are met.⁵²
- 7) The study demonstrates that national laws in all surveyed countries mandate community participation in decision-making on mining investments. However, participatory mechanisms often fall short of what is needed to ensure that the voices of vulnerable groups are heard. This is particularly the case in the three African jurisdictions reviewed, where it can be difficult for land users to prove their customary rights to land.
- 8) Findings indicate that a major challenge for governments is to ensure fair, prompt and adequate compensation for mining-affected communities' interests. For example, in Botswana, there is contention around amounts of compensation charged for various types of land use. The adequacy of the compensation requires careful consideration through agreed-upon negotiation and evaluation methods. If compensation is inadequate in relation to the long-term social and economic costs of mining, this can generate long-term tensions between mining companies, governments and mining-affected communities.

⁵² The authors note that in both countries, the state's power to grant easements is seen as a mechanism to exert pressure over those communities that would not agree to have a contract for the purchase and/or use of their lands. It has generated fear among communities because it creates the perception that if negotiations fail between the investor and the community, the latter will be left without possessions. It is seen as an expropriation mechanism that contributes to the asymmetry between mining companies and farmers or communities. See World Bank (2005). [Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru](#). Washington, DC: World Bank; Bustos, B., Folchi, M. & Fragkou, M. (2016). [Coal Mining on Pastureland in Southern Chile: Challenging Recognition and Participation as Guarantees for Environmental Justice](#). *Geoforum*, in press.

References

- Amanor, K.S. (2012). [Land Governance in Africa: How Historical Context has Shaped Key Contemporary Issues Relating to Policy on Land](#). Framing the Debate Series, no. 1. ILC, Rome.
- Asian Development Bank (ADB) (2017). [Country Safeguards Review: Indonesia Consultation Draft](#). March.
- Bustos, B., Folchi, M. & Fragkou, M. (2016). [Coal Mining on Pastureland in Southern Chile: Challenging Recognition and Participation as Guarantees for Environmental Justice](#). *Geoforum*, in press.
- Catholic Commission for Justice and Peace (2014). [Land Displacement, Involuntary Resettlement and Compensation Practice in the Mining Sector: A Comparative Analysis of Legal and Policy Frameworks in Southern Africa](#).
- Downing, T.E. (2002). [Avoiding New Poverty: Mining-Induced Displacement and Resettlement](#). Mining, Minerals and Sustainable Development (MMSD), No. 58, April.
- International Finance Corporation (IFC) (2002). [Handbook for Preparing a Resettlement Action Plan](#). Environment and Social Development Department.
- International Finance Corporation (IFC) (2012). [IFC Performance Standard 5 – Land Acquisition and Involuntary Resettlement](#).
- Kemp, D., Owen, J.R. & Collins, N. (2017). [Global Perspectives on the State of Resettlement Practice in Mining](#). *Impact Assessment and Project Appraisal*, 35(1): 22-33.
- Kuusana, E.D. & Gerber, N. (2015). [Institutional Synergies in Customary Land Markets—Selected Case Studies of Large-Scale Land Acquisitions \(LSLAs\) in Ghana](#). *Land*, 4(3): 842-868.
- Lindsay, J., Deininger, K. & Hilhorst, T. (2017). [Compulsory Land Acquisition in Developing Countries: Shifting Paradigm or Entrenched Legacy](#). In Iljoong Kim, Hojun Lee and Ilya Somin (eds.), *Eminent Domain: A Comparative Perspective*. Cambridge, UK: Cambridge University Press, pp. 93-117.
- Owen, J.R. & Kemp, D. (2015). [Mining-induced Displacement and Resettlement: A Critical Appraisal](#). *Journal of Cleaner Production*, 87: 478-488.
- Owen, J.R., & Kemp, D. (2016a). [The Weakness of Resettlement Safeguards in Mining](#). *Forced Migration Review*, 52: 78-81.
- Owen, J.R. & Kemp, D. (2016b). [Can Planning Safeguard against Mining and Resettlement Risks?](#) *Journal of Cleaner Production*, 133: 1227-1234.
- Power, T. (2008). [Incorporated Land Groups in Papua New Guinea](#). In *Making Land Work, Volume Two: Case Studies on Customary Land and Development in the Pacific*. Canberra: Australian Agency for International Development (AusAID), pp. 3-20.
- Rainforest Foundation (2015). [Peru at the Climate Crossroad](#). London: Rainforest Foundation.
- Schoneveld, G.C. & German, L. (2014). [Translating Legal Rights into Tenure Security: Lessons from the New Commercial Pressures on Land in Ghana](#). *The Journal of Development Studies*, 50(2): 187-203.

School of International and Public Affairs, Columbia University (2015), [Mining in Peru: Benefiting from Natural Resources and Preventing the Resource Curse](#), Capstone Workshop, Spring 2015

Tagliarino, N.K. (2017). [The Status of National Legal Frameworks for Valuing Compensation for Expropriated Land: An Analysis of Whether National Laws in 50 Countries/Regions across Asia, Africa, and Latin America Comply with International Standards on Compensation Valuation](#). *Land*, 6(2): 37.

The International Network for Displacement and Resettlement (INDR) (2017). [INDR Comments on the Asian Development Bank's Country Safeguards Review: Indonesia Consultation Draft](#). 31 April.

Vo, M. & Brereton, D. (2014). [Involuntary Resettlement in the Extractive Industries: Lessons from a Vietnamese Mining Project](#). In Evi Fritriani, Francisca Seda and Yesi Maryam (eds.), *Governance of Extractive Industries: Assessing National Experiences to Inform Regional Cooperation in Southeast Asia*. Jakarta, Indonesia: Penerbit Universitas Indonesia (UI Press), pp. 36-61.

World Bank (2005). [Wealth and Sustainability: The Environmental and Social Dimensions of the Mining Sector in Peru](#). Washington, DC: World Bank.

World Bank (2013). *Land Governance Assessment Framework: Final Report for Peru*. Washington, DC: World Bank.

Appendix 1: List of national statutes, regulations and policies

COUNTRY	LEGISLATION / REGULATION	YEAR	POLICY
Botswana	Constitution	1966	Environmental Impact Assessment Guidelines for Mining Projects 2003 Mineral Investment Promotion Policy 2008 Land Policy 2011
	Mines and Minerals Act (<i>under review</i>)	1999	
	<i>There are no regulations accompanying this Act</i>		
	State Land Act	1967	
	Mineral Rights in Tribal Territories Act	1967	<i>There is no comprehensive mineral policy that deals with all socio-economic, environmental and commercial issues related to mining development.</i>
	Tribal Land Act	1968	
	Acquisition of Property Act	1955	
	Environmental Assessment Act	2011	
	Environmental Impact Assessment Regulations	2012	
Chile	Constitution	1980	Mining: A Platform for Chile's Future 2014
	Foreign Investment Statute (Decree Law 600)	1974	
	Foreign Investment Law (Law 20,848)	2016	
	Mining Code (Law 18,248)	1983	
	Supreme Decree No. 1/1986 (mining regulations)	1986	
	Law on Mining Concessions (Law 18,097)	1982	
	Law on Mine Closure (Law 20,551)	2011	
	Law on the Environment (Law 19,300)	1994	
	Supreme Decree No. 40/2012 (SEIA regulations)	2013	
	Law on the Environment (Amendment) (Law 20,417)	2010	
	The Indigenous Law (Law 19,253)	1993	
Supreme Decree No. 66/2013 (Indigenous consultations regulations)	2014		
Law on Transparency (Law 20,285)	2009		
Côte d'Ivoire	Constitution (Law 2016-886)	2016	
	Mining Code (Law 2014-138)	2014	
	Arrêté No. 002/MIM/CAB (procedures for granting of mining titles)	2016	
	Environmental Code (Law 96-766)	1996	
	Décret No. 96-894 (rules and procedures for environmental impact studies)	1996	
	Rural Land Law (Law 98-750)	1998	
	Décret No. 99-594 (establishing the implementing rules)	1999	
	Décret No. 2013-224 (regulation of the discharge of customary land rights for public interest)	2013	
	Décret No. 95-817 (rules for compensation for the destruction of crops)	1995	
Arrêté Interministériel No. 28 MINAGRA/MEF (the scale of compensation for crops destroyed)	1996		

Ghana	<p>Constitution Minerals and Mining Act (Act 703) Minerals and Mining (Compensation and Resettlements) Regulations (LI2175) Minerals and Mining (General) Regulations (LI2173) Minerals and Mining (Amendment) Act (Act 900) Minerals Commission Act (Act 450) Minerals Development Fund Act (Act 912) State Property and Contracts Act State Lands Act (Act 125) Land Title Registration Act Office of the Administrator of Stool Lands Act Lands Commission Act Lands Statutory Way Leaves Act (Act 186) Environmental Protection Agency Act (Act 490) Environmental Assessment Regulations (LI 1652) Environmental Assessment (Amendment) Regulations (LI 1703) Local Government Act (Act 462)</p>	<p>1992 2006 2012 2012 2015 1993 2016 1960 1962 1986 1994 2008 1963 1994 1999 2002 1993</p>	<p>National Land Policy 1999 National Environment Policy 2012 Ghana Shared Growth and Development Agenda II, 2014-2017 2014 Minerals and Mining Policy 2014 Minerals and Mining Policy 2016</p>
PNG	<p>Constitution Mining Act (under review) Mining Regulations Mineral Resource Authority Act Environment Act Environment (Amendment) Act Environment (Amendment) Act Land Act Land Groups Incorporation Act Land Groups Incorporation (Amendment) Act Land Registration (Customary Land) (Amendment) Act Land Disputes Settlement Act Land Disputes Settlement Regulations Organic Law on Provincial Governments and Local-level Governments</p>	<p>1975 1992 1992 2005 2000 2012 2014 1996 1974 2009 2009 1975 1975 1998</p>	<p>The Papua New Guinea Mining Policy 2012 Mining Involuntary Resettlement Policy 2017 (in draft) *Mining Policy 2017 (in draft) *Mine Rehabilitation and Closure Policy 2017 (in draft) *Sustainable Mining Development Policy 2017 (in draft)</p>
Peru	<p>Constitution General Mining Law (Supreme Decree 014-92-EM) Decree for promotion of mining investment (Legislative Decree 708) Regulations for Mining Procedures (Supreme Decree 018-92-EM) General Mining Law Regulations (Supreme Decree 003-94-EM) Incentives for investing in natural resources (Legislative Decree 818)</p>	<p>1993 1992 1992 1992 1994 1996 2014</p>	<p>Mining Investment Handbook 2011</p>

Regulations for Environmental Protection in Mining and Metallurgical Activities (Supreme Decree 040-14-EM)	2008
Regulations for the public participation process in the mining industry (Supreme Decree 028-2008-EM)	2006
Regulations for reorganization of functions in the Ministry of Energy and Mines (Supreme Decree 066-2005-EM)	2003
Regulations on Prior Commitment as a Requirement for the Development of Mining Activities and Complementary Rules (Supreme Decree 042-2003-EM)	2003
Law on Mine Closure (Law 28,090)	1987
General Law of Campesino Communities (Law 24,656)	1978
Native Community and Agrarian Development Law (Law 22,175)	2014
Law that establishes a special procedure for formalizing plots located within the area of influence of public & private investment projects (Law 30,230)	1995
Law on Purchase and Sale of Land (Law 26,505)	1996
Regulations for mining (Supreme Decree 017-96-AG)	1996
Law on Purchase and Sale of Mining Land (<i>Servidumbre Minera</i>) (Law 26,570)	1990
Environment and Natural Resources Law (Legislative Decree 613)	1997
Law on Sustainable Use of Natural Resources (Law 26,821)	2005
General Environmental Law (Law 28,611)	2004
Law of the National System of Environmental Management (Law 28,245)	2001
Law of the National System of Environmental Impact Assessment (Law 27,446)	2009
Regulations (Supreme Decree 019-2009-MINAM)	1994
Citizen Participation Law (Law 26,300)	2008
Specific rules of the public participation process in the mining industry (Ministerial Resolution 304-2008-MEM/DM)	2002
Law on Transparency and Access to Public Information (Law 27,806)	2012
Law of the Right to Prior Consultation to Indigenous or Native Peoples (Law 29,785)	2015
Law of Expropriation (Legislative Decree 1192)	

Note: We were unable to source three PNG draft policies that are marked with an asterisk (*)



Centre for Social Responsibility in Mining
Sustainable Minerals Institute
The University of Queensland, Australia
csrm@smi.uq.edu.au

www.csrm.uq.edu.au