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Country-level governance frameworks for mining-induced resettlement

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Abstract
Debates about safeguarding the rights of people displaced by mining focus on three levels of governance. The first is the international system of sustainability polices and performance standards preferred by lenders such as the World Bank and the IFC. The second is the commitments and enacted performance of mining corporations. The third is the country-level mechanisms of host jurisdictions as they appear in legislation and government policy. In this article, we focus on country-level mechanisms as simultaneously setting the operational context for mining and for demonstrating the rate of uptake and relevance of the international system of regulatory protections. Country-level systems of governance is becoming increasingly important as observers have noted both the generally low levels of performance by mining companies against existing standards and the overall absence of specific legislated instruments as a basis for enforcement and accountability at the country level. Moves by international financial institutions, such as the Asian Development Bank, to progressively recognise country systems as equivalent safeguard proxies necessarily brings such systems into closer scrutiny. The authors provide a comparative review of country-level governance arrangements for guiding resettlement in mining across six jurisdictions.

Keywords Minerals policy · Land acquisition · Involuntary resettlement · Country-level systems · International safeguards

1 Introduction

Recent decades have witnessed significant growth in international- and national-level instruments relating to land acquisition and involuntary resettlement. During this time, the policy landscape has evolved from a set of prescriptions by international finance institutions (IFIs) targeting country-level infrastructure development to a suite of safeguard policies and performance standards extending to both public and private sector organisations. Policy frameworks for safeguarding against known sets of resettlement risks have, in a sense, become mainstream governance instruments. What began with The World Bank's

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Operational Policy (4.12) on Involuntary Resettlement, is now reflected in The World Bank's private investment arm the International Finance Corporation's (IFC) Performance Standards, along with multiple region-based IFI policies, e.g. Asian Development Bank (ADB), African Development Bank (AfDB),European Bank for Reconstruction and Development (EBRD) and Inter-American Development Bank (IADB). In the last decade in particular, 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 paper 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 land acquisition and involuntary resettlement-related instruments, as well as instruments developed exclusively for regulating 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 involuntarily land acquisition 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 about the need for greater legislative and regulatory capacity at the national level. Achieving alignment or coherence across the various institutional actors and jurisdictions in which these actors operate is a major forward challenge. The primary aim of this paper is to understand the mechanisms and instruments that governments are using to manage land acquisition and involuntary resettlement risks in the mining sector. This paper examines legally binding instruments related to what we refer to as "mining-induced displacement and resettlement" (MIDR), which establish legal rights and entitlements for affected people across six mining jurisdictions. The paper proceeds as follows. The approach and methodology are outlined in detail in Sect. 2. Section 3 reviews the existing policy literature and provides the contextual background for the study. Comparative review of legal and regulatory frameworks for resettlement across four themes is the focus of Sect. 4. Finally, Sect. 5 summarises the key findings of the comparative review and presents policy recommendations.

2 Approach and methodology

It is common for land acquisition and involuntary resettlement to be managed by the state through a collection of laws and regulations (e.g. expropriation of land and assets, mineral exploitation and environmental management and public participation) with different departments, institutions and individual actors involved in the process. 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 major IFIs, including The World Bank, IFC (part of the World Bank Group), AfDB, ADB, EBRD and IADB, have their own involuntary resettlement policy guidelines for development projects requiring 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, the primary point of reference is the IFC's Performance Standard 5 (PS 5) on Land Acquisition and Involuntary Resettlement (Mahanty and McDermott 2013; Owen and Kemp 2015; Kemp et al. 2017).[1] There is a practical acceptance that these performance standards reflect minimum safeguard standards for protecting affected populations from known resettlement risks (Owen and Kemp 2016a). Numerous global mining companies use the IFC's Performance Standards on Land Acquisition and Involuntary Resettlement as a benchmark, even when they do not have a direct institutional relationship with the IFC as a lender or equity partner (Owen and Kemp 2016b).[2]

The suite of international safeguards and performance standards contain specific provisions for displacement, resettlement and compensation that are often absent or poorly defined in national laws. For the vast majority of developing countries, and some developed countries, which do not have national laws for involuntary resettlement, international safeguards and performance standards can serve as one of the building blocks for formulating policy guidelines (Cernea 2000). 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 (IFC PS 5). Key requirements as 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 review:

- requirements for compensation;
- requirements for resettlement;
- planning, monitoring and oversight; and
- roles and responsibilities of major actors.

These themes constitute the primary or structural basis through which subsequent sets of resettlement safeguards will be realised. A key feature of the international safeguard frameworks is an assurance that responsibilities can and have been defined, that the appropriate institutions have been identified for managing the specific details and processes associated with the resettlement, and importantly, that those institutional actors have the willingness and resources to fulfil their statutory, contractual and societal responsibilities.

[1] 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 (2012).

[2] The IFC PS 5, for example, is referenced in the corporate policy statements of Anglo American, Rio Tinto, Glencore, BHP Billiton, AngloGold Ashanti, Newmont and Barrick Gold.

The distinction between law and policy is relevant for this paper. 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 (e.g. PS 5) 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. Thus, this study focused on legally binding instruments and the degree to which international norms and standards have been incorporated into national law and regulation.

For the purposes of this paper, the comparative review of the legal and regulatory frameworks that govern resettlement in the mining sector focuses on six mature mining jurisdictions: Botswana, Chile, Côte d'Ivoire, Ghana, Papua New Guinea (PNG) and Peru. 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. 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.

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. A total of 102 laws, regulations and policies were scrutinised (Table 1). 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;
- writing up the findings; and
- validating the findings by soliciting written feedback from the mining companies.

3 Literature review: country-level systems and the international context

MIDR is isolated from emerging topics and policy debates that have captured the industry's attention. The literature on MIDR can be categorised into three basic types: academic, publically available sponsored studies and privately commissioned reports. The vast majority of literature is located within the third category (Owen and Kemp 2015). This literature is mostly commercial-in-confidence and only occasionally peer-reviewed. The majority of academic case studies on MIDR are located within the development induced displacement and resettlement (DIDR) literature. This ensures that scholars reach a broader audience of

Table 1 List of national statutes, regulations and policies

Country	Legislation/regulation	Year	Policy
Botswana	Constitution	1966	Environmental Impact Assessment
	Mines and Minerals Act (under review) *There are no regulations accompanying this Act*	1999	Guidelines for Mining Projects
			2003
	State Land Act	1967	Mineral Investment Promotion Policy
	Mineral Rights in Tribal Territories Act	1967	2008
	Tribal Land Act	1968	Land Policy 2011
	Acquisition of Property Act	1955	
	Environmental Assessment Act	2011	
	Environmental Impact Assessment Regulations	2012	
Chile	Constitution	1980	Mining: A Platform for Chile's
	Foreign Investment Statute (Decree Law 600)	1974	Future
	Foreign Investment Law (Law 20,848)	2016	2014
	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	Constitution	1992	National Land Policy 1999
	Minerals and Mining Act (Act 703)	2006	National Environment Policy 2012

Table 1 (continued)

Country	Legislation/regulation	Year	Policy
	Minerals and Mining (Compensation and Resettlements) Regulations (LI2175)	2012	Ghana Shared Growth and
	Minerals and Mining (General) Regulations (LI2173)	2012	Development Agenda II, 2014-2017 2014
	Minerals and Mining (Amendment) Act (Act 900)	2015	
	Minerals Commission Act (Act 450)	1993	Minerals and Mining Policy 2014
	Minerals Development Fund Act (Act 912)	2016	Minerals and Mining Policy 2016
	State Property and Contracts Act	1960	
	State Lands Act (Act 125)	1962	
	Land Title Registration Act	1986	
	Office of the Administrator of Stool Lands Act	1994	
	Lands Commission Act	2008	
	Lands Statutory Way Leaves Act (Act 186)	1963	
	Environmental Protection Agency Act (Act 490)	1994	
	Environmental Assessment Regulations (LI 1652)	1999	
	Environmental Assessment (Amendment) Regulations (LI 1703)	2002	
	Local Government Act (Act 462)	1993	
PNG	Constitution	1975	The Papua New Guinea Mining
	Mining Act (under review)	1992	Policy
	Mining Regulations	1992	2012
	Mineral Resource Authority Act	2005	Mining Involuntary Resettlement
	Environment Act	2000	Policy 2017 (in draft)
	Environment (Amendment) Act	2012	Mining Policy 2017 (in draft)
	Environment (Amendment) Act	2014	Mine Rehabilitation and Closure
	Land Act	1996	Policy 2017 (in draft)
	Land Groups Incorporation Act	1974	Sustainable Mining Development
	Land Groups Incorporation (Amendment) Act	2009	Policy 2017 (in draft)
	Land Registration (Customary Land) (Amendment) Act	2009	
	Land Disputes Settlement Act	1975	
	Land Disputes Settlement Regulations	1975	
	Organic Law on Provincial Governments and Local-level Governments	1998	

Table 1 (continued)

Country	Legislation/regulation	Year	Policy
Peru	Constitution	1993	Mining Investment Handbook 2011
	General Mining Law (Supreme Decree 014-92-EM)	1992	
	Decree for promotion of mining investment (Legislative Decree 708)	1992	
	Regulations for Mining Procedures (Supreme Decree 018-92-EM)	1992	
	General Mining Law Regulations (Supreme Decree 003-94-EM)	1994	
	Incentives for investing in natural resources (Legislative Decree 818)	1996	
	Regulations for Environmental Protection in Mining and	2014	
	Metallurgical		
	Activities (Supreme Decree 040-14-EM)	2008	
	Regulations for the public participation process in the mining industry	2006	
	(Supreme Decree 028-2008-EM)		
	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 (*Servidumbre Minera*) (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	2002	
	(Ministerial Resolution 304-2008-MEM/DM)	2012	
	Law on Transparency and Access to Public Information (Law 27,806)		
	Law of the Right to Prior Consultation to Indigenous or Native Peoples	2015	
	(Law 29,785)		
	Law of Expropriation (Legislative Decree 1192)		

development practitioners, but run the risk of generalising resettlement dynamics in mining contexts (Owen and Kemp 2015).

Previous work demonstrates the linkages between displacement and land-use conflicts in mining regions (Hilson 2002; Jenkins 2004; Yakovleva et al. 2007; Moomen and Dewan 2017). Several single jurisdiction case studies have found that the conflicts between mining-affected communities, (including those involving artisanal and small scale miners) and the companies regarding land ownership, compensation and resettlement occur due to the lack of good governance in the sector (Geenen and Claessens 2013; Jeronimo et al. 2015; Marwa and Warioba 2015; Essah and Andrews 2016; Mishra and Mishra 2017; Mtero 2017; Rodrigues 2017; Kesselring 2018). To date, comparative studies on mining laws and regulation have evaluated the attractiveness of jurisdictions from the investors' perspective and focusing primarily on the Asia–Pacific region (Vivoda 2011; O'Callaghan and Vivoda 2015). A comparative study of country-level MIDR-specific laws has not been conducted.

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. Recent work demonstrates that mining companies routinely fail to identify and manage known resettlement risks, calculate the full cost of resettlement when allocating resources or effectively define which groups are to be impacted by displacement (Owen and Kemp 2016a; Adam et al. 2015). 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 severe risks and impacts (Owen and Kemp 2015).

The gaps between the national law on land access and international best practice are perhaps best illustrated in a recent paper that 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 (Tagliarino 2017). 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)
- Ghana implemented regulations to guide compensation and resettlement in the minerals and mining sector (2012)
- Mozambique implemented regulations to guide resettlement resulting from economic activities (2012) and
- PNG and Uganda are currently developing new resettlement policies.

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 mining-induced resettlement events. Monitoring these developments is important as IFIs are actively promoting improved regulatory frameworks. The ADB, for example, recently reviewed Indonesia's suite of displacement and resettlement laws. 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 ADB's 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 (Asian Development Bank 2017). 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 (INDR 2017).

The following section details the main components of six country-level systems relating to the governing of mining and resettlement processes. The status of these mechanisms across these six countries indicates that for mining in particular, efforts to graduate country-level safeguard systems would be premature and could indeed lead to a widening of the existing regulatory vacuum in this area.

4 Results and discussion

This section is divided into four subsections. The first subsection focuses on requirements for compensation, including matters considered when making a determination in national laws in the six countries. Requirements for resettlement of populations affected by mining projects across the selected countries are the focus of the second subsection. The third subsection evaluates the extent to which national laws in six countries establish planning, compliance, reporting, monitoring and supervision requirements for resettlement. The roles and responsibilities of major actors in the event of resettlement across six case studies are evaluated in the final subsection. Country analysis is presented in alphabetical order.

4.1 Compensation

For each of the six jurisdictions surveyed, the landholder is entitled to compensation for losses suffered when the government acquires land for public use. 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 provided by the government. Generally, where land is acquired from private owners, compensation is paid 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 awareness of its rights under law, and access to knowledge and legal representation.

In Botswana, Chile, Côte d'Ivoire, PNG 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 (Tagliarino 2017). 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 (World Bank 2013). 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 PNG 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.

Among the sample of countries surveyed, Ghana is the only country that has laws providing 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.

4.1.1 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.

4.1.2 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). 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.

4.1.3 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 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.

4.1.4 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".[3]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.

[3] 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".

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 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 and 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.[4] The regulation invites the Land Valuation Board to

[4] Specifically, the regulations require that the assessment of compensation is based on a four-tier principle:

i. 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.

ii. 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.

iii. 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.

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.

4.1.5 Papua New Guinea

PNG'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 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.

Footnote 4 (continued)

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

4.1.6 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 (SIPA 2015). Instead, provisions in the law allow the government to provide lands for mining projects through "special procedures", without defining them.[5]

4.2 Resettlement

None of the six surveyed countries included in this study have a clear national resettlement policy or a single law to guide development 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.[6] 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

[5] 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.

[6] 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.

- there are no legal provisions to monitor or evaluate resettlement.

4.2.1 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:

> 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.[7]

Ghana's Minerals and Mines (Compensation and 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.

4.2.2 Other countries

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

[7] 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.

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.[8]

4.3 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.

4.3.1 Ghana

Ghana's Minerals and Mines (Compensation and 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 and 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

[8] 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).

resettlement is to be carried out. A resettlement plan will not be approved if the authority is not satisfied with the 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.[9] 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.

4.3.2 Other countries

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).[10] 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 stipu-

[9] 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.

[10] 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.

lated in Law 20,417 (2010).[11] 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 ESIAs. 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 PNG, 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. Peru's legislation does not require preparation of a resettlement plan.

4.4 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 (Owen and Kemp 2016a, b). 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 a national legal and regulatory framework. If in place, government systems provide the national legal context in which companies will exercise their interests and attempt to discharge their responsibilities. This is a voluntary form of governance, whereby the company is not legally required to meet safeguard standards. When companies have sought finance under any of the conditions where adherence to IFC PS 5 is a requirement of the loan, the proponent may be compelled to meet particular provisions. In any case, a company's responsibilities under IFC PS must not exceed or contradict the legal standards of the country in which the proponent is operating.

The second 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 PS 5 on Involuntary Land Acquisition and Resettlement (IFC 2002). Paragraphs 30–32 of the IFC's PS 5 and the IFC's *Handbook for Preparing a Resettlement*

[11] 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.

Action Plan describe private sector responsibilities under government-managed resettlement (IFC 2002, 2012).[12]

All of the jurisdictions surveyed for this paper 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 (Vo and Brereton 2014).

5 Conclusions

This comparative study aims to improve knowledge on national legal and regulatory frameworks that govern resettlement activities in the global mining sector. The comparative review of MIDR-related laws and regulations across six mining jurisdictions in Sect. 4 highlights gaps between national frameworks and prevailing international norms and standards. The concluding section summarises key findings of the comparative review and briefly outlines key policy recommendations.

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

[12] 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 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 (2002: 42–45) and IFC (2012: 8).

important 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.

Our findings show that the existing international standards have been unevenly incorporated into national regulatory frameworks. In some instances, this is a function of national frameworks not having base regulatory mechanisms into which they can receive international standards. At other times, national frameworks have adapted legislative instruments within the practical constraints of the country's ability to administer these provisions. 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. In each of the countries surveyed, with the exception of Ghana, the relevant laws and regulatory mechanisms do not clearly address:

a. how affected people may gain benefits and assert rights under the law with respect to compensation and resettlement; and/or
b. the empowerment of government agencies to execute, regulate, and monitor land acquisition and resettlement.

The comparative review of laws and regulations reveals 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. However, Ghana's governance framework 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. The legal vacuum constitutes a significant limitation in the country's commitment to good governance (Adimazoya 2013; Kidido et al. 2015).

Findings indicate that national frameworks bias landowners over land users (i.e. occupants). In some countries, 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.

Finally, the comparative review suggests 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. Compensation amounts, whether overly high or low can generate enduring tensions between mining companies, governments and mining-affected communities.

A basic assumption underlying the recommendations that can be made from this study is that robust resettlement procedures established by law, coupled with respect for the rule of law, can help promote sustainable development outcomes. Land acquisition and mining-induced resettlement and land acquisition require stronger legislative frameworks. International norms and standards can have an important influence on domestic regulation and can serve as additional incentives for compliance. Governments should develop regulations on land acquisition and resettlement in the mining sector that include minimum requirements.

Government ministries and implementing agencies should establish their role as provider of information and prepare sector-specific guidelines on how to address key aspects of MIDR, particularly land acquisition, agreements, resettlement processes and compensation agreements. If legal reform is impractical or unfeasible, governments should negotiate investment contracts with mining companies that require the application of international standards in addition to domestic law. This would make non-compliance a violation of legally binding contractual terms.

This paper focuses exclusively on written laws in six countries; it does not assess whether laws and regulations are effectively implemented in practice. Although beyond the scope of this study, substantial gaps may exist between what is written in law and what is implemented. Specifically, gaps in regulatory capacity, resources and knowledge of MIDR often weaken governance arrangements in new mining frontiers. As a further step, it would be important to assess whether the rule of law is weak or ineffective and determine what mechanisms should be used to address this problem.

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