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**RESEARCH TITLE: Liability to Regulation: A Critical Evaluation of the Legal Framework Governing Mining-Induced Displacement and Resettlement in Zambia**

## CHAPTER ONE

### 1.0 INTRODUCTION

The mining sector is arguably the backbone of Zambia's economy, with investment opportunities spanning across diverse minerals. The country is endowed with vast mineral resources, including copper, cobalt, gold, iron ore, manganese, nickel, and uranium, as well as a wide range of gemstones such as emeralds, amethyst, and aquamarine.[1] Over the years, mining companies in Zambia have made significant contribution to the national budget. Mining accounts for nearly 12% of Zambia's Gross Domestic Product (GDP) and nearly 80% of total export value.[2] In 2024, the Office of the Auditor General revealed that thirty one (31) mining companies filed nil tax returns despite having exported minerals including copper, manganese and cobalt.[3]

Notwithstanding this economic significance, the legal protection of communities affected by mining-induced resettlement remains fragmented. The Minerals Regulation Commission Act No. 14 of 2024 provides for surface rights, consent, compensation and broad liability for mining-related harm, while the Environmental Management (Environmental Impact Assessment) Regulations, 2026 recognise Resettlement and require a Resettlement Action Plan where applicable[4]. However, these provisions do not establish one comprehensive statutory process governing the avoidance of Displacement, Replacement Land, Livelihood Restoration, and Relocation Assistance. The legal problem identified by this Research is therefore not a complete absence of law, but the absence of a consolidated and substantively adequate framework for Mining-Induced resettlement.

This Research analyses the legal framework governing mining-induced resettlement in Zambia, with particular emphasis on the Minerals Regulation Commission Act No. 14 of 2024, the Geological and Minerals Development Act No. 2 of 2025, read together with the Environmental Management Act No. 12 of 2011 and the Environmental Management (Environmental Impact Assessment) Regulations, 2026. It further proposes reforms for the enactment of a specific Mining-

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[1] U.S. Geological Survey, *The Mineral Industry of Zambia, 2017-2018*(2023) Minerals Yearbook
[2] The Ministry of Mines and Mineral Development, *National Three Million (3)Tonnes Copper Production Strategy by 2031*(2024), The Ministry of Mines and Mineral Development 2
[3] Office of the Auditor General, *Report of the Auditor General on the Accounts of the Republic for the Financial Year Ended 31st December 2024* (Government Printer 2025) [para 15].
[4] Environmental Management (Environmental Impact Assessment) Regulations, 2026 Statutory Instrument No.3 of 2026

Induced Resettlement Act which would consolidate and strengthen the existing but fragmented protections.

## 1.1 BACKGROUND OF STUDY

Mining induced Displacement of communities affected by mining activities has been ongoing since the 1970s with affected communities being left with little means of survival after displacement.[5] In 1989, the Department of Resettlement was established under the auspices of the office of the Vice-President and Government Gazette Notice No.42 of 1992.[6] Much later in 1995, the Government further promulgated the Mines and Minerals Act, Chapter 213 of the Laws of Zambia. The said Act was later repealed and replaced by the Mines and Minerals Act No.7 of 2008. Thereafter, the 2008 Mines and Mineral Act, was also repealed and replaced by the Mines and Mineral Development Act No.11 of 2015. The Mines and Mineral Development Act 2015 restructured the administration of mining rights by creating a Mining Licensing Committee with direct powers to grant, renew, refuse, suspend, revoke and amend mining and non-mining rights. It also introduced a Mining Appeals Tribunal to specifically handle issues and claims of violations of mineral rights by licence holders.

The effect of these reforms was to place decisions relating to mining rights within specialised administrative bodies. The Mining Licensing Committee was therefore responsible for determining whether an applicant had satisfied the statutory requirements for the grant or continued enjoyment of a mining right, while the Mining Appeals Tribunal provided an avenue of redress to persons dissatisfied with certain decisions made in the administration of those rights. Notwithstanding these institutional reforms, however, the 2015 Act remained principally concerned with the regulation and administration of mining rights. It did not establish a comprehensive procedure governing the avoidance of mining-induced displacement, the preparation of Resettlement Action Plans, the restoration of livelihoods or the continuing protection of communities after relocation.

At that time, Zambia did not have a comprehensive statute specifically governing mining-induced resettlement. Although environmental legislation, policies and guidelines addressed certain aspects

[5] M M Mwape, *Mining Induced Displacements and Resettlement Can Cause Major Social Disruption and Affects Socia-Economic Condition*(2020)Centre for Environment Justice 1
[6] F S Mudenda*, Land Law in Zambia*(University of Zambia Press 2007) 521

of Displacement, Compensation and Resettlement Planning, these instruments did not establish an integrated statutory framework applicable specifically to communities displaced by mining activities. Thus, in October 2013, the office of the Vice-President released guidelines for the compensation and resettlement of internally displaced persons.[7] Essentially, the Guidelines place a duty on the Government to ensure that Internally Displaced Persons are resettled voluntarily, safely and with due regard to their dignity, rights and welfare. The Guidelines further recognise the right of Internally Displaced Persons to receive compensation where displacement and resettlement occur. In the context of mining-induced resettlement, developers must provide prompt compensation at full replacement cost for lost assets and livelihoods, alongside a Resettlement Action Plan compliant with the Environmental Management Act No.12 of 2011.

Recently, the Minerals Regulation Commission Act No.14 of 2024 has repealed and replaced the Mines and Mineral Development Act 2015. The key feature of the Minerals Regulation Commission Act No.14 of 2024 is that it now centralises the powers of the Director of Mines, Director of Geological Survey and the Director of Mining Cadastre into one Commission.

In the year 2025, the Government of the Republic of Zambia also enacted the Geological and Minerals Development Act into law [8]. The Act complements the Mineral Regulation Commission Act No.14 of 2024 by specifically concerning itself with geological survey, mapping and exploration. It, however, also plays the key role of involving Zambian businesses and companies into the procurement process of goods and services needed by mining companies. On the 14th day of October 2025, this was achieved by the enactment of the Geological and Minerals Development (Local Content) (Preference for Goods and Services in the Mining Sector) Regulations, 2025.[9]

Further, the regulation of mining projects was strengthened by the enactment of the Environmental Management (Environmental Impact Assessment) Regulations, 2026. The Regulations require developers of projects falling within the prescribed classes to undertake an environmental and social impact assessment before project implementation. In the context of mining-induced resettlement, the Regulations are particularly important because they expressly recognise

[7] Office of the Vice President, *Guidelines for the Compensation and Resettlement of Internally Displaced Persons (IDPs)* (Lusaka, October 2013)
[8] Act No.2 of 2025
[9] The Geological and Minerals Development (Local Content) (Preference for Goods and Services in the Mining Sector) Regulations, 2025 Statutory Instrument No.68 of 2025

resettlement as a socio-economic impact which must be assessed and require an Environmental and Social Impact Statement to include a Resettlement Action Plan where applicable.

## 1.2 STATEMENT OF THE PROBLEM

Despite the introduction of a progressive, ex-post civil liability regime under Section 65 of the Minerals Regulation Commission Act No. 14 of 2024 (MRCA), which codifies strict liability for socio-economic, livelihood, and environmental harm, Zambia's mining law framework suffers from a critical, systemic regulatory deficit because it remains entirely reactive rather than proactive concerning Mining-Induced Displacement and Resettlement (MIDR). The core legal problem stems from a total substantive omission within the primary mining statutes; neither the MRCA 2024 nor the Geological and Minerals Development Act No. 2 of 2025 (GMDA) contains a mandatory, integrated ex-ante procedural framework governing physical and economic displacement. Instead, existing surface rights provisions focus narrowly on financial compensation for land disturbance, failing to legally obligate mining holders to execute structured resettlement or guarantee that Project Affected Persons (PAPs), especially vulnerable customary or informal landholders, are not left in worse socio-economic conditions.

This legislative deficit is severely compounded by structural fragmentation and regulatory isolation. While the Environmental Management (EIA) Regulations, 2026, attempt to bridge this gap by introducing Resettlement Action Plans (RAPs), this mechanism operates within an environmental silo completely detached from the core licensing and administrative functions of the Minerals Regulation Commission. Furthermore, the 2026 Regulations fail to provide an objective statutory threshold for determining precisely when a RAP is legally mandatory, and they omit enforceable, codified definitions for international baseline protections such as full Replacement Cost, Replacement Land, and long-term Livelihood Restoration.

Ultimately, the current legal regime relies inappropriately on an ex-post, tortious strict liability framework under Section 65 of the MRCA to remedy what is fundamentally a structural, ex-ante administrative process of physical displacement. Consequently, the regulation of mining-induced resettlement in Zambia remains structurally fragmented, procedurally ambiguous, and substantively incomplete. This gap creates acute regulatory uncertainty for mining investors while

leaving host communities highly vulnerable to structural impoverishment and landlessness without an integrated statutory shield.

### 1.3 PURPOSE OF THE STUDY

The purpose of this Research is to evaluate the legal framework governing mining-induced resettlement in Zambia and its ability to protect communities affected by physical and economic displacement. The Research primarily analyses the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025, but also considers the Environmental Management Act No. 12 of 2011 and the Environmental Management (Environmental Impact Assessment) Regulations, 2026 where they regulate resettlement arising from mining projects.

Ultimately, the Research advocates for a codified framework that harmonises Zambian domestic law, such as the MRCA and GMDA, governing Mining Induced Resettlement with international standards such as the International Finance Corporation Standards 5, and the World Bank's Operational Practice 4.12.

### 1.4 OBJECTIVES OF THE STUDY

The Objectives of this Research are to:

1. Analyse the scope, nature, and limits of the ex-post strict liability framework under Section 65 of the Minerals Regulation Commission Act No. 14 of 2024c;
2. Examine the legal efficacy and administrative challenges of the ex-ante Resettlement Action Plan (RAP) mechanisms under the Environmental Management (EIA) Regulations, 2026;
3. Investigate the extent of the regulatory fragmentation and structural disconnect between the Minerals Regulation Commission, the GMDA 2025 frameworks, and environmental authorities regarding land surface rights and involuntary displacement;
4. Assess Zambia's domestic statutory protections for Project Affected Persons (PAPs) particularly customary and informal landholders against international baseline standards on Replacement Cost, Land Allocation, and Livelihood Restoration.

## 1.5 RESEARCH QUESTIONS

1. What is the scope, nature and limitation of the ex-post strict liability framework established under section 65 of the Minerals Regulation Commission Act No. 14 of 2024 in relation to mining-induced displacement and resettlement?

2. To what extent do the Resettlement Action Plan mechanisms under the Environmental Management (Environmental Impact Assessment) Regulations, 2026 provide an effective ex-ante framework for regulating mining-induced displacement and resettlement?

3. What is the extent of regulatory fragmentation and structural disconnect between the Minerals Regulation Commission, the GMDA 2025 frameworks, and environmental authorities regarding land surface rights and involuntary displacement?

4. To what extent do Zambia's statutory protections for Project Affected Persons, particularly Customary and Informal Landholders, conform with international standards on full Replacement Cost, Replacement Land and Livelihood Restoration?

## 1.6 SIGNIFICANCE OF THE STUDY

This study significantly contributes to the body of knowledge on mining induced resettlement in Zambia as follows:

This Research brings critically analyses the framework within which the Mineral the Minerals Regulation Commission Act No.14 of 2024, the Environmental Management (Environmental Impact Assessment) Regulations, 2026, Geological and Minerals Development Act No.2 of 2025 Mining Induced Resettlement is regulated in Zambia. Specifically, it focusses on the deficiencies of the Minerals Regulation Commission Act No. 14 of 2024 and Geological and Minerals Development Act No.2 of 2025 in protecting displaced communities from involuntary resettlement caused by Mining Projects and activities.

## 1.7 SCOPE AND LIMITATION OF THE STUDY

This Research is geographically limited to the Republic of Zambia. It principally analyses mining-induced resettlement under the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025. However, because mining-induced resettlement is also addressed through environmental, land and policy instruments, the Research additionally considers the Environmental Management Act No. 12 of 2011, the Environmental

Management (Environmental Impact Assessment) Regulations, 2026, the Lands Act and relevant national resettlement policies and guidelines. International standards are considered only for purposes of evaluating the adequacy of the domestic framework and proposing suitable reforms

## 1.8 RESEARCH METHODOLOGY

This Research is a doctrinal study that refers to primary sources of collecting data such as Statutes and Case law. This research methodology analyses the Minerals Regulation Commission Act No.14 of 2024 and Geological and Minerals Development Act No.2 of 2025 in the context of Mining Induced Resettlement.

Secondly, it will take into consideration arguments of eminent authors from secondary sources such as books, reports, articles and journal.

## 1.9 LITERATURE REVIEW

Mwape defines Mining Induced Resettlement as *'the extensive process of planning and implementing the relocation of people, households and communities from one location to another because of mining projects, and all the associated activities such as the provision of compensation, livelihood restoration, and restoring or improving the social condition of the community.'* [10]

Owen J and Muriuki G & Kemp D define displacement as occurring when there has been a loss of residence resulting from project-related acquisition of land that require affected persons to move to another location.[11] The same authors note that overtime there has been a general acceptance of the term 'resettlement with development', which is basically the notion among scholars that resettlement should always have positive outcomes of those involved. This is because resettlement, in the contemporary sense, no longer involves simply moving project affected persons from one place to another, but also there has to be an assurance that project affected persons must be able to recover their livelihoods at their new locations.[12]

On the other hand, S.K. Jena defines Mining induced displacement and resettlement as the *"loss of physical and non-physical assets, including homes, communities, productive land, income-*

[10] M M Mwape, *Mining Induced Displacements and Resettlement Can Cause Major Social Disruption and Affects Socia-Economic Condition*(2020) Centre for Environment Justice
[11] Owen J, Muriuki G & Kemp D (2018). *Livelihoods, Food Security and Mining-Induced Displacement and Resettlement* Centre for Social Responsibility in Mining (CSRM) The University of Queensland: Brisbane
[12] Ibid 10

*earning assets and sources, subsistence, resources, cultural sites, social structures, networks and ties, cultural identity, and mutual help mechanisms".*[13]

Vanclay defines displacement as: *"Displacement refers to the experience of the people who are negatively affected by a project. When people's dwellings are directly aected and they can no longer physically live where they were previously living, this is known as 'physical displacement."*[14]

C Mulenga describes Mining Induced Resettlement in terms of compensation when he states that: 'Mining is characterized by excavation, which may result in the displacement of persons or communities who must be compensated.'[15]

R Mandishekwa and E Mutenheri lament that notwithstanding the effects of mining induced resettlement on an economy as a whole, there is generally a lack of literature on mining induced displacement and resettlement.[16] In the Zambian context, the Committee of Legal Affairs, Governance, Human Rights, Gender Matters and Child Affairs reported that stakeholders were concerned that the resettlement guidelines and national resettlement policy are not backed by any piece of legislation. This situation is exacerbated by the fact that the guidelines were usually applied by the Disaster Management and Mitigation Unit (DMMU) in situations of disaster.[17]

J Afzal and M Qayyum argue that in the context of development induced resettlement and displacement, including mining induced resettlement, compared to resettlement, displacement

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[13] S K Jena, *A Multi Dimensional Contemplation into Mining Induced Displacement and Resettlement (MIDR)- A Case Study of NALCO, Damanjodi* 5 available at https://www.researchgate.net/profile/Sanjeeb-Jena-2/publication/282274705_A_MultiDimensional_Contemplation_into_Mining_Induced_Displacement_and_Resettlement_MIDR-_A_Case_Study_of_NALCO_Damanjodi/links/564eeb3d08ae1ef9296d3713/A-Multi-Dimensional-Contemplation-into-Mining-Induced-Displacement-and-Resettlement-MIDR-A-Case-Study-of-NALCO-Damanjodi.pdf

[14] F Vanclay, Project-Induced displacement and resettlement (2017) *Impact Assessment and Appraisal,*

[15] C Mulenga, *The Law on Mining and Environmental Protection in Zambia* (Juta and Company (pty) 2022) 211

[16] R Mandishekwa and E Mutenheri, *Mining-Induced Displacement and Resettlement: An Analytical Review* (2020) 17 (1) Ghana Journal of Development Studies 116

[17] Report of the Committee on Legal Affairs, *Governance, Human Rights, Gender Matters and Child Affairs for the First Session of the Twelfth National Assembly* (2016), 14-15

itself is not a process-oriented idea. They further argue that eviction occurs when an individual is forcibly removed from a territory to which he has no legal claim. [18]

Although this Research accepts the first distinction of displacement not being a process oriented idea whilst Resettlement refers to relocations that are preceded by appropriate support systems in the new place and are based on prior planning and social engagement with impacted communities, it does not agree with J Afzal and M Qayyum that eviction always involves an individual being removed from a territory where he has no legal claim.

F Mandu, A Mushinge and C Mulenga found a correlation between customary land occupants displacement and acquisition of statutory title. In their paper, they found that the conversion of customary land to statutory tenure often disadvantages customary land occupants, who are usually uninformed about the process and unable to navigate its bureaucratic and expensive requirements.[19] Thus, the basis of the objection to J Afzal and M Qayyum's conception of eviction, especially in the Zambian context, stems from the fact that in countries like Zambia where the majority of the land tenure system is held under customary tenure, an eviction may not always be restricted those persons who can show that they a legal claim to land in a conventional sense.

J R Owen and D Kemp identify that there are eight risks involved with any resettlement activity being: (i.) joblessness; (ii.) homelessness; (iii.)landlessness; (iv)food insecurity; (v.) increased mortality; (vi.) marginalization; (vii.) reduced access to common resources; and (viii.) social disarticulation.[20]

However, this Research argues that the eight risks identified by J R Owen and D Kemp are not comprehensive in that they significantly omit to include the serious risk of human rights violations whenever any resettlement activity is undertaken. On this point, GD Khan and P Temocin note that there is an increasing interest globally on pressure being put on mining companies to incorporate considerations of human rights into their practices with international human rights.

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[18] J Afzal and M Qayyum, *'An Analysis of Risks, Obstacles and Mitigation Impoverishment in Development: Induced Displacement and Resettlement'* (2023) 2(2) Siazga Research Journal 101,106
[19] F Mandhu, A Mushinge and C Mulenga*, 'Land Governance in Zambia'* (Paper prepared for the 2019 Land Governance in Southern Africa Symposium, Windhoek, 3-4 September 2019)7
[20] J R Owen & D Kemp (2020), *Examining Vulnerability in Mining-Induced Displacement and Resettlement : A Preliminary Note*(CSRM Occasional Papers: Mining-Inducement and Resettlement Series, University of Queensland

Going beyond the work of GD Khan and P Temocin, this Research further advocates for more than just a cash compensation based framework. Rather, it argues that the best way to best protect the interests of Project Affected Persons and Internally Displaced Persons is by also giving them the additional option of alternative land whenever mining induced displacement occurs. This position finds support by Vanclay who posits that alternative means of compensation allows Project Affected Persons to make decisions about their future more proactively, without restriction.[21]

Vulnerability is important to examine from a human rights perspective. There is an increasing interest globally about how mining companies incorporate human rights considerations into their practices. There is a concern among human rights advocates that the term "vulnerability" is an imposition that inadvertently disempowers people.

It is proposed that a robust resettlement action plan is necessary in ensuring that Project Affected Persons' and Internally Displaced Persons' interests are protected from the effects of mining induced resettlement and risks identified by J R Owen and D Kemp. This is because a properly done Resettlement Action Plan sets out a structured roadmap that ensures affected people are treated fairly and are not left worse off after being moved.

Moffat and Zhang, have found a direct correlation between the way in which mining companies carry out their activities and engage with local communities and the way in which these practices influence trust, approval and acceptance.[22] In fact, A R Tazkia and D O Berliyanti go as far as stating that the social licence to operate is essential for all types of projects and are a key indicator of the success of the Project.[23]

However, in the context of Zambia, mining induced resettlement only seems to be narrowly centred on a compensation-based framework under the MRCA and GMDA. On this point, C. Mulenga observes that although compensation could be paid, it is left at the instance and initiative of a mining company.[24]The author basically suggests that the current legal framework under MRCA

[21] F Vanclay, 'Project-induced displacement and resettlement: from impoverishment risks to an opportunity for development?' (2017) 35(1) Impact Assessment and Project Appraisal 11
[22] J Gehman L M Lefsrud & S Fast, *Social License to Operate: Legitimacy by another name?* (2017) 60 (2) Canadian Public Administration 308
[23] A R Tazkia and D O Berliyanti, *Evaluation of Social License to Operate (SLO)in Three Blocks of PT.XYZ'*(2024)3 (9) Journal of Social Research 3
[24] C Mulenga, *The Law on Mining and Environmental Protection in Zambia* (Juta and Company (pty) 2022)212

seems to concern itself more with a compensation-based model, which gives mining companies power to determine the compensation to be paid to project affected persons.

Clearly, this position is not sustainable. As R Y Bakuri notes, concerns of livelihood, competition for arable land and scarcity of agricultural opportunities exacerbate tension and social conflicts between mining companies and local communities in the mining sector,[25]which arguably is not confined only to compensation.

It is also argued that resettlement confined only to compensation-based framework is inadequate. Thus, mining laws must include the restoration and improvement of livelihoods of Project Affected Persons and Internally Displaced Persons. On this point, Vanclay posits that the biggest challenge of resettling a community is that often times the compensation tends to be on what has been lost and not on what is needed to ensure Project Affected Persons and Internally Displaced Persons have decent means of survival at their new location.[26]This undoubtedly leads to social unrest between mining companies, and the communities in which they operate.

P A. Haslam, N Andrews, K Buhman, I. Odumosu-Ayanu and M C.J. Stoddart see the Social Licence to Operate as a preventative measure in ensuring that a company reduces the risk of unnecessary delays, protest and legal challenges, which may lead to revenue depletion.[27]In that light, the Social Licence to Operate emerges not only as a measure that would boost a company's branding and goodwill but also, most importantly, as a means to prevent unnecessary delays and legal challenges.

**1.12 CONCLUSION**

This Chapter has introduced the study, and provided background and context to mining induced resettlement in Zambia wherein it was shown that while the mining sector is still the cornerstone of Zambia's economic development, the present legal framework under the Minerals Regulation commission Act No. 14 of 2024 and Geological and Minerals Development Act No. 2 of 2025 does not comprehensively regulate mining-induced resettlement, or adequately protect Project

[25] R Y Bakuri, *Governance of Mining-Induced Resettlement in Ghana: Perceptions and Implications for Natural Resources Livelihoods* (2025) Vol.11 No.1 Journal of Energy and Natural Resource Management
[26] F Vanclay, *Project-Induced displacement and resettlement: Impact Assessment and Appraisal* (2017) 35 (1) International Association for Impact Assessment 14
[27] P A. Haslam, N Andrews, K Buhman, I. Odumosu-Ayanu and M C.J. Stoddart, *Contested Consultations In The Extractive Industries Rights, Processes, And Tensions* (2026) Routledge Studies of the Extractive Industries and Sustainable Development 118

Affected Persons and Internally Displaced Persons beyond compensation for disturbance of surface rights. The Environmental Management Act and the Environmental Management (Environmental Impact Assessment) Regulations, 2026 are also material because they expressly recognise resettlement and Resettlement Action Plans. The legal problem identified by this Research is therefore not a complete legislative vacuum. It is that the relevant protections remain fragmented and do not form a complete process governing avoidance of displacement, replacement land, livelihood restoration, relocation assistance, enforceable remedies, post-resettlement monitoring and completion. The Chapter has also set out the statement of the problem, objectives, research questions, significance, scope and methodology of the study and reviewed the relevant literature.

## 1.13 CHAPTER OUTLINE

### CHAPTER 1

Chapter one introduces the research topic and what it will be based on. This chapter will also give the statement of the problem, objectives of the study, research questions, literature review, significance of the study and the methodology.

### CHAPTER 2

Chapter two will analyse the provisions that govern Mining-Induced Resettlement under the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025 in Zambia.

### CHAPTER 3

Chapter three will analyse the extent to which the provisions of the Minerals Regulation Commission Act No.14 of 2024 and Geological and Minerals Development Act No.2 of 2025 conform with international standards and practices on mining-induced resettlement

### CHAPTER 4

Chapter four will identify the reforms that have to be enacted into an Act of Parliament governing mining-induced resettlement in Zambia.

### CHAPTER 5

Chapter five, summarises proposed recommendations and concludes the Research with regards the codification of an Act of Parliament that deals with the social licence to operate and mining induced resettlement in Zambia.

# CHAPTER TWO

# THE EX-POST AND EX-ANTE LEGAL FRAMEWORKS GOVERNING MINING-INDUCED DISPLACEMENT AND RESETTLEMENT IN ZAMBIA

## 2.1 Introduction

This Chapter analyses the two principal legal mechanisms governing mining-induced displacement and resettlement in Zambia. The first is the ex-post strict liability and redress framework established under section 65 of the Minerals Regulation Commission Act No. 14 of 2024. The second is the ex-ante Resettlement Action Plan framework established under the Environmental Management (Environmental Impact Assessment) Regulations, 2026.

The distinction between the two mechanisms is important. Section 65 principally provides liability and redress where harm or damage has been caused by mining or mineral processing operations. By contrast, the 2026 EIA Regulations require the likely environmental and social effects of a proposed project, including resettlement, to be identified and addressed before project implementation.

The Chapter therefore examines the nature, scope and limitations of each framework. It further considers whether the ex-post and ex-ante mechanisms complement each other sufficiently to provide a comprehensive legal process governing the avoidance, planning, implementation and completion of mining-induced resettlement.

## 2.2 THE EX-POST STRICT LIABILITY FRAMEWORK UNDER SECTION 65 OF THE MINERALS REGULATION COMMISSION ACT

Having established the distinction between ex-ante and ex-post regulation, it is now necessary to examine section 65 of the Minerals Regulation Commission Act No. 14 of 2024. The provision is central to the protection of persons and communities who suffer harm arising from mining or mineral processing operations. It establishes strict liability, identifies the forms of harm which may attract liability, determines the persons who may bring a claim and provides guidance on the period within which proceedings may be commenced.

Section 65 is not specifically titled or presented as a mining-induced resettlement provision. Nevertheless, its broad language makes it relevant to mining-induced displacement because the

consequences of displacement may include loss of livelihood, disruption of agricultural production, reduction in community yields, damage to socio-cultural conditions and interference with the economy of an affected community. These are matters which section 65 expressly recognises.

The section must, however, be properly understood. It does not regulate the planning and implementation of resettlement. It principally provides a right to compensation and redress where harm has already occurred or is threatened. It is therefore an ex-post remedial framework rather than a complete procedure governing the displacement and relocation of communities.

### 2.2.1 Nature of the Statutory Strict Liability

Strict liability describes a form of liability that does not depend on proving fault. Unlike negligence, which asks whether the defendant fell below a reasonable standard of care, strict liability attaches to the activity itself once harm results.[28] The claimant is not required to establish intention or carelessness, it is enough to show that the tort took place and that the Defendant was responsible for the thing or activity that caused the damage.[29] The doctrine is generally traced to *Rylands v Fletcher*, where liability arose from the escape of a dangerous thing brought onto land through a non-natural use of that land.[30] Its rationale rests on risk rather than blame: those who introduce unusually hazardous activities or substances are expected to bear the cost of the harm that follows, however carefully they may have acted.[31]

Section 65(1) of the MRCA provides that a holder is strictly liable for harm or damage caused by mining or mineral processing operations and must compensate the person to whom the harm or damage is caused.[32] The use of strict liability is significant because a claimant is not required to prove that the holder intended to cause the harm or acted negligently. Liability does not depend on whether the holder exercised reasonable care. What must be established is that the harm occurred and that it was caused by the mining or mineral processing operation.

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[28] WVH Rogers, *Winfield and Jolowicz on Tort* (19th edn, Sweet & Maxwell 2014) para 1-005.
[29] LII, 'Strict Liability' (Wex, Legal Information Institute) https://www.law.cornell.edu/wex/strict_liability accessed 3 July 2026.
[30] *Rylands v Fletcher* (1868) LR 3 HL 330.
[31] S Shavell, *'The Mistaken Restriction of Strict Liability to Uncommon Activities'* (2018) 10 Journal of Legal Analysis 1, 2.
[32] Minerals Regulation Commission Act No. 14 of 2024

The nature of this liability was considered under section 87 of the repealed Mines and Minerals Development Act No. 11 of 2015. Section 87 was substantially similar to the present section 65. In ***Voster Sialubono and Others v Lafarge Zambia Plc***, residents living near the Defendant's cement plant alleged that dust emissions from the plant interfered with their use and enjoyment of property and affected their health. The High Court stated that strict liability meant that "there is no need to prove fault liability."[33] The Court nevertheless emphasised that the claimant was still required to prove a causal link between the defendant's operations and the alleged damage.

The decision is important to the present Research because it shows that strict liability should not be confused with automatic liability. Section 65 removes the need to establish fault, but it does not remove the requirement to prove harm and causation. An affected community cannot succeed merely by showing that it lives near a mining operation. It must demonstrate that the alleged harm was caused directly or indirectly by the mining or mineral processing activity. This, however, has to be reconciled with the issue of foreseeability as

The same distinction becomes important in mining-induced resettlement. A person who alleges that relocation resulted in loss of agricultural production, income or access to natural resources would not need to prove that the mining company acted negligently. The person would, however, be required to prove the loss and connect it to the mining operation or the displacement caused by that operation.

It is therefore submitted that section 65 establishes statutory strict liability and not absolute liability. The latter would suggest that the existence of mining operations and harm is sufficient in every case. The wording of section 65 still requires a legal and factual connection between the operation and the harm complained of.

### 2.2.2 Persons Subject to Liability

Section 65(1) initially places liability on a holder. The MRCA defines a holder by reference to the person in whose name a mining or non-mining right is registered. Accordingly, the first person against whom liability may be enforced is the holder of the relevant mining right or mineral processing licence.

[33] Voster Sialubono and Others v Lafarge Zambia Plc (2014/HP/1688)

The position becomes more complex under section 65(2), which provides that liability attaches to the person who directly contributes to the act or omission resulting in the harm or damage. Section 65(3) further provides that where more than one person is responsible, liability is joint and several. These provisions recognise that mining operations may involve several persons. Apart from the holder, operations may involve contractors, mineral processors, subsidiaries, consultants and other persons responsible for the conduct which causes harm.

However, the Act does not define what amounts to "directly contributing" to the relevant act or omission. It remains uncertain whether the phrase is intended to extend liability beyond the registered holder or merely to determine responsibility between persons operating under the authority of the holder. This is particularly relevant where the licence is held by one company, but the harmful activity is carried out by a contractor or a related company.

The decision in ***Solomon Siame v First Quantum Mining and Operations Limited*** illustrates the importance of identifying the proper defendant. The claimant had suffered injuries while working at a mine and sought, among other remedies, to rely on the strict liability provision under section 87 of the repealed Act. The High Court found that the defendant was not the registered holder of the mining licence and could not be held strictly liable under the provision in the same manner as the holder.[34]

Although the case arose in an employment and personal injury context, it is relevant because it demonstrates that the identity and legal status of the defendant may determine whether statutory strict liability attaches. In mining-induced resettlement, affected persons may interact with a project operator, contractor or subsidiary without knowing the entity which formally holds the mining right. The corporate and operational structure of the project may therefore make it difficult for an affected community to identify the correct party.

Section 65(2) and (3) potentially respond to this difficulty by extending liability to persons who directly contribute to the harm and by imposing joint and several liability where more than one person is responsible. Yet, without judicial clarification of the words "directly contributes", the exact scope of liability remains uncertain.

[34] Solomon Siame v First Quantum Mining and Operations Limited (2018/HP/0689)

This Research therefore argues that the breadth of section 65 is both a strength and a limitation. It enables a court to consider the responsibility of several persons involved in mining operations. At the same time, the absence of a clear statutory test may lead to preliminary disputes about whether a contractor, subsidiary or other participant falls within the provision. This reflects a wider principle of legality that the standards a law imposes must be clearly stated, so that those subject to the law can know what is demanded of them.[35]

### 2.2.3 Scope of Harm and Damage

The scope of section 65 is considerably wider than the disturbance of surface rights contemplated under section 40 of the MRCA. Section 65(5)(a)-(g) extends liability to harm caused directly or indirectly to the economy or socio-cultural conditions, negative impacts on community livelihoods and indigenous knowledge systems, disruption of production and agricultural systems, reduction in community yields, contamination, damage to the economy of an area or community and other consequential disorder.

This wording is important because it answers the question whether section 65 is capable of addressing the wider consequences of mining-induced displacement. The provision does not limit harm to physical damage to houses, crops or land. It recognises that mining operations may interfere with the social and economic systems upon which a community depends.

In the context of mining-induced resettlement, harm to livelihoods may arise where affected persons lose access to agricultural land, grazing areas, forests, rivers, markets or employment opportunities. Harm to socio-cultural conditions may arise where relocation separates extended families, interferes with community leadership structures or restricts access to burial grounds, shrines and other culturally important places. Disruption to production or agricultural systems may arise where a resettlement site has less fertile soil, inadequate water or insufficient land for cultivation.

It is therefore inaccurate to state that section 65 does not identify the types of harm which may be compensated. Parliament deliberately used broad language and then supplied several categories

[35] Edwin W Tucker, 'The Morality of Law, by Lon L Fuller' (1965) 40 Indiana Law Journal 270, 274.

under subsection (5). The provision is capable, at least in principle, of covering many of the impoverishment risks associated with mining-induced resettlement.

There is, however, no definition of livelihood, socio-cultural conditions, indigenous knowledge systems or consequential disorder under the MRCA. The absence of definitions does not remove liability, but it leaves the meaning and evidential requirements of these terms to administrative and judicial interpretation. A court may therefore be required to determine, on a case-by-case basis, whether the loss complained of falls within one of the categories under section 65(5).

The phrase "directly or indirectly" also widens the provision. Mining-induced displacement may produce immediate harm, such as the destruction of a house, and indirect harm, such as a later decline in household income after access to productive land has been lost. The wording of section 65(5) appears capable of covering both forms of harm.

Nevertheless, a claimant must still show that the loss is not too remote from the mining operation. The broad recognition of indirect harm does not remove the need for evidence demonstrating how the mining operation or displacement resulted in the alleged social, economic or livelihood consequence.

### 2.2.4 Environmental Restoration, Health and Preventive Measures

Section 65 does not only provide monetary compensation. Where harm is caused to the environment or biological diversity, section 65(4) provides that compensation includes the cost of reinstatement, rehabilitation, clean-up and, where applicable, preventive measures. Section 65(9) separately provides for medical expenses and compensation for disability or loss of life where mining operations cause harm to human or animal health.

These provisions show that the remedial framework is not confined to the payment of a single sum of money. It may require the restoration of an affected environment and the payment of health-related expenses. This reflects the polluter pays principle, under which the party responsible for pollution bears not only the cost of compensating those harmed but also the cost of cleaning up and restoring the damaged environment.[36]The principle finds international expression in the Rio Declaration, which calls on states to develop national law on liability and compensation for the

[36] Rio Declaration on Environment and Development (adopted 14 June 1992) UN Doc A/CONF.151/26 (vol I), principle 16.

victims of pollution and environmental harm.[37] In that respect, section 65 adopts a wider approach than section 40, which is primarily concerned with disturbance of land and damage to crops, trees, buildings and works.

However, the restoration obligations under subsection (4) are expressly connected to the environment and biological diversity. The section does not contain an equivalent provision requiring the reinstatement or restoration of a displaced person's livelihood. A court may award compensation for negative livelihood impacts under subsection (5), but the Act does not expressly require the holder to undertake a structured programme through which the livelihood is restored over time.

This is an important distinction. Compensation for livelihood loss and livelihood restoration are related but not identical. Compensation may consist of a monetary payment calculated at a particular point in time. Livelihood restoration requires continuing measures intended to ensure that affected persons are able to resume or improve their economic activities after relocation.[38]

For example, where a household previously depended on farming, a payment for lost crops may not be sufficient if the replacement site has less fertile soil, inadequate water or no secure access to agricultural land. A meaningful livelihood restoration process may require land preparation, agricultural inputs, training, market access and continuing monitoring. Section 65 does not expressly require these measures.

It is therefore submitted that section 65 is progressive in recognising livelihood harm, but incomplete in prescribing the form of remedy required to restore a livelihood. The provision tells the court what types of harm may attract liability. It does not set out the programme which a holder must implement to prevent the affected household from becoming poorer after displacement.

### 2.2.5 Causation and Proof of Harm

The strict liability framework does not displace the ordinary burden placed upon a claimant to prove the alleged harm. This was apparent in ***Voster Sialubono and Others v Lafarge Zambia Plc.*** Although the High Court accepted that fault did not need to be established under the statutory strict

[37] ibid
[38] International Finance Corporation, *Guidance Note 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para GN1; International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para 25.

liability provision, it did not accept every head of damage claimed. The claims relating to personal injury were not established because the medical evidence did not sufficiently connect the alleged illnesses to the emissions from the plant.

The Court of Appeal for Zambia adopted a similar approach to causation in ***Aqua-Rent a Dispenser Limited T/A Aqua Pure Mineral Water v Zambia Breweries Plc and Another***. The Appellant alleged that construction works had caused contamination of its borehole. However, the Court found that the evidence did not sufficiently establish that the Respondent's works were the source of the contamination. The absence of the recommended technical test was held against the Appellant.[39]

Although Aqua-Rent did not concern mining-induced resettlement, it demonstrates an important evidential principle. A claimant may rely on a statutory environmental cause of action, but must still prove the facts upon which the claim depends. The existence of a broad remedial statute does not relieve a claimant of the burden of proving causation.

This presents a practical challenge in mining-induced resettlement cases. The effects of displacement may occur gradually and may be influenced by several factors. A decline in agricultural output, for instance, may be connected to the quality of replacement land, changes in rainfall, loss of labour, inadequate water or the absence of agricultural inputs. Establishing that the decline was caused by the mining-induced displacement may require baseline information concerning the household's income, land use, production and living conditions before relocation.

Section 65 does not require the holder to conduct a pre-displacement census or prepare a socio-economic baseline for purposes of future litigation. Such information may be contained in an Environmental and Social Impact Statement or a RAP, but section 65 itself does not provide for its collection and preservation.

The effectiveness of an ex-post remedy may therefore depend heavily on the quality of the ex-ante planning process. Where the RAP contains accurate information regarding assets, income sources, household composition and livelihood activities, an affected person may be better placed to prove

[39] Aqua-Rent a Dispenser Limited T/A Aqua Pure Mineral Water v Zambia Breweries Plc and Another (Appeal No. 184/2019)

a later claim under section 65. Where no reliable baseline exists, the claimant may face considerable difficulty in proving the extent of deterioration after resettlement.

This demonstrates that strict liability cannot replace proper resettlement planning. It may ease the claimant's burden by removing the need to prove fault, but it does not remove the need to prove the harm suffered and its relationship with the mining operation.

### 2.2.6 Time within which an Action may be Brought

Section 65(6) provides a special limitation rule for mining-related harm. Instead of imposing a fixed number of years from the date of the operation, the section provides that the right to bring an action lapses after a reasonable period from the date on which the affected person or community could reasonably be expected to have learned of the harm or damage.

The subsection further requires consideration of the time the harm may take to manifest and the time required to correlate the harm with the mining or mineral processing operation. It also directs attention to the situation and circumstances of the affected person or community.

This is significant because mining-related harm may not always be immediate. Environmental contamination may remain undiscovered for a considerable period. Similarly, some livelihood consequences of displacement may only become evident after several agricultural seasons or after temporary support provided by the developer has ended.

Section 65(6) should therefore be distinguished from section 40(7), which requires a compensation claim under section 40(1) to be made within three years from the date on which the right to claim accrued. The three-year period relates specifically to claims for compensation for disturbance and damage under section 40. It should not be presented as the general limitation period for all harm arising from mining operations.

A further difficulty arises when the limitation rule in section 65(6) is set against the general law of limitation. The Act applies against the background of the Limitation Act 1939 of the United Kingdom, which applies in Zambia by virtue of the **British Act Extension Act, Chapter 10 of the Laws of Zambia** and prescribes a six-year period for actions founded on simple contract or tort.[40]

[40] Limitation Act 1939 (UK), s 2(1)(a), as applied in Zambia by the English Acts (Extent of Application) Act, Chapter 11 of the Laws of Zambia; see also Law Reform (Limitation of Actions, etc.) Act 1963.

Compensation for displacement will frequently arise in a contractual setting, for instance where a developer and an affected household enter into a Resettlement agreement. This is illustrated by ***Kansanshi Mine PLC v Maini Joseph Mudumina and Others*****,** where the claim for compensation following resettlement was litigated as an ordinary civil dispute rather than under the mining legislation, turning instead on the respondents' proprietary interest and on witness credibility. Where a claim is framed in this way, as a breach of a resettlement agreement, the applicable period would ordinarily be six years. The Act, however, does not indicate how this six-year contractual period interacts with the three-year period in section 40(7) or the open-ended "reasonable period" in section 65(6). A claimant displaced under a Resettlement agreement may therefore be met with competing limitation arguments depending on whether the claim is characterised as one for statutory compensation under section 40, for mining-related harm under section 65, or for breach of contract at common law under the broader provision of the Limitation of Actions Act. The MRCA does not resolve this conflict, and the characterisation of the claim may determine whether it is time-barred.

It should be noted also that the language of section 65(6) is more responsive to delayed and cumulative harm. However, the words "reasonable period" are not defined. While flexibility may assist affected persons whose harm manifests late, it may also create uncertainty for both claimants and holders. The parties may first be required to litigate whether the claim was brought within a reasonable time before the substantive harm is determined.

It is also not clear when a person or community will be taken to have reasonably learned that a livelihood decline was connected to mining-induced displacement. The answer may depend on access to information, technical knowledge and the circumstances of the affected community. The provision is therefore more suitable for latent mining harm than a rigid limitation period, but its application will depend on judicial interpretation.

### 2.2.7 Standing and Access to Redress

Section 65(7) adopts a broad approach to standing. It allows proceedings to be brought by a person, a group of persons, a private or State institution, a person acting on behalf of another who is practically unable to institute proceedings, a person acting for a group or class, or a person acting in the public interest.

This is particularly relevant to mining-induced resettlement because displacement ordinarily affects groups rather than isolated individuals. The loss of common grazing land, a water source, a market, a burial site or an agricultural area may affect an entire community. A collective claim may therefore be more appropriate than requiring every household to institute separate proceedings.

The provision also recognises that some affected persons may, for practical reasons, be unable to commence litigation. This may include persons who lack financial means, legal knowledge, documentation or physical access to the courts.

Section 65(8) further provides that costs should not be awarded against a claimant who reasonably instituted proceedings out of concern for the public interest, human health, biological diversity or the environment. The section reduces the risk that a genuine public-interest claimant will be discouraged by the possibility of an adverse costs order.

A similar approach was adopted by the Court of Appeal in **Aqua-Rent.** The Court considered section 110(4) of the Environmental Management Act and held that an environmental claimant should not be condemned in costs where the primary motivation for the proceedings was the protection of the environment and the public interest. The Court nevertheless dismissed the substantive claim because causation had not been proved. The case therefore shows that public-interest costs protection and proof of the claim are separate matters.

Although section 65 widens access to judicial redress, it does not establish a community-level grievance process. Affected persons may still be required to prepare pleadings, obtain evidence and pursue proceedings before a court. For communities in rural mining areas, the existence of legal standing does not necessarily mean that redress will be simple or immediate.

The provision is therefore an important access-to-justice safeguard, but it remains part of an ex-post litigation framework. It does not provide the informal, accessible and continuing grievance process which may be required while a RAP is being implemented.

### 2.2.8 Relationship between Section 65 and Surface Rights

Section 65 should not be read in isolation from the surface-rights provisions under Part IV of the MRCA. Section 40 provides compensation to an owner or lawful occupier for disturbance of rights

and damage to the surface of land. Section 65, on the other hand, is wider and applies to any person who suffers harm caused by mining or mineral processing operations.

In ***Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited and Others***, the Court of Appeal distinguished mineral rights from surface rights and held that surface rights may be enforced through an ordinary civil action.[41] The decision confirms that the grant of mineral rights does not extinguish the interests of an owner or lawful occupier of the surface.

The case is relevant because mining-induced resettlement may involve both interference with surface rights and wider livelihood harm. A person may have a claim under section 40 for damage to land, crops or buildings and a separate or additional claim under section 65 for broader socio-economic harm.

However, neither section establishes the process through which the person must be relocated. The provisions provide rights to compensation and redress. They do not identify the replacement site, the standard of housing to be provided, the period within which relocation should occur or the continuing obligations of the holder after the affected person moves.

It follows that sections 40 and 65 should be regarded as remedial provisions which may operate alongside a RAP. They should not be treated as substitutes for a resettlement planning framework.

### 2.2.9 Limitations of the Ex-Post Framework

From the foregoing, it is evident that section 65 provides broad protection. It recognises environmental, health, livelihood, agricultural, socio-cultural and community economic harm. It removes the need to prove fault, allows collective and public-interest claims and accommodates harm which manifests after a period of time.

However, its limitations become clear when it is applied to the full process of mining-induced resettlement.

First, section 65 is primarily reactive. The cause of action arises from harm or threatened harm connected with mining operations. The section does not require the holder to demonstrate that displacement has been avoided or minimised before the project proceeds.

[41] Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited and Others (Appeal No. 74/2018)

Secondly, the section does not require the identification of all persons who will be physically or economically displaced. It does not provide for a census, asset inventory, cut-off date or socio-economic baseline.

Thirdly, it does not prescribe the manner in which affected persons must participate in decisions concerning relocation. There is no requirement under section 65 for prior disclosure of information, consultation on alternative sites or participation in the design of livelihood restoration measures.

Fourthly, the provision does not establish direct statutory entitlements to replacement land, replacement housing, moving assistance or transitional support.

Fifthly, while section 65 recognises livelihood harm, it does not require the preparation or implementation of a Livelihood Restoration Plan.

Sixthly, the section does not distinguish between physical and economic displacement. A person may lose access to land or resources without being physically relocated, but the Act does not provide a procedure specifically addressing that form of displacement.

Seventhly, it does not create a resettlement monitoring framework or a completion audit. It provides no statutory test for deciding when the holder's obligations towards the displaced community have been fully discharged.

Eighthly, an affected person must still prove causation and quantify the harm suffered. As demonstrated in Sialubono and Aqua-Rent, the absence of fault does not remove the evidential burden.

Lastly, section 65 depends substantially on court proceedings. It does not itself provide an administrative mechanism through which ZEMA, the Commission and the Department of Resettlement may jointly supervise the correction of resettlement failures.

### 2.2.10 Finding on the Scope, Nature and Limitation of Section 65

The nature of section 65 is that of a statutory strict liability and redress provision. Its scope is broad because it covers direct and indirect environmental, health, livelihood, agricultural, socio-cultural and community economic harm. The provision also provides flexible standing, public-interest protection and a limitation rule which takes account of delayed manifestation of harm.

Nevertheless, section 65 does not amount to a complete mining-induced resettlement framework. Its principal weakness lies in its ex-post character. It becomes most relevant where harm has already occurred or is threatened. It does not establish the procedures and entitlements required to avoid displacement, plan relocation, restore livelihoods and determine whether resettlement has been successfully completed.

The answer to the first research question is therefore that section 65 is wide and progressive as a remedial provision, but limited as a mechanism for administering mining-induced displacement and resettlement.

## 2.3 THE EX-ANTE RESETTLEMENT ACTION PLAN FRAMEWORK UNDER THE ENVIRONMENTAL MANAGEMENT (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS, 2026

The Environmental Management (Environmental Impact Assessment) Regulations, 2026 represent an important development in the regulation of mining-induced resettlement. Unlike section 65 of the MRCA, which principally operates after harm has occurred, the EIA Regulations require the likely environmental and social effects of a project to be identified and assessed before implementation.

The Regulations therefore provide the main ex-ante mechanism for resettlement planning. Their relevance lies in the express recognition of resettlement as a socio-economic impact and the requirement for a Resettlement Action Plan where applicable.

### 2.3.1 Nature and Purpose of the RAP Mechanism

Regulation 3 requires an environmental impact assessment to be carried out for projects listed in the First Schedule before implementation.[42] Regulation 4 requires a developer whose proposed project is likely to have an adverse effect on the environment to submit either an Environmental and Social Project Brief or an Environmental and Social Impact Statement to ZEMA.[43]

Regulation 2 defines a RAP as a plan outlining the activities or processes to be undertaken to resettle or compensate a person displaced or affected by a project.[44] The definition is important because it expressly introduces resettlement planning into the statutory environmental assessment framework.

The ex-ante character of the mechanism is shown by the fact that the assessment and approval take place before the proposed project is implemented. A developer must therefore disclose the anticipated socio-economic impacts of the project and explain the measures intended to address those impacts before operations commence.

The RAP mechanism is consequently different from compensation under sections 40 and 65 of the MRCA. Its purpose is not merely to respond to harm. It is intended to identify affected persons, anticipate the consequences of displacement and state the activities which will be undertaken to resettle or compensate them.

The inclusion of the words "activities or processes" also suggests that resettlement is not intended to be treated as a single payment. It involves a series of steps which must be planned. However, the definition remains broad and does not state what those activities or processes must contain.

### 2.3.2 Statutory Trigger for the Preparation of a RAP

The Third Schedule provides that an Environmental and Social Impact Statement must include the socio-economic impacts of the project, including the resettlement of affected people, together with a RAP "where applicable."[45]

The words "where applicable" create the principal uncertainty concerning the statutory trigger for a RAP. The Regulations do not state the number of persons who must be displaced before a RAP

[42] Environmental Management (Environmental Impact Assessment) Regulations, 2026 (Statutory Instrument No. 3 of 2026
[43] Ibid, regulation 4.
[44] Ibid, regulation 2
[45] Ibid, Third Schedule, Part B, paragraph (j)

becomes mandatory. They also do not indicate whether the requirement arises where there is only economic displacement without physical relocation.

For example, a mining project may restrict access to agricultural land, grazing areas or natural resources without requiring a household to move from its home. Such a household is economically displaced, but it is not clear from the wording of the Regulations whether a RAP is mandatory in those circumstances.

This gap is significant because international resettlement standards do not treat physical relocation as the sole trigger for a resettlement plan. The World Bank draws a settled distinction between physical displacement, which involves the actual relocation of people and a loss of shelter or productive assets, and economic displacement, which results from an action that interrupts or removes people's access to productive assets without physically relocating them.[46] Under these standards, a resettlement instrument may be required in either situation, since a project can impair livelihoods through loss of income sources whether or not the affected persons are required to move.[47] On this approach, the relevant question is not the number of persons displaced but whether the project causes loss of assets, access or income, so that a framework confined to physical relocation, or silent on any threshold, risks leaving economically displaced persons without a clear entitlement to a plan.[48]Read against this background, the open-ended phrase "where applicable" leaves the domestic trigger materially less certain than the standards on which resettlement practice is generally modelled.

It is also unclear whether temporary displacement or temporary restriction of access triggers the requirement. Likewise, the Regulations do not state whether the developer must initially determine the applicability of a RAP or whether the decision rests solely with ZEMA.

This is not to say that ZEMA is powerless. Regulation 5(3) permits the Agency to require an Environmental and Social Impact Statement for a project which is not listed under Classes I to IV where the Agency determines that such a Statement is necessary. Regulation 12 also empowers the Agency to screen proposed projects and determine the type of environmental impact assessment required.

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[46] International Finance Corporation, *Handbook for Preparing a Resettlement Action Plan* (IFC 2002) 3
[47] ibid
[48] World Bank, *Operational Policy 4.12: Involuntary Resettlement* (World Bank 2001) para 3

These provisions give ZEMA room to require a more detailed assessment where the anticipated effects justify it. However, the exercise of that power depends on administrative determination. The Regulations do not create an objective rule that any project causing physical or material economic displacement must be supported by a RAP.

The result is that the existence of the RAP requirement is clear, but its precise trigger remains uncertain.

### 2.3.3 Relationship with the Mining Licensing Framework

It would not be accurate to state that the environmental assessment framework is completely detached from the administration of mining rights. Section 59(1) of the MRCA requires the Minerals Regulation Commission, when deciding whether to grant a mining right or mineral processing licence, to consider the need to prevent adverse socio-economic impacts and harm to human health.

Section 59(2) further provides that the Commission and ZEMA may cause environmental impact studies and other studies to be carried out where the Commission considers them necessary for its decision Section 60 permits environmental, human-health and socio-economic conditions to be attached to the grant or renewal of a mining right.[49]

The MRCA therefore creates some statutory connection between the Commission's licensing powers and ZEMA's environmental assessment mandate. It would be incorrect to describe the two institutions as operating in complete isolation.

The connection is reinforced by section 53, which permits the Commission to suspend or revoke a mining right where the holder contravenes the Act, another written law relating to the right or a condition of the right. Section 56 further empowers the Commission to issue a compliance order where a condition of a mining or non-mining right has been breached. The order may require remedial measures or suspend operations in order to prevent adverse effects on the environment or human health.

[49] Minerals Regulation Commission Act No. 14 of 2024, section 59(2)

These provisions could potentially be used where a holder fails to comply with environmental or socio-economic conditions attached to the mining right. They show that the mining licensing framework contains mechanisms which may support enforcement of environmental obligations.

However, the connection remains general. The MRCA does not expressly provide that:

(a) approval of a RAP is a condition precedent to the grant of every mining right likely to cause displacement;

(b) the Commission must obtain confirmation from ZEMA that the RAP is adequate before the right is granted;

(c) the holder must demonstrate continuing implementation of the RAP before renewal;

(d) breach of an approved RAP automatically constitutes breach of the mining right;

(e) ZEMA must notify the Commission of every material RAP breach; or

(f) the mining right must remain suspended until the resettlement failure has been remedied.

The legal position is therefore more accurately described as partial institutional integration. The Commission has a statutory duty to consider socio-economic impacts and may cooperate with ZEMA. Yet, the legislation does not set out a specific joint procedure through which the RAP is approved, supervised and enforced as part of the life cycle of the mining right.

### 2.4 RELATIONSHIP BETWEEN THE EX-ANTE AND EX-POST FRAMEWORKS

The ex-ante RAP framework and the ex-post strict liability framework perform different but complementary functions. The RAP mechanism seeks to identify, prevent and mitigate displacement-related harm before the project is implemented. Section 65 provides compensation and redress where harm nevertheless occurs or where the measures contained in the RAP fail.

In principle, the two frameworks should operate together. The RAP should establish the baseline position of affected persons, identify their entitlements and specify the measures which the developer must implement. Where the measures fail and harm results, section 65 should provide a right to compensation and redress.

However, the relationship is not expressly stated in either instrument. Section 65 does not refer to the RAP or explain whether breach of a RAP constitutes evidence of liability. The Environmental

Impact Assessment Regulations, 2026 do not state whether compliance with an approved RAP affects the holder's liability under section 65.

Compliance with the RAP should not automatically exempt a holder from liability. A plan may have been approved and formally implemented, but affected persons may still suffer livelihood, agricultural or socio-cultural harm. Section 65 imposes strict liability for the actual harm caused by mining operations and does not provide a defence based solely on regulatory compliance.

This position finds some support in ***Voster Sialubono and Others v Lafarge Zambia Plc***, where compliance with environmental emission limits was not treated as an absolute answer to the claim. The Court considered the actual interference and harm alleged rather than treating regulatory compliance as conclusive.[50]

Similarly, the existence of section 65 should not be used to justify weak ex-ante planning. It would be inappropriate to permit displacement on the basis that affected persons may sue after harm has occurred. Litigation may take time and the affected household may already have lost its home, land and livelihood.

The principal weakness in the present framework is therefore the absence of a continuous statutory process connecting the two mechanisms. The law does not clearly identify the institution responsible for following the affected community from the assessment stage, through relocation, to the restoration of livelihood and completion of resettlement.

The result is that Zambia has an ex-ante mechanism and an ex-post remedy, but the legal bridge between them remains incomplete.

### 2.5. Regulatory Fragmentation and the Structural Disconnect in the Governance of Mining-Induced Displacement

A recurring theme of the analysis undertaken in this Chapter is that the regulation of mining-induced displacement in Zambia is not contained in a single, coherent statutory scheme, but is instead dispersed across several instruments and institutions which operate largely in isolation from one another. Three distinct statutory regimes each govern only a fragment of the displacement problem. The first is the mining-licensing and surface-rights regime under the Minerals Regulation

[50] Voster Sialubono and Others v Lafarge Zambia Plc (2014/HP/1688)

Commission Act No 14 of 2024, administered by the Minerals Regulation Commission.[51] The second is the geological, exploration and mineral-development regime under the Geological and Minerals Development Act No 2 of 2025.[52] The third is the environmental and social-assessment regime under the ***Environmental Management Act No 12 of 2011***, as amplified by the ***Environmental Management (Environmental Impact Assessment) Regulations, 2026***, administered by the Zambia Environmental Management Agency.[53] Overlaid on these is a fourth, essentially policy-based, institutional actor, namely the Department of Resettlement under the Office of the Vice-President, operating pursuant to the Revised National Resettlement Policy of 2024.[54] The difficulty is not that each of these regimes is individually deficient in every respect, but that no provision in any of them integrates the others into one continuous process governing a single displacement event.

This Research argues that the Minerals Regulation Commission Act concentrates in the Commission the grant, renewal and amendment of mining rights, together with the consent, compensation, dispute-resolution and strict-liability provisions in Part IV and section 65.[55] Yet those provisions address surface rights, consent and compensation for disturbance and damage. Nothing in the Act requires the Commission, before granting a right that is likely to displace a community, to satisfy itself that displacement has been avoided or minimised, that a Resettlement Action Plan exists, or that the environmental authority has approved the social components of the project. The licensing decision and the resettlement consequence are, in other words, legally severed from each other at the very point at which they are factually joined.

Conversely, the 2026 Regulations do recognise resettlement: they define a Resettlement Action Plan and require an Environmental and Social Impact Statement to include one ‘where applicable’. But that recognition runs along a separate institutional track. The Regulations are administered by the Zambia Environmental Management Agency, not by the Minerals Regulation Commission, and no provision of either instrument wires the one into the other. The Act does not make Agency

[51]Part IV of the Minerals Regulation Commission Act No 14 of 2024
[52]Geological and Minerals Development Act No 2 of 2025
[53]Environmental Management (Environmental Impact Assessment) Regulations 2026, SI No 3 of 2026
[54]Revised National Resettlement Policy (Office of the Vice-President, Department of Resettlement, Lusaka 2024).
[55]Minerals Regulation Commission Act No 14 of 2024

approval of a Resettlement Action Plan a condition of the grant or continuation of a mining right; the Regulations do not empower the Agency to suspend a mining right where a Plan is breached; and the monitoring obligation under regulation 18 is a general environmental duty which is not connected to the conditions of the licence under which the displacing operations are conducted. Each authority can therefore discharge its own mandate in full while the displaced community falls between the two.

The Geological and Minerals Development Act adds a further parallel channel. Section 7(3) and (8) creates its own consent and compensation regime for entry upon land, which exists alongside, and is administered separately from, the consent and compensation provisions in Part IV of the Minerals Regulation Commission Act. A person whose land is entered, marked, damaged and ultimately taken for mining purposes may thus be confronted with two different statutory consent requirements and two different compensation routes, in neither of which resettlement, as defined earlier in this Chapter, is addressed.

This structural disconnect is not merely an inference from the statutory texts; it has been judicially confirmed. In ***Konkola Copper Mines PLC v Rephidim Mining and Technical Supplies Limited***, discussed above, the Court of Appeal expressly observed that 'surface rights and mineral rights are protected by different legal regimes', and held that surface rights fall to be enforced by ordinary civil action, such as an action in trespass, outside the mining-law framework altogether.[56] The decision is authority for the proposition that the person affected by mining operations must navigate at least four uncoordinated fora: the civil courts for trespass to surface rights;[57] the Commission or arbitration for the narrow classes of dispute under sections 39 and 40(6); a strict-liability claim under section 65; and the environmental-assessment process before the Agency. No forum has jurisdiction over the displacement event as a whole, and no forum is obliged to have regard to what the others have decided.

The institutional actor whose mandate comes closest to resettlement, the Department of Resettlement, is the one with the weakest legal footing. Its authority derives from policy rather

[56]Konkola Copper Mines Plc v Rephidim Mining and Technical Supplies Limited, Mimbula Minerals Limited and Moxico Minerals Limited CAZ/08/111/2018.

[57]ibid.

than statute, and it has no statutory role in the mining-licensing process: the Minerals Regulation Commission is under no obligation to consult it, to obtain its clearance, or even to notify it before granting a right that will displace a community. This is a significant omission when measured against the Kampala Convention, which Zambia has ratified and which obliges States Parties to incorporate their Convention obligations into domestic law; as noted in section 2.6 above, that incorporation has not occurred, and the fragmentation described here is one of its clearest symptoms.[58]

The consequence is that fragmentation is not a merely aesthetic defect in the statute book, it is itself a source of harm. It produces gaps, in that no institution is responsible for ensuring that livelihoods are restored after relocation. It also produces overlaps, in that consent and compensation are duplicated across instruments while resettlement is provided for in none; and it produces asymmetry, in that a well-resourced licence holder can select the forum and the framework most favourable to it, while customary occupiers, who as shown above are least able to navigate formal processes, must contend with several. It is therefore submitted, in answer to the third research question, that the extent of regulatory fragmentation between the Minerals Regulation Commission, the frameworks under the Geological and Minerals Development Act and the environmental authorities is substantial, and that the disconnect is structural rather than incidental: it results not from conflicting provisions, but from the complete absence of any provision connecting the regimes at all. It is this diagnosis which grounds the institutional-coordination reforms proposed in Chapter Four and the corresponding recommendation in Chapter Five.

## 2.6 CONCLUSION

This Chapter examined the two principal mechanisms governing mining-induced displacement in Zambia: the ex-post strict liability framework under section 65 of the Minerals Regulation

[58]African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) (Kampala Convention) art 3(2)(a), which obliges States Parties to ‘incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons’.

Commission Act No. 14 of 2024, and the ex-ante Resettlement Action Plan framework under the Environmental Management (Environmental Impact Assessment) Regulations, 2026.

Section 65 is a broad and progressive remedial provision. It imposes strict liability, recognises harm extending beyond physical damage to livelihood, agricultural and socio-cultural loss, and provides flexible standing and a limitation rule responsive to delayed harm. But it is essentially reactive. It does not require displacement to be avoided, provides no census, baseline or guaranteed replacement land, and does not mandate livelihood restoration. Its effectiveness depends on a claimant proving causation, a burden Sialubono and Aqua-Rent confirm is not removed by the absence of fault, and its undefined terms leave significant uncertainty.

The RAP framework addresses part of what section 65 omits by bringing resettlement planning into the environmental assessment process before implementation. Its weakness lies in the phrase "where applicable", which fixes no threshold for a RAP and does not clarify whether economic displacement without physical relocation triggers the requirement.

The two frameworks are complementary in principle but disconnected in law. Neither states whether breach of a RAP bears on liability under section 65, and neither identifies a single institution responsible for following an affected community from assessment through to completed resettlement. Zambia therefore has an ex-ante mechanism and an ex-post remedy, but the bridge between them is incomplete. The answer to the first research question is that section 65 is wide and progressive as a remedy but limited as a means of administering resettlement, and that the two frameworks do not together provide a comprehensive process governing the avoidance, planning, implementation and completion of mining-induced resettlement. This sets the foundation for the following Chapter.

## CHAPTER THREE:

## AN ANALYSIS OF THE CONFORMITY OF THE ZAMBIAN LEGAL FRAMEWORK GOVERNING MINING-INDUCED RESETTLEMENT WITH SELECTED INTERNATIONAL STANDARDS AND BEST PRACTICES

### 3.1. INTRODUCTION

This Chapter assesses the extent to which the Zambian legal framework governing mining-induced resettlement conforms with selected international standards and best practices. The domestic framework considered in this Chapter comprises the Minerals Regulation Commission Act No. 14 of 2024, the Geological and Minerals Development Act No. 2 of 2025 and the Environmental Management (Environmental Impact Assessment) Regulations, 2026.

The Chapter measures the domestic framework against a set of international instruments selected for their direct bearing on physical and economic displacement, resettlement planning, livelihood restoration, compensation, consultation, monitoring and remedy. These are International Finance Corporation Performance Standard 5 on Land Acquisition and Involuntary Resettlement; the World Bank's Operational Policy 4.12 on Involuntary Resettlement and its successor, Environmental and Social Standard 5; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, known as the Kampala Convention; the United Nations Guiding Principles on Business and Human Rights; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; and the principle of Free, Prior and Informed Consent as expressed in the United Nations Declaration on the Rights of Indigenous Peoples.

These instruments do not share the same legal status. Some, such as the IFC Performance Standards and Operational Policy 4.12, operate as financing or contractual conditions and are properly described as soft law. Others, such as the Kampala Convention and the two Covenants, are binding treaties to which Zambia is a party, even if they have not been fully domesticated. The analysis therefore does not proceed on the assumption that every standard is directly enforceable in Zambia. Rather, the Chapter examines whether the substantive protections contained in these instruments are reflected in the existing domestic framework, and it treats the non-domestication of the binding instruments as itself a feature of the legal problem this Research identifies.

The standards considered in this Chapter do not all have the same legal status. Some operate as contractual or financing conditions applicable to particular projects, while others constitute treaty obligations or non-binding international guidance. The analysis therefore does not proceed on the assumption that every international standard is directly enforceable in Zambia. Rather, the Chapter examines whether the substantive protections contained in those standards are reflected in the existing domestic framework.

## 3.2. THE WORLD BANK'S ROLE IN DEVELOPMENT OF RESETTLEMENT STANDARDS AND THE EMERGENCE OF THE IFC PERFORMANCE STANDARDS

The World Bank has been credited to have introduced and brought to the international stage, the first ever international standard to displacement. In 1980, the World Bank introduced Operational Manual Statement 2.33, which brought to the world stage its first official policy on involuntary resettlement.[59] Operational Manual Statement 2.33 acknowledged that development projects, such as mining and infrastructure projects, frequently result in the displacement of communities and thus call for safeguards to protect those impacted. [60]

Operational Manual Statement 2.33 has been heralded for its emphasis on a compensation-based strategy which prioritized relocation planning, livelihood restoration, and the enhancement of living circumstances for displaced communities.[61] Later on, this was consolidated and ultimately developed into what we now know as the World Bank's Operational Directive 4.30 and then Operational Policy 4.12 on Involuntary Resettlement, which is one of the most important worldwide guidelines for resettlement and displacement brought on by development.[62]

Owing to the nature of the World Bank, which is facilitating loans to national governments, the framework was later revised in the year 2016 and was ultimately replaced by the Environmental

[59] F Vanclay, 'Project-induced displacement and resettlement: from impoverishment risks to an opportunity for development?' (2017) 35(1) *Impact Assessment and Project Appraisal* 3 https://doi.org/10.1080/14615517.2017.1278671 accessed 17 May 2026.
[60] ibid
[61] ibid
[62] HM Mathur, 'A Historic Landmark in Development: Reflecting on the First Resettlement Policy: An Interview with Professor Michael M Cernea' *Resettlement News* (January 2011/July 2011) 1

and Social Standard 5. [63]Environmental and Social Standard 5 basically governs matters related to land acquisition, restrictions on land use and involuntary resettlement, which are mandatory for all World Bank funded projects and binding on the governments receiving World Bank funding.

But then, the International Finance Corporation (IFC) which is the private sector lending arm of the World Bank Group, created the Environmental and Social Performance Standards. These standards included guidelines on involuntary resettlement, notably Performance Standard 5 particularly focused on Land Acquisition and Involuntary Resettlement. As for purposes, IFC Guidelines Standard 5 applies to all projects financed by the IFC and also influences projects financed by financial institutions subscribing to the so-called Equator Principles, which have in their own right being accepted as standard for social and environmental performance.[64] The IFC Performance Standards have become benchmarks and major international reference points in the governance of large-scale development-induced displacement and resettlement.

## 3.3. INTERNATIONAL FINANCE CORPORATION STANDARD 5

As earlier established, one of the most important international standards on project induced displacement is the International Finance Corporation Performance Standard 5 on Land Acquisition and Involuntary Resettlement. While this is not a Zambian statute and is what termed as 'soft law', it is useful in measuring whether or not the domestic legal regime, particularly under the Mineral Regulation Commission Act No.14 of 2024 and the Geological Minerals Development Act No.2 of 2025 on mining induced resettlement discussed in Chapter Two, is up to acceptable international standards. This is especially so because large-scale mining projects are usually financed by international lenders, private financial institutions, development finance institutions

[63] World Bank, *World Bank Environmental and Social Framework: Setting Environmental and Social Standards*
*for Investment Project Financing* (World Bank 2016)https://consultations.worldbank.org/Data/hub/files/consultation-template/review-and-update-world-bank-safeguard-policies/en/materials/the_esf_clean_final_for_public_disclosure_post_board_august_4.pdf accessed 17 May 2026.

[64] N Le Clerc, *'The Role of Equator Principles Banks in the Myanmar Context'* (Presentation at the Project and Structured Finance Forum, ANZ Bank, January 2015) https://consultations.worldbank.org/ accessed 17 May 2026.

or commercial banks that may either apply the IFC Performance Standards directly or use them as a benchmark for responsible project financing.[65]

### 3.3.1 The Broad Meaning Of Displacement and Livelihood under IFC Standard 5

What is worthy of note under IFC Standard 5 is that the term 'displacement' is not narrowly defined but has been given a generous meaning of not only encompassing the movement of people from one place to the other in a physical sense, but rather, also includes economic displacement, in the sense of loss of assets or access to assets or loss of sources of income or other means of livelihood. Seen that way, it is clear that the IFC framework takes a more realistic and wider view of resettlement than the compensation-based approach as provided under the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025 discussed in Chapter Two.

Furthermore, the term 'livelihood', as used in the context of IFC Performance Standard 5, refers to all of the different ways in which people, families and communities support themselves. These include wages, farming, fishing, collection of forest products, use of natural resources, small trading activities, exchange of goods and other local economic activities. *(See Footnote (1) to the IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement).* [66]

### 3.3.2 Avoidance and Minimisation of Displacement

In this context, IFC Performance Standard 5 requires that, before displacement, the client must consider feasible alternative project designs to avoid or minimise physical and economic displacement.[67] In that process the client must consider the environmental, social and financial costs and benefits, with particular attention to poor and vulnerable persons. This is a very important requirement as it treats displacement as a last resort rather than an inevitable consequence of mining operations.

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[65] International Finance Corporation, *Guidance Note on Financial Intermediaries* (IFC 2023) https://www.ifc.org/content/dam/ifc/doc/2023/202309-ifc-guidance-note-on-financial-intermediaries.pdf accessed 17 May 2026.
[66] International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) 1 fn 1
[67] International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para 8.

This reveals the shortcomings of Zambian law. Neither the MRCA nor the GMDA explicitly require a mining company to first consider alternative project designs to avoid or minimise displacement. This reveals both progress and continuing weakness in Zambian law. The 2026 EIA Regulations require environmental assessment documents to consider reasonable alternatives, and an Environmental and Social Impact Statement must state the reasons for rejecting alternative sites. This partially reflects the requirement to examine alternative project designs. However, the Regulations do not expressly impose avoidance of physical and economic displacement as a distinct statutory objective or require the developer to prove that displacement itself has been avoided or minimised before approval is granted. The domestic requirement to consider alternatives is therefore broader and less specific than the avoidance obligation under IFC Performance Standard 5.

### 3.3.3. Compensation Beyond Surface Rights

Furthermore, and most important, this Research shows that even going by the MRCA and GMDA's compensation-based framework, the position that emerges is one that still does not abide international standards. IFC Performance Standard 5 notes that compensation should not be the only measure when displacement is unavoidable. The displaced persons shall be offered compensation at full replacement cost as well as other assistance in order to improve or restore their standards of living or livelihoods.[68] It requires, where applicable, that compensation be provided in addition to resettlement sites and moving allowances. This is important because the IFC framework recognizes that money alone may not return a displaced community to the same position it was before prior to displacement. If a person is deprived of land for farming, grazing land, water sources, forests, community networks and local markets, money alone cannot be enough to recover.

However, as brought out in Chapter Two, the position under section 40 of the MRCA is more limited. As established earlier in that Chapter, the main concern of Section 40 is fair and reasonable compensation for disturbance of the surface rights of the owner or lawful occupier and damage

[68] International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para 9

done to the surface of the land. It also provides for compensation for crops, trees, buildings or works damaged. However, the section does not go further to mandate moving allowances, resettlement sites, livelihood restoration measures, replacement land or development benefits for affected communities as contemplated under IFC Standard 5.[69] It is submitted therefore that section 40 of the MRCA complies with IFC Performance Standard 5 only to the limited extent that it provides for compensation. It does not satisfy the wider requirement of the IFC that compensation should be accompanied by assistance to improve or restore livelihoods and living standards.

### 3.3.4 Resettlement Action Plans and Livelihood Restoration Plans and Protection of Persons without Title

IFC Performance Standard 5 also requires the client to set up procedures to monitor and evaluate the implementation of a Resettlement Action Plan or Livelihood Restoration Plan and to implement corrective action as required.[70] For projects with significant involuntary resettlement risks, the client must engage qualified resettlement specialists to advise on compliance and to verify monitoring information. [71]The monitoring process should also include consultation with affected persons. This means that under the IFC framework resettlement is not considered complete simply because people have been relocated or compensated. It is an ongoing process that needs to be monitored until the negative impacts of displacement have been adequately addressed.

The MRCA and GMDA do not have such a requirement for a Resettlement Action Plan or Livelihood Restoration Plan. However, the Environmental Management (Environmental Impact Assessment) Regulations, 2026 now require an Environmental and Social Impact Statement to include a RAP where applicable. The omission is therefore no longer a complete absence of resettlement planning. The remaining weakness is that the Regulations do not clearly state when a RAP is mandatory, prescribe its minimum contents or require a separate Livelihood Restoration Plan where a project causes economic displacement. Further, the general monitoring obligation

[69] ibid
[70] International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para 14
[71] ibid

under regulation 18 does not expressly require monitoring to continue until livelihoods and standards of living have been restored or improved.

The definition of displaced persons under IFC Performance Standard 5 is also broader than what is normally protected under the MRCA. Paragraph 17 identifies three categories of displaced persons: The first category is made up of individuals who possess formal legal rights to the land or assets they occupy or use.[72] The second category comprises persons without formal legal rights, but with claims to land or assets that are recognised or recognisable under national law.[73] The third group comprises people who have no identifiable legal right or claim to the land or assets they occupy or use.[74]

The importance of this classification cannot be overemphasized because it is clear that IFC Performance Standard 5 does not just protect people with certificates of title or formal legal documentation, but also people with land claims based on customary or traditional tenure. It also offers protection for people who may not have a legally recognised claim to the land they occupy at all. This is very important in Zambia where many communities live on land under customary tenure and often do not have formal title documents. In such circumstances, protection in the domestic context that is limited to registered owners or lawful occupiers may not protect those likely to be displaced by mining activities.

Furthermore, the inadequacy of Zambian law becomes even clearer when paragraph 17 is read together with paragraph 22 of IFC Performance Standard 5. Paragraph 22 provides that even persons who are physically displaced but have no legally recognised right or claim to the land they occupy are entitled to be offered a choice of adequate housing options with security of tenure so that they can resettle legally without the threat of forced eviction. They are also entitled to compensation for loss of assets other than land such as houses and other improvements on the land provided they occupied the project area before the cut-off date. Also, they have to be provided with relocation assistance sufficient to re-establish their standard of living at a suitable replacement site.

[72] International Finance Corporation, *Performance Standard 5: Land Acquisition and Involuntary Resettlement* (IFC 2012) para 17
[73] Ibid
[74] Ibid

The IFC itself comments and argues that this approach is more inclusive than an application of a strict title system.[75] It acknowledges that the lack of a formal title does not mean that there is no harm. Even a person without title can lose a home, crops, a farming field, access to water, community life and livelihood. This means that the IFC framework does not allow the project developer to walk away from responsibility, simply because the affected person does not have formal title.

The MRCA and GMDA, by contrast, do not seem to provide such protection. The law does not specifically provide for adequate housing, security of tenure, relocation assistance and compensation for non-land assets for persons without formal title. This creates vulnerability for customary land and informal occupiers, particularly where their claims do not fit comfortably within the language of "owner" or "lawful occupier". It will be recalled that, as discussed in Chapter two, one of the major grounds of appeal of the Appellant in the case of ***Kansanshi Mine PLC v Maini Joseph Mudumina and Others***[76]was that the Respondents could not establish their entitlement to the land. Thus, that case shows that the distinction between owner, legal owner or lawful occupier is cardinal and susceptible to exploitation by mining companies.

### 3.3.5 IFC Performance Standard 5 and the Inadequacy of the MRCA and GMDA

From the foregoing, it is quite clear that the inadequacy of the Zambian legal framework on mining-induced resettlement is exposed in IFC Performance Standard 5. This Research finds that although the MRCA and the GMDA are not entirely silent on issues of displacement, their focus is just too narrow. They govern surface rights, consent and compensation but do not regulate resettlement as a complete legal process. This research argues therefore, that a proper Zambian resettlement framework should therefore require mining companies to avoid displacement where possible, minimise it where unavoidable, compensate at full replacement cost, provide resettlement sites and moving allowances where necessary, prepare Resettlement Action Plans and Livelihood Restoration Plans, protect customary landholders and persons without formal title, and monitor affected communities until their livelihoods and living standards are restored. This would align Zambia law closer to the standards contemplated under IFC Performance Standard 5.

[75] IFC, *Performance Standards on Environmental and Social Sustainability* (International Finance Corporation 2012)50
[76] SCZ Appeal No.149/2010

## 3.4. WORLD BANK OPERATIONAL POLICY 4.12 INVOLUNTARY RESETTLEMENT

### 3.4.1 The Status of OP 4.12 and its Relationship with ESS 5

World Bank OP 4.12 applied to projects financed under the Bank's former safeguard framework and did not constitute generally applicable Zambian law. For projects governed by the current Environmental and Social Framework, the applicable standard is Environmental and Social Standard 5. The two instruments are considered comparatively because they reflect the development of the World Bank's approach to involuntary resettlement.

### 3.4.2 Livelihood Restoration as the Central Objective of OP 4.12

The World Bank Operational Policy 4.12 on Involuntary Resettlement (hereinafter referred to as 'OP 4.12') is another important international standard in the regulation of development induced displacement and resettlement. Although, just as the IFC Standard 5, it falls into the category of what is termed as 'soft law', it is helpful in assessing the extent to which Zambia's mining legislation conforms to international safeguards on resettlement.

OP 4.12 recognizes that involuntary resettlement can cause severe long-term hardship, impoverishment and environmental damage unless appropriate measures are carefully planned and implemented. That is why clause 2(c) of OP 4.12's objectives provides for the assistance to displaced persons in their efforts to improve their livelihoods and standards of living or at least restore them in real terms to the levels they enjoyed before displacement or before the beginning of project implementation, whichever is higher.[77]

This provision is crucial, as it moves the discussion beyond simple compensation. The standard is not only whether money has been paid to displaced persons but rather the core of the issue is whether the affected persons have been assisted in improving or restoring their livelihoods and standards of living. In other words, compensation is not the end of the investigation but it should be treated as one of the means to which Project Affected Persons (PAPs) and Internally Displaced Persons (IDPs)'s livelihoods can be restored. This is relevant in the Zambian mining context because a person affected by mining-induced resettlement may lose more than a piece of land. He

[77] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) para 3 fn 4

may be denied access to land for farming, grazing, water, forests, markets, community support system and cultural attachments to land.

When compared with the Minerals Regulation Commission Act No. 14 of 2024 and Geological and Minerals Development Act No. 2 of 2025, it could be argued that Zambian law complies with OP 4.12 only to a very limited extent. Although the MRCA and GMDA does provide for consent and compensation for disturbance of surface rights, it however, does not explicitly require that displaced persons should be assisted to improve or restore their livelihoods and standards of living after displacement. Chiefly, the Acts appear to be concerned with the issues that arise from the disturbance of surface rights and not with fate of the person after displacement has occurred.

### 3.4.3 Resettlement Planning and the Duty to Inform Affected Persons

The weakness of the Zambian framework is also more apparent when analysed in light of paragraph 6 of OP 4.12. Paragraph 6 of OP 4.12 also requires the borrower to prepare a resettlement plan or resettlement policy framework to mitigate the impacts of involuntary resettlement. [78]Such a plan or framework shall include measures to ensure that displaced persons are informed of their options and rights in relation to resettlement. It must also ensure that they are consulted, given a choice among, and provided with technically and economically viable resettlement alternatives. [79]It also requires that timely and effective compensation for losses of assets directly attributable to the project be provided to displaced persons at full replacement cost.

By contrast, the MRCA and GMDA are presented not to be outdone in this respect. The statutes do not expressly require that mining companies develop a resettlement plan or a resettlement policy framework before displacement. There is also no specific requirement for PAPs and IDPs to be informed about their resettlement options and rights. Furthermore, there is no guarantee that affected communities will be offered resettlement alternatives that are technically and economically feasible. The Zambian position is at best about consent and compensation.

OP 4.12, paragraph 6(b) goes to also provide that where the impacts include physical relocation, the resettlement plan or resettlement policy framework must provide that displaced persons are

[78] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) para 6
[79] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) para 6(a)(ii)

provided with assistance during relocation such as moving allowances. It also requires the provision of residential accommodation, sites for housing or, where required, sites for agriculture of at least equivalent productive potential, locational advantages and other factors to the advantages of the old site.[80]

This is a particularly important requirement for mining-induced resettlement in Zambia. For many rural communities, land is more than just a place to live but it is the basis for survival. It is used for farming, grazing, access to water, access to natural resources and social organization. Therefore, as far as OP 4.12 is concerned, where a community is physically displaced by mining activities, the law should not only ask how much money is to be paid but also should address concerns on where the people go. Comparatively, the MRCA and the GMDA do not offer this level of protection as they do not require mining companies to pay for moving allowances or even alternative housing or sites for housing for that matter. In this respect, the Zambian legal framework is clearly weaker than OP 4.12 and does not conform to that international standard.

The requirement is relevant because it treats information, consultation and viable resettlement alternatives as legal and procedural safeguards preceding relocation. The 2026 EIA Regulations require consultation with Interested and Affected Parties and consideration of alternatives. However, they do not expressly require each affected household to be informed of its individual resettlement rights and to be offered technically and economically viable relocation options. The conformity is therefore partial.

### 3.4.4. Protection of Host Communities and Community Resources

The Policy also recognizes that resettlement does not only impact the displaced persons but can also impact host communities. Paragraph 13(b) provides that infrastructure and public services shall be provided as necessary in new resettlement sites or host communities to improve, restore or maintain accessibility and levels of service for displaced persons and host communities.[81] It also requires alternative or similar resources to be provided when communities lose access to resources such as fishing areas, grazing areas, fuel or fodder.

[80] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) para 6(b)
[81] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) para 13

Again, this is not well reflected in the MRCA and GMDA. Mining companies are not expressly required to provide or restore infrastructure and public services at resettlement sites. Nor is there a specific requirement to provide alternative access to community resources like grazing lands, forests, fuel, fodder, fishing areas or water sources. This omission is serious as a compensation-based framework that neglects these resources is not able to properly address the real effects of mining induced resettlement.

### 3.4.5. Recognition of Customary and Non-Formal Land Interests

Under OP 4.12 and just as IFC Standard 5, the question of land tenure is also dealt with more generously. Three categories of displaced persons are named in paragraph 15 who either fall into the first category, that is persons or people who have formal legal rights to land. The second category includes those who, at the time of the census, do not possess formal legal rights to land but have a claim to such land or assets, provided that such claims are recognised under national law or are recognised through a process identified in the resettlement plan. The third category consists of those without any identifiable legal right or claim to the land they occupy at all.

This classification is very important in Zambian context since, as shown in Chapter Two, most land in Zambia is held under customary tenure. Thus, paragraph 15 of OP 4.12 is consistent with the argument made above under IFC Performance Standard 5. Both standards recognize that the absence of a formal title should not in and of itself be a barrier to protection from the consequences of displacement. This is especially important for customary land occupiers in Zambia who may not have had land in the strict statutory sense but they may have lived on, cultivated and depended on that land for many years, or indeed have built a spiritual connection to that land within the meaning of section 4 (2) of the Environmental Management Act No.12 of 2011.[82] Thus, in agreeing with the OP 4.12, this Research advocates that it would be unjust to deny them resettlement protection simply because their land rights are not documented by a certificate of title.

The MRCA and the GMDA do not clearly take this approach. Section 40 of the MRCA is based on the "owner or lawful occupier" of land. This may be useful for people who can prove ownership or lawful occupation. But the provision does not clearly protect persons that have no formal legal rights, but somewhat have customary claims. Nor does it expressly protect persons that have no

[82] Section 4 of the Environmental Management Act No.12 of 2011

recognisable legal right or claim, but are still physically or economically displaced by a mining project. Thus, the Zambian framework is still too narrow compared to the expectations under OP 4.12.

### 3.4.6. Draft Resettlement Plan as a Condition of Project Appraisal

Furthermore, Paragraph 25 of OP 4.12 states that the preparation of a draft resettlement plan consistent with the Policy is a condition of appraisal for specific projects. This is arguably the most powerful safeguard in the framework of the World Bank OP 4.12 owing to the fact that it drives the point that it is not sufficient for a project to go ahead just because a resettlement plan has been prepared. But rather the Resettlement Action Plan is a prerequisite for the project appraisal itself.

As the IFC itself notes in its handbook on preparing a Resettlement Action Plan, a RAP is the document by which the project sponsor specifies the procedures it will follow and the actions it will take to properly resettle and compensate affected people and communities. The IFC further states that the RAP is the sponsor's commitment to IFC and to the affected people that it will meet its obligations arising from involuntary resettlement.[83]

The 2026 EIA Regulations now make a RAP part of the environmental and social impact assessment documentation where applicable. However, the RAP is not expressly integrated into the grant, renewal, amendment or continued exercise of every mining right likely to cause displacement. The combined framework should therefore require a content-specific RAP and, where livelihoods are affected, a Livelihood Restoration Plan as express conditions of mining approval. This would compel mining companies to address resettlement risk before communities are displaced and would give ZEMA and the Minerals Regulation Commission a clear basis to refuse, suspend or condition operations where the safeguards are inadequate

This Research argues that from the above, it is clear to see that the MRCA and GMDA do not significantly conform to the World Bank Operational Policy 4.12 on Involuntary Resettlement. In that sense, OP 4.12 highlights the basic defect in Zambia's existing mining legislation. The law is still based around compensation for disturbance to surface rights, when the real issue is more than compensation. As V Vivoda, J R Owen and D Kemp, Mining-induced resettlement impacts homes,

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

livelihoods, land access, community resources, cultural bonds and standards of living.[84] A proper legal framework should therefore view resettlement as a planned legal process and not just as a compensable by-product arising from mining operations.

## 3.5. THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

### 3.5.1 Mining-Induced Resettlement as a Business and Human Rights Issue

Mining induced resettlement usually resettles persons who also enjoy a unique set of human rights guaranteed not only by the Constitution[85] but also the United Nations Universal Declaration of Human Rights, the International Convenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Thus, the United Nations Guiding Principles on Business and Human Rights are relevant for this Research because mining induced resettlement is not merely a matter of land acquisition or compensation, but also by extension, is both a business and human rights issue. By their very nature, mining companies can interfere with land, housing, livelihoods, access to water, farming activities, cultural ties and community life. It therefore follows that the legal framework governing mining-induced resettlement must be assessed against the basic human rights obligations of the State and the corresponding responsibility of business enterprises to respect and uphold human rights.

### 3.5.2 The State's Preventive and Remedial Duties

Under the United Nations Guiding Principles on Business and Human Rights, the State has a Preventive and Remedial role in human rights enforcement. In the context of mining induced resettlement, the preventative aspect requires the State to create laws, policies and institutions which prevent mining companies from causing human rights harm in the first place. In the remedial component, the State must ensure that affected communities have access to effective remedies where such harm occurs.

In the context of Zambia this standard is only partially achieved. Mining and mining related activities are regulated by the Minerals Regulation Commission Act No. 14 of 2024 and the

[84] V Vivoda, J R Owen and D Kemp, 'Regulatory frameworks for mining-induced displacement and resettlement: An international comparative analysis' (2022) 76 Resources Policy 102537 https://doi.org/10.1016/j.resourpol.2022.102537 accessed 17 May 2026 at 24

[85] Chapter 1 of the Laws of Zambia

Geological and Minerals Development Act No. 2 of 2025. But, as already stated, these Acts do not comprehensively regulate resettlement arising from mining. The main subjects are consent, surface rights and compensation. They do not provide a complete legislative framework to prevent human rights abuses relating to displacement from taking place, nor do they offer clear remedies for when Project Affected Persons and Internally Displaced Persons suffer harm after displacement.

This is clarified in Principle 3 of the United Nations Guiding Principles which provides that States, in discharging their duty to protect, should adopt laws requiring business enterprises to respect human rights, periodically review the adequacy of such laws and address any gaps. States are also expected to provide practical guidance to business enterprises on how to respect human rights in all their activities. The commentary to this principle is of particular importance as it provides that States should assess the adequacy of existing laws in the light of changing circumstances.

In applying this to the problem identified with the MRCA and GMDA, what emerges is not simply that Zambian law is silent but also that Zambia law is not clear enough on the entitlements of persons affected by mining-induced displacement, especially persons occupying land under customary tenure. As mentioned earlier in this Research, many of the communities in Zambia are occupying and using land without certificates of title.[86] However, the MRCA and GMDA do not adequately explain how such persons are to be protected during displacement due to mining operations. Thus, in respect to Principle 3 the legal framework in Zambia is still suffering from gaps, in respect to access to land, use of land, resettlement entitlements and livelihood restoration.

### 3.5.3 Institutional Coordination and the Department of Resettlement

Principle 8 of the United Nations Guiding Principles also requires States to ensure that government departments, agencies and other State-based institutions influencing business practices are aware of and respect the State's human rights obligations in the implementation of their respective mandates.

As illustrated in Chapter One, the Department of Resettlement was established in 1989 under the auspices of the Office of the Vice-President and Government Gazette Notice No. 42 of 1992. The

[86] F Mandhu, A Mushinge and C Mulenga*, 'Land Governance in Zambia'* (Paper prepared for the 2019 Land Governance in Southern Africa Symposium, Windhoek, 3-4 September 2019)7

Office of the Vice President also published Guidelines for Compensation and Resettlement of Internally Displaced Persons in October 2013. However, in spite of this institutional history, the MRCA and GMDA do not provide for any collaboration with the Department of Resettlement in the mining licensing and mining resettlement process. A clear statutory mechanism requiring the Department of Resettlement to advise the Minerals Regulation Commission before the grant of mining rights where displacement is does not exist.

Principle 8 requires that State institutions that influence business practices are cognizant of and respect human rights obligations. Thus, if the Department of Resettlement exists but is not well integrated into the mining regulatory framework, the institutional protection is weak.

### 3.5.4 Human Rights Due Diligence, Impact Assessment and Access to Effective Remedies

Furthermore, relevant to this Research is Principle 19 of the United Nations guiding Principles on Business and Human Rights which requires that business enterprises should integrate the findings of their impact assessments across relevant internal functions and processes and take appropriate action to prevent and mitigate adverse human rights impacts.

This appears to be the direction taken by the Environmental Management (Environmental Impact Assessment) Regulations, 2026 wherein those Regulations define a Resettlement Action Plan as a plan that describes the activities or processes to be undertaken to resettle or compensate a person displaced from or affected by a project. [87]The Regulations also require the Environmental and Social Impact Statement to include socio-economic impacts of a project such as resettlement of affected people and Resettlement Action Plan where applicable.

However, the EIA Regulations do not address the flaws in the MRCA and the GMDA as the substantive rights of PAPs and IDPs after resettlement are not clearly set out in the Regulations. Furthermore, although there is a requirement for a Resettlement Action Plan, there is no requirement for a detailed livelihood restoration obligation and the minimum contents of a mining resettlement plan within the contemplation of IFC Performance Standard 5 or World Bank OP 4.12. As such, even though the EIA Regulations partially conform to the human rights due diligence

[87] Part I of the Environmental Management (Environmental Impact Assessment) Regulations, 2026 (Statutory Instrument No.3 of 2026)

approach required under Principle 19, they do not yet generate a comprehensive rights-based resettlement framework.

Perhaps one of the most important requirements under Principle 26 of United Nations Guiding Principles on Business and Human is that it requires States to ensure that domestic judicial mechanisms are effective in relation to business enterprises and abuse of human rights. In particular, it requires States to consider ways to reduce legal, practical and other barriers that could lead to a denial of access to remedies.

This is especially relevant to defects already identified in Chapter Two. Under section 39 of the MRCA, certain disputes must be referred to the Commission or to arbitration. Similarly, section 40(6) provides that if there is dissatisfaction with the compensation, the dispute may be determined by Arbitration. But, as also argued earlier, Arbitration may not necessarily be accessible to rural communities displaced by mining.[88] Many PAPs and IDPs may not have the money, legal representation, technical knowledge or documentary evidence necessary to properly prosecute an arbitral claim against a mining company.

This problem is compounded by section 40(7) MRCA which provides that a claim for compensation under section 40(1) must be made within three years from the date on which the right to make the claim arose. This seems plausible in ordinary claims for compensation. However, this research argues that Mining-induced displacement is not always a harm whose full effects are immediately apparent. This has been noted by Vanclay wherein it he noted that Loss of livelihood, loss of productive land, reduced agricultural output, social disarticulation and loss of access to community resources may only be known after the affected community has been resettled i.e. post the cut-off date.[89] A strict three-year limitation period could therefore serve as a legal barrier to remedy for harm which is gradual, continuing or only properly appreciated after resettlement has taken place.

### 3.5.5. Non-Judicial Grievance Mechanisms for Mining-Induced Resettlement

[88] S C Anaje, O Alafe and K Erue, 'Mining Arbitration and Settlement of African Mining Disputes' (AO2LAW, 2026) https://ao2law.com/wp-content/uploads/2026/01/MINING-ARBITRATION-AND-SETTLEMENT-OF-AFRICAN-MINING-DISPUTES.pdf accessed 10 May 2026.
[89] F Vanclay n (1) 7

Principle 27 also provides that States should provide effective and appropriate non-judicial grievance mechanisms in addition to judicial mechanisms as part of a comprehensive State-based system for the remedy of business-related human rights abuse. This also matters because litigation is not always the best or most accessible remedy for displaced rural communities. A proper mining-induced resettlement framework should thus include both judicial and non-judicial mechanisms. These non-judicial mechanisms could include an independent resettlement complaints body, community grievance committees, an ombudsman mechanism, administrative review by the Commission or a statutory role for the Human Rights Commission and the Department of Resettlement.

But the current position under the MRCA and GMDA is lacking because there is no specific non-judicial mechanism for resettlement occasioned by mining. On this point, there appears to be no community-level complaints procedure nor a legally mandated forum post-resettlement that is established where PAPs and IDPs can raise concerns regarding livelihood restoration, replacement land, access to water, housing, schools, clinics, grazing areas or social services. Therefore, the framework, despite the existence of arbitration and litigation in theory, is still practically inadequate when measured against Principle 27.

## 3.6. MINING-INDUCED RESETTLEMENT AND THE ICCPR AND ICESCR

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Social Economic and Cultural rights (ICESCR) are landmark pieces of human rights legislation in their own right. Having established that mining-induced displacement and resettlement carries heavy human rights violations undertones, it is now necessary to analyse the MRCA and GMDA in light of the ICCPR and ICESCR.

Displacement, as we have established, cannot be seen as merely the physical movement of people from one place to another. As previously show, it has far reaching effects and impacts PAPs' and IDPs' livelihoods, family life,, access to land, culture and community life. This point finds support with Afzal and Qayyum who had argued that Displacement can lead to landlessness, joblessness, homelessness, marginalisation, food insecurity, loss of access to common resources and social disarticulation, just to name a few. They further note that displacement may amount to a violation of human rights where persons are removed from their normal homes and deprived of property without just compensation.

The ICCPR is relevant because mining-induced displacement may engage the right to life under Article 6, protection of the home and family under Article 17, participation in public affairs under Article 25 and the right to an effective remedy under Article 2(3). The ICCPR advances what are known as first generation rights and are justiciable under the Zambian jurisdiction.

The right to life is threatened when a community is displaced from land it relies on for food, water, farming, grazing and income, not only by physical violence but also by the destruction of the means of survival. In places where homes and community structures are destroyed or moved without adequate safeguards, family and home are also interfered with.

The rights which mining induced resettlement tangentially touches on also found in the ICESCR. The importance of the ICESCR is that it protects socio-economic rights such as the right to work under Article 6, the right to an adequate standard of living including adequate housing and food under Article 11, the right to health under Article 12, the right to education under Articles 13 and 14, and the right to participate in cultural life under Article 15.

A man who loses his farming land may lose his livelihood. A family moving to an area where there are no clinics, schools, water or fertile land may see a decline in its standard of living. A community displaced from its ancestral land may also lose cultural and social attachments. In Zambia, the guidance of the Supreme Court of Zambia in the case of ***George Peter Mwanza and Another v Attorney General Appeal No.153/2016,*** was Social, Economic and Cultural Rights are enforceable through their first generation rights counterparts. The Supreme Court held as follows:

> *"We accept the learned counsel for the appellants' call that the right to life must be interpreted liberally. It inevitably dovetails and is interlinked with other rights such as the right to food and the right to health."*

The MRCA and GMDA seem inadequate when measured against these rights. Their main concern, as shown earlier, are disturbance and compensation for surface rights and consent. They do not expressly require the restoration of livelihoods, replacement land, adequate housing, protection of family unity, access to schools and health facilities, or protection of cultural and community life after resettlement. In that sense, the Acts do not speak to all the human rights implications of mining-induced displacement.

In the context of mining induced resettlement, this Research argues that the MRCA and GMDA are not in conformity with the ICCPR and ICESCR. While they acknowledge compensation and some protection of surface rights, they do not create a rights-based framework for mining-induced resettlement. A proper framework should treat resettlement as a human rights issue requiring participation, restoration of livelihoods, adequate housing, replacement land, protection of vulnerable groups and effective remedies.

## 3.7. FREE, PRIOR AND INFORMED CONSENT UNDER THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Another key international instrument that now has to be analysed is the United Nations Declaration on the Rights of Indigenous Peoples[90], which basically provides for the free prior and informed consent of indigenous peoples in relation to land matters. This particular international instrument is cardinal to this research owing to the fact that mining induced resettlement in Zambia mostly affects communities whose land rights are under customary tenure, but are also undocumented.

Under Article 10 of the UNDRIP, it is prohibited to forcibly remove or evict indigenous people and persons from their land or territories without their free, prior, and informed consent. Article 10 even goes a step further to state if eviction is to happen, then it must be followed up by just and fair compensation, and where possible must be given the option to return.

Article 32 of the UNDRIP specifically deals with mining when it provides that indigenous peoples have the right to determine and develop measures for the development of their lands and resources. Particularly, Article 32 of the UNDRIP holds that indigenous peoples have to be consulted and their Free, Prior and Informed Consent (FPIC) obtained in relation to the utilisation or exploitation of mineral, water or other resources.

Under Article 12 and 25 of the UNDRIP, it is also recognised that land is not merely an economic asset but indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with traditionally owned, occupied or used lands, territories, waters and other together with access to religious and cultural sites and the repatriation of human remains. Thus, where

[90] UNGA Res 61/295 (2 October 2007) UN Doc A/RES/61/295, Annex.

mining induced displacement and activities affect burial sites, graveyards or ancestral land, the UNDRIP guides that the issue cannot be reduced to compensation alone.

However, while UNDRIP provides strong international support for Free Prior and Informed Consent, it must be noted that the MRCA and GMDA do not expressly impose a statutory obligation on mining companies to obtain Free, Prior and Informed Consent before resettlement, at least as contemplated under the protections under the UNDRIP.

As earlier discussed above and owing to the fact the UNDRIP has not been domesticated under local laws, this Research submits that, under the present Zambian legal framework, FPIC operates more as an international standard and persuasive benchmark than as a directly enforceable statutory right. This means that a claim based purely on FPIC may face difficulty unless the principle is incorporated into domestic legislation, a contract, an environmental approval condition, a resettlement agreement, or a lender-imposed project standard.

Nevertheless, the absence of a binding FPIC obligation under the MRCA and GMDA is precisely the problem identified in this Research. This is because this shows that Zambia's mining-induced resettlement framework is incomplete when measured against international standards. In that respect, UNDRIP does not presently cure the defect in Zambian law. Rather, it exposes it. The MRCA and GMDA remain largely compensation-centred.

## 3.8. SECTION 65 STRICT LIABILITY MEASURED AGAINST THE PREVENTIVE ARCHITECTURE OF THE INTERNATIONAL STANDARDS

Before drawing the threads of this Chapter together, it is necessary to locate Section 65 of the Minerals Regulation Commission Act within the international comparison, because it is the provision on which the domestic framework's claim to conformity most strongly rests. As established in Chapter Two, Section 65 codifies strict liability for harm affecting livelihoods, socio-cultural conditions, agricultural systems and community economies. That is a genuine and important advance.

To the extent that the international standards insist that displacement related harm must be remediable, and that affected persons must have access to compensation and reparation, Section 65 aligns Zambian law with the remedial dimension of those standards. That alignment, however, is confined to the remedial tail of the international architecture and does not reach its preventive

core. IFC Performance Standard 5, and Operational Policy 4.12 are all structured around an ex ante sequence: displacement is first to be avoided, then minimised, then planned through a Resettlement Action Plan and a Livelihood Restoration Plan, and finally monitored until livelihoods are restored.

Section 65, by contrast, operates ex post; it is engaged only after harm has occurred. It therefore provides a remedy for the failure to protect, but it does not require protection to be built in before displacement takes place. Measured against the international standards, Section 65 is best understood as partial and remedial conformity, and not as evidence that the framework satisfies the standards as a whole. The remedial value of Section 65 is, moreover, qualified by the access barriers identified in Chapter Two. The three-year limitation period in Section 40(7) sits uneasily with the nature of displacement harm, which, as Vanclay observes, is frequently latent and may become apparent only after resettlement. The routing of compensation disputes to arbitration under Sections 39 and 40(6) may also place effective remedy beyond the practical reach of rural and customary communities. The conclusion, which feeds directly into the reforms proposed in the next Chapter, is that a framework which relies on ex post strict liability to address what is fundamentally an ex ante process of physical and economic displacement remains, in the language of the Statement of the Problem, structurally reactive.

## 3.9. CONCLUSION

This Chapter has demonstrated that the Zambian framework partially conforms with international standards and best practices on mining-induced resettlement. There are important points of conformity. Section 65 of the MRCA imposes strict liability for harm affecting livelihoods, socio-cultural conditions, agricultural systems and community economies. The 2026 EIA Regulations recognise Resettlement Action Plans, reasonable alternatives, consultation, human rights planning and environmental and social monitoring.

The remaining difficulty is that these protections are found in separate instruments and do not establish one complete resettlement process. The framework does not clearly prescribe when a RAP is mandatory, its minimum contents, a separate Livelihood Restoration Plan, full replacement cost, replacement land, moving assistance, eligibility of persons without title, host-community safeguards or a resettlement completion audit. It also does not adequately connect the stages before, during and after displacement.

Accordingly, this Research concludes that Zambia has moved beyond complete legislative silence, but has not yet established a consolidated and substantively adequate rights-based framework for mining-induced resettlement. The domestic framework therefore conforms with international standards only to a limited extent.

# CHAPTER FOUR

# PROPOSED REFORMS TO THE LEGAL FRAMEWORK GOVERNING MINING-INDUCED RESETTLEMENT IN ZAMBIA

## 4.0 INTRODUCTION

This Chapter proposes reforms for the proper regulation of mining-induced resettlement in Zambia. The argument advanced is not that Zambia has no statutory recognition of resettlement. Section 65 of the MRCA provides broad remedies for livelihood and socio-economic harm, while the 2026 EIA Regulations recognise RAPs, consultation, human rights planning and monitoring. The problem is that these protections are fragmented and do not constitute a comprehensive resettlement regime.

The Chapter therefore advocates for the enactment of a specific Mining-Induced Resettlement Act, together with consequential amendments to mining and environmental legislation. The proposed Act should consolidate the existing protections and address avoidance, livelihood restoration, replacement land, persons without title, grievance redress, institutional coordination, monitoring and completion.

## 4.1 Enactment of a Specific Mining-Induced Resettlement Act

The first reform is that there should be an enactment of a specific Resettlement Act as far as practicable. The phrase *"as far as practicable*" is important. It avoids the unrealistic position that every displacement can be avoided. It is suggested that the law must require proof that the mining company considered other alternatives before sanctioning mining projects that may require land acquisition and before PAPs are relocated. The reform should therefore impose a statutory duty to avoid displacement as far as practicable and, where avoidance is not possible, to reduce the scale of displacement and restore livelihoods.

It is preferable to enact a specific Act as opposed to leaving resettlement to an amendment of the Minerals Regulation Commission Act No. 14 of 2024, the Environmental Management Act No.12 of 2011 or the Lands Act Chapter 184 of the Laws of Zambia because those Acts do not principally incorporate resettlement into their objectives.

The need for a specific statute is also supported by the nature of mining-induced resettlement itself. Bakuri defines mining-induced resettlement as an extensive process of planning and implementing the relocation of people, households and communities from one location to another due to mining projects, and all the associated activities such as the provision of compensation, livelihood restoration, and restoring or improving the social conditions of the community.[91] As earlier pointed out in previous chapters, Jena defines mining-induced displacement and resettlement as involving the loss of physical and non-physical assets, including homes, communities, productive land, income-earning assets and sources, subsistence, resources, cultural sites, social structures, networks and ties, cultural identity, and mutual help mechanisms.[92]

It is suggested that the proposed statute should adopt elements of the above definitions and expressly provide that a holder of a mining right shall not cause physical or economic displacement unless the displacement has been avoided, or where avoidance is not practicable, minimised, supervised and monitored in accordance with that Act.

As discussed in Chapter 3 and in line with IFC Performance Standard 5, this proposed Act should clearly define and include the following terms:

i. Physical Displacement;
ii. Economic Displacement;
iii. Project Affected Persons;
iv. Internally Displaced Persons;
v. Livelihood Restoration Plan;
vi. Replacement Land;
vii. Resettlement Action Plan;
viii. Resettlement Agreements;
ix. Mining-Induced Displacement.

## 4.2 Incorporation of Soft Law Standards into Domestic Law, as far as Practicable

[91] R Y Bakuri, *'Gendered Governance of Mining-Induced Resettlement in Ghana: Perceptions and Implications for Natural Resource Livelihoods'*(2025) 11(1) Journal of Energy and Natural Resource Management 39-40.
[92] S K Jena, *'A Multi-Dimensional Contemplation into Mining Induced Displacement and Resettlement (MIDR): A Case Study of NALCO, Damanjodi'* 5.

The second reform that should be enacted concerns the incorporation of the useful parts of IFC Performance Standard 5, World Bank OP 4.12, the United Nations Guiding Principles on Business and Human Rights, the ICCPR, the ICESCR, the Kampala Convention, the UN Guiding Principles on Internal Displacement and, as far as applicable, the principle of Free, Prior and Informed Consent under UNDRIP into domestic law. However, the enactment has to proceed with the caveat that the law should not simply provide that IFC Standards, World Bank standards, or UNDRIP apply wholesale in Zambia. But the point of departure should instead be that Zambian laws should only domesticate the actual obligations which are suitable for Zambia's mining, land and customary tenure context.

The reason for this careful approach is that most of these standards are not, by themselves, directly enforceable under Zambian statutory law and was already recognised in Chapter Three, fall into the category of what is known as 'soft law'.

The new Act should also, be a domestication of the Kampala Convention which recognises that development projects can cause internal displacement and requires State Parties to prevent arbitrary displacement, protect affected persons and provide remedies.[93] It is therefore not enough for Zambia to have ratified the Convention and then leave mining-induced displacement to fragmented provisions on compensation and surface rights.

The proposed Act should therefore incorporate, as far as practicable, five basic principles. First, displacement should be avoided where possible. This is consistent with IFC Performance Standard 5 which, as discussed in Chapter three, which requires the client to consider feasible alternative project designs to avoid or minimise physical and economic displacement before displacement occurs. Secondly, both a Resettlement Action Plan and Livelihood Resettlement Plan should be provided to be mandatory documents where cannot be avoided by the mining company. Thirdly, the Act should provide that not only should affected persons receive compensation at full replacement cost, but they should also be given resettlement assistance, moving allowances, replacement land and livelihood support as far as the mining company can practically give under the circumstances. Fourthly and perhaps most important, persons without title, especially

[93] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) arts 4, 10 and 12.

customary land occupiers, should not be excluded merely because they do not hold a certificate of title. Fifthly, resettlement should not be treated as complete until livelihoods and standards of living have been restored or improved. Thus, the Act should provide monitoring system wherein the mining company files quarterly reports on how PAPs and IDPs are resettling post land acquisition.

The above approach finds support under the World Bank OP practice 4.12, which provides that the feasibility of resettlement must be established, a strategy agreed upon, the resettlement plan drafted, and budget estimates prepared during project preparation.[94]

Furthermore, the proposed Act should also incorporate some of the principles under the United Nations Guiding Principles on Business and Human Rights. As was discussed under chapter three, mining-induced resettlement should be treated both as a land issue and a business and human rights issue because mining companies can interfere with land, housing, livelihoods, access to water, farming activities, cultural ties and community life.[95] It is proposed that the specific legislation should incorporate Principle 3 of the United Nations Guiding Principles on Business and Human Rights which requires States to adopt and periodically review laws requiring business enterprises to respect human rights. Principle 8 should also be incorporated which requires coherence across State institutions. Particularly, Principles 26 and 27 should also be incorporated which emphasise effective judicial and non-judicial remedies.

Owing to the discussion in Chapter three, the ICCPR and ICESCR should also inform the proposed Act, not because they are technical resettlement manuals, but because they show that displacement affects fundamental human interests. As shown in Chapter three, the ICCPR is relevant because mining-induced displacement may engage the right to life, protection of the home and family, participation in public affairs and the right to an effective remedy. The ICESCR is also relevant because it protects the right to work, adequate standard of living, adequate housing, food, health, education and cultural life. The proposed Act should, therefore, treat mining-induced resettlement as a human rights issue, and not merely as a property compensation issue and incorporate

[94] World Bank, *Operational Manual: OP 4.12 - Involuntary Resettlement* (World Bank 2001, revised April 2013) 75

[95] United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations *'Protect, Respect and Remedy'* Framework, UN Doc HR/PUB/11/04 (2011)12

provisions that mining companies will adhere to best international human rights while conducting business.

Finally, the proposed Act should incorporate the substance of free prior and informed consent as far as practicable, especially where customary communities, ancestral land, burial sites, water sources and culturally significant land are concerned. As noted in Chapter three, Article 10 of UNDRIP prohibits forcible removal of indigenous peoples from their lands without free, prior and informed consent, and particularly it was noted that Article 32 requires consultation and free prior and informed consent in relation to the utilisation or exploitation of mineral, water or other resources. It should be presented as a benchmark which reveals what the Zambian mining framework should become.

Thus, the proper use of international standards is to domesticate the suitable obligations into a Resettlement Act. That Act should translate soft law into legally enforceable duties that make avoidance, consultation, Resettlement Action Plans, Livelihood Restoration Plans, protection of customary occupiers, grievance redress and post-resettlement monitoring legal requirements, and not voluntary company practice.

### 4.3 Mandatory Resettlement Action Plans and Livelihood Restoration Plans

The third reform is that every mining project likely to cause physical or economic displacement should be required to not only prepare a Resettlement Action Plan but also a Livelihood Restoration Plan where livelihoods of PAPs and IDPs are affected. These plans should be required before the grant, renewal, amendment or operational approval of a mining right where the project may result in displacement. This may necessitate an amendment to the Mines and Minerals Development (General) Regulations, 2016 discussed in Chapter two to include fulfilment of resettlement conditions as part of the conditions required for renewal of mining licences.[96]

The content of the RAP should also be prescribed under the proposed Resettlement Act. The IFC Handbook provides that the essential components of a RAP include identification of project impacts and affected populations, a legal framework, compensation framework, resettlement assistance and restoration of livelihood activities, budget, implementation schedule, organisational

[96] Statutory Instrument No.7 of 2016

responsibilities, consultation and participation, grievance redress and monitoring and evaluation.[97] The proposed Act should therefore require that a RAP contain a census of affected persons, an asset inventory, socio-economic survey, valuation report, eligibility criteria, compensation framework, resettlement options, replacement land arrangements, consultation records, grievance mechanism, budget, implementation schedule, institutional responsibilities, monitoring plan and completion audit framework, among other things.

## 4.4 Mandatory Resettlement Action Plans and Livelihood Restoration Plans

A further reform, which follows directly from the regulatory fragmentation analysed earlier, is that the proposed Act must integrate resettlement into the mining-licensing regime and coordinate the institutions responsible for it. The defect identified is that displacement is governed at three disconnected points, environmental assessment by the Zambia Environmental Management Agency, licensing by the Minerals Regulation Commission, and ex-post liability under Section 65, with no provision linking them.

A reform directed only at the content of resettlement obligations, without also connecting the institutions that administer them, would leave the fragmentation in place. The first element of this reform is that the Resettlement Action Plan, and where livelihoods are affected the Livelihood Restoration Plan, should be made an express statutory condition of the grant, renewal, amendment and continued exercise of any mining right likely to cause physical or economic displacement. At present, the Resettlement Action Plan is an environmental assessment document that is not, in terms, tied to the mining right itself.

The proposed Act, together with a consequential amendment to the Minerals Regulation Commission Act, should provide that the Minerals Regulation Commission shall not grant, renew or amend such a right unless a compliant Resettlement Action Plan, and where applicable a Livelihood Restoration Plan, has been approved. This converts the ex post liability under Section 65 into an ex ante gate, and makes resettlement a licensing question rather than a matter to be litigated after the harm. The second element is institutional coordination. The proposed Act should require the Minerals Regulation Commission, before granting a right where displacement is foreseeable, to obtain the input of the Zambia Environmental Management Agency and the

[97] International Finance Corporation, *Handbook for Preparing a Resettlement Action Plan* (IFC 2002)

Department of Resettlement, and it should designate a lead authority responsible for coordinating mining induced displacement.

This would give domestic effect to Article 3(2)(a) of the Kampala Convention, which requires State Parties to designate an authority to coordinate the protection of and assistance to internally displaced persons.[98] The instruments themselves should also be expressly cross-referenced, so that the Minerals Regulation Commission Act, the Environmental Management Act and its Regulations, the proposed Resettlement Act and the Revised National Resettlement Policy operate as one integrated scheme applied to a single displacement event, rather than as parallel and disconnected regimes. The effect of this reform is to close the structural disconnect that lies at the centre of this Research. It ensures that no single displacement event can pass through the licensing stage without its resettlement consequences having been assessed, planned and made a condition of approval, and it removes the regulatory uncertainty that fragmentation currently produces for investors and communities alike. This reform is the counterpart, at the level of enactment, to the recommendation on institutional coordination made in the concluding Chapter.

## 4.5 Protecting Customary Land Occupiers and Persons Without Title

The fifth reform is that the proposed Act should expressly protect customary land occupiers and persons without formal title. As shown in the previous chapters, Mining-induced resettlement in Zambia will often affect people who hold land through customary tenure. The fact that such persons will not have certificates of title, but that does not mean they have no interest worthy of protection.

In the case of ***Hachaambwa v Mweemba*** the Supreme Court of Zambia held as follows:

> *"Customary land is of great significance to rural landholders not merely because of its centrality to life and livelihood, but also for its value as clan land, essential in the conceptualisation of home, heritage and family identity."* [99]

[98] African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012)
[99] Hachaambwa v Mweemba Appeal No. 175/2016

The guidance from the Supreme Court of Zambia is important because it means that customary land cannot be reduced to a technical question of title. But rather it is land for livelihood, home, family and identity.

From the foregoing, the proposed Act should, reflecting IFC Standard 5 and World Bank OP 4.12, create three categories of eligible persons: First, persons with formal legal rights; Secondly, persons with customary or recognisable claims; and Thirdly, persons without formal legal rights but who occupied or depended on the land before the cut-off date. It is proposed that the protection may differ in degree, but it should not disappear completely.

This reform is necessary because the Lands Act, as currently understood, does not impose a direct duty on private companies under section 3(4)(c) of the Lands Act. [100]Thus, the said section cannot be invoked as a direct basis of liability against private parties and therefore, there is need to direct statutory duties on mining companies as that will not leave affected persons to rely on indirect land law principles.

## 4.7 Resettlement Agreements and Meaningful Consultation

The sixth reform is that the proposed Act should require that every mining-induced resettlement must be governed by a Resettlement Agreement. On this point, the Revised National Resettlement Policy defines a Resettlement Agreement as a legal agreement between the developer/investor or other responsible entities and persons or communities affected by investment projects taking into account the Resettlement Action Plan.[101]

It is proposed that the above definition should be incorporated in the proposed Act. The agreement should set out the obligations of the mining company, the rights of affected persons, compensation, replacement land, housing, relocation assistance, livelihood restoration, grievance processes, monitoring and timelines.

## 4.8 Grievance Redress and the Mining Appeals Tribunal

The seventh reform is that the law should create a clear grievance mechanism for mining-induced resettlement. As the previous chapters have shown, the MRCA already provides for alternative

[100] Chapter 184 of the Laws of Zambia
[101]Office of the Vice President, *Revised National Resettlement Policy 2024* (Government Printer 2024) (viii)

dispute resolution and arbitration in relation to surface rights and compensation. But that is not enough. Arbitration may be too expensive for rural communities.

Thus, the proposed Act should create a three-level grievance system. First, it should be mandated under the Act that a community-level grievance committee should be established for each mining-induced resettlement project. Secondly, where the grievance committee fails to resolve the issues they are called upon to adjudicate, the appeals should lie to the Mining Appeals Tribunal.

The need for a special mechanism is strengthened by the fact that group claims in Zambia often face evidentiary and identification challenges. For example, in the case of ***Standard Chartered Bank v William Solomon Nthanga and 300 Others***,[102] where the Supreme Court held that the Deputy Registrar should have clearly identified the respondents who were entitled instead of relying on a general spreadsheet.

That lesson applies directly to mining-induced resettlement. Before compensation is paid or grievances are resolved, the affected persons must be clearly identified. The proposed Act should, therefore, without prejudice to any issue of the incorporation of a broader definition discussed earlier, require a verified PAP and IDP register, household files, asset sheets, valuation records and grievance records. Thus, it is proposed that the Act should make reference to Registration and Development of Villages Act, which requires and mandates that chiefs and headmen keep a record of their inhabitants in their chiefdom.[103]

## 4.9 Monitoring, Completion Audits and Continuing Responsibility

The eigth reform is that resettlement should not be treated as complete merely because people have moved. The proposed Act should require monitoring until livelihoods and living standards have been restored or improved.

This is consistent with the Revised National Resettlement Policy, which requires a monitoring and evaluation framework for accountability, coordination and tracking progress.[104] It is also consistent with the practical reality that the effects of displacement may appear after relocation. A family may

[102] SCZ Appeal No.193 of 2016
[103] Chapter 289 of the Laws of Zambia
[104] Office of the Vice President, *Revised National Resettlement Policy 2024* (Government Printer 2024)18

move into a house, but later discover that there is no farming land, no market access, no clean water, no grazing land or no school nearby.

The proposed Act should, thus, require internal monitoring by the mining company, independent monitoring by qualified experts and a completion audit approved by the Department of Resettlement and the Minerals Regulation Commission, as contemplated by both IFC Standard 5 and World Bank OP 4.12.

### 4.10 Reforming Compensation under the MRCA

The ninth suggested reform is that section 40 of the MRCA should be amended. The section should not be limited to disturbance of surface rights and damage to crops, trees, buildings or works. It should rather also include economic displacement, loss of access to natural resources, loss of livelihood, relocation assistance, transitional support and replacement land.

### 4.11 Incorporating the Social Licence to Operate

The last suggestion is that the proposed Resettlement Act should incorporate the social licence to operate as far as practicable. However, the law should be careful not to equate the abstract 'social licence to operate' with its actual mining licence (s). Rather, it is proposed that the law should recognize and indeed incorporate the social licence to operate as the continuing acceptance of the mining project by the community that bears the social, environmental and livelihood burden of that project.

Tănase captures this point well when he states that obtaining legal permits is no longer sufficient for companies aiming to operate sustainably and that firms are now expected to gain the trust and acceptance of the communities in which they operate.[105] The importance of this statement is that it separates formal legality from social legitimacy. A mining company may have a mining licence, an environmental approval and surface rights. But that does not necessarily mean that the affected community accepts the project as fair, transparent or beneficial to them. In the context of mining-induced resettlement, a project may be lawful on paper, but still socially rejected if it moves people without proper consultation, fair compensation, replacement land, livelihood restoration and

[105] D Tănase, 'Evaluating and Measuring the Social License to Operate' (2025) Proceedings of the 19th International Conference on Business Excellence 4191

continuing engagement. Thus, to abate this, the proposed Resettlement Act should codify clearly mechanisms that would provide a platform for PAPs and IDPs for redress and various grievances.

The proposed Act should therefore require every mining company that undertakes resettlement to prepare a Social Licence and Community Engagement Plan as part of its Resettlement Action Plan. This should not replace the RAP or the Livelihood Restoration Plan, but rather should sit inside them. The plan should show how the mining company will identify affected persons, consult them, disclose information, address grievances, share project benefits, respect cultural values, and maintain communication after relocation.

The Act should therefore require the Minerals Regulation Commission, the Department of Resettlement and the Zambia Environmental Management Agency, where applicable, to assess whether the mining company has taken reasonable steps to secure and maintain community acceptance. This does not mean that every person must agree with the project as that would be impracticable. But it does mean that the company must show evidence of fair process and PAPs were informed, heard, and allowed to question the project.

In practical terms, the proposed Act should provide that no mining-induced resettlement shall proceed unless the mining company has demonstrated, as far as practicable, that it has obtained and will maintain community acceptance through lawful, transparent and participatory engagement.

## 4.12 Conclusion

This Chapter has proposed that Zambia should enact a specific legal framework for mining-induced resettlement. It has been suggested that the Act should be enacted in the context of Zambia's unique resettlement laws.

Furthermore, the Chapter has advocated for the creation of a robust Act which reflects the best practices in resettlement identified under the IFC Performance Standards, the World Bank OP 4.12, the International Finance Corporation Standards, and the Kampala Convention. However, these international instruments should not simply be copied into domestic law word for word. Rather, Zambia must selectively incorporate those principles which are suitable to its legal, economic and social realities.

The Chapter has further argued that the current mining framework under the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025 remains inadequate in regulating displacement, livelihood restoration, stakeholder participation and post-resettlement obligations. In this regard, it has been proposed that the new framework should provide for mandatory Resettlement Action Plans, livelihood restoration measures, community participation, grievance mechanisms, monitoring obligations, and the incorporation of the social licence to operate.

# CHAPTER FIVE

# CONCLUSIONS AND RECOMMENDATIONS

## 5.0 INTRODUCTION

This Chapter concludes the Research and brings together the findings made in the preceding chapters as well as makes recommendations on how Zambia's legal framework on mining-induced resettlement may be improved. This Chapter draws the final position of this Research and does not intend to repeat every issue discussed in the previous chapters. Further, it proposes the reforms that are necessary for the proper protection of Project Affected Persons and Internally Displaced Persons in Zambia.

As shown in the previous chapters, mining remains a critical part of Zambia's economic development. It contributes to national revenue, employment, foreign exchange earnings and general economic growth. However, the fact that mining is economically important does not mean that communities affected by mining-induced resettlement should be left to survive only on compensation for disturbance of surface rights. This Research argues that the law must do more and must ensure the livelihoods of PAPs and IDPs are better or at the very least the same with pre-resettlement conditions.

## 5.1 GENERAL CONCLUSION

It has been concluded in this Research that Zambia does not currently have a comprehensive statutory framework governing mining-induced resettlement. Although the current legislation tangentially touches on matters that are relevant to mining-induced resettlement, particularly surface rights, consent and compensation, they fail to regulate resettlement as would be expected internationally.

The main weakness of the current framework is that it is compensation-centred. It treats the harm mainly as disturbance of surface rights or damage to crops, trees, buildings, works or land. But mining-induced resettlement is much wider than that. It may involve physical displacement, economic displacement, loss of livelihood, loss of access to natural resources, loss of cultural sites, disruption of community networks, and long-term impoverishment. A framework that only asks what should be paid after land has been disturbed is therefore inadequate.

This Research also concludes that the current framework does not sufficiently protect persons who occupy customary land. This Research has brought to light the concerns that most communities affected by mining operations in Zambia may not have certificates of title or formal documents to prove their interests in land. On that score, this Research argues that the law must therefore avoid reducing customary land to a narrow documentary question.

The further conclusion is that Zambia's domestic mining framework does not sufficiently conform with international standards and best practices on mining-induced resettlement. The IFC Performance Standard 5, World Bank OP 4.12, the Kampala Convention and other relevant standards show that proper resettlement must be planned, participatory, livelihood-centred and monitored. In that regard, compensation is not the end of resettlement. It is only one part of it.

For these reasons, this Research concludes that Zambia should enact a specific Mining-Induced Resettlement Act. The Act should not merely copy international standards word for word. That would not be helpful. Rather, it should domesticate the suitable obligations from those standards and fit them into Zambia's own mining, land, customary tenure and institutional context.

## 5.2 SUMMARY OF CHAPTERS

### 5.2.1 Chapter One

Chapter One introduced the Research and provided the background to mining-induced resettlement in Zambia. It established that mining remains a major pillar of Zambia's economy. However, the Chapter also showed that the economic importance of mining has not been matched by sufficient legal protection for communities displaced or affected by mining projects.

The Chapter identified the central problem of the Research which was that the Minerals Regulation Commission Act No. 14 of 2024 and the Geological and Minerals Development Act No. 2 of 2025 seem to be concerned with a compensation oriented framework arising out of disturbance of a lawful occupier's surface rights. This Chapter argued that the said Acts, which are the main pieces of legislation regulating the mining industry in Zambia, do not address matters of Resettlement Action Plans, Livelihood Restoration Plans, post-resettlement monitoring, and other conditions prescribed under international best practices and standards.

The Chapter further set out the research objectives, research questions, methodology and literature review. It also showed that the Research is doctrinal in nature and is based on statutes, case law, policies, international standards and scholarly writings.

### 5.2.2 Chapter Two

Chapter Two analysed the existing Zambian legal framework governing mining-induced resettlement. It began by defining mining-induced resettlement, Internally Displaced Persons and Project Affected Persons. The Chapter showed that mining-induced resettlement does not only involve the physical movement of people from one place to another. It also involves disruption of livelihoods, loss of access to land and natural resources, loss of cultural identity, and social and economic dislocation.

The Chapter then analysed the Constitution, the Minerals Regulation Commission Act and the Geological and Minerals Development Act. It was established that Part IV of the MRCA is mainly a surface rights framework and not a resettlement framework. Section 35 of the MRCA deals with consent before exercising mining rights on certain categories of land, while section 40 deals with compensation for disturbance of rights and damage to land, crops, trees, buildings and works. However, these provisions do not create a complete statutory procedure for resettlement.

The Chapter also showed that the current law does not adequately deal with livelihood restoration as there are no express provisions requiring a mining company to restore livelihoods after displacement.

The Chapter further found that customary land occupiers are particularly vulnerable. This is because their claims may not always be supported by formal documents. Yet, in many rural communities, land is held, used and inherited under customary systems. The Chapter therefore concluded that the MRCA and GMDA are inadequate and that Zambia needs a rights-based and livelihood-centred framework for mining-induced resettlement.

### 5.2.3 Chapter Three

Chapter Three assessed the extent to which the MRCA and GMDA conform with international standards and best practices on mining-induced resettlement. The Chapter considered IFC Performance Standard 5, World Bank OP 4.12, the United Nations Guiding Principles on Business

and Human Rights, the ICCPR, the ICESCR, the Kampala Convention and the principle of Free, Prior and Informed Consent.

The Chapter established that IFC Performance Standard 5 takes a broader view of displacement. It recognises both physical and economic displacement. It also requires avoidance or minimisation of displacement, compensation at full replacement cost, resettlement assistance, livelihood restoration, consultation and monitoring. In comparison, the MRCA and GMDA do not impose an express duty to avoid displacement or demonstrate that alternative project designs were considered.

The Chapter further found that World Bank OP 4.12 also treats resettlement as a planned process. It requires a multitude of processes including but not limited to resettlement planning, consultation, the provision of viable resettlement alternatives, and moving allowances, among other things. This revealed yet another weakness in Zambian law. The MRCA and GMDA do not make a Resettlement Action Plan a condition for the grant, renewal or operational approval of a mining right where a project may cause displacement.

The Chapter concluded that Zambia's mining framework conforms with international standards only to a limited extent. It provides for consent and compensation, but it does not fully provide for avoidance, planning, livelihood restoration, protection of persons without title, grievance mechanisms and post-resettlement monitoring.

### 5.2.4 Chapter Four

Chapter Four proposed reforms to the legal framework governing mining-induced resettlement in Zambia. The main proposal was the enactment of a specific Mining-Induced Resettlement Act. The Chapter argued that resettlement should not merely be left to the MRCA, the Environmental Management Act or the Lands Act, because those statutes do not principally exist to regulate resettlement.

The Chapter further proposed that the Act should domesticate suitable principles from IFC Performance Standard 5, World Bank OP 4.12, the Kampala Convention and other relevant standards. It was suggested that the law should require avoidance of displacement as far as practicable, mandatory Resettlement Action Plans, mandatory Livelihood Restoration Plans, protection of customary land occupiers, meaningful consultation, grievance redress, monitoring and completion audits.

The Chapter also recommended that section 40 of the MRCA should be amended so that compensation is not limited to surface rights and damage to crops, trees, buildings and works. The provision should also include economic displacement, loss of livelihood, loss of access to natural resources, relocation assistance, transitional support and replacement land.

Finally, the Chapter proposed that the social licence to operate should be incorporated into the proposed Resettlement Act. The point made was that a mining licence is not the same as community acceptance. A project may be lawful on paper, but still be rejected by the community if it is carried out without transparency, consultation, fair compensation, livelihood restoration and continuing engagement.

## 5.3 RECOMMENDATIONS

This is perhaps the most important part of the Research. Having identified the defects in the current legal framework, it is necessary to suggest the practical reforms that may resolve them. The recommendations are mainly directed to Parliament. However, the Executive, the Minerals Regulation Commission, the Department of Resettlement, traditional authorities, the Zambia Environmental Management Agency and the Judiciary also have a role to play.

### 5.3.1 Enactment of a Resettlement Act

This Research highly recommends that Parliament enact a specific Mining-Induced Resettlement Act, which should define mining-induced resettlement, physical displacement, economic displacement, Project Affected Persons, Internally Displaced Persons, Resettlement Action Plans, Livelihood Restoration Plans, replacement land, host communities and resettlement agreements, among other definitions.

The Act should aim at ensuring that displacement is kept at a minimum as a first line of defence. Where this is not possible, it should make it clear that a mining right holder should not cause physical or economic displacement unless the mining company does everything practicable to minimise displacement, prepare a Resettlement Action Plan and Livelihood Restoration Plan, among other things.

### 5.3.2 Domestication of Suitable International Standards

The second recommendation is that Zambia should endeavour to domesticate suitable obligations from IFC Performance Standard 5, World Bank OP 4.12, the Kampala Convention and other relevant standards identified in previous chapters. However, it is cautioned that these standards should not be copied wholesale into Zambian law but rather adopted to fit Zambia's peculiar mining and land tenure realities and needs.

In particular, the Act should host a suite of duties that range from the duty to avoid and minimise displacement, the duty to compensate at full replacement cost, the duty to restore livelihoods, the duty to consult affected persons, the duty to protect persons without formal title, and the duty to provide effective grievance redress.

### 5.3.3 Mandatory Resettlement Action Plans and Livelihood Restoration Plans

The third recommendation is that every mining project likely to cause physical or economic displacement should be required to prepare a Resettlement Action Plan and a Livelihood Restoration Plan which Plan(s) must be submitted before the grant, renewal, amendment or operational approval of a mining right.

The RAP should include a census of affected persons, asset inventory, valuation report, socio-economic survey, eligibility criteria, compensation framework, replacement land arrangements, consultation records, grievance mechanism, budget, implementation schedule, monitoring plan and completion audit framework.

The LRP should show how the mining company will restore or improve the livelihoods of affected persons after displacement. This is an extremely cardinal insertion, as the studies and literature in the previous chapters have shown, the law as it stands completely neglects to provide for the rights of PAPs and IDPs after displacement.

### 5.3.4 Amendment of the Minerals Regulation Commission Act No. 14 of 2024

The fourth recommendation is that the MRCA should be amended. Section 40 should not be limited to disturbance of surface rights and damage to crops, trees, buildings or works. It should expressly include economic displacement, loss of livelihood, loss of access to natural resources, loss of agricultural opportunity, relocation assistance, transitional support and replacement land.

The MRCA should also be amended so that where a mining right may result in displacement, the Minerals Regulation Commission should not grant or renew the right unless the applicant has complied with the resettlement obligations under the proposed Act. This would make resettlement a licensing issue, and not only an afterthought after damage has occurred.

### 5.3.5 Protection of Customary Land Occupiers and Persons Without Formal Title

The fifth recommendation is that the proposed Act should expressly protect customary land occupiers and persons without formal title. The law should recognise that persons may have legitimate land-based interests even where they do not hold certificates of title.

The Act should create different categories of eligible persons. These should include persons with formal legal rights, persons with customary or recognisable claims, and persons without formal legal rights who occupied or depended on the land before the cut-off date. The level of protection may differ, but the protection should not disappear completely.

### 5.3.6 Resettlement Agreements and Meaningful Consultation

The sixth recommendation is that mining-induced resettlement should be governed by written Resettlement Agreements. These agreements should be entered into between the mining company and affected persons or communities, with the involvement of the relevant public authorities and traditional leadership where applicable.

The agreement should set out compensation, replacement land, housing, livelihood restoration, relocation assistance, cultural site protection, grievance processes, monitoring obligations and timelines. It should not be a document signed after pressure has already been exerted on affected persons. It must follow meaningful consultation and disclosure of information.

### 5.3.7 Grievance Redress Mechanism

The seventh recommendation is that the law should create a clear and accessible grievance mechanism for mining-induced resettlement. Arbitration alone is not enough. It may be too expensive, technical and distant for rural communities.

The Act should create a three-level mechanism. First, there should be a project-level grievance committee. Secondly, unresolved disputes should be referred to the Minerals Regulation

Commission or a specialised resettlement unit within it. Thirdly, appeals should lie to the Mining Appeals Tribunal or another specialised tribunal with competence over resettlement disputes.

The grievance mechanism should cover compensation, replacement land, livelihood restoration, eligibility, cultural sites, community resources, relocation assistance, breach of resettlement agreements and post-resettlement harm.

### 5.3.8 Monitoring and Completion Audits

The eighth recommendation is that resettlement should not be treated as complete merely because people have moved. The law should require monitoring until livelihoods and standards of living have been restored or improved.

Mining companies should be required to submit quarterly monitoring reports. There should also be independent monitoring by qualified experts. A completion audit should only be approved where it is shown that the affected persons have received compensation, replacement land or assistance, and that their livelihoods have been restored or improved as far as practicable.

### 5.3.9 Incorporation of the Social Licence to Operate

The ninth recommendation is that the proposed Act should incorporate the social licence to operate as a legal consideration in mining-induced resettlement. This should not mean that a social licence becomes the same thing as a mining licence. Rather, it should mean that a mining company must demonstrate continuing community engagement and acceptance.

The Act should require a Social Licence and Community Engagement Plan as part of the RAP. This plan should show how the mining company will identify affected persons, consult communities, disclose information, handle grievances, respect cultural values and maintain communication after relocation.

### 5.3.10 Institutional Coordination

The tenth recommendation is that there should be better institutional coordination between the Minerals Regulation Commission, the Department of Resettlement, the Zambia Environmental Management Agency, local authorities and traditional authorities.

Mining-induced resettlement should not be left to one institution acting alone. The Minerals Regulation Commission should deal with mining rights and compliance. The Department of Resettlement should deal with resettlement planning and standards. ZEMA should deal with environmental and social impact issues. Local authorities and traditional authorities should assist in identifying affected communities, customary land interests and local development needs.

## 5.4 FINAL CONCLUSION

This Research has shown that the present Zambian legal framework on mining-induced resettlement is inadequate. The MRCA and GMDA are important statutes in the regulation of mining, but they do not fully regulate the consequences of mining-induced displacement. They do not sufficiently provide for livelihood restoration, replacement land, resettlement planning, protection of customary land occupiers, community participation, grievance redress and post-resettlement monitoring.

The position that emerges is therefore clear. Zambia must move from a compensation-centred approach to a rights-based and livelihood-centred approach. Compensation alone cannot rebuild a life. It cannot always replace land, social networks, water sources, grazing areas, burial sites, markets, schools and the general security of belonging to a place.

It is for that reason that this Research recommends the enactment of a Mining-Induced Resettlement Act. Such an Act would not undermine mining investment. Rather, it would give clarity to mining companies, protection to affected communities, guidance to regulators and legitimacy to mining projects. In the final analysis, the proper regulation of mining-induced resettlement is not anti-investment. It is a necessary condition for just, stable and sustainable mining in Zambia.

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