



A Review of Sierra Leone's Mines and Minerals Act

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The Columbia Center on Sustainable Investment (CCSI), a joint center of Columbia Law School and the Earth Institute at Columbia University, is the only university-based applied research center and forum dedicated to the study, practice and discussion of sustainable international investment. Our mission is to develop practical approaches for governments, investors, communities and other stakeholders to maximize the benefits of international investment for sustainable development.



Oxfam is a globally renowned humanitarian and development charity with over 70 years' experience working and campaigning with partners in over 90 countries worldwide. Originally founded in 1946, Oxfam today focuses its work on vital issues to tackle the root causes of poverty; from life's basics - food, water, health - to complex questions around inequality, gender justice, climate change and human rights. It works on long-term projects with communities determined to shape a better future for themselves.



Introduction and Methodology

At the request of Oxfam, the Columbia Center on Sustainable Investment reviewed select provisions in the Mines and Minerals Act 2009 and corresponding policy statements from the Minerals Policy 2018 to provide recommendations for how to best align the anticipated new mining law with international best practice. The following topics were reviewed:

- Fiscal regime
- Climate change
- Access to and use of land
- Community consultations and participation
- Human rights
- Community development agreements

The team completed a desk-top review of the following laws and policies.

- Mines and Minerals Act 2009
- Mines and Minerals Regulations 2009
- Minerals Policy 2018
- Local Government Act 2004
- The Sierra Leone Environment Protection Agency Act 2008
- Environmental and Social Regulations for The Minerals Sector 2012
- The Income Tax Act as amended by the Financial Act 2015
- The Finance Act 2016
- The Extractive Industries Revenue Act 2018
- The Financial Act 2019

In addition, the team interviewed key informants to identify practitioner perspectives on the topic areas outlined above.



Fiscal

Sierra Leone's fiscal regime for mining is known for being particularly advantageous for companies, and has in the past failed to strike an equitable balance between the interests of the country and those of the companies. This stems from a series of problems, mainly related to weak provisions in the Income Tax Act (ITA) and the Mines and Minerals Act 2009 on the issues of:

- transfer pricing;
- thin capitalization;
- ring fencing;
- head office expenses; and
- incentives granted on a negotiated basis through mining development agreements.

Many of these issues are now addressed by the 2016 and 2019 Financial Acts (FA), the Extractive Industry Revenue Act 2018 (EIRA) and hopefully the upcoming transfer pricing regulations. Thus, first and foremost, the new mining law should align with these instruments by:

1. explicitly referring to the EIRA and relevant ITA/FA provisions;
2. at best complementing the provisions in the EIRA and ITA/FA, but at a minimum not contradicting them; and
3. forbidding any contractual derogation from applicable laws, and imposing a penalty for doing so.

The following sections discuss the latest improvements in the fiscal regime including on investment incentives, transfer mispricing, ring fencing, and indirect transfers, while highlighting the remaining loopholes. It does not propose a new fiscal regime. It is important to note that the new mining law is not necessarily the instrument through which the relevant loopholes should be corrected in all cases.

Definitions

Transfer pricing: the practice of using the multinationals' network of affiliates to deflate prices or inflate costs including financial interests so as to reduce taxable income.

Thin capitalization: the practice of abusive borrowing, in particular through shareholders' loans, to reduce taxable income through loan interest deductions.

Absence of ring fencing: the practice of using the losses of one project to offset the income of another project when these projects relate to two different license areas.

Box 1: Singapore and conditional tax incentives

The Government of Singapore provides investors with a concessionary tax or complete tax exemption for 10-15 years provided they fulfill certain objectives on an annual basis such as business expenditure, the creation of jobs, payments to local suppliers, and knowledge and technology transfer. These incentives are provided in law and are available to all investors that meet the conditions. The Economic Development Board (EDB) monitors the fulfillment of objectives at the end of each incentive period. Investors that benefit from the incentives must submit progress reports to the EDB, and run the risk of having their incentives revoked if objectives are not realized.²⁷

Fiscal investment incentives

As a starting point, in order to discourage companies from seeking investment incentives on a negotiated basis, the new mining law should refer to or duplicate the penalty clause in the Financial Act 2019, section 14:

“Fiscal incentives in any contract, contrary to prohibited tax and duty exemptions, awarded by a Government Ministry, Department or Agency shall be declared null and void.”¹

Tax incentives

Tax incentives should be codified in the law, preferably in the tax law and administered by the National Revenue Authority

If tax incentives are considered necessary, the law, and preferably the tax law, should prescribe the circumstances in which tax incentives could be granted so that incentives are generally applied and are granted in a transparent manner.² Tax incentives should not be granted by contract as alluded to by the Policy.³

It has been shown that “mov[ing] tax incentives from other laws into the tax laws is a critical first step in better managing the use of tax incentives.”⁴ Tax incentives that are established in other laws and by agencies or ministries that are not involved in the collection of taxes presents a moral hazard problem. This is because those agencies or ministries are evaluated against the quantity of investment that is generated, as well as the quantity of tax incentives that are granted without bearing any responsibility for losses of revenue that may result.⁵ The National Revenue Authority through the tax law should administer the incentive programs of the country.

If granted at all, tax incentives should be back-loaded and regularly scrutinized, in particular by the Parliament.

Section 3.2.1 of the Minerals Policy 2018 suggests granting incentives in exchange for contributions to the sustainable development goals such as “developing infrastructure and value chain linkages, employment creation, knowledge and technology transfer, as well as greater use of local services and supplies.” This approach is certainly preferable over unconditional incentives but it could be as inefficient if incentives are front-loaded. Incentives should be back-loaded, which means they are granted only when goals are reached.⁶ Even if back-loaded, the use of such incentives should be closely scrutinized and should only be granted if the likely benefits clearly outweigh the expected revenue loss that they are likely to result in. See box above on Singapore.

As a general point, the Government should review the extent to which tax incentives that have been granted in the past effectively lead to the realization of long term goals. This is especially important as:

1. ITA, section 32 already grants tax deductibility at 125% for training, export promotion activities and social expenses;
2. ITA, section 37 already anticipates a 125% investment allowance for R&D spent related to the project (at the exclusion of R&D spent on locating minerals); and
3. FA 2015, section 24 already grants corporate income tax holidays for 5-10 years depending on the size of the workforce and the minimum investment when there is at least 20% Sierra Leonean ownership in the company.

If such incentives have not contributed to the goals intended by the law (training, export promotion, job creation, etc.), the Government should consider reviewing how incentives are granted. In addition, these expenses for which incentives provide an uplift should be externally audited, follow the transfer pricing regulations, and the spending categories should proceed from a plan validated by the national or local governments. The Parliament should be involved in this review.

Revise corporate income tax holidays

The Government should consider revisiting the **corporate income tax holiday** included in the ITA. Corporate income tax holidays are generally considered inefficient because they are only relevant once a mine is in a tax-paying position, which may be beyond the tax holiday period. In addition, they are deleterious because they can lead to high leakages if businesses reorganize themselves to benefit from tax holidays in unintended ways.⁷ For example, a company could choose to shift profits through transfer mispricing from older mines that do not benefit from tax holidays to newer ones that do benefit from tax holidays to continue enjoying the effect of tax holidays longer than intended (e.g. the older mine could sell goods and services to the newer miner mine at above market price). "High

grading" is another risk that the Government takes when granting corporate income tax holidays.⁸ High-grading is the practice of increasing the rate of extraction or strategically extracting high-grade ore during the tax holiday period to reduce the revenues available to tax after the expiry of the tax holiday.⁹

To mitigate these negative implications, the new mining law could complement the ITA by:¹⁰

- Requiring that a mining company's taxable income is calculated normally during the tax holiday period, which implies requiring regular submission of the tax return and deduction of all depreciation costs instead of pushing their deduction beyond the tax holiday expiry to avoid extending the period during which the taxable income is artificially reduced;
- Putting in place measures to avoid the impacts of 'high-grading.' For example, the Government could agree to a tax holiday on a tonnage-of-ore extracted basis; for instance, *Mali's Mining Code 2012* stipulates that, if the production level exceeds that approved annually by the company's board of directors by 10%, the generally applicable corporate income tax rate will be applied to the excess. If Sierra Leone's new mining law were to include a similar provision, unlike in the Malian Mining Code 2012, we would recommend benchmarking the production level to the feasibility study rather than to the board's decision, which may not be sufficiently transparent nor objective.

Ideally the new mining law would not interfere with the ITA and the next Financial Act would repeal the tax holiday granted by the ITA altogether. Instead of tax holidays, there should be incentives that defer taxes rather than waive them. It is preferable to have accelerated depreciation and loss, as well as carry-forward, as is already the case in Sierra Leone. Over time, fewer countries have been offering tax holidays because of their limitations.¹¹

Revise customs duty exemptions

We note the important amendment brought about by FA 2016 to **customs duty exemptions**. FA 2016 reduces the exemption from 5 years to 3 years, and excludes spare parts, general vehicles and imports for resales from the exemption. Excluding spare parts from the customs duty exemption is particularly important to avoid discouraging the emergence of the spare parts business in Sierra Leone. FA 2016 also imposes a threshold and does not grant this exemption for businesses investing under the threshold of \$10M for a new investment and \$5M for an existing investment. While the intent of FA 2016 is to encourage large investment, by the same token, FA 2016 in fact hurts the competitiveness of SMEs. Further amendments to the ITA should address this issue.

Incentive packages must be closely scrutinized using fiscal models, cost-benefit analyses and by parliamentary oversight

Before deciding on an incentive package, the government should develop a **fiscal model** looking at the overall fiscal package to understand the effectiveness, usefulness, fairness and competitiveness of the incentive package. In addition, all fiscal incentives need to be **costed in terms of their revenue loss**; the government should conduct a **regular tax expenditure analysis** showing the revenue cost from incentives and exemptions, which **should be made public and debated in Parliament**. Finally, Sierra Leone should follow the regional debates on regional tax harmonization and actively collaborate with partners in the region to eliminate a race to the bottom.¹²

Stabilization clauses

Another fiscal and regulatory incentive is the fiscal stability clause. The changes brought by EIRA 2018 that **limit the applicability of fiscal stability clauses** to a maximum of 10 years (EIRA, section 40) are positive; it also prevents companies from having the choice to either benefit from fiscal stability granted by contract, or opt to take advantage of potentially more favorable tax arrangements arising from amendments to the EIRA or ITA enacted after the contract has been

entered into (EIRA, section 41). To avoid doubt, the new mineral law should reiterate that contractual fiscal stability clauses are subject to the terms of EIRA 2018.

Transfer pricing

We are aware that new **transfer pricing** regulations are being drafted. The new mining law should clearly cross-reference the upcoming instruments (to the extent the transfer pricing regulations are adopted before the new mining law is passed) and clearly indicate that these regulations must be followed in assessing both sales (Mines and Minerals Act 2009, sections 148 and 154) and expenditures for all projects. The Mines and Minerals Act 2009 only requires the application of the arm's length principle for sales, and this requirement only applies to holders of large-scale mining licenses that have a capital expenditure above US\$5 million. This should be broadened in the transfer pricing regulations. In addition, we expect the new transfer pricing regulations to define "affiliates" and "related party" as these terms are not defined in the ITA, or in the Mines and Minerals Act 2009.

Transfer pricing regulations are also expected to cover the risk triggered by multinationals' use of **offshore "service hubs,"** for finance, insurance, legal, marketing, or IP development services. There is a risk that service hubs could charge the Sierra Leonean mining subsidiary fees in excess of services rendered, which would enable profit shifting to these offshore "hubs." This practice and the possible ways of mitigating the risk is well captured in the World Bank publication, "Transfer Pricing in Mining, with a Focus on Africa."¹³ The World Bank notes that:

"While (...) [multinationals] exercise their discretion as to how they wish to structure their global business to achieve the best outcome for their shareholders, they must ensure that the degree to which the tax base of the source country is eroded as profit is shifted abroad is commensurate to the value actually added by their overseas subsidiaries."¹⁴

It is notable that the FA 2019 has taken very good measures to discourage this practice: it amends section 32(2) of the ITA 2000 by disallowing the deductibility of expenses related to "copyrights and industrial property rights in trade and banking services, technical, scientific and similar know-how, knowledge and skills such as plans, designs, process"¹⁵ if payments for these services are made to a related party. In addition, FA 2019 repeals and replaces FA 2016, Section 37 by increasing the withholding tax rate on management and technical service fees from 15% to 20% of the value of services that provide "a taxpayer with professional, managerial, scientific or engineering advisory and other support services."¹⁶

Similarly, transfer pricing regulations should also address the issue of **head office expenses**, which also represent a risk for profit shifting. While this topic was addressed by FA 2016 in the Sixth Schedule ("where a deduction for head office expenses exceeds one-half percent of sales, any excess of such expense shall be treated as a dividend,") it has now been repealed by EIRA 2018, with no replacement.

Lastly, we expect the transfer pricing regulations to mandate **private ruling or advanced pricing agreements** for all transactions that do not have a reference price. Right now, ITA section 168 provides for private ruling but it is seldom implemented. While this might be because of an institutional constraint, the regulations could usefully specify when these rulings should mandatorily be used and their contents.

Thin capitalization rules should also be addressed by the new transfer pricing regulations. The Finance Act 2016 has improved regulation of thin capitalization, for example, by limiting the deductibility of interest from shareholders' loans using a debt to equity ratio (FA 2016, section 8). In addition, the EIRA 2018 limits the recovery of interest above the deductibility cap to 10 years (counted from the year of commercial production or the year of the incurred loss, depending on what comes later) (EIRA 2018, section 7 and 5). In further iterations of the FA, the deductibility limitation could

be changed to align with the recommended Action 4 of the OECD's Base Erosion Profit Shifting project setting a fixed ratio for debt as a percentage of EBITDA, the Earnings Before Interest, Tax, Depreciation and Amortization (i.e.: the company's operating income). For the mining sector, this ratio is recommended to be around 20-25% while the arm's length principle should be applied to shareholders' loans. A debt to EBITDA ratio is preferable over a debt to equity ratio as companies could subvert the debt to equity ratio by converting debt into equity or vice versa through transactions with affiliates.¹⁷

Moreover, ITA, section 119(2)(c) and FA 2019 consider exceptions to the imposition of **withholding tax on interests**. The ITA leaves the exception at the discretion to the Commissioner, which is problematic. FA 2019 makes an exception for longer-than-two-year-loans granted to aid export activities, for which international companies investing in the mining sector might well qualify. Withholding tax on interest is a key instrument that can be used to discourage thin capitalization, since this is a tax imposed on the interest paid on loans. As such, there should be discussions as to whether the new mining law should carve out the mining sector from these exemptions.

Ring fencing

Ring fencing is now addressed adequately by many provisions of the EIRA (section 4 (3) and (4) and section 5). In addition, the EIRA has made necessary changes to the accumulation of deductible losses: the deduction of exploration expenses is limited to 7 years (section 17) (whereas there exists unlimited deductibility under the Mines and Minerals Act 2009, section 155 (4)); loss and carry forward remains limited to 10 years (counted from the year of commercial production or the year of the incurred loss, depending on what comes later); and tax payable to more than 15% cannot be reduced (EIRA 2018, section 8).

Indirect transfers

Also known as change in control, **indirect transfers** in the chain of underlying ownership of the mineral rights is now addressed by EIRA 2018, section 9. Indirect transfers are taxed with a change of ownership equal to or higher than 25%. Moreover, any change of ownership equal or above this threshold should be declared to the authority. We are of the view that not only is this threshold too high (it is 5% in Ghana for instance)¹⁸ but that all indirect transfers should be declared for at least three reasons: 1) it can enable the tax administration to reflect on the feasibility of lowering the threshold by amending the tax law, 2) it will limit tax avoidance opportunities by empowering the tax administration to decide if/when the threshold has been reached instead of leaving this determination to the companies, and 3) it will help trace beneficial ownership as will be required by EITI from 2020. While the revised mining law should not contradict EIRA 2018, it can circumvent this problem by simply deferring to the EITI's latest standard and stipulating that it is applicable even in the context of change in control.

State participation

The Mines and Minerals Act 2009, section 162 stipulates that the Government has the right to acquire a participating interest in the project on terms agreed with the license holder. While we can't advise on a specific interest that the State should take, we note here a few principles to keep in mind for the new mining law:

- As mentioned, it is never wise to leave terms to be negotiated;
- Dividends might be paid with a lot of delay because dividends never have the priority in payments—first comes taxes, then debt payments, and then dividends. With tax planning, the payment of dividends can be pushed off considerably;
- Paid up equity can be very costly for the government, carried interest by the investor can be accompanied by above market interest, and free equity is most often negotiated against a tax concession; and
- The revenue impact of state equity can be reproduced by tax instruments that are more certain, as explained in [this IMF note](#).¹⁹

Aspects not addressed by EIRA AND ITA/FA that could be usefully addressed by the new mining law

Annual Charges: The Mines and Minerals Act 2009 discusses the imposition of “annual charges” to be paid on the grant of the mineral right, as “may be prescribed” (section 152). The uncertainty embodied in this phrasing should be clarified in the new mining law by explaining which authority will prescribe these charges, when, and according to which criteria. This should not be left to contract negotiation.

Use of derivative instruments and hedging: EIRA gives a very vague definition that should be clarified in the new mining law.²⁰ Companies could use the extracted minerals to hedge against the price of other minerals, for instance through the use of futures contracts. In this case the minerals might not be sold at the highest world price, as required by the Mines and Mineral Act 2009, section 154, thus reducing payments owed to government through tax, royalties and other fiscal instruments. The new mining law could stipulate that even when derivative instruments are used, all payments to the Government will remain determined as if the minerals were sold at the market reference price, i.e.: the effects of hedging are ignored as recommended by the IMF.²¹ This would be more effective than EIRA, section 7, that attempts to neutralize the effect of derivative instruments by stipulating that the financial cost resulting from the use of derivative instruments can only be included in the income computation if their financial gains are also included. The EIRA provision leaves room for interpretation, and it does not necessarily reduce the risk or impact of the use of hedging. It also limits the neutralization attempt to tax types indexed to income, ignoring that hedging can also impact the royalty base for instance. As for the Minerals Policy 2018, while it shows some awareness of the problem, it only invites the government to take a position on it.²²

Penalties for non-compliance with tax law and fiscal provisions: While the Mines and Minerals Act 2009, sections 158 and 160 respectively include a 2-year and a 1-year prison sentence that may serve as an effective deterrent, all the other monetary penalty schemes (included in sections 158 and 160 of the Mines and Minerals Act 2009 and in ITA, sections 154 - 158 and 160 - 162) are too low to be a deterrent for an international company. All in all, there is a need to raise the monetary penalties to levels that incentivize international companies to comply with the tax law (and with any other relevant laws).

Permanent Establishment: Permanent Establishment (PE) is usually defined in Double Tax Agreements (DTAs) and in the ITA. Its definition determines the extent to which a foreign business is subject to tax in the source country. The ITA defines the Permanent Establishment clause for all industries as: “Foreign permanent establishment means a fixed place of business of a resident person situated in a foreign country where the business is conducted continuously for at least 183 days, but excludes any place at which only activities of a preparatory or auxiliary nature are conducted.”

The extractive industries present specific challenges for this clause that are explained in CCSI's note, [“Understanding how the various definitions of Permanent Establishment can limit the taxation ability of resource- rich source countries.”](#)²³ This is because companies sometimes use short term specialized sub-contractors in activities leading up to the production stage and/or the supplemental activities involved in maintaining or terminating production, and these sub-contractors could avoid being classed as “permanently established,” and thus avoid taxation in Sierra Leone. They would do so by splitting contracts to stay under the 183-day threshold and fragment activities to ensure that activities fall under the exemptions granted to “preparatory or auxiliary activities.”

Because extractive industries are the mainstay of Sierra Leone's economy, it is advisable for the new mining law to complement the ITA's permanent establishment clause and reinforce rules that might be circumvented in the context of extractive industries. Ideally, though,

this revision would occur in the ITA and in particular in the DTAs since DTAs override domestic law.

Provisions that could usefully be added include:

- Complementing the definition of the term permanent establishment and adding that a permanent establishment also includes *a mine, [an oil or gas well if the change is made in the ITA], a quarry or any other place of extraction of minerals [or natural resources if the change is made in the ITA];*
- An anti-fragmentation rule where specific activity exemptions (i.e. preparatory or auxiliary nature) do not apply when a company or a closely related company carries out business activities in one or more places in a contracting State, and either (1) one or more of such places constitute a permanent establishment for one of the related companies, or (2) the overall activity resulting from the combination of the activities carried on by the two companies at the same place, or by the same company or closely related companies at the two places, does not have a preparatory or auxiliary character.²⁴
- An anti-contract-splitting rule: where the aggregation of time spent performing activities at a place that constitutes a building site, construction project, installation project or other specific project identified in the permanent establishment definition, as long as these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days; or where the aggregation of time performing connected activities in a place that constitutes a building site, construction project, installation project or other specific project identified in the PE definition, if these activities are carried out during different periods of time, each exceeding 30 days, by one or more closely related companies.²⁵

This anti-fragmentation rule and anti-contract-splitting rules come from the OECD BEPS' Multilateral Convention (MLI) which is an instrument that parties to a DTA can use to modify the DTA to avoid tax evasion and avoidance scheme. Sierra Leone only has three tax agreements in force (United Kingdom, South Africa, Norway) and the country could usefully engage the parties to the DTAs to adopt the recommendations of the MLI.²⁶ The MLI' s minimum mandatory standard to adopt is the Principal Purpose Test aimed at limiting treaty shopping by granting the benefit of the treaty only to investors that have a real economic purpose.

Climate Change

Integrate climate change considerations into the mining regulation

Sierra Leone is one of the world's ten most vulnerable countries to climate change.²⁸ With temperatures set to rise by 1-2.5°C by 2060 and increasing climate variability, Sierra Leone is particularly vulnerable to the impact that this will have on its economy, its environment and its people.²⁹

Sierra Leone is heavily dependent on natural resources, with agriculture providing employment for around 75% of the labor force, around 60% of which is at the subsistence level.³⁰ Sierra Leone's natural resources are currently being threatened by rapid population growth, increasing energy consumption, and deforestation and water pollution from "environmentally unsound" mining activities and farming. The changing climate acts as a "risk multiplier" by increasing climate extremes, and in the case of Sierra Leone, floods, landslides and droughts.³¹

Mining exacerbates Sierra Leone's climatic vulnerabilities to the extent mining activities compete for fresh water sources with local communities, contaminate clean water sources with waste effluents and tailings, and contribute to deforestation which exacerbates soil erosion, landslides and flooding in the rainy season. As ore grades continue to decline and minerals need to be more intensively processed, mining will also become more energy and water intensive.³² This will in turn greatly increase mining companies' greenhouse gas (GHG) emissions. The mining of low grade ore also results in more waste being produced, that needs to be carefully planned for and managed.³³

At the same time, the mining sector is also vulnerable to the adverse impacts of climate change. The mining sector in Sierra Leone has already suffered setbacks and economic losses from the damage caused to infrastructure and hindered operations by extreme weather events such as floods and landslides, resulting in lost revenues for mining companies and Governments alike. The multiplier effect of climate change on these types of weather events means that it is not only in the interest of Sierra Leone, but also the mining companies operating in Sierra Leone, to proactively mitigate, prepare for, and adapt to climate change.

The Mines and Minerals Act 2009 contains no provisions to mitigate or manage the effects of climate change. The current mining law's environmental provisions only include an obligation on mining license holders to carry on operations "in a manner that is reasonably practicable in order to minimize, manage and mitigate any environmental impact including but not limited to pollution resulting from such operations" section 132), and water and timber may be used "as necessary" (section 114). There is also no reference to water use, tailings management, or atmospheric emissions, and no requirement to properly assess, monitor or report on these in the environmental impact assessments ("EIA") or environmental management plan ("EMP").

In this context, the 2018 mining policy acknowledges the impact of climate change (clause 3.9.2) and requires Government to work with mine operators "to develop clear and comprehensive climate change mitigation, response and adaptation plans for the minerals sector" in relation to the full mine life cycle from pre-production, to operation, to mine closure.

Interestingly we note that the FA 2016, section 34 stipulate customs duty exemptions for the import of photovoltaic systems, low energy or energy efficient appliances that follow the standard of the International Electro-Technical Commission. This incentive should facilitate the use of renewable energies and energy efficient design by mines.

The new mining law should implement the mining policy statement by including provisions to mitigate the effects of climate change, better adapt the mining sector to withstand climate change vulnerabilities, minimize the water footprint of mining activities, and better manage waste effluents and tailing storage facilities. Deforestation should not be allowed without the prior approval of the Environmental Protection Agency ("**EPA**"), and the discharge of waste effluents and tailings into surrounding water sources should be strictly prohibited.

Mining plan submissions should include requirements for mining companies to demonstrate that the proposed mine design and equipment:

- is the most energy efficient design to minimize energy consumption on the mine site;
- is the most water efficient design to minimize the use of fresh water and maximize the use of dewatered, recycled and treated water;
- includes an effluent waste and management system that minimizes the risk of spillages and tailings storage failures;
- includes details on how a mining company intends to source energy from renewable energy sources to minimize its carbon footprint; and
- gives local communities access to renewable energy sources with arrangements for compensation.

The new mining law should require **Environmental Impact Assessments** to include the following:

- An assessment of the impact of the proposed mining activity on the following, along with the proposed strategy to minimize the impact:³⁴
 - o water use and waste water discharge;
 - o greenhouse gas ("**GHG**") emissions, along with the projected quantity of emissions in accordance with the Greenhouse Gas Protocol³⁵;
 - o mining-project related waste such as acid mine drainage, overburden and tailings storage and disposal with the goal of achieving zero tailings storage failures; and
 - o vegetation and already cleared mining areas (from existing operations) and soil erosion.
- A model to assess: (i) the climate-related impacts on the proposed mining activity and (ii) the impact of climate-related risks on the proposed mining activity (increased flooding, heavier rainfall, drought), including the risk of tailings spillages and storage failures, during the life of the mine and post-closure. This will help to inform decisions around the design and placement of infrastructure and operations.³⁶

The new mining law should specify a minimum list of items that should be included in the **EMP**,³⁷ based on the risks identified in the **EIA**. The list should include, but not be limited to:

- A GHG emissions reduction strategy, along with updated reporting on CO² emissions in accordance with the Greenhouse Gas Protocol.³⁸
- An emergency preparedness plan to deal with environmental and climate-related emergencies on the mine site, including from flooding, landslides, drought, tailings storage spillages, and widespread disease.
- Impact of mining activities on surrounding water sources.

Public consultations conducted to seek free prior and informed consent (see section on consultations below) should include engagement on climate change risks and adaptations, and tailings storage and management so that they can also make informed decisions about the risks and mitigation strategies.

The new mining law should include community access to a renewable energy source as one of the topics to negotiate in the **CDAs**. In addition, communities should negotiate financial as well as other relevant support to develop climate adaptation and resilience strategies, including to address impacts on livelihoods, immediate humanitarian climate impacts, and longer-term disaster risks.

We note that **Kenya** and **Ghana** have both deployed a policy and legal framework to tackle climate change that will soon be tailored to mining.³⁹ Sharing knowledge and experience with African countries that already incorporated climate change in their policy and legal framework could help make progress more quickly on this issue.

Water use

Require mines to minimize fresh water use and maximize water re-use and recycling

Climate change poses significant challenges to the availability and quality of water in Sierra Leone.⁴⁰ The country has an abundant source of water resources, with seven major rivers connected through a network of twelve water basins,⁴¹ but rainfall is unevenly distributed throughout the country and highly seasonal, and infrastructure to collect and store water is limited, leaving parts of the country with severe water shortages during the dry season from October to April.⁴² Increasing climate variability is also resulting in less predictable and more severe seasons, with torrential rains and flooding become an increasing feature of the rainy season and drought becoming increasingly common in the dry season.

Water quality is also impacted by climate change. Water pollution caused by runoff of pollutants from agricultural production and mining activity is already degrading available water sources. An estimated 80 percent of the rural population obtains its water directly from the boreholes, rivers and wells that are vulnerable to water shortages and contamination. Deforestation is increasing soil erosion, and the increasing intensity of summer rainfall is resulting in much higher runoff from sediment and mine effluents into rivers. Increasing temperatures will also increasingly impact water quality by increasing the growth of toxic algae blooms and waterborne diseases.

Water is required at each stage of the mining process to suppress dust, process ore, cool and wash mining equipment, and manage waste tailings. Hard rock mineral mining is particularly water intensive because of the extensive processing and beneficiation of minerals that is required to separate the minerals from hard rock and other matter, a process that will become increasingly water and energy intensive as ore grades decline. However, fresh potable water is not needed for most mine stages of the mining process. Mining companies should not be competing with local communities for fresh water sources and should minimize the impact of their operations on the quality of surrounding water sources on which communities rely.

Under the Mines and Minerals Act 2009, water can be utilized "as necessary for mining operations" (section 114(e)). There are no restrictions or requirements on how much water can be drawn and from which sources. Prior approval from the EPA is only required if a mining company wishes to divert a watercourse, or to carry out dredging activities (sections 135-136). There is also no legal regime in place to regulate water use or allocate it among competing users. The 1963 Water (Control and Supply) Act requires license holders to obtain a water extraction license from the Ministry of Water Resources. However, in practice, this requirement has not been implemented and there is no mention of water permitting in the current mining law or any of the EPA legislation.⁴³

The new mining law should require mining operations to minimize their water footprint. This can be done by including provisions that require:

- The submission of the mining plan to demonstrate how a proposed mining project or any extension or expansion of mining operations has been designed with maximum water efficiency so that the need for fresh water extractions are minimized, water is recycled and treated before discharge into the environment (see Box on Western Australia).
- A rigorous assessment of water requirements in the EIA, so that fresh water is only used when there are no alternative sources available such as water from dewatering, recycled water, salt water, and seawater. The source and quantity of fresh water extracted should be specified in the EIA and reported on in the EMP (see Box in South Africa).
- The new mining law should not permit water to be extracted as necessary and, in the absence of a water permitting process, should limit water extraction to the quantities and sources approved in the environmental impact assessment (see Box on Canada).
- The new mining law should require mining companies to minimize the discharge of any contaminated water into surrounding water sources and to treat all wastewater, including dewatered water, to an acceptable water quality level prior to discharging it. Mining companies that are unwilling or unable to comply with environmental regulations should be subject to strict penalties.
- The new mining law should considerably increase the quantum of the penalties charged for environmental or water violations.

South Africa's water license allocation process

In South Africa there is extensive legislation to control the allocation and use of water. Mining companies must apply for water use permits from the Department of Water Services, which *has the power to reduce the amount of water allocated to a mining project when there is insufficient water for competing users (such as neighboring communities)*. A full water monitoring program must also be included as part of the environmental management program that is submitted in order to obtain a mining licence.⁴⁹ There are also regulations to govern water quality in mine usage which require mining companies to recycle water to the extent possible.⁵⁰

Canada's water license allocation process

In Canada, separate permits for ground and water sources are required, which are reviewed by the Ministry of Forests, Lands and National Resource Operations. *If the use or diversion of water is likely to result in an adverse impact on water quality*, a mining company may be required to submit a plan with proposed mitigation measures before a surface or ground water permit is issued.⁵¹

Western Australia's water permit application procedures

Western Australia's procedures for assessing an application for a water permit are the most rigorous in the world and should serve as a reference point. They *"include an in-depth assessment of water source options, water demands, the management of dewatering volumes, the need for efficient water use, and the broader ecological, social and cultural values that may be impacted."*⁵²

	Outputs	Department of Water	Inputs
Stage A Preliminary Consultation	- Identification and shared understanding of any critical issues that may affect approval of the project and conceptual water balance ↓	- Provides advice and information on the complexity of water issues, availability and known impacts within the area in response to proponent's outline of proposals ↓	- Proponent prepares outline of proposal and consults with agencies to determine complexity of water issues - Conceptual water balance ↓
Stage B Scoping the Water Management Task	- Agreed scope of regulatory requirements and information needs for a license application and predicted water balance indicating major uses and sources of water - 26D license for exploration / investigation granted subject to assessment and conditions ↓	- Provides advice and guidelines to the proponent to help determine the scope of the assessment, what information will need to be supplied to the department for assessment and preliminary advice on water management objectives - Assessment of 26D license applications ↓	- Proponent and agencies scope the assessment requirements and timetable - Application for 26D license - Conceptual water balance (noting if mine will produce surplus water due to dewatering). ↓
Stage C Water License Application and Environmental Authority (EPA) Assessment	- Finalized hydrogeological / hydrological report detailing water availability - Development of conceptual water balance on water systems and use preliminary mine closure plan - Environmental review documentation finalised as a requirement of the EPA approvals process and EPA decision ↓	- Assesses the proponent's application documents including hydrogeological / hydrological reports and water management objectives and outcomes - Provides advice to EPA and other government agencies and advises proponent with some direction if further work is required. ↓	- Proponent conducts agreed investigations and prepares appropriate hydrogeological assessment documents. - Applications for 5C license for the mining project (and permit applications where relevant). - Proponent responds to submissions, undertakes required assessments. ↓
Stage D Development of an Operating Strategy and Final License Decision	- Approved mine site operating strategy - Nominal water balance for the mine site - Issue 5C licenses (and permits where relevant) for the mining project subject to conditions ↓	- Assesses license application and draft strategy - Decides on appropriate terms and conditions for license after considering hydrogeological / hydrological reports, environmental information and other approvals including alignment to EPA recommendations and environmental conditions. ↓	- Draft operating strategy incorporating commitments from the EPA's assessment and approval process - Finalise any additional work required ↓
Stage E Construction, Operation, and Closure Planning	- Leading practice water efficiency and management - Monitoring and adaptive management of the water balance to minimize impacts from the mining operations - Proponent finalises the mine closure plan before mining operations cease ↓	- Ongoing assessment of monitoring and reporting commitments made within the operating strategy to ensure adaptive management - Regulation as per conditions of the license including license inspections / audits ↓	- License provides monitoring reports and other information as required during the term of the license, conditions and commitments of the operating strategy - Confirm and improve management with evaluation of goals and targets with monitoring, reporting, and taking action. ↓
Stage F Decommissioning and Closure	- Decommissioning of water-related assets, site rehabilitation and management of impacts beyond the life of the mine	- Makes recommendations to DMP / EPA about ongoing monitoring and reporting commitments	- Proponent implements mine closure plan (based on DMP/EPA guidelines)

Source: Western Australia's Department of water policies and guidelines⁵³

Mine Tailings - storage design, management and monitoring

Tailings are extremely harmful to the environment and local communities when their improper storage results in nearby water sources being contaminated with dangerous minerals and acid water, or a tailings dam failure devastates an area.⁴⁴

Tailings are a major waste stream of the mining process. They are generated as a by-product when extracting minerals and separating them from other materials in the ground.⁴⁵ They include ground rock and sand, heavy metals, chemicals used in the beneficiation process, and processed water.⁴⁶ Tailings are usually discharged in the form of a slurry to a storage area called a tailings storage facility ("**TSF**") or a tailings management facility ("**TMF**"). Tailings dams are the most common way to store tailings, though they can also be stored underground in dry stacks in mined out gaps by a process known as backfilling.

Given their chemical composition, tailings pose large risks to people, nearby water sources, the environment, and agriculture when they are not properly stored at a safe distance from local communities and water sources. There is also an increasing risk of tailings dams failures in recent years,⁴⁷ which is set to increase as the mining of low grade ores produces more waste and climate change acts as a "risk multiplier" through increased flooding, landslides and torrential rains.

The current mining law only contains limited obligations on a mining company in relation to effluent discharge. In fact, section 114 of the current mining law provides that license holders may (i) "dispose of any mineral products recovered"; and (ii) "stack or dump any mineral or waste product in a manner approved by the Director [of Mines] in consultation with the health and environmental authorities." The draft Operational Regulations for the Mining Sector 2012 require mining operations to comply with international standards in relation to, among other things, the discharge of liquid effluents, solid waste disposal (overburden) that could seep into ground water, water quality, and river diversions. However, to date they have not been enacted.

The mining policy also makes no specific reference to waste discharge and tailings beyond reference to minimizing the environmental impact of mines and international best practice including the IFC Performance Standards, whose Performance Standard 1 only addresses tailings in passing.

Strict regulations are required to ensure that mine effluents, including tailings, are not directly discharged into surrounding water sources, that they are carefully and properly stored in TSFs designed in accordance with international best practice, taking into account the heightened risks of climate change.

The new mining law should specifically address tailings storage, with the aim of introducing detailed regulations to govern the design, management and monitoring of tailings storage facilities (see Box on best practices). In particular:

- **Mining Plan:** Mining companies should be required to demonstrate that the tailings storage facilities are designed in accordance with the latest global safety standards on tailings management. The International Council on Mining and Metals (ICMM) is working with the United Nations Environment Programme (UNEP) and Principles for Responsible Investment (PRI) to establish an international standard on tailings facilities management. These and all following updates ought to be followed by mining companies operating in Sierra Leone. Moreover, tailings facilities are to be located in a place that minimizes the risks of spillages into surrounding water sources, particularly those accessed by local community members. Dam construction methods known to be high risk (such as upstream) must be avoided.⁴⁸ Lastly, the mine design should incorporate remediation as a continuous process with restoration of tailings every 5 years.
- **EIA and EMP:** The EIA needs to include an assessment of the risks of tailings spillages and TSF failures, including the impact of climate change on these risks. The EMP should include an obligation to demonstrate that adequate monitoring capacity of tailings dam failure risk is in place; it should include both internal and external monitoring systems with the goal of achieving zero tailings dam failures. External inspection systems should involve the latest technologies such as satellite based remote sensing, include report disclosure, and involve citizen monitoring.
- There should be strict and high penalties for non-compliance.
- The new mining law should prohibit the discharge of tailings into nearby rivers or other water sources, including underground where tailings can contaminate water basins.

Best practices around tailings dam design and approval process

Best practice includes a mix of detailed tailings storage guidance and regulations, independent monitoring of tailings storage facilities, and the enforcement of financial and criminal sanctions for non-compliance.⁵⁴

In **Ghana**, a separate regulation governs the design and construction of tailings storage facilities.⁵⁵ The design and construction of tailings storage facilities must be done by a qualified engineer approved by the Chief Inspector of Mines. The location of a TSF is also regulated. Each mine with a tailing dam is required to appoint an independent engineer to conduct yearly dam safety audits.⁵⁶

In **British Columbia, Canada** and **New Mexico, United States**, with the EIA submission, mining companies must provide a detailed description of how they will manage tailings as well as a justification for the approach. The tailings design can also be addressed in the discharge permits: for example, in **Arizona**, United States engineered plans for the disposal of wastewater must be submitted for approval jointly with the state wastewater disposal permit. In **Nevada**, United States a specific permit is required before the construction or modification of any tailing impoundments.



Access to and Use of Land

The Mines and Minerals Act 2009 vests ownership and control of minerals on or under land in the State.⁵⁷ This ownership structure is common, and aligns with laws that govern mineral ownership in most countries in the world, with few exceptions. While common, this ownership structure creates a tension between the State's sub-surface rights to minerals, and land owner's and users' rights in land. This tension must be carefully regulated and managed by the State in accordance with its human rights obligations, namely its obligations to respect, protect, and fulfill the fundamental human rights and freedoms of its people as set out in the Constitution 1991, and the regional and international human rights instruments to which Sierra Leone is a party.⁵⁸ The Mines and Minerals Act 2009 includes a number of provisions that seek to regulate how this tension is managed in practice, and the new mining law should aim to improve on the foundational principles set out in the Mines and Minerals Act 2009 and accompanying regulations.

This section will consider key land-related provisions in the Mines and Minerals Act 2009 and the Minerals Policy 2018 with recommendations for improvement. It is important to note, however, that a new National Land Policy was adopted in 2015, which lays out a roadmap for updating Sierra Leone's land laws.⁵⁹ The Minerals Policy 2018 helpfully recognizes that the National Land Policy should guide land rights-related matters in mining. The simultaneous reform of land laws and the mining law presents an important opportunity to align land-related provisions in the new mining law with the anticipated land laws to avoid one instrument undermining the other. The Ministry of Mines and Minerals Resources should coordinate closely with the Ministry of Lands, Country Planning

& the Environment in this regard, and recommendations in the section that follow should be read with this in mind.

Terminology

Use the term "customary land owners and users"⁶⁰ rather than "legal and equitable owners of land" or "person who legally owns land and has title to...land"

It is unclear what is meant by the reference to 'legal and equitable owners of land,' and 'land owners in law and equity' in the Minerals Policy 2018. The new mining law should avoid using these terms. Instead the new mining law should refer to 'customary land owners and users.'⁶¹ Relatedly, we recommend amending the definition of "lawful land owner" in the Regulation to the Mines and Minerals Act 2009 (Regulations 2009).⁶² The Regulations 2009 read: "lawful land owner means a person who legally owns land and has title to the said land."⁶³ This definition could arguably exclude all customary land owners in the Provinces whose land is not formally titled. Even in the event that new land laws do provide pathways for formal titling of customary land (as envisaged by the National Land Policy 2015), a formal title should not be a required in order for customary land owners to be considered "lawful land owners." The land laws of Tanzania, Mozambique, Kenya, Ghana and others recognize that the introduction of land titling and registration regimes should not delegitimize existing customary rights that have long been recognized as legitimate, merely for failure to title.⁶⁴ This is especially so as land titling and registration is a resource and time intensive process, spanning years if not decades. For example, Tanzania and Mozambique enacted land laws in 1999 and 1997 that provided pathways for land registration; and while some customary land has been registered as a result of the laws, the majority of

customary land in each country remains unregistered. Therefore, we recommend that the new mining law and accompanying regulations amend the definition of "lawful land owners" to reflect the realities of land ownership in the Provinces by referring to customary land owners and users.⁶⁵

Consultation and consent

Improve the consultation requirements by requiring companies that apply for all exploration or mining licenses – including large-scale mining licenses– to seek and obtain the free, prior and informed consent of all communities and peoples who stand to be affected by proposed operations in advance of a license being granted

Currently, the Mines and Minerals Act 2009 and accompanying regulations require applicants for artisanal or small scale licenses to first seek and obtain the 'consent' of the Chiefdom Mining Committee or lawful owners or occupiers of land before submitting a license application.⁶⁶ In contrast, the Mines and Minerals Act 2009 requires holders of exploration licenses (rather than applicants), to 'inform' land owners and users about general exploration activities.⁶⁷ The requirement to 'inform' is a lower standard than consent because it does not suggest any opportunities for land owners and users to participate in decisions relating to the land that they own or use. In addition, the requirement to inform land owners and users is engaged after the exploration license is issued, thus confirming that land owners and users do not have any opportunity to participate in and influence the licensing process. In keeping with human rights principles of participation, it is important to consult and seek the consent of communities who stand to be affected by projects as early as possible, including before the issuance of an exploration license.



Source: Adapted from Rachel Davis "Enhancing Extractive Companies' Respect for the Human Rights of Affected Communities", Shift

Similarly, the Mines and Minerals Act 2009 does not generally require a large-scale mining license applicant to obtain the free, prior, and informed consent of land owners or users before a license is granted; the obligation is merely to consult.⁶⁸ It is only after a license is granted that in certain circumstances the holder of a large-scale mining license must obtain the consent of land owners or lawful occupiers where the relevant land is: 'dedicated as a place of burial'; a 'place of religious or other cultural significance;' 'within 200 meters...of any inhabited, occupied or temporarily unoccupied house or building;' 'cleared or ploughed or... prepared for the growing of...agricultural crops;' or within 100 meters of 'any cattle dip, tank, dam, or other body of water.'⁶⁹ While these exceptions are encouraging, particularly because they seek to protect cultural rights, the circumstances under which a large-scale mining license holder is required to obtain the consent of land owners and users is too narrow.

Helpfully, the Minerals Policy 2018 anticipates harmonizing the consent requirement, and refers to requiring mining license applicants to seek the 'informed consent' of land owners *before* issuance of a mining license (which presumably includes large-scale license and exploration license applicants). The new mining law should clarify that the consent requirement applies to applicants for *all* exploration and mining licenses, and should also align the requirement for consent with the more robust standard of "free, prior and informed consent" to measure up to international standards and emerging norms.⁷⁰

In addition, the new mining law should extend the requirement for free, prior and informed consent to all communities and peoples who stand to be affected by a project, rather than just requiring the 'informed consent of land owners, in law and equity' (as is suggested in the Mining Policy 2018). Land users and others who live outside the contract area may still be affected by the project, and should therefore have a say in and influence over decision making around the project. Liberia's newly enacted land law includes an example of this type of provision in practice (see box below).

The Mines and Minerals Act 2009 suggests that in the case of applications for artisanal and small scale licenses the grant of consent from the Chiefdom Mining Allocation Committee can displace the need to obtain consent of land owners and occupiers.⁷¹ The new mining law should either require the consent of the Chiefdom Mining Allocation Committee *and* the free, prior, and informed consent of all communities and peoples who stand to be affected by a project (including women and youth) before the grant of any mining license (if it is indeed appropriate to require the consent of the Chiefdom Mining Allocation Committee); or only require the free, prior, and informed consent of all affected communities including women and youth. In keeping with human rights principles, it is important that consultation and consent processes are inclusive with meaningful opportunities for affected communities to participate in decision-making. It is therefore critical that the new law does not grant the Chiefdom Mining Allocation Committee or relevant Chiefdom authorities final or sole decision-making power in these matters.

Liberia Land Rights Act 2018, section 33(3)

"... any interference with or use of the surface of Customary Land require the Free, Prior and Informed Consent (FPIC) of the Community"

The Mines and Minerals Act 2009 also contains a provision that allows the Minister of Mines considerable discretion in deciding whether an applicant needs to obtain the consent of rights holders at all if, in her view consent is unreasonably withheld.⁷² This provision should be narrowed, and aligned with Constitutional protections against deprivation of property.⁷³ The new mining law should remove the highly discretionary right of the Minister to decide whether the need for consent can be dispensed with in circumstances where rights holders withhold consent to mining operations. If consent is withheld and the Government considers it strictly necessary for the project to go ahead, the new mining law should require the Government to first consider whether the particular case fulfills criteria for compulsory acquisition as set out in the Constitution, and whether such an acquisition would be compatible with the State's human rights obligations. Provisions on compulsory acquisition in the new mining law should align with the criteria and compensation requirements for such takings set out in the Constitution of Sierra Leone 1991. The compulsory acquisition criteria set out in the Mines and Minerals Act 2009 while similar, do not align with the Constitutional criteria completely.⁷⁴ The Mines and Minerals Act 2009, for example, operates on the assumption that it is appropriate to compulsorily acquire land for use by the holder of a large-scale mining license.⁷⁵ This suggests that large-scale mining is in all cases considered to satisfy the various criteria set out in the Constitution including that large-scale mining 'promot[es] the public benefit or the public welfare of citizens of Sierra Leone,'⁷⁶ which is arguably not the case in certain situations. In addition, the criteria and procedural rules for compulsory acquisition of land should be detailed in the new land laws,⁷⁷ and the mining law should not deviate from a framework set out in the new land laws.

Resettlement

The Mining Policy helpfully recognizes that additional guidance and regulation of mining-induced resettlement is required. New regulations on this topic should take as the starting point that resettlement should only be considered in exceptional circumstances.

Where resettlement is strictly necessary, comprehensive, fair, and adequate compensation must be paid to restore the resettled individual or community to enjoy the same or better quality of land and living standards as was enjoyed before the resettlement. This is because numerous human rights are impacted when communities have to be resettled, and the Government has the obligation to respect, protect, and fulfill the human rights of its population. For example, cultural rights are implicated, as are the rights to an adequate standard of living, food, water, and housing, among others. As such, if companies are involved in resettlement efforts, the Government is under a duty to monitor and regulate company activity to safeguard the human rights of resettled populations.

In the case that the Government compulsorily acquires land for mining purposes the Mines and Minerals Act 2009 suggests that either monetary compensation will be made available to impacted communities *or* if it is their preference, impacted communities will be resettled on suitable alternate land.⁷⁸ The Minerals Policy 2018 helpfully identifies livelihood restoration as the principal goal of resettlement compensation.⁷⁹ Livelihood restoration necessarily requires replacement land of equal or better quality, *and* monetary compensation, *and* other types of support to restore access to natural resources including water, services, and livelihood activities. The new mining law should avoid taking the either/or approach to monetary compensation and replacement land that is found in the Mines and Minerals Act 2009.

Key things to consider when drafting new resettlement regulations include:

- Clarification of institutional roles and responsibilities for resettlement. The Government should play a central role in coordinating and overseeing the process given the Government's obligations to safeguard the rights of affected communities. The resettlement provisions in the Mines and Minerals Act 2009 could be clearer on the Government's role in resettlement.
- The Government should put in place criteria and guidelines for ensuring that compensation is sufficient to achieve the goal of livelihood restoration. The Mines and Minerals Act 2009 leaves compensation to be determined by the parties or by the Minister on the advice of the Minerals Advisory Board.⁸⁰ This approach is incomplete because such a determination should in practice be informed by "detailed socio-economic baseline studies to develop a thorough understanding of every impacted household's livelihood."⁸¹ Public participation and close and regular consultation and collaboration with affected landowners and users is critical to designing and implementing resettlement plans. In order for participation to be meaningful, affected households should have access to all relevant information and studies, as well as legal and technical support so that they can engage in such a negotiation apprised of all relevant information to evaluate various compensation and livelihood restoration proposals.
- The rights of land users must be considered in addition to the rights of land owners, and land users should also be compensated for mining-induced resettlement given the potential disruption to their livelihood activities.

- The new resettlement regulations should include details of how disputes arising out of resettlement activities will be resolved. Access to effective remedies for affected land owners and users is an important part of planning the resettlement framework.

In the case of consultation, consent seeking, and resettlement, the Government and companies should be required to implement gender-responsive and age-responsive stakeholder engagement that promotes the participation of women and youth.

Rental income for Landowners

Landowners should earn all surface rent income with appropriate income taxes levied as per Sierra Leone's income tax laws.

The Mines and Minerals Act 2009 requires the holder of a large-scale mining license to enter into a lease agreement with the 'lawful occupier of the land,' and pay surface rent for such rights. It is unclear why the Mines and Minerals Act 2009 requires surface rent payments to be divided up between those who own the land, and other bodies including the District Council, Paramount Chiefs, Chiefdom Administration, and the Constituency Development Fund.⁸² In the case of privately held land, this would effectively amount to a 50% tax on rental income. The drafting of a new mining law presents an opportune moment to reconsider whether this division of rental income strikes an appropriate balance. In addition, the new mining law should refer to and reflect the new land laws that are anticipated to have important new provisions on women's land rights. Such provisions may impact how and to whom rental income is paid, which could be reinforced by the new mining law.



Community Development Agreements

Require that all affected communities have the option to enter into a CDA rather than limiting this option to the "primary host community"

The Mines and Minerals Act 2009 requires small-scale and large-scale license holders to implement a community development agreement (CDA) with the 'primary host community'.⁸³ This suggests that if there are multiple communities affected by a mine's operations, only the community identified as the 'primary host community' will benefit from the implementation of a community development agreement. The new mining law should allow for conclusion of CDAs with multiple host communities. This approach is taken in Kenya's Mining (Community Development Agreement) Regulations 2016, which requires license holders to first assess the impact of its operations in order to identify the community or communities with which community development agreements will be concluded.⁸⁴

Require license applicant to conduct a human rights impact assessment in addition to an environmental and social impact assessment, which can inform identification of affected communities (i.e. potential parties to a CDA)

The Mines and Minerals Act 2009 requires the local council, or, if there is disagreement, the Minister, to identify the 'primary host community'.⁸⁵ But identification of affected communities should take place during the completion of the Environmental and Social Impact Assessment ("ESIA") – before a license is issued. In addition, a human rights impact assessment should be concluded or incorporated into the ESIA to assist in identifying the potential human rights impacts of a project and help to identify communities who may be affected by a project, and who should therefore have the option of being party to a CDA. CCSI has developed a methodology⁸⁶ for collaborative human rights impact assessments that may be suitable for application in this regard.

Require continual monitoring of project impacts to identify whether, as project operations change, new communities are impacted; and require that newly identified communities have the option to enter into a CDA if they so wish

Because a project's activities may change over time, impacts may manifest themselves differently at different stages of the project. Because of this, the license holder, the Government, and local authorities should be required, by law, to continually monitor the nature and reach of a project's impacts on nearby populations, and periodically review together with those populations whether additional CDAs with additional communities should be entered in to.

Mandate the provision of legal and technical assistance for communities engaging in the negotiation of CDAs, with adequate financing for ongoing support

While the Mines and Minerals Act 2009 requires CDAs to be concluded between companies and host communities, and provides guidance on the topics to be included, it is silent on how such agreements are to be negotiated in practice. Sierra Leone's National Land Policy helpfully recognizes the need to address the power imbalances that are inherent in a negotiation process between a company and a community in the context of land-based investments, and commits to setting up a legal assistance fund to finance legal and paralegal assistance to communities, landowners, and land users to support such negotiations.⁸⁷ Legal and other technical support should be made available during initial CDA negotiations, to monitor the implementation of CDAs, to review the CDAs on a periodic basis, and to represent communities in resolving disputes as they arise. This is critical to achieving equitable CDAs that properly reflect the priorities of affected communities, and that are successfully implemented in practice. The Minister of Mines and Mineral Resources has an important opportunity to improve the CDA negotiation and implementation process by collaborating with the Ministry of Lands, Country Planning & the Environment and other interested entities (e.g. Legal Aid Board) on the implementation of the financing commitment in the National Land Policy. CCSI published a discussion paper outlining possible financing solutions for legal and technical assistance.⁸⁸ Sierra Leone's Draft Guidelines for Sustainable Agricultural and Bioenergy Investment 2013 provides an instructive example:

"...after registering with the country's investment promotion agency, [companies] would periodically pay a mandatory fee calculated to cover the average monthly cost of a Sierra Leonean lawyer. Companies would then submit a consultation plan detailing how they will seek to obtain the free, prior and informed consent of communities potentially affected by the proposed investment. Companies would then carry out consultations and impact assessments, before negotiating leases with community land owners and a memorandum of understanding and agreement with the government. The fund would be administered by the District Council, with oversight by the Human Rights Commission of Sierra Leone. Money would be allocated to pay a lawyer chosen by the community from a network of justice organizations and practitioners supported by the Human Rights Commission. The lawyer would provide "community justice services, including legal advice, assistance, representation and [...] education in the negotiation process" with the company. Proponents of "large and huge scale impact projects" would pay the fee monthly, while smaller projects would pay the same fee but on a less frequent basis (thus paying proportionately less overall)."⁸⁹

Strengthen CDA monitoring and implementation mechanisms

The Mines and Minerals Act 2009 requires small and large-scale license holders to "substantially comply with community development agreements under the Act."⁹⁰ This provision should be amended to remove the word 'substantially' so that it reads: licenses holders are "required to comply with all provisions set out in community development agreements entered into under the Act." The word 'substantially' in the current law weakens the obligation of license holders to comply with all CDA provisions at all times. In addition, in order to incentivize compliance and implementation of CDAs, the new mining law could explicitly state that compliance with the terms of a CDA is a condition of any small or large-scale license issued, and therefore a breach of a CDA is a breach of the license terms.⁹¹

In the same vein, CDA reporting provisions should be strengthened in the new mining law. The Mines and Minerals Act 2009 requires license holders to report to the Minister on activities and expenditures in respect of a CDA annually, and the Model CDA sets out further requirements for the annual reports. This provision should be improved in the new mining law and require license holders to report on all license holder obligations in respect of a CDA, with evidence of activities and expenditures undertaken in fulfillment of those obligations. Each annual report should be reviewed by a multi-stakeholder group, which includes a representative group of parties/beneficiaries and relevant local authorities to validate the content.

While the Mines and Minerals Act 2009 includes a provision that requires CDAs to include details of consultative and monitoring frameworks between the license-holder and the host community,⁹² and the Model CDA includes guidance on this too, in practice, monitoring and implementation of CDAs remain weak. Drafters of the CDA regulations should seek to understand the practical and political challenges faced when implementing such provisions and account for these challenges in the drafting of the regulations.

The provision on funding for administrative activities set out in the Model CDA should be replicated in the CDA regulations, with specific reference to funding for monitoring activities. More generally it would be desirable to incorporate the Model CDA into the new mining law.

Identify/establish accessible and effective grievance mechanisms

For circumstances where license holders fall short of fulfilling CDA obligations (and indeed in the case of all project-related disputes), there should be an independent grievance mechanism that is accessible and appropriate for the needs of potential users (including women), to hear complaints. The findings of a report on non-judicial grievance mechanisms in Sierra Leone could be instructive in considering how existing mechanisms could be strengthened, or new ones set up, in the context of CDA-related or other grievances. A number of (non-exclusive) options for reform were presented in this report for consideration including:

- "(1) strengthening existing institutions by providing them with clear complaints mandate and building their capacity on issues such as gender equality, fair hearing and record-keeping;
- (2) creating one non-judicial institution that deals with all types of land-related disputes with branches all over the country;
- (3) instituting one such body to deal with certain administrative or high-level disputes; and
- (4) establishing an institution that serves as a secretariat coordinating the dispute resolution work of all existing non-judicial [grievance redress mechanisms].

However, it is important to state upfront that these are not ready-made and exclusive recommendations, but proposals to be explored in the context of policy and law reform and implementation processes"⁹³

If there is ongoing work to establish or improve non-judicial grievance mechanisms in the context of land disputes, there may be an opportunity to expand the mandate of such mechanisms to include the resolution of CDA disputes. If this is not considered appropriate,

any grievance mechanism mandated to resolve CDA-related disputes must operate independently of interested parties, and thus it is not appropriate for the Minister of Mines to be the final arbiter of such disputes, as suggested by the Mines and Minerals Act 2009 and the Model CDA.⁹⁴ Importantly, the new mining law, and indeed any CDA should not restrict or preclude access to the courts.

Include mechanisms for communities to meaningfully influence spending of community development funds in representative ways that include and give sufficient weight to the priorities of traditionally marginalized peoples including women and youth

One of the key objectives of the Diamond Area Community Development Fund, which was established to implement post-war transformational efforts, is to enable local communities to promote their own development agenda.⁹⁵ The Community Development Fund was devised later but similarly to provide funding for community development goals as identified by affected communities. In keeping with human rights principles of stakeholder participation, communities should, in law, and in practice, have a voice in the development of local development plans so that funds are put to use in furtherance of community identified goals. Thus, the new mining law and accompanying community development regulations should include mechanisms for communities to meaningfully influence spending in representative ways and in ways that include and give sufficient weight to traditionally marginalized peoples including women and youth.

Detailed information on planning and spending should be made available and accessible to host communities. This could include, for example, holding quarterly public meetings with affected communities to provide project updates in culturally appropriate ways, and also include holding separate meetings for women, if appropriate, to encourage greater female participation in community development projects. The transparency and accountability provisions set out in the Model CDA should also be reflected in the new mining law.

The Model CDA contains many provisions on the management of funds, with various committees to oversee activities. It is important to understand why there are still challenges in implementing inclusive decision making and oversight in spite of these provisions. This is important so that the new mining law and community development regulations can properly account for and mitigate the practical and political challenges faced.

Correct the percentage contribution to community development funds and require companies to publish their gross annual revenue in accessible ways

As is indicated by the MMA Reform Proposal Memo, it was originally intended that license holders contribute 1% of gross revenue earned per year to funding community development rather than 'one percent of one percent' as is set out in the Mines and Minerals Act 2009. Indeed, some companies have already entered into CDAs that set their contributions above the 0.01% set by the Mines and Minerals Act 2009. The new mining law is an important opportunity to revise section 139(4) of the Mines and Minerals Act 2009 to reflect original intentions. In addition, in order to facilitate increased transparency, all mining companies that are required to enter CDAs should be required to publish their gross revenue on an annual basis in ways that are culturally appropriate and accessible to the public and specifically the community parties to the CDA. This may mean holding annual community meetings in which companies disclose their annual gross revenue and relevant supporting documentation so that communities understand how community development contributions are determined.



Human Rights

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”
UN Guiding Principles on Business and Human Rights

The Government has the obligation to respect, protect, and fulfill the human rights of its people.⁹⁶ In the context of a mining project this requires the enactment and implementation of laws that prevent human rights abuses and provide redress in the case of violations. The Government must proactively monitor company activity in order to protect against human rights violations.

A range of human rights can be negatively impacted by a mining project. These include the right to property, the right to food, the right to water, cultural rights, the right to housing, and the right to an adequate standard of living. These rights are closely linked to and dependent on proper respect for land rights, and mining projects can affect the rights of men and women in different ways. If communities are voluntarily or involuntarily resettled to make way for a mining project, for example, there is a risk that the resettlement could impact a community’s ability to sustain its livelihood if livelihood restoration programs are not implemented, or if they fail. Resettlement may also impact a community’s ability to grow and access food, or the community may be relocated far from natural sources of water, affecting its right to water.

Sierra Leone’s Constitution 1991 recognizes and protects the fundamental human rights of its people. In addition, as a signatory to major international and regional human rights instruments, Sierra Leone has binding international human rights obligations. The new mining law should not seek to ‘establish’ rights but rather facilitate and regulate their protection and fulfillment. For example, the recommendations in the sections that cover access to and use of land, consultation and consent requirements, and climate and water, are provided with human rights protection and fulfillment in mind.

Closely related to the human rights principle of inclusive participation, (which has been covered in earlier sections), is the **right to access information**. The right to information is relevant from the earliest stage of a project– from consultations and planning long before licenses are granted, all the way through the project life-cycle. Taken together, the Right to Access Information Act 2013, the Environmental Protection Agency Act 2008,⁹⁷ the Environmental and Social Regulations for the Minerals Sector 2012,⁹⁸ the Model CDA, and EITI standards are important safeguards of the right to information. The new mining law may seek to consolidate information disclosure requirements in the new mining law for ease of reference (cross-referencing applicable laws), but should be very careful not to narrow the right to information as expressed in

the Right to Access Information Act 2013 or other instruments. Instead, any protections of the right to information in the new mining law should be guided by the principle of maximum disclosure with positive obligations on public bodies and private entities to proactively publish information in accessible and culturally appropriate formats.⁹⁹ In any event, the prohibition of the disclosure of information obtained under the Mines and Minerals Act 2009 should be amended to align with the Right to Access Information Act 2013. As it currently stands, the Mines and Minerals Law 2009 narrows the generally applicable right as protected by the Right to Access Information Act 2013. We recommend that the new mining law clearly states that any provision in the new mining law that prohibits the disclosure of information shall not apply if it conflicts with rights protected by Sierra Leone's access to information laws or international conventions to which Sierra Leone is a party.

Civil and political freedoms have in the past been violated in the context of mining projects in Sierra Leone. It is helpful that the Minerals Policy 2018 anticipates rolling out trainings for law enforcement on the UN Guiding Principles. The Government should consider incorporating relevant parts of the Voluntary Principles on Security and Human Rights into such trainings and in law.

The UN Guiding Principles and Human Rights¹⁰⁰ should be incorporated as binding obligations in the new mining law, with appropriate penalties for non-compliance. The new mining law should oblige companies to respect human rights including rights as established in the laws of Sierra Leone and the regional and international conventions to which Sierra Leone is a party.¹⁰¹ The new mining law should also require companies to undertake human rights due diligence to "identify, prevent, mitigate and account for how they address their impacts on human rights," and put in place processes to remedy any violations.¹⁰² This includes tracking and publicly reporting on human rights impacts.¹⁰³

"In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve."

UN Guiding Principles on Business and Human Rights, section 17 (a) and (c)

Endnotes

- 1 [As reported here, for e.g.: http://curtisresearch.org/wp-content/uploads/Losing-Out.-Final-report.-April-2014.pdf](http://curtisresearch.org/wp-content/uploads/Losing-Out.-Final-report.-April-2014.pdf); Full exemption from import duty and withholding tax on interest for the duration of a project is provided for in the AML MLA for instance.
- 2 This remains true even though, since FA 2013, all investment agreements must be ratified by Parliament. The parliamentary review process for investment agreements is not rigorous and transparent enough to ensure that the incentives are warranted and negotiated for the public interest.
- 3 Sierra Leone Minerals Policy, Clause 3.2.1
- 4 Sebastien James, "Tax Incentives Around the World," in by Ana Teresa Tavares-Lehmann, Perrine Toledano, Lise Johnson, and Lisa Sachs, Eds. Rethinking Investment Incentives: Trends and Policy Options, Columbia University Press, July 2016.
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- 6 Lise Johnson, Perrine Toledano, Lisa Sachs and Ana Teresa Tavares-Lehmann, "Conclusion," in by Ana Teresa Tavares-Lehmann, Perrine Toledano, Lise Johnson, and Lisa Sachs, Eds. Rethinking Investment Incentives: Trends and Policy Options, Columbia University Press, July 2016.
- 7 Ibid.
- 8 Sebastien James, "Tax Incentives Around the World," in by Ana Teresa Tavares-Lehmann, Perrine Toledano, Lise Johnson, and Lisa Sachs, Eds. Rethinking Investment Incentives: Trends and Policy Options, Columbia University Press, July 2016 and <http://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf>
- 9 We note that sometimes companies could do this irrespective of tax holidays to shorten their pay back period, increase their internal rate of return and satisfy their shareholders more rapidly.
- 10 Adapted from <https://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf>
- 11 Sebastien James, "Tax Incentives Around the World," in by Ana Teresa Tavares-Lehmann, Perrine Toledano, Lise Johnson, and Lisa Sachs, Eds. Rethinking Investment Incentives: Trends and Policy Options, Columbia University Press, July 2016 and <http://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf>
- 12 United Nations, Economic Commission for Africa, Economic Report on Africa 2019: fiscal policy for financing sustainable development in Africa, available at: <http://repository.uneca.org/handle/10855/41804>
- 13 <http://documents.worldbank.org/curated/en/801771485941579048/pdf/112346-REVISED-Dated-Transfer-pricing-in-mining-with-a-focus-on-Africa-a-reference-guide-for-practitioners-Web.pdf>
- 14 <http://documents.worldbank.org/curated/en/801771485941579048/pdf/112346-REVISED-Dated-Transfer-pricing-in-mining-with-a-focus-on-Africa-a-reference-guide-for-practitioners-Web.pdf>
- 15 <http://sliempa.org/wp-content/uploads/2019-Finance-Act-Key-Changes.pdf>
- 16 <http://sliempa.org/wp-content/uploads/2019-Finance-Act-Key-Changes.pdf>
- 17 <https://www.oecd.org/tax/beps/limiting-excessive-interest-deductions-discussion-draft.pdf>
- 18 See Ghana's 2015 ITA, section 83, <https://gra.gov.gh/wp-content/uploads/2018/11/INCOME-TAX-ACT-2015-ACT-896.pdf>
- 19 <https://www.imf.org/external/np/seminars/eng/2008/taxnatural/pdf/mcpherson.pdf>
- 20 "Derivative instrument" has the meaning prescribed by regulations and, in the absence of regulations, takes its meaning from generally accepted accounting principles (EIRA 2018, section 1)
- 21 2012 IMF guidance on EI
- 22 "Government will formulate and make public its policy on hedging or the use of derivatives for the disposal of mineral exports." (Mineral policy)
- 23 <http://ccsi.columbia.edu/files/2018/03/Optimizing-the-PE-clause-for-resource-riche-source-state-CCSI-2018-2.pdf>
- 24 *ibid*
- 25 *ibid*

- 26 <https://www.oecd-ilibrary.org/docserver/9789264312388-en.pdf?expires=1575271538&id=id&accname=guest&checksum=6B5DBCA187A5B04E0C1621E82C260D3A>
- 27 <http://www.oecd.org/tax/beps/tax-incentives-in-mining-minimising-risks-to-revenue-oecd-igf.pdf>
- 28 David Eckstein, Marie-Lena Hutfils and Maik Wings: "Global Climate Risk Index 2019" available at: https://germanwatch.org/sites/germanwatch.org/files/Global%20Climate%20Risk%20Index%202019_2.pdf.
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- 30 USAID Agriculture and Food Security website page, available at: <https://www.usaid.gov/sierra-leone/agriculture-and-food-security>. Sierra Leone Minerals Policy (November 2018), p. 14.
- 31 CCSI Submission on the MMDA (unpublished).
- 32 "The Growing Role of Minerals and Metals for a Low Carbon Future", World Bank (2017), available at: http://documents.worldbank.org/curated/en/207371500386458722/The-Growing-Role-of-Minerals-and-Metals-for-a-Low-Carbon-Future_
- 33 J.R.Owen, D.Kempa, É.Lèbrea, K.Svobodova, G.Pérez Murillo: "Catastrophic tailings dam failures and disaster risk disclosure" (12 December 2019) available at: <https://www.sciencedirect.com/science/article/pii/S2212420919306648>.
- 34 Extractive Industries Source Book, Chapter 9, section 9.4.5, available at: <http://www.eisourcebook.org>.
- 35 <http://ghgprotocol.org/>
- 36 <https://conferences.iaia.org/2014/IAIA14-final-papers/Capstick,%20Sean.%20%20Incorporating%20climate%20change%20impacts%20into%20EA.pdf>
- 37 An environmental management plan ("EMP") must be submitted along with the EIA for approval and must be updated annually to the Ministry of Mines Director to assess progress. No guidelines for what should be included in the EMP are provided, let alone to address climate change, and the annual EMPs are reviewed by the Ministry of Mines and Mineral Resources, with a copy being sent to the EPA for their records.
- 38 <http://ghgprotocol.org/>.
- 39 Kenya: https://www4.unfccc.int/sites/NAPC/Documents%20NAP/Kenya_NAP_Final.pdf and Ghana: <https://www.un-page.org/files/public/ghanacclimatechangeopolicy.pdf>.
- 40 USAID Fact Sheet: "Climate Change Risk Profile: Sierra Leone" (August 2016).
- 41 <https://www.salonwatersecurity.com/maps>
- 42 [https://www.unicef.org/wash/files/Sierra_Leone_final_report_favorable_zones_\(FINAL\).pdf](https://www.unicef.org/wash/files/Sierra_Leone_final_report_favorable_zones_(FINAL).pdf)
- 43 Sophie Thomashausen and Alpa Shah: "A Framework to Approach Shared Use of Mining-Related Infrastructure Case Study: Sierra Leone," CCSI (March 2014), available at: http://ccsi.columbia.edu/files/2014/05/Case-Study_Sierra-Leone_March-2014.pdf.
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- March 2018), Pages 143-151, available at: <https://doi.org/10.1016/j.resourpol.2017.11.012>.
- 52 <https://www.sciencedirect.com/science/article/pii/S0301420717302933> and this: <http://ccsi.columbia.edu/files/2016/06/Water-Template-Australia-Western-Australia.pdf>
- 53 <http://www.water.wa.gov.au/legislation/current-legislation/department-of-water-policies>
- 54 Roche C. Thygesen and K. Baker E. (Eds): "Mine Tailings Storage: Safety is No Accident." UNEP (2017).
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- 56 "Ghana Mining", Getting the Deal Through (July 2019), available at: <https://gettingthedealthrough.com/area/22/jurisdiction/134/mining-ghana/>
- 57 Mines and Minerals Act 2009, section 2
- 58 See for e.g. African Charter on Human and Peoples' Rights (ratified in 1983); International Covenant on Civil and Political Rights (ratified in 1996); International Covenant on Economic, Social and Cultural Rights (ratified in 1996).
- 59 National Land Policy of Sierra Leone (2015), p. 6-8.
- 60 If this term is not used in the new land laws the new mining law should mirror the appropriate term as set out in the new land laws.
- 61 If this term is not used in the new land laws the new mining law should mirror the appropriate term as set out in the new land laws.
- 62 Regulations 2009, definitions section
- 63 Ibid., definitions section
- 64 Tehtena Mebratu-Tsegaye, "Statutory recognition of customary land rights: lessons for Sierra Leone," Columbia Center on Sustainable Investment, (FAO unpublished 2018).
- 65 If this term is not used in the new land laws the new mining law should mirror the appropriate term as set out in the new land laws.
- 66 Mines and Minerals Act 2009 section 85(2)(c), 96(2)(b), Regulations 2009 section 38(g) and 48(3)(c)
- 67 Ibid., section 78(1)(f).
- 68 Ibid., section 106(1).
- 69 Ibid., section 32.
- 70 Oxfam, "Free, prior and informed consent in the extractive industries in southern Africa," (2018).
- 71 It is unclear who comprises the Chiefdom Mining Allocation Committee that is referred to in sections 85(2)(c) and 96(2)(b) of the Mines and Minerals Act 2009 because the term is not defined in the Act.
- 72 Mines and Minerals Act 2009, section 32
- 73 Constitution of Sierra Leone 1991, section 15 and 21
- 74 Mines and Minerals Act 2009, sections 36-38
- 75 Ibid., section 36(1)
- 76 Constitution of Sierra Leone 1991, section 21(1)(a)
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- 79 Mining Policy 2018 section 3.13.
- 80 Mines and Minerals Act 2009, section 35, 37
- 81 Eddie Smyth et al, "Five 'big' issues for land access, resettlement and livelihood restoration practice: findings of an international symposium," (2015).
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- 85 Mines and Minerals Act 2009, section 139(1-3)
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- 89 Ibid.
- 90 Mines and Minerals Act 2009, section 102 and section 115.
- 91 See for example James Otto, "Annotated Community Development Agreement Model Regulations," World Bank, (2010), section 22. This section could be used as an example, but as noted, the word 'substantially' should be omitted.
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- 93 Sonkita Conteh and Sisay Yeshanew, "Non-judicial grievance mechanisms in land-related disputes in Sierra Leone," FAO Legal Papers No. 99 (2016),
- 94 See Mines and Minerals Act 2009, section 140(g). The Mines and Minerals Act 2009 section 175 appears to contradict this, however. See also Model CDA section 40.
- 95 GoSL Diamond Area Community Development Fund Operational Procedures and Guidelines, November 2008
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- 97 Environmental Protection Agency Act 2008, section 27.
- 98 Environmental and Social Regulations for Mining 2012, sections 14-15.
- 99 Article 19, International standards: Right to information, available at: <https://www.article19.org/resources/international-standards-right-information/>
- 100 https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- 101 UN Guiding Principles on Business and Human Rights, Foundational Principles
- 102 Ibid., section 15, 17, 18.
- 103 Ibid., section 20-21.



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