



Harmonising regional health standards for the extractive sector in east and southern Africa

This brief aims to inform policy dialogue on the protection of health in extractive industries (EIs) in the mining sector in east and southern Africa (ESA). It outlines on pages 5-7 a proposal for a 'Regional guidance on minimum standards for the duties and responsibilities of parties in the extractive sector for health and social protection'. EIs play a key economic role, but also bring health, environmental and social risks. International codes and guidance exist on the duties of corporate actors to control these risks and contribute to health. ESA country laws provide for some health protection in EIs, but all have gaps in legal provisions. In line with the intentions of the Southern African Development Community (SADC) and other regional economic communities, standards and laws for the sector should be harmonised and brought in line with international standards. The proposal for regional guidance draws clauses from current laws in ESA countries, suggesting the feasibility of their wider application across the region.

Extractive industries are key economic players in the region

Most ESA countries are richly endowed with a range of mineral reserves that are highly sought after in global trade. Extractive industries (EIs) extract raw materials – minerals, oil and gas- from the earth through mining, dredging and quarrying. These materials are largely exported by multinational companies from outside Africa.

Though subject to boom and bust price fluctuations, EI exports yield significant returns: In 2009, Africa's oil, gas and minerals exports were worth roughly five times the value of international aid to the continent (\$246 billion vs. \$49 billion). They can, however, yield rapid but unsustainable



The 2009 African Union (AU) African Mining Vision states a policy intention for Africa to ensure national and social benefit from EI activities in the mining sector that amongst other issues "is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities."

growth and high levels of inequality, especially where EIs have limited forward or backward linkages into the national economy. ESA countries face a challenge to make and implement policies that link their natural resources to improved social and economic development and to ensure that EIs do not generate harm to health.

EIs have benefits and risks for health

EIs provide employment and income for those directly employed. They may provide social services to employees and their families and make fiscal (tax) contributions. However, they also bring health risks of injury and illness for workers and surrounding communities, from hazardous working conditions and environments. This includes degradation of ecosystems, air pollution from dust, sulphur dioxide, lead, arsenic and other gases, water pollution from chemicals and heavy metals; and poor living and community environments raising the risk of tuberculosis, cholera, HIV and other communicable diseases. EIs may displace large numbers of local people, several thousand in some cases, affecting their living conditions, access to resources, services and livelihoods. Generous tax exemptions may limit EI's contribution to services to deal with these issues. If local communities are not involved in decisions on these conditions, they and the public services they use can bear a disproportionate share of the cost of mining development.



International standards define the obligations of EIs

There are over 25 international standards, codes and guidance documents on the practices of EIs and multinational enterprises set by the United Nations (UN) multilateral institutions, OECD countries, the African Union and financial institutions (see References). There are also corporate social responsibility (CSR) standards set by international business and by civil society. These standards are listed and their details provided in the discussion paper and supplement informing this brief. Box 1 below lists the key areas they raise on health.

African states have resolved to harmonise laws for the sector at sub-regional level. In West Africa,

ECOWAS has set a Directive on the *Harmonization of Guiding Principles and Policies in the Mining Sector*. The SADC Protocol on Mining 1997 (in force since February 2000) and the UN Economic Commission for Africa / SADC *Harmonisation of Mining Policies, Standards, Legislative and Regulatory Framework* equally state the intention to develop and implement common standards, including on health, safety and the environment. Some ESA countries have already begun to use international standards to review their own laws. South Africa, through the *King Committee Report on Corporate Governance 2009*, aims to bring local companies in line with global best practices. Kenya in the *Nairobi Process: A Pact for Responsible Business* aims to apply the UN *Guiding Principles on Business and Human Rights*, in the emerging oil and gas sector.

Box 1: Health areas in International standards and guidance documents on EIs

- Consultation, impact assessment and protection of health in negotiation of prospecting rights, including social rights to culture, identity, employment, education, and fair benefit sharing.
- Health and social protection in resettlement/relocation of affected communities;
- Occupational health and safety (OHS) for employed workers and sub-contractors;
- Health benefits for workers and their families;
- Environmental, health and social protection for surrounding communities, and access to remedy where harm has occurred;
- EI fiscal contributions to health promotion and health care
- Fair local benefit from EI activities; and
- Transparent, democratic and accountable governance of these issues, by government, civil society, affected communities and industry.

Current legal situation in the ESA region on these duties

Many of these international standards on health and EIs are included in national laws of ESA countries, but no country covers them completely. *Tables 1a and 1b* summarise how comprehensively ESA countries cover the health areas set in international standards on the practices of EIs and multinational enterprises, based on their constitutions, health, occupational health, environmental, labour, mining and company laws. The specific national laws and clauses are provided in detail in the discussion paper and its supplement, shown in the References.

In summary:

- All ESA country laws include **protection of health in negotiation of prospecting rights/licences and EI agreements**, largely through environmental impact assessments (EIAs). Only a few countries (eg Kenya; Zambia) explicitly include health or social impacts in EIAs, and none explicitly require health sector approval of EIAs.
- There are weak *specific* provisions for **health and social protection in the resettlement or relocation of affected communities**, mainly to observe the 'interests of local communities' and 'pay fair compensation for disturbance of rights or damage done'. Where included, there are specific duties to avoid displacement, provide homes, jobs and services and to negotiate resettlement as a formal agreement involving community representatives.
- All countries provide **OHS protection in law for employed workers and contractors in the mining sector** and require periodic medical examinations.
- Fewer countries include **health benefits for workers and families** – eg healthcare, public health screening – as this is regarded as a matter for voluntary CSR.
- **Environmental, health and social protection for surrounding communities** is better provided for, largely under environmental laws. These laws often include 'polluter pays' duties and the most comprehensive provision for this, in Kenya, obliges mine licence holders to pay for an environmental protection bond as financial security for any damage caused.
- The provisions for **fiscal contributions towards health and health services** largely relate to general taxes and royalties. Angola, Kenya, Mozambique and DRC require that municipalities in mining areas benefit directly from a share of taxes, or vary tax/royalty levels based on the contribution to national development. Some countries include specific levies for health, such as Zimbabwe's *National AIDS Trust Fund Act*.

**Table 1: Health provisions in ESA country laws, post-2010**

The shading indicates how completely the area is covered in law: the darker the green, the more comprehensive the cover, yellow = less well covered and red = not covered in laws sourced

| COUNTRY | Consultation and protection of health in negotiation of prospecting rights/licenses and EI agreements | Health and social protections in resettlement/relocation of affected communities | OHS for employed workers/contractors | Health benefits for workers and families | Environment, health and social protection for surrounding communities |
|--------------|---|--|--------------------------------------|--|---|
| Angola | Dark Green | Light Green | Dark Green | Yellow | Dark Green |
| Botswana | Yellow | Yellow | Dark Green | Yellow | Yellow |
| DRC | Light Green | Light Green | Dark Green | Yellow | Yellow |
| Kenya | Dark Green | Light Green | Dark Green | Yellow | Dark Green |
| Lesotho | Yellow | Yellow | Light Green | Yellow | Dark Green |
| Madagascar | Yellow | Yellow | Yellow | Red | Light Green |
| Malawi | Light Green | Yellow | Dark Green | Yellow | Dark Green |
| Mozambique | Dark Green | Dark Green | Dark Green | Yellow | Light Green |
| Namibia | Light Green | Yellow | Yellow | Yellow | Yellow |
| South Africa | Dark Green | Red | Dark Green | Yellow | Yellow |
| Swaziland | Light Green | Yellow | Dark Green | Yellow | Dark Green |
| Tanzania | Dark Green | Dark Green | Yellow | Yellow | Yellow |
| Uganda | Light Green | Yellow | Light Green | Yellow | Light Green |
| Zambia | Dark Green | Yellow | Yellow | Yellow | Dark Green |
| Zimbabwe | Light Green | Yellow | Yellow | Yellow | Light Green |

Source: Analysis of ESA country laws in Loewenson et al (2016) EQUINET discussion paper 108 and supplement.

Table 2: Health system provisions in ESA country laws, post-2010

The shading indicates how completely the area is covered in law: the darker the green, the more comprehensive the cover, yellow = less well covered and red = not covered in laws sourced

| COUNTRY | Health benefits for surrounding communities | Fiscal contributions towards health and health services, specifically in relation to EIs | Forward and backward links with local sectors and services supporting health; use of wealth funds, community ownership for local well-being | Post-mine closure obligations | General governance issues |
|--------------|---|--|---|-------------------------------|---------------------------|
| Angola | Red | Light Green | Light Green | Dark Green | Light Green |
| Botswana | Red | Yellow | Light Green | Yellow | Yellow |
| DRC | Red | Light Green | Yellow | Yellow | Light Green |
| Kenya | Yellow | Light Green | Dark Green | Dark Green | Light Green |
| Lesotho | Red | Yellow | Yellow | Light Green | Yellow |
| Madagascar | Red | Yellow | Yellow | Yellow | Yellow |
| Malawi | Red | Light Green | Dark Green | Yellow | Yellow |
| Mozambique | Red | Light Green | Dark Green | Yellow | Dark Green |
| Namibia | Red | Light Green | Light Green | Yellow | Yellow |
| South Africa | Red | Yellow | Dark Green | Dark Green | Yellow |
| Swaziland | Yellow | Light Green | Yellow | Yellow | Light Green |
| Tanzania | Red | Light Green | Light Green | Yellow | Dark Green |
| Uganda | Yellow | Yellow | Yellow | Yellow | Yellow |
| Zambia | Light Green | Yellow | Dark Green | Yellow | Dark Green |
| Zimbabwe | Red | Dark Green | Dark Green | Dark Green | Light Green |

Source: Analysis of ESA country laws in Loewenson et al (2016) EQUINET discussion paper 108 and supplement.

Proposal for regional guidance on health in extractive industries

- Some countries require EIs to stimulate forward and backward links with local sectors and to support services in order to obtain incentives or mining rights. South Africa and Zimbabwe have provisions for historically disadvantaged people to benefit from mining.
- Most ESA country laws include post-mine closure obligations, mainly relating to environmental and safety issues. None have provisions for handover of social services, or for duties post-closure in relation to chronic occupational diseases.

In relation to **governance** of these issues, most ESA countries provide constitutional rights to information, association, assembly and participation. Company laws set registration and reporting duties; OHS and labour laws provide for consultation mechanisms and newer environmental laws include duties of public information and consultation. Some laws (in DRC, Mozambique, Kenya, Tanzania) include EI governance arrangements, such as mechanisms for informed participation of affected local communities, and prohibit public officers from acquiring mining interests to protect against conflicts of interest. Tanzania's *Extractive Industries (Transparency and Accountability) Act* has detailed provisions for transparency, establishing an independent oversight committee that includes civil society, with reporting and disclosure obligations on EIs and measures for public reporting and citizen awareness on agreements.

The gaps and variation in ESA law outlined in this brief suggest that it would be timely for governments, with private sector, civil society and others to review and, where needed, update their current laws for health in the extractive sector, to ensure that they are in line with international and continental standards.

The current situation validates the policy intention of regional harmonisation, to assist in such national review and to support those countries with newly emerging or growing EI sectors.

While no single ESA country addresses all the required standards of health and social welfare in EIs in their laws, in combination, the laws across ESA countries provide clauses that could be used in such regional guidance on minimum standards. The fact that such guidance originates from the laws of a wide range of countries of varying size and income from *within* the region suggests that it would be feasible to apply these clauses more widely across the region.

The suggested clauses for regional guidance (and the laws they derive from) are shown in the *Box* overleaf, in line with the key areas of health protection provided for in international standards. The content draws largely from the wording in the respective source laws, as detailed in the background discussion paper and its supplement.



Open cast mining, South Africa, Na Derdingseben 2008 (Creative Commons)



Recommendations for regional guidance on minimum standards for health and social protection in East and Southern Africa

1. **Protection of health-related issues in negotiation of prospecting rights/licences and EI agreements** implies legal provisions for:
 - Approval of a mining right subject to ensuring that mining activity prevents any adverse harm to human health¹. Mining rights holders' duty to promote public health and security in accordance with applicable national and international legislation².
 - Implementation and approval by relevant government departments, including environment and health departments³, of environmental, social and health impact assessments (ESHIA) that consider: environmental, social and health impact of the specific EI project as a pre-condition for granting and obtaining mining rights⁴.
 - ESHIAs submitted for approval of mining rights applications to include costed impact prevention/mitigation; post-mining rehabilitation plans; evidence of ability to comply with health and safety law⁵; socially responsible investments for the local community⁶; benefit to and measures for engaging local communities; resettlement plans (where relevant); monitoring and audits and grievance and dispute settlement mechanisms⁷.
 - Local authorities and local communities to be informed about the ESHIAs and consulted on the impacts and any measures to be taken that may affect them, or the area in which they live, before EI approval, with ESHIAs reporting on these consultations and their recommendations⁸.
 - The state to implement wider ESHIAs that plan for the cumulative impacts of EI projects across a wider area and to set periods for updated ESHIAs for licencing renewal.

2. **Health and social protection relating to resettlement or relocation of affected communities** due to mining activities calls for legal provisions for:
 - State protection of communities in mining areas⁹.
 - No forced eviction, avoidance of displacement of inhabitants¹⁰.
 - When avoidance of displacement is not possible, minimising displacement by exploring alternative project designs; and a duty for companies to pay the affected communities a fair and transparent compensation fixed in a memorandum between the government, the company and the community as a requirement for the allocation of mining exploration rights¹¹, with resettlement plans included in the EHSIA, as above.
 - Fair compensation to cover: resettlement in dignified homes and in better than previous conditions; preservation of historical, cultural and symbolic heritage of families and communities; socioeconomic activities to re-establish or improve their living standards and incomes and social infrastructures for health, learning, sport in ways to be agreed¹².
 - EI duty to ensure informed participation of, constructive dialogue with and fair management of grievances from local communities at all stages in a resettlement process¹³.

3. **OHS protection for employed workers and contractors in the mining sector**, to include:
 - The promotion and protection of occupational health and safety for workers and/or sub-contractors; EI duties of training in workplace health and safety; prevention and reporting of accidents and injury; provision of periodic medical examinations, with no exemption from these duties for those holding mineral rights¹⁴.

1 Zambia Mines and Minerals Act Section 80

2 Mozambique's Mining Law Art 36

3 Kenya's Mining Act Sec 36, (health further specified in the guidance proposal)

4 Most laws in the region provide for this.

5 South Africa's Mine Health and Safety Act Sec 23

6 As in Kenya's Mining Act Sec 101 and Mozambique's Mining Law Art 8

7 Angola Mining Code Art 66 and Mozambique's Mining Law Art 8

8 DRC Mining Code Art 69 Mozambique's Mining law Art 13

9 Mozambique's Mining law Art 13

10 Angola's Mining Code Art 8 and as set in International Finance Corporation (IFC) Performance Standards 2012

11 Mozambique Mining Law Art 30

12 Mozambique Regulations for the Resettlement Process Resulting from Economic Activities

13 DRCs Mining Regulations Art 477

14 Kenya's Mining Act Sec 178 and as set in ILO Safety and Health in Mines Convention

15 South Africa's Mine Health and Safety Act Sec 1



- Legal objective to give effect to public international law obligations for OHS on mines¹⁵.
- EI duty to make available to workers' representatives, competent authorities, workers' and employers' organisations and, upon request, information on the safety and health standards relevant to their local operations, those observed in other countries, and relevant special hazards and protective measures¹⁶.
- Powers of state inspectors, including to suspend mining activity in the event of serious risk to life and health of workers and the population¹⁷.
- Provision for workers' compensation for work-related injury or disease, and a presumption that an occupational disease was due to employment unless proved otherwise¹⁸.
- Provision for workers to rescind an employment contract that exposes them to serious and unforeseen health and safety risks¹⁹.

4. **Health benefits for workers, families and surrounding communities** to include:

- EI duties to ensure healthy environments (see next section) and access to medical care.
- EI owners to avoid harm to health, to prevent nuisances that would be 'injurious or dangerous to health'; to report and prevent the spread of infectious and notifiable diseases; to avoid or minimize the risks and impacts to community health, safety, and security that may arise from project-related activities, with particular attention to vulnerable groups²⁰.
- Mining to be done in a way that promotes socioeconomic development, including the local community in the surrounding area based on prioritisation of community needs, health and safety²¹.
- Prohibition of employment of children and young persons in mining and quarrying.
- Safe and healthy working conditions for migrant workers, workers engaged by third parties and workers in the client's supply chain²².
- EIs to make fiscal (and insurance) contributions to ensure access to health services for workers and their families.

5. **Environment, health and social protection for surrounding communities** to include:

- Citizens' right to live in a healthy environment and benefit from rational use of natural resources. Activities with immediate or long-term effects on the environment to be analysed in advance, to eliminate or minimize negative effects and to support environmental conservation and protection and rational use of natural resources²³.
- EI duties to implement ESHIAs (see above).
- Mining zones and operations to not disturb the integrated social and economic development of regions and populations, with state power to suspend mining operations that cause serious risk to life and health of populations and harm to the environment²⁴.
- Any person to apply for legal remedy to stop any act that violates the right to a clean and healthy environment, whether they are directly affected or not²⁵. Freedom for any person to request information relating to the environment that is relevant to its conservation²⁶.
- All persons or organisations whose actions cause harm to the environment, or the degradation, destruction or depletion of national resources to be held liable for the same and be required to repair such damage and/or pay compensation for damage caused²⁷.
- Redress from those who cause damage to the environment and to human and animal health²⁸. Contribution from mine licence holders to an environmental protection bond, fund or other forms of financial security for any environmental damage²⁹.
- Relinquishing a mining right to not relieve the holders from meeting their environmental and community obligations³⁰.

16 ILO Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)

17 Angola Mining Code Art 53

18 Tanzania's Workers Compensation Act Sec 23

19 DRC's Labour Code Art 73

20 Botswana Public Health Act Sec 14, and 43 and IFC Performance Standards 2012

21 Zambia's Mines and Minerals Development Act Sec 4

22 Lesotho Labour Code Arts 127, 132, ILO Convention 45 and IFC Performance Standards 2012

23 Angola's General Environmental Law Arts 3-4

24 Angola's Mining Code Art 13, 53

25 Kenya's Constitution, Art 70

26 Swaziland's Environment Management Act Sec 51

27 Angola's General Environmental Law Arts 3-4

28 Zimbabwe's Mines and Minerals Development Act Sec 87

29 Kenya's Mining Act Sec 181

30 DRC's Mining Code Art 79



6. **Fiscal contributions towards health and health services** includes:

- Communities and local authorities in mine areas to benefit directly from a share of EI fiscal contributions, with at least 10% to local communities³¹.
- EIs to refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to environmental, health, safety, labour, taxation, financial incentives or other issues.
- State authorities to apply levies to EI activities that impact on environment, health and social welfare or EIs to contribute towards national funds for public health³².
- EIs to submit annual reports and information on use of local goods and services, corporate social responsibility and capital expenditures³³.

7. **Stimulation of forward and backward links with local sectors and services supporting health**, including:

- Provisions for employment of local citizens; use of local goods and services; training programmes and skills transfer.
- EI contribution to economic, social and environmental progress and socially responsible investment benefiting local communities, within community development agreements, share ownership arrangements, particularly for historically disadvantaged people³⁴.

8. **Post mine closure obligations**, including

- EI duty to provide post-closure plans in ESHIAs before approval of mining rights.
- EI duties post closure for fiscal, environment and other legal obligations, including in relation to screening, care services and compensation for chronic occupational diseases³⁵.
- Ensuring environmental reclamation, public health and safety of the area³⁶, with measures for handover of welfare services and social infrastructures or other social or health aspects in consultation with affected communities.

9. In relation to **governance** of these issues, legal provisions for:

- Rights to information, association, assembly and participation.
- EI support and upholding of good corporate governance principles and development and practices that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate³⁷.
- EI compliance with legal provisions for registration and reporting, joint consultation and co-determination between workers and managers on workplace safety and employment, disclosure and public information and consultation on ESHIAs.
- EI duty to ensure informed participation of the affected local communities and to remain in constructive dialogue with them, community consultation *prior* to the granting of licence or right and a duty on government to create mechanisms and community capabilities for such engagement³⁸.
- Transparency and accountability, for an independent oversight committee that includes civil society, with reporting and disclosure obligations on EIs and measures for public accountability, public reporting and citizen awareness, including of all past and current mineral development agreements³⁹.
- Prohibition of public officers acquiring mining rights or interests and protection against conflicts of interest in decision making⁴⁰.

31 Angola's Mining Code Art 245, DRCs Mining Code Art 242; Kenya's Mining Act; Mozambique's Mining Code Article 20

32 Such as in Zimbabwe's Environmental Management Act Sec 50 and National AIDS Trust Fund Act

33 Tanzania Extractive Industries (Transparency and Accountability Act) Sections 10-15

34 Kenya's Mining Act Sec 47; South Africa's Mineral and Petroleum Resources Development Act Sec 2, Zimbabwe's Indigenisation and Economic Empowerment Act and and OECD Guidelines for Multinational Enterprises

35 Angola's Mining Code Arts 2, 71, 75, 115 and 116

36 Tanzania's Mining Act Sec 62

37 OECD Guidelines for Multinational Enterprises

38 DRCs Mining Regulations Art 477, Mozambique's Mining Law Art 32

39 Tanzania's Extractive Industries (Transparency and Accountability Act)

40 Kenya's Mining Act Sec 220

Communicating and applying the law

Consultation, buy-in, awareness and understanding of the different stakeholders of their respective roles, rights and duties in law are important for updating and enforcing the law. There is scope to raise public awareness and ensure implementation of the existing laws on health and social protection in EIs in ESA countries.

There is some evidence to suggest that barriers to implementation of the laws arise due to the multiplicity and sometimes fragmented nature of the Acts and regulations; their implementation by different state departments; from communication, capacity and resource shortfalls and from power imbalances between the different parties involved.

At the same time, national and regional policy dialogue on harmonised regional standards offers an opportunity to strengthen public awareness and stakeholder consensus on what should be done to health in the extractive sector, and to strengthen knowledge and implementation of the law.



Water yellowed by cassiterite collected for sluicing, DRC, M Craemer 2010 (Creative Commons)

Selected references

The full background information, legal analysis of international standards and the national laws, specific legal provisions and references that this brief is based on can be found in:

Loewenson R, Hinricher J, Papamichail A (2016) 'Corporate responsibility for health in the extractive sector in East and Southern Africa', EQUINET Discussion paper 108, Training and Research Support Centre, EQUINET: Harare. www.equinet africa.org/sites/default/files/uploads/documents/EQ%20Diss108%20EIs%20and%20health2016.pdf

And the supplement at

www.equinet africa.org/sites/default/files/uploads/documents/EIs%20and%20health%20report%20APPENDICES%20Nov2016.pdf

International standards and guidance documents on EIs

- **UN and international guidance:** UN Universal Declaration of Human Rights; UN Guiding Principles on Business and Human Rights; Voluntary Principles on Security and Human Rights; UN Global Compact; UN Declaration on the Rights of Indigenous Peoples; Kimberley Process; Global Reporting Initiative; ILO Core Conventions, UN Framework Convention on Climate Change, ILO Multinational Enterprise (MNE) Declaration, Extractive Industries Transparency Initiative (EITI) Principles; Santiago Principles, WHO Air Quality Guidelines.
- **OECD guidance:** OECD Guidelines for MNEs; Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.
- **Financial institution guidance:** viz the Equator Principles (which includes the International Finance Corporation (IFC) Performance Standard on Land Acquisition and Involuntary Resettlement); IFC's Performance Standards on Social and Environmental Sustainability; IFC Social and Environmental Performance Guidelines.
- **CSR standards developed by business,** including GRI Sustainability Reporting Guidelines; Responsible Care Guidelines; the Global Mining Initiative; Mineral and Sustainable Development project of the International Council on Mining and Metal and the ICMM Sustainable Development Principles; and
- **Civil society guidance,** including the Natural Resource Charter and Initiative for Responsible Mining Assurance.