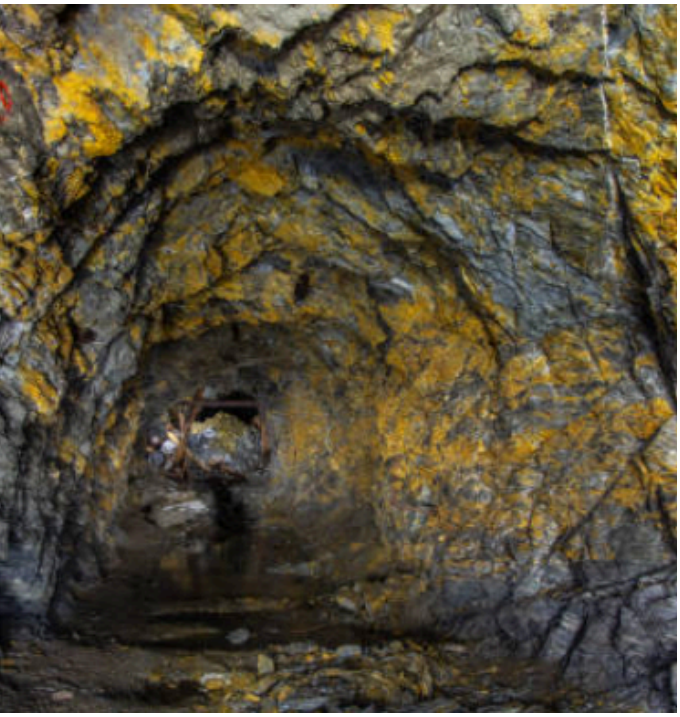

ZAMBIA'S MINING SECTOR:

MINING SERIES

Mining Rights and Surface Rights in Zambia

(This is the third article in our series on Zambia's mining sector.)

The Mines and Minerals Development Act No. 11 of 2015 ("**Mines Act**") highlights the distinction between mining rights and surface rights. This article examines the differences between these two types of rights and the challenges encountered as a result of this distinction in Zambia.

Understanding Mining Rights and Surface Rights

The distinction between mining rights and surface rights is crucial in Zambia because mining rights drive economic growth, while surface rights protect landowners' interests. Clear legal distinctions are essential for balancing these competing priorities.

From a legal perspective, mining rights pertain to the authority granted to an individual or entity to explore or extract minerals within a designated area. These rights, issued under the Mines Act, empower holders to conduct operations necessary for mining activities, subject to regulatory conditions.

Surface rights on the other hand refer to the ownership or occupation of the land surface by individuals or entities. These include rights to use land for agriculture, construction, grazing, or other non-mining activities. Surface rights are often under customary or statutory tenure in Zambia.

Essentially, the holder of a mining right has the right to explore or extract minerals from the land, but this right does not extend to ownership of the land itself, which is governed by surface rights.

Key Provisions in the Mines Act

Mining operations are restricted to specific land and where that land has surface rights, the mining right holder is required to obtain written consent from the landowner or from an appropriate authority, where applicable.

Under section 52 of the Mines Act, the areas where written consent is required include burial sites, land which is part of the aerodrome, monuments, villages, land within proximity to buildings, dams, cultivated land, land occupied as a village, land reserved for purposes of a railway, residential or agricultural zones, and forests. Mining or exploration cannot occur on such land without the consent of relevant authorities, local communities, or landowners.

Section 57 of the Mines Act mandates holders of mining rights to compensate landowners for damage or disturbances to the surface caused by mining activities. Compensation covers damages to crops, buildings, and other structures and must reflect the fair and reasonable compensation for the disturbance on the land. Disputes regarding consent or compensation are subject to arbitration.
Despite the legal distinction between mining and surface rights, challenges often arise, leading to disputes that can hinder mining operations. Some of the challenges include:

Inability to identify surface rights on the Flexi Cadastre System
Although the holder of a mining right can verify whether their area of interest overlaps with another mining right by using the land coordinates in the FlexiCadastre System, determining the ownership of surface rights for a particular area is not as straightforward.

The FlexiCadastre system does not provide information on who holds the surface rights, creating a challenge for a mining right holder in confirming land ownership or securing necessary agreements for land access. This lack of information can hinder mining right holders' ability to easily verify whether a particular parcel of land has surface rights.

Thus, where a mining right holder does not have ownership of the surface rights, it becomes difficult for them to access the land through either a lease agreement, or negotiated access as the details of the surface rights holder are not readily available.

Lack of integration between the Flexi Cadastre System and the Lands and Deeds Registry
The above challenge is further compounded by the fact that the FlexiCadastre System and the Lands and Deeds Registry are not integrated which makes it difficult for a mining right holder to easily verify whether a particular parcel of land has surface rights.

It is likely that an integration of the Lands and Deeds Registry with the FlexiCadastre System would create a more seamless data-sharing framework which would enable access to a data base that provides both surface and mining rights information in one place.

Conclusion
The distinction between mining rights and surface rights is crucial for the sustainable management of Zambia's mineral resources. While the Mines Act offers a framework to balance the interests of mining rights holders and surface landowners or relevant authorities, addressing the challenges that arise from this distinction is essential to fostering smoother investment in the country's mining sector.

MAY and Company
759 Glass House Independence Avenue
Woodlands Roundabout
Lusaka Zambia
Tel: +260211250580
info@mayandco.co.zm | www.mayandco.law

MAY
AND COMPANY