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**AN ANALYSIS OF THE POTENTIAL IMPLICATIONS OF THE INTRODUCTION OF  
THE “USE IT OR LOSE IT” POLICY IN THE ZIMBABWEAN MINING SECTOR.**

**By**

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## **DEDICATION**

This essay is dedicated to my late father, Mernard Gwata, my mother Beatrice Gwata for the support during the period of my studies and the Almighty for strength.

## **ACKNOWLEDGEMENTS**

I would like to thank the Almighty for guiding me through this journey and giving me the strength, wisdom and understanding that has taken me through this journey and for His grace that I have seen at every step of this journey.

A special thank you to Advocate Leonardus J. Gerber for the expert knowledge he has imparted in the world of extractive industries and for helping me with this dissertation.

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## ABSTRACT

Zimbabwe is endowed with vast mineral resources which can make a significant contribution to the GDP of the country. Amongst the mineral resources found in the country are diamonds, gold and platinum and these resources need to be properly managed for them to benefit the country through revenue and also creation of opportunities in the country. This means that the existence of vast mineral resources has numerous direct and indirect benefits which have to be utilised fully. The management of the extractives industry in the country requires proper administration and such administration is mandated to the President, in whom all minerals in the country are vested, the Minister of mines and mineral development, the Mining affairs Board and Mining Commissioner(s).

The nature of mineral resources requires that all the parties involved in the administration thereof play their roles. Mineral resources are finite and cannot be left to be underground for extended periods as this can lead to sterility. Such a position has led to the government to consider implement the “use it or lose it” policy which in simple terms means that a holder of a mineral claim should exploit it or risk losing it. This study therefore sought to consider the implications of enforcing the policy in the country. This was done by firstly discussing how someone can obtain a limited real right to a mining location to exploit the minerals and this was achieved by looking at the pertinent provisions in the Mines and minerals Act dealing with the grant of licences. The writer thereafter discussed the provisions containing the “use it or lose it” policy to ascertain what the Act stipulates and how it can be enforced. Licences amount to a limited real right and expropriation, the effect of enforcing the policy leads to a violation of property rights which are sought to be protected by the Constitution of the country.

A discussion of these provisions and the effect thereof proved that a holder of a right under the Act to exploit minerals would have his right prematurely terminated if he was not working the mining location or was not developing his location. An investigation would need to be done to ascertain the circumstances and the Board will make a recommendation to the President who makes a final decision on expropriation. Compensation following expropriation is not always guaranteed but the Act does not explain how this decision is made and an aggrieved party has recourse to the court system. The writer raised concerns on the violation of property rights in the process when the government is exercising its powers for the benefit of the public.

The implementation of the policy is valid but issues of security of tenure are obviously raised and this does not paint a good picture on the government. One must always remember the violent land grab once implemented by the same government. Transparency together with equal and fair treatment was therefore recommended by the writer and a need to have shared responsibility in the

decision making to avoid politicised decisions. The writer further recommended that the court system should not be influenced by the powers that be when a decision is being made pertaining the expropriation; the rule of law should therefore be protected.

## **LIST OF ACRONYMS**

USD	UNITED STATES OF AMERICA DOLLAR
GDP	GROSS DOMESTIC PRODUCT
FDI	FOREIGN DIRECT INVESTMENT
BSAC	BRITISH SOUTH AFRICA COMPANY



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## CHAPTER 1 - INTRODUCTION

### 1.1. Background

A thriving mining sector is a jewel and a goal of many African countries and therefore there is always a need to regulate the sector in a just and equitable manner. The challenges faced by many is internal, with the “resource curse” a common problem on the continent. It is because of the challenges that the continent faces that there is a dire need to regulate the precious industry in a manner that can only improve the livelihoods of a population and the growth of a country’s economy.

Zimbabwe being a country endowed with so much natural resources is no exception to the challenges and the country’s mining industry is regulated by the Mines and Minerals Act [Chapter 21:05] Act 38 of 1961 (as amended) (hereinafter referred to as “the Act”)<sup>1</sup> and property rights on the other hand are governed by the Constitution of Zimbabwe (hereinafter referred to as “the Constitution”).<sup>2</sup> Subordinate legislation also exists and principles of common law which have led to the development of most principles found in our laws. The mineral potential in Zimbabwe is highlighted in a report by the Ministry of Mines and Mining Development dubbed “Zimbabwe Mineral Potential: Procedures and requirements of acquiring licenses and permits in terms of the Mines and Minerals Act [Chapter 21:05]” dated January 2018.<sup>3</sup> The said report states that Zimbabwe has the second largest reserve of group of platinum group of metals, over 4000 gold deposits and about 160 known kimberlites amongst other known minerals in the country.<sup>4</sup>

The abundant resources in the country are not being extracted to the fullest to contribute to the country’s economy and on the 10<sup>th</sup> of April 2018 the Deputy Minister of Mines of Zimbabwe, Polite Kambamura, at a mining conference in Johannesburg, stated that the country would make use of the “use it or lose it” policy (hereinafter referred to as “the policy”).<sup>5</sup> This enforcement of the policy is a bid to try and revive an ailing economy as many companies are “sitting” on their mines.<sup>6</sup> The same sentiments were echoed by the President of Zimbabwe, Emmerson Mnangagwa, who was quoted speaking at a youth *indaba* where he further stated that there were companies which have held claims for over 60 years for speculative purposes as they are not utilising the said claims and that government was looking at imposing the policy in order to give the said claims to players who would utilise the said claims.<sup>7</sup>

This dissertation seeks to examine the state of the mining sector in Zimbabwe, that is, its undoubted potential and the legislation that is governing the industry. It shall further discuss

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<sup>1</sup> [Chapter 21:05] Act 38 Of 1961 (amended).

<sup>2</sup> The Constitution of Zimbabwe Amendment (No. 20) Act, 2013

<sup>3</sup> <http://www.mines.gov.zw/sites/default/files/Downloads/Zimbabwe%20Mineral%20Pontential%20Booklet.pdf> (Last accessed 24/06/2019).

<sup>4</sup> *idem* at 1-2.

<sup>5</sup> <https://www.businesslive.co.za/bd/world/africa/2019-04-10-zimbabwe-considers-use-it-or-lose-it-approach-to-mining-rights/> (Last accessed 19/06/19).

<sup>6</sup> *ibid*

<sup>7</sup> <https://www.herald.co.zw/use-it-or-lose-it-ed-tells-mining-firms/> (Last accessed 19/06/19).

the notion of the “use it or lose it” policy and further look into the drivers behind the notion of “use it or lose it” and also explore the implications that the policy might have on the Zimbabwean mining industry.

## 1.2. Purpose of the study

The purpose of this study is to analyse the possible implications of enforcing the “use it or lose it” on the mining industry of Zimbabwe.

## 1.3. Aims and objectives

### 1.3.1 Aims

To determine the legal implications of introducing the “use it or lose it” policy in the Zimbabwean mining sector.

### 1.3.2 Objectives

- i. To discuss Zimbabwe’s current situation with regards the mining industry.
- ii. To analyse the “use it or lose it” policy and its use in the mining sector.
- iii. To discuss the consequences of introducing the “use it or lose it” policy in the Zimbabwean mining sector.

## 1.4 Research questions

### 1.4.1 Primary questions

- i. What are the implications of the introduction of the “use it or lose it” policy in the Zimbabwean mining sector?

### 1.4.2 Secondary questions

- i. What is the current status of the Zimbabwean mining sector?
- ii. What does the “use it or lose it” policy provide and how is it enforced?
- iii. What are the potential consequences of the introducing the “use it or lose it” policy in the Zimbabwean mining sector?

## 1.5 Research methodology

### 1.5.1 Methodology

The research will take the form of a desktop methodology in which the writer will analyse the current state of the Zimbabwean mining industry and examine the legislation governing the sector. The writer will further look at the “use it or lose it” policy and discuss what it provides, why it is enforced by governments and the effects of enforcing it. There shall also be a discussion of the implications of enforcing the policy in Zimbabwe.

### 1.5.2 Research parameters

This research shall be conducted within the scope of the Zimbabwean mining legislation together with a discussion on the “use it or lose it” policy. The Minerals Act of Zimbabwe which is the key piece of legislation in the mining sector shall be key in this research as it governs the regulation of the industry. The Minerals Act of Zimbabwe is currently being reviewed with an amendment being debated on in parliament and this research shall only be limited to the current piece of legislation.

## 1.6 Chapter outline

The study shall consist of five chapters which shall be divided as follows:

### 1.6.1 Chapter 1

This Chapter shall give the background of the study with an overview of the complete study. It shall provide the aims and objectives of the study and also highlight the research questions which shall be answered in this research.

### 1.6.2 Chapter 2

This Chapter shall discuss the current status of the Zimbabwean mining industry and look at the legislation governing the industry and it shall further discuss the country’s mining industry’s potential.

### 1.6.3 Chapter 3

This Chapter shall analyse the “use it or lose it” policy; it shall discuss the notion of the policy and look at the drivers behind it and the reason(s) why it is being considered in Zimbabwe.

### 1.6.4 Chapter 4

This Chapter shall analyse the potential legal implications of the introduction of the “use it or lose it” policy in the Zimbabwean mining sector.

### 1.6.5 Chapter 5

This Chapter shall conclude this research and provide recommendations for the Zimbabwean government.

## CHAPTER 2 – THE ZIMBABWEAN MINING SECTOR

### 2.1. Introduction

The dominium in and rights for searching, mining for and disposal of all minerals, mineral oils and natural gases in Zimbabwe is vested in the President and acquisition of such mining rights is governed by the Mines and Minerals Act, “the Act”.<sup>8</sup> The country is endowed with various “economic minerals”<sup>9</sup> which include gold, platinum group metals, silver, diamonds, chrome, coal, nickel, asbestos, coal bed methane, copper, dimension stones and pegmatite minerals amongst others.<sup>10</sup>

Zimbabwe is said to have one of the world’s largest resource of platinum group metals and the Great Dyke, “a layered igneous complex” extending for about 550km, hosts the largest grade of chromite resource base in the world of about 2.8 billion tonnes of platinum group metals ore.<sup>11</sup> The country has the second largest resource of platinum group metals in the world after South Africa.<sup>12</sup> There are also 4000 recorded gold deposits with much of the country under-explored therefore showing potential of more deposits and 160 known kimberlites.<sup>13</sup> There are further over 29 known coal localities of more than 26 billion tonnes and an estimate of 40 trillion cubic feet (tcf) of over 95% purity of coal bed methane gas revealed in exploration of coal fields revealing such coal basins.<sup>14</sup>

Various pieces of legislation have therefore been passed to facilitate the operations in the highly profitable industry although the country has struggled to show much economic growth despite such endowment. The Mines and Minerals Act is the main piece of legislation dealing with most aspects of the industry and other pieces of legislation have been promulgated to complement it and these include the Gold Trade Act, the Precious Stones Act and the Mining (General) Regulations amongst others.

In seeking to have a discussion on the state of the mining industry in the country, it is important to consider the Act with specific focus on pertinent provisions. Accordingly, these are discussed below, in order to provide an oversight of the status of the industry in the country. The Chapter shall therefore look at the law relating to the grant of licences under the Act as Zimbabwe operates under such a system and any other laws which may be related to such issues.

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<sup>8</sup> Section 2 and Section 3.

<sup>9</sup> Economic minerals fall into four categories, that is, metals and non-metals, mineral fuels, gemstones and industrial minerals. They are extracted from the soil through mining, quarrying and pumping - Balasubramanian, A.. (2017). Economic Minerals of India. 10.13140/RG.2.2.21849.52320; [https://www.researchgate.net/publication/315831629\\_Economic\\_Minerals\\_of\\_India](https://www.researchgate.net/publication/315831629_Economic_Minerals_of_India) Last accessed 27-11-19.

<sup>10</sup> Minerals of Zimbabwe - <http://www.mines.gov.zw/?q=minerals-zimbabwe> – Last accessed 16/09/19.

<sup>11</sup> Ministry of Mines and Mine Development 2018; Mineral Potential – Procedures and requirements of acquiring licences and permits in terms of the Mines and minerals Act (Chapter 21:05) “Unlocking or mineral resource potential”; at 1 <http://www.mines.gov.zw/sites/default/files/Downloads/Zimbabwe%20Mineral%20Potential%20Booklet.pdf> Last accessed 27-11-19.

<sup>12</sup> *Idem* at 4.

<sup>13</sup> *Idem* at 2.

<sup>14</sup> *Idem* at 3-4.

## 2.2. The extent of mining revenue

The mining industry contributes significantly to the Zimbabwean economy. The country has become heavily reliant on the industry since the decline of the agricultural sector and it accounts for a large portion of export revenue.<sup>15</sup> In the “2018 First Quarter budget performance and outlook report”<sup>16</sup> it was highlighted that the country has over 800 mines with a capacity to earn US\$18 billion annually. However, it appears to be failing to reach even half the projected amount.<sup>17</sup> The country received USD2,3 billion from mineral export receipts in 2017 and the industry was reported to be contributing to 13% of gross domestic product and 68% of total export receipts.<sup>18</sup> The industry is reported to have been earning US\$2 billion since 2009 which is only 11% of its full potential.<sup>19</sup>

In his mid-year budget for 2019, the Minister of Finance highlighted the importance of the industry to the growth of the ailing economy contributing to the country’s export earnings, gross domestic product and employment.<sup>20</sup> In the first half of the year the sector contributed US\$1,3 billion which was 68% of total exports of USD1,9 billion.<sup>21</sup> The Minister highlighted that the industry formally employs 45,000 employees and over a million small scale and artisanal miners on gold and chrome.<sup>22</sup>

The potential to rake in high revenues in the country is therefore clear, with the management of the sector key to such success. Fidelity printers and refiners is the country’s sole gold buyer, refiner and exporter. In its 2018 report, it was stated that gold deliveries had hit a record of 33,2 tonnes from 24,8 tonnes previously, of note is that 21.7 tonnes came from small scale miners and 11,5 tonnes from primary producers.<sup>23</sup> This is a shift in the dynamics in which one would expect the primary producers to produce more than the small scale miners. In the previous year small scale miners and the primary producers had produced 7.2 tonnes and 7.5 tonnes respectively.<sup>24</sup> Gold as at 2017 was the driving force in

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<sup>15</sup> Malinga Wayne; From an Agro-Based to a Mineral Resources-Dependent Economy’: A Critical Review of the Contribution of Mineral Resources to the Economic Development of Zimbabwe;

<https://www.tandfonline.com/doi/full/10.1080/08039410.2017.1378711> Last accessed 27-11-19.

<sup>16</sup> Parliament budget office - 2018 First Quarter budget performance and outlook report, at 14

[https://www.parlzim.gov.zw/component/k2/download/2344\\_f68a1cf823d4cb031e8a588d2ab2df8d](https://www.parlzim.gov.zw/component/k2/download/2344_f68a1cf823d4cb031e8a588d2ab2df8d) Last accessed 27-11-19.

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*

<sup>20</sup> The 2019 mid-year budget review and supplementary budget – “Budgeting a strong foundation for future prosperity”, at 33 [https://www.dpcorp.co.zw/assets/2019\\_mid-year\\_budget\\_review\\_-\\_supplementary\\_budget-\(1\)-\(1\).pdf](https://www.dpcorp.co.zw/assets/2019_mid-year_budget_review_-_supplementary_budget-(1)-(1).pdf) Last accessed 27-11-19.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> Fidelity surpass gold delivery targets; <https://www.fpr.co.zw/2019/01/07/fidelity-surpass-gold-deliveries-target/> Last accessed 20/09/19.

<sup>24</sup> Export revenue tops US\$4bn...gold leads at US\$683m; <https://www.fpr.co.zw/2017/10/08/export-revenue-tops-us4bn-gold-leads-at-us683m/> Last accessed 20/09/19.

the industry accounting for 38% of overall exports, platinum at 36% and ferrochrome, amongst others contributing 34%.<sup>25</sup>

### 2.3. The indigenisation policy

The indigenisation policy was introduced in Zimbabwe in a bid to correct the imbalance in the control of the economy by increasing participation by the marginalised population. The imbalance was a side-effect of colonialism.<sup>26</sup> In seeking to address the said imbalance government directed that fifty-one *percentum* shares of every public company or any business would be held by indigenous Zimbabweans.<sup>27</sup> However, such a policy affected investment into the country and government in 2017 sought to remedy the position to attract investment and implement investor-friendly policies. In the 2018 budget, the Finance Minister announced changes in the Indigenisation policy<sup>28</sup> which were to be found in the Finance Act.<sup>29</sup> The fifty-one *percentum* threshold now only applies to the platinum and diamond sector.<sup>30</sup>

This was a shrewd decision by the government considering the revenues that the extractives industry can bring to the economy. The limit to the platinum and diamond sector still, however, remains a cap which affects investment but the restriction might be a way to protect a very valuable sector of the industry.

### 2.4. The mining affairs board

The Mining Affairs Board, “the Board”, is a board established through the Mines and Minerals Act to exercise and perform the powers, functions and duties conferred upon it by the Act; any other enactment and the Minister.<sup>31</sup> The Board consists of individuals from diverse disciplines to enable it to perform its duties diligently as directed by Section 7 of the Act and the Secretary of the Ministry of Mines, “the Secretary”, is the chairman of the Board. The Board shall have the power to have an area or mining location subject to an application to be investigated; to summon an applicant, the holder of a mining location, an owner of any land or any person with an interest or knowledge in any matter before the Board to appear before it to give any evidence or explanations required by the Board and also require production of books, plans, accounts and other documents related to any application.<sup>32</sup> Persons appearing before the Board may be requested to take an oath and any false statements made shall be treated as an offence.<sup>33</sup>

From the above one can therefore note that the Board’s duties are to assist in the administration of the Act. They do not work in a vacuum as they work together with the

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<sup>25</sup> *Ibid.*

<sup>26</sup> Indigenisation and Economic Empowerment Act [Chapter 14:33] Act 15 of 2007

<sup>27</sup> Section 3 - Indigenisation and Economic Empowerment Act.

<sup>28</sup> Zimbabwe National budget statement for 2018; at 59; [https://www.parlzim.gov.zw/administration/clerk-of-parliament/clerk-s-blog/download/2254\\_2a2a961b96f3a47ba3c105e8d51d710d](https://www.parlzim.gov.zw/administration/clerk-of-parliament/clerk-s-blog/download/2254_2a2a961b96f3a47ba3c105e8d51d710d) Last accessed 27-11-19

<sup>29</sup> Finance Act 2018 (No. 1 2018) Section 42.

<sup>30</sup> Section 42 (1)c - Finance Act 2018.

<sup>31</sup> Section 6.

<sup>32</sup> Section 11(1).

<sup>33</sup> Section 12.



Minister and also the President in the administration of the Act. This is done by their acts of performing investigations and interviews and thereafter providing reports to the necessary authority. This paper shall discuss some of the duties that the Board performs in furthering the aim of the Act which are quite crucial to its administration as the President and Minister alone will not have the expertise to deal with all that is mandated to the Board. The Board is constituted in a diverse manner in order to achieve a balance in its duties as mandated by the Act.

## 2.5. The awarding of licences

The Board plays a considerable role in the awarding of licences together with the Mining Commissioner, “the Commissioner”. The Mining Commissioner is the mining commissioner responsible for the mining district within which the land or claim concerned is situated.<sup>34</sup> There are different types of licences granted through the Act, and the processes and approving authorities differ. The different types of licences are the following:-

### 2.5.1 Prospecting licences

There are two types of prospecting licences, that is, the ordinary prospecting licence and the special prospecting licence and they are both granted under Section 20 of the Act.<sup>35</sup> The ordinary prospecting license applies to a location not exceeding 10 hectares and 25 hectares for the special prospecting license.<sup>36</sup> The Ministry of Mines and Mining Development provides a summary of the application process on their website but the said process is discussed below.<sup>37</sup> Both licences have a similar procedure in the application processes and similar requirements. A prospecting licence can be applied for by any person who is permanently resident in Zimbabwe who is above 18 years of age who can also appoint an agent. A company duly registered in terms of the laws of Zimbabwe can also apply for one. The application is made at the offices of any Mining Commissioner on payment of the appropriate fee.<sup>38</sup> The Mining Commissioner may refuse the application for a prospecting licence and in such circumstances he is then obligated by the Act to report to the Secretary. In turn, the Secretary is required to report to the Minister who can issue a directive back to the Commissioner to grant the licence.<sup>39</sup> The person so granted the licence can only exercise his rights under the Act if he is an approved prospector and if not he will have to appoint a prospector.<sup>40</sup> A prospecting licence is valid for two years and cannot be sold.<sup>41</sup> The Act limits the land open for prospecting to State land and communal land; private land with title reserved for the British South Africa Company (BSAC) or Zimbabwe Government. The BSAC or government in this instance shall hold the right to all minerals or power to make grants of the right to prospect for

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<sup>34</sup> Section 5(1)(b)(b)(ii).

<sup>35</sup> Section 5(1).

<sup>36</sup> [http://www.mines.gov.zw/?q=mining\\_procedures](http://www.mines.gov.zw/?q=mining_procedures) Last Accessed 27-11-19.

<sup>37</sup> <http://www.mines.gov.zw/?q=summary-procedures-acquiring-mining-title> Last Accessed 25/09/19.

<sup>38</sup> Section 20(1).

<sup>39</sup> Section 20 (3)-(4).

<sup>40</sup> Section 21.

<sup>41</sup> Section 23, 25.

minerals. Land held by a person under an enactment or agreement in which the person obtains title from the State on the fulfilment by him of conditions prescribed shall also be open to prospecting.<sup>42</sup>

The holder of a prospecting licence shall have the right to search for any minerals, mineral oils and natural gases but not to remove or dispose any of the minerals discovered except for purposes of having the mineral found to be examined for its content and quality or nature thereof.<sup>43</sup> They shall also have the right to peg a block of precious metal claims or one block of precious stone claims or one block of base mineral claims subject to obtaining permission of the mining commissioner.<sup>44</sup> No drilling or excavations can be done on the land held under the licence unless the holder has given notice through a prospecting notice.<sup>45</sup>

Upon the discovery of ore, deposit of precious metals or precious stones a holder of a prospecting licence shall put a notice of such discovery, a discovery notice, and peg the relevant area.<sup>46</sup> Following the placing of a discovery notice the person is expected to post a registration notice after pegging the area.<sup>47</sup> A certificate of registration is obtained after application to the mining commissioner.<sup>48</sup> Failure to place such a notice will constitute an abandonment of rights acquired upon posting of the prospecting notice.<sup>49</sup>

The Ordinary license applies to precious metal and all stone minerals whilst the Special prospecting licence covers base metal.<sup>50</sup>

### 2.5.2 Exclusive prospecting order

An exclusive prospecting order allows the holder to prospect for all minerals except for coal and allows the holder to prospect an area of 65 000 hectares.<sup>51</sup> It must be noted that this is an order and not a license and it is applied for under Part VI of the Act. The person or body corporate applying for the said order must show how the works are to be done and provide all information required at the application stage including details of the shareholding of the company and the details and nationality of the directors.<sup>52</sup> Applicant must further provide its financial status to the Board.<sup>53</sup> The application period for this order extends to three months. The Board considers the application and makes a recommendation to the President.<sup>54</sup> The

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<sup>42</sup> Section 26.

<sup>43</sup> Section 27 (1).

<sup>44</sup> Section 27(1)b.

<sup>45</sup> Section 27(2).

<sup>46</sup> Section 42-43.

<sup>47</sup> Section 44.

<sup>48</sup> Section 44(1).

<sup>49</sup> Section 44 (1).

<sup>50</sup> N36 above.

<sup>51</sup> N36 above.

<sup>52</sup> Section 87(2).

<sup>53</sup> *Ibid.*

<sup>54</sup> Section 88-89.

President may approve or refuse to grant the order.<sup>55</sup> The order runs for a period of 3 years which is renewable for a maximum period of another 3 years.<sup>56</sup> The rights granted under this order are personal and cannot be ceded without the Minister's approval.<sup>57</sup>

### 2.5.3 Mining lease

A person holding a "registered mining location or of contiguous registered mining locations" makes an application to the Mining Commissioner for the grant of a mining lease and if the lease is granted it will run into perpetuity subject to renewals.<sup>58</sup> In making the application the applicant is required to indicate the list of minerals to be mined, a sketch plan of the area, details of any special metal reef blocks, a list of all mining locations registered in his name situated within the area and their certificate of registration. The applicant must further provide the name and address of the owner or occupier of the land which is subject to the application and any other information relevant to the application which may be required of him by the mining commissioner.<sup>59</sup>

The Mining Commissioner upon receipt of an application forwards it to the Board together with any report he may wish to add. The Board may provisionally approve either the full application or part of it and may also decide to decline the application.<sup>60</sup> If the Board is satisfied that the investment will be wholly in foreign currency and will exceed USD100 million and the output will be for export it may direct that the Applicant applies for a special mining lease under Part IX.<sup>61</sup> In giving this directive, the Board further considers the nature and size of the mineral deposits in the area, estimated life and economic viability of the proposed mine and extent of investment to be made and any other relevant factors.<sup>62</sup> The Mining Commissioner notifies the applicant of the outcome from the Board.<sup>63</sup>

If the application has been provisionally approved the Commissioner shall require the applicant to submit a plan in triplicate prepared by a land surveyor of the area provisionally applied for.<sup>64</sup> If the approval is for the area originally applied for it shall be deemed as the area applied for.<sup>65</sup> Failure to lodge the said plan in the specified period will result in the application being withdrawn.<sup>66</sup> The mining commissioner thereafter publishes the application in the gazette and notifies the owner or occupier of the land through registered post and invites them to make any

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<sup>55</sup> Section 90.

<sup>56</sup> N36 above.

<sup>57</sup> Section 92

<sup>58</sup> Section 135(1)

<sup>59</sup> Section 135(2)

<sup>60</sup> Section 137

<sup>61</sup> Section 137(3)

<sup>62</sup> *Ibid.*

<sup>63</sup> Section 137(5).

<sup>64</sup> *Ibid.*

<sup>65</sup> Section 137(5)

<sup>66</sup> Section 137(7)

objections they may have.<sup>67</sup> If any objections made they are dealt with either by the Commissioner or the administrative court as directed by Section 139 and the application together with the objections and determination will be forwarded to the Board following determination of the objections, if any.<sup>68</sup>

The Board will not approve of any application unless it is satisfied that the applicant is able to meet any financial demands that may become due during the tenure of the lease, that the operations are to be on a substantial scale and that no ground open to prospecting save as provided in Section 34 is included in the area to which such approval would relate.<sup>69</sup> The Board may require a guarantee to be furnished if the landowner requires it.<sup>70</sup> The Board may approve of the application in whole or in part with terms and conditions; their decision is final with no appeal.<sup>71</sup> The applicant may withdraw his application following receipt of the result of his application and if application was granted in part he must submit an amended plan from the land surveyor within a defined period failure which the application shall be deemed as withdrawn.<sup>72</sup> The applicant will not be able to make a new application for a lease on the same area for twelve months if he fails on the initial attempt.<sup>73</sup> The reason for this twelve months period could be to allow other interested applicants a chance to apply for the lease and for the person who would have failed to have a chance to prepare for another application. The lease holder cannot transfer the lease without approval from the Board.<sup>74</sup>

It really seems a tedious process but one can assume that it is structured this way due to the nature of the right being granted, that is, the mining lease. The holder of this right shall have the right to mine and this exploitation of the nation's resources should be done in accordance with the law and the government jealously guards these resources.

If the applicant is successful he can mine for any ore or minerals in his initial application.<sup>75</sup> The lease does not confer any right to mine any coal or mineral oil or natural gas.<sup>76</sup>

#### 2.5.4 Special mining lease

Application for a special mining lease is done by a holder of one or more contiguous registered mining locations and the holder intends to establish or develop a mine thereof.<sup>77</sup> The holder must intend to invest in the said mining activities wholly or

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<sup>67</sup> Section 138.

<sup>68</sup> Section 141.

<sup>69</sup> Section 142(3).

<sup>70</sup> Section 142(4).

<sup>71</sup> Section 142 (5)-(6).

<sup>72</sup> Section 144.

<sup>73</sup> Section 148.

<sup>74</sup> Section 149.

<sup>75</sup> Section 150(1)a.

<sup>76</sup> Section 150(1)b.

<sup>77</sup> Section 159(1).

mainly in foreign currency and investment must exceed USD100 million and the output must be meant for export.<sup>78</sup> There is an exception to the mentioned conditions when the applicant does not meet the said requirements and this is at the discretion of the Mining affairs Board. In applying its discretion the Board shall consider the nature and size of the mineral deposits, estimated life and economic viability of the proposed mine, the extent of the investment to be made, proposed method of extraction and any other relevant circumstances.<sup>79</sup> The applicant must further furnish the Commissioner with particulars of the minerals being mined or to be mined in the area, details of any registered mining location he is part of, details of each owner or occupier on the said land and a development and plan for the mine. The applicant shall be expected to provide any information that may assist in the application or information which relates to his ability to perform his obligations under the special mining lease and as required by the Commissioner or the Board.<sup>80</sup>

The application process is similar to that used in the application for a mining lease save for that the Board shall not have the authority to approve the application but shall make recommendations to the Minister. The Board is required, in the making of recommendations, to further consider whether it is in the country's interests will be realised through the mining activities; whether the area has a group of minerals which may be profitably mined and sold. This is possibly in an effort to ascertain whether the mining activities sought can positively contribute to the economic growth of the country.<sup>81</sup> The Board further considers whether the applicant's proposal deals with the procurement of local goods and services and employment of Zimbabwean citizens; that applicant possesses or can obtain the technical or financial resources required for the project and that it would be in the best interests of the country for the special mining lease to be granted.<sup>82</sup> The considerations taken by the Board show a concern on the positive direct and indirect effects of the lease when granted to the applicant.

The Board shall not recommend a refusal of the grant of a special mining lease but will request the applicant to amend his application or make representations to remove the ground on which the proposed recommendation is proposed.<sup>83</sup> The Board recommends the granting of an application to the Minister and submits a report to that extent.<sup>84</sup> The Minister in turn will consider the documents sent to him and submit them to the President with his recommendations thereon for the President's approval.<sup>85</sup> The President, after considering the application may authorise the Minister to issue the mining lease in accordance with the Board

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<sup>78</sup> *Ibid.*

<sup>79</sup> Section 159(2).

<sup>80</sup> Section 159(3).

<sup>81</sup> Section 160.

<sup>82</sup> *Ibid.*

<sup>83</sup> Section 160(3).

<sup>84</sup> Section 160(4)

<sup>85</sup> Section 162.

recommendations or on any terms and conditions that the President may deem fit.<sup>86</sup> A special mining lease shall not be granted for a period exceeding twenty-five years but provision for renewal for periods not exceeding ten years shall be made with the Minister renewing the lease subject to the approval of the President.<sup>87</sup>

A period of twenty five years followed by options for renewal of ten years exhibit the nature of mining activities, which is, the period it takes from the establishing of a mine to being able to extract the resource. The lifecycle of a mine is certainly not a short one and if a person can hold a lease for so long government should be able to guarantee that the holder of a lease is protected from eviction. Mining is capital intensive and the activities that are involved from the beginning to the point when there is closure need time. The periods provided for are long and should be sufficient for the extraction activities with the extensions being there to assist the holder if there are still activities that are still ongoing. One must note that there can be circumstances which might be affecting the holder from conducting mining activities at certain stages and such a long duration of a lease can assist in this regard. However, the existence of such extended periods might not be enough protection from eviction of a holder due to certain requirements which shall be discussed in this paper.

#### 2.5.5 Special grant

The Secretary may issue a special grant to carry out prospecting operations or mining operations or any other operations for mining purposes on application.<sup>88</sup> The holder of a special grant to carry out mining operations shall have the right to treat the area in which the grant is granted as if it were a mining location provided the activities do not conflict with the terms and conditions of the special grant.<sup>89</sup> The holder of the special grant to carry out prospecting operations shall have the exclusive right to carry out prospecting within the area including the right to drill and excavate the surface and underground and also have the same surface rights that the holder of a prospecting licence enjoys.<sup>90</sup>

#### 2.5.6 Special grant for coal, mineral oils and natural gases

The rights to mine coal, mineral oils or natural gases or nuclear energy source can only be acquired under special grant.<sup>91</sup> These are special type of economic deposits which provide energy and hence the needs for them to only fall under a special grant. The government is seeking to protect these resources due to their value which stems from the energy they provide and are therefore treated differently. The applicant in this instance makes an application to the Board and is expected to provide full information on his financial status, particulars of any guarantees

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<sup>86</sup> Section 163.

<sup>87</sup> Section 164(4).

<sup>88</sup> Section 291(1).

<sup>89</sup> Section 294(1).

<sup>90</sup> Section 294(2)

<sup>91</sup> Section 298

required for the performance of his obligations under the special grant; state whether the application is for coal, mineral oils or natural gases; a sketch plan of the area to be mined; if applicant is a company to provide names and nationalities of directors and any other information required by the Board and any other information required by the Board.<sup>92</sup>

The Board considers every application made to it and reports to the Minister with its recommendations on whether the application should be granted or declined.<sup>93</sup> The Board shall consider whether the applicant is a fit and proper person to be granted the licence; whether the financial status of the applicant is such that he will be able to comply with the terms and conditions of the special grant and whether it will be in the best interests of the nation for the special grant to be issued.<sup>94</sup> In making a recommendation for the special grant to be issued the Board shall submit a report with recommendations of conditions to be met for the special grant to be issued. The Minister submits a report and recommendations made to him by the Board to the President who may refuse the application or grant it with terms and conditions.<sup>95</sup> If the President declines the application the applicant will only be able to make a new application after three months have lapsed.<sup>96</sup> The rights granted under a special grant are personal and cannot be ceded or assigned unless approval has been granted by the President.<sup>97</sup> This is likely to relate to the importance of the resources herein and the need to have a person with the capacity to exploit the resources to the benefit of the state. This group of resources is important to the government and they will need to know who seeks to exploit them before they are just ceded to any individual.

## 2.6 Conclusion

Zimbabwe's extractives industry has so much promise with an ability to resuscitate an ailing economy. The variety of the minerals found in the country and the revenue that can be attained is clear for all to see as minerals which include diamonds, platinum and gold can bring so much into the government coffers. The country remains underexplored and this means that there is room for growth in the industry with investment being a key driver which can unlock the potential. However, such potential can only be realised if there is transparency and a legal framework which allows for investment into the sector. The awarding of licences is clearly governed by the Act which provides for different licences which depend on the activities an individual seeks to be engaged in which also depends on a person's capacity to carry out operations. In that regard, the Act plays a major role in governing the industry with numerous players with different roles to play from the President, the Board and the commissioners. There are indeed numerous provisions dealing

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<sup>92</sup> Section 299

<sup>93</sup> Section 300(1)

<sup>94</sup> Section 300(2)

<sup>95</sup> Section 301(1)

<sup>96</sup> Section 301(2)

<sup>97</sup> Section 302

with other substantive issues which have not been discussed in this Chapter but will be found in the next Chapter due to their relevance to the issues found therein.

The grant of a licence should allow a person to carry on activities which are relevant to the licence without influence. They are further granted for a specific period with the Ministry expecting that the holder shall carry on the activities under which the licence was given. Failure to abide with the conditions under which a licence is granted have the negative effect of affecting the contract between the parties.



## CHAPTER 3 – THE USE IT OR LOSE IT POLICY

### 3.1 Introduction

The “use it or lose it policy” requires title holders to commit to developing the mineral resource under their mining location resource or risk losing their mining lease.<sup>98</sup> It is enforced in a bid to avoid inactive or idle leases. It is not just found in the extractive industries but also in the employment sector where it is termed the “use it or lose it vacation policy” and employees are told that if you do not use your vacation or personal leave time by a predetermined time you will lose the accrued time and will not be paid for the unused time-off.<sup>99</sup> In order to implement the policy a country must have the pertinent provisions in its legislation which allows for the enforcement thereof.

### 3.2 Trends in other jurisdictions

The policy is enforced in a bid to ensure that holders of mineral leases work on their mines and/or wells and that the said mines and/or wells are not idle. In the extractive industries sector the policy is very common in the oil and gas industries. The American government, for example, at one point tabled the “Responsible Federal Oil and Gas Act” popularly known as the “Use it or lose it bill” in a bid to ensure that oil and gas wells are drilled so as to increase domestic available supplies.<sup>100</sup> America’s concern came about after a report in 2017 stated that nearly 26 million acres of federal land were under leases to oil and gas developers and less than half of that land was not producing any oil and gas.<sup>101</sup> A report on the Centre for American progress stated that some of these huge companies were sitting on undeveloped land as they are only acquiring the leases so that they can boost their balance sheets as the subsurface reserves are carried to their balance sheets as assets which will improve their financial status, boost their attractiveness to shareholders and investors and further increase their creditworthiness at the expense of government revenue.<sup>102</sup>

Canada on the other hand also makes use of the policy in a manner in which it requires a company to undertake a minimum level of work each year.<sup>103</sup> If the company fails to reach that level of work then it will lose its mineral right.<sup>104</sup> In keeping up with the enforcement of the policy the government has a clear and defined process by which a company moves a

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<sup>98</sup> Coal Energy Council - Review of petroleum licencing regulations Terms of reference <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Retention%20Review%20Terms%20of%20Reference%20-%20SCO%20approved.pdf> Last accessed 13/11/19.

<sup>99</sup> What Are Use-It-or-Lose-It Employee Vacation Policies? <https://www.thebalancecareers.com/use-it-or-lose-it-employee-vacation-policies-2064027> - Last accessed 01/10/19.

<sup>100</sup> Oil and Gas Journal - House Democrats, Republicans trade charges as 'use it or lose it' bill heads for floor <https://www.ogj.com/general-interest/economics-markets/article/17269325/house-democrats-republicans-trade-charges-as-use-it-or-lose-it-bill-heads-for-floor> - Last accessed 29/09/19.

<sup>101</sup> Oil and Gas Companies Gain by Stockpiling America’s Federal Land; <https://www.americanprogress.org/issues/green/reports/2018/08/29/455226/oil-gas-companies-gain-stockpiling-americas-federal-land/> - Last accessed 01/10/19.

<sup>102</sup> *Ibid.*

<sup>103</sup> Government of Canada, Exploration and mining in Canada : An investor’s brief, February 2016, page 16 [https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/poli-poli/pdf/Investment\\_Brief\\_e.pdf](https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/mineralsmetals/pdf/mms-smm/poli-poli/pdf/Investment_Brief_e.pdf) Last accessed 13/11/19.

<sup>104</sup> *Ibid.*

project from discovery to production.<sup>105</sup> In Australia on the other hand, Fortescue Metals Group (FMG) an iron ore miner called for the use of the policy over Western Australia's gas reserves which was said to be welcomed by the oil and gas industry.<sup>106</sup> Australia's reason for the implementation of the policy in 2009 following an announcement by their Minister for Resources and Energy arose due to the perceived "warehousing" of resources done by companies and their belief that companies would focus on developing resources first in other jurisdictions before developing resources in Australia due to the country's low sovereign risk.<sup>107</sup>

The Equatorial Guinea economy depends on oil production which accounts for 78% of their GDP and their government also warned oil and gas producers to either kick-start their drilling or to move over at the beginning of 2019 to allow those who can use the wells profitably to increase production in a very important sector of their economy.<sup>108</sup> The Minister of Mineral Resources in South Africa in 2018 was also echoing sentiments on the policy issuing a warning to companies with mines which were under care and maintenance as it impacted on the country's production numbers and employment as well.<sup>109</sup> He further raised a concern that placing mines under care and maintenance had the effect of sterilising economic deposits and also encouraged illegal mining activities.<sup>110</sup>

### 3.3 The Zimbabwe situation

The discussion of the introduction in Zimbabwe is no surprise considering the resources found in the country and a need to fully maximise the resource potential to stimulate economic growth. The previous Chapter briefly discussed the potential of the mining industry and with government looking at mining export revenues of USD12 Billion by 2023 the introduction of the policy seems the perfect way to boost such revenues.<sup>111</sup>

The Zimbabwean government in 2013 sought to cease land owned by Zimbabwe Platinum Mines (Private) Limited (Zimplats) under a mineral lease which was not being worked.<sup>112</sup> The government through a Government Gazette Extraordinary dated 1<sup>st</sup> March 2013 sought to acquire 27,948 hectares of land or 50% of the mining claims held by Zimplats for the "public

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<sup>105</sup> *Ibid.*

<sup>106</sup> Fortescue Metals Group calls for 'use it or lose it' policies on WA gas reserves <https://www.abc.net.au/news/2014-05-29/fortescue-calls-for-use-it-or-lose-it-policies-on-gas-reserves/5487982> Last accessed 28/09/19.

<sup>107</sup> Petroleum permits - 'use it or lose it' <https://www.lexology.com/library/detail.aspx?g=612df557-c157-4dea-b2e0-7aebdf3cf78d> – Last accessed 28/09/19.

<sup>108</sup> Use it or lose it, Equatorial Guinea tells drillers <https://www.petroleum-economist.com/articles/politics-economics/africa/2018/use-it-or-lose-it-equatorial-guinea-tells-drillers> - Last accessed 29/09/19.

<sup>109</sup> Mantashe considers invoking 'use it or lose it' principle for mines under care and maintenance [https://www.miningweekly.com/article/mantashe-considers-invoking-use-it-or-lose-it-principle-for-mines-under-care-and-maintenance-2018-05-23/rep\\_id:3650](https://www.miningweekly.com/article/mantashe-considers-invoking-use-it-or-lose-it-principle-for-mines-under-care-and-maintenance-2018-05-23/rep_id:3650) - Last accessed 29/09/19.

<sup>110</sup> *Ibid.*

<sup>111</sup> Zimbabwe considers 'use it or lose it' approach to mining rights <https://www.businesslive.co.za/bd/world/africa/2019-04-10-zimbabwe-considers-use-it-or-lose-it-approach-to-mining-rights/> - Last accessed 01/10/19.

<sup>112</sup> Mining review Africa – Zimplats to appeal landgrab <https://miningreview.com/top-stories/zimplats-to-appeal-land-grab/> - Last accessed 13/11/19.

benefit” to enable other players to participate in the industry.<sup>113</sup> This resulted in a legal battle in which Zimplats took the government to the Administrative Court and the proceedings dragged on for five years as negotiations continued between the parties until Zimplats agreed to release 23 903 hectares to the government while it remained a total of 24,632 hectares of land from two pieces of land measuring 6,605 hectares and 18,027 hectares respectively.<sup>114</sup> The leases now held by Zimplats are valid for the life of the mine of the company and they released 23 903 hectares to government.<sup>115</sup>

Some companies are said to be holding mining rights which they are not working for speculative reasons.<sup>116</sup> In a bid to protect their interests in the mining locations, they pay for any fees which are due as and when they fall due to ensure that they comply with that requirement and do not default but however do not carry on any works. Metallon Gold is said to hold idle mines at Shamva Mine and Jumbo Mine.<sup>117</sup> This is not to say that there are no other companies holding mines for speculative reasons, the extent will only be discovered when the government implements the policy. The government has sought to bring more transparency in the mining industry with a view to increase revenue into the economy through the mining industry by introducing the Transitional Stabilisation Programme.<sup>118</sup>

#### 3.4. Zimbabwean legislative provisions

The Mines and Minerals Act is crucial in the discussion of the use it or lose it policy as it is the piece of legislation providing for the administration of the industry. Part XXII provides for “expropriation of mining locations not being worked or developed and is very instructive in this regard.

The Act allows for a private individual to report to the mining commissioner of any mining location which is not being worked at all or is not being adequately worked or developed; such a report is lodged with a deposit of USD400.00.<sup>119</sup> The Commissioner upon receipt of the report shall request a government mining engineer to provide a report on the matter.<sup>120</sup> However, such request to an engineer is not done merely because a report has been made to the Commissioner, the Commissioner can request such a report if he/she has reason to

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<sup>113</sup> *Ibid.*

<sup>114</sup> Zimplats; Resolution of mining lease area and mining tenure issues  
<https://www.zimplats.com/data/2018/06/Confirmation-of-Release-ZIM-Resolution-of-Mining-Lease-Area-and-Mining-Tenure-Issues.pdf> Last accessed 13/11/19.

<sup>115</sup> *Ibid.*

<sup>116</sup> Zimplats : Use it or lose it mining policy key for economic revival  
<https://www.marketscreener.com/ZIMPLATS-HOLDINGS-LTD-6699756/news/Zimplats-Use-it-or-lose-it-mining-policy-key-for-economic-revival-28700624/> - Last Accessed 04/10/19.

<sup>117</sup> *Ibid.*

<sup>118</sup> Transitional Stabilisation Programme, Reform Agenda, October 2018 – December 2020  
<http://www.zimcodd.org/sites/default/files/research/Citizen%20Perspective%20Transitional%20Stabilisation%20Programme.pdf> Last accessed 13/11/19.

<sup>119</sup> Section 320(1).

<sup>120</sup> Section 320(2).

believe that a certain mining location is not being worked at all or is not being adequately developed or worked.<sup>121</sup>

Upon receipt of the report the Commissioner refers the matter to the Board which shall investigate into the history of the mining location and activities that have been conducted in order to determine whether the mining location is being adequately worked or developed.<sup>122</sup> The Board may, after the said investigations call upon a holder to show cause why the mining location should not be expropriated.<sup>123</sup> Thereafter the Board may recommend to the President expropriation of the mining location unless it is satisfied that failure to develop or work or to adequately work or develop the location is due to circumstances beyond the control of the holder which he has sought to remedy.<sup>124</sup> The holder is also expected to show that he seeks to work on the location within six months on a scale satisfactory to the Board; that the location is essential to other mining activities being done by the holder and that he will carry out activities on the location.<sup>125</sup> The holder is further expected to show that the location forms part of a series of not more than ten blocks contiguous to a main block being worked and is essential to the working of the main block.<sup>126</sup>

In making a recommendation of expropriation to the President the Board submits a report with grounds justifying its recommendation and the President may request the Board to make further investigations or that the holder makes representations to him.<sup>127</sup> The President thereafter makes a determination which determination shall be published in a Gazette and a copy shall also be given to the holder.<sup>128</sup> The Commissioner thereafter transfers the expropriated location to the Minister upon receipt of a copy of the order, makes the necessary entries into the records and informs the Board of such entry.<sup>129</sup> No compensation is due to the holder whose location has been expropriated unless the location has been sold by the Board.<sup>130</sup> The Minister may, if the Board elects to sell the location, which sale would be to a purchaser showing ability to finance and conduct mining operations on the location, it will pay the purchase price to the holder less any expenses it would have incurred.<sup>131</sup> The Minister can also transfer the expropriated location to any person without any consideration on recommendation by the Board.<sup>132</sup>

If the location is not sold or transferred within twelve months of the date at which it was transferred to the Minister the Board shall cancel the lease or the Commissioner shall declare the location forfeited.<sup>133</sup> If the Board is of the opinion that no economic deposit of

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<sup>121</sup> Section 20(3).

<sup>122</sup> Section 321.

<sup>123</sup> Section 322.

<sup>124</sup> Section 323.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> Section 324(1)-(2).

<sup>128</sup> Section 324(3)-(4).

<sup>129</sup> Section 325(1).

<sup>130</sup> Section 326.

<sup>131</sup> Section 329.

<sup>132</sup> Section 328.

<sup>133</sup> Section 330.

any mineral has been found or is likely to be found the location may be cancelled or forfeited after the expiration of a shorter period as may be determined by the Board.<sup>134</sup> Following the conclusion of the above processes the applicant in terms of Section 320 will be refunded his deposit unless it is seen that his application was frivolous or vexatious in which case such fee paid shall be forfeited.<sup>135</sup>

The exercise of such powers to expropriate follows an administrative process which has to be followed before a decision can be made. It therefore follows that an aggrieved party enjoys recourse to the justice system of the country. The administrative court enjoys jurisdiction in dealing with matters arising from the application of this Act as such actions are administrative in nature.

### 3.5. The import of the above provisions

Part XXIII of the Act applies to the “use it or lose it” policy and the Act is specific on the reasons on which a mining location can be expropriated by the government and it provides a Part which applies specifically to such expropriation. The Commissioner, the Board and the President have a huge role to play in expropriation and the expectation on mining rights holders is that they should be developing their locations; failure to adequately develop or failure to work leads to expropriation. “Not being worked” is clear as it denotes to a mining location where no works are being done. “Not being adequately worked” on the other hand is not clear as to the level of work expected as it is not defined in the Act. One has to assume that this may denote to little progress being done on the mining location but ultimately such an evaluation is done by the Government mining engineer who makes a report on his findings on the site. The Board’s investigation thereafter has an effect on the eventual consequence as it prepares a report for the President to make a decision following representations by the mining rights holder.

The expropriation that follows following a conclusion that the mining location was not being adequately worked or was not being worked is possible due to the fact that the rights to the minerals are vested in the President and any rights granted to any individual is done on the basis that the said individual is granted limited rights through a licence, lease or special grant as according to the Act.<sup>136</sup> In other jurisdictions the implementation can be different but the purpose and the reason behind the implementation remains the same.

### 3.6. Conclusion

It is clear that the “use it or lose it” policy can play a part in any country’s extractives industry as it seeks to expropriate mines and wells which are not being adequately developed or are not being developed at all. The extractives industry is a source of economic growth to any country and has the ability to inject a considerable push to the GDP of the specific country through the revenues brought in. The failure by companies to work their claims is detrimental to the economy of a country as it results in promoting illegal miners

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<sup>134</sup> *Ibid.*

<sup>135</sup> Section 322.

<sup>136</sup> Section 2 – 3.

who deprive the economy off much needed revenue whilst some of these deposits also become sterile in the process.

It is therefore on this basis that the government of Zimbabwe is seeking to enforce the policy and the basis on which they can enforce it is the legal provisions stated above. The existence of so much mineral potential cannot be laid to waste and considering the economic turmoil the country is going through it is of such great importance to enforce such a policy to inject the much needed revenue but the enforcement itself must be legal and not arbitrary. Careful considerations need to be made thereof in the implementation and it should not be hurried in a way that it will harm the prospects of growing the national economy. The implications resulting from the enforcement of the policy will be discussed in the preceding chapter.

## CHAPTER 4 – IMPLICATIONS OF ENFORCING THE “USE IT OR LOSE IT” POLICY

### 4.1 Introduction

A holder of a licence under the Mines and Minerals Act enjoys rights which are protected by the law and should not be deprived arbitrarily.<sup>137</sup> These rights which are to be protected have a base in the law of property and the Constitution of Zimbabwe describes property as “*property of any description and any right or interest in property*”.<sup>138</sup> Such protection guaranteed under the Constitution cannot be overemphasised and the State is expected to protect the rights enjoyed by a holder under the Mines and Minerals Act as it is the very institution which grants a person access and a right to the minerals found under the soil. The enforcement of the “use it or lose it policy” has an effect on the property rights held by the individual who “loses” his mining rights and therefore it is important to understand the concept of property under the law and its nature thereof. The process prescribed for the loss or the possible loss of a right under the Act has been discussed and due process needs to be followed in proceedings that can be instituted when there has been a report of a mining location which is not being developed or adequately developed.

The government of Zimbabwe is looking to increase production in the mining sector and the enforcement of the use it or lose it policy is seen as a key driver in improving the ailing economy. Idle claims are therefore being discouraged with the hope that if they are expropriated from the current holders and given to a person who is willing to exploit the resources the country will benefit. One must always be cognisant of the fact that mineral resources are finite and can be sterilised if they are not exploited and left underground. It is therefore from this angle that the enforcement of the policy can provide the much needed revenue and further mean that resources do not become sterile whilst a company is holding a mineral claim for speculative purposes.

### 4.2 The law of property

The term “property” is not easily defined as shown by the Constitution of Zimbabwe but the definition provided by it seems to give us an idea of what property is.<sup>139</sup> Ensminger J. is quoted as defining property rights as “*the exclusive right of possessing something*” or “*rules governing the use of resources*”.<sup>140</sup> Rugadya MR goes to describe property rights as “*a defensible claim to a particular place or thing*”.<sup>141</sup> Sieberberg and Schoeman’s Law of Property goes to a great deal of trouble in seeking to define the term property and states

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<sup>137</sup> Chapter [21:05].

<sup>138</sup> Constitution of Zimbabwe Amendment (No. 20) Act, 2013, Section 71(1).

<sup>139</sup> *Ibid.*

<sup>140</sup> Zimbabwe Human Rights NGO Forum; Land Reform and Property Rights in Zimbabwe; Page 7; [https://reliefweb.int/sites/reliefweb.int/files/resources/F83EDE2320A923844925779F001CDC97-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/F83EDE2320A923844925779F001CDC97-Full_Report.pdf) Last accessed on 24-11-19.

<sup>141</sup> Margaret A. Rugadya; Natural Resource Rights and Biodiversity Protection: Guidelines for Policy and Strategies to strengthen Local Governance Systems [http://mokoro.co.uk/wp-content/uploads/natural\\_resource\\_rights\\_and\\_biodiversity\\_protection.pdf](http://mokoro.co.uk/wp-content/uploads/natural_resource_rights_and_biodiversity_protection.pdf) Page 2 Last Accessed 25-11-19.

that the definition derived depends on the context in which the word is used.<sup>142</sup> Firstly, it may signify the right of ownership to a legal object; it may also refer to the legal object to which this right relates (which legal object is tangible or perceptible, derived from the description of things) and thirdly the term may also mean the variety of legal relationships qualifying for protection under the law.<sup>143</sup> The common denominator in the above meanings is the existence of rights and duties among individuals and individuals and the State which rights are found in private law, public law and fundamental rights.<sup>144</sup> The maxim "*cuius est solum, eius est usque ad coelom et da inferos*" found in the common law meant that the owner of the land owned everything from the centre of the earth to the heavens.<sup>145</sup> Such ownership, in relation to minerals and the land, was to be later divided into two, that is, property rights – land – and a second subject of the property rights – minerals and petroleum.<sup>146</sup>

The purpose of the law of property is to protect the enjoyment of rights by a person and the terms dominium and ownership are quite crucial.<sup>147</sup> The terms carry a similar legal meaning but dominium "*...expresses more vividly than the latter (ownership) that the essence of ownership is the legal ability to control the use of a thing, and that owners' entitlements to determine the use to which their things may be put will almost invariably affect the satisfaction of the needs and the wants of others with a resultant chain reaction ultimately determining the way of life and character of an entire society or nation.*"<sup>148</sup> The diminishing of dominium renounces factions of entitlements.<sup>149</sup>

Property in private law has two meanings, that is, the right in the legal object and the object to which that right relates.<sup>150</sup> Such right is held by a legal subject and it relates to a legal object and can be used against other persons.<sup>151</sup> In this essence of rights, property is seen as either ownership or real rights.<sup>152</sup> The right a person holds to a thing is a real right.<sup>153</sup> In this sense of rights property includes "*...statutory claims (not based on contracts) against the State to certain resources, performance, licenses, permits and quotas issued by the State and other rights based on legislation*".<sup>154</sup> This therefore means that a person can hold a statutory right against the State to resources through licences and permits.<sup>155</sup> A right or interest in

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<sup>142</sup> PJ Badenhorst, Juanita M Pienaar, Hanri Mostert; Sieberberg and Schoeman's The Law of Property; Fifth Edition, at 1.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Idem* page 2.

<sup>145</sup> Summers W.L. , "Property in Oil and Gas." The Yale Journal, Vol.29, No. 2 (Dec., 1919), pp. 174-187 Page 174 JSTOR [www.jstor.org/stable/786106](http://www.jstor.org/stable/786106) Last accessed 19-10-19.

<sup>146</sup> Galloway, K. (2012). Landowners' vs Miners' Property Interests: The Unsustainability of Property as Dominion. Alternative Law Journal, 37(2), 77–81. <https://doi.org/10.1177/1037969X1203700202> Last Accessed 28-11-19

<sup>147</sup> *Idem* page 3.

<sup>148</sup> N142 Page 3.

<sup>149</sup> *Ibid.*

<sup>150</sup> N142 Page 9.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> N142 Page 10.

<sup>155</sup> N142 Page 24.



property does not therefore only refer to ownership but also property rights which are not ownership, an interest in a thing therefore denotes to property. In the case of minerals, they are not things, for purposes of the law of property, before they are separated from the land.<sup>156</sup> A holder of a license enjoys a right to mine on a piece of land which belongs to another and that right is a limited real right as it is “less than ownership”.<sup>157</sup> Such real rights enjoyed by a person in terms of the Mines and Minerals Act exist in the form of statutory real rights, which are, prospecting rights, mining rights (granted through a lease) and special grants.<sup>158</sup>

Given the definition of “property” one must further be cognisant of the term “tenure” which is a term closely associated with the former. Tenure is a bundle of rights and obligations; the right which a licence holder enjoys to hold, manage and exploit natural resources and further not to use his rights in a way which harms others.<sup>159</sup> This effectively means that the person who holds a right to exploit the minerals enjoys tenure over the minerals and such a right is the property right held by the licence holder; the terms are synonymous to each other. The property rights enjoyed by a holder in terms of the Mines and Minerals Act are therefore enforced by the State with the President being the guardian of the resources in the country.

#### 4.2.1 Licences in property law

Ownership of base minerals in Zimbabwe is, as previously stated, is vested in the President.<sup>160</sup> The President therefore represents the people of Zimbabwe and is given ownership over the minerals in the country. Control by government in this area is crucial as minerals are exhaustible and the stock under the ground is fixed although the full extent is unknown.<sup>161</sup> Section 2 of the Act distinguishes ownership of the land and that of the subsoil with ownership of the minerals underneath the soil attributed to the state and the land itself being privately owned.<sup>162</sup> State ownership means that the State enjoys the right to mine for the minerals and so the State owns the mining rights which it in turn grants to individuals in the form of a “limited right” following the fulfilment of certain requirements.<sup>163</sup> Due to such nature of the right so granted, the minerals can be viewed as *res publicae* as they are vested in the President who represents the people of Zimbabwe. The President holds “title” in the base minerals for the benefit of the public and such ownership is public ownership and not private ownership. The authority granted to the President allows him to have control over the resources as far as the protection and regulation of such resources is concerned.

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<sup>156</sup> N142 Pages 21-22.

<sup>157</sup> N142 Page 47.

<sup>158</sup> Mines and Minerals Act Chapter [21:05].

<sup>159</sup> N5 above.

<sup>160</sup> Mines and Minerals Act; Section 2.

<sup>161</sup> Ndulo, Muna “The ownership of base minerals in Zambia.” *The Comparative and International Law Journal of Southern Africa*, Vol 13, No. 1 (MARCH 1980), pp 78-85. at 79 JSTOR [www.jstor.org/stable/23245407](http://www.jstor.org/stable/23245407) . Last accessed 19-10-19.

<sup>162</sup> *Ibid.*

<sup>163</sup> *Idem* at 79-80.

The rights granted to an individual through the Mines and Minerals Act have the effect of a licence being granted to the person who has applied for the licence, lease or for a grant although they come in different forms.<sup>164</sup> It should be noted that there is no such thing as an irrevocable licence.<sup>165</sup> The word licence comes from the Latin *licentia* which stems from the verb *licet, licere* -which means “it is permitted or allowed” and it can further denote to a grant of authorisation, a permit.<sup>166</sup> The licensor grants consent to the licensee and through this consent a relationship is created between the parties in which there is a legal privilege granted to the latter.<sup>167</sup> The right granted to the licensor lasts as long as the license as without the licensee will be trespassing.<sup>168</sup>

A license in the extractive industries can therefore be defined as a personal privilege, temporary in nature and permitting the licensee to carry upon mining activities on the land. Before the licence is granted, ownership remains vested in the President which license can be revoked by the President after being granted as shown by provisions in the previous Chapter following the satisfaction of certain conditions.<sup>169</sup> The holder of a licence enjoys protection against third parties for the duration of the license and the holder further has a defence to any claims arising from his acts on the subject-matter land.<sup>170</sup> A holder has the right to go and prospect or mine and he has a right to the minerals which have been extracted and not those left under the ground if the license is revoked which ownership will still remain vested with the President and no individual can acquire property in such minerals.<sup>171</sup> The provisions in the Act allowing for expropriation show that there can be no arbitrary use of power by the President or the State in extinguishing the privilege so granted through the licence and such privilege granted is protected by the Act.<sup>172</sup>

#### 4.3 Implications of enforcing the “policy”

The enforcement of the use it or lose it policy does come with legal implications as it results in the loss of a licence to prospect, explore and mine minerals which is held pursuant to the grant of such authority from the Act. This loss of a licence is occasioned on the holder despite the position that there is a licence to hold the mining location for purposes of which it has been granted for a defined period which would not have lapsed. Further, there is likely to be no default in terms of any fees due to the State and therefore the need to look at the legal implications of such an action.

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<sup>164</sup> N158 above.

<sup>165</sup> Clark, Charles E. “Licenses in Real Property Law.” *Columbia Law Review*, vol. 21, no. 8, 1921, pp. 757–782. JSTOR, [www.jstor.org/stable/1112452](http://www.jstor.org/stable/1112452). Page 757 Last accessed 13-11-2019.

<sup>166</sup> *Idem* Page 758.

<sup>167</sup> *Idem* Page 759.

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> *Idem* Page 763

<sup>171</sup> *Idem* Page 768

<sup>172</sup> Mine and Minerals Act, Part XXII

#### 4.3.1 Premature termination of a limited real right

Licences are granted to a person for a defined period which can be renewed. It is not necessary to go back to the differences in the duration of the licences granted under the Act as this has been discussed in Chapter 2. A special grant, for example, is valid for a period of 25 years; this therefore means that if a mining location is expropriated as per Part XXIII before the lapse of the said period the limited real right granted to the holder would have terminated prematurely. The reasons for the termination arising from the policy are clear but the result is a violation of the right of the holder through the termination. The premature termination of the licence is provided for by the Act as it stems from an administrative action which action must be reasonable and rational as the interests sought to be protected are the nation's. This termination leads to the next important part of this discussion, that is, expropriation.

#### 4.3.2 Expropriation

The obvious result from the use of the policy is the loss of the property right held by the holder. Expropriation is to dispossess of ownership, to deprive of property.<sup>173</sup> To dispossess in this context is to deprive, take away, leave without, divest.<sup>174</sup> The effect of expropriation is that the expropriator acquires the rights which were held by the previous party whose right has been taken and it differs from restriction in which the rights of an owner are restricted in a way.<sup>175</sup> Expropriation is regarded as deprivation but not all deprivations are expropriations.<sup>176</sup> Acquisition by the expropriator is a must in expropriation.<sup>177</sup> When the loss of property is followed by an appropriation by the State compensation becomes payable irrespective of whether proper expropriation procedures have been followed.<sup>178</sup> The Act speaks of compensation once expropriation has occurred and provides two instances, that is, firstly there can be no compensation and in the second instance the purchase price paid for the expropriated location is paid to the holder less any costs incurred in the sale of the rights or location.<sup>179</sup>

We must however be cognisant of the concept of constitutional property law is found in the Zimbabwean Constitution, 2013, as Section 71 provides for the recognition, protection and for the regulation of property rights.<sup>180</sup> The State enjoys

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<sup>173</sup> Van der Schyff, Elmarie. "Constructive Appropriation — The Key to Constructive Expropriation? Guidelines from Canada." *The Comparative and International Law Journal of Southern Africa*, vol. 40, no. 2, 2007, pp. 306–321. JSTOR, [www.jstor.org/stable/23252667](http://www.jstor.org/stable/23252667) Last accessed 13-11-2019.

<sup>174</sup> *Idem* at 307.

<sup>175</sup> *Idem* at 308.

<sup>176</sup> *Idem* at 309.

<sup>177</sup> *Ibid.*

<sup>178</sup> *Idem* at 315.

<sup>179</sup> Mine and Minerals Act, Section 328-329.

<sup>180</sup> Midlands State University Law Review 2017; Compulsory acquisition and deprivation of property rights under Zimbabwe's 2013 Constitution : Dissecting the interpretive problems; Page 82;

<https://zimlil.org/zw/journals/Midlands%20State%20University%20Law%20Review%202017%20Vol%20III%20ARTICLE%20V.pdf> Last Accessed 24-11-19.

“*dominium eminens*” over the property in the country and can compulsorily acquire private property for the benefit of the public which acquisition will require the payment of compensation.<sup>181</sup> It is further, under the common law, vested with police powers to control the use of private property in the public interest which powers under which no compensation will be due.<sup>182</sup>

The result of expropriation is therefore apparent as the Act states that the holder loses the right entitling the holder to the mining location and its forfeited to the State.

#### 4.3.3 Compensation

The Act is not clear on the instances that demand compensation and those that do not; but the aspect of compensation is indeed found in the Act. Section 325(3) uses peremptory language, that is, “...no compensation **shall** be payable...” to the holder of a mining location and Section 328 further states that a location can, subject to the Board’s recommendation, be transferred to any person without any consideration paid. The applicability of Section 325(3) is subject to Section 329 which does provide for compensation following the sale of the mining location to another.

The exercise of such right to expropriate by the President seems to be discretionary as he makes an order for expropriation if he is “of the opinion” that the location is not being worked at all or is not being adequately worked.<sup>183</sup> However, it seems that any issue arising from the Act in which compensation will be due, the Administrative Court will have jurisdiction over the determination of such compensation if the parties fail to agree.<sup>184</sup> The Act does not clearly articulate on how and when compensation is available to an affected party and such a state of affairs is not ideal as, in normal circumstances, compensation follows expropriation. The Act does not clearly explain how the issue of expropriation is dealt with leaving a gap in which private individuals are not certain of what happens with regards compensation.

#### 4.3.4 Zimbabwe’s checkered past with expropriation

Zimbabwe’s history with expropriation does not provide a good read following the violent Fast Track Land Reform of the early 2000’s that sent the economy into a decline. The Land Acquisition Amendment Act which provided for safeguards to property owners was ignored by the government and violent seizures of farm followed leading to assaults and murders by the war-veterans.<sup>185</sup> The Supreme Court condemned the unlawful invasions and such condemnation led to an attack on the

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<sup>181</sup> *Idem* at 24.

<sup>182</sup> *Ibid.*

<sup>183</sup> Section 324(3).

<sup>184</sup> Section 393.

<sup>185</sup> Naldi, Gino J. “Mike Campbell (Pvt) Ltd Et Al v The Republic of Zimbabwe: Zimbabwe’s Land Reform Programme Held in Breach of the SADC Treaty.” *Journal of African Law*, vol. 53, no. 2, 2009, pp. 305–320. *JSTOR*, [www.jstor.org/stable/40646848](http://www.jstor.org/stable/40646848). Page 308; Last accessed 26-11-19.

judiciary that saw the removal of certain judges.<sup>186</sup> The land reform was to be supported by a compliant Supreme Court bench and the confiscation of property would only be allowed by an amendment to the Constitution in 2005 which applied in retrospect to the year 2000. The matter eventually found its way to a SADC tribunal which made a ruling against the government which in turn stated that it would not comply with the said ruling.<sup>187</sup> Politics certainly played a huge part on the events of the land reform programme and some if not most of the farms seized went to the big wigs in the ruling party.

Such instances give a rise to concern over the enforcement of the use it or lose it policy. The policy, if implemented in accordance with the law is a good tool which can spur economic growth but if used for the wrong reasons and in an arbitrary manner can only lead to a decline of the mining sector. The Marange diamonds discovered in 2006 is a good example of how the government have mismanaged resources for their own gain as soldiers took control of the mining location and smuggled diamonds.<sup>188</sup> The mining company granted a licence over the area is jointly owned by the Chinese and Zimbabwean army raising questions on the involvement of top government officials in the operations.

One must further note that the President is a political figure who is elected into office by a majority of votes. He therefore remains loyal to his political party and the policies coming from the said party. One must remember that it was a ZANU-PF government which embarked on a land reform policy and it is still the same party which is at the helm of government. Such a position is not encouraging, that is not to say that the incumbent will arbitrarily enforce the policy but the discussion of it with the current government is frightening. Such a position is not good for an ailing economy in need of a boost. The need for Foreign Direct Investment (FDI) is apparent and any policies which portray a negative picture on how property rights are managed by the government can only further isolate the country.

#### 4.3.5 Legal Recourse

Affected parties can seek the intervention of the justice system with the Administrative Court able to intervene and provide assistance to the affected parties. The history of the Courts in relation to matters with political overtone has not been encouraging. The Zimplats situation alluded to earlier took long to resolve but a compromise was eventually reached.

#### 4.4 Conclusion

The enforcement of the use it or lose it policy remains a crucial topic with the state in which the Zimbabwean economy is in. The motivation for implementing it is clear as the government wants to add to the revenue flow into the country. This however does not mean

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<sup>186</sup> *Idem* Page 309.

<sup>187</sup> *Idem* Page 319.

<sup>188</sup> Farineau, Katie. "Red Diamonds: Chinese Involvement in Zimbabwe." *Harvard International Review*, vol. 35, no. 1, 2013, pp. 28–30. *JSTOR*, [www.jstor.org/stable/42763545](http://www.jstor.org/stable/42763545). Last accessed 26-11-19.

that should be the only reason for implementing it as it is not ideal to have mineral reserves being held for years with no production being done by the holder. These resources are sterilised whilst they are underground and are not being exploited. In that regard one can view the enforcement of the policy as a necessity.

The implications of the implementation of the policy have been discussed in this chapter and the government will need to ensure that there is no ulterior motive in the implementation of the policy and that there is transparency, equal and fair treatment of all parties. One should further bear in mind that it is not something that can be done overnight as due process has to be followed. The need for foreign direct investment (FDI) is also a crucial part of this policy as the economy seeks to find investors in the industry. The irony becomes that the country will be seeking to invite foreign investors at the possible expense of another foreign investor who might be affected by the policy. The extractives industry is capital intensive and not so many local companies are able to sustain the financial needs of operating a mine. The government's mantra, open for business, can only be effective if the government itself does not arbitrarily use the policy for its benefit as it has a track record of self-enrichment. The issue of compensation remains a concern with the Act not providing a clear way of dealing with the issue of compensation and resolve only found in the administrative court.

## CHAPTER 5 - CONCLUSION

### 5.1 Introduction

This chapter concludes the research which has been undertaken by the writer on the implementation of the “use it or lose it” policy which has been mooted by the Zimbabwean government. Research questions were raised in the first chapter of this dissertation and the writer has sought to answer them in the preceding chapters.

### 5.2 Recap of the research problem

In this study, a discussion was undertaken on the Zimbabwean mining sector which has, over the years become a key driver of the economy. The importance of the mining industry in the country cannot be ignored as a huge chunk of the revenue coming into the country has been contributed by the extractives industry such that one would conclude that the country is extractives-based. In the process government has sought to implement a policy which is found in the Mines and Minerals Act, that is, the “use it or lose it” policy. This decision came up due to that several companies have been holding mining claims they have not been exploring for speculative purposes. Some of these companies are said to have been holding these locations since 1960. The enforcement of the policy is believed to be a move which can increase the revenue in a country which is faced with a shortage of foreign currency reserves and fuel and further grappling with a low supply of electricity. Such a development therefore prompted this research to look at the legal implications of the implementation of the policy.

In Chapter 2 the writer looked at the extent of mining revenue in the country and how key the industry is to the Zimbabwean economy. A discussion as to the types of minerals available in the country and ownership of mineral resources in the country followed. Ownership of mineral resources are vested in the President and the country uses a licensing system in which different types of licences exist in the country. Persons, natural or artificial, exploit the resources through leases and grants which run for a specific period and the administration thereof of this sector is done by the President with the help of the Minister, a Mining affairs Board and Mining Commissioners. The industry exists in a country with an indigenisation policy which promotes local ownership of entities involved in the exploitation of strategic resources in the country. Transparent administration of the Act was seen as a key part of ensuring that the country benefits from the wealth which belongs to every citizen of the country.

Chapter 3 then looked at the notion of the “use it or lose it” policy, what it entails and the drivers behind it. The writer examined the Mines and Minerals Act and found that the provisions which further the implementation of the policy are present in the Act therefore providing a foundation for the implementation of the policy. The policy seeks to promote the exploitation of the resources by a person who has a right to the mining location and that holders do not hold onto locations that they are not exploiting. The existence of the pertinent provisions in the country’s legislation means that the enforcement of the policy is possible and this is another key part of the administration of the industry. A threat therefore exists that failure to “use” the mining right by a holder leads to the “loss” of the right. The

writer found that the policy is not only new to Zimbabwe but other countries do have it and the drivers behind its implementation are not so different from the reasons in which the Zimbabwean government seeks to implement it.

From this Chapter it then became important to consider the implications of implementing the policy in the next chapter. The writer noted that mineral rights amount to a limited real right and that the rights have application in property law which is protected by the Constitution of Zimbabwe. Ownership being a full bundle of rights the premature cancellation of a right held by an individual amounts to expropriation of the property by government thereby violating the person's property rights. Compensation naturally follows any expropriation but this is not the case in the circumstance and disputes are likely to arise in this regard.

### 5.3. Recommendations

In implementing the "use it or lose it" policy the government of Zimbabwe should consider the following :-

- The drafting of clear legislation or regulations dealing with compensation after expropriation of mining claims. This means that they should be clear provisions showing the circumstances when compensation is due and when it is not.
- Ensure transparency in the enforcement of the policy and promoting fair and equal treatment of all parties that are in the mining industry. This means that focus should be on all the players in the mining industry in ascertaining that all claims are being worked or being adequately developed.
- That the discretion granted to the President in deciding on whether a mining location should be expropriated is restricted. The history the government in expropriation is far from being perfect and therefore investor confidence in the government may be affected thereby limiting FDI in the country.
- The judiciary should be allowed to apply the law without fear or undue influence; this means that the rule of law should be promoted. This means that any affected party should be able to approach the courts for redress without fear that the presiding officers will be biased.



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