



**ENHANCING THE CIVIL REMEDIES REGIME FOR EFFECTIVE COMPLIANCE
ENFORCEMENT IN THE MINING SECTOR IN ZIMBABWE.**

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DECLARATION

I, **RUTH ROUND SAMUKANGE**, do hereby state and declare that this LMLNR Dissertation is my own original work. The sources that were used in this dissertation were properly acknowledged. The Dissertation is being submitted in partial fulfilment of the requirements of the degree of Master of Laws in Land Law and Natural Resources Law in the Faculty of Law, Postgraduate Department at the University of Zimbabwe. This Dissertation has never been submitted before for any degree or examination at the University of Zimbabwe or any other academic institution whatsoever.

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ABSTRACT.

Zimbabwe's mining sector is currently dominated by negative themes of smuggling of precious minerals, illicit financial flows, corruption, violence, illegal mining and environmental degradation among others. All this has resulted in the failure of government to collect meaningful revenue from the mining sector. Most of the people in Zimbabwe are leaving in poverty with no access to essential services like health delivery, education, shelter, water and electricity. This should not be so in a country that is so rich in mineral resources. The Constitution of Zimbabwe explicitly states that natural resources in Zimbabwe must be exploited for the benefit of all the people of Zimbabwe. The mining sector has been chaotic and has not managed to project expected revenue. This all is despite the fact that there are various laws that have been put in place to regulate the mining sector.

Regulation of mining activities will only be effective if effective compliance enforcement mechanisms are put in place. For laws to be effective there has to be put in place adequate penalties for non-compliance. A close analysis of the mining laws in Zimbabwe reflects that to a greater extent non-compliance with mining laws is penalised through the criminal justice system. Penalties in the criminal justice system are usually criminal fines and imprisonment. It has been argued that the criminal sanctions are very lenient and thus have no deterrent effect hence the prevalence of non-compliance in the mining sector as the cost of non-compliance is much cheaper than that of compliance. This is what has led to all the illegal activities in the mining sector and the failure to collect expected revenue that can meaningfully help in meeting the need of the nation at large.

It is beyond doubt that the situation on the ground shows that despite the criminal justice system for compliance enforcement being in place, compliance in the mining sector has been lagging behind. It is this observation that inspired the writer to have a keen interest to research on whether enhancing the civil remedies regime will help in effectively enforcing compliance in the mining sector. The civil remedies regime in Zimbabwe has a very narrow scope and is not even provided for in some of the mining law legislation. In comparison with other jurisdictions like South Africa, it can be observed that Zimbabwe still has room for expansion of its civil remedies' regime. The research therefore seeks to investigate if there is still room for enhancing the civil remedies regime in Zimbabwe, how enhancement of the civil remedies' regime can be done and whether this enhancement will improve compliance enforcement.

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CHAPTER 1: BACKGROUND AND INTRODUCTION

1.1. BACKGROUND AND INTRODUCTION.

The importance of the mining sector to the economy of Zimbabwe should never be underestimated. Mining significantly contributes to the economy of Zimbabwe.¹ In the Zimbabwe Vision 2030, the government's objective is, "Towards a prosperous and empowered upper middle-income society by 2030." As the country is very rich in abundant mineral resources, government has also expressed an ambition to quadruple the mining sector's total value to 12 billion dollars by 2023.²

Zimbabwe is endowed with rich mineral deposits which include minerals like gold, diamond, platinum, copper, silver, iron ore, granite, chrome, asbestos, tungsten, lithium and cobalt just to mention a few. However, the socio-economic problem that arises is that despite all this mineral wealth that all the people of Zimbabwe must benefit from,³ the generality of the population of Zimbabwe has nothing to show for it and most people of Zimbabwe are wallowing in poverty.⁴ This is notwithstanding all the mining laws that have been put in place to regulate mining activities, that is, the licencing system, exploration, sale and export of mineral resources.

From a social perspective, it can be seen that the mining sector is dominated by negative themes of smuggling and leakages of minerals, illicit financial flows⁵, rampant illegal mining, environmental degradation as well as abuse of human rights of the local communities by mining entities. There has been rampant smuggling of minerals into countries like South Africa and Dubai which tend to pay more for minerals than what is paid in Zimbabwe. Most offenders, even if they are

¹J.P. Casey, 'Mining in Zimbabwe, time to use it or lose it.' 4 March 2020.

See <https://www.mine.nridigital.com> visited on 5 April 2022. In this article it was mentioned that mineral exports are responsible for sixty percent of the country's earnings as of October 2018 and the mining sector contributes sixteen percent of the National Gross Product.

²National Development Strategy 1 (2021-2025) (NDS-1) which seeks to improve earnings from beneficiated minerals.

³See Section 3 (2) (j) of the Constitution of Zimbabwe, 2013 which advocates for equitable sharing of natural resources as well as Section 13 (4) of the Constitution of Zimbabwe, 2013 which gives the State an obligation to ensure that local communities benefit from the resources in their areas.

⁴ Around seventy-four percent of the population of Zimbabwe lives on less than US\$5.50 a day and the average wage per month is RTGS4253. Half of Zimbabwe's 13.5 million people live below the poverty line and about 3.5 million children are chronically hungry.

See <https://borgenproject.org>. visited on 6 April 2022. The CPI for the month ending February 2022 stood at 4,483.06 RTGS compared to 4,189.97 RTGS in January 2022.

⁵M. Chifamba, 'Zimbabwe: Losing millions from Illicit Gold Mining Trade.' *The Africa Report*. 7 December 2020. In this article it was said that, the Minister of Finance confirmed losing US1.8 billion worth of mineral revenue and the Minister of Home Affairs mentioned that Zimbabwe loses US100 million worth of gold every month through international smuggling rings and the country's porous borders.

arrested, at the end of the day, they will still go scot free because of the lengthy criminal justice system that is cumbersome and in most cases is subject to corruption and abuse of office by public officials responsible for the administration of the criminal justice system.⁶

Another major social problem is that of environmental degradation. The constitution of Zimbabwe, 2013 (hereinafter referred to as The Constitution) and Environmental Management Act Chapter 20:27 provide a robust legal framework for environmental protection, however, the problem is on implementation and enforcement of the environmental protection laws. This has led to severe degradation of the environment with mining companies polluting water bodies, leaving pits and gullies open which makes the land not to be arable and also endanger human beings and animals and also the prevalence of noise pollution and air pollution that has caused prevalence of skin diseases and lung infections in various mining communities.⁷ Environmental degradation is also worsened by the illegal miners who operate illegally and this makes it very difficult to identify and supervise their activities as well as hold them accountable for the environmental damage they would have caused.

The country's objectives of increasing mineral revenue are only achievable if there is effective regulation of the mining sector that promotes compliance in the mining sector. Without effective compliance mechanisms, the country's progress and potential will remain hamstrung. It is from this background that it became necessary to carry out a study on how the civil remedies regime can be enhanced so as to ensure effective compliance enforcement so that the mining sector reaches its full potential.

The philosophy underpinning the civil remedies regime in Zimbabwean mining laws, is to ensure compliance enforcement in the mining sector. If a law is put in place, and there is no sanction that follows non-compliance with that specific law, then that law ceases to be law. Remedies are therefore put in place to ensure or to force actors to comply with the law as non-compliance will attract a sanction.

⁶ZimFieldGuide.com, 'Rushwaya Gold Smuggling Case Exposes a Microcosm of the Corruption that Exists in Zimbabwe Today.'

See <https://www.zimfieldguide.com> visited on 8 April 2022. This article reports on the Henrietta Rushwaya case of 2020 wherein she was arrested at the R.G. Mugabe International Airport and she was charged with attempting to smuggle six kilograms of gold. To this day Henrietta Rushwaya's has not been convicted of this offence.

⁷C. Chimhete, 'Zimbabwe: Villagers sue Diamond Firms for Pollution,' *The Standard*. 9 September 2012. In this article it was reported that, Anjin Mine has been fined several times by the Environmental Management Agency for polluting Odzi River. Many people around the area rely on Odzi River for their livelihood and domestic use of water. This directly infringes the local communities right to safe and clean water.

N. Chingono (Mutoko), '1000 Cattle Die from Mining Pollution,' *The Guardian*. 7 January 2022. In article it was reported that in Mutoko Chinese companies are mining granite and discharging waste into water bodies thus causing water pollution.

In Zimbabwe there a number of laws that have been enacted to regulate mining activities and these among others include the Mines and Minerals Act (MMA),⁸ the Gold Trade Act,⁹ the Precious Stones Trade Act,¹⁰ the Minerals Marketing Cooperation of Zimbabwe Act,¹¹ and the Environmental Management Act (EMA).¹² These are the primary mining laws in Zimbabwe that regulate mining activities and provide sanctions for non-compliance.

However, an analysis of the above-mentioned mining laws indicates that these pieces of legislation predominantly lean on the side of criminal penalties for non-compliance as opposed to the civil remedies approach. With most of the provisions of the mining laws, non-compliance will be criminalised by placing criminal charges against the offender and the criminal justice system will be followed through which involves investigations, preparation of the docket, arrest, prosecution, conviction and finally sentence. The purpose of the criminal justice system is to deter would-be offenders, prevent crimes and retribute offenders.

Despite provision of the criminal sanctions, it can be noted that, non-compliance has been rife and has been on the increase in the mining sector and this is the reason why the mining sector has failed to reach its full potential and effectively deliver for the betterment of the economy of Zimbabwe. It appears compliance enforcement has not been very effective because of its over-reliance on the criminal justice system. This is so because the criminal justice system is slow and lengthy since it involves quite a number of players, that is, the police, the prosecution and the judiciary and so this results in cases taking too long to be concluded.

Other criminal sanctions like imprisonment because of their nature are simply not applicable to mining corporate entities. If a mining company breaches the law criminal charges are pressed against it and it is ultimately taken to court and gets convicted, it will obviously be fined as imprisonment will not be possible. In some cases, the criminal penalty provisions, especially the option of payment of a fine can be so lenient to such an extent that the value of the damage caused will be far much more than the fine imposed. This is also aggravated by the high inflation economic set-up Zimbabwe finds itself in. If the time within which the fine is to be paid is extended, one might find that by the time the full amount for fine is paid up, the fine will be meaningless as the value would have been eroded by inflation. At the end of the day, miners will choose to breach the law and pay a paltry fine rather than comply as the cost of compliance will be much higher than that of breaching the law.

⁸[Chapter 21:05]

⁹[Chapter 21:03]

¹⁰[Chapter 21:06]

¹¹[Chapter 21:04]

¹²[Chapter 20:27].

It is from this background, that the need to carry out a study was necessitated, so as to further research and determine whether enhancement of the civil remedies regime will bridge the gap and bring some meaningful change to the mining sector and ensure effective compliance enforcement which is much needed for the success of the sector.

1.2. STATEMENT OF THE PROBLEM.

On the legal perspective, the legal problem that is there, is that Zimbabwe currently does not have a comprehensive and exhaustive civil remedies regime that can be relied on to ensure compliance enforcement. This research has thus been motivated by the fact that when it comes to compliance enforcement, the law largely leans in favour of the criminal justice system. However, the criminal justice system has its own fair share of shortcomings such that there is need for an enhancement of the civil remedies so that they both work hand in hand to ensure compliance enforcement.

The mining laws in Zimbabwe give a very limited scope of civil remedies that are available for compliance enforcement. The world over, the trend has been moving towards advancement of civil remedies regime so as to strengthen compliance enforcement as it is more applicable to corporate entities than the criminal justice system. There is therefore need for this legal gap in Zimbabwean mining laws to be addressed by finding other ways of enhancing and strengthening the civil remedies regime by studying other jurisdictions and see how they have structured their civil remedies in their mining laws as well as institutions established thereof for Zimbabwe to learn best lessons and practices so as to expand the scope of the civil remedies' regime. The main thrust of this research therefore is to explore other non-judicial civil remedies and analyse how effective they have been in other jurisdictions they have been put in practice and see how this can also be implemented in Zimbabwe's mining laws so as to enhance the civil remedies regime.

1.3. RESEARCH QUESTIONS.

- 1) What are civil remedies in mineral resource regimes?
- 2) What is the nature of civil remedies currently provided for under Zimbabwean mining laws?
- 3) How effective are the civil remedies currently provided for under Zimbabwean mining laws effective?

- 4) What else can be done to enhance the civil remedies regime for effective compliance enforcement in the mining sector in Zimbabwe?

1.4. METHODOLOGY.

The research is essentially desktop. Desktop study refers to the study of primary and secondary literature, documentary reviews and analysis in order to understand a phenomenon, explore its scope and possible ways of addressing associated problems. Desk top research is a research that involves the use of data that is already in existence and the data is summarised to increase effectiveness of research.¹³ Desk research comes in the form of physical books, industry reports, web searches and various online platforms.

The research methods to be adopted are:

- i. descriptive critical analysis and,
- ii. comparative analysis.

Descriptive method will assist in the outlining and understanding of the civil remedies framework already provided for in the Zimbabwe mining laws. Critical analysis will be the interrogation of the law to determine how effective it is with a view of providing a solution to the gaps in order to improve the civil remedies regime so that it becomes effective in enforcing compliance.

Comparative analysis will be looking at another jurisdiction, South Africa, to see what other non-judicial civil remedies they have implemented in their mining laws that have improved compliance enforcement in its jurisdiction. It is hoped that Zimbabwe can learn from the experiences of South Africa in enhancing its own civil remedies regime for effective compliance enforcement in the mining sector.

1.5 LITERATURE REVIEW.

According to Erin Smith and Peter Rosenblum, mining has failed to deliver much benefits, especially in the poorer developing countries that are rich in natural resources because of failure to effectively monitor and enforce existing obligations among other reasons.¹⁴ Once actors in the mining fraternity are not thoroughly supervised and monitored, the mining sector becomes chaotic and there will not be delivery of much benefits as only a few elites will benefit from the profits made out of mineral resources exploitation to the exclusion of the majority. this is why in Africa in general, countries that are very rich in mineral resources are the

¹³A. Bhat, 'Secondary Research- Definition, Methods and Examples.'

See <https://www.questionpro.com>. visited on 6 April 2022. Visited on 6 April 2022.

¹⁴E. Smith and P. Rosenblum, 'Enforcing the Rules', *Revenue Watch Institute*, 2011.

poorest and some are war torn leading to the theory of the resources curse. This is so because of weak regulation and monitoring. If there is no effective monitoring, it follows that adherence will be minimal.

Smith and Rosenblum go on to say that for monitoring compliance to be possible, it is also needful that there be access to mining contracts so that its' possible to analyse the full range of obligations as this will help to determine whether there is compliance or not. This points to the fact that for compliance enforcement to be possible, the first step is access to mining contracts for a determination of compliance or non-compliance to be made. Without access to relevant information then compliance enforcement is difficult which is the major problem in developing countries like Zimbabwe. Big mining contracts are concluded behind closed doors and are never put in the public domain. When there is non-compliance by the miners, no-one will ever know and hence they will never be brought to book as scanty information will be available to the public and the civic society.

According to Ian Ayres and John Braithwaite who developed the theory of responsive regulation, there is no way that any regulatory agency will be able to detect and enforce every contravention of the law that happens everywhere that it administers. In terms of this theory, it is argued that it is therefore vital that regulatory agencies are able to encourage actors to comply with the law voluntarily.¹⁵ Measure ought to be put in place that make mining actors want to comply with the mining laws voluntarily. The responsive regulation theory is premised on the premises that the actions of individual actors are influenced by different factors and circumstances and hence for regulation to be successful there has to be a very wide range of enforcement options that are applicable.¹⁶

This theory therefore advances the point that, one cannot heavily rely on one penalties regime as is the case in Zimbabwe where there is so much reliance on the criminal justice system for compliance enforcement and a very little scope for civil remedies hence the need for enhancement of the civil remedies regime in for effective compliance enforcement in the mining sector. If that regime is manipulated then the whole sector is exposed and this leads to chaotic administration, there should therefore be made available a range of other enforcement mechanisms.

According to Darryl Brown, enforcement mechanisms ought to be provided for in a way that they reduce the psychology of resentment. This argument thus advances the use of the civil remedies' regime in enforcing compliance as they are more flexible and, in some instances leave room for negotiations between the parties to reach settlements. The use of non-judicial remedies that foster compliance must

¹⁵ I. Ayres and J. Braithwaite, 'Responsive Regulation: Transcending the Deregulation Debate,' 1992.

¹⁶Ayres and Braithwaite, n 16 above.

be encouraged as confrontational, harsh and inflexible criminal sanctions may lead to critical and uncooperative behaviour.¹⁷ This is highly undesirable.

According to M.Welsh, civil penalty provisions can be divided into two groups, there is the first group which are those provisions that may in some instances be enforced by a criminal prosecution in addition to a civil remedy being applied. A good example is where a miner is taken to court for non-compliance with the law, for example polluting a water body, the judicial officer might order the non-compliant miner to pay a fine and in addition order the miner to remedy the wrong. The order to remedy is a civil remedy. The other group contains those civil through the criminal regime: the penalties that are not criminal in nature.¹⁸ A good example is where the Minister responsible for the mining sector cancels the mining rights of a miner due to non-compliance with the law.

Mining offences are not only carried out by individuals but also by corporations, however, criminal law has a variety of actions that are contrary and not applicable to corporates for example the punishment of imprisonment. The possibility of its enforcement is very difficult since corporates are not physical people who can physically serve the custodial sentences. It is from this background that the principle of '*ultimum remedium*' was developed which simply means criminal law must be the last resort if other sanctions are inadequate.¹⁹

This principle actually encourages the use of civil remedies more also when dealing with corporate offenders as the civil penalties are much more applicable and enforceable than the criminal sanctions like imprisonment thus raising the need for widening of the scope of civil remedies in Zimbabwe's mining laws. This principle says that as much as is possible, civil sanctions must be applied and the criminal sanctions must be resorted to as a last resort after all civil sanctions have been exhausted.

1.6. CHAPTER SYNOPSIS.

Chapter 1: INTRODUCTION AND BACKGROUND.

Chapter one will consist of the introduction and background which outline the importance of the mining sector to the economy of Zimbabwe. This chapter will therefore demonstrate the need for there to be a solid compliance enforcement

¹⁷ D.K. Brown, 'Street Crime, Corporate Crime and the Contingency of Criminal Liability,' 2001149, *University of Pennsylvania Law Review* 1295, 1313-14.

¹⁸M. Welsh, 'Civil Penalties and Responsive Regulation: The Gap Between Theory and Practice,' *Melbourne Law School, University of Melbourne*.

¹⁹A. Fidaus, Suhaidi, Sunarmi and J. Leviza, 'Environmental Criminal Responsibility for Mining Corporation Through the UltimumRemedium Principle', *Faculty of Law, Universitas Sumatera Utara City Medan, Indonesia*.

mechanism in order for the mining sector to be efficient and yield success and benefits. It also briefly pinpoints the weaknesses of the criminal justice regime which the Zimbabwean mining laws currently lean in favour of. Chapter one will also go on to give the statement of the problem which highlights the legal problems in the subject area under research. It will also outline the research questions to be answered by the study as well as the research methodology that will be used.

Chapter 2: OUTLINE OF THE ZIMBABWEAN CIVIL REMEDIES REGIME.

This chapter will give a descriptive outline of the civil remedies regime as currently provided for in Zimbabwean mining laws. It will go in to give a comprehensive analysis of the same, establish its scope and extent. It will outline the legal framework and institutional framework that have been put in place to implement civil remedies in the mining sector. This chapter will go on to give an outline of each and every civil remedy that is provided by the law, give a brief description of the remedy as well as instances when it can be invoked. It will also pinpoint the legislative provisions for each civil remedy.

Chapter 3: CHALLENGES AND WEAKNESSES OF THE CIVIL REMEDIES REGIME IN ZIMBABWE.

The thrust of this chapter is to give a candid and robust critical analysis of the civil remedies regime as currently provided for in the mining laws of Zimbabwe. It will pinpoint the weaknesses and limitations of the legislative framework and institutional framework for the civil remedies' regime. It will also expose the challenges that are being faced by the relevant institutions in the implementation of civil sanctions and how this renders compliance enforcement weak and ineffective.

Chapter 4: COMPARATIVE ANALYSIS: CIVIL REMEDIES REGIME IN SOUTH AFRICA.

The essence of this chapter is to point out ways in which the civil remedies regime can be enhanced in Zimbabwe by way of comparing Zimbabwe with the South African jurisdiction that has established a civil remedies' regimes that is comprehensive to a larger extent. The South African legal framework and institutional framework for civil remedies' regime will be looked at as well as all the provisions that provide for the remedies. Other non-judicial civil remedies that can also be implemented in Zimbabwe to enhance its civil remedies' regime will be comprehensively outlined. It is hoped that Zimbabwe will learn some best lessons from other jurisdictions that will improve and enhance its civil remedies' regime.

Chapter 5: CONCLUSION AND RECOMMENDATIONS.

This chapter will summarise everything that was covered from chapter one to four, that is, the summary of findings and the summary of arguments. It will then

proceed to make recommendations and give a conclusion. Practical recommendations will be given that are hoped will be implemented by the relevant authorities that will enhance the civil remedies' regime in Zimbabwean mining laws in order to ensure compliance enforcement in the mining sector.

CHAPTER 2: THE CIVIL REMEDIES REGIME.

2.1. INTRODUCTION.

A civil penalty/remedy is a non-criminal remedy for a party's violation of laws and regulations.²⁰ Civil penalties usually come in the form of civil monetary fines, damages, compensation, restitution, declaratory orders and cancellation of agreements and licences.²¹ A civil penalty may be imposed by the government, a government agency or by a private party in the shoes of the government. Civil penalties are founded on the notion of preventing wrong doing and also punishment in the event of non-compliance.²² Compliance has been defined as the state of being in accordance with established guidelines and specifications. Legal compliance has been defined as provisions, processes and procedures within a specific set up that is meant to ensure adherence to government regulation and administration of laws.²³ The thrust of this chapter is to give an outline of the legislative and institutional framework for the civil remedies' regime in Zimbabwe as well as an outline of each and every civil remedy provided for in the mining laws of Zimbabwe.

2.2. LEGISLATIVE FRAMEWORK FOR CIVIL REMEDIES, COMPLIANCE AND ENFORCEMENT.

Mining operations in Zimbabwe are governed by various pieces of legislation and these include:

2.2.1. MINES AND MINERALS ACT [CHAPTER 21:05] (MMA).

This is the principle mining law act that governs the Ministry of Mines and Mining Development in terms of its' operations. It is relatively a very old piece of legislation that was enacted in 1961 and it is a law that was enacted to consolidate the law relating to mines and minerals. It controls mining operations in Zimbabwe, establishes the Mining Affairs Board and it also provides for the administration of the Act and definition of various rights and duties of persons involved in mining operations.²⁴ Part XXVI of the MMA is dedicated to offences and penalties. It is however important to note that this part of the Act the was enacted to ensure compliance with the Act leans heavily in favour of the criminal justice system as the penal provisions are criminal in nature and a little scope for civil remedies which shall be discussed here under. At this juncture it is also very important to highlight that there is a **Mines and Minerals Amendment Bill** that was tabled sometime in 2015 and to date has not yet been passed into law.

²⁰'Civil Penalties (Civil Fines)' Wex US Law, Cornell Law School, *Legal Information Institute*. See <https://www.law.cornell.edu> Visited on 20 April 2022.

²¹n 20 above.

²²'Criminal or Civil Penalty?' *Australian Law Reform Commission*, 17 August 2010.

²³A.S. Gillis and J. Biscobing, 'What is Compliance?' 13 October 2021.

See <https://www.techtarget.com> Visited on 20 April 2022.

²⁴Part 1 to X, n 8 above.

2.2.2. GOLD TRADE ACT [CHAPTER 21:03] (GTA)

The Gold Trade Act is also a relatively old piece of legislation as it was enacted in September 1940. It is an Act that was enacted to prohibit the possession of gold by people who have no authority to possess gold. It also administers the dealing in gold and also issuing of various licences and permits pertaining to the handling of gold.²⁵ In the same manner as the MMA, the Gold Trade Act relies heavily on the criminal justice system for compliance enforcement and has very little scope for civil remedies.

2.2.3. PRECIOUS STONES TRADE ACT [CHAPTER 21:06].

The Precious Stones Trade Act was enacted in 1978. It is an Act that was enacted to regulate the possession of precious stones and dealings in precious stones.²⁶ Its definition of precious stones is provided for in this act and it is given as rough or uncut diamonds other than those suitable only for industrial purposes or rough or uncut emeralds and any other substance which is declared by the Act to be a precious stone.²⁷ In terms of compliance enforcement, again the Precious Stones Trade Act strongly relies on the criminal justice system as compared to the civil remedies.

2.2.4. MINERALS MARKETING CORPORATION OF ZIMBABWE ACT [CHAPTER 21:04] (MMCZA).

The MMCZA was enacted in March 1983. It is an act that establishes the Minerals Marketing Corporation of Zimbabwe, its' functions, powers and duties. It also provides for the constitution, functions and powers of the Minerals Marketing Board.²⁸ The mandate of the Minerals Marketing Corporation of Zimbabwe Act is to provide for the control and regulation of the export, sale and stockpiling of minerals.²⁹ Like all the other mineral laws, the MMCZA relies heavily on the criminal justice system for compliance enforcement.

The EMA commenced in March 2003. It provides for sustainable protection and management of natural resources and the environment. It aims to prevent pollution of the environment as well as environmental degradation.³⁰ It establishes the Environmental Management Agency and the Environment Fund.³¹ In terms of compliance enforcement, EMA leans in favour of criminal sanctions, it however, gives little scope for civil remedies in the form of restoration orders.

²⁵Preamble, n 9 above.

²⁶Preamble, n 10 above.

²⁷Section 2 of, n 10 above.

²⁸Preamble, n 11 above.

²⁹n 11 above.

³⁰Preamble, n 12 above

³¹Section 9 and Section 48, n 12 above.

2.3. INSTITUTIONAL FRAMEWORK FOR CIVIL REMEDIES, COMPLIANCE AND ENFORCEMENT.

2.3.1. MINISTRY OF MINES AND MINING DEVELOPMENT (MMMD)

The MMMD is the department that is responsible for all mines and mining activities in Zimbabwe. It is the department that has the mandate to administer the MMA. The MMMD prepares, inspects and assesses the implementation of mining development policies which are meant to efficiently account for the country's mineral resources for the benefit of the people of Zimbabwe.³² The MMMD's mission is to promote sustainable prospecting, exploration, mining, processing, marketing and management of mineral resources.³³

The overall functions of the Ministry of Mines and Mineral Development, among others, are to:

- create mining development policies,
- assess and evaluate the carrying out of the mining policies,
- Maintain up to date information on all mines, exploration and mining titles in Zimbabwe,
- Develop an effective accounting system for the country's mineral resources,
- Execute and change and mining laws,
- Supervise and coordinate mining Parastatals and State Enterprises.³⁴

2.3.1.1. INSPECTORATE DEPARTMENT OF MINING ENGINEERING: COMPLIANCE ENFORCEMENT.

The civil penalties regime is executed by the Ministry of Mines and Mineral Development specifically, the department of Mining Engineering. The department of Mining Engineering is a department that is responsible for regulation and it headed by the Chief Government Mining Engineer who is also the Chief Inspector of Explosives and reports to the Principle Director.³⁵ The department has inspectors who go on the ground to monitor and inspect the work at the mining sites and ensure that all operations are in compliance with the provisions of the mining laws and impose penalties where there is non-compliance. The importance of the inspectorate department can never be over-emphasised as it the one that monitors and ensures compliance.

The functions of the mining engineering department, among others, include:

- Enforcement of all mining laws so as to ensure safety and health at all mining sites in Zimbabwe that is in line with the MMA and all subsidiary mining legislation,

³²Ministry of Mines and Mining Development. See <https://www.mines.gov.zw>. Visited on 22 April 2022.

³³Ministry of Mines and Mineral Development Mission Statement.

³⁴n 32 above. Visited on 22 April 2022.

³⁵n 32 above. Visited on 22 April 2022.

- Supervision of all mining activities through inspections of operations
- Investigation of mine accidents,
- Providing advisory services to the entire mining industry with regards to all mining operations and this includes small-scale mining operations as well.
- Conducting statutory examinations for mining blasting licences, mine managers' certificate of competency, mine surveyors' certificate of competency etc,
- Administering financial loans and plant hire schemes through Mining Industry Fund for the small-scale mining sector,
- Monitoring and auditing mines on environmental requirements,
- Monitoring and evaluation of mineral production and mine development
- Approve and inspect all Explosives Storage Facilities,
- Commission and Inspection of plant equipment.³⁶

2.3.1.2. INSPECTORATE DEPARTMENT OF METALLURGICAL ENGINEERING: COMPLIANCE ENFORCEMENT.

The department of Metallurgical Engineering also performs regulatory functions to ensure compliance with the mining laws and its functions, amongst others, are as follows:

- Inspection of custom milling plants and elution plants for certification and recommendations,
- Inspection of all mineral processing plants for general compliance with regulations including material balance and accounting,
- Inspection of special grants and siting of work plans,
- Export samples verification
- Visit chrome smelting refiners from time to time for on-the-ground fact finding and updating,
- Give technical advice to mineral processors especially small to medium groups,
- Granting of carbon movement permits,
- Verification of production returns (cyanidation, elution, custom milling log books).³⁷

2.3.2. ENVIRONMENTAL MANAGEMENT AGENCY (EMA).

The Environmental Management Agency is established in terms of the EMA which was enacted in 2002. Its' mission is to regulate, monitor and promote sustainable management of natural resources and protection of the environment with stakeholder participation. The Environmental Management Agency is a statutory body that is responsible for the protection of the environment and natural resources. It ensures prevention of air pollution and water pollution. The Agency is

³⁶Ministry of Mines and Mining Development n 32 above.

³⁷Ministry of Mines and Mining Development n 32 above.

responsible for the preparation and implementation of environmental management plans and environmental impact assessments.³⁸

2.3.2.1. ENVIRONMENTAL PROTECTION DEPARTMENT: COMPLIANCE MONITORING.

Within the Environmental Management Agency, there was established the department of Environmental Protection which is responsible for:

- Compliance monitoring and inspections,³⁹
- Enforcing environmental legislation,
- Making environmental quality standards,
- Issuing environmental licences and environmental impact assessments,
- Hazardous substances management,
- Ecosystem protection and laboratory services,⁴⁰

The department of Environmental Protection therefore also ensures compliance enforcement for the mining sector since mining activities greatly impact on the environment. This department thus plays a role in ensuring compliance with the Environmental Impact Assessment processes and hazardous and waste disposal management by mining entities as well as ensuring rehabilitation of the environment after mining activities have taken place.⁴¹

2.3.3. MINERALS MARKETING CORPORATION OF ZIMBABWE (MMCZ)

The MMCZ was established in 1983 through an Act of Parliament, that is, the Minerals Marketing Corporation of Zimbabwe Act Chapter 21:04⁴² and it began its operations in March 1983. It is wholly owned by the government of Zimbabwe. The operations of the MMCZ fall under the ambit of the MMMD. The Mineral Marketing Corporation of Zimbabwe provides for the control and regulation of the export, sale and stockpiling of minerals. The Mineral Marketing Corporation of Zimbabwe

³⁸Environmental Management Agency. See <https://www.ema.co.zw>. Visited on 24 April 2022.

³⁹Environmental Management Agency Annual Report, 2019, it was stated that the Environmental Protection department stepped up its' compliance monitoring enforcement functions and a total of 12 398 compliance inspections were carried out, 7 072 environmental monitoring licences were processed, 1 063 environmental audits were conducted with 1 326 environmental protection orders being served and 1 033 tickets being issued. A total of 846 prospecting and 368 EIA reports were received and reviewed.

⁴⁰Environmental Management Agency n 32 above.

⁴¹Chimhete n 7 above. This article is a very good example of compliance monitoring role that the Environmental Protection Department plays on mining activities. In this article, it was stated that in a letter dated 26 July 2012 that was signed by Anjin's senior official, admitted that they polluted the water bodies one or two times when they experienced a mechanical fault and water was not been pumped properly, resulting in the overflow of the water and that the company received criticism and was fined by the Environmental Management Agency.

⁴²Section 3, n 11 above.

mission is to maximise returns to all stakeholders through efficient marketing services and national mineral resource accounting.⁴³

The Minerals Marketing Corporation of Zimbabwe is the only agent that is legally permitted to market and sell all minerals that are produced in Zimbabwe except for silver and gold.⁴⁴ Gold buying and selling is done by Fidelity Printers and Refineries (Fidelity). The marketing team for Minerals Marketing Corporation of Zimbabwe searches for markets for producers and also negotiates, enters and administers the implementation of sales agreements in keeping with the provisions of the Minerals Marketing Corporation of Zimbabwe Act.⁴⁵ This is done in conjunction with the producer. In addition to this, Minerals Marketing Corporation of Zimbabwe is responsible for the physical movement of the product from the mining location to the point of sale and arranges warehousing facilities.⁴⁶

The functions of the Minerals Marketing Corporation of Zimbabwe include the following:

- To act as the sole marketing and selling agent for all minerals,
- To purchase and acquire any minerals for its' own account and to sell or dispose of such minerals,
- To encourage local beneficiation and utilisation of such minerals,
- To advise the Minister on all matters connected with the marketing of minerals.⁴⁷

2.3.3.1. MINERALS MARKETING CORPORATION OF ZIMBABWE INSPECTORATE DEPARTMENT: COMPLIANCE ENFORCEMENT AND MONITORING.

The Minerals Marketing Corporation of Zimbabwe's Inspectorate department was established in July 2010 and its' mandate is to ensure the effective accounting of national mineral resources through sound inspectorate and monitoring strategies that are in line with the Minerals Marketing Corporation of Zimbabwe's policies and control systems.⁴⁸ The Minerals Marketing Corporation of Zimbabwe thus endeavours to ensure mineral resources accounting through inspections and these inspections are conducted by inspectors in the Inspectorate department.

The appointment of inspectors is done in terms of Statutory Instrument 109 of 1983. In order for them to carry out inspections, inspectors are deployed to various mining houses where they will witness the production, weighing, packaging and

⁴³Minerals Marketing Corporation of Zimbabwe Mission Statement.

⁴⁴Section 42 (1) (a) and (b), n 11 above.

⁴⁵Minerals Marketing Corporation of Zimbabwe. See <https://www.mmcz.co.zw>. Visited on 22 April 2022

⁴⁶Minerals Marketing Corporation of Zimbabwe n 45 above.

⁴⁷Section 20, n 11 above.

⁴⁸Minerals Marketing Corporation of Zimbabwe. n 45 above.

sealing of minerals.⁴⁹ Every now and then inspectors, take samples for assaying in order to determine the value of the product.

The areas that inspectors focus on include the following:

- The systems and procedures that relate to the prevention of leakages,
- The maintenance of records that relate to production, storage, movement and sale of minerals,
- The systems and procedures that relate to prevention of corrupt practices,
- The prevention of collusion of officers in the system.⁵⁰

In order to strengthen compliance enforcement and monitoring, the inspectors are empowered to do the following:

- Enter the premises of any person who mines, owns or possesses any mineral,
- Examine and make any extracts from any copies of records relating to the production or sales of any minerals, in and outside Zimbabwe,
- Demand from any person explanation of any entries,
- Seize and remove any record that affords evidence of a contravention of the Minerals Marketing Corporation of Zimbabwe Act,
- Seize and remove any sample or specimen of any minerals which are subject to any investigation and shall be required to issue a receipt of anything seized.⁵¹

2.4. CIVIL REMEDIES PROVIDED FOR IN THE MINING LAWS IN ZIMBABWE.

As earlier on highlighted, the civil remedies regime as provided for in Zimbabwean mining laws has very limited scope. The penalties regime generally leans in favour of the criminal justice system which provides for criminal offences for non-compliance. This involves investigations, preparation of a docket, arrest, prosecution and sentence if found guilty. Penalties come in the form of imprisonment and terms of imprisonment are stipulated by the law as well as imposing fines at level that is stipulated by the laws as well.

The civil remedies scope is therefore greatly limited since non-compliance is largely criminalised. The civil remedies that are provided by the mining laws for non-compliance that are implemented by the MMMD and the Environmental Management Agency are:

- i. Cancellation/Revocation/ Forfeiture of mining rights and permits,
- ii. Non-renewal of mining rights and permits,
- iii. Imposing of quasi-civil fines by officials of the MMMD and Environmental Management Agency,

⁴⁹Minerals Marketing Corporation of Zimbabwe n 45 above.

⁵⁰Minerals and Marketing Corporation of Zimbabwe n 45 above.

⁵¹Minerals and Marketing Corporation of Zimbabwe n 45 above.

- iv. Rehabilitation Orders,
- v. Environment levy contributed to the Environment Fund

2.4.1. CANCELLATION/FORFEITURE AND NON-RENEWAL OF LICENCES.

Under Zimbabwean mining laws there are a number of provisions that provide for cancellation of mining licences/rights and permits as a civil penalty for non-compliance. These provisions include among others:

2.4.1.1. CANCELLATION OF REGISTERED PROSPECTOR'S LICENCE.

Registration of a prospector can be cancelled or suspended by the Secretary of the MMMD on the direction of the Minister if the prospector is convicted of an offence or has conducted himself in a manner which renders it necessary to cancel or suspend his registration.⁵²

2.4.1.2. CANCELLATION OF REGISTRATION CERTIFICATE.

The Mining Commissioner can at any time cancel a certificate of registration issued in respect of a block or site if satisfied that the provisions of the MMA relating to the method of pegging were not substantially complied with.⁵³ This happens usually when pegging is being done and the boundary overlap into another persons' block or site. This usually results in boundary disputes. After the adjudication of the boundary dispute, if it is found that there was an overlap or the method of pegging is wrong, then the registration certificate can be cancelled for non-compliance with the provisions of the law.

2.4.1.3. MINISTERIAL CANCELLATION OF MINING LEASE.

The Minister may direct to cancel the lease in cases where the leaseholder would have failed to comply with the obligations and requirements as outlined in the mining lease.⁵⁴ This ensures the state's control over mining activities. Failure to abide by the terms and conditions of the mining lease will result in the cancellation of the mining lease.

2.4.1.4. FORFEITURE OF MINING LEASE OR BLOCK.

Failure to obtain an inspection certificate will render the block or mining lease of which such failure has taken place to be forfeited.⁵⁵ This is a very effective civil remedy for compliance enforcement. It deters miners from non-compliance as they will know that once they fail to obtain inspection certificates, then their mining lease or block will be forfeited.

2.4.1.5. COURT ORDER FOR FORFEITURE OF PROSPECTOR'S LICENCE.

In the event of failure to protect open workings by prospectors, a court may order the forfeiture of the prospecting licence of the convicted person.⁵⁶ This is an

⁵²Section 17 (1) (2), n 8 above.

⁵³Section 50 (1) (b), n 8 above.

⁵⁴Section 157 (1) (3) (b), n 8 above.

⁵⁵Section 260, 263, n 8 above.

⁵⁶Section 370 as read with Section 392 (3), n 8 above.

effective way of punishing non-compliance as the offender will not be allowed to continue with any prospecting.

2.4.1.6. PRESIDENTIAL CANCELLATION OF LICENCES GRANTED IN TERMS OF THE GOLD TRADE ACT.

The President is entitled to cancel/revoke any licence permit given in terms of the Gold Trade Act if the holder of such permit is convicted of an offence or breaches any condition of the permit.⁵⁷

2.4.1.7. CANCELLATION OF LICENCE ISSUED IN TERMS OF THE PRECIOUS STONES TRADE ACT. On the breach of any condition of a licence to deal in precious stones or upon conviction of the holder of the licence, the Minister may direct the Secretary to cancel the licence.⁵⁸

2.4.1.8. CANCELLATION OF PERMIT TO DEAL WITH PRECIOUS STONES.

On the breach of a permit to acquire, possess or dispose of precious stones or conviction of the holder, the Secretary or any official of his ministry authorised by him may cancel the permit.⁵⁹

2.4.1.9. NON-RENEWAL OF LICENCES

In terms of MMA, miners are expected to renew their mining licences annually. There is need for the miners to comply with all the provisions of the law for them to get a renewal. Legal provisions on payment for renewal of licences, payment of taxes⁶⁰, compliance with safety and health provisions at the mining sites, preparation of accurate records as well as environmental protection have to be adhered to for one's mining licence to be renewed. Failure to comply with legislative provisions may result in one's mining licence being not renewed.⁶¹

⁵⁷Section 21-22, n 9 above.

⁵⁸Section 7 (3), n 10 above

⁵⁹Section 8 (2) (b), n 10 above.

⁶⁰'Government to only renew mining licences to remitting companies,' *Mining Zimbabwe*, 21 January 2020. In this article, the Minister of Local Government mentioned that the Ministry of Mines and Mineral Development had made an undertaking that it will ensure that only miners that pay royalties to local authorities will have their licences renewed. This will ensure that the funds from natural resources will cascade to local economic development.

See <https://www.miningzimbabwe.com>. Visited on 1 May 2022.

⁶¹C. Mupesa and P. Manomano, 'Zimbabwe: Non-Compliant Miners to Lose Licences,' *The Herald*, 17 February 2022. In February 2022 at a workshop at Zimbabwe Institute of Public Administration and Management in Darwendale, the Minister of Mines and Mining Development said that renewal of mining licences would be subject to observation of sustainable mining by actors in the mining sector which are environmentally friendly and lawful and he went on to say that every miner before they start mining must obtain an environmental impact assessment certificate from Environmental Management Agency. Miners at the consultative meeting were encouraged to ensure that once they start mining, they comply with the provisions of environmental laws of the country as the level of environmental degradation taking place in some places is simply unacceptable. Also, the Minister of the Ministry of Mines and Mineral Development revealed at a meeting with the Masvingo Provincial

The provision for the cancellation of mining rights/leases/and permits is very sound at law. This is a good civil remedy as it acts as a serious deterrent measure to miners as they will know that if they do not comply with the dictates of the law and the terms and conditions of their mining contracts then their mining contracts will be cancelled.⁶²This is a very simple yet very effective way of ensuring compliance as no miner would want to have their mining rights cancelled. This is a more efficient way of ensuring compliance enforcement as it has dire effects on non-compliant mining entities as it halts operations if they do not comply with the law. This will definitely force them to comply with the law so as not to lose their mining rights. It is more plausible than instituting criminal proceedings wherein they'll be fined upon conviction and in some cases the fine will be so little and in cases of mining companies' incarceration is not an option.

This civil penalty remedy is a very effective measure of enforcing compliance with mining laws. If the licences of those non-compliant miners are actually cancelled or not renewed this will send a loud and clear message to would-be offenders that if they breach the law, their mining rights would be cancelled or forfeited and hence it works as a deterrent measure. It is a very efficient way of ensuring enforcement compliance as it forces miners to comply with the law because they will be afraid of losing their mining rights and permits.

2.4.2. PROPOSED USE IT OR LOSE IT POLICY.

In terms of the proposed Mines and Minerals Amendment Bill, 2015 (MMAB), a use it or lose it approach is proposed wherein only those mines that are operating and producing minerals will be allowed to keep their mining rights and those who will not be operating and producing minerals, their licences will be cancelled and given to others who have the potential. This is because the government is aiming at

Taskforce that new regulations were to be enacted that regulate the registration and renewal of licences for only those who remit the taxes as required by the law.

⁶²The Provincial mining director cancelled the certificate of registration of Ronald Davison Mugangavari in respect of mining claim known as Clifton 15 on Clifton Farm, Mberengwa, in terms of Section 50 (2) of the MMA as it was alleged that his boundary encroached into another persons' mining claims. Also, the mining Commissioner cancelled the certificate of registration for Juve Zimba in respect of Mine Registration number 37885 for the reason that the area he had pegged was over-pegging into other blocks owned by another person.

R. Tapfumaneyi, 'Zimbabwe: Mines Ministry Cancels with immediate effect all Mining Activities of the Chinese-Owned Heijin Mining Company in Uzumba,' *New Zimbabwe*. 11 November 2021. In this article it was mentioned that, in November 2021 Heijin mining company that operates in Murehwa had its' mining licence cancelled after local leaders complained to the government that the company planned to evict hundreds of villagers under Kaseke village after it was granted mining rights to extract black granite. The Provincial Mining Director for MMMD, Mashonaland East Province stated that, Heijin had registered two blocks of claims and upon assessment it was found that the two blocks of claims registered encompassed people. The mining company had breached the provisions of the law and thus MMMD penalised it using the civil remedy of cancellation of mining rights.

increasing the mining sector's contribution towards the national treasury to twelve billion by 2023.⁶³

A weak regulatory system has made Zimbabwe's mining sector to struggle. Mining entities cheaply acquire mining licences and keep the licences for a long period of time without any intention of developing them into productive running mines, thus reducing Zimbabwe's potential of producing as well as depriving smaller and local companies the opportunity to get a chance to develop mining projects.⁶⁴ The MMAB thus provides for cancellation of mining licence of those mining entities that will not be operating so as to ensure increased production of minerals. This is a very plausible civil remedy as it will ensure development since miners will know that if they do not utilise their mining licences then they will definitely lose them. This is a very effective compliance enforcement remedy that will strengthen the mining sector that is currently operating below its' potential at the moment due to decreased production.

2.4.3. IMPOSING OF QUASI-CIVIL FINES.

Another quasi-civil remedy that is provided for in the mining laws is the imposition of fines for non-compliance. This penalty is not adequately provided for in all the three Acts. The GTA and PSTA are silent on it and both acts do not make any provision for fines for any breach under those two acts. The MMA and EMA are the acts that provide for imposing of fines by the inspectors and officials in the relevant institutions without the need for appearing in a criminal court.

2.4.3.1. FINES UNDER MINES AND MINERALS ACT.

Pecuniary civil fines are provided for in the MMA under the following sections:

i. Imposing a penalty fine for non-compliance

The MMA provides for a pecuniary civil penalty under section 157. That section provides that, where the mining affairs board is satisfied that a leaseholder has failed to fulfil the obligations and requirements of his mining lease, it is within the affairs board discretion to recommend to the Minister that a certain appropriate amount of money must be recovered from the leaseholder as a sanction or penalty. This money may be recovered by the minister from the leaseholder through the institution of summons in a court of competent jurisdiction by the minister or any amount that seems appropriate⁶⁵ This is a purely civil remedy which allows the Minister to penalise breach of the obligations and requirements of the mining lease by the leaseholder. It is a very effective way of ensuring compliance with the law in as much it penalises breach through payment of fine and it also gives the MMMD

⁶³National Development Strategy 1. n 2 above.

⁶⁴Casey. n 1 above.

⁶⁵See Section 157 (1) (a). n 8 above.

opportunity to collect some revenue that can be used in the administration of the mining laws by the ministry.

ii. Admission of guilt fines.

Also, Section 389 of the MMA empowers mining commissioners and inspector of mines to impose fines for breaching the provisions of the MMA. It is a quasi-civil remedy in the sense that in the MMA, inspectors impose fines under section 389 without appearing in court.⁶⁶ Under this provision if a person commits a mining offense and it is clear that if the person is convicted by a court of competent jurisdiction, the court will not impose imprisonment as a penalty or a fine exceeding five hundred dollars, then that person is entitled by the law to file an admission of guilty document as well as pay to the Mining commissioner an amount that is not above five hundred dollars or the maximum fine that can be paid for the offense in question or whichever amount is lesser between the two options mentioned.⁶⁷

In terms of Section 389 (2) of the MMA, if a person files an admission of guilt as well as paid the required fine then they will not be expected to go to court for the adjudication of the charges. What this therefore means is that the offender will not have to go through the criminal justice system whereby one is arrested and a docket is prepared and then be arraigned before a criminal court of justice. This makes the provision quasi-civil as it allows mining commissioners or inspectors of mines to impose and collect a fine for non-compliance with the provisions of the Act. This is procedure is sound as it shortens the process through allowing officials from the MMMD to collect fines from defaulting miners without the need of taking them to court and going through the lengthy criminal court procedures.

2.4.3.2. FINES UNDER ENVIRONMENTAL MANAGEMENT ACT.

The Environmental Management Agency issues fines to those found guilty of environmental crimes including miners. Dockets will then be opened for those who then fail to pay up the fines. Currently the maximum fine payable is \$500 000.⁶⁸ There are quite a number of incidences wherein the Environmental Management Agency has utilised this provision and fined mining companies for failure to comply with environmental protection laws.⁶⁹

⁶⁶The title of Section 389. n 8 above reads, "*Payment of fine without appearing in court.*"

⁶⁷Section 389 (1). n 8 above.

⁶⁸K. Kachiko, 'EMA calls for specialised environmental courts,' *Newsday*. 15 February 2022.

⁶⁹L. Mavhudzi, 'Indigenous Communities in Zimbabwe Struggle to hold Chinese-Owned firms accountable,' *Sly Media News*, 8 August 2021. The Environmental Management Agency fined a Chinese mining company, Edsabri (Private) Limited \$520 000 for conducting gold mining activities at the Inyoka ranch in Matobo without an environmental impact assessment certificate. The mining company was ordered to cease operations and was issued a \$500 000 ticket for illegal mining and \$20 000 for illegal prospecting. Another example is that of White ASB Gold Mine, a mine operating along the Dohwe River near Mberengwa Rural Service Centre, which was licensed to undertake rubble, open-cast and reef mining. However, this mine started to expand into the Dohwe River

The Environmental Management Agency will issue out a ticket for non-compliance with the law, if the ticket is not honoured, it will then proceed to report the matter to the police for criminal proceedings to be instituted. It remains a civil remedy in as far as the ticket is honoured without going to court, once the ticket is not honoured and the matter is reported to the police then it becomes a criminal matter.

Imposing of fines is a very efficient enforcement mechanism if adequately provided for. It also has the benefit of generating revenue for the MMMD which revenue can be used to rehabilitate the degraded environment. If appropriately provided for imposing of fines by the mines inspectors and officials from the MMMD and the Environmental Management Agency will yield better results as it will be based on physical assessments of damage caused to the environment by mining activities. This is a better system as compared to the criminal justice system wherein a magistrate will just impose a fine as laid down by the law, without having occasion to physically visit the mining site and assess the damage and its impact on the local communities.

However, to ensure the success of the civil penalty regime of imposing fines upon non-compliant miners, the inspectors from the Ministry of Mines and Mineral Development as well as officials from Environmental Management Agency must be visible on the ground, monitoring and inspecting mining activities in order to identify any breach of the law impose fines on the offenders.

To add on to this, for the system of imposing fines to be successful, the fines imposed must be appropriate, proportionate, meaningful and deterrent enough. The fines must not be too little as miners will actually prefer to breach the law and pay a fine rather than comply with the law as the cost of compliance will be more than that of breaching the law.⁷⁰

2.4.4. REHABILITATION/RESTORATION ORDERS.

This is where any non-compliant person, who would have caused environmental damage is ordered to rehabilitate or restore the environment to its former state. Restoration orders are motivated by the polluter pays principle of environmental law. These are provided for in terms of the EMA. Restoration orders are a good way

catchment, it managed to achieve this with the use of heavy equipment such as excavators, front-end loaders and tipper trucks, resulting in environmental degradation. The Zimbabwean government recently issued Statutory Instrument 104/2021 Environmental Management (Control of Alluvial Mining) (Amendment) Regulations which regulate the mining operations in the country. SI 104/2021 does not allow the use of mechanical equipment or motor-powered equipment in alluvial mining as well as the use of mercury or cyanide for the purposes of processing of ore. The Environmental Management Agency carried out an assessment and issued a ticket worth \$RTGS 800 000. This is a purely civil penalty meant to enforce compliance with the mining laws.

⁷⁰See n 7 above which gives a good example of Anjin mining company that kept on polluting the Odzi river and was fined various times by the Environmental Management Agency but kept on polluting meaning that the fines were too little and not deterrent enough thus defeating the purpose.

of ensuring rehabilitation of the environment which is actually progressive. In some instances, the Environmental Management Agency will go on to order costs of restoration of the damaged environment as well as compensation. The following provisions under EMA provide for restoration:

Under section 57 of EMA, any person who puts poisonous or toxic waste or other pollutants into water bodies or sources of water will be guilty of an offence and in addition to the criminal sanction shall:

- Pay for all the money that is required for the removal of all the poisonous and toxic waste as well as any other pollutants that will be affecting the water and aquatic life therein,
- If a government agency bears the cost of rehabilitation of the degraded environment, then it claims the costs of such restoration from the responsible person,
- Following a court application, a court of competent jurisdiction can order the responsible person to pay to third parties the costs of restoration that they could have incurred in rehabilitating the damaged environment.⁷¹

Also, under section 73 of EMA, any person who discharges a hazardous substance, chemical, oil or a mixture containing oil into any waters shall be ordered to pay costs of removal of the hazardous substance as well as the costs incurred by any government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge.

The above provisions directly apply to mining companies as the exploitation of minerals negatively impacts on the environment. Mining companies have been accused of polluting water bodies with the different chemicals that they use in their mining activities when they discharge them in water bodies thus disturbing the aquatic environment as well as the livelihood of the local communities whose lives depend on the water bodies for domestic use. Local communities who live in mining areas have expressed concern about their health and safety considering the use of mercury in mining activities.⁷²

The provisions in the EMA that call for costs of restoration are very plausible and must be utilised in order to enforce compliance. If miners are ordered to pay the costs of restoration, this may help to in-still some sense of responsibility on the miners as they will know that once they cause any form of environmental degradation, they'll be asked to pay the costs of rehabilitation. This on its own if effectively implemented will go a long way in ensuring compliance.

⁷¹Section 57 (2) (a) - (b) of Environmental Management Act [Chapter 20:27]

⁷²Mavhudzi n 69 above which gives a good example of the communities living downstream of Dohwe River in Mberengwa where a Chinese mining company has encroached into Dohwe river catchment to mine using heavy equipment such as excavators and front-end loaders. One of the villagers said that the Chinese company has destabilised their way of life as they have been dependent on Dohwe river for their livelihoods and due to water-pollution they now fear for their lives and livestock.

Again, for the rehabilitation/restoration orders to be effective there is need for constant monitoring and inspections by the MMMD inspectorate department as well as the Environmental Management Agency. The trend in most mining areas like Shurugwi, Mberengwa, Kadoma, Mutoko among others is that miners, mostly the Chinese investors, cause environmental degradation as they leave open shafts and pits unrehabilitated. There is therefore need for constant monitoring so that degradation of the environment is identified and the responsible miners are given orders to restore and rehabilitate the environment or alternatively they are made to pay a fine that resonates with the damage for rehabilitation to take place in order to promote the polluter pays principle.

2.4.5. ENVIRONMENTAL FUND.

The Environmental Fund is established in terms of Section 48 of the EMA. The management and control of this fund is vested in the Minister of Environment, Water and Climate.⁷³ The Minister is empowered by the EMA to impose an environment levy on any person whose activities impact on the environment.⁷⁴ This means therefore the mining sector falls within the scope of the environmental levy as mining activities have an impact on the environment and the need to rehabilitate the environment after mining activities have taken place can never be over-emphasised. Rehabilitation needs money and thus establishment of the environmental fund is very plausible. Miners must therefore contribute towards the environmental fund so that when they fail to rehabilitate the environment, money from the environmental fund can be used to do so.

The object of the environmental fund among others is to:

- For the standardisation of environmental management services and the maintenance of high standards of quality in the provision of such services,
- To assist in the funding of environmental protection services to areas that do not have such services,
- To restore the damaged environment,
- To clean up polluted environment,
- To raise public awareness of issues that have to do with environmental protection and management.⁷⁵

The mining sector currently does not have a fund within the MMMD that it contributes to for the purpose of rehabilitating the environment and cleaning up polluted areas caused by mining activities. A Safety Health Rehabilitation Fund has been proposed in the Mines and Minerals Amendment Bill but this has not yet been passed into law and hence it is not yet operational.

⁷³Section 48. n 12 above.

⁷⁴Section 50 (1). n 12 above.

⁷⁵Section 52. n 12 above

It therefore follows that at the moment, miners in the mining sector must ensure that they meaningfully contribute environmental levies towards the environmental fund which funds will be used to rehabilitate the environment. Establishment of the environmental fund is a good proactive environmental conservation mechanism as it anticipates damage and sets aside funds that can be used to repair the damage.

Failure to contribute towards the Environment Fund by miners will also mean that the fund will not have money at hand to execute one of its mandate of rehabilitating the degraded environment as well as cleaning up the polluted environment. The effect of this is that environmental degradation will continue unabated as there are no funds for rehabilitation. Since at the moment, the Ministry of Mines and Mineral Development has not yet established a stand-alone Mines Rehabilitation Fund, there is need for the mining sector to continue to contribute to the Environment Fund until such a time when the mines rehabilitation fund becomes operational so that at least it gets some funds that can assist it in rehabilitation of the damaged environment that would have been caused by mining activities.

2.4.6. PROPOSED SAFETY HEALTH REHABILITATION FUND.

The Mines and Minerals Amendment Bill has proposed the setting up of the Safety Health Rehabilitation Fund.⁷⁶ The purpose of this fund is rehabilitation of the environment with regard to environmental degradation associated with mining. The fund will be financed by annual contributions made by every miner at rates specified by the minister responsible for mining. Establishment of the fund will help in that government will rest assured that when the need arises for rehabilitation, funds will be there to do so.

Once the Safety Health Rehabilitation Fund is established, the mining sector should then be exempted from contributing towards Environmental Fund to avoid duplication. The Ministry of Mines and Mineral Development can collect the revenue for this fund.⁷⁷ The rehabilitation fund will only be used in circumstances where there is no compliance with rehabilitation orders more also at the closure of mining sites. Experience has shown that a lot of mining companies do not follow their mine closure and decommission plans and leave the environment unrehabilitated.⁷⁸ Money will be taken out of the fund to clean up the site and

⁷⁶Section 257E of the MMAB.

⁷⁷On the issue of which institution must administer the Safety Health Rehabilitation Fund, in most jurisdictions, this falls under the department responsible for mining or jointly with the department responsible for environment. in Queensland it is the Environment Protection Agency that is responsible for the rehabilitation fund. In Ghana, it is the Minerals Commission together with the Environmental Protection Agency. In Botswana, it is the department of Mines under the Ministry of Minerals, Energy and Water that is responsible for the rehabilitation fund.

⁷⁸Good examples are the ghost towns of Shurugwi and Mashava which were left unrehabilitated once mining operations by large scale miners ceased.

ensure compliance with the rehabilitation orders and rehabilitation requires a lot of money hence the need of planning for it well ahead of time by establishing a rehabilitation fund.⁷⁹

2.4.7. CONCLUSION.

In concluding this chapter, it can be seen that the scope for the civil remedy regime is quite limited. The mining laws in Zimbabwe heavily lean in favour of the criminal justice system for compliance enforcement. In most cases, whenever there is a breach of the mining laws, that breach will be criminalised and criminal sanctions will follow. The civil remedies provided for in Zimbabwe are cancellation/forfeiture, quasi civil fines and restoration orders. The world over there are quite a number of other civil remedies and in some cases that are non-judicial that are being implemented in compliance enforcement that have yielded better success that Zimbabwe has not yet implemented and taken on board. There is therefore need for the enhancement of the civil remedies' regime to ensure effective compliance enforcement.

⁷⁹ A Survey of Decommissioned Mines, *Environmental Management Agency*, 2011. The research conducted by Environmental Management Agency showed that twenty-two large scale mines decommissioned over the past twenty years and that cumulative rehabilitation cost for large for large four decommissioned mines was USD32 million with an average rehabilitation cost of USD8 million per mine. There are no resources that were set aside over the years and it is now the government's burden to rehabilitate.

CHAPTER 3: CHALLENGES AND WEAKNESSES OF THE CIVIL REMEDIES REGIME IN ZIMBABWE.

3.1. INTRODUCTION.

This chapter will critically examine the civil remedies' regime as currently provided for by the law. It will look at the weaknesses and gaps in the legislative framework for civil remedies and it will highlight as well the challenges that are being faced by the institutions responsible for compliance enforcement in the mining sector and how this will improve the ineffectiveness of the civil remedies regime. Audit reports by the Auditor-General of Zimbabwe on the mining institutions will be used to substantiate the findings.

3.2. LEGISLATIVE WEAKNESSES IN THE CIVIL REMEDIES REGIME.

3.2.1. LACK OF A COMPREHENSIVE LEGAL FRAMEWORK FOR CIVIL FINES.

The mining laws in Zimbabwe lean more in favour of criminal sanctions than civil ones. All the other mining acts provide for criminal fines that can be imposed by a criminal court upon conviction. It is only the MMA that provides for imposing of fines by the inspectors where an accused person admits and is prepared to pay a fine as well as EMA that allows the inspectors and environmental officers to issue tickets but these as well must be within the bounds of level one to fourteen as provided in the Act. This is too limiting because the level of fines is already provided for under the Act and leaves no room for the inspectors to assess and impose the most appropriate fine in the circumstances.

There is need for a proper civil framework that provides for civil fines whereby the inspectors will be allowed by the law to impose on-spot civil fines. Currently, the law only provides for a one size fits all fine provided for under the criminal justice system. If a civil fines system is established, it will allow inspectors to assess the wrong and come up with the most appropriate fine under the circumstances.

To ensure success of the civil fines system, the inspectors from the MMMD must be visible on the ground so that they can monitor and inspect all the mining activities through-out the country in order to identify any breach of the law and impose fines on the non-compliant miners. If the inspectors do not go to the mines to inspect then there will be no way they can ever know of any non-compliance hence the need for them to be constantly on the ground.

When a comprehensive civil fines system is established, it must be ensured that the fines that are imposed are meaningful and deterrent enough. According to the United Nations Environmental Programme Multilateral Environment Agreement, the fines that are imposed must be appropriate proportionate.⁸⁰ If the fines are too lenient then they will not be effective and miners will actually prefer to rather

⁸⁰Guideline 40 (c) of the United Nations Environmental Programme Multilateral Environment Agreement.

intentionally breach the law and pay a paltry fine than to comply as the cost of compliance will be much higher than that of breaching the law.⁸¹

3.2.2. LIMITED SCOPE FOR CIVIL REMEDIES.

At this juncture, it will simply be highlighted that the scope for simple remedies as provided for by the legislature is very limited. Currently, the mining laws only provide for the civil remedies of cancellation/forfeiture/non-renewal of licences and restoration orders. There is much more that can be done civilly to ensure compliance enforcement. However, this will be looked with in much more detail later on.

3.3. INSTITUTIONAL WEAKNESSES AND CHALLENGES.

3.3.1. MINISTRY OF MINES AND MINERAL DEVELOPMENT.

3.3.1.1. LACK OF FINANCIAL RESOURCES.

As mentioned earlier on, the success of the civil remedies' regime is greatly hinged on vigorous monitoring and inspections of mining sites in order to pick any breach of the laws and impose penalties. Monitoring and inspections therefore require a lot of financial resources.

The MMMD is understaffed and it is also underfunded⁸² such that it is difficult for it to effectively perform its duties. The MMMD lacks the capacity to inspect, audit and review the mining activities over the very long-life span of mining projects.⁸³

⁸¹Office of the Auditor-General, Report on the Environmental Monitoring of Mining Operations by the Environmental Management Agency under the Ministry of Environment, Water and Climate 2015, in this audit report it was stated that, when interviews were held in Manicaland province during the preparation of the report, the Agency's provincial officers confirmed that mine operators confirmed that at times the cost of complying with environmental regulations, for example setting up the required infrastructure to carry out safe mining was sometimes very expensive which made it cheaper for miners to opt to pollute the environment in breach of the law and then pay a fine as this will be much cheaper than the cost of complying with the law. This is so because the law only allows environmental officers to impose a ticket that is not more than level 14 on the scale of fines.

A good example is that of Freda Rebecca, a large-scale mining company located in Bindura, Mashonaland Central was fine two times, the first time in 2010 and it paid a fine of \$1000 and in 2011 and it paid a fine of \$5000 for unlawfully discharging toxic cyanide and therefore polluting the environment. Imposing such little amounts on such a large-scale mining entity is ridiculous and an affront to common sense as such little fines will not deter such a big entity from violating the law.

⁸²The MMMD operations are funded by the government through the Ministry's vote and the Ministry of Mines and Mineral Development Fund. The income of the MMMD's Fund consists of mining fees as provided by SI 10/2016. The Ministry retains 25 % revenue generated by this fund and the remainder of 75 % is remitted to treasury. This explains why the Ministry of Mines and Mineral Development is heavily underfunded.

⁸³ Office of the Auditor-General, Report of the Auditor-General on the Management of Occupational Health and Safety in Mining Operations by the Ministry of Mines and Mining Development presented

This is the reason why operations can go on for a long time without any follow up inspections from the MMMD as there won't be any financial resources.⁸⁴ This is a major set-back to the effective implementation of the civil penalty regime.

Another issue that has made inspections difficult and, in some cases impossible is the fact that the MMMD has no database of mines in the country and this therefore makes it difficult for the Ministry to come up with inspection schedules. The MMMD has been planning of coming up with a computerised system since 2012. In the place of the computerised database, the MMMD was relying on mining registration cards and monthly revenue returns submitted by the Ministry Provincial Offices as reference for database of mines. The absence of the computerised database therefore made it difficult for the inspectors to plan inspections and monitor. This has led to the rise in disputes over ownership of mines as well as mine boundary disputes which are now very prevalent in the mining sector and very difficult to resolve since the manual system has a lot of loopholes.

3.3.1.2. LACK OF HUMAN RESOURCES.

Another key challenge is that of low staff numbers that has greatly incapacitated the MMMD. The Ministry has a challenge in attracting and retaining enough sufficiently trained staff to conduct the monitoring and inspections due to low remuneration. The number of inspectors should be driven primarily by the number of active mining projects. Another sticky issue on capacity is that of lack of knowledge and expertise to handle the monitoring and implementation of duties. If officials from MMMD lack the requisite knowledge to perform their functions then this will affect the success of the civil remedies' regime. Mines inspectors must know the provisions of the law and possess some knowledge on mining operations so that they are able to dictate violations of the law and assess appropriate penalties. The challenge with human resources is therefore twofold in that firstly there is shortage of staff members in the MMMD especially, the inspectors, then secondly there is lack of expertise as some of the people employed do not possess the requisite knowledge needed on the performance of the work.

3.3.1.3. OPACITY OF MONITORING AND INSPECTIONS

Zimbabwe is endowed with a huge mineral resource base whose exploitation should be a key source of revenue for government but however, the reality in Zimbabwe is that the distribution of benefits that comes from mineral wealth to

to Parliament of Zimbabwe, 2019. According to the Auditor-General's report, the six mining provinces that were visited during the preparation of the report, statistics and documentary evidence revealed that inspections were not being adequately done and inspections conducted averaged 1.32 % for the six provinces that were involved in the study.

⁸⁴ Auditor-General's report. n 83 above. The Auditor-General's report also established that, each province had at most two vehicles, one of which was allocated to the Provincial Mining Director and therefore could not be availed for any other duties. The other vehicle was being used for both administrative duties and also used by other departments, that is, geology, metallurgy and the inspectorate department for inspection duties.

central government, local authorities and local communities has been a very contentious issue.⁸⁵ Zimbabwe has acknowledged the need to improve on transparency as disclosure of information has the benefit of ensuring that the mining sector contributes meaningfully to increased economic growth and development.⁸⁶

Effective monitoring relies on access to information and lack of transparency can be a challenge for both governments and civil society monitoring efforts.⁸⁷ All relevant information must be disclosed. Civic society can also assist in the monitoring of mining activities to ensure compliance but the first step in civil society is to identify the mining company's obligations and to determine which of those obligations to monitor, this then requires access to mining contracts. It is only with this access to contracts that civil society can analyse the full range of a company's obligations and determine its compliance.⁸⁸ This is so because for there to be proper monitoring and enforcement the Ministry of Mines and Mineral Development must also work with the various civic society organisations located in various mining locations. The civic society can play the role of a "watch-dog" and blow the whistle whenever some violations of the mining laws take place. However, this role can be effectively performed if the relevant mining contracts information is availed to everyone concerned, that is, the civic society, the local communities and the local authorities.

The government through the Ministry of Mines and Mineral Development must publish all essential information for monitoring mining projects and this includes:

- Mining agreements, contracts, permits and licences,
- Laws and regulations,
- Project-specific assessments and reports, including Environmental Impact assessments, Environmental Management Plans, work programs, social impact assessments and local development plans,
- Ongoing data on implementation and monitoring, including production figures, tax and royalty payments and inspection reports.⁸⁹

In Zimbabwe there is serious lack of transparency. Zimbabwe is not even a signatory of the Extractive Industries Transparency Initiative. Extractive Industries Transparency Initiative is a global coalition of governments, companies and civil society working to improve accountability in the management of revenues from natural resources such as oil, gas, metals and minerals.⁹⁰ It is administered by the

⁸⁵'An Analysis of Zimbabwe Mining Revenue and Disclosure Frameworks,' *Zimbabwe Economic Policy Analysis and Research Unit (ZEPARU)*, May 2018.

⁸⁶Zimbabwe Economic Policy Analysis and Research Unit n 85 above, Page 4.

⁸⁷E. Smith and P. Rosenblum n 14 above.

⁸⁸Smith and Rosenberg n 14 above.

⁸⁹Smith and Rosenberg n 14 above.

⁹⁰Extractive Industries Transparency Initiative Multi Donor Trust Fund Annual Report 2015.

world bank. It seeks to improve governance and transparency in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas and mining activities.⁹¹ One wonders why Zimbabwe has decided not to be a member of such a good initiative that promotes transparency and accountability.

Mining contracts in Zimbabwe are not put in the public domain, members of the public, as well as the civic society in most cases are left to speculate. It therefore becomes impossible for proper monitoring of compliance to be effectively done with the assistance of the civic society and local communities.⁹²

3.3.1.4. ABUSE OF OFFICE BY MINING OFFICIALS.

Due to the harsh and unfavourable economic climate in Zimbabwe where government employees are earning little income, the temptation to abuse office and engage in corruption and bribery for the mine inspectors, provincial mining directors and other officials in the MMMD is high. Mine inspectors can solicit bribes or they can be offered bribes by miners in order for them not to expose any violations and impose penalties on them. The violation might even be warranting a shut-down of business but if the mine inspectors are given some bribe money, they will not expose the breach of law thus rendering the civil penalties regime ineffective.⁹³

In Zimbabwe's mining sector, corruption is also being fuelled by senior politicians. When the elite politicians bring foreign investors, they tend to relax the rules.

See <https://www.worldbank.org>. Visited on 23 April 2022.

⁹¹Extractive Industries Transparency Initiative Annual Report n 90 above.

⁹²To demonstrate the high level of lack of transparency and accountability in the mining sector reference can be made to the claims that were made by the then President of Zimbabwe, Robert Gabriel Mugabe, in March 2016 wherein he said that the state had lost US\$15 billion in diamond revenue. He said that the state had not received much by way of earnings and had only received around US\$2 billion or so and yet well over US\$15 billion or more had been earned in diamond mining.

⁹⁴ A very good example is that of two mine inspectors from the MMMD based in Chinhoyi who were arrested in August 2020. Their arrest was after the police trapped them and a police officer allegedly witnessed the mine owner handing over previously agreed bribe. The allegation was that the two mine inspectors demanded USD5000 from the co-director of Bonanza X Mine in Banket in order for them to write a favourable report following a mine shaft collapse that claimed the life of an illegal gold miner.⁹³ It was alleged that the two mine inspectors told the mine workers that the mine faced imminent closure as it was not properly fenced unless they paid the USD5000 bribe. The owner of the mine then negotiated a payment plan where trenches of USD1000 would be paid. The owner of the mine then reported the matter to the police and a trap was set up and the two mine inspectors were arrested whilst receiving the trap money.

Violations of the law by the foreign investors especially the Chinese investors are not exposed.⁹⁴

3.3.2. ENVIRONMENTAL MANAGEMENT AGENCY.

Environmental Management Agency gets its administration funds from the Environment Fund which is established in terms of EMA.⁹⁵ The Environment Fund is managed and controlled by the Minister of Environment, Water and Climate as a trustee of the Fund and it is administered in accordance with the Minister's directions.⁹⁶ The sources of funds for the Environment Fund are environment levies that are paid in terms of Section 50 of EMA, any moneys that are payable to the fund from moneys appropriated for the purpose by Act of Parliament, any moneys that the Fund may obtain with approval of the Minister of Finance, by way of donations, loans or other financial assistance and moneys that may vest or accrue to the fund. The Minister may by notice in a statutory instrument, impose an environment levy on any person or class of persons whose activities impact on the environment.⁹⁷ This puts the mining sector under the ambit of the Environment Fund.

The objectives of the Environmental Fund are very plausible and they include rehabilitation of degraded environment, clearing up of polluted areas, financing or assisting in financing the extension of environmental management services to under-serviced areas among others.⁹⁸ The Environmental Fund's objectives therefore cover the mining sector as the mining sector is notorious for causing environmental degradation and water, air and noise pollution. The Environment Fund can thus be used to rehabilitate the environment after mining activities have taken place. If effectively administered it can help in the enforcement of environmental protection in the sense that, were miners fail to rehabilitate the environment, their contributions to the Environment Fund can be used to rehabilitate the environment.

3.3.2.1. LACK OF FINANCIAL RESOURCES.

The greatest challenge in the operationalisation of the Environment Fund as administered by Environmental Management Agency (the Agency) that has affected in the discharge of compliance enforcement duty by the Agency is the fact that the

⁹⁴Mavhudzi n 69 above. The Midlands Provincial Environment Manager was quoted saying that Chinese operations have a well know record of breaching the environmental regulations and efforts to stop Chinese miners from committing environmental crimes have not been fruitful. This was said after Chinese mine, ASB Gold Mine had been issued with a ticket worth RTGS 800 000 and was also ordered to stop operations and rehabilitate the environment. Despite all the efforts, the Chinese mine did not cease to operate neither did it rehabilitate the environment.

⁹⁵Section 48. n 12 above.

⁹⁶Section 51. n 12 above.

⁹⁷Section 50 (1). n 12 above.

⁹⁸Section 52. n 12 above.

Environmental Fund is under-funded and this has been a great hinderance in the discharge of the Agency's duties. The Environment Fund which is supposed to fund the operations of the Agency has insufficient funds to do so.⁹⁹The very low revenue collection has made the Agency lack the capacity to execute its functions and it has been ineffective in ensuring compliance enforcement.

Due to lack of resources, the Environmental Management Agency has failed to do the following:

a) Failure to conduct bi-annual environmental audits due to lack of financial and human resources.

The Environmental Management Agency has not been able to adequately carry out bi-annual audits to check compliance by miners with Environmental Impact Assessments (EIA) regulations. In terms of the law, the Agency must carry out bi-annual environmental audits to ensure that all projects being implemented are in compliance with the regulations.¹⁰⁰ The bi-annual audits are very important as they focus on the implementation of the conditions set out in the environmental management plan that will be contained in the Environmental Impact Assessment thereby ensuring compliance.¹⁰¹

b) Failure to enforce the EIA certificate process.

In terms of environmental law, certain prescribed projects can only start operations after an EIA certificate has been issued.¹⁰² Mining is a prescribed project in terms of the Environmental Management Act as it has the potential of causing environmental degradation.¹⁰³ The Environmental Impact Assessment process identifies the environmental impacts of a development project and clearly outlines measures to mitigate the negative impacts caused during project construction, implementation and decommissioning.¹⁰⁴ However, due to lack of financial and human and capital resources, the Environmental Management Agency

⁹⁹Office of the Auditor-General n 81 above. The Environmental Management Agency only managed to collect revenue amounting to \$41 754 289 and of that amount less than twenty-eight percent was used for environmental enforcement.

¹⁰⁰Section 13 (1) of Statutory Instrument 7 of 2007.

¹⁰¹Office of the Auditor-General n 81 above. In the Audit Report, it was observed that in Manicaland, Mashonaland Central, Matebeleland North provinces and the head office, a total of 1468 mining projects were granted Environmental Impact Assessment certification period from 2009 to September 2012. It was however, noted that the agency only managed to conduct 372 audits translating to only thirteen percent of the required bi-annual audits.

¹⁰²Section 97. n 12 above.

¹⁰³First Schedule. n 12 above.

¹⁰⁴Section 99. n 12 above.

has not been able to monitor and inspect to ensure that all mining companies operate after issuance of an EIA certificate.¹⁰⁵

When an EIA certificate is issued, its lifespan is up to two years.¹⁰⁶ Renewal of the Environmental Impact Assessment certificate must be done within 6 months before expiry. However, the Agency does not have adequate systems to ensure renewal is done on time.¹⁰⁷

This shows poor compliance enforcement on the part of the Agency due to incapacity. If inspectors of the Agency do not go on the ground to enforce compliance then there is no way they can penalise the non-compliant to ensure that they comply with the law. The need for the Agency to be visible on the ground can never be over-emphasised.

3.3.2.2. INADEQUATE HUMAN RESOURCES.

The Environmental Management Agency is understaffed.¹⁰⁸ The deficiency of staff personnel is mainly in the areas of important specialists needed in the monitoring of the environment who are environmental officers, technicians, planning officers and analysts. The inadequate staff compliment has resulted in the Agency completely not operating in a total of 9 districts. This is what has also immensely contributed to the Agency's failure to conduct bi-annual audits consistently, renew Environmental impact assessment certificates and emission and discharge licenses timeously because the staff will be overwhelmed with the work load. All this then results in inadequate monitoring of mining activities and once there is no adequate monitoring then there is no effective compliance enforcement that will take place.

3.3.3. LACK OF COORDINATION OF OPERATIONS BETWEEN ENVIRONMENTAL MANAGEMENT AGENCY AND MINISTRY OF MINES AND MINING DEVELOPMENT.

For effective compliance enforcement to be achieved through the civil remedies regime there is need for coordination of operations between the EMA and the MMD. The mining sector has a huge impact on the environment and hence it falls under the ambit of the EMA and the Environmental fund as well. It has been noted

¹⁰⁵n 81 above. From the Auditors report on the Agency's monitoring of mining activities it was established that in eight provinces, a total of 986 mines were found operating without Environmental Impact Assessment certificates during the period 2010 to 2012.

¹⁰⁶Section 101 of the Environmental Management Act.

¹⁰⁷n 81 above. In the Audit report it was observed that from the chosen sample of seventy-five mines that were issued with Environmental Impact Assessment certificates during the period from 2007-2009, only one project, Rose of Gold Mine in Midlands renewed its Environmental Impact Assessment certificate, eighteen mines were not operational and two had their status not known meaning that fifty-four mines were operating without renewing their Environmental Impact Assessment certificates. In Mashonaland central for the period 2009-2012, 356 projects were due for renewal and only forty-seven had renewed meaning eighty-seven percent of the projects had not renewed their Environmental Impact Assessment certificates.

¹⁰⁸n 81 above. In the audit report it was stated that, the staff establishment for the Agency nationwide is 447 personnel but the Agency as at the time of the audit had 275 personnel which translates to sixty-two percent capacity.

that, the success of the Environmental Fund under Environmental Management Act hinges on an effective environmental management, legal and institutional framework.¹⁰⁹

The main problem is that the current main act on mining, that is, the Mines and Minerals Act, takes precedence over mining issues. Since it is an archaic piece of law, it does not strike a balance between mineral development and enhancing environmental protection. For example, the Mines and Minerals Act does not make issuance of Environmental impact assessment certificate a requirement for granting a person mining rights. It therefore follows that miners can actually get mining rights before acquiring the Environmental impact assessment certificate which opens a leeway for some miners to actually embark on mining operations before even getting Environmental impact assessment certificate.¹¹⁰ This then has a negative impact on the environment and the cost of rehabilitating an already degraded environment might be higher than that of preventing in the first place. There is therefore need for these institutions to be coordinated well so that there is no conflict so as to enhance effective compliance enforcement.

Since mining activities have an impact on the environment, they must therefore contribute towards the Environment Fund, but because of the conflict that exists between the environmental protection department, the Environmental Management Agency and MMMD, it is difficult for the Agency to exercise its power of gazetting and enforcing levies on miners without conflicting and irritating the mining authorities who grant various licences and certifications.¹¹¹ This is the reason why at some point in 2018, the mining sector was not contributing to the Environment fund at all following a request by the miners to be exempted citing harsh macroeconomic environment and thus the environment levy was not enforced on miners.¹¹²

The MMMD must work in harmony with the Environmental Management Agency and must not issue any mining rights before an environmental impact assessment certificate is obtained. If there is no coordination between the two institutions as

¹⁰⁹ J.B. Tsabora, 'The Legal and Economic Framework for Natural Resources-Related Statutory funds in Zimbabwe,' *Zimbabwe Environmental Law Association*. 2016.

¹¹⁰ 'Zimbabwe: Four Gold Mines found operating Without Mandatory Environmental Impact Assessment Certificate,' *New Zimbabwe*, 12 August 2020.

See <https://www.business-humanrights.org> Visited on 25 April 2022. This is a good example of what happened in Mashonaland Central Province where four mines were shut down by the Agency after they were found operating without environmental impact assessment certificates. The defaulting mines were Pecho Minerals located in Galiver Farm Bindura, Ruvimbo Mining Syndicate located in Mountainview Farm, Red Steel Mining Syndicate in Umfurudzi and Duiker 2&3 Gold Mining located in Willowdean Farm. Also, it was noted in the audit report on Environmental Monitoring of Mining Operations that 986 miners that were found operating without environmental impact assessment had already been issued mining rights by the Ministry of Mines and Mineral Development.

¹¹¹ Tsaboran 109 above.

¹¹² Zimbabwe Economic Policy Analysis and Research Unit 85 above. Page 4.

well as the legislation that governs their operations then compliance enforcement will not be effective as the institutions will not be complimenting each other.

3.4. CONCLUSION.

In essence, this chapter demonstrated that the civil remedies regime in Zimbabwe has its own shortcomings. It has been shown in this chapter that the legislative framework has some gaps in that it only provides for a few civil remedies that are applicable thus providing a very limited scope for civil remedies regime. This therefore leaves a lot of room for enhancement of the civil remedies' regime for effective compliance enforcement. Also, in this chapter it has been demonstrated that there are some serious institutional challenges in the civil remedies regime mainly as a result of lack of financial and human capital resources. All this, cumulatively leads to ineffectiveness of the civil remedies regime hence the need to find solution on how it can be enhanced in order to promote effective compliance enforcement. If there are weak, uncoordinated mining institutions that are very hostile to each other as is the case between the MMMD and the Environmental Management Agency, then the success of the civil remedies' regime will be greatly hampered.

CHAPTER 4: THE SOUTH AFRICAN CIVIL REMEDIES REGIME.

4.1. INTRODUCTION.

The main thrust of this Chapter is to look at the South African civil remedies' regime, that is, the legislative framework, institutional framework as well as the civil remedies provided in the South African mining laws for compliance enforcement. A comparison of the South African jurisdiction and the Zimbabwean jurisdiction will be done in order to establish if there are any similarities and differences with a view of establishing whether Zimbabwe can learn any best practice from its South African counterpart that will help in the enhancement of the civil remedies regime for effective compliance enforcement.

4.2. LEGISLATIVE FRAMEWORK FOR THE CIVIL REMEDIES REGIME INSOUTH AFRICA.

South Africa has quite a number of Acts that regulate mineral resources law. For the purposes of this research only four Acts will be looked at and these are:

4.2.1. MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT (MPRDA), 2002.

The MPRDA is the primary act that regulates the mining industry in South Africa. Its aim is to provide for equitable access to mineral and petroleum resources as well as to ensure sustainable development in the mineral resources sector in South Africa.¹¹³ One of its objectives is to create an effective and efficient administrative and regulatory regime that is internationally competitive. It is important to highlight that the Mineral and Petroleum Resources Development Act is quite progressive and in line with modern principles of natural resources governance in as much as it clearly provides for sustainable mineral resources development. The MPRDA provides for both criminal and civil remedies for non-compliance. It has put in place institutions that are mandated to deal with compliance enforcement issues. The MPRDA's scope for civil remedies is reasonable and to a larger extent more effective in ensuring compliance enforcement.

4.2.2. NATIONAL ENVIRONMENTAL MANAGEMENT ACT (NEMA), 1998.

The NEMA is the act that is mandated with issues to do with the environment, that is, establishing principles and procedures on matters that affect the environment, establishing institutions as well as promoting coordination between the institutions and organs of state that deal with environmental issues.¹¹⁴ It recognises that the law is enforced by the state and also that the law must facilitate the enforcement of environmental laws by civil society.¹¹⁵ This therefore enhances the civil remedies regime in South Africa. Mining activities by nature have a bearing on the

¹¹³Preamble to the MPRDA, 2002.

¹¹⁴Preamble to the NEMA, 1998.

¹¹⁵Preamble n 114 above.

environment and in most situations the impact is negative, and it is for this reason that mineral resources development is also governed by the National Environmental Management Act.

4.2.3. MINE HEALTH AND SAFETY ACT (MHSA), 1996.

The MHSA is a piece of legislation that is primarily responsible for the protection of the health and safety of employees and all other persons at the mine.¹¹⁶ It holds the employer responsible for ensuring protection of the health and safety of all persons at the mine, that is, employees, contractors and even visitors.¹¹⁷ The employer is obliged to provide sufficient training to the employees regarding health and safety on the mine, providing sufficient protective clothing and equipment as well as keeping the health records of the employees. The act also provides the penal provisions as well as the civil remedies that can be imposed in the event of non-compliance by the employer.

4.2.4. PRECIOUS METALS ACT (PMA), 2005.

The PMA is one of the important pieces of legislation that regulates mineral resources development in South Africa. It provides for quite a number of issues and these include the acquisition, possession, beneficiation, and disposal of precious metals.¹¹⁸ It provides for the functions and objects of the regulator who is responsible for the implementation and control of all matters relating to acquisition, possession, refining and disposal of precious metals.¹¹⁹ The PMA also provides for penalty provisions in the event of non-compliance which includes civil remedies.

4.3. INSTITUTIONAL FRAMEWORKS FOR CIVIL REMEDIES REGIME IN SOUTH AFRICA.

4.3.1. DEPARTMENT OF MINERAL RESOURCES AND ENERGY (DMRE)

The DMRE is the department that is responsible for regulating, transforming and promoting the minerals and energy sector in South Africa.¹²⁰ The Department seeks to ensure that all South Africans derive benefit from mineral resources in a sustainable manner. The Department is responsible for issuing mining licences, supervising and regulating all mining activities from issuing licences, supervising operations as well as sale, export and beneficiation of minerals. The Department also monitors and enforces compliance with the Mining Charter.

The Department is headed by the Minister of Mineral Resources and Energy who has extensive regulatory powers that he or she uses in enforcing compliance with the

¹¹⁶Preamble to the MHSA, 1996.

¹¹⁷E. Hayes & J. Cloete, 'The Mining Law Review: South Africa,' *The Law Reviews*. 1 November 2012

¹¹⁸Preamble to the PMA, 2005.

¹¹⁹Section 3 (1). n 118 above. The office of the Regulator is established under section 3(1) of the Diamonds Act, 1986 (Act 56 of 1986.)

¹²⁰DMRE <https://www.dmr.gov.za> visited on 27 June 2022.

mining laws. These powers include suspension and cancellation of rights, permits and permissions, restriction and prohibitions orders as well as orders to remedy the environment. These powers of the Minister form part of the civil remedies' regime of the South African mineral law.

4.3.2. MINE HEALTH AND SAFETY INSPECTORATE.

In order for the Department of Minerals and Energy to enforce compliance with mining laws there is need for effective monitoring and inspections. This therefore means that officials from the Department must go on the ground for them to monitor and inspect operations so as to ensure compliance. Effective monitoring and inspection are the backbone of the civil remedies' regime. The Department of Mine Health and Safety Inspectorate which falls under the Department of Minerals and Energy was established to carry out inspections and monitoring.

The Mine Health and Safety Inspectorate Department (Inspectorate Department) is established in terms of Section 47 (1) MHPA. The Inspectorate department has regional offices.¹²¹ Inspections are done by inspectors in terms of section 50 of the MHPA. The department is headed by the Chief Inspector who is appointed by the Minister and he must have suitable mining qualifications and experience in health and safety at mines.¹²²The Chief Inspectors functions include the following:

- Ensuring compliance and enforcement of the Mines Health and Safety Act,
- Ensuring that inspectors perform all their duties in terms of the law,
- Administering the Mine Health and Safety Inspectorate,
- Determining as well as implementing policies for the promotion of the health and safety of all persons at mines,
- Publishing and distributing activities of the Mine Health and Safety Inspectorate,
- Submit a report to the Minister on Mine Health and Safety on health and safety as well as the activities of the inspectorate department.¹²³

4.3.3. REGIONAL MINING DEVELOPMENT AND ENVIRONMENTAL COMMITTEE (RMDEC).

In terms of Section 7 of the MPRDA, the Minister must by public notice in the Gazette divide the Republic into regions. The RMDEC is thus established in terms of Section 64 of the MPRDA. The Director-General designates an officer in the Department to be the Regional Manager for each region who is responsible who must perform the function designated or assigned to by the Act. The Regional Manager in each Region acts on behalf of the Minerals and Mining Development

¹²¹Section 47 (2). n 116 above.

¹²²Section 48 (1). n 116 above.

¹²³Section 49 (1) (a)-(k). n 116 above.

Board and his or her functions include processing of applications for a prospecting right, a mining right or a mining permit as well as the renewal of these rights.

4.3.4. SOUTH AFRICAN DIAMOND AND PRECIOUS MINERALS REGULATOR (SADPMR).

The SADPMR has the mandate to administer the Diamonds Act of 1986 and the PMA, 2005. The core business of the SADPMR is to facilitate the buying, selling, exporting and importing of diamonds and this is done through the Diamond Exchange and Export Centre.¹²⁴ The functions of the Regulator therefore, include the following, implementing, administering and controlling the acquisition, possession, smelting, refining, fabrication, use and disposal of precious minerals.¹²⁵

The SADPMR has regulatory powers. It has authority to administer the PMA and hence ensure compliance with the Act. It has powers to issue and renew refining licences, precious metal beneficiation licence, jewellers' permits, permits to import precious metals. The Regulator therefore regulates and supervises all holders of the said licences and permits. In the event of failure to comply with the conditions imposed in the licence, permit or certificate or any provisions of the Precious Metals Act, the Regulator is entitled to cancel the licence, permit or certificate.¹²⁶

4.3.5. DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM (DEAT).

The DEAT is the department that is responsible for giving effect to the citizen's right to a clean environment that is not harmful to health or wellbeing in order to preserve the environment for the benefit of present and future generations.¹²⁷ The Department, to this end, provides leadership in environmental management, conservation and protection and it has a bearing on all activities that affect the environment including mining activities. Mining companies therefore have to submit environmental implementation plans and environmental management plans in line with NEMA. The Department of Environmental Affairs has various branches which have a bearing on mining activities and these include, Air quality and climate change, biodiversity and conservation, chemicals and waste management and legal authorisations and compliance inspectorate.

4.3.6. LEGAL AUTHORISATIONS AND COMPLIANCE INSPECTORATE DEPARTMENT (LACID).

This department falls under the ambit of the DEAT. The purpose of the Inspectorate Department is to promote the development of an enabling legal

¹²⁴The Diamond Exchange and Export Centre was established by the SADPMR under section 59 (b) of the Diamonds Act Second Amendment Act of 2005.

¹²⁵Section 3 (1). n 118 above.

¹²⁶Section 11. n 118 above.

¹²⁷Department of Environment, Forestry and Fisheries <https://www.environment.gov.za> visited on 29 June 2022.

regime for licencing and authorisation that promotes compliance enforcement.¹²⁸ The focus of the Inspectorate Department is therefore on implementation, compliance monitoring and enforcement against those that are non-compliant. Its aim is to effectively deal with non-compliance to existing environmental laws.

The functions of the Inspectorate Department include the following:

- To provide effective legal services to enable the Department to deliver its mandate of protecting and conserving the environment;
- To enhance and coordinate the environmental regulatory framework relating to environmental impact management;
- To promote compliance with environmental laws;
- To enforce compliance with environmental laws.¹²⁹

4.3.7. NATIONAL ENVIRONMENTAL ADVISORY FORUM (NEAF).

The NEAF is established in terms of Section 3 (1) of the NEMA, 1998 and it falls under the DEAT. The Forum consists of at least twelve but not more than fifteen members appointed by the Minister and these must be persons who represent stakeholders' and persons who have the relevant experience and expertise to carry out the functions of the Forum.¹³⁰ The object of the Forum is to:

- Advise the Minister on all matters involving environmental management and governance;
- Advise the Minister on appropriate methods of monitoring compliance which are in line with the principles of environmental conservation.¹³¹

4.3.8. COMMITTEE FOR ENVIRONMENTAL COORDINATION (CEC).

The Committee is established in terms of Section 7 of the NEMA. The Committee comprises of thirteen members from relevant organs of the state.¹³² The major object of the Committee is to promote the integration and co-ordination of environmental functions by the relevant organs of state as well promote the achievement of the purpose of environmental implementation plans and environmental management plans.¹³³ Coordination between the relevant government organs enhances compliance enforcement as it eliminates duplication of duties and allows all organs to work together for a common good without organs just concentrating on advancing their objectives at the expense of the environment.

¹²⁸n 127 above.

¹²⁹n 127 above.

¹³⁰Section 4 (1) and (2). n 114 above.

¹³¹Section 3 (2) (a) and (b) (i) (ii). n 114 above.

¹³²Section 8 (1) (a) - (m). n 114 above.

¹³³Section 7 (2). n 114 above.

The functions of the Committee include the following:

- Scrutinising and making recommendations on the submitted environmental implementation plans;
- Investigating and making recommendations on the delegation of functions between organs of the state to prevent duplication of efforts,
- Investigating and recommending the establishment of mechanisms in each province for providing a single one point for the receipt of applications for authorisation, licences and similar permissions required in terms of the law from more than one organ of the state;
- Making recommendations to secure compliance with the principles of environmental conservation and national norms and standards;
- Ensuring compliance by making recommendations requiring reports from its members.¹³⁴
-

4.4. CIVIL REMEDIES IN THE MINING LAWS OF SOUTH AFRICA.

South African mining laws provide for a wider scope and more comprehensive civil remedies regime as compared to Zimbabwe. Non-compliance is also criminalised in some instances. However, the civil remedies regime is much wider in scope and covers some remedies that are not available in Zimbabwe. The civil remedies that are provided for by the mining legislature for non-compliance and implemented by the Department of Minerals and Energy and the Department of Environmental Affairs are as follows:

- a) Cancellation or suspension of mining rights, permits or permissions;
- b) Remedy orders;
- c) Financial provision for remediation of damaged environment;
- d) Prohibition orders;
- e) Attachment of property belonging to non-compliant miners.

4.4.1. SUSPENSION OR CANCELLATION OF MINING RIGHTS, PERMITS AND PERMISSIONS UNDER THE MPRDA.

These provisions include:

4.4.1.1. CANCELLATION OR SUSPENSION OF PERMIT/PERMISSION/RIGHT FOR NON-COMPLIANCE WITH THE ACT.

The Act provides for reconnaissance permission, prospecting right, mining right or retention permit may be cancelled or suspended if conducted in contravention of the MPRDA.¹³⁵ The Act outlines the procedure for acquiring mining rights as well as

¹³⁴Section 7 (3). n 114 above.

¹³⁵Section 47 (1) (a). n 113 above.

how mining operations are conducted, once there is non-compliance with any of the provisions of the Act then the Minister has the power to suspend or cancel the mining rights.¹³⁶

4.4.1.2. CANCELLATION OR SUSPENSION OF RIGHT/PERMISSION/PERMIT FOR BREACH OF TERMS OF SUCH RIGHT/PERMISSION/PERMIT.

The Act provides for suspension or cancellation of mining rights, permit and permission for breach of a material term or condition of such right, permit or permission.¹³⁷ This happens when the holder has a mining contract and there are certain conditions that have to be complied with. Once the miner breaches the mining contract, the Minister has the power to cancel the contract. This helps in ensuring that government remains with an upper hand over mining operations and it ensures compliance for the fear of losing mining rights.¹³⁸

4.4.1.3. CANCELLATION OR SUSPENSION OF RIGHTS/PERMISSION/PERMIT FOR CONTRAVENING THE ENVIRONMENTAL MANAGEMENT PROGRAMME.

The Act provides for suspension or cancellation of mining rights, permit or permission for contravening the environmental management programme.¹³⁹ Mining activities impact negatively on the environment thus miners ought to comply with environmental management plans in order to reduce environmental degradation. Cancellation of mineral rights of those who do not comply is very effective remedy of ensuring sustainable mining as non-compliance will lead to loss of mining rights.

4.4.1.4. CANCELLATION OR SUSPENSION OF RIGHTS/PERMISSION/PERMIT FOR SUBMITTING INCORRECT INFORMATION.

The Act provides for suspension or cancellation of mining rights, permit and permission for submitting inaccurate, incorrect or misleading information on any matter required to be submitted under the Mineral and Petroleum Act.¹⁴⁰ Miners in terms of the Act are expected to disclose information and data in respect of mining or processing of minerals.¹⁴¹ To ensure compliance, the Act empowers the Minister to cancel the mining rights of those who do not comply.

¹³⁶See <https://www.rough-polished.com> visited on 30 June 2022. In this issue it was reported that BRC DiamondCore may lose its South African mining licences for failing adhere to Section 52 of the MPRDA, if it is found that the mining firm did not notify the country's department of Minerals and Energy of its plan to retrench 200 mine workers as required by Section 52 of the Act.

¹³⁷Section 47 (1) (b). n 113 above.

¹³⁸See <https://www.miningmx.com> visited on 30 June 2022. This was a matter in which the South African government threatened to cancel the mining licences from Sibanye-Stillwater amid a strike at the operations. The strike over wages had been going on for more than 10 weeks and the South African Mines Minister indicated that he would withdraw the mining licences under Section 47 of the MPRDA t for the mining firms' failure to fulfil its obligations in terms of the mining rights.

¹³⁹Section 47 (1) (c). n 113 above.

¹⁴⁰Section 47 (1) (d). n 113 above.

¹⁴¹Section 28 and 30. n 113 above.

4.4.1.5. PROCEDURE FOR CANCELLATION OR SUSPENSION.

Section 47 (2) of the MPRDA provides for the procedure to be adopted for the suspension or cancellation of mining rights. Before cancelling mining rights, the Minister must give a written notice to the holder of the licence indicating the intention to cancel the right and in the written notice the Minister must set out the reasons why he or she is considering suspending or cancelling the mining rights.¹⁴² The holder of the mining right must be given an opportunity to show why the right must not be suspended or cancelled.¹⁴³ This procedure affords the holder their right to administrative justice as they will be given an opportunity to be heard before a decision affecting their rights is taken

In terms of Section 47 (3) of the MPRDA, the Minister must direct the holder of the rights to take specified measures to remedy breach or failure before suspending or cancelling the rights. It is only after failure of the holder to remedy the breach, that the Minister can suspend or cancel the mining rights.¹⁴⁴ This is a fair procedure that is quite sound at law as it allows concerned parties to be heard and also be given an opportunity to remedy before the extreme measure of suspension or cancellation is taken.

4.4.2. CANCELLATION OF LICENCES, PERMITS AND CERTIFICATES UNDER THE PRECIOUS METALS ACT.

In terms of the PMA, the Regulator is empowered to cancel licences, permits and certificates under various circumstances which include the following:

4.4.2.1. CANCELLATION OF LICENCE/PERMIT/CERTIFICATE FOR FURNISHING FALSE INFORMATION.

If the holder of the licence, permit or certificates furnishes false or incomplete information in the application for the licence then that licence, permit or certificate can be cancelled.¹⁴⁵ If a holder tenders false information in the application, and such information is relied on in the granting of the application, the civil remedy of cancellation can be relied on to cancel such a licence or permit as it would have been obtained fraudulently.

4.4.2.2. CANCELLATION OF LICENCE/PERMIT/CERTIFICATE FOR BREACHING ANY TERM OF THE LICENCE/PERMIT/CERTIFICATE.

If the holder of the licence, permit or certificate fails to comply with any condition imposed in the licence, permit or certificate then the licence can be cancelled.¹⁴⁶ This is a very effective way of ensuring compliance with conditions set out. The holder of the licence will know that if they fail to fulfil any condition imposed in

¹⁴²Section 47 (2) (a) and (b). n 113 above.

¹⁴³Section 47 (2) (c). n 113 above.

¹⁴⁴Section 47 (4). n 113 above.

¹⁴⁵Section 11 (a). n 118 above.

¹⁴⁶Section 11 (b). n 118 above.

the licence then the licence will be cancelled. This will actually deter the holder from contravening conditions in the licence.

4.4.2.3. CANCELLATION OF LICENCE/PERMIT/CERTIFICATE FOR NON-COMPLIANCE WITH THE PROVISIONS OF THE PRECIOUS METALS ACT.

If the holder fails to comply with any provisions of the PMA, then the licence, permit or certificate will be cancelled.¹⁴⁷ This is an effective compliance enforcement mechanism that will force holders of licences to comply with the provisions of the law as failure will lead to withdrawal of rights through the cancellation of the licence, permit or certificate.

4.4.2.4. CANCELLATION OF LICENCE/PERMIT/CERTIFICATE UPON CONVICTION.

If a holder is convicted of any offence in terms of the PMA or any other offence involving fraud, theft, corruption or forgery then the licence, permit or certificate will be cancelled.¹⁴⁸ If upon conviction the convicts' licence is not cancelled, then they may continue using it to commit further offences but if the licence is cancelled altogether then there is no room for continuation of the offence. This shows how effective cancellation of licences is as a remedy as it stops the continuation of the wrong.

The provision of the civil remedy of cancellation of mining licences, permits and certificates as quite plausible and sound at law as it is effective in the sense that it forces miners to comply with the law in order for them to preserve their mining rights. It is a very efficient way of ensuring enforcement compliance as it forces miners to comply with the law because they will be afraid of losing their rights and permits and it helps government to retain control over mining operations.

4.4.3. FINANCIAL PROVISION FOR REMEDIATION OF ENVIRONMENTAL DAMAGE.

Financial Provision is a form of security that is given by mineral rights holders before they commence any mining operations, the mining rights holder must make an assessment of what it will cost to rehabilitate the impact of their operations on the environment and then they must set aside the amount of money as security that is needed to cover the cost of rehabilitation.¹⁴⁹ For the financial provision regime to be effective as a remedy, there is need for transparency of financial provision information and the money must be safely kept until such a time when the need to rehabilitate arises. In addition to this, there is need for public participation of the affected communities in the various processes taken in

¹⁴⁷Section 11 (c). n 118 above.

¹⁴⁸Section 11 (d). n 118 above.

¹⁴⁹D. Sefatsa and C. Horsfield. 'What do you Know about Proposed New Rules for Financial Provision for Mining Rehabilitation.' *Centre for Environmental Rights*. 10 March 2022.

determining the amount sufficient for financial provision in each circumstance so that the views are heard from the word go.

By nature, mining is one of the most destructive activities that negatively affects the environment and ecology as well as affecting those who depend on the environment for survival and it is for this reason that, there are laws that have been designed to ensure that, the mining entities that cause the damage are the ones who pay to clean up the damage.¹⁵⁰ The prescribed financial provision requirement in South African mining law is actually in line with the “polluter pays principle.”

4.4.3.1. FINANCIAL PROVISION UNDER THE MPRDA.

In terms of Section 41 (1) of the MPRDA, in an application for a mining right or permit, the applicant must make the prescribed financial provision for the rehabilitation or management of negative environmental impacts. The Minister must not approve any environmental management plan or environmental management programme before the prescribed financial provision for environmental rehabilitation is made. The holder of the mining right must annually assess his or her environmental liability and increase his or her financial provision to the satisfaction of the Minister.¹⁵¹ In the event that the Minister is not satisfied by the assessment of the financial provision, he or she may appoint an independent assessor to conduct the assessment and determine the financial provision.¹⁵² The requirement of financial provision remains in force at all time until such a time the mine is closed.¹⁵³

4.4.3.2. FINANCIAL PROVISIONING REGULATIONS, 2015.

The Financial Provisioning Regulations were promulgated by the Minister of Environmental Affairs on 20 November 2015 under Government Notice R1147 (GNR 1147) and prior to that, they were solely governed by Section 41 of the MPRDA. The 2015 financial provision regulations are currently operating but they do not yet govern miners that made financial provisions for rehabilitation under the MPRDA.¹⁵⁴ Under GNR 1147, mining companies are required to determine and make financial provision for the guarantee of availability of funds to remedy negative environmental damage caused by prospecting and mining.¹⁵⁵ The holder of mining rights is expected to make financial provision for :

¹⁵⁰Sefatsa & Horsfield n 149 above.

¹⁵¹Section 41 (3). n 113 above.

¹⁵²Section 41 (4). n 113 above.

¹⁵³Section 41 (5). n 113 above.

¹⁵⁴O. Tambo & S. Theobald. ‘Financial Provisioning for Rehabilitation and Mine Closure: A Study of South African Platinum and Coal Mining Companies.’ *Intellidex Research Report*. May 2018.

¹⁵⁵Tambo & Theobald n 154 above. The following South African mining companies actually have financial provisions and rehabilitation funds: Exxaro Resources, Anglo American Platinum, Lonmin, Impala Platinum, Northam, Atlatsa, Eastern Platinum, Royal Bafokeng Platinum, Wescoal, Wesizwe Platinum and MC Mining.

- Rehabilitation and remedy;
- Decommissioning and closure of mining activities at the end of mining operations;
- Remediation of latent and residual environmental impacts that may become known in the future.¹⁵⁶

In terms of GNR 1147, financial provisioning can be done and accepted through three different means which are:

- A financial guarantee from a registered bank or any financial institution registered with the Financial Services Board as an insurer or underwriter;
- Deposits into an account administered by the Department of Mineral and Energy;
- Contributions to a trust fund established in terms of applicable legislation as security for the provision raised.

The purpose of the establishment of the prescribed financial provision is that, if the holder of the mining rights fails to rehabilitate or manage any negative impact on the environment, the Minister may upon written notice to the holder, use all or part of the financial provision to rehabilitate the environment.¹⁵⁷ The requirement of the prescribed financial provision is quite plausible. This is so because mining activities by nature have a negative impact on the environment and there is need for funds to be set aside for the purpose of remedying the damaged environment. If no funds are set aside for this well in advance, when the need to remedy the environment arises nothing will be done as there won't be any funds available to remedy the environment. The financial provision requirement is also plausible in the sense that even after the mine closes, the Minister can still retain a portion of it that may be required to rehabilitate the closed mining. This helps to rehabilitate and restore the environment to the condition it was before mining commenced.

The problem being currently faced in Zimbabwe is that the current Mines and Minerals Act does not establish any funds for rehabilitation of the environment. Once the environment is degraded, it is left like that as the mining companies would not have set aside funds that can be used to rehabilitate the environment. Zimbabwe can learn this from South Africa and also amend the Mines and Minerals Act to provide for the prescribed financial provision.

4.4.4. REMEDIAL ORDERS

This is where the Minister will issue a directive ordering anyone carrying on mining or prospecting operations that results in environmental degradation and pollution to take measures to remedy the environment within a specified period of time. Remedial orders are quite progressive and very effective in ensuring rehabilitation of the environment. In South Africa, remedial orders are provided for in the

¹⁵⁶Regulation 5 of the Financial Provisioning Regulations, 2015.

¹⁵⁷Section 41 (2). n 113 above.

Mineral and Petroleum Resources Development Act as well as the National Environmental Management Act under the following provisions:

4.4.4.1. MINISTERIAL REMEDY ORDER AGAINST HOLDER OF MINING RIGHTS.

In terms of Section 45 (1) of the MPRDA, if any prospecting or mining operations result in pollution or environmental damage that is harmful to health or wellbeing of others and requires urgent remedial measures, the Minister may direct the holder to investigate, evaluate, assess and report on the impact of the pollution and degradation, take remedial measures as indicated in the Minister's directive within the period specified in the Directive.¹⁵⁸ Orders by the Minister to remedy the environment are a very effective way of monitoring and compliance enforcement as this is a follow up on miners to ensure that they comply with the provisions of the law that require them to remedy the environment. The Minister in the Directive will actually clearly specify the measures that must be taken to ensure meaningful rehabilitation is done within a specified reasonable period of time

4.4.4.2. REMEDY BY THE MINISTER.

In terms of Section 45 (2) of the MPRDA, if the holder of the mining rights fails to comply with the Minister's Directive to remedy, the Minister may take necessary measures to remedy ecological degradation and stop pollution. The holder of the mining rights will be given an opportunity to make representations before the Minister goes ahead to remedy.¹⁵⁹ The Minister may use the funds appropriated for that purpose by Parliament to remedy the environmental damage and the Minister is entitled to recover an amount equal to the funds necessary to fully to fully implement the remedial measures from the holder of mining rights concerned.¹⁶⁰ This provision is quite plausible as it ensures that the Minister does not bear the burden of remedying the damaged environment but rather allow the Minister to go after the mining rights holder and recover the costs of remedying from there.

4.4.4.3. REMEDY BY THE REGIONAL MANAGER.

In circumstances where the Minister directs that remedial measures be undertaken to rehabilitate the environment in terms of Section 45 of the Act, and it is established that the holder or successor in title of the prospecting or mining rights is deceased or cannot be traced or In the case of a juristic person, has been liquidated or ceased to exist, the Minister may instruct the Regional Manager concerned to take the necessary measures to prevent further pollution and to remedy the degraded environment and make the area safe.¹⁶¹ The remedial measures undertaken by the Regional Manager must be funded from the financial

¹⁵⁸Section 45 (1) (a) - (c). n 113 above.

¹⁵⁹Section 45 (2) (b). n 113 above.

¹⁶⁰Section 45 (2) (d) and (e). n 113 above.

¹⁶¹Section 46 (1). n 113 above.

provision made by the holder of the mining rights in terms of Section 41 of the Act.¹⁶² In such circumstances the financial provision will then come in handy as it will be readily available for use in the rehabilitation process. Where the financial provision is not there or is inadequate then rehabilitation can be done using funds appropriated by Parliament for that purpose.¹⁶³

4.4.4.4. REMEDY ORDER AGAINST EVERY RESPONSIBLE PERSON.

In terms of Section 28 (1) of the NEMA, 1998, every person who causes, has caused or may cause pollution or degradation of the environment must minimise or rectify such pollution or degradation of the environment. It is within the powers of the Director-General to issue remedial orders to non-compliant mining rights holders compelling them to remedy the environment. The Director-General is entitled to issue a directive ordering any person who fails to remedy the environment to:

- Investigate, evaluate and assess the impact of his or her activities on the environment;
- Take specific reasonable measure before a given date;
- Complete the measures before the given date.¹⁶⁴

4.4.4.5. REMEDY BY THE DIRECTOR-GENERAL OR PROVINCIAL HEAD OF DEPARTMENT.

In terms of Section 28 (7) of the NEMA, in the event of non-compliance with the directive to remedy by the mining rights holder, the Director-General or Provincial Head of Department may take reasonable measures to remedy the situation. The Director-General or Provincial Head of Department may recover all the costs incurred in remedying the environment from any person responsible for the degradation and pollution, owner of the land or person in control of the land at the time of pollution or degradation or any person who negligently failed to prevent the damage.¹⁶⁵ This provision is quite plausible as it allows recovery of costs incurred from the responsible person thus taking away the financial burden of rehabilitation from the fiscus.

¹⁶²Section 42 (2). n 113 above.

¹⁶³W. Gilliland. 'R49 Billion to Rehabilitate 6 000 Mines.' *Mail & Guardian*. 6 December 2019. In this newspaper article it was said that the mineral resources department needed R49 billion to rehabilitate 6 000 left by mine owners and rehabilitation of each asbestos site needed around R40 Million and R6 Million. The Director -General noted the fact that mine owners would have made huge profits during the period the mines were operating but all the rehabilitation costs running to R49 billion were left to be met by the fiscus. It appears this problem was created prior to 2002 before the new MPRDA came into effect which has rehabilitation as a requirement for mines as well as the requirement for financial provision for all environmental liabilities related to the mine.

¹⁶⁴Section 28 (4). n 114 above.

¹⁶⁵Section 28 (8) (a) - (d). n 114 above.

4.4.4.6. COURT ORDERS COMPELLING DIRECTOR GENERAL OR PROVINCIAL HEAD OF DEPARTMENT TO ISSUE REMEDY ORDER.

Any person is entitled in terms of Section 28 NEMA to approach a competent court for an order compelling the Director-General Or Provincial Head of Department to take steps to compel a person responsible for environmental degradation to remedy the environment in terms of Section 28 (4) of the same Act.

4.4.5. SEIZURE AND SALE OF PROPERTY BELONGING TO MINING RIGHTS HOLDER.

Under South African mining laws, the property of the mining rights holder can be seized and sold in order to get funds to remedy the damaged environment due to the mining rights holder's mining operations. This is provided for under Section 45 (2) (c) of the MPRDA. Where the Minister incurs costs in remedying the environment because of the non-compliance of the holder of mining rights with the Ministers' directive to remedy, the Minister is allowed to approach the High Court through an *ex-parte* application for an order to seize and sell such property of the holder that is necessary to cover the costs of remedying the situation.

This is a very effective civil remedy in that the burden of remedying the environment will be put on the holder of mining rights and not the fiscus. If the holder of mining rights fails to remedy and the Minister does so, the Minister will still go after the responsible person using this procedure to recover costs of rehabilitation.

4.5. LESSONS LEARNT.

South African mining laws provide for some civil remedies that are not provided for in Zimbabwe at the moment. Zimbabwe can thus learn a few lessons from its counterpart that if implemented can enhance the civil remedies regime for effective compliance enforcement. These remedies that Zimbabwe must also implement are:

1) The Prescribed Financial Provision.

Provision from the onset of mining operations that miners provide financial provision to cater for negative impacts on the environment in the form of pollution and environmental degradation is a plausible idea. What this means therefore is that there will be a financial guarantee that in the future whenever the need arises to rehabilitate the environment, funds to do so will be availed as they would have been set aside right from the onset after appropriate assessments of the amounts to be kept would have been done. Currently Zimbabwe has a huge challenge in that no funds whatsoever are being kept aside to guarantee rehabilitation of the environment after mining operations have taken place. Zimbabwe must learn a lesson from South Africa on this and amend the current legislation. This is a proactive strategy that ensures that provision is made for the

rehabilitation of the environment before any harm to the environment. it anticipates the damage and make provision for the restoration beforehand.

2) Seizure and sale of property belonging to non-compliant miners to recover costs for environmental rehabilitation.

In South Africa, the MPRDA allows the Minister to urgently remedy the environment, in the event that the miner has not complied with an order to remedy as directed by the Minister. However, in the spirit of the polluter pays principle, the Minister after remedying, is entitled to make an *ex-parte* application to the High Court to seize and sell the property of the non-compliant. This is a sound provision as it allows urgent rehabilitation to take place and at the same time ensure that the non-compliant miner pays the costs of such rehabilitation through the selling of the miners' property. Zimbabwe must amend the current legislation and provide for attachment of property of miners in order to recover costs of rehabilitation just like what is being done in South Africa.

3) Integration of mining development and environmental protection.

The South African MPRDA is quite progressive in as much as it tries to strike a balance between mining development and environmental protection. It seeks to integrate environmental protection in its mining laws which makes enforcement much easier. Section 38 of the MPRDA provides for Integrated environmental management and responsibility to remedy and it emphasises the need for all miners to uphold the objectives of the NEMA. The NEMA also provides for a Committee on Environmental Coordination. Zimbabwe needs to amend its mining laws to reflect this so that there is also coordination between relevant state organs especially the MMMD and Environmental Management Agency. A major challenge in the compliance enforcement of civil remedies in Zimbabwe has been the incoordination between these two organs as the MMMD seems to be obsessed with mineral development at the expense of environmental protection. Zimbabwe needs to learn a lesson from South Africa and also establish a coordinated committee with representatives from all relevant stakeholders so as enhance its civil remedies regime for effective compliance enforcement.

4) Imposing of liability on Mining companies' Directors.

Section 38 (2) of the MPRDA states that directors of mining companies are jointly and severally liable for any unacceptable negative impact on the environment, including damage, degradation or pollution advertently or inadvertently caused by the company which they represent. What this means therefore is that liability can actually be visited upon the directors of the mining companies personally. This is good way of ensuring that mining companies comply with the laws as the Directors will know that if there is non-compliance, liability can be visited on them personally. The Directors will therefore endeavour at all costs to ensure that the mining company complies with the law so that liability is not imputed on them.

Zimbabwe must also amend its mining laws and also include this provision as it will induce Directors of mining companies to comply with the laws to avoid personal liability.

4.6. CONCLUSION.

In a nutshell, this chapter has highlighted the legislative and institutional frameworks of the civil remedies' regime in South Africa as well as an outline of the civil remedies available in South Africa in a bid to compare with Zimbabwe and learn lessons. It has been established in this chapter that both Zimbabwe and South Africa have suspension or cancellation as a civil remedy. Also, both jurisdictions do not have a comprehensive civil fines system which is a shortcoming for both. There is need for both countries to legislate for civil fines wherein inspectors from the mining departments can go and the ground and assess the breach and impose fines that are commensurate with the breach and not only rely on criminal fines imposed by the judicial officers. However, there are some civil remedies that are available under South African laws that Zimbabwe ought to also must learn lessons on and also amend its mining laws to provide for them. These include provision of prescribed financial provision at the onset of mining operations, seizure and sell of miners' property to recover costs of rehabilitating the environment, imposing personal liability on directors of mining companies for any damage caused to the environment that the company would have failed to remedy. Lastly there must be coordination between all relevant stakeholder in order to enhance compliance enforcement.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS.

5.1. INTRODUCTION.

This chapter presents the summary of major findings and summary of major arguments. The research was conducted on how the civil remedies regime can be enhanced in order to have effective compliance enforcement in the department of mining. An outline of the legislative framework and institutional framework of the civil remedies regime in Zimbabwe was given in Chapter two. Chapter two also gave an outline of the civil remedies that are currently available in the mining laws. In Chapter three, a critical analysis of the Zimbabwean civil remedies' regime was done and the challenges and weaknesses were highlighted for both the provisions of the law and the challenges that are faced by institutions within the mining division in implementing the civil remedies regime. Under Chapter 4, the research then went further to look at the South African civil remedies' regime, that is, the legislative framework and institutional framework in a bid to compare with the Zimbabwean context. From the comparison, it was established that there are some lessons that Zimbabwe can learn from its counterpart, South Africa. It was also established that South Africa seems to have a more comprehensive civil remedies' regime that is wider in scope. Desk top research and comparative analysis are the research method tools that were used. Chapter 5 will also provide the recommendations that Zimbabwe can pursue in order to enhance its civil remedies regime for effective compliance enforcement as well as conclude the research.

5.2. SUMMARY OF FINDINGS.

This research was motivated by the fact that when it comes to compliance enforcement, the law largely leans in favour of the criminal justice system but the criminal sanctions system has also had its own fair share of shortcomings. The research therefore sort to investigate how the civil remedies regime can be enhanced in order for it to step in and assist in ensuring effective compliance enforcement in mining activities. The summary of the findings of the study have therefore been summarised according to the statement of the problem provided in chapter one. The findings are as follows:

- The civil remedies regime in Zimbabwe has very limited scope as it only provides for cancellation and non-renewal of licenses and restoration orders.
- The civil remedies regime in Zimbabwe does not provide for a civil fines system. It largely relies on the criminal fines system making it a quasi-civil fines system that has not been very effective. Fines can only be imposed by the judicial officers upon conviction. Inspectors can only collect fines in instances where there is an admission of guilt.

- The civil remedies system in Zimbabwe does not provide for seizure and sell of properties belonging to non-compliant miners in order to remedy any breaches of the law.
- Currently there is no Rehabilitation Fund or any form of financial provision that miners are contributing towards that can be used to rehabilitate the environment during the course of mining as well as at the time of closure of mines and decommissioning. This is the reason why there are no funds to remedy any damage to the environment.
- There is no coordination between all relevant stakeholders, that includes, the MMMD and the Environmental Management Agency and this has hampered the smooth administration of the civil remedies' regime. Each organ is mainly interested in advancing its own interests. There are competing interests between the two main organs, one is interested in advancing mining development at all costs and the other is interested in protecting the environment and ensuring sustainable exploitation of natural resources.
- The relevant institutions in the administration of the civil remedies' regime mainly the MMMD and the Environmental Management are heavily under-resourced in terms of financial and human resources and this has negatively affected the effective implementation of the civil remedies' regime. The budgetary allocations are too little and cannot cater for all the costs involved in the effective administration of the mining operations. This has greatly reduced the institutions capacity to monitor mining activities and ensure adherence.

5.3. SUMMARY OF MAJOR ARGUMENTS.

After the carrying out of this study, the following arguments emerged:

- Chapter 2 made the argument that the scope of the civil remedies provided for by the Zimbabwean mining laws is too narrow as only cancellation of mining rights and remedial orders and quasi civil fines are the only civil remedies being provided for in the mining legislature. It was established that there is over reliance on the criminal penalties system to ensure adherence with the mining laws in mining operations as most of the acts simply impose criminal sanction for non-compliance and barely provide for civil remedies. It is argued that, civil remedies if efficiently implemented give room to all parties concerned to negotiate and reach settlements on how the wrong can be rectified thus preserving good relations unlike criminal sanctions which are brutal and bring animosity between the administrative bodies and the miners on the other hand.
- In Chapter 3 the major argument was that an effective legal framework and institutional framework is necessary for effective regulation of the mining sector. The civil remedies regime is hinged on inspections, it therefore

follows that institutions responsible for carrying out inspections must have the capacity to do so. The Institutions that have been established are enough but what is lacking is the capacity to perform their mandate. There is need for the state to allocate adequate funds that will meaningfully assist in the operations of the mining institutions. The law should allow the institutions to collect revenue in the form of civil fines imposed by the inspectors as this will help in increasing funds that can be used in administration. There is need for government to adequately cater for the remuneration of workers within these institutions as this will encourage more people to want to work for the mining institutions so as to avoid lack of human resources.

- Be that as it may, it can be argued that implementation of civil remedies does not require a lot of state resources as much as the criminal justice system does. The civil remedies regime is mainly implemented by officials from the MMMD with some technical assistance from the environment department unlike the criminal justice system that requires more financial and human resources from the Judicial Service Commission, National Prosecuting Authority, Zimbabwe Republic Police and Zimbabwe Prisons Services. All these various stakeholders are needed to investigate the alleged offence, arrest, prepare dockets, prosecute the case, adjudication of the matter and finally imprisonment. This process is clearly costly and eats into state coffers more than the civil remedies would do.
- In Chapter 4, the argument was that South Africa has a wider scope for the civil remedies' regime. A number of civil remedies are provided for in the mining laws in the event of non-compliance which are very effective. Lessons that Zimbabwe can learn include, prescribed financial provision, seizure and sale of property belonging to non-compliant mining rights holder and imposing liability on mining companies' directors. Civil remedies in the form of rehabilitation funds and financial provisions are proactive strategies which anticipate damage and prepares for when it happens. They do not wait for a wrong to be done then react like what happens under the criminal justice system which only waits for a wrong to be done then implement punishment. The South African civil remedies system is more robust and comprehensive. This could be the explanation why the mining industry has been able to remit meaningful revenue to the fiscus hence leading to a better economy for the country.
- Another argument that emerged in Chapter 4 is that of the importance of integrated mining development and environmental protection. Establishing a multi-sectoral approach wherein all relevant stakeholders come together with an objective of ensuring compliance enforcement in the mining sector

will yield good results and leads to effective compliance enforcement. The need for coordination can never be over-emphasised. All relevant government organs responsible for monitoring mining activities must come together and establish a platform wherein they meet to discuss issues to do with mining so that they speak with one voice. Such coordination will greatly assist in ensuring compliance in the mining front.

It is therefore argued that if the civil remedies regime in Zimbabwe is enhanced and its scope is widened it might bring about effective compliance enforcement as they are more efficient in that they have an impact of deterring miners from breaching the law as the effects of non-compliance under the civil remedies' regime are more dire. If civil remedies are sufficiently provided for miners will just start to adhere with the laws on their own because of the fear of facing the dire consequences of breaching the law.

5.4. RECOMMENDATIONS.

This study has revealed that the civil remedies regime is much more effective in ensuring compliance enforcement more also when dealing with mining companies that exist as legal persons. The research also established that Zimbabwe's scope for civil remedies' regime is quite limited thus rendering it ineffective hence the need for enhancing and widening the scope of the civil remedies regime to ensure effective compliance enforcement. There is need for amendment of mineral law legislature mainly, MMA so as to widen the scope of civil remedies. Thus, the following recommendations are hereby presented:

1) Establishment of civil fines system.

Currently fines are only comprehensively provided for under the criminal justice system. There is need for amendment of the major pieces of legislation by Parliament, that is, the MMA, PSTA, GTA and the EMA so that they establish a comprehensive civil fines system, separate from the criminal fines that will allow mine inspectors and environmental officers to impose fines with amounts varying on a case by case basis. Appropriate assessments must be done in coming up with the appropriate fine. The inspectors and environmental officers must be given the discretion to assess fines and come up with the most appropriate fine that will be suitable in the circumstances. Fines must not be fixed at the same rate for all cases. Each case must be assessed on its own and the most appropriate fine must be imposed. The civil fines must be hefty in order to deter miners from non-compliance thus ensuring compliance enforcement. Lenient fines do not help as they promote non-compliance. If a fine is too little, the miners will not see the need to adhere. Those miners who breach the law must be hit hard in their pockets. This is an effective way of ensuring adherence with the mining laws.

2) Establishment of Prescribed Financial Provision.

Currently in Zimbabwe, there is no financial guarantee that is given at the start of mining operations for rehabilitation of the degraded environment due to mining operations. There is a need for Parliament to amend the MMA so that it makes it a requirement for provision of financial provision at the beginning of mining operations and the appropriate amount must be assessed by qualified valuers. This will ensure that whoever pollutes the environment pays for it as the funds guaranteed as financial provision will be used to enforce restoration orders. At the moment rehabilitation is not possible in most cases as there will be no funds set aside for this. Zimbabwe must follow the South African model on prescribed financial provision. Such a proactive strategy is sound. It entails planning ahead for something that is likely to happen in the future. The MMMD will then have access to the reserved funds and use them when the need arises.

3) Provision for seizure and sell of property belonging to non-compliant mining rights holders.

Parliament must amend the relevant pieces of mining legislation, so that they allow seizure and sell of property belonging to non-compliant mining rights holders. If for example, if a fine is imposed or a restoration order is issued and the miner fails to adhere to it, the relevant mining institution must be empowered by the law to seize and sell the property of the non-compliant that will satisfy the fine or restoration order in question. This will ensure compliance enforcement as the property of the non-compliant miner will be used to satisfy the orders. This civil remedy is very effective and it will cause miners to voluntarily comply with the law since they will be aware that if they fail to abide by the law, their property will be attached and sold in order to satisfy whatever order was given to them.

4) Imposing liability on the mining companies' directors.

The relevant mining laws especially the MMA must be amended by Parliament so that liability for any breach is imposed on all directors of mining companies jointly and severally. This will ensure that where there is no compliance, for example where the mine decommissions and is no longer in existence, the liability to remedy the damaged environment must be placed on all the directors jointly and severally so that they remedy the breach. Once a mine decommissions and stops operations, it is very difficult to proceed against the mine and recover anything from it, it will then make sense to proceed against the directors of the mine in their own personal capacity so that they remedy. This provision once provided for in the will force mine directors to make sure that the mining company abides by all its obligations during the mining life span since they will be aware that if there is any obligation not satisfied, liability will be visited on them.

5) Establishment of a Multi-Sectoral Approach.

The administration of the civil remedies' regime in Zimbabwe has been greatly hampered by the incoordination between the relevant stakeholders in the mining department. There is need for all the relevant stakeholders in the mining sectors mainly the MMMD, Ministry of Environment, Water and Climate Change as well as the Environmental Management Agency and Representative Boards for Miners to come together and establish a committee with all the relevant stakeholders that will be responsible for coordination compliance enforcement so that all relevant stakeholders speak with one voice with all common goal of ensuring effective compliance enforcement without necessarily advancing ones selfish goals at the expense of others which is the situation currently prevailing.

6) Provision of Adequate Resources for all Mining Institutions.

As aforementioned, any civil remedies' regime greatly relies on inspections on the ground in order to enforce compliance. Inspections require a lot of human and financial resources. Currently the main institutions responsible for compliance enforcement in the mining sector, that is, the MMMD and the Environmental Management Agency are heavily under-resourced such that it is nearly impossible for them to carry out inspection. There is need for the Ministry of Finance to allocate adequate financial resources that will allow inspections to be performed. There is need for recruitment of more staff members so that there's sufficient human personnel to efficiently perform the inspections. Without adequate human and financial resources, no meaningful inspections will take place and this will lead to the failure of the civil remedies' regime as it is hinged on inspections.

5.5. CONCLUSION.

In a nutshell, it can be concluded that, in enhancing the civil remedies regime in Zimbabwe for effective compliance enforcement, the amendment of the main piece of legislation, that is, the MMA be attended to urgently. As it is an archaic piece of legislation, it tends to focus more on mineral development to the detriment of all other aspects of sustainable mining and over relies on the criminal justice system for compliance enforcement. The MMAB that was approved by Cabinet on the 12th of July 2022 and now awaits to go before Parliament. The Amendment Bill will help but to a smaller extent as it does not adequately cover issues to deal with the civil remedies. There is need for mineral legislation to be amended so that it captures and provides for more civil remedies that are not currently provided for in the mining laws. Civil remedies will ensure effective compliance as the consequences of violating the law civil remedies are more dire thus have the positive effect of encouraging miners to comply. The cost of breaching the law under civil remedies regime is much higher than the cost of compliance thus making it more effective in ensuring compliance. If all the civil remedies as put forward under recommendations are implemented this will definitely enhance Zimbabwe's civil remedies regime leading to effective compliance enforcement.

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