

Thematic Report: Natural Resources, Environment, and Property¹



I. Introduction

Overview

Resource extraction projects, both public and private, may put the communities in which they operate at greater risk of becoming victims of trafficking and forced labor. For instance, when such projects limit communities' access to natural resources, individuals in such communities may find themselves looking for alternative means of survival. In doing so, barriers of language, culture, low socioeconomic status, and lack of legal knowledge or understanding of their rights may render them vulnerable to exploitation. Too, a lack of regulatory law, or regulation in fact, in resource extraction industries creates fertile ground for firms and individuals to exploit others for their labor.

Furthermore, environmental degradation—whether it be caused by industrial operations, resource extraction work, urbanification, or climate change—may also result in communities' increased vulnerability to TIP, for many of the reasons outlined above.

Environmental degradation and land acquisition both increase TIP risks in communities by their likelihood of contributing to involuntary displacement. The landlessness, joblessness, homelessness, food insecurity, loss of access to common property and community services, and social disintegration that may result from such displacement all contribute to individuals' need to seek new income. As above, when this occurs a number of factors may drive them towards employment in sectors that use forced labor, or otherwise involve TIP.

As such, strong laws governing resource extraction licensing and environmental regulation can help states to intercept TIP long before it even occurs. Laws that require companies to engage in environmental impact assessments, or community engagement, before undertaking large projects can help to ensure that their negative impact on the communities in the project area is limited. When such laws also require the use of a domestic labor force, as they do in a few of the countries noted in this Report, they may help to improve local and/or national job growth; when they mandate that firms comply with labor standards in order to retain their licenses, they help to prevent the likelihood that industries will rely on forced labor for their production. However, even when such laws exist, they must be supplemented by labor inspection standards and mechanisms that are sufficient to ensure that the laws are adequately enforced.

Similarly, strong environmental standards can help to ensure that communities are not adversely

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affected by growth-related environmental degradation, and thus reduce TIP risks.

Finally, property law regimes that encourage transparency in property transfers, and access to justice in property disputes—including access to courts to challenge government expropriations of land—can help to reduce likelihood of displacement, or at least the likelihood that displacement will result in the kinds of economic uncertainty that increase TIP risks in communities.

The statements and analysis contained herein are the work of the American Bar Association’s Rule of Law Initiative (ABA ROLI). They address, by and large, the *de jure* legal framework in Eritrea, Ethiopia, Ghana, Lesotho, Malawi, Namibia, Uganda, and Zambia. This Report is based primarily on desk review of freely and publicly-available laws and reports, supplemented in portions by the knowledge of ABA ROLI’s local affiliates. Please note that the materials discussed in this Report capture only the legislative and policy framework of the relevant countries; *de facto* implementation of these laws may be at issue in some, if not all, of these states.

II. Natural Resource Extraction Laws

Agriculture and Logging

Eritrea

The Ministry of Agriculture regulates agriculture and logging pursuant to the Forestry and Wildlife Conservation and Development Proclamation.² The Ministry is charged with creating declaring and managing protected forest or wildlife areas for the purposes of conserving Eritrea's biodiversity.³ The Ministry is also charged with issuing logging licenses and permits, and suspending such licenses or permits "where there is reason to believe a violation of the conditions of the permit or a violation of this Proclamation has occurred or is likely to occur,"⁴ after the licence or permit-holder has been given an opportunity to be heard.⁵

Permits may not be issued without the area subject to a permit undergoing any relevant environmental impact assessments, to be laid out by the Ministry.⁶ However, ABA ROLI has been unable to review whether permit requirements include TIP or TIP-related conditions or limitations.

Ethiopia

The Ministry of Agriculture and Natural Resources oversees the agricultural, fishing, and logging industries. Although there is not a comprehensive regulatory scheme related to agriculture, there are proclamations on the establishment of Ethiopian agricultural research organizations.⁷

The logging industry is generally regulated by the Proclamation to Provide for the Development, Conservation, and Utilization of Forests.⁸ This law charges the Ministers for Agriculture and Rural Development with the care of Ethiopia's forests,⁹ and lays out the procedures by which trade licenses for forest products may be issued.¹⁰ The law permits the harvest of forest products from state-owned forests, provided harvesters have obtained permits from the appropriate federal or regional state authority;¹¹ however, even with a permit they may not cut or use endangered indigenous natural trees, remove natural resources beyond the scope of their permits, or otherwise undertake large-scale farming, mining, or construction beyond the scope of their permits.¹²

² Forestry and Wildlife Conservation and Development Proclamation, Proclamation No. 155/2006, *available at* <http://extwprlegs1.fao.org/docs/pdf/eri68045.pdf> (last visited July 22, 2017) [hereinafter Proclamation No. 155/2006].

³ *Id.* at arts. 16-17.

⁴ *Id.* at art. 35(1).

⁵ *Id.* at art. 35(4).

⁶ *Id.* at art. 14.

⁷ A Proclamation to Provide for the Establishment of the Ethiopian Agricultural Research Organization, Proclamation No. 79/1997, *available at* <http://extwprlegs1.fao.org/docs/pdf/eth11145.pdf> (last visited July 21, 2017); *see also* MINISTRY OF AGRICULTURE AND NATURAL RESOURCES, <http://www.moa.gov.et/home> (last visited July 21, 2017).

⁸ Forest Development, Conservation and Utilization Proclamation No. 542 of 2007, *available at* https://www.unodc.org/res/cld/document/proclamation-no--542-2007_html/Proclamation_No_542-2007.pdf (last visited July 21, 2017).

⁹ *Id.* at § 2(1).

¹⁰ *Id.* at § 6.

¹¹ *Id.* at § 13(3).

¹² *Id.* at § 14.

The Forestry Proclamation is enforced by Forest Guards and Inspectors of Forest Products, who have the authority to inspect transports of forest products, demand certificates of origin or other legal documents, and seize any products that are being transported, processed, or stored in violation of the law.¹³ Penalties for violations of the law generally include fines, and imprisonment ranging between 1-5 years.¹⁴ However, causing damage to a forest by way of setting fires carries a penalty of up to 15 years' imprisonment.¹⁵

Ghana

Timber harvesting is regulated by the Timber Resource Management Act (1988). The Act establishes a Timber Rights Evaluation Committee to evaluate applications for timber harvesting rights.¹⁶ It also provides investors with immigration quotas based on capital investment levels,¹⁷ which may affect incentives to use trafficked labor in the logging industry.

Lesotho

Lesotho's logging industry is regulated by the Ministry of Forestry and Land Reclamation, pursuant to the Land Administration Authority Act and the Forestry Act.¹⁸

Under the Forestry Act, authority for the management and control of forest reserves is generally vested in the Chief Forestry Officer, who is charged with advising the Minister for Forestry and Land Reclamation on the "ownership, control and management of any forest enterprise owned or run by the government."¹⁹ All transfers of ownership, control, and management, and licenses to cut, take, or remove forest product must be embodied written agreements and licenses, respectively.²⁰

Licenses are required for any taking or removal of forest product, whether it be for commercial use by an entity of any size, or wood for domestic use or to construct or repair a dwelling.²¹ The Chief Forestry Officer retains the right to deny licenses; such denials may be appealed to the Minister, and from there as necessary to a court of competent jurisdiction.²²

Malawi

¹³ *Id.* at §§ 15(1)-(2).

¹⁴ *Id.* at § 20.

¹⁵ *Id.* at § 20(3).

¹⁶ Timber Resource Management Act 547 of 1997, §§ 5-6, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha16665.pdf> (last visited July 17, 2017).

¹⁷ *Id.* at § 14(G).

¹⁸ Land Administration Authority Act, No. 9 of 2010, *available at* https://www.lesotholii.org/files/node/12162/land_administration_authority_act_2010_pdf_15551.pdf (last visited Aug. 3, 2017) [hereinafter Land Act]; Forestry Act, No. 17 of 1998, *available at* http://www.commonlii.org/ls/legis/num_act/fa1998139.pdf (last visited Aug. 3, 2017).

¹⁹ Forestry Act, *supra* note 18, at §§ 20-21.

²⁰ *Id.* at §§ 21(2)-22.

²¹ *Id.* at § 23(1).

²² *Id.* at § 24.

The Forestry Act regulates the identification and management of Malawi's trees and forests.²³ It appoints a Director of Forestry to manage, plan, promote, and conduct activities related to the maintenance of biological diversity in forests and forest products.²⁴ The Act also establishes a Forestry Management Board, and charges it with advising the Minister responsible for forestry on all matters related to tree and forest management.²⁵

The Forestry Act provides that licenses may be granted for the removal of forest produce from reserves, customary land, public lands, and protected forest areas, as well as for prospecting for and extracting minerals from forest reserves and protected forest areas.²⁶ Licenses may be refused if applicants have failed to comply with prescribed conditions, if they have previously suffered license revocations, if they have, in the previous 24 months, been convicted of a Forestry Act offense, if the Director of Forestry "is satisfied on reasonable ground[s] that the applicant is not a fit or proper person to hold such license," or if temporary freezes on licenses is warranted.²⁷ License denials are appealable.²⁸

Notwithstanding the licensing requirements, villagers are authorized by law to collect forest produce from customary land for the purposes of domestic use; excess wood must be disposed of by village natural resource management committees, for the benefit of the local community.²⁹

Namibia

The Namibian logging industry is overseen by the Ministry of Agriculture, Water and Forestry, under the authority of the Forest Act.³⁰ A number of licenses may be procured under the Forest Act, including licenses to harvest, graze or carry on agricultural activities, carry on mining activities, or construct roads or buildings.³¹ Licensing decisions are made by the Minister for Agriculture, Water and Forests, and granted only when royalties have been paid pursuant to regulations imposed by the latter Minister and the Minister of Finance.³²

Harvest licenses may only be granted for commercial activities that fall within the scope of any applicable forestry management plans,³³ which are drawn up by the Forestry Directorate in consultation with local and area councils where the relevant classified forests are situated.³⁴ At minimum, these management plans must note the maximum quantity of forest produce that may be

²³ Forestry Act, No. 11 of 1997, *available at* http://www.chmmw.org/publications/Forestry_Act_1997.pdf (last visited July 23, 2017).

²⁴ *Id.* at arts. 4-5.

²⁵ *Id.* at arts. 17-18.

²⁶ *Id.* at arts. 46(b)-(c).

²⁷ *Id.* at art. 52.

²⁸ *Id.* at art. 54(1).

²⁹ *Id.* at art. 50.

³⁰ *See* Forest Act, 12 of 2001, *available at* [http://www.lac.org.na/laws/annoNAM/ENVIRONMENT%20\(2001\)%20-%20Forest%20Act%2012%20of%202001%20\(annotated\).pdf](http://www.lac.org.na/laws/annoNAM/ENVIRONMENT%20(2001)%20-%20Forest%20Act%2012%20of%202001%20(annotated).pdf) (last visited July 31, 2017).

³¹ *Id.* at §§ 27-30.

³² *Id.* at § 27(2).

³³ *Id.* at § 24(1).

³⁴ *See id.* at § 12.

harvested.³⁵

Harvest licenses may be suspended or cancelled if a forest officer has reasonable grounds to believe that any provision of the Forestry Act or the license is occurring or about to occur.³⁶ ABA ROLI has not been able to review any boilerplate or actual harvest licenses to determine whether they contain TIP or TIP-related provisions.

Uganda

The harvesting and trade of timber is regulated generally by the Forestry Act, the 2004 Ministerial Notice issued by the Ministry of Water, Lands and Environment, and the Statutory Instrument No. 16 of 2000.³⁷ These laws lay out the general provisions for timber harvest, regulations for sustainable forest management, and procedures for licensing, sales, and fees.³⁸ The agencies charged with monitoring and implementing the timber industry include the District Forest Services, which is responsible for regulating timber harvesting on private lands, and the Forest Sector Support Department, which regulates the forestry sector overall.³⁹

In spite of the existence of a regulatory framework for the timber industry, “the trade is poorly regulated and much of the trade is undocumented”;⁴⁰ indeed, it is estimated that at least 80% of the timber in the Ugandan market was illegal as of 2012.⁴¹

Zambia

Zambia’s logging industry is regulated by the Director of Forestry under the terms of the Forests Act.⁴² The Act provides for the creation of national, local, and private forests, and charges the Directorate of Forestry, in consultation with rights-holders in forest areas (including local communities and joint forest management committees) with managing these lands.⁴³

The Directorate is permitted to offer forest products for sale via auction, tender, or estimate;⁴⁴ furthermore, it is authorized to issue sawmill and concession licenses, which allow sawmill owners

³⁵ *Id.* at § 26.

³⁶ *Id.* at § 34(1).

³⁷ *See, e.g.*, National Forestry and Tree Planting Act of 2003, *available at* <https://www.ulii.org/ug/legislation/act/2003/2003/national%20forestry%20and%20tree%20planting%20Act%202003.pdf> (last visited July 19, 2017); MINISTRY OF WATER, LANDS, AND ENVIRONMENT, THE UGANDA FORESTRY POLICY (2001), *available at* <https://library.health.go.ug/download/file/fid/782> (last visited July 19, 2017); WWF UGANDA, A REPORT ON NATIONAL TIMBER TRADE AND FLEGT SOLUTIONS FOR UGANDA (2012), *available at* http://awsassets.wwfdk.panda.org/downloads/national_timber_study_final_report.pdf (last visited July 19, 2017) [hereinafter WWF UGANDA, NATIONAL TIMBER STUDY].

³⁸ WWF UGANDA, NATIONAL TIMBER STUDY, *supra* note 37, at 8.

³⁹ *Id.* at 20.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 3.

⁴² The Forest Act, No. 4 of 2015, *available at*

<http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Forest%20Act%202015.pdf> (last visited Aug. 5, 2017) [hereinafter Forest Act].

⁴³ *Id.* at arts. 10-28, 31-32, 37, 42.

⁴⁴ *Id.* at art. 51.

or citizens to process timber or cut, fell, or process timber from specified forest areas. Both kinds of licenses can only be granted for a period not to exceed five years.⁴⁵ Other licenses that may be issued include conveyance permits, merchants' permits, export and import permits, domestic user permits, cord-wood permits (which allow holders to harvest or use wood for the purposes of firework or charcoal production), fire permits (which allow holders to set fires for the purpose of forest management), and tree-felling permits.⁴⁶

The terms and conditions of licenses must specify the circumstances under which the licenses may be suspended, cancelled, or renewed, in addition to provisions relating to fees, conditions for wood-cutting (including quantities of forest produce that may be harvested), requirements for reforestation, and the payment of compensation for damages.⁴⁷ However, ABA ROLI has been unable to review any publicly-available samples of forest licenses to determine whether they contain provisions relating to TIP or TIP-related practices.

Fishing

Eritrea

The Ministry of Marine Resources and the Fisheries Advisory Council regulate the fishing industry pursuant to the Fisheries Proclamation.⁴⁸

The Fisheries Proclamation provides that no foreign or national fishing vessel may engage in commercial fishing in Eritrean waters, except under the authority of a fishing license issued by the Ministry.⁴⁹ Fishing licenses may contain conditions relating to the type and method of fishing activity, the area which is to be fished, the target species and amount of fish authorized to be taken, the time period of the license, provisions regarding the tagging and marking of gear, and other measures intended to facilitate the enforcement of the law.⁵⁰

Fishing licenses are generally issued for a period not exceeding three years, and may not be extended beyond an additional year.⁵¹

The Ministry is authorized to suspend or cancel fishing licenses when there are reasonable grounds to believe that a violation of the law or a licensing condition has occurred; such decisions are appealable.⁵² However, it is not clear whether TIP or TIP-related offenses would constitute violations of a fishing license.

Ethiopia

⁴⁵ *Id.* at art. 52.

⁴⁶ *Id.* at art. 53.

⁴⁷ *Id.* at art. 55(2).

⁴⁸ Fisheries Proclamation, Proclamation No. 176/2014, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/103959/126618/F-221982642/ERI103959.pdf> (last visited July 22, 2017).

⁴⁹ *Id.* at arts. 16(1), 18.

⁵⁰ *Id.* at art. 21.

⁵¹ *Id.* at art. 23.

⁵² *Id.* at arts. 24, 48.

The Ethiopian fishing industry is regulated by the Fisheries Development and Utilization Proclamation.⁵³ This law lays out requirements for obtaining commercial, subsistence, and recreational fishing licenses,⁵⁴ and demands that fish and fish product handling occur pursuant to relevant trade standards.⁵⁵ ABA ROLI has been unable to review these trade standards to determine whether they address the use of TIP, forced labor, or migrant smuggling in the fishing industry.

Fisheries Inspectors are empowered to investigate offenses and violations under the Fisheries Development and Utilization Proclamation, and seize any products, gear, or proceeds that are involved in the violation.⁵⁶

Ghana

The Fisheries Act of 2002 governs fishing activities, including licensing and registration of fishing vessels and conservation of fisheries.⁵⁷ It also establishes a Fisheries Monitoring, Control, Surveillance and Enforcement Unit.⁵⁸

Lesotho

Agriculture and fishing are regulated by the Ministry of Agriculture and Food Security pursuant to the Agricultural Marketing Act and the Freshwater Fish Proclamation.⁵⁹

The Freshwater Fish Proclamation generally provides that any person other than an African who willfully disturbs, takes, catches, kills, or otherwise possesses fish outside the close season has committed an offense under the terms of the Proclamation.⁶⁰ However, those who are ordinarily resident upon land that borders water or through which water flows are entitled to fish in it without obtaining a permit.⁶¹ While the Proclamation does not specifically provide for licensing requirements, these provisions seem to indicate that licensing requirements exist.

Malawi

Malawi's fishing industry is regulated by the Fisheries Conservation and Management Act (Fisheries Act) and its accompanying rules and regulations.⁶²

⁵³ Fisheries Development and Utilization Proclamation, Proclamation No. 315 of 2003, *available at* https://www.unodc.org/res/cld/document/proclamation-no--315-2003_html/Proclamation_No_315-2003.pdf (last visited July 21, 2017).

⁵⁴ *Id.* at § 5.

⁵⁵ *Id.* at § 10.

⁵⁶ *Id.* at §§ 13-15.

⁵⁷ *See generally* Fisheries Act 625 of 2002, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha34737.pdf> (last visited July 17, 2017).

⁵⁸ *Id.* at § 94.

⁵⁹ Agricultural Marketing Act, No. 26 of 1987, *available at* <http://www.lesothoii.org/files/Agricultural%20Marketing%20Act%2026%200F%201967.pdf> (last visited Aug. 3, 2017); Protection of Fresh Water Fish, Proclamation No. 45 of 1951, *available at* <http://extwprlegs1.fao.org/docs/pdf/les128714.pdf> (last visited Aug. 3, 2017).

⁶⁰ Protection of Fresh Water Fish Proclamation, *supra* note 59, at § 6.

⁶¹ *Id.* at § 7.

⁶² Fisheries Conservation and Management Act, No. 25 of 1997, *available at* <http://extwprlegs1.fao.org/docs/pdf/mlw18341.pdf> (last visited July 23, 2017) [hereinafter Fisheries Act];

The Fisheries Act provides for the establishment of a Director of Fisheries, fisheries protection officers, and a Fisheries Advisory Board;⁶³ together, these entities are charged with conserving fish stocks, managing fisheries, collecting fees, and generally enforcing the terms of the Act.⁶⁴

The Fisheries Act provides for the registration of fishing vessels and the grant of licenses for commercial fishing.⁶⁵ Fishing licenses specify not only the area, times, and quantities relevant to commercial fishing, but also the gear that is permitted to be used, the use to which fish may be put, and conditions regarding the navigation equipment to be carried on board the vessel.⁶⁶

However, it is not clear that fishing licenses may be revoked for abuses of the labor law.

Namibia

The National Fishing Corporation of Namibia regulates Namibia's marine resources, and promotes the development of Namibia's fishing industry.⁶⁷ Other laws that regulate the Namibian fishing industry include the Marine Resources Act and its associated Regulations.⁶⁸

The Marine Resources Act regulates harvest rights, fisheries agreements and fishing vessel licensing; it authorizes the Minister responsible for marine resources to set catch limits, amongst other regulations.⁶⁹ The Regulations contain more detailed licensing provisions relating to allowable gear, protected species, and modes of fishing;⁷⁰ however, they do not appear to have provisions relating to the use of TIP or TIP-related practices on board fishing vessels.

Uganda

The Fish Act, modified by the Fish Rules of 2010, governs Ugandan fishing activities.⁷¹ These laws

Fisheries Conservation and Management Regulations of 2000, *available at* <http://extwprlegs1.fao.org/docs/pdf/mlw44463.pdf> (last visited July 23, 2017); Fisheries Conservation and Management (Local Community Participation) Rules of 2000, *available at* <http://extwprlegs1.fao.org/docs/pdf/mlw44465.pdf> (last visited July 23, 2017); Fisheries Conservation and Management (Close Season for Lake Chilwa and Mpoto Lagoon) Notice of 2012, *available at* <http://extwprlegs1.fao.org/docs/pdf/mlw117950.pdf> (last visited July 23, 2017).

⁶³ Fisheries Act, *supra* note 62, at arts. 3-6.

⁶⁴ *Id.*

⁶⁵ *Id.* at art. 10, 14.

⁶⁶ *Id.* at art. 16.

⁶⁷ National Fishing Corporation of Namibia Act, No. 28 of 1991, at Preamble, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam2713.pdf> (last visited July 31, 2017).

⁶⁸ Marine Resources Act, No. 27 of 2000, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam44344.pdf> (last visited July 31, 2017); the Regulations Relating to the Exploitation of Marine Resources, No. 241 of 2001, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam44363.pdf> (last visited July 31, 2017); Marine Resources (Amendment) Act, No. 214 of 2015, *available at* <http://extwprlegs1.fao.org/docs/pdf/nam154198.pdf> (last visited July 31, 2017).

⁶⁹ *See* Marine Resources Act, *supra* note 68, at §§ 32-43.

⁷⁰ Regulations Relating to the Exploitation of Marine Resources, *supra* note 68.

⁷¹ *See generally* Fish Act of 1970, *available at* <https://www.ulii.org/ug/legislation/consolidated-act/197> (last visited July 19, 2017).

regulate the licensing and regulation of fishing vessels, catch restrictions, and fishing seasons.⁷² The Fish Act also envisions the establishment of ‘fisheries officers’, who are charged with policing and prosecutorial powers with respect to any offenses listed under the Act.⁷³

Zambia

Fishing licenses in Zambia are issued by the Director of Fisheries under the terms laid out in the Fisheries Act.⁷⁴ The Act lays out restrictions on fishing methods, introduction of non-native fish, and the import and export of fish and fish product.⁷⁵ It provides that no person may engage in fishing or aquaculture without the relevant licenses,⁷⁶ and notes that environmental impact assessments must be conducted before persons engage in aquaculture.⁷⁷

ABA ROLI has not been able to determine whether Zambia’s fishing and aquaculture laws require firms or individuals to follow any guidelines on TIP or TIP-related practices prior to engaging in commercial fishing activities.

Mining, Oil and Gas

Eritrea

The Ministry of Energy, Mines, and Water Resources regulates mining and oil and gas. The Proclamation to Promote the Development of Natural Resources also sets forth the laws on mining and oil and gas.⁷⁸ With respect to mining, the Proclamation states that, with certain limits, no person may prospect, explore, or mine without a license, although any Eritrean may prospect without a license as long as the land is not subject to an existing license or application.⁷⁹ The Proclamation also provides that an individual or business may need to fulfill certain financial and human resource requirements before obtaining a license for mining or exploration.⁸⁰ However, there do not appear to be any TIP-related conditions or limitations associated with the issuance of mining, oil, or gas licenses.

Ethiopia

Natural mineral resources that exist on, in, and under the territory of the state of Ethiopia are held in trust for the people by the government,⁸¹ and in general, any land may be made available by the

⁷² *Id.*

⁷³ *Id.* at §§ 23-26.

⁷⁴ The Fisheries Act, No. 22 of 2011, *available at* <http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Fisheries%20%20Act%2C%20%202011.pdf> (last visited Aug. 5, 2017).

⁷⁵ *Id.* at arts. 15, 19, 23, 25.

⁷⁶ *Id.* at arts. 35, 43.

⁷⁷ *Id.* at art. 45.

⁷⁸ Proclamation to Promote the Development of Mineral Resources, Proclamation No. 68/1995, *available at* <http://www.eritrean-embassy.se/wp-content/uploads/Mining-Proclamation.pdf> (last visited July 22, 2017).

⁷⁹ *Id.* at arts. 4-5.

⁸⁰ *Id.* at arts. 8-11.

⁸¹ Mining Operations Proclamation, Proclamation No. 678 of 2010, § 5, *available at* <https://www.a->

government for the purposes of mining operations.⁸²

Mining operations are regulated under Ethiopia's Proclamation to Promote Sustainable Development of Mineral Resources and its 2013 Amendment.⁸³ Together, these laws govern the issuance of reconnaissance, exploration, and retention licenses for artisanal, small-scale, and large-scale mining operations.⁸⁴ Licenses may not be granted in areas that are otherwise reserved for religious sites, physical infrastructure, natural habitats or national parks, or by any other national law for other purposes; land containing archeological remains, or land located within 500 metres of water reservoirs, also may not be subject to the issuance of a license.⁸⁵ However, in the latter case, local bodies may otherwise consent to the issuance of a license.⁸⁶ Artisanal mining licenses may be issued under the 2010 Proclamation without the provision by the licensee of evidence of financial resources or technical and professional competency.⁸⁷

The Ministry of Mines and Energy is the appropriate licensing authority for mining rights; regional offices have jurisdiction over smaller mining projects.⁸⁸

The Ministry of Mines and Energy oversees the oil and gas industry, governed by the Petroleum Operations Proclamation.⁸⁹ As with mineral products, ownership of petroleum in its natural state is vested in the Ethiopian federal government;⁹⁰ ownership over refined petroleum may be vested in accordance with contracts signed between governments and the relevant contractors.⁹¹

The Ministry is authorized to issue petroleum licenses, which may not be obtained without evidence that contractors possess the necessary financial resources, technical competency, and professional skills necessary to fulfill their obligations under petroleum agreements with the state.⁹² Exploration licenses may be issued either for two- or four-year periods, depending on whether the respective agreements are exclusive or non-exclusive;⁹³ development and production licenses may be issued for a duration not exceeding 25 years.⁹⁴

All petroleum agreements must explicitly lay out, in addition to general contractual provisions (such as payments of royalties, assignment or transfer of rights, accounting procedures, and general rights and obligations), provisions regarding safety requirements and employee working conditions;⁹⁵ however, it is not clear what violations of such provisions would constitute grounds

mla.org/masteract/50 (last visited July 21, 2017) [hereinafter Proclamation No. 678/2010].

⁸² *Id.* at § 6(1).

⁸³ Mining Operations Proclamation, *supra* note [x]; Mining Operations (Amendment) Proclamation, Proclamation No. 816 of 2013, *available at* <https://www.a-mla.org/masteract/809> (last visited July 21, 2017).

⁸⁴ Proclamation 678/2010, *supra* note 81, at § 9.

⁸⁵ *Id.* at § 6(3).

⁸⁶ *Id.* at § 6(3)(e).

⁸⁷ *Id.* at § 11(2).

⁸⁸ *Id.* at 2(16).

⁸⁹ Petroleum Operations Proclamation No. 295 of 1986, *available at* <http://extwprlegs1.fao.org/docs/pdf/eth85045.pdf> (last visited July 21, 2017).

⁹⁰ *Id.* at § 4(1).

⁹¹ *Id.* at § 4(2).

⁹² *Id.* at § 7(2).

⁹³ *Id.* at §§ 11(1)(a)-(b).

⁹⁴ *Id.* at § 11(1)(c).

⁹⁵ *Id.* at § 9(2); *see generally id.* at § 9.

for revocation or termination of these contracts. ABA ROLI has not been able to locate boilerplate petroleum agreement language to review whether it addresses the usage of TIP, forced labor, or migrant smuggling in oil and gas-related operations.

Ghana

The Minerals and Mining Act of 2006 governs mineral and mining rights. Under the Act, no person may extract, export, sell or dispose of minerals without prior authorization. If such authorization is received, it cannot be transferred, assigned, or mortgaged.⁹⁶ The Minister Responsible for Mines governs mineral rights, which are required for search, reconnaissance, prospecting, exploration or mining. These rights are granted on the recommendation of the Minerals Commission.⁹⁷

The Parliament of Ghana ratifies contracts granting mineral exploitation rights or concessions, unless it chooses to waive this ratification.⁹⁸ Mining licenses can be revoked by the Minister Responsible for Mines for actions such as smuggling or illegal sale of minerals, or if the Minister determines it is in the public interest.⁹⁹ This permits the Minister to revoke a license if TIP is discovered during mining operations; however, TIP is not itself an explicit ground for revocation of a license.

Several laws govern the exploration, development and production of petroleum, including the National Petroleum Corporation Law, the Petroleum Exploration and Production Law, the Petroleum Commission Act, the Petroleum Revenue Management Act, and the Petroleum (Exploration & Production) Act.¹⁰⁰

Lesotho

Mining is regulated by the Ministry of Mining pursuant to the Mines and Minerals Act.¹⁰¹ The Act provides that mineral rights are generally vested in the Basotho Nation,¹⁰² and that mineral rights may only be acquired, via license, to individuals and companies of Lesotho.¹⁰³ Furthermore, the Act appears to provide that only citizens of Lesotho may generally be employed in minerals operations.¹⁰⁴ It further provides that members of the Commission for Mines and Geology may not acquire any mineral rights.¹⁰⁵

Mineral rights envisioned under the Mines and Minerals Act include prospecting licenses, mining

⁹⁶ Minerals and Mining Act 703 of 2006, §§ 6, 9, 13, 14, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha85046.pdf> (last visited July 17, 2017).

⁹⁷ *Id.* at §§ 5, 9.

⁹⁸ *Id.* at § 5.

⁹⁹ *Id.* at § 87.

¹⁰⁰ *Laws and Regulations*, PETROLEUM COMMISSION GHANA, <http://www.petrocom.gov.gh/laws---regulations.html> (last visited July 17, 2017).

¹⁰¹ Mines and Minerals Act, No. 4 of 2005, *available at* https://www.lesotholii.org/files/Mines_and_Minerals_Act_NO_4_of_2005.pdf (last visited Aug. 3, 2017).

¹⁰² *Id.* at § 3.

¹⁰³ *Id.* at §§ 4, 5(1).

¹⁰⁴ *Id.* at § 11.

¹⁰⁵ *Id.* at § 10.

leases, mineral permits, mineral concessions, and surface rights.¹⁰⁶ It appears that none of these licenses or permits may be issued without a showing that the applicant has access to adequate financial resources, technical competence, and experience to carry out the applications, and that the program of work makes proper environmental protections.¹⁰⁷ It does not appear that rights holders have any obligations with respect to labor protections under the Mines and Minerals Act.

Malawi

Mining is regulated by the Mines and Minerals Act.¹⁰⁸ The Act vests ownership over mineral rights in the President on behalf of the people of Malawi;¹⁰⁹ although this provision appears to be a holdover from the pre-democratic era, it does not appear that the provision has been repealed.

Mining and minerals operations are regulated by the Commissioner for Mines and Minerals, who is charged with generally administering the terms of the Act.¹¹⁰

The Act envisions the creation of a number of licenses and permits under which persons may legally prospect for minerals. These include reconnaissance licenses, which are granted only if they are accompanied by a plan of the area over which the license is sought, an identification of the minerals, and a statement of particulars detailing the licensee's financial and technical resources;¹¹¹ exclusive and non-exclusive prospecting licenses, which are subject to similar restrictions;¹¹² and mining licenses, which are only granted to the holder of exclusive prospecting licenses, upon a showing that the mineral to which their license relates exists in commercial quantities.¹¹³ Finally, the Act authorizes mineral permits, which permit holders to enter onto any public or customary land to mine any mineral prescribed by law.¹¹⁴

Reconnaissance license holders are not permitted to engage in any subsurface excavation techniques unless the terms of their license otherwise authorize it.¹¹⁵ Prospecting license holders may carry on prospective operations, but are obliged to notify the Minister if they discover any mineral or mineral deposit that has commercial value, within 30 days of the discovery.¹¹⁶

Mining licenses may not be granted without an environmental impact assessment; notably, this assessment must note whether the mining of that mineral carries any particular health or safety risks, and provide solutions for their control or elimination.¹¹⁷

¹⁰⁶ *Id.* at Parts IV-VII.

¹⁰⁷ *Id.*

¹⁰⁸ Mines and Minerals Act of 1981, Ch. 61:01, *available at* <http://www.eisourcebook.org/cms/Malawi%20Mines%20and%20Minerals%20Act.pdf> (last visited July 23, 2017).

¹⁰⁹ *Id.* at art. 1.

¹¹⁰ *Id.* at art. 5.

¹¹¹ *Id.* at art. 16.

¹¹² *Id.* at art. 25.

¹¹³ *Id.* at art. 37(2).

¹¹⁴ *Id.* at art. 81.

¹¹⁵ *Id.* at art. 23.

¹¹⁶ *Id.* at art. 35(c).

¹¹⁷ *Id.* at art. 37(2)(h)(v)-(vii).

Mineral rights holders of all classes may have their licenses revoked for a number of violations, including a failure to use the land subject to the license in good faith or for any purpose other than the terms of the license, failure to comply with any requirements of the Mining Act or any other law, or failure to make payments as required by law.¹¹⁸ It is not evident that mining licenses may be revoked for engagement in TIP or TIP-related practices.

Oil and gas exploration licenses are issued by the Commission for Petroleum Exploration and Production, under the terms of the Petroleum (Exploration and Production) Act.¹¹⁹ Licenses may only be granted to Malawian citizens, or persons who have been resident in Malawi for the four years immediately preceding the license application.¹²⁰ Exploration licenses confer a right to explore for petroleum and engage in any operations that support that exploration, in the area stated in the license.¹²¹ Significant petroleum deposits must be reported to the responsible minister,¹²² and a failure to do so may constitute default such that the license may be revoked or not renewed.

Petroleum production licenses may not be issued unless the applicant's proposal "take[s] proper account of environmental and safety factors."¹²³ Licensees may be held liable for petroleum pollution;¹²⁴ however, it is unclear whether licenses may be revoked for violations of labor or environmental laws.

Namibia

Namibia's mining industry is overseen by the Mining Commissioner and the Minerals Ancillary Rights Commission, under the authority of the Minerals (Prospecting and Mining) Act (Minerals Act).¹²⁵ A number of other laws also regulate the mining industry, however, including the Environmental Management Act, the Environmental Impact Assessment Regulations, The Forest Act, and the Mines, Works and Minerals Ordinance.¹²⁶

The Minerals Act provides for the issuance of mineral reconnaissance licenses, exploration and prospecting licenses, and mining operations licenses.¹²⁷ However, none of these licenses may be issued until the applicant has obtained an environmental clearance certificate, pursuant to the Environmental Impact Assessment Regulations.¹²⁸ The Act further provides that license-holders are only entitled to reconnoitre, explore and prospect, or mine the minerals or groups of minerals that

¹¹⁸ *Id.* at 57(1).

¹¹⁹ Petroleum Exploration and Production Act, no. 2 of 1983, art. 5, *available at* <http://www.eisourcebook.org/cms/Malawi%20Petroleum%20Act.pdf> (last visited July 23, 2017).

¹²⁰ *Id.* at art. 13(a).

¹²¹ *Id.* at art. 18.

¹²² *Id.* at arts. 24-25.

¹²³ *Id.* at art. 29(1)(a)(i).

¹²⁴ *Id.* at art. 55.

¹²⁵ Minerals (Prospecting and Mining) Act, No. 33 of 1992, *as amended by* Minerals (Prospecting and Mining) Amendment Act, No. 8 of 2008, *available at* <https://a-mla.org/masteract/22> (last visited July 31, 2017).

¹²⁶ *See Namibia, Mining Law 2017*, African Law & Business ch. 1, <https://www.africanlawbusiness.com/publications/mining-law/mining-law-2017/namibia/q-and-a> (last visited July 31, 2017).

¹²⁷ *See generally* Minerals (Prospecting and Mining) Act, *supra* note 125.

¹²⁸ *Namibia, Mining Law 2017*, *supra* note 126.

are specified in their license; violations of the Minerals Act, or the terms of the license, may result in license revocation.¹²⁹

ABA ROLI has not determined whether the laws and regulations listed above contain provisions regarding TIP or TIP-related practices; however, the Minerals Act provides that mining employers must provide safe working conditions for mine workers, and violations of this provision may result in liability both under the terms of the act and under Namibian common law.¹³⁰

Namibia's petroleum industry is overseen by the Minister for Mines and Energy and the Commission and Inspectorate of Petroleum Affairs, under the authority of the Petroleum (Exploration and Production) Act.¹³¹ The Act establishes that licenses may be granted for the reconnaissance, exploration, and production of petroleum and petroleum products, as well as the payment of royalties.¹³²

Applicants may not obtain petroleum licenses without entering into a Petroleum Agreement with the state of Namibia. Companies that enter into such agreements guarantee that they will conduct operations in a manner "likely to conserve the natural resources of Namibia and protect the environment," employ best practices to avoid environmental damage, and produce a Development Plan that addresses pollution prevention, waste treatment, the safeguarding of natural resources, and the "progressive reclamation and rehabilitation of lands disturbed by Petroleum Operations."¹³³ Violations of these undertakings may be grounds for the revocation of the contract.

Similarly, applicants undertake to conduct all petroleum operations in accordance with good oilfield practices, in a proper and workmanlike manner, and in accordance with any work programs mandated by the terms of the Petroleum Act.¹³⁴ Furthermore, companies seeking oil and gas concessions must ensure that adequate compensation is provided for injury to workers or damage to property caused by their Petroleum Operations.¹³⁵ Beyond these provisions, the Model Petroleum Agreement does not mandate companies to take any further undertakings with respect to TIP or TIP-related practices.

Uganda

Mining in Uganda is governed by the Mining Act, the Mining Regulations, and their associated

¹²⁹ See generally Minerals (Prospecting and Mining) Act, *supra* note 125.

¹³⁰ Namibia, *Mining Law 2017*, *supra* note 126; see also Minerals (Prospecting and Mining Act), *supra* note 125, at § 41(1)(e).

¹³¹ Petroleum (Exploration and Production) Act, No. 2 of 1991, *available at* [http://www.lac.org.na/laws/annoNAM/MINING%20AND%20MINERALS%20\(1991\)%20-%20Petroleum%20\(Exploration%20and%20Production\)%20Act%202%20of%201991%20\(annotated\).pdf](http://www.lac.org.na/laws/annoNAM/MINING%20AND%20MINERALS%20(1991)%20-%20Petroleum%20(Exploration%20and%20Production)%20Act%202%20of%201991%20(annotated).pdf) (last visited July 31, 2017).

¹³² *Id.*

¹³³ Republic of Namibia, Model Petroleum Agreement, cl. 11.2, *available at* <http://www.resourcecontracts.org/contract/ocds-591adf-0557496060/download/pdf> (last visited July 31, 2017).

¹³⁴ *Id.* at cl. 12.1.

¹³⁵ *Id.* at cl. 12.7.

Schedules.¹³⁶ Provisions of the National Environment Act, the Petroleum Exploration, Development and Production Act, Water Act, Land Act, and Companies Act may also be relevant to the framework of laws that govern Uganda’s mining industries.¹³⁷ These laws govern the issuance of prospecting and exploration licenses and leases, inspections regulations, the minerals trade, and rights to minerals and surface rights.¹³⁸

The Mining Act appoints the Commissioner for the Geological Survey and Mines Department to inspect mining operations, and authorizes the office of the Commissioner to order remedies for dangerous or defective operations.¹³⁹ The Commissioner may also authorize medical officer or other public officers to make inquiries into the “health and welfare of persons employed in or connected with prospecting, exploration or mining operations”;¹⁴⁰ if defects are found during this process, these officers are charged with informing the holder of the right of such defects, and requiring that such defects be remedied.¹⁴¹ It is possible for the holder of a mineral right to appeal to the Commissioner under such circumstances; however, the Commissioner does not have the power to exempt a mineral rights holder from complying with the general requirements of the Mining Act, and rights holders may not contract their way out of liability for damages arising out of a failure to comply.¹⁴²

The Petroleum (Exploration, Development and Production) Act was passed in 2013, pursuant to the country’s National Oil and Gas Policy of 2008.¹⁴³ The Act establishes a Petroleum Authority of Uganda to ensure that all aspects of oil and gas exploration are in compliance with environmental principles, and otherwise administering the terms and conditions of the Act.¹⁴⁴ Specifically, the Petroleum Authority of Uganda deals with the issuances of petroleum exploration and production licenses, permits, and approvals.¹⁴⁵ The Act additionally creates a National Oil Company and charges it with handling the state’s commercial interests and participation in the petroleum industry.¹⁴⁶

Petroleum licensees are “liable for pollution damage without regard to fault”, although *force majeure* events may help to reduce this liability.¹⁴⁷ Licensees are further responsible for ensuring the health and safety of their employees, and the Act mandates that operators follow the provisions

¹³⁶ See generally Mining Act of 2003, available at <https://www.ulii.org/ug/legislation/act/2003/2003/mining%20Act%202003.pdf> (last visited July 19, 2017); Mining Regulations of 2004, available at http://archive.resourcegovernance.org/sites/default/files/mining_regulations_of_uganda_2004.pdf (last visited July 19, 2017).

¹³⁷ Summary: Uganda, AFRICAN MINING LEGISLATION ATLAS, <https://www.a-mla.org/countries/52?name=Uganda> (last visited July 19, 2017).

¹³⁸ See Mining Act, *supra* note 136.

¹³⁹ *Id.* at §§ 64-65.

¹⁴⁰ *Id.* at §§ 66(1).

¹⁴¹ *Id.*

¹⁴² *Id.* at §§66(5).

¹⁴³ Petroleum (Exploration, Development and Production) Act of 2013, § 1(a), available at http://pau.go.ug/uploads/Petroleum_EDP_Act_2013.pdf (last visited July 19, 2017).

¹⁴⁴ *Id.* at §§ 9, 3.

¹⁴⁵ About Us, NATIONAL PETROLEUM AUTHORITY, <http://www.npa.gov.gh/about-mpa> (last visited July 19, 2017).

¹⁴⁶ Petroleum (Exploration, Development and Production) Act, *supra* note 143, at §§ 42-46.

¹⁴⁷ *Id.* at § 130.

of, at minimum, the Occupational Health and Safety Act in establishing safety precautions.¹⁴⁸ These health and safety provisions do not make specific reference to TIP, and while the Act does envision a number of criminal offences, none of them explicitly reference the usage of forced or trafficked labor in petroleum-related operations.¹⁴⁹

Zambia

Zambia's Mines and Minerals Development Act provides that all rights of ownership in, and rights to mine or dispose of, minerals in the Republic of Zambia vest in the President on behalf of the country.¹⁵⁰ The Directorates of Mines, Mines Safety, Geological Survey, and Mining Cadastre are in charge of implementing the terms of the Act.¹⁵¹ To this end, they supervise and regulate mine development and mining operations, with a view towards ensuring the protection of the environment as well as public health and safety.¹⁵²

Nobody may explore for minerals or carry on mining, mineral processing, or gold panning operations without possessing a right, license, or certificate, granted under the terms of the Act, or without obtaining the permission of the Zambia Environmental Management Agency.¹⁵³ Mineral rights (read broadly) may only be granted to firms that have incorporated under the Companies Act, or have established a registered office in Zambia.¹⁵⁴

Licenses are generally granted on the basis of whether an applicant has the financial resources and technical resources necessary to conduct the proposed activity, whether the proposed expenditure is compatible with the program of work, and whether the program of work makes proper provisions for environmental protection.¹⁵⁵ Additionally, with respect to mining operations, the Act provides that applicants must establish that they meet standards for good mining practices; for large-scale mining operations specifically, applicants must undertake to employ and train Zambian citizens with a view towards promoting the development of local businesses.¹⁵⁶

Violations of environmental terms in mining and mineral licenses may result in the firm having to pay damages to redress the harm.¹⁵⁷ However, it is not clear that mining and mineral licenses may be revoked for failure to comply with environmental regulations; nor is it clear whether licenses may be revoked for violations of labor laws.

Oil and gas extraction is governed by the Zambian Petroleum Committee pursuant to the terms of

¹⁴⁸ *Id.* at § 141(a)(i).

¹⁴⁹ *Id.* at §§ 160-166.

¹⁵⁰ The Mines and Minerals Development Act, No. 11 of 2015, art. 3, *available at* <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101344/122055/F-1171521983/ZWE101344.pdf> (last visited Aug. 5, 2017) [hereinafter Mines and Minerals Development Act].

¹⁵¹ *Id.* at art. 5.

¹⁵² *Id.* at arts. 5(2)-(3).

¹⁵³ *Id.* at art. 12; *see also* Environmental Management Act, No. 12 of 2011, art. 29, *available at* <http://extwprlegs1.fao.org/docs/pdf/zam117523a.pdf> (last visited Aug. 5, 2017) [hereinafter EMA].

¹⁵⁴ Mines and Minerals Development Act, *supra* note 150, at art. 14(2).

¹⁵⁵ *See, e.g., id.* at art. 22(1).

¹⁵⁶ *Id.* at arts. 31(1)(e)-(f)(ii).

¹⁵⁷ *Id.* at art. 87.

the Petroleum (Exploration and Production) Act.¹⁵⁸ No person may enter into any petroleum-related operations without first entering into a contract with the Republic of Zambia, in accordance with the terms of the Act.¹⁵⁹ Contracts may not be entered into without the firm first showing that they can contribute the necessary funds, assets, machinery, equipment, tools and technical expertise necessary for successful performance of their contractual obligations.¹⁶⁰

Companies that obtain petroleum contracts under the terms of the Act are obliged to undertake, amongst other things, that they will employ and train Zambian nationals, with a view to replacing all foreign personnel over time, and that they will purchase Zambian goods and services, to the extent that they are priced within competitive margins.¹⁶¹ They further undertake to maintain environmental safety, to carry out their operations in a workmanlike manner, and to take all necessary steps to ensure the safety, health, and welfare of employees.¹⁶²

It appears that failure to comply with the provisions of the Act could result in revocation of a contract; such failure to comply appears to encompass failure to maintain the labor and employment provisions laid out above.¹⁶³ Violations of the Act may also constitute a criminal offense, punishable upon conviction to a fine not exceeding 25,000 penalty units, a term of imprisonment not exceeding three years, or both.¹⁶⁴

¹⁵⁸ Petroleum (Exploration and Production) Act, No. 10 of 2008, *available at* <http://www.zamlii.org/zm/legislation/act/2008/10/peapa2008416.pdf> (last visited Aug. 5, 2017).

¹⁵⁹ *Id.* at art. 17(2).

¹⁶⁰ *Id.* at art. 20(1).

¹⁶¹ *Id.* at art. 26.

¹⁶² *Id.* at art. 32.

¹⁶³ *Id.* at art. 47.

¹⁶⁴ *Id.* at art. 49.

III. Environmental Regulation

Eritrea

The Regulations for the Issuance of Permit for the Importation or Exportation of Ozone Depleting Substances and Ozone Depleting Substances Based Equipment or Products sets forth certain restrictions on the use, exportation, importation, and handling of certain ozone-depleting substances.¹⁶⁵ These Regulations authorize Customs Officers of Eritrea to require the production of specific import or export permits, and conduct physical examination of goods at the border.¹⁶⁶

The Water Proclamation regulates drinking water quality.¹⁶⁷ However, ABA ROLI has been unable to review a free or publicly-available copy of the Water Proclamation to review its terms and conditions.

At minimum, the Proclamation on the Use and Disposal of Pesticide regulates certain types of hazardous waste management.¹⁶⁸ It requires that pesticide containers intended for import be specifically marked with the trade and common names of the chemical, directions for use, hazard warnings, and direction in the case of poisoning, in Tigrigna, Arabic, and English.¹⁶⁹ The Proclamation's Schedule lays out a national list of pesticides that are subject to its requirements.¹⁷⁰

The Forestry and Wildlife Conservation and Development Proclamation regulates forest conservation, wildlife conservation, and poaching.¹⁷¹ The Proclamation seeks to preserve endangered species, the conservation of other indigenous species, afforestation and deforestation, the establishment and proper management of protected areas, and prompt awareness about wildlife and forests.¹⁷² The Proclamation also prohibits any person from hunting, taking, distributing, transporting, or possessing any wildlife or any part thereof without prior authorization.¹⁷³

Ethiopia

The Ethiopian Environmental Protection Agency (EPA)'s air quality standards specify the ambient air quality, and provide allowable emission amounts for both stationary and mobile air pollution sources.¹⁷⁴

¹⁶⁵ Regulations for the Issuance of Permit for the Importation or Exportation of Ozone Depleting Substances and Ozone Depleting Substances Based Equipment or Products, Legal Notice No. 117/2010, arts. 4–5, available at <http://extwprlegs1.fao.org/docs/pdf/eri151851.pdf> (last visited July 22, 2017).

¹⁶⁶ *Id.* at art. 9.

¹⁶⁷ Water Proclamation, Proclamation No. 162/2010.

¹⁶⁸ Regulations for Importation, Handling, Use, Storage and Disposal of Pesticides, Legal Notice No. 114/2006, available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91364/105930/F-206009705/ERI91364%20Eng.pdf> (last visited July 22, 2017).

¹⁶⁹ *Id.* at art. 7(1).

¹⁷⁰ *Id.* at Annex I.

¹⁷¹ hereinafter Proclamation No. 155/2006, *supra* note 2.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Environmental Pollution Control Proclamation No. 300 of 2002, available at <http://extwprlegs1.fao.org/docs/pdf/eth44282.pdf> (last visited July 21, 2017) [hereinafter Proclamation No. 300/2002].

With respect to drinking water, Ethiopia aims to build the capacity of water supply service providers by allowing the Ministry of Health to investigate and promote remedial actions to improve the country's water supplies.¹⁷⁵ Such actions include periodic preventative maintenance of drinking water delivery systems, and the establishment of a water safety plan to prevent contamination of drinking water using a multi-barrier system from source to point-of-use.¹⁷⁶

Ethiopia also regulates the collection, recycling, transportation, treatment, or disposal of any hazardous waste.¹⁷⁷ Entities involved in hazardous waste management are required to take appropriate precautions to prevent any damage to the environment or to human life, on penalty of fines and imprisonment.¹⁷⁸ Environmental inspectors are authorized to investigate possible violations of the environmental pollution law.¹⁷⁹

Ghana

The Environmental Protection Agency ("EPA") prescribes standards and guidelines relating to the pollution of air, water, and land, as well as any other forms of environmental pollution, including the discharge of waste and the control of toxic substances.¹⁸⁰ The EPA's mandate includes issuing permits and pollution abatement notices for emissions, including hazardous substances, and ensuring compliance with environmental impact assessment procedures in the planning and execution of development projects.¹⁸¹

The Hazardous Chemicals Committee, established under the authority of the EPA Act, monitors the use of hazardous chemicals and advises on the regulation and management of such chemicals.¹⁸² The Environmental Protection Agency Act also deals with pesticide control.

The Water Resource Commission has the authority to grant water rights and advise pollution control agencies on matters concerning the management and control of pollution of water resources, among other functions.¹⁸³

The Forestry Commission is responsible for the regulation, conservation and management of the use of forest and wildlife resources. There are several laws and regulations that apply to forest conservation; for instance, under the Trees and Timber Act, a person cannot fell trees for export without authority, and under the Forest Protection Act it is an offense to fell or destruct trees in reserves.¹⁸⁴

¹⁷⁵ MINISTRY OF HEALTH, NATIONAL DRINKING WATER QUALITY MONITORING AND SURVEILLANCE STRATEGY (2011), available at <http://www.cmpethiopia.org/content/download/384/2301/file/National%20drinking%20water%20quality%20monitoring%20and%20surveillance%20strategy.pdf> (last visited July 21, 2017).

¹⁷⁶ *Id.*

¹⁷⁷ Proclamation No. 300/2002, *supra* note 174, at § 4.

¹⁷⁸ *Id.* at § 12.

¹⁷⁹ *Id.* at § 11.

¹⁸⁰ Environmental Protection Agency Act 490 of 1994, § 2, available at <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/environmental+protection+agency+act+1994.pdf> (last visited July 17, 2017).

¹⁸¹ *Id.*

¹⁸² *Id.* at § 10.

¹⁸³ Water Resources Commission Act 522 of 1996, § 2, available at <http://extwprlegs1.fao.org/docs/pdf/gha10691.pdf> (last visited July 17, 2017).

¹⁸⁴ Trees and Timber Act, N.R.C.D. 273 of 1974, § 2, available at

The Wild Animals Preservation Act protects wild animals by placing restrictions on the export of trophies, defined as certain scheduled animals or parts of such animals, without a certificate.¹⁸⁵ It additionally prohibits hunting by motor vehicle or aircraft, and surrounding animals with fire for hunting.¹⁸⁶

Lesotho

Environmental matters are regulated under the Environment Act of 2008.¹⁸⁷ The act adopts the following principles of environmental law: the ‘polluter pays’ principle, the precautionary principle, the principle of eco-system integrity, the principle of public participation in environmental policies, and the principle of inter-generational and intra-generational equity.¹⁸⁸

The act imposes quality standards for water, air, soil, waste, noise, odors and radiation.¹⁸⁹ In addition, the act establishes a liability scheme and protocol for addressing spills of hazardous materials,¹⁹⁰ requirements for preventing and addressing environmental degradation, including conservation, reforestation and afforestation,¹⁹¹ management of hazardous waste,¹⁹² and protection of wildlife.¹⁹³

<http://extwprlegs1.fao.org/docs/pdf/gha93274.pdf> (last visited July 17, 2017); Forest Protection Act, N.R.C.D. 243 of 1974, § 1(a), *available at* http://laws.ghanalegal.com/acts/id/362/section/1/Forest_Offences (last visited July 17, 2017).

¹⁸⁵ Wild Animals Preservation Act 43 of 1961, § 4, *available at* <https://www.clientearth.org/external-resources/ghana/forests-and-wildlife/1979%20WILD%20ANIMALS%20PRESERVATION%20ACT.pdf> (last visited July 17, 2017).

¹⁸⁶ *Id.* at §§ 6-7.

¹⁸⁷ Environment Act, No. 10 of 2008, *available at* <http://extwprlegs1.fao.org/docs/pdf/les128916.pdf> (last visited Aug. 3, 2017).

¹⁸⁸ *Id.* at § 4.

¹⁸⁹ *Id.* at Part VI.

¹⁹⁰ *Id.* at Part VII.

¹⁹¹ *Id.* at Part IX.

¹⁹² *Id.* at § 75.

¹⁹³ *Id.* at § 113.

Malawi

Environmental regulations are promulgated under the Environment Management Act (EMA).¹⁹⁴ The EMA establishes a Director of Environmental Affairs and a National Council for the Environment, and charges both bodies with advising on all matters affecting the protection and management of the environment, and the conservation and sustainable utilization of natural resources.¹⁹⁵ The EMA lays out requirements for waste management, including regulations relating to the import, export, and transport of waste;¹⁹⁶ it provides that the Minister for Environment and the Minister for Agriculture may issue rules and regulations for the classification of hazardous substances and pesticides,¹⁹⁷ and otherwise generally provides prohibitions against pollution and the discharge of pollutants.¹⁹⁸

The EMA also gives environmental inspectors broad authority to enter premises, examine activities which may be detrimental to the environment, and collect pollutant samples.¹⁹⁹

Environmental impact assessments, audits, and monitoring requirements are laid out under the EMA; such assessments may be subject to review at public hearings.²⁰⁰ It is not clear from the terms of the EMA whether such impact assessments must take any TIP- or TIP-related standards into consideration. However, failure to prepare environmental impact assessment reports, or knowingly providing false information in such reports, may result in imprisonment for a period not exceeding two years, and fines between K5000 and 200,000.²⁰¹

Although Forestry management is generally vested in the Director of Forestry, the Director of Environmental Affairs may become involved in rules and regulations related to afforestation, forest protection, and environmental impact assessments that relate to logging.²⁰²

Wildlife conservation is governed by the National Parks and Wildlife Act, and administered by the Chief Parks and Wildlife Officer.²⁰³ The Chief Parks and Wildlife Officer is generally responsible for the management of Malawi's national parks and wildlife, and appears to have jurisdiction over the national parks and wildlife reserves.²⁰⁴ Hunting and game licenses may be granted, even with respect to protected species,²⁰⁵ and the removal of wildlife from a reserve without a license is an offense under the Act.²⁰⁶

¹⁹⁴ Environment Management Act, No. 23 of 1996, *available at* <http://ilo.org/dyn/natlex/docs/ELECTRONIC/45482/97715/F548493060/MWI45482.pdf> (last visited July 23, 2017).

¹⁹⁵ *Id.* at art. 9.

¹⁹⁶ *Id.* at arts. 37, 39.

¹⁹⁷ *Id.* at art. 40(1).

¹⁹⁸ *Id.* at 44, 42.

¹⁹⁹ *Id.* at art. 46(1).

²⁰⁰ *Id.* at 26(1)(a).

²⁰¹ *Id.* at art. 63.

²⁰² *See generally* Forestry Act, *supra* note 23.

²⁰³ Malawi National Parks and Wildlife Act, no. 11 of 1992, art. 5, *available at* <http://extwprlegs1.fao.org/docs/html/mlw4733.htm> (last visited July 23, 2017).

²⁰⁴ *Id.* at art. 6(1).

²⁰⁵ *Id.* at art. 39, 53.

²⁰⁶ *Id.* at art. 48(1).

Namibia

Namibia regulates air quality and emissions, drinking water quality, forest conservation, and wildlife conservation.²⁰⁷

ABA ROLI researchers did not identify any laws regulating hazardous waste management.

Uganda

The National Environment Management Authority (NEMA) is responsible for coordinating, monitoring, regulating, and supervising Uganda's environmental management laws,²⁰⁸ which are laid out in the National Environment Act.²⁰⁹ NEMA is responsible for setting a number of environmental standards, including those for air quality, water quality, and soil quality.²¹⁰ NEMA's mandate also includes, under the aegis of the Technical Committee on the Licensing of Pollution,²¹¹ the issuance of pollution licenses. In situations where responsibility for environmental regulation may be vested in another ministry, department, state agency, local government body, or public officer (lead agency),²¹² the necessity for an environmental impact assessment is determined by that body.²¹³ However, assessments themselves are to be conducted by NEMA-approved experts, and it appears that NEMA must always be consulted to determine whether further environmental impact review is needed before a project is ultimately approved.²¹⁴ NEMA decisions are generally appealable within the administrative system, although the High Court may exercise "supervisory jurisdiction" over NEMA decisions.²¹⁵

NEMA works alongside lead agencies in specific areas to issue regulations and guidelines for the management of hazardous waste.²¹⁶

Forestry management is administered primarily by local and district environmental committees,²¹⁷ although to the extent that forestry and timber policies intersect NEMA may also be involved in

²⁰⁷ Environmental Management Act, No. 7 of 2007, § 27, *available at* <http://www.lac.org.na/laws/pdf/environmentalact.pdf> (last visited July 31, 2017); MINISTRY OF AGRICULTURE, WATER AND RURAL DEVELOPMENT, NATIONAL WATER POLICY WHITE PAPER: POLICY FRAMEWORK FOR EQUITABLE, EFFICIENT, AND SUSTAINABLE WATER RESOURCES MANAGEMENT AND WATER SERVICES (Aug. 2000), *available at* <http://www.orangesenqurak.com/UserFiles/File/National%20Water%20Departments/Namibia/Water%20Policy%20for%20Namibia%20August%202000.pdf> (last visited July 31, 2017); MINISTRY OF AGRICULTURE, WATER AND FORESTRY, FOREST POLICY STATEMENT, <http://www.mawf.gov.na/documents/37726/186033/National+Forestry+Policy/59a90e4e-b01d-45c7-a99a-acdba399420d> (last visited July 31, 2017).

²⁰⁸ *Home*, NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY, <http://www.nema.go.ug> (last visited July 19, 2017).

²⁰⁹ National Environment Act of 1995, § (4), *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/ug/ug019en.pdf> (last visited July 19, 2017).

²¹⁰ *Id.* at §§ 24-30.

²¹¹ *Id.* at § 58(1).

²¹² *Id.* at § 1(gg).

²¹³ *Id.* at § 19(3).

²¹⁴ *Id.* at §§ 19 (6)-(7).

²¹⁵ *Id.* at § 104.

²¹⁶ *Id.* at §§ 53-56.

²¹⁷ *Id.* at § 39.

decision-making. To the extent that reforestation or afforestation policies are to be implemented, local environmental committees are required by law to “encourage voluntary self-help in the community”.²¹⁸ Those who hold customary and non-customary interests in land are also required to plant trees and vegetation pursuant to the orders of a district environmental action plan, and if they do not do so local environmental committees are empowered to “mobilise the community to ensure compliance”.²¹⁹

Wildlife conservation is governed by the Uganda Wildlife Act, and administered by the Uganda Wildlife Authority.²²⁰ The Wildlife Authority is charged with developing wildlife management policy, controlling and monitoring industrial and mining developments in wildlife protected areas, managing the trade in wildlife specimens, both internally and externally, and promoting scientific research on wildlife and wildlife conservation areas.²²¹ The Wildlife Act criminalizes a number of acts, including unauthorized hunting or killing in wildlife conservation areas, and preparing land in these areas for cultivation or mineral prospecting.²²² The Act further criminalizes the destruction, import, export, and re-export of protected species, and establishes asset forfeiture as a punishment for these offenses, in addition to any fines and/or imprisonment that may be imposed.²²³

Zambia

Zambian law regulates air quality and emissions,²²⁴ drinking water quality,²²⁵ hazardous waste management,²²⁶ forest conservation,²²⁷ and wildlife conservation and poaching.²²⁸

²¹⁸ *Id.* at § 39(2).

²¹⁹ *Id.* at § 39(4).

²²⁰ Uganda Wildlife Act of 1996, § 4, *available at* <https://www.ulii.org/ug/legislation/consolidated-act/200> (last visited July 19, 2017).

²²¹ *Id.* at § 5.

²²² *Id.* at § 21(a)-(c).

²²³ *Id.* at §§ 78-79.

²²⁴ EMA, *supra* note 153; Air Pollution Control (Licensing and Emission Standards) Regulations, Instrument No. 141 of 1996, *available at* <http://extwprlegs1.fao.org/docs/pdf/zam48235.pdf> (last visited Aug. 5, 2017); The Environmental Protection and Pollution Control (Environmental Impact Assessment) Regulations, Instrument No. 28 of 1997, *available at* <http://faolex.fao.org/docs/pdf/zam10326.pdf> (last visited Aug. 5, 2017).

²²⁵ EMA, *supra* note 153; The Water Act, No. 34 of 1948, *available at* <http://faolex.fao.org/docs/pdf/zam1678.pdf> (last visited Aug. 5, 2017); The Water Resources Management Act, No 21 of 2011, *available at* <http://faolex.fao.org/docs/pdf/zam117433.pdf> (last visited Aug. 5, 2017) [hereinafter Water Resources Management Act].

²²⁶ Water Resources Management Act, *supra* note **Error! Bookmark not defined.**; The Hazardous Waste Management Regulations, Instrument No. 125 of 2001, *available at* <http://extwprlegs1.fao.org/docs/pdf/zam63977.pdf> (last visited Aug. 5, 2017).

²²⁷ Forest Act, *supra* note 42, at Preamble.

²²⁸ *Id.*; *see also* Zambia Wildlife Act, No. 12 of 1998, *available at* http://theredddesk.org/sites/default/files/wildlife_act_12_1998_1.pdf (last visited Aug. 5, 2017).

IV. Land Ownership and Eminent Domain

Eritrea

According to the Proclamation to Reform the System of Land Tenure in Eritrea (Land Proclamation), the land in Eritrea is owned by the State.²²⁹ However, every Eritrean citizen has a usufruct right (to enjoy without alteration), without additional restrictions that limit the right of women and minorities to own land.²³⁰ However, foreigners may only obtain usufruct, lease, or other legally authorized rights to land by special permission of the President of the State of Eritrea.²³¹ With respect to inheritance of property, the Civil Code of the State of Eritrea states that the sex, age, and nationality of the heir shall not affect the ascertainment of an heir's rights to succession.²³² Any person, including a conceived child and corporate bodies, can inherit property.²³³

ABA ROLI has not identified any specific legal protections against land grabbing, but the Land Proclamation does lay out the formal process by which the government may expropriate land.²³⁴ Expropriation may occur for the purposes of various developments and capital investment projects aimed at national reconstruction or other similar purposes.²³⁵ Before expropriating the land, the government must conduct a study to determine whether the land is fit for the purpose for which it is to be expropriated.²³⁶ Expropriation decisions are final and unappealable.²³⁷ It is unclear what standards, if any, the government must meet to justify land takings.

Holders of land rights are entitled to just compensation when the government expropriates land.²³⁸ The compensation, in cash or substitute land, must be commensurate to the loss accruing to the holder of the right, and must be paid before the holder of the right leaves the land.²³⁹ The extent or type of compensation may be decided by agreement between the state and the rights holder.²⁴⁰

If the parties disagree on compensation, a petition or suit may be brought before the High Court in accordance with the relevant provisions of the Civil Code of Eritrea.²⁴¹ If the expropriating agency takes measures to hold the land, initiate work on the land, or disclose indications to initiate work prior to payment of compensation, the holder of right may petition the High Court for an injunction against such measures.²⁴²

²²⁹ Proclamation to Reform the System of Land Tenure in Eritrea to Determine the Manner of Expropriating Land for Purposes of Development and National Reconstruction, and to Determine the Powers and Duties of the Land Commission, Proclamation No. 58/1994, *available at* <http://extwprlegs1.fao.org/docs/pdf/eri8227.pdf> (last visited July 22, 2017) [hereinafter Proclamation No. 58/1994].

²³⁰ *Id.*

²³¹ Constitution of Eritrea (1997), arts. 9(2), *available at* <http://confinder.richmond.edu/admin/docs/Eritrea1997English.pdf> (last visited July 22, 2017).

²³² Civil Code of the State of Eritrea, arts. 711-18 [hereinafter Civil Code].

²³³ *Id.*

²³⁴ Proclamation No. 58/1994, *supra* note 229, at arts. 50-52.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

Ethiopia

The Ethiopian constitution vests ownership of all rural and urban land, and natural resources, in the State, to be held for the benefit of the people of Ethiopia.²⁴³ Accordingly, Ethiopia has a general prohibition on private land ownership; however, there are no further restrictions on the rights of women, minorities, stateless people, or foreigners to own land.²⁴⁴ Women are specifically guaranteed the right to acquire, administer, control, use and transfer property and in particular, have equal rights with men with respect to use, transfer, administration, and control of land and inheritance of property.²⁴⁵

In order to lease land, one must sign a lease contract before the Document Authentication and Registration Authority. Applicants then return to regional land administration offices, which are responsible for issuing lease certificates.²⁴⁶ The government agency responsible for urban land leases is the Ministry of Urban Development and Construction.²⁴⁷

Based in part upon the fact that all land in Ethiopia is owned by the State and its people, there is no legislation that specifically prohibits land grabbing. If an individual feels that he or she has been illegally evicted, they may pursue a case under civil property law.²⁴⁸ Although land cannot be inherited, Ethiopia places no restrictions on the ability of people to inherit personal property.²⁴⁹

In spite of the lack of ownership rights in real property, Ethiopia does have an eminent domain system that deals specifically with expropriations. In general, at least 90 days' notice must be provided before a government project is to commence on leased land,²⁵⁰ and land may not be taken but for the existence of a "a valid public purpose".²⁵¹ Compensation is generally provided on the basis of the property's replacement cost,²⁵² although rural landholders may be paid additional compensation "equivalent to ten times the average annual income he secured during the five years preceding the expropriation".²⁵³ Property holders do have a right to appeal compensation decisions.²⁵⁴

²⁴³ A Proclamation to Pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, no. 1 of 1995, art. 40, *available at* https://www.constituteproject.org/constitution/Ethiopia_1994.pdf?lang=en (last visited July 21, 2017).

²⁴⁴ *Id.*

²⁴⁵ *Id.* at art. 35.

²⁴⁶ Urban Lands Lease Holding Proclamation No. 721/2011, §§ 16-17, *available at* <http://www.ethiopianembassy.org/pdf/new-land-lease-proclamation-no-721-20111.pdf>. (last visited July 21, 2017).

²⁴⁷ *Id.* at § 2(22).

²⁴⁸ *See generally id.* at § 28.

²⁴⁹ Civil Code Proclamation No. 165/1960, §§ 826-1013, *available at* <http://www.wipo.int/edocs/lexdocs/laws/en/et/et020en.pdf> (last visited July 21, 2017).

²⁵⁰ Proclamation to Provide for the Expropriation of Land Holdings for Public Purposes and Payment of Compensation, Proclamation No. 455 of 2005, § 4(2), *available at* <http://www.moa.gov.et/documents/93087/512013/Federal+Gov+Proclamation+No.+455--2005.pdf/f0fa6ee6-fa1b-4b46-8045-9178dd52f638> (last visited July 21, 2017).

²⁵¹ *Id.* at § 2(5).

²⁵² *Id.* at § 7(2).

²⁵³ *Id.* at § 8(1).

²⁵⁴ *Id.* at § 11.

Expropriation proceedings may be used to give project management over to public entities, private investors, cooperative societies, and other entities.²⁵⁵ Eminent domain is appropriate when the government decides that a lessee has failed to honor obligations assumed under a lease agreement, or when the lessee has failed to comply with applicable regulations, or when the land is required for development works undertaken by government.²⁵⁶

Ghana

The Constitution expressly prohibits non-citizens from acquiring land in Ghana,²⁵⁷ and recognizes the Parliament's authority to enact laws to this effect.²⁵⁸ The Constitution does not restrict land ownership by other groups.

The Constitution, Administration of Lands Act, and the State Lands Act (1962) permit the state to take ownership of private lands, upon a showing that the acquisition is necessary and the payment of fair compensation.²⁵⁹ The Constitution also requires the state, upon the exercise of this eminent domain power, to "resettle . . . displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values."²⁶⁰

Lesotho

The Lesotho Constitution prohibits restrictions on the acquisition or use by any person of property.²⁶¹

However, the Land Act does place certain restrictions on who may hold title to property. Specifically, title to property may be held by (a) the government of Lesotho; (b) any citizen of Lesotho who is 18 years of age or older (except that title may be held by people less than 18 years old when it is a result of gift, inheritance or where the person is married); (c) companies incorporated under the laws of Lesotho, provided that at least 20% of the shareholders are members of the Basotho Nation; (d) partnerships carrying on business in Lesotho where the shareholders are members of the Basotho Nation; (e) societies registered under the laws of Lesotho; (f) an association organized under the laws of Lesotho; and (g) foreign governments or public international organizations for which Lesotho enjoys similar reciprocity for purposes relevant to their activities.²⁶²

No interest or right in any property shall be compulsorily acquired, except in cases of eminent

²⁵⁵ *Id.* at § 3(1).

²⁵⁶ *Id.* at § 3(2).

²⁵⁷ GHANA CONST. art. 266, *available at*

https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

²⁵⁸ *Id.* at art. 17(4)(c).

²⁵⁹ *Id.* at art. 20; Administration of Lands Act 123 of 1962, § 10(1), *available at*

<http://extwprlegs1.fao.org/docs/pdf/gha3115.pdf> (last visited July 17, 2017); State Lands Act 125 of 1962, § 1(1), *available at* <http://extwprlegs1.fao.org/docs/pdf/gha3105.pdf> (last visited July 17, 2017).

²⁶⁰ GHANA CONST. art. 20(3).

²⁶¹ Lesotho, Constitution of 1993, § 7, *available at*

https://www.constituteproject.org/constitution/Lesotho_1998.pdf?lang=en (last visited Aug. 2, 2017) [hereinafter LESOTHO CONST.].

²⁶² Land Act, *supra* note 18, at § 6.

domain by the government.²⁶³ The government may exercise its eminent domain power where necessary for the purposes of defense, public safety, public order, public morality, public health, town and country planning, or the development or utilization of any property to promote the public interest, provided that the government has a reasonable justification for doing so and the person from who property is taken receives fair compensation.²⁶⁴

Every person from whom property has been taken under this provision may appeal to the High Court for the purposes of contesting both the legality of the taking and the amount of compensation.²⁶⁵

ABA ROLI has not identified any other laws or protections against land grabbing.

Malawi

While the Constitution of Malawi generally vests all lands and territories in the Republic,²⁶⁶ the Land Act of Malawi recognizes private and customary land ownership interests.²⁶⁷

The Constitution grants the government the power of eminent domain, and provides that property may only be expropriated “when done for public utility and only when there has been adequate notification and appropriate compensation, provided that there shall always be a right to appeal to a court of law.”²⁶⁸ The Land Acquisition Act contains similar provisions, noting that government entities must pay the fair market value of the property.²⁶⁹ Private landowners who object to the government’s fair market value assessments may obtain independent assessments.²⁷⁰

ABA ROLI researchers have been unable to locate any laws or regulations that prevent the government or private entities from engaging in “land grabbing”; however, reports indicate that it is a problem in the country.²⁷¹

Namibia

Under the Constitution, all persons have the right to acquire, own, and dispose of all forms of immovable and movable property.²⁷² However, Parliament may by legislation prohibit or regulate

²⁶³ LESOTHO CONST., *supra* note 200, at § 17.

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ Constitution of Malawi, 1994, arts. 207, *available at* https://www.constituteproject.org/constitution/Malawi_1999.pdf (last visited July 23, 2017) [hereinafter MALAWI CONST.].

²⁶⁷ Land Act of 1965, Ch. 57:01, *available at* <http://extwprlegs1.fao.org/docs/pdf/mlw41845.pdf> (last visited July 23, 2017).

²⁶⁸ MALAWI CONST., *supra* note 266, at 44(4).

²⁶⁹ Land Acquisition Act, No. 21 of 1970, art. 9, *available at* https://www.malawilii.org/mw/legislation/num-act/1970/21/num_act_1970_21.pdf (last visited July 23, 2017).

²⁷⁰ *Id.* at art. 11.

²⁷¹ *See, e.g.,* Ward Anseeuw, *Sugarcane cultivation worsens land grabbing in Malawi*, The Oracle (Aug. 11, 2014), <http://www.orakonews.com/sugarcane-cultivation-worsens-land-grabbing-in-malawi/> (last visited July 23, 2017).

²⁷² Namibia, Constitution of 1990, art. 16, *available at* https://www.constituteproject.org/constitution/Namibia_2010.pdf?lang=en (last visited July 31, 2017).

the right of non-Namibian citizens to acquire property,²⁷³ and the Constitution does provide that ownership interests over natural resources located in, on, or under the land vest in the State.²⁷⁴

The Constitution gives the State the right to expropriate property in the public interest subject to the payment of just compensation.²⁷⁵

ABA ROLI has not been able to identify any specific laws or policies that govern land grabbing. However, reports indicate that land grabbing is an increasing problem in Namibia, affecting rural families that rely on grazing and members of minority ethnic groups.²⁷⁶

Uganda

The Constitution recognizes four historic forms of land tenure: customary, freehold, *mailo*, and leasehold.²⁷⁷ National and local governments alike have the power to acquire land in the public interest;²⁷⁸ however, such acquisitions must be deemed “necessary for public use”, and the government is obliged to provide fair compensations for takings.²⁷⁹

The only substantial restriction that Ugandan law seems to impose on land ownership is that noncitizens are only entitled to acquire leasehold land interests.²⁸⁰

ABA ROLI was unable to identify any other express legal provisions that protect individuals or communities against “land grabbing.”

Zambia

The Lands Act of 1995 vests ownership of all land in the President, on behalf of the people of Zambia.²⁸¹ Land administration may occur under both statutory and customary tenure systems, by government officials and traditional authorities, respectively.²⁸²

ABA ROLI was unable to identify information regarding whether Zambian law restricts land ownership, e.g., with respect to whether non-citizens or foreign corporation may own land.

²⁷³ *Id.* at art. 16.

²⁷⁴ *Id.* at art. 100.

²⁷⁵ *Id.* at art. 16.

²⁷⁶ See Willem Olendaal, *Elite Land Grabbing in Namibian Communal Areas and its Impact on Subsistence Farmers' Livelihoods*, Policy Brief 33 (Sep. 2011) at 5, available at <http://dSPACE.africaportal.org/jspui/bitstream/123456789/33230/1/PB%2033.pdf?1> (last visited July 31, 2017).

²⁷⁷ UGANDA CONST., art. 237(3), available at https://www.constituteproject.org/constitution/Uganda_2005.pdf?lang=en Constitution (last visited July 19, 2017).

²⁷⁸ *Id.* at art. 237(2)(a).

²⁷⁹ *Id.* at art. 26(2).

²⁸⁰ *Id.* at art. 237(2)(c).

²⁸¹ Lands (Amendment) Act, No. 20 of 1995, available at https://www.zambialii.org/zm/legislation/consolidated_act/184 (last visited Aug. 5, 2017).

²⁸² *Land Rights and Governance*, ZAMBIA LAND ALLIANCE, <http://www.zla.org.zm/2014/06/land-resources-management/> (last visited Aug. 5, 2017).

The Constitution of Zambia places restrictions on the government's ability to expropriate land. The government is generally prohibited from compulsorily taking possession of or acquiring an interest or a right over property unless the Parliament passes an Act, which provides for the payment of adequate compensation before the acquisition occurs.²⁸³ However, the Lands Acquisition Act generally provides that the President may engage in a compulsory acquisition "whenever he is of the opinion that it is desirable in the interests of the Republic to do so."²⁸⁴ The government must provide adequate compensation in such circumstances, and the courts have jurisdiction to hear disputes over the amount.²⁸⁵ It does not appear that those whose property is subject to an expropriation may, under the terms of the Land Acquisition Act, challenge the expropriation itself.

Zambia does not appear to have any other laws that specifically prohibit land-grabbing.

²⁸³ Zambia Constitution of 1991, art. 16(1), *available at* https://www.constituteproject.org/constitution/Zambia_2009.pdf?lang=en (last visited Aug. 5, 2017).

²⁸⁴ Land Acquisition Act, No. 2 of 1970, art. 3, *available at* <http://faolex.fao.org/docs/pdf/zam36114.pdf> (last visited Aug. 5, 2017).

²⁸⁵ *Id.* at art. 11(2).