

# STRENGTHENING THE ENVIRONMENTAL PROTECTION FUND IN ZAMBIA: A GAP ANALYSIS



**POLICY BRIEF**



# TABLE OF CONTENTS

<b>1   EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS</b>	<b>2</b>
1.1   Key Recommendations	2
<b>2   BACKGROUND</b>	<b>2</b>
<b>3   ZAMBIA'S ENVIRONMENTAL PROTECTION FUND</b>	<b>2</b>
<b>4   CHALLENGES TO THE EPF</b>	<b>3</b>
4.1   Inadequate Legal Framework	3
4.2   Lack of sanctions for non-compliance	4
4.3   Challenges with compliance and enforcement	4
4.4   Challenges affecting the EPF's Management	4
4.5   Challenges Relating to The EPF's Auditing and Investing	5
<b>5   CONCLUSION AND RECOMMENDATIONS</b>	<b>5</b>
5.1   Recommendations	5
<b>6   REFERENCES</b>	<b>6</b>
<b>7   PARTNER</b>	<b>7</b>





## 1 | EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Zambia's Environmental Protection Fund (EPF or 'the fund') was initially established under section 82 of the Mines and Minerals Development Act, 1995 (now repealed) to support the rehabilitation and remediation of mining areas. It was subsequently included under section 122 of the Mines and Mineral Development Act, 2008 (now repealed) and under section 86 of the current Mines and Minerals Development Act, 2015 (MMDA). The objective of the EPF is to assure the director of the Mines Safety Department (MSD) that any person who holds a licence or permit (a 'developer') issued under the MMDA will carry out an environmental and social impact assessment (ESIA) and to safeguard the government against the risk of bearing the financial burden of rehabilitating a mining area.

All developers are required to contribute to the EPF. Contributions are made partly in cash and partly by guarantee based on the developer's ability to rehabilitate an area likely to be damaged by mining. The MSD may use funds from the EPF to rehabilitate a mining area where a developer fails to do so. The contributions made by a developer to the EPF are refundable to the extent that the amounts contributed were not used by the government for any rehabilitation costs.

The EPF has been fraught with challenges that have rendered it ineffective. This has led to negative implications for the environment and local communities. As a result, the EPF has drawn the attention of many stakeholders in both the extractives and the environmental sectors. The main criticism against the EPF is that it has failed to effectively finance the rehabilitation and remediation of areas affected by exploration, mining, and mineral processing operations. This is due to mining licence holders' poor compliance with their statutory obligations. In the absence of effective compliance with, and enforcement of, the EPF provisions, the government will carry the associated risks from mining and have to bear the cost of undertaking rehabilitation of mining areas.

A report prepared by the Office of the Auditor General in 2014 indicated that most mining companies have not paid the necessary contributions to the EPF. In addition, the MSD has taken little to no action to compel mining companies to adhere to the EPF's requirements or to impose appropriate sanctions for non-compliance.

The Zambian government through the National Mineral Resources Development Policy 2022 acknowledges the EPF's challenges and highlights the need to strengthen the administration of the fund to promote environmentally responsible mining practices.

This policy brief stems from the third national Environmental Protection Dialogue (EPD) convened by the Centre for Environment Justice (CEJ), a Zambian non-governmental organisation working on environmental justice, in Lusaka from 13 to 14 October 2022 under the theme 'Strong Actions for Environmental Sustainability'. The EPD helped to identify significant issues concerning the status of the EPF and surfaced current gaps in its management and administration. This policy brief aims to propose priority legislative and policy recommendations to address these gaps and strengthen the EPF.

At the time of writing, two major developments with significant implications for the administration of the EPF are emerging:

### ■ The MSD has:

- commenced the review and amendment of the Mines and Minerals (Environmental Protection Fund) Regulations 1998 (Statutory Instrument Number 102 of 1998). The amendment is still in draft form and is yet to be shared with the public. It also remains to be determined when the MSD will consult stakeholders to seek input on the draft regulations; and
- prepared a draft investment policy to guide the Environmental Protection Fund Committee and fund manager when investing funds from the EPF. Again, the draft investment policy is yet to be made public and the process of public consultation is yet to be undertaken.

■ The Zambian government has appointed the EPF's first external fund manager, African Life Financial Services. At the time of writing, the terms of reference for the external fund manager have not been made public. It is anticipated that the amended regulations will provide terms of reference for the EPF manager.



## 1.1 | Key Recommendations

To facilitate the effective administration of Zambia's Environmental Protection Fund (EPF), which supports the rehabilitation and remediation of mining areas, the Ministry of Mines and Mineral Development (MMMD) should:

- Undertake a comprehensive review and update of the Mines and Minerals (Environmental Protection Fund) Regulations 1998 and the Mines and Minerals (Environmental) Regulations 1997 in consultation with relevant government agencies and stakeholders.
- Strengthen the capacity of the Mines Safety Department (MSD) to continuously monitor and enforce compliance with the requirements of the fund.
- Formulate an investment policy to guide investment decisions of the EPF committee in consultation with relevant government agencies and stakeholders.
- Review the requirement for financial guarantees to facilitate compliance with the requirement to contribute to the fund in consultation with relevant government agencies.
- Include civil society and local community representation in the administration and management of the fund.

## 2 | BACKGROUND

Zambia is and has historically been economically reliant on mining. Zambia possesses a wealth of minerals, including copper, coal, cobalt, emeralds, lead, gold, silver, uranium, and zinc. In addition, Zambia's National Development Plan 2022–2026 (NDP) recognises mining as an important sector for economic development and transformation. Mining contributes substantially to the Zambian economy through export revenues, royalties, and employment opportunities. Mining currently makes up approximately 14.8% of Zambia's gross domestic product (GDP) and is the country's leading source of export income, accounting for approximately 77% of its total exports in 2021. Zambia also boasts deposits of key energy transition minerals such as manganese, lithium, nickel and cobalt. These critical minerals have sparked renewed interest in the mining sector as the world transitions to clean energy sources. The Zambian government has shared its plans to reposition Zambia to benefit from the energy transition as a means of promoting the country's economic development.

Mining, despite its substantial economic contributions, carries significant environmental and social costs. Poor mining and mineral processing practices have widespread effects on the environment, affecting land, air, water, and interconnected plant and animal life. Moreover, these impacts pose risks to human health and safety, which persist long after mining companies have concluded their operations. Mining also affects the livelihoods and way of life of communities on or near whose land mines are established. As of December 2020, the cumulative environmental liability attributable to each mining firm in Zambia was estimated to be approximately US\$58 million.

In recognition of the challenges facing the Environmental Protection Fund (EPF or 'the fund'), the government's National Mineral Resources Development Policy 2022 has acknowledged the need to strengthen the fund's administration to help facilitate environmentally sound mining. It is therefore critical to address the gaps in the management and administration of the EPF. This policy brief aims to contribute to the strengthening of the EPF by identifying these gaps and proposing priority legislative and policy recommendations.

## 3 | ZAMBIA'S ENVIRONMENTAL PROTECTION FUND

To manage and improve environmental remediation and sustainability in the mining sector, Zambia first established the EPF under section 82 of the Mines and Minerals Development Act, 1995 (now repealed). The fund was subsequently included under section 122 of the Mines and Mineral Development Act, 2008 (also now repealed) and section 86 of the current Mines and Minerals Development Act, 2015 (MMDA).

The EPF has two main objectives: first, to assure the director of the Mines Safety Department (MSD), that

<sup>1</sup> Stakeholders include relevant government agencies, civil society organisations, local communities and private sector entities in the extractive industries sector.

the developer—that is, a person who holds a licence or permit issued under the MMDA—will carry out an environmental and social impact assessment (ESIA); second, to safeguard the government against the risk of bearing the financial burden of rehabilitating a mining area.

Every developer is required to contribute to the EPF. Section 65 (2) of the Mines and Minerals (Environmental) Regulations, 1997 provides that contributions to the EPF are based on the capacity of the developer to rehabilitate areas where operations may have adverse impacts on the environment, as determined by the director of the MSD. The contributions depend on the performance of the developer under an established criterion. The director of the MSD notifies the developer of the category that their operation falls under.

Payment of contributions to the EPF includes a cash component and a bond or bank guarantee. The cash component consists of a percentage of the total mine site rehabilitation cost (5%, 10% or 20%) depending on the classification of the mine. The balance of that percentage must be secured by bond or bank guarantee. The cash amount is to be paid in hard currency.

A recurring challenge for the EPF is mining companies' non-compliance with the requirement to contribute to the fund. This challenge has persisted since the creation of the fund and has been documented in government reports, including the 2014 Report of the Committee on Lands, Environment and Tourism, which focused on the auditor general's findings regarding environmental degradation caused by mining activities. Additionally, the Office of the Auditor General published a report on the EPF in 2014 and presented on the issue at the 2022 Environmental Protection Dialogue. Where companies had provided bank guarantees and bonds, the guarantees or bonds had not been validated by the Bank of Zambia as required.

A further challenge for the EPF is weak enforcement. The MSD has limited human resource and has shown inadequacies in compelling mining companies to make the required contributions to the fund.

## 4 | CHALLENGES TO THE EPF

In addition to mining companies' non-compliance with the requirements of the EPF and the MSD's weak enforcement of the fund's provisions, the EPF also faces the following challenges: an inadequate legal framework; lack of penalties for non-compliance; lack of an investment policy to guide investment of EPF funds; a non-inclusive management committee; and lack of provisions for how rehabilitation will be undertaken in the case of environmental damage resulting from artisanal and small-scale mining (ASM).

As a starting point for resolving the challenges facing the EPF, the government needs to reform the policy and legal framework regulating the fund to ensure effective management and administration. The sections below outline these challenges in more detail.

### 4.1 | Inadequate Legal Framework

The current legal framework governing the EPF is outdated and requires reform. As noted, the MMDA governs the EPF, in addition to the Mines and Minerals (Environmental) Regulations 1997 and the Mines and Minerals (Environmental Protection Fund) Regulations 1998 (together with the 'EPF regulations'). Although the law governing mining in Zambia has been reviewed, repealed, and re-enacted several times, the EPF regulations have never been reviewed since their enactment in 1997 and 1998 respectively.

<sup>2</sup> Ministry of Finance and National Planning, Eighth National Development Plan 2022–2026, <https://www.mofnp.gov.zm/?wpdmpo=8ndp-2022-2026>, p. 32.

<sup>3</sup> Zambia Extractive Industries Transparency Initiative (ZEITI), 2021 ZEITI Report, May 2023, <https://eiti.org/countries/zambia>, p. 16.

<sup>4</sup> Mumba, E. (Centre for Trade Policy and Development), *The Energy Transition: What Does It Mean for Zambia's Mining Sector?*, News Diggers!, 22 May 2023, <https://diggers.news/guest-diggers/2023/05/22/the-energy-transition-what-does-it-mean-for-zambias-mining-sector/>.

<sup>5</sup> Vandome, C., *Reforming Zambia's Mines Needs Regional Partners, Improved Domestic Operating Environment*, The Africa Report, 19 May 2022, <https://www.theafricareport.com/205412/reforming-zambias-mines-needs-regional-partners-improved-domestic-operating-environment/>.

<sup>6</sup> Zambia Extractive Industries Transparency Initiative, Zambia EITI Report 2019, December 2020, [https://eiti.org/sites/default/files/attachments/zeiti\\_report\\_2019.pdf](https://eiti.org/sites/default/files/attachments/zeiti_report_2019.pdf)

<sup>7</sup> Regulation 3 (1) (a), Mines and Minerals (Environmental Protection Fund) Regulations 1998.

<sup>8</sup> Regulation 3 (1) (b), Mines and Minerals (Environmental Protection Fund) Regulations 1998.

The existing regulations do not adequately address the current requirements or persistent challenges faced by the EPF. For example, the MMDA provides for appointing a fund manager to invest the EPF's funds. However, provisions to guide and regulate the function of the fund manager are absent from the EPF regulations. At the time of writing, a review has commenced with the potential to open the way for needed amendments to the EPF regulations. The amended regulations are still in draft form and are yet to be shared with the public. It is therefore unclear whether they will address the function of the fund manager. It also remains to be determined whether the MSD will consult stakeholders to seek input on the draft regulations.

## 4.2 | Lack of sanctions for non-compliance

Weak compliance with the requirement to contribute to the fund also remains a major issue. The EPF regulations do not provide specific sanctions or penalties for non-compliance with this requirement, and this is one of the reasons for limited compliance. Furthermore, while ASM also contributes to environmental degradation, the EPF regulations do not address how environmental damage suffered through ASM will be mitigated. Given the recurrent challenges facing the fund, there is a need to review the legislation to ensure applicable laws address identified and future challenges.

## 4.3 | Challenges with compliance and enforcement

Another challenge for the EPF is a lack of robust enforcement by the MSD to compel mining companies to meet the requirement to contribute to the fund. A portion of company contributions to the EPF is intended to be provided in the form of bank guarantees or bonds validated by the Bank of Zambia, with the remaining balance paid in cash. However, contrary to the established procedures, the Bank of Zambia does not validate the bank guarantees or bonds of some mining companies.

Despite such persistent compliance challenges, the MSD has limited capacity and resources to enforce and monitor compliance. The Zambia Law Development Commission in its 2021 review of the EPF regulations also noted that the law does not stipulate what happens when a developer fails to contribute to the EPF. This creates a regulatory gap and weakens the overall effectiveness of the EPF as a tool for environmental remediation.

Consequently, the EPF has failed to achieve its intended goals and objectives in sufficiently financing the progressive rehabilitation and remediation of areas affected by exploration, mining, and mineral processing operations.

## 4.4 | Challenges affecting the EPF's Management

An Environmental Protection Fund Committee ('the committee') manages the EPF. The committee is a mix of government and private sector actors—four from the government and seven from the private sector. The four government actors are the permanent secretary of the Ministry of Mines and Mineral Development (MMMD), the director of the MSD, a representative of the Environmental Council of Zambia, and a representative of the Ministry of Finance and Economic Development. The seven other members representing the developers contributing to the fund are appointed by the MMMD in consultation with a body representing the developers.

The structure of the committee presents several challenges that affect the EPF's operation. In its current structure, there is no representation from civil society or local communities. The lack of civil society and local community representation on the committee means there is no independent participation on behalf of the public or local communities.

<sup>9</sup> Regulation 65 (1), *Mines and Minerals (Environmental) Regulations* 1997.

<sup>10</sup> Regulation 66 (1) - (2) and Eleventh Schedule, *Mines and Mineral (Environmental) Regulations* 1997.

<sup>11</sup> Regulation 66 and third schedule, *Mines and Minerals (Environmental) Regulations* 1997.

<sup>12</sup> National Assembly of Zambia, *Report of the Committee on Lands, Environment and Tourism*, 2014, <https://www.parliament.gov.zm/node/3929>.

<sup>13</sup> Presentation by the Office of the Auditor General at the 2022 Environmental Protection Dialogue (EPD), Republic of Zambia, *Report of the Auditor General on the Management of Environmental Degradation Caused by Mining Activities in Zambia*, July 2014, [https://www.ago.gov.zm/?wpfb\\_dl=225](https://www.ago.gov.zm/?wpfb_dl=225).

<sup>14</sup> Republic of Zambia, *Report of the Auditor General on the Management of Environmental Degradation Caused by Mining Activities in Zambia*, July 2014, [https://www.ago.gov.zm/?wpfb\\_dl=225](https://www.ago.gov.zm/?wpfb_dl=225).

<sup>15</sup> Section 86, *Mines and Minerals Act* 2015, provides for the EPF.

<sup>16</sup> The law relating to mining was re-enacted in 1995, 2008 and 2015, with several amendments in between.



## 4.5 | Challenges Relating to The EPF's Auditing and Investing

The EPF regulations require an annual audit of the fund. However, it is unclear whether this requirement is adhered to. The MMDA also requires the EPF committee to invest any funds not immediately required for the fund. At the time of writing, there was no policy to guide the EPF committee's investment decisions. However, the MMDA is in the process of developing an investment policy, which is currently in draft form.

The EPF regulations require the Minister of Mines and Mineral Development to appoint a fund manager, on the recommendation of the committee, to manage the affairs of the EPF. The fund manager is also the secretary to the committee but does not have voting rights. From its establishment in 1995 until September 2023, the EPF did not have a fund manager. However,

## 5. | CONCLUSION AND RECOMMENDATIONS

Mining necessarily has negative impacts on the environment. With renewed interest in mining sparked by the Zambian government's energy transition agenda and intention to benefit from the country's abundance of critical minerals, deliberate measures must be taken to address these negative impacts.

In Zambia, the EPF is essential in ensuring the remediation and rehabilitation of environmental damage caused by mining. Therefore, the government should ensure the proper functioning of the EPF through efficient and effective management. So far, the EPF has failed to meet its objectives of safeguarding the government against the risk of having to bear the burden of rehabilitating mining areas. The main reasons for this are the fund's inadequate regulatory framework; mining companies' non-compliance with the obligation to contribute to the fund; the MSD's lack of enforcement of the law; and a lack of penalties for non-compliance. These key challenges need to be addressed for the EPF to serve its purpose and safeguard Zambia's environment in the context of the increasing interest in mining.

### 5.1 | Recommendations

To strengthen management, compliance, and enforcement concerning the EPF and ensure that legislation is responsive to current and future challenges:

- **The MMDA** and other relevant government agencies should conduct a comprehensive review of existing regulations, such as the EPF regulations. This review should focus on incorporating provisions to clarify the role of the fund manager and to strengthen overall compliance with, and enforcement of, EPF requirements.
- **The MMDA** should also develop guidelines or regulations to govern environmental remediation in cases of ASM.  
To strengthen the management of the EPF:
- **The MMDA** in consultation with all relevant stakeholders should develop an investment policy to guide the EPF committee's investment decisions and ensure that value for money and risk considerations are at the forefront of investment decisions.
- **The MMDA** in consultation with all relevant stakeholders should develop and publicly disclose the specific responsibilities and functions of the external fund manager.
- **The MMDA** should facilitate increased coordination and collaboration among relevant stakeholders, including key government entities such as the MSD, the Zambia Environmental Management Authority (ZEMA), the EPF committee, mining companies, communities, and civil society organisations.
- **The MMDA** in consultation with all relevant stakeholders should include a civil society representative, such as a civil society participant from the Zambia Extractive Industries Transparency Initiative (ZEITI), in the EPF committee, and a representative of local communities.  
To strengthen compliance and enforcement:

<sup>17</sup> Zambia Law Development Commission, *Report of the Review of the Mines and Minerals (Environmental) Regulations, 51 No. 29 of 1997, and the Mines and Mineral (Environmental Protection Fund) Regulations, 51 No. 102 of 1998, 2021*, pp. 15 – 19.

<sup>18</sup> Regulation 3 (2), *Mines and Minerals (Environmental Protection Fund) Regulations 1998*.

<sup>19</sup> Regulation 6 (2) and (3), *Mines and Minerals (Environmental Protection Fund) Regulations 1998*.

<sup>20</sup> Section 86 (6), *Mines and Minerals Development Act 2015*.

<sup>21</sup> Regulation 5 (1), *Mines and Minerals (Environmental Protection Fund) Regulation 1998*.

Sichula, A., Govt names managers for \$40 million environmental

- **The MMMD** in consultation with all relevant stakeholders should review the requirement for financial guarantees to facilitate companies' compliance with the obligation to contribute to the fund.
- **The MMMD** in consultation with other relevant government agencies should strengthen the capacity of the MSD to monitor and enforce compliance with the EPF regulations.
- **The MSD** should provide incentives for compliance with the fund's requirements.

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