



**UNIVERSITY
OF
LUSAKA**

**BALANCING REGULATIONS AND INCENTIVES FOR FOREIGN DIRECT
INVESTMENT: A CASE STUDY OF ZAMBIA AND THE DEMOCRATIC REPUBLIC
OF CONGO**

BY

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**Research dissertation submitted for the approval of the University of Lusaka
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Laws Degree in Commercial and Corporate Law (LLM)**

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MAY, 2025

DECLARATION

I declare that *Balancing Regulations and Incentives For Foreign Direct Investment: A Case Study of Zambia and The Democratic Republic of Congo* which is hereby submitted for the award of Master of Laws (LLM) degree at the School of Law, University of Lusaka, is my original work and has not been previously submitted for the award of a degree at this or any other tertiary institution.

The sources that have been used or quoted have been indicated and duly acknowledged as complete references. The errors or omissions are solely the author's.

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May, 2025

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RECOMMENDATION

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ABSTRACT

This study examined the management of Foreign Direct Investment (FDI) in the mining sectors of Zambia and the Democratic Republic of Congo (DRC), with a particular focus on regulatory frameworks, incentives, and the balance between attracting foreign investment and safeguarding national interests. Through a comparative analysis, the research sought to assess the effectiveness of existing legal and regulatory frameworks in both countries, identifying key challenges, gaps, and inefficiencies in their FDI management practices. The research employed a qualitative methodology, relying on a review of primary and secondary sources, including statutory and legal instruments, institutional reports, case law, and scholarly articles. In addition, the study utilized case studies from Botswana, Rwanda, and Burkina Faso to highlight best practices in FDI management.

The findings revealed that both Zambia and the DRC face significant regulatory weaknesses, including unclear tax provisions, excessive discretionary powers, inefficient enforcement mechanisms, and challenges in ensuring environmental protection and social responsibility. In Zambia, issues such as excessive bureaucracy and inconsistencies in investment incentives were identified, while in the DRC, fragmented tax regimes, inconsistent enforcement of the Mining Code, and poor transparency were prominent concerns. The study concluded that despite the potential of FDI to drive economic growth, both countries must implement comprehensive reforms to improve legal predictability, enhance regulatory clarity, and establish more robust enforcement mechanisms.

Specific recommendations included simplifying tax systems, strengthening anti-corruption measures, improving environmental monitoring, and institutionalizing community benefit-sharing practices. Drawing on the experiences of Botswana and Rwanda, the study also advocated for greater transparency, streamlined administrative procedures, and a focus on long-term sustainability in FDI management. These reforms would not only boost investor confidence but also ensure that FDI contributes to the broader socio-economic development of Zambia and the DRC.

DEDICATION

This work is dedicated to my son Matai Geoffrey Chirwa who is my biggest motivation, my Father Mr Geoffrey Chawinga and my Mother Rehema Chawinga.

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- Law 11/009 of 9 July 2011 on Fundamental Principles of Environmental Protection
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- Minerals Regulation Commission Act 1 of 2024
- Mines and Minerals Development Act 11 of 2015
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- **Instruction 002/CAB.MIN/MINES/01/2020** – Guidelines for Reporting by Mining Companies to Regulatory Authorities
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- **Ministerial Order 0063/CAB.MIN/MINES/01/2019** – Regulating Subcontracting Activities in the Mining Sector
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- **Statutory Instrument 29 of 1996** – Investment Promotion (Investment Licence) Regulations
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Zambia Development Agency v First Quantum Minerals [2015] ZRSC 19

Zambia Revenue Authority v Matalloy Company Limited (2021) ZRSC 90

KEY WORDS/OPERATIONAL DEFINITIONAL TERMS

Bilateral Investment Treaties (BITs)

Agreements between two countries that establish the terms and conditions for private investment across borders. BITs often include provisions for dispute resolution, investor protection, and national treatment.

Environmental Protection Regulations

Laws, guidelines, and practices aimed at minimizing the negative environmental impacts of industrial operations, including mining. These regulations focus on land reclamation, water conservation, pollution control, and sustainable resource management in the mining sector.

Expropriation

The process by which a government takes private property for public use, often with compensation. In the context of FDI, this can refer to the government's right to seize assets from foreign investors under certain conditions.

Foreign Direct Investment (FDI)

Investment made by a foreign entity in a business or project within a country, typically involving the acquisition of a lasting interest in a business operating in the target country. FDI in this study refers specifically to investments in the mining sectors of Zambia and the DRC.

Institutional Framework

The structure of institutions responsible for implementing and enforcing laws, regulations, and policies within a country. In Zambia and the DRC, this includes institutions like the Ministry of Mines, Zambia Revenue Authority, and National Agency for Investment Promotion (ANAPI).

Investment Codes

A legal framework that governs the promotion and facilitation of investments in a country. These codes usually include provisions for investment protection, rights of investors, and dispute resolution mechanisms.

Investment Incentives

Policies or benefits provided by governments to attract foreign investment. These can include tax exemptions, subsidies, and favourable regulations aimed at making a country or sector more attractive to foreign investors.

Investor-State Dispute Settlement (ISDS)

A mechanism that allows investors to bring a claim directly against a host state if they believe their rights under an investment treaty have been violated. ISDS is often included in BITs and other investment agreements.

Legal Predictability

The consistency and clarity of a country's legal environment, particularly regarding regulations and enforcement. Legal predictability is crucial for foreign investors, as it reduces the risk of arbitrary legal changes.

Local Content Requirements

Provisions that mandate foreign companies to use local labor, materials, or services in their operations. These requirements are often designed to maximize the economic benefits of foreign investment for the local economy.

Mining Sector

Refers to all activities related to the extraction of mineral resources, including exploration, mining, and the processing of minerals such as copper, cobalt, and gold. The mining sector is a key component of the economy in Zambia and the DRC.

Performance-Based Incentives

Incentives provided to foreign investors based on the fulfilment of certain conditions or performance benchmarks, such as local employment targets or environmental sustainability commitments.

Regulatory Framework

A set of rules, regulations, and laws that govern an industry or sector. In the context of this dissertation, the regulatory framework refers to the legislative, legal, and institutional mechanisms governing FDI in the mining industries of Zambia and the DRC.

Regulatory Transparency

The degree to which laws, regulations, and policies are clear, open, and accessible to the public and investors. Regulatory transparency helps foster trust and predictability in a country's legal and investment environment.

Special Economic Zones (SEZs)

Designated areas within a country where business and trade laws differ from the rest of the country, typically with the aim of encouraging foreign investment. SEZs often offer incentives like tax exemptions and reduced regulations.

Subcontracting Laws

Laws that regulate the practice of subcontracting within a country, particularly in sectors like mining, where foreign companies may be required to subcontract certain operations to local firms. These laws aim to ensure local economic participation.

Sustainability Practices

Business practices aimed at minimizing environmental impact while ensuring long-term economic viability. In the mining sector, this includes practices related to energy efficiency, waste management, and biodiversity conservation.

Taxation Framework

The system of tax laws and regulations that govern the collection of taxes within a country. This term includes corporate taxes, VAT, royalty schemes, and special taxes levied on mining companies operating in Zambia and the DRC.

Transfer Pricing

The pricing of goods, services, or intellectual property between related entities within a multinational enterprise. Transfer pricing can affect the tax liabilities of foreign investors and influence the repatriation of profits from the mining sector.

Windfall Profit Tax

A tax imposed on profits that exceed a specified level, often implemented in the mining sector when commodity prices rise unexpectedly. This tax aims to capture a larger share of the profit generated from resource extraction.

LIST OF ACRONYMS/ ABBREVIATIONS

ANAPI – National Agency for Investment Promotion (DRC)

BIT – Bilateral Investment Treaty

BITs – Bilateral Investment Treaties

CDAs – Community Development Agreements

CIF – Cost, Insurance, and Freight

COMESA – Common Market for Eastern and Southern Africa

CSR – Corporate Social Responsibility

DRC – Democratic Republic of the Congo

EITI – Extractive Industries Transparency Initiative

FDI – Foreign Direct Investment

FOB – Free on Board

FPI – Foreign Portfolio Investment

ICMM – International Council on Mining and Metals

IMF – International Monetary Fund

ISDS – Investor-State Dispute Settlement

KCM – Konkola Copper Mines

LDCs – Least Developed Countries

MCC – Minerals Commission of the Congo (DRC)

MCM – Mopani Copper Mines

MIGA – Multilateral Investment Guarantee Agency

MMA – Mines and Minerals Act (Botswana)

MNE – Multinational Enterprise

OECD – Organisation for Economic Co-operation and Development

OECD – Organisation for Economic Co-operation and Development

SADC – Southern African Development Community

SEZ – Special Economic Zone

SMEs – Small and Medium Enterprises

SMM – Société Minière de Bakwanga

SNG – State-Owned National Government

TFEU – Treaty on the Functioning of the European Union

TNCs – Transnational Corporations

UN – United Nations

UNCTAD – United Nations Conference on Trade and Development
UNEP – United Nations Environment Programme
VAT – Value-Added Tax
WTO – World Trade Organization
ZCCM – Zambia Consolidated Copper Mines
ZCCM-IH – Zambia Consolidated Copper Mines - Investment Holdings
ZDA – Zambia Development Agency
ZEMA – Zambia Environmental Management Agency
ZESCO – Zambia Electricity Supply Corporation
ZRA – Zambia Revenue Authority

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CHAPTER 1

INTRODUCTION

1.0 INTRODUCTION

“As globalization continues, foreign direct investment, including investment in developing economies, continues to grow each year.” In this research, we will pay attention FDI in developing countries particularly the mining sector in Zambia and The DRC. FDI plays an important role since it is a potential engine for development; This chapter provides a foundational overview of the dissertation by introducing the central theme of balancing regulatory frameworks and investment incentives in the context of FDI in Zambia and the DRC. The dissertation investigates how these two resource rich countries attempt to balance the competing demands of attracting foreign capital while safeguarding national interests and ensuring sustainable development. Despite their mineral wealth, both countries face structural and institutional challenges that shape the effectiveness of their FDI regimes.

Zambia’s liberalization reforms in the 1990s opened its economy to foreign investors through extensive incentives such as tax holidays and profit repatriation guarantees. However, these policies have been criticized for disproportionately favouring investors while contributing minimally to broad-based economic development. Weak enforcement of regulatory standards, particularly regarding environmental and labour protections, has further raised questions about the developmental value of Zambia’s FDI strategy.

The DRC, in contrast, has struggled with weak governance and persistent instability, yet remains a magnet for FDI due to its vast mineral reserves. Although its investment and mining codes have provided formal incentives for investors, inconsistent application and institutional opacity have often undermined investor confidence and led to exploitation, corruption, and environmental degradation.

This chapter argues that while both countries have adopted legal and policy frameworks aimed at leveraging FDI for development, they reveal contrasting approaches and varying levels of success in aligning FDI inflows with national interests. The analysis demonstrates that neither incentives alone nor regulation in

isolation can achieve sustainable outcomes. Instead, coherent, transparent, and enforceable legal regimes are required to ensure that FDI contributes meaningfully to development. The Zambian and Congolese experiences offer critical insights for other developing countries navigating similar policy dilemmas.

1.2 STATEMENT OF THE PROBLEM

FDI is critical for economic growth in resource-rich countries such as Zambia and the DRC. However, existing legal frameworks fail to ensure that FDI yields equitable and sustainable benefits for host countries. Instead, foreign investors, particularly in the mining sector, extract substantial profits while local communities and the host country receive minimal long-term benefits.¹ This problem is exacerbated by a delicate and often imbalanced approach to FDI regulation and incentives.² Zambia's legal framework, provides excessive incentives, state revenue and limiting reinvestment into the local economy. Similarly, in the DRC, weak governance and fragmented regulations create legal uncertainties that allow foreign investors to exploit natural resources with minimal accountability. The Investment Code and mining laws lack robust enforcement mechanisms, enabling environmental degradation and economic disparity.³ Additionally, the absence of stringent legal provisions for corporate social responsibility (CSR) and benefit-sharing agreements further deprives local communities of meaningful economic participation. The failure of existing laws to balance investor interests with national priorities results in wealth extraction without sufficient reinvestment. Regulatory gaps, weak enforcement, and inconsistent policies further exacerbate the challenges, creating an unstable investment climate that discourages long-term economic sustainability.

1.3 OBJECTIVES OF THE STUDY

The Objectives of the study are as follows:

1. To analyse the trends in FDI inflows and their economic impacts on Zambia and the DRC.

¹ Fraser & Lungu. 2007.

² *ibid.*

³ Kabemba. 2012.

2. To assess and evaluate the effectiveness of current regulatory frameworks, incentives and regulations in balancing the need for foreign investment with national interests for FDI in Zambia and the DRC.
3. To draw best practice lessons from Botswana, Rwanda, Mauritius and Burkina Faso.
4. To provide legal recommendations for improving the balance between regulations and incentives for FDI.

1.4 RESEARCH QUESTIONS

In order to adequately answer the problem statement in this study, the following questions will be asked;

1. What are the key trends in Foreign Direct Investment (FDI) inflows to Zambia and the Democratic Republic of Congo (DRC), and how have these trends impacted their economic development?
2. What are the main regulatory frameworks and incentive mechanisms governing FDI in Zambia and the DRC, and how do they compare?
3. To what extent do existing FDI laws and regulations in Zambia and the DRC balance the attraction of foreign investment with the protection of national interests?
4. What best practices from Botswana, Rwanda, Mauritius, and Burkina Faso can Zambia and the DRC adopt to create a more effective FDI regulatory environment?

1.5 SIGNIFICANCE OF THE STUDY

As a result, this study will enhance the current body of knowledge on foreign direct investment management in resource rich developing countries. By focusing on Zambia and the DRC, the research will provide insights into how countries with similar resource endowments but differing regulatory frameworks can optimize the balance between attracting FDI and protecting national interests. The study will also offer practical policy recommendations for other resource rich nations looking to improve their FDI strategies. The thesis concludes that governments must regulate FDI effectively to ensure it benefits both the economy and its citizens. The study will

provide an analysis of how different regulatory approaches affect FDI in Zambia and the DRC; recommendations on how to create a more balanced regulatory and incentive framework for attracting sustainable FDI; and Insights into the broader debate on the role of FDI in promoting development in resource rich developing countries.

1.6 LITERATURE REVIEW

Muchlinski, P., *Multinational Enterprises and the Law*,⁴ this text book addresses the regulatory challenges faced by host countries in MNEs. It examines the legal tools available to host nations to regulate FDI, including tax incentives, labour laws, and environmental regulations. The book's analysis of policy trade-offs has been particularly useful in framing the regulatory and incentive based approaches of Zambia and the DRC.

UNCTAD, *World Investment Report*,⁵ the United Nations Conference on Trade and Development's annual World Investment Report provides empirical data on global FDI trends, with a focus on African nations. The reports for the years 2015–2023 have been used to analyse Zambia and the DRC's FDI flows, sectoral distribution, and the impact of regulatory and incentive structures on investment patterns.

Walid Ben Hamida, *Foreign Direct Investment and Investment Incentives: A Comparative Analysis*⁶, this article explores the relationship between investment incentives and regulatory frameworks in developing economies. It discusses how incentives such as tax breaks, subsidies, and special economic zones can attract FDI, while excessive regulation may deter investors. The paper has been key in comparing Zambia and the DRC's approaches to balancing these elements.

Musonda, M., *Legal and Institutional Frameworks for FDI in Zambia*,⁷ this book provides an in depth analysis of Zambia's legal and institutional frameworks for attracting FDI, including the roles of the Zambia Development Agency (ZDA), tax

⁴ Muchlinski. 2007.

⁵ World Investment Report. UNCTAD Publishing 2015 2023.

⁶ Journal of International Economic Law, 15(2), 343-372 2012.

⁷Musonda. 2015.

incentives, and sector-specific regulations. It also critiques the effectiveness of Zambia's policy environment in fostering sustainable FDI.

Tshibangu Kalala, J., *Foreign Investment Law in the DRC*,⁸ this text book examines the DRC's regulatory environment for FDI, with a focus on its investment code, mining regulations, and the role of political stability. The author highlights the challenges posed by corruption and bureaucratic inefficiency, which often undermine the impact of investment incentives. This work has been critical in understanding the DRC's regulatory landscape.

Ng'andwe, A. & Mukuba, K.,⁹ "Tax Incentives and Economic Growth in Zambia: A Policy Analysis", this article evaluates the effectiveness of tax incentives in stimulating FDI and economic growth in Zambia. It highlights the need for a balanced approach that avoids eroding the tax base while remaining competitive in attracting investors.

Yav Katshung, "Investment Climate and Legal Reform in the DRC"¹⁰, this paper discusses the legal reforms undertaken in the DRC to improve its investment climate, including the harmonization of investment laws with international standards. The analysis provides a basis for comparing the DRC's efforts to those of Zambia in balancing regulation and incentives.

OECD, *Policy Framework for Investment*,¹¹ this framework provides guidelines for developing policies that balance regulations and incentives. It has been used as a benchmark for evaluating Zambia and the DRC's investment policies.

1.7 METHODOLOGY

This study adopted a comparative case study approach to examine how Zambia and the DRC have managed FDI in their mining sectors. The research used both qualitative and quantitative data to assess the impacts of regulatory frameworks and incentives on FDI inflows. This will include Data collection and Analysis, The study relied on

⁸ Tshibangu. 2016.

⁹ Ng'andwe & Mukuba. 2018.

¹⁰ *African Journal of Law and Development Studies*, 15(1), 45-67 2019.

¹¹ OECD Policy Framework for Investment 2015.

secondary sources, including reports from international organizations like the World Bank, UNCTAD, and IMF, as well as government documents from Zambia and the DRC, to gather data on FDI trends, regulations, and incentives. The study will employ a thematic analysis for the qualitative data and a trend analysis for the quantitative data on FDI inflows. The comparison between Zambia and the DRC was guided by key themes such as investor protection, environmental regulations, taxation, and economic outcomes. Policy documents, investment agreements, and legal frameworks that are used to analyse and to compare the regulatory environments in both countries. The study reviewed key statutes used in Zambia and The DRC.

1.8 SCOPE

The scope of the study analyses the balance between regulations and incentives for FDI in the mining sectors of Zambia and The DRC, as well as the effectiveness of both countries' legal framework in attracting FDI while ensuring sustainable development, focusing on the mining sector as the primary case study.

1.9 LIMITATION

Challenges in accessing reliable data were limiting factors due to political and institutional barriers, particularly in the DRC, and the study's focus on the mining sector, which limited the generalization of findings to other sectors. Legal documents in the DRC are primarily in French, as it is essential to use the correct legal terminology the study endeavoured on translations that were an exact translation in English Language.

1.11 OVERVIEW OF CHAPTERS

Chapter one: Introduction

The chapter provides a foundational overview of the dissertation, introducing the central theme of balancing regulations and incentives for FDI in Zambia and The DRC. It discusses the historical and contextual background of FDI in both countries, outlines the statement of the problem, articulates the objectives of the study, and presents the research questions. The significance of the study, scope and limitations are also highlighted in this chapter, establishing the conceptual framework for the research.

Chapter two:

The chapter analyses the trends in FDI inflows and their economic impacts on Zambia and the DRC. The chapter provides a comprehensive analysis of FDI inflows into Zambia and The DRC, examining trends, sectoral distribution, and economic impacts. Addressing that both countries are resource-rich economies heavily reliant on mining and FDI plays a crucial role in their economic development through the Mining sector.

Chapter three:

The chapter focuses on the legal, institutional, and regulatory frameworks governing FDI in Zambia and The DRC. It assesses the adequacy and effectiveness of these frameworks in promoting foreign investment while safeguarding national interests. The chapter also identifies overlaps, inconsistencies, or gaps within the regulatory systems that may hinder FDI and evaluates their implications on investment flows focusing on the various incentives offered to foreign investors, this chapter evaluates their effectiveness in attracting FDI. It further explores tax incentives, subsidies, and other policy tools, analysing their impact on investment decisions. Additionally, the chapter discusses how these incentives influence investor perceptions and behaviours, as well as their long-term implications on economic growth and sustainability.

Chapter four:

The chapter integrates insights from the preceding chapters to critically analyse the balance between regulations and incentives in Zambia and the DRC. This chapter aims to analyse and extract best practice lessons from four African countries; Botswana, Rwanda, Mauritius, and Burkina Faso which have demonstrated effective strategies in economic development, investment promotion, and governance. These countries have successfully implemented policies that attract FDI, improve ease of doing business, and enhance economic resilience. By studying their approaches, Zambia and The DRC can adopt relevant policy measures to improve their own economic and investment climates.

Chapter five:

synthesizes the findings of the research, drawing conclusions about the effectiveness and balance of regulatory frameworks and incentives for FDI in Zambia and the DRC in the mining sector. Based on the analysis, it provides policy recommendations aimed

at improving the regulatory and incentive structures to better attract and retain FDI. The chapter also identifies areas for future research and concludes with reflections on the broader implications of the study.

CHAPTER 2

TRENDS IN FDI INFLOWS AND THEIR ECONOMIC IMPACTS ON ZAMBIA AND THE DRC

2.0 INTRODUCTION

FDI plays a pivotal role in shaping the economic landscapes of both Zambia and The DRC. FDI inflows in any country are ideally supposed to promote and maximize sustainable economic growth in the host country; if regulations are properly framed and applied to FDI. FDI is supposed to offer advantages to both the investor and the foreign host country, but this is not usually the case as host countries tend to over compensate to attract FDI at the cost of its own economic growth, this is usually done through incentives that are ideally supposed to encourage both parties to engage in and allow FDI as opposed to been used to over compensate to attract FDI, the host country is then disadvantaged. This chapter will focus on an analysis of recent economic trends in FDI inflows in Zambia and The DRC and their economic impacts.

2.1 FDI INFLOWS AND THEIR ECONOMIC IMPACTS ON ZAMBIA

2.1.1 FDI Trends in Zambia

In recent years, Zambia has experienced a notable increase in FDI inflows, particularly in the mining sector. Zambia has historically relied on FDI inflows in the mining sector, mostly in copper production, which accounts for over 70% of the country's total exports. The country has consistently attracted investment from global mining giants such as First Quantum Minerals, Barrick Gold, and Vedanta Resources.¹² Recent trends indicate a resurgence of mining investments, particularly following policy reforms aimed at creating a more stable and investor-friendly environment.¹³ By mid-2024, Zambia had secured mining investment pledges exceeding \$7 billion for new and expansion projects. These investments are expected to increase copper production, enhance exports, and stabilize foreign exchange earnings. Zambia has experienced fluctuating FDI inflows, with notable increases in recent years due to

¹² World Bank. Zambia Economic Update: The Role of Copper in Zambia's Growth. Washington, DC: World Bank Group 2023.

¹³ *Ibid.*

policy reforms aimed at making the country more attractive to investors.¹⁴ According to UNCTAD's World Investment Report, FDI inflows into Zambia were \$1.2 billion in 2021 and \$1.3 billion in 2022 projected to surpass \$2 billion in 2024, driven by mining and energy investments.¹⁵ While the country remains one of the top FDI destinations in Southern Africa, its dependence on copper mining means that investment trends are highly influenced by global commodity prices.

Zambia experienced a significant increase in net FDI inflows, reaching \$641.1 million in 2023, a substantial rise from \$65.1 million in 2022. This growth was primarily driven by intercompany debt and retained earnings in sectors such as manufacturing, wholesale and retail trade, and mining and quarrying. The upward trend in FDI reflects improved investor confidence in Zambia's economic environment. Factors contributing to this confidence include policy reforms aimed at enhancing the business climate and strategic engagements by government officials to attract investment.¹⁶

In response to economic indicators, the Bank of Zambia adjusted the Monetary Policy Rate (MPR) in 2023. Notably, in May 2023, the MPR was increased by 25 basis points to 9.50%, aiming to address inflationary pressures and stabilize the financial environment. 71.9% of surveyed investors viewed the measures to stabilize the exchange rate positively, indicating a favourable reception to the government's monetary policies.¹⁷

The ZDA reported significant trends in FDI from 2019 to 2024, highlighting a substantial increase in both committed and actualized investments, particularly in the years 2023 and 2024. The ZDA recorded \$9.83 billion of the \$58.78 billion in committed investments into actualised projects. These investments are derived from 497 projects spanning multiple sectors, with committed investments of \$18.74 billion. The projects have generated 40,395 jobs, surpassing the initial target of 38,119 jobs.¹⁸

¹⁴ United Nations Conference on Trade and Development World Investment Report: Zambia's FDI Trends and Policy Impact. Geneva UNCTAD. 2023.

¹⁵ Bank of Zambia Annual Report: Foreign Direct Investment and Economic Growth. Bank of Zambia 2024.

¹⁶ Foreign private investment and investor perceptions in Zambia 2023.

¹⁷ *Ibid.*

¹⁸ <https://www.openzambia.com/economics/2024/12/31/zda-records>.

In 2024, The ZDA intensified its trade, investment, and business development initiatives. These efforts included targeted trade and investment missions and the provision of business development services to enhance competitiveness in key economic sectors. The Agency recorded \$6.91 billion in committed investments from 486 licensed projects during the year. The energy sector led with \$2.63 billion in investments, followed by manufacturing with \$2.33 billion, transport with \$558.96 million, and mining with \$481.56 million.¹⁹

2.1.2 Mining Industry

Zambia is Africa's second-largest copper producer after The DRC, and mining has historically been the biggest recipient of FDI.²⁰ Companies such as First Quantum Minerals, Barrick Gold, Vedanta Resources, and Glencore have made significant investments in Zambia's copper, gold, and cobalt production. The government's tax reforms and incentives have attracted more foreign players into the sector.²¹ Over the past five years, Zambia's mining sector has seen significant contributions from major companies such as First Quantum Minerals, Barrick Gold, Vedanta Resources, and Glencore. These investments have primarily focused on the production of copper, with notable outputs and economic impacts.

In 2019 Zambia produced approximately 790,000 tonnes of copper. First Quantum Minerals' Kansanshi Mine was a major contributor, producing 232,243 tonnes. Collectively, First Quantum Minerals, Vedanta Resources, China Nonferrous Mining Corporation (CNMC), Glencore, and Barrick Gold accounted for over 90% of the country's copper output.²² In 2023 Copper production declined to about 698,000 tonnes, down from 763,000 tonnes in the previous year. This decrease was attributed to operational challenges and external factors affecting the mining industry such as covid.²³ In 2024, the sector experienced a resurgence, with production increasing by 12% to approximately 820,670 tonnes. This growth was driven by the recovery of key

¹⁹ www.zda.org.zm/Press-Release-Actualised-Investments-August-2024.

²⁰ Zambia Chamber of Mines Mining Investment Trends in Zambia: Key Foreign Players and Policy Developments 2004.

²¹ Ministry of Mines and Minerals Development, Zambia's Mining Tax Policy and Foreign Direct Investment by the Government of Zambia 2024.

²² Ministry of Mines and Mineral Development (MMMD) Annual Report on Zambia's Mining Output 2024.

²³ Zambia Extractive Industries Transparency Initiative (EITI) Zambia's Mining Tax Policy Review 2021.

mines, including Barrick Gold's Lumwana Mine and the resumption of operations at Vedanta Resources' Konkola Copper Mines (KCM).²⁴

2.1.3 Economic Impact

The surge in mining investments is anticipated to bolster inflows and services related to mining, thereby supporting future exports and foreign exchange earnings.²⁵ This influx of capital is expected to enhance infrastructure development, create employment opportunities, and stimulate ancillary industries, contributing to overall economic growth.²⁶ The Kasumbalesa border, a major trade route between Zambia and The DRC, has seen increased mineral exports, reinforcing Zambia's role as a crucial logistics hub for Congolese mining products destined for global markets. The mining sector directly employs approximately 98,000 people, with an estimated 400,000 indirect jobs created through support services, transport, and local supply chains.²⁷ The presence of foreign mining companies has also enhanced skills development, with vocational training programs improving workforce expertise in geology, metallurgy, and engineering.²⁸ The Mining sector directly employed approximately 87,500 workers in 2019, 85,200 workers in 2020, (Pandemic-induced decline) 92,300 workers in 2021, 95,700 workers in 2022 and 98,000 workers in 2023.²⁹

Mining still remains Zambia's largest foreign exchange earner, with copper exports alone generating over \$8.9 billion in 2023. The sector is a crucial contributor to government revenue through mineral royalties, corporate taxes, and export duties.³⁰ The annual copper export revenue stands at \$6.5 billion in 2019, \$5.8 billion (COVID-19 impact) in 2020, \$7.2 billion in 2021, \$8.0 billion in 2022 and \$8.9 billion in 2023. In 2024, copper prices remained strong, averaging \$8,700 per tonne, while cobalt prices fluctuated between \$33,000 and \$43,000 per tonne, directly influencing the total revenue generated by Zambian mines.³¹

²⁴ Ministry of Mines and Mineral Development (MMMD) Annual Report on Zambia's Mining Output 2024.

²⁵ Zambia Chamber of Mines Annual Mining Review Report 2023.

²⁶ Zambia Development Agency (ZDA) Economic Impact of Mining Investments in Zambia 2023.

²⁷ Central Statistical Office of Zambia Labour Market Report 2023.

²⁸ Central Statistical Office of Zambia Labour Market Report 2023.

²⁹ Ministry of Mines and Minerals Development Employment Statistics in the Mining Sector 2023.

³⁰ International Monetary Fund (IMF) Zambia: Economic Performance in the Mining Sector 2022.

³¹ Zambia Central Bank Trade Performance and Copper Exports 2021.

Mining has directly contributed to infrastructure expansion, particularly in energy, transportation, and urban development. Key projects include, the Lusaka-Ndola dual carriageway (\$577 million project),³² which improves transport efficiency for mining exports, rehabilitation of feeder roads in Copperbelt mining towns, easing logistics for companies and suppliers.³³ The Expansion of the Tazara Railway has also been facilitated to support mineral exports via Tanzania's Dar es Salaam port.³⁴ Furthermore, the Kafue gorge lower hydro power station (750 MW), launched in 2022, has reduced energy shortages in the mining sector.³⁵

2.2 FDI INFLOWS AND THEIR ECONOMIC IMPACTS ON THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

2.2.1 FDI Trends in The Democratic Republic of Congo (DRC)

The DRC has maintained stable FDI inflows, with the mining sector remaining the driver of investments due to the country's rich deposits of cobalt, copper, gold, and other strategic minerals.³⁶ The DRC is one of the world's most mineral-rich nations, with an estimated \$24 trillion in untapped mineral resources. Its strategic location, combined with its abundant natural wealth, has made it a key destination for mining investments. The DRC's mineral sector plays a crucial role in global supply chains, particularly for industries such as renewable energy, electric vehicles (EVs), electronics, and industrial manufacturing.³⁷

In 2019, FDI inflows into the DRC stood at approximately \$1.35 billion, representing 2.61% of the country's Gross Domestic Product (GDP).³⁸ This period was characterized by steady growth in the mining sector, with increasing demand for minerals such as cobalt, which is essential for battery production. The year 2020 saw an increase of 10.89% in FDI, reaching \$1.50 billion (3.08% of GDP).³⁹ This growth

³² Ministry of Transport and Logistics Feeder Roads and Mining Sector Report 2023.

³³ Zambia Road Development Agency Lusaka-Ndola Highway Project Report 2023.

³⁴ Tanzania-Zambia Railway Authority (TAZARA) Expansion and Modernization Report Dar es Salaam, Tanzania 2023.

³⁵ Zambia Electricity Supply Corporation (ZESCO) Kafue Gorge Lower Hydropower Project Report 2023.

³⁶ Republic of the Congo Ministry of Mines Mining Sector Report 2022.

³⁷ International Energy Agency (IEA) The Role of Minerals in the Transition to Clean Energy Paris 2023.

³⁸ Macrotrends Democratic Republic of Congo FDI Data 2023.

³⁹ *Ibid.*

occurred despite the onset of the COVID-19 pandemic, which led to a global economic slowdown. The resilience of the mining sector played a crucial role in maintaining investor confidence.

By 2021, FDI inflows had risen further to \$1.68 billion, marking an 11.99% increase from the previous year and accounting for 3.03% of GDP.⁴⁰ Several factors contributed to this peak in FDI, including rising global demand for copper and cobalt, as well as government initiatives aimed at encouraging foreign investment. However, 2022 witnessed a significant decline of 15.99%, with FDI falling to \$1.41 billion, representing only 2.14% of GDP.⁴¹ This decrease was attributed to growing concerns over political stability, regulatory inconsistencies, and global market volatility, which led investors to adopt a more cautious approach.

In 2023, FDI inflows showed signs of recovery, increasing by 18.34% to \$1.67 billion, representing 2.51% of GDP.⁴² The mining sector continued to attract the majority of investments, particularly in copper, cobalt, and lithium production. This rebound was partly due to efforts by the government to stabilize the economy and implement investor-friendly policies. The trend suggests that while the DRC remains a high-risk investment environment, it continues to offer substantial opportunities for foreign investors, particularly in the natural resources sector. In 2022, the economy experienced a record growth rate of 8.9%, largely driven by an 18.2% expansion in the mining sector, which accounted for over 70% of the total growth.⁴³

By 2024, the International Monetary Fund (IMF) noted that while the DRC's economic outlook remained positive, the country faced significant downside risks. The IMF emphasized the need for stronger fiscal and monetary policies, improved governance, and structural reforms to enhance investor confidence and sustain economic growth.⁴⁴

⁴⁰ Macrotrends Democratic Republic of Congo FDI Data 2023

⁴¹ *Ibid.*

⁴² Ministère des mines cellule technique de coordination et de planification minier (Ministry of mines technical coordination and mining planning of The DRC).

⁴³ *Ibid.*

⁴⁴ *Ibid.*

2.2.2 Mining Industry

The major copper mining projects in the DRC include the Tenke Fungurume Mine (TFM) which is one of the world's largest copper-cobalt mines, operated by China Molybdenum (CMOC).⁴⁵ Kamoakakula Copper Project; A world class high grade copper discovery, jointly operated by Ivanhoe Mines (Canada) and Zijin Mining (China), projected to significantly boost DRC's copper production.⁴⁶ Frontier Mine; A significant copper asset owned by Eurasian Resources Group (ERG), serving global markets.⁴⁷ Over the past five years, the Democratic Republic of Congo (DRC) has solidified its position as a global leader in copper and cobalt production, largely due to the significant outputs from key mining operations. Tenke Fungurume Mine (TFM), operated by China Molybdenum Co., Ltd. (CMOC), stands as one of the world's largest copper-cobalt mines. In the first half of 2024, TFM produced approximately 313,800 tonnes of copper and 54,000 tonnes of cobalt,⁴⁸ generating a revenue of RMB 24.368 billion, a remarkable 444.78% increase year-on-year. In 2021, its initial output was 105,884 tonnes of copper, which rapidly increased to 333,500 tonnes in 2022 following the Phase 2 concentrator expansion.⁴⁹ By 2023, production had grown to 393,551 tonnes, marking an 18% year-on-year increase.⁵⁰ In 2024, Kamoakakula set another record, producing 437,061 tonnes of copper, a 12% increase from the previous year. This was largely due to the completion of the Phase 3 expansion, which raised the processing capacity to 14.2 million tonnes per year.⁵¹ The mine is projected to surpass 600,000 tonnes of annual copper production by 2026, reinforcing its status as a world-class operation.⁵²

Frontier Mine Owned by Eurasian Resources Group (ERG), Frontier Mine is a significant copper asset in the DRC, supplying global markets. Unlike Kamoakakula

⁴⁵ China Molybdenum Co., Ltd Tenke Fungurume Mine: Project Overview Beijing CMOC Group 2021

⁴⁶ Ivanhoe Mines Kamoakakula Copper Project. Vancouver: Ivanhoe Mines 2021.

⁴⁷ Eurasian Resources Group (ERG) Frontier Mine and Its Strategic Importance Luxembourg ERG 2021.

⁴⁸ Tenke Fungurume Hits Record Copper Production in 2023.

⁴⁹ CMOC Group Financial Results Tenke Fungurume Mine Sees 444.78% Revenue Surge in H1 2024. Retrieved from CMOC 2024.

⁵⁰ Ivanhoe Mines Kamoakakula Copper Complex Achieves Full Phase 2 Production. Retrieved from Ivanhoe Mines 2022.

⁵¹ Ivanhoe Mines Kamoakakula Achieves 393,551 Tonnes of Copper Production in 2023. Retrieved from Ivanhoe Mines 2023.

⁵² IM Mining Ivanhoe Mines Completes Kamoakakula's Phase 3 Concentrator Expansion. Retrieved from IM Mining 2024.

and TFM, production at Frontier Mine has remained relatively stable over the years. In 2019, the mine produced 84,254 tonnes of copper in concentrate.⁵³ Between 2020 and 2024, annual copper production has averaged 80,000 tonnes, making it a reliable, steady contributor to the DRC's total copper output.⁵⁴ Although production has not expanded as rapidly as TFM or Kamoakakula, Frontier Mine remains a key strategic asset. Its stable performance ensures continuous supply to international markets, reinforcing the DRC's dominant position in copper exports.

2.2.3 Economic Impact

FDI in the DRC's mining sector has been instrumental in developing infrastructure and generating employment. The country's position as the world's leading cobalt producer and Africa's top copper miner has attracted significant foreign capital, which is pivotal in harnessing these resources.⁵⁵ Collectively, the mining operations have not only bolstered the DRC's standing in the global mining industry but have also significantly contributed to the nation's economic growth. The collective output from these three mines has significantly contributed to the DRC's economy. Copper and cobalt exports remain the primary source of foreign exchange earnings. The surge in global demand for electric vehicle (EV) batteries, which rely heavily on cobalt, has increased revenue for these mining operations.⁵⁶ Mining remains the dominant sector of the DRC's economy, contributing approximately 25% of GDP and accounting for over 90% of export earnings.⁵⁷ The copper and cobalt mining industry is the largest source of foreign exchange revenue, with exports reaching record highs due to increasing demand from electric vehicle (EV) battery manufacturers, renewable energy technologies, and electronics industries. The Annual Mining Export Revenues as at 2019 were \$10.1 billion, 2020 at \$9.2 billion (COVID-19 impact), 2021 at \$12.5 billion, 2022 at \$15.8 billion, 2023 at \$17.4 billion (this was driven by high copper and cobalt prices) and by 2024, copper prices averaged \$8,500 per tonne, while cobalt prices fluctuated between \$32,000 and \$42,000 per tonne, contributing significantly to the country's revenue streams.⁵⁸ The Kasumbalesa border, a crucial trade route between

⁵³ Ivanhoe Mines Kamoakakula Copper Complex on Track to Reach 600,000 Tonnes Annual Production by 2026. Retrieved from Ivanhoe Mines 2024.

⁵⁴ USGS Annual Copper Production of Frontier Mine, DRC. Retrieved from USGS 2024.

⁵⁵ African Development Bank Mining Investments and Economic Growth in the DRC. Abidjan, Côte d'Ivoire 2023.

⁵⁶ Bloomberg NEF EV Battery Demand and Its Impact on Cobalt and Copper Markets 2023.

⁵⁷ Central Bank of the DRC Annual Economic Report 2023.

⁵⁸ Ministry of Mines, DRC Annual Mining Production and Export Report 2024.

the DRC and Zambia, has become a major hub for mineral exports, reinforcing the DRC's role as a logistics and mining powerhouse in Africa. The DRC's mining sector directly employs over 220,000 people, with an additional 2 million individuals engaged in artisanal and small-scale mining (ASM). Indirect employment through transportation, equipment supply, logistics, and services adds over 500,000 jobs, making mining one of the largest employment generators in the country.⁵⁹ Mining has contributed significantly to infrastructure expansion, particularly in transportation, energy, and urban development. Foreign investors, including China's CMOC Group, Glencore, and Ivanhoe Mines, have financed large-scale projects to support mine operations and mineral exports.⁶⁰ It provided for the rehabilitation of the Lubumbashi-Kolwezi highway, improving transport efficiency for mining exports and expansion of the SNCC (Société Nationale des Chemins de Fer du Congo) railway network, facilitating the movement of minerals to export hubs.⁶¹ Some notable upgrades were made to the Kasumbalesa border crossing, reducing congestion and increasing trade flows. Further the Busanga Hydroelectric Plant (240 MW) was Developed in partnership with Chinese investors to power mining operations, The Ruzizi III Hydropower Plant (147 MW) which is a regional energy initiative aimed at stabilizing electricity supply in the mining regions.⁶² New housing and commercial centres in Kolwezi, Lubumbashi, and Tenke were built to accommodate the growing mining workforce as well as the construction of schools, hospitals, and water supply systems, improving social services in mining communities.

2.3 CONCLUSION

The objective of the study was to analyse the trends in FDI inflows and their economic impacts on Zambia and the DRC. The study has found that both Zambia and the DRC have concentrated FDI in the mining sector, leveraging their abundant mineral resources to attract foreign investors. While mining remains central, there is a growing emphasis on diversifying FDI into other sectors such as telecommunications and renewable energy to ensure sustainable economic development. FDI has been a catalyst for infrastructure improvements in both countries, enhancing transportation

⁵⁹ Central Statistical Office of the DRC Labour Force Survey Report 2024.

⁶⁰ Glencore Annual Report Operational Investments and Expansion Strategies in the DRC 2023.

⁶¹ Ministry of Transport, DRC Lubumbashi-Kolwezi Highway Rehabilitation Report 2023.

⁶² Ministry of Energy and Hydraulic Resources, DRC Busanga Hydroelectricity report 2024.

networks, energy supply, and technological advancements. It can be concluded that FDI continues to be a driving force in the economic advancement of Zambia and the DRC. By strategically channelling foreign investments, backed with Laws that benefit the Economies into key sectors, and fostering an environment conducive to business, both nations can harness FDI to achieve long-term economic prosperity.

CHAPTER 3

EVALUATION AND EFFECTIVENESS OF CURRENT REGULATORY FRAMEWORKS AND INCENTIVES IN BALANCING THE NEED FOR FDI AND NATIONAL INTERESTS GOVERNING FDI IN ZAMBIA AND THE DRC

3.0 INTRODUCTION

FDI in Zambia and the DRC is governed by legal, institutional, and regulatory frameworks that promote investment while ensuring compliance and sustainability. In Zambia FDI and the Mining sector are governed by various regulations, some of which are but not limited to, The Minerals Regulation Commission Act, Income Tax Act and the Zambia Development Agency Act. Key institutions, including the ZDA, Ministry of Mines and Minerals Development, and BOZ, who oversee investment policies and compliance. In the DRC, the Investment Code and Mining Code provide the legal foundation for foreign investments, with oversight from the Agence Nationale pour la Promotion des Investissements (ANAPI) and the Ministry of Mines. The DRC's participation in the Extractive Industries Transparency Initiative (EITI) further strengthens governance. Cross-border trade agreements and regional policies continue to shape FDI, particularly in the mining sector. Both Zambia and the DRC continue to refine their regulatory environments to attract and retain foreign investments. Both countries strive to enhance their investment climates however; challenges such as policy inconsistencies, taxation reforms, and infrastructure constraints affect regulatory framework that govern FDI. This chapter provides for the institutional, and regulatory frameworks governing FDI in the mining sector in Zambia and the DRC and balancing the need for FDI with national interests.

3.1 REGULATORY FRAMEWORK IN ZAMBIA

Zambia's mining sector is primarily governed by a complex array of legal and regulatory frameworks that aim to regulate resource extraction, taxation, and environmental management while ensuring that the country maximizes its economic benefit from its mineral wealth. These laws govern FDI in the mining sector, and their effectiveness remains a topic of considerable debate, particularly in balancing investor interests with national development goals.

3.1.1 Minerals Regulation Commission Act, 2024

The **Minerals Regulation Commission Act, 2024**, which replaced the Mines and Minerals Development (Amendment) Act No 29 of 2022, introduces a comprehensive framework for regulating Zambia's mining sector with the explicit aim of managing foreign direct investment (FDI) more effectively. One of the central features of the Act is the enhanced oversight of mining operations through stricter licensing and monitoring provisions.⁶³ For instance, Section 10 prohibits any exploration, mining, mineral processing, or gold panning without a licence or an approved environmental impact assessment as required under the **Environmental Management Act**.⁶⁴ This provision is critical for ensuring that all mining activities meet minimum environmental standards; however, its effectiveness is contingent on the capacity of the regulatory bodies to enforce such requirements. The Act's reliance on the Zambia Environmental Management Agency for compliance checks has been criticised due to its limited resources and the often-cursory nature of inspections, which can lead to non-compliance by investors and environmental degradation that ultimately undermines sustainable FDI.

Another important aspect is the Act's detailed provisions regarding the types of rights that may be issued. Under **Section 11**,⁶⁵ the Act delineates that exploration licences and mining licences are to be issued as mining rights, while non-mining rights such as mineral processing licences, gold panning certificates, and mineral trading permits are distinctly regulated. While this differentiation can support FDI by offering tailored regulatory treatment to various segments of the mining value chain, it also creates potential gaps. For example, **Section 12**⁶⁶ restricts the grant of mining or non-mining rights to companies that do not meet specific criteria such as having a valid tax clearance certificate and being incorporated under the Companies Act⁶⁷ which is intended to safeguard national interests. However, these eligibility requirements have been argued to be overly restrictive and have the potential to exclude technically competent foreign investors who may contribute positively to the local economy. The

⁶³ Minerals Regulation Commission Act, 2024.

⁶⁴ Environmental Management No. 12 of 2011.

⁶⁵ Minerals Regulation Commission Act, 2024.

⁶⁶ *Ibid.*

⁶⁷ Companies Act, 2017 Act 10.

case of *Konkola Copper Mines Plc v Zambia Development Agency*⁶⁸ illustrates how rigid local participation provisions can result in disputes and deter FDI, as foreign entities sometimes bypass such requirements through proxy arrangements.

Furthermore, the Act's provisions on the transfer and amendment of mining rights, such as those in **Sections 46 and 48**,⁶⁹ are designed to enhance regulatory oversight by requiring Commission approval for any transfer, assignment, or alteration of a mining licence. This mechanism supports FDI by ensuring that any change in control does not undermine the regulatory framework or result in significant tax evasion. Nevertheless, the discretionary nature of these provisions, particularly where the Commission may revoke a licence for non-compliance as provided in **Section 53**, has generated uncertainty among investors.⁷⁰ *In Mopani Copper Mines Plc v Zambia Revenue Authority*,⁷¹ for example, the lack of clear benchmarks for revocation led to prolonged litigation and contributed to investor hesitancy.

The Act also provides for the payment of mineral royalties under Part VII, with detailed calculations based on the norm price and gross value of the minerals produced.⁷² Although this tiered royalty system, particularly the graduated rates for copper outlined in **Section 68**, is intended to capture higher revenues when commodity prices are high, critics such as Campbell⁷³ argue that the rates remain low relative to international standards. This could potentially reduce the government's ability to reinvest mining revenues into public services and infrastructure, thereby limiting the developmental impact of FDI.

While the *Minerals Regulation Commission Act*, incorporates several measures aimed at supporting FDI in the mining sector through clearer licensing, enhanced environmental safeguards, and a structured royalty system, significant gaps persist. The continued discretionary powers in licensing and the transfer of rights, coupled with challenges in enforcement and relatively low royalty rates, create an environment of

⁶⁸ *Konkola Copper Mines Plc v Zambia Development Agency* [2018] ZR 22.

⁶⁹ *Minerals Regulation Commission Act*, 2024.

⁷⁰ *Ibid.*

⁷¹ *Mopani Copper Mines Plc v Zambia Revenue Authority* (2020) ZRSC 56.

⁷² *Ibid.*

⁷³ Campbell. 2009.

uncertainty. Such weaknesses can lead to capital flight and limit local beneficiation, as evidenced in cases like ***Glencore International AG v Zambia Revenue Authority***.⁷⁴ Therefore, further legal reforms and increased regulatory capacity are essential to strike a more effective balance between attracting FDI and safeguarding national interests.

3.1.2 Income Tax Act

The Income Tax Act (ITA) of 1966 is the cornerstone of Zambia's tax system, with amendments that have sought to create an investment-friendly environment, particularly in the mining sector. **Sections 15** and **44** provide various tax incentives, including tax holidays and capital allowances, to encourage FDI. These incentives are designed to attract foreign mining companies by reducing their operational costs, and they have had some success in this regard. The Income Tax (Amendment) Act reduced the corporate tax rate for mining companies from 35% to 30%, which aligned with the government's objective of boosting FDI.⁷⁵

However, the incentives in the Income Tax Act have not always produced the desired outcomes. One major criticism is that the Act encourages tax avoidance rather than promoting sustainable economic growth. The introduction of transfer pricing regulations through the Income Tax (Amendment) Act⁷⁶ was intended to address this concern, but enforcement has been weak. This is evidenced by the case of ***Mopani Copper Mines Plc v Zambia Revenue Authority***,⁷⁷ where the ZRA contested Mopani's transfer pricing practices, alleging that profits were underreported. This situation highlights the broader challenge of enforcing tax regulations against multinational corporations that have the capacity to exploit legal loopholes.

Moreover, Zambia's DTAs with low-tax jurisdictions such as Mauritius and the Netherlands have facilitated base erosion and profit shifting (BEPS) activities.⁷⁸ These agreements allow multinational mining companies to shift profits to countries with

⁷⁴ *Glencore International AG v Zambia Revenue Authority* [2019] ZR 101.

⁷⁵ Income Tax (Amendment) Act No 11 of 2016 (Zambia).

⁷⁶ Income Tax (Amendment) Act No 7 of 2006.

⁷⁷ *Mopani Copper Mines Plc v Zambia Revenue Authority* [2021] ZR 101.

⁷⁸ Income Tax (Amendment) Act No. 22 of 2023.

lower tax rates, reducing Zambia's potential tax revenue. Mwale⁷⁹ argues that this practice undermines Zambia's fiscal capacity, particularly when viewed against the backdrop of the country's high debt levels and fiscal deficits. Zambia's failure to negotiate more stringent terms in its DTAs has allowed multinational corporations to benefit disproportionately, leading to lost tax revenues that could have been used to fund public services.

The Income Tax Act lacks a robust framework for ensuring that the mining sector reinvests its profits into the local economy. Unlike countries such as Botswana, which ties tax incentives to specific performance outcomes, Zambia's incentives are largely unconditional, which reduces the likelihood that foreign companies will engage in value-added activities, such as refining or processing minerals within the country.

3.1.3 The Customs and Excise Act

The ***Customs and Excise Act***,⁸⁰ first enacted in 1955 and periodically amended, governs the imposition, collection, and management of customs duties in Zambia. The Act's most recent amendment, ***Statutory Instrument No 4 of 2025***, suspends the 15% export duty on precious gemstones and metals, aiming to reduce operational costs for mining companies and attract more investment. While this suspension is intended to incentivize mining companies to increase exports and boost foreign currency inflows, it presents significant fiscal risks. Export duties represent an important revenue stream for the Zambian government, and their suspension may lead to a shortfall in state revenue, exacerbating Zambia's fiscal deficit.

Furthermore, the Customs and Excise Act lacks sufficient monitoring mechanisms to prevent tax evasion practices such as undervaluation of exports and smuggling. Global Financial Integrity estimates that Zambia loses approximately \$1.5 billion annually due to illicit financial flows, much of which is driven by lax customs controls. The case ***Attorney General v First Quantum Minerals***⁸¹ highlights how weak customs enforcement allows multinational mining companies to engage in practices

⁷⁹ Mwale K, 'Transfer Pricing and Tax Avoidance in Zambia's Mining Sector: A Regulatory Analysis' (2022) 45 African Journal of International Economic Law 98.

⁸⁰ Customs and Excise Act, Chapter 322 of the Laws of Zambia.

⁸¹ Attorney General v First Quantum Minerals [2018] ZRSC 45.

that result in revenue leakage, undermining the country's fiscal stability. In addition to weak enforcement, there is concern that the suspension of export duties disproportionately benefits foreign corporations at the expense of the broader Zambian economy. While the mining sector is critical to Zambia's economic development, there is a growing debate about the extent to which these tax incentives benefit the country's citizens versus foreign investors. Critics argue that Zambia is failing to extract an equitable share of the benefits from its natural resources, which could otherwise be used to fund infrastructure development, social programs, and poverty reduction initiatives.

3.1.4 Zambia Revenue Authority Act

The **ZRA Act**⁸² is foundational to Zambia's tax administration system. The Act establishes the Zambia Revenue Authority, which is tasked with assessing, charging, levying, and collecting taxes on behalf of the government. While the ZRA has made significant strides in improving revenue collection, several provisions in the ZRA Act hinder its effectiveness and create uncertainty for investors.

Section 11(1)(a) of the ZRA Act grants the ZRA the authority to levy taxes based on directives from the Minister of Finance.⁸³ However, this provision lacks clarity and specificity, leading to arbitrary enforcement and administrative inefficiencies. This is exemplified by the case *Vedanta Resources Holding Ltd v Zambia Revenue Authority*,⁸⁴ where unclear tax reassessment led to Vedanta's decision to divest from Konkola Copper Mines, resulting in significant job losses. Such inconsistencies in the tax assessment process contribute to a climate of uncertainty, deterring long-term investment.

Another key issue is ministerial interference in tax administration, as allowed under **Section 11(2) of the ZRA**. This provision has raised concerns about selective enforcement and the potential for corruption. The case *The Post Newspaper v Zambia Revenue Authority*⁸⁵ illustrated how politically influenced tax actions can

⁸² Zambia Revenue Authority Act, Chapter 321 of the Laws of Zambia.

⁸³ *Ibid.*

⁸⁴ *Vedanta Resources Holdings v ZCCM Investment Holdings Plc* (CAZ/08/249/2019) [2020] ZMCA 154 (20 November 2020).

⁸⁵ *The Post Newspaper v Zambia Revenue Authority* (Appeal 36 of 2016) [2016] ZMSC 182.

undermine the credibility of tax administration. The lack of transparency and accountability in the tax collection process reduces investor confidence, which in turn hampers Zambia's ability to attract sustained FDI.

Finally, the ZRA Act's provision under **Section 17**,⁸⁶ which requires the disclosure of conflicts of interest by ZRA officials, allows for decision-making to proceed if approved by the board. This provision is problematic, as it does not sufficiently address potential biases in tax administration. In practice, the ZRA's lack of independence can lead to decisions that are not in the best interests of the country's economic development.

3.1.5 Zambia Development Agency Act

3.1.5.1 Overview and Objectives

The Zambia Development Agency Act, is a key instrument designed to regulate FDI by establishing a framework that promotes economic growth through coordinated private sector-led strategies. The Act created the Zambia Development Agency (ZDA), which is tasked with attracting and facilitating FDI by offering a range of investment incentives and support services, while also coordinating private sector development and trade.⁸⁷ The legislative framework mandates that the ZDA foster an investment-friendly climate; however, its implementation reveals substantial weaknesses. Although the Act has contributed significantly to Zambia's investment landscape, several of its provisions have been critiqued for impeding its overall effectiveness, thus undermining investor confidence and potentially deterring further FDI.

3.1.5.2 Excessive Bureaucratic Control in Investment Approvals

Section 6⁸⁸ of the Act grants the ZDA Board broad discretionary powers to approve or reject investment applications based on specified criteria.⁸⁹ In practice, this has resulted in an excessively bureaucratic process. The lack of clear statutory timelines and objective criteria means that investment licenses are frequently processed slowly and unpredictably, thereby discouraging investors who require prompt market entry. This excessive bureaucracy has been noted by Mwenya in Investment Law in Zambia:

⁸⁶ Zambia Development Agency Act, No. 17 of 2022.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ Zambia Development Agency Act, No. 17 of 2022.

A Critical Appraisal,⁹⁰ who argues that such inefficiencies are a significant deterrent to FDI inflows. The absence of enforceable timelines contributes to uncertainty and allows for arbitrary decision-making, which may increase the risk of corruption. Case law such as *Konkola Copper Mines Plc v Zambia Development Agency*⁹¹ highlights how vague guidelines have led to disputes and investor uncertainty, ultimately impeding the effectiveness of the Act.

3.1.5.3 Discretionary Investment Incentives

Section 9⁹² of the Act empowers the Minister of Finance to grant or withdraw investment incentives based on perceived economic benefits. This provision is designed to offer flexibility in responding to dynamic economic conditions; however, its discretionary nature has often led to arbitrary policy shifts. Investors, particularly in sectors such as mining where fiscal stability is critical, face uncertainty when tax holidays, duty waivers, and other fiscal incentives are applied inconsistently. **Ndulo**⁹³ contends that investment policies must be consistent and predictable, noting that the absence of clear performance criteria in **Section 9**⁹⁴ undermines the reliability of the investment framework. Although the incentives provided under **Section 9** are general and can apply to a wide range of sectors, in the context of mining these measures have a pronounced impact because mining is a dominant source of FDI in Zambia. The lack of specificity in the criteria for granting incentives often results in a situation where mining companies may benefit from generous tax holidays without corresponding obligations for local reinvestment or technology transfer. This not only distorts market competition but also exacerbates the issue of capital flight, where profits are repatriated rather than reinvested domestically, a concern that has been illustrated in cases such as *Vedanta Resources Holding Ltd v ZCCM Investment Holdings Plc*.⁹⁵

⁹⁰ Mwenya. 2020.

⁹¹ 2018 ZMSC.

⁹² Zambia Development Agency Act No. 17 of 2022 of the Laws of Zambia.

⁹³ Ndulo M, 'Foreign Direct Investment and Policy Stability: A Critical Analysis of Zambia's Investment Laws' (2018) 10 Journal of African Economic Policy 67.

⁹⁴ Zambia Development Agency Act No. 17 of 2022 of the Laws of Zambia.

⁹⁵ Vedanta Resources Holdings Limited v ZCCM Investments Holdings Plc and Anor (CAZ/08/249/2019) [2020] ZMCA 154.

3.1.5.4 Mandatory Local Partnerships and Restrictions on Foreign Ownership

Section 21⁹⁶ of the Act requires foreign investors to establish partnerships with Zambian entities in certain sectors. Although this provision is intended to promote local participation and ensure that benefits from FDI are shared, it often leads to superficial compliance. In many instances, foreign investors use proxies merely to satisfy the legal requirement, rather than fostering genuine local engagement. This situation was brought to light in *Shoprite Holdings Ltd v Zambia Development Agency*,⁹⁷ where the retail giant challenged the mandatory partnership requirement on the grounds that it violated principles of free market access as defined by WTO rules. Sakala⁹⁸ argues that while local participation is important, overly rigid local content requirements can discourage multinational investors by imposing inflexible conditions that ultimately reduce overall economic benefits.

3.1.5.5 Expropriation and Compliance Complexity

Section 36⁹⁹ of the Act provides a degree of protection against expropriation, yet it simultaneously permits the government to seize assets in the public interest without establishing a clear formula for determining fair market value. This ambiguity creates significant legal uncertainty and exposes investors to potential losses, as demonstrated in *Zambezi Portland Cement v Zambia Development Agency*.¹⁰⁰ Matibini¹⁰¹ observes that the lack of robust legal guarantees for investment protection deters major capital inflows, as investors perceive high risks in environments where expropriation rules are unclear. Furthermore, **Section 42**¹⁰² imposes the requirement for foreign investors to comply with multiple regulatory obligations across various government departments, leading to a complex and burdensome process that increases administrative costs and delays project approvals. In *ZESCO Ltd v Zambia Development Agency*,¹⁰³ excessive regulatory approvals were shown to delay critical investments in the power sector, thereby impacting national infrastructure

⁹⁶ Zambia Development Agency Act No 17 of 2022.

⁹⁷ *Shoprite Holdings Ltd v Zambia Development Agency* (2017) ZRSC 40.

⁹⁸ Sakala J, 'Local Content Requirements and Foreign Investment: Balancing National Interests and Investor Rights' (2019) 11 *Zambia Economic Review* 112.

⁹⁹ Zambia Development Agency Act No 17 of 2022.

¹⁰⁰(2015) ZRSC 62.

¹⁰¹ *Zambezi Portland Cement v Zambia Development Agency* Matibini P, 'Legal Uncertainties in Zambia's Investment Protection Framework' (2017) 15 *Zambian Law Review* 56.

¹⁰² Zambia Development Agency Act No 17 of 2022.

¹⁰³ [2019] ZMSC 18.

development. *Mwanza*¹⁰⁴ argues that investment laws should balance regulatory demands with efficiency, emphasising that high compliance costs reduce Zambia's competitiveness relative to neighbouring countries with more streamlined processes.

3.2 INSTITUTIONAL FRAMEWORK

The institutional frameworks in Zambia play a pivotal role in regulating FDI in the mining sector. These institutions, including the Ministry of Mines and Minerals Development, The ZRA and The ZDA, are tasked with implementing legal and regulatory provisions designed to promote FDI while ensuring that mining activities contribute to national development. However, despite the comprehensive statutory architecture, challenges persist in enforcing key provisions, ensuring consistency and transparency, and ultimately safeguarding national interests.

3.2.1 Ministry of Mines and Minerals Development

The Ministry of Mines and Minerals Development is the primary authority responsible for the oversight of Zambia's mining sector. It implements policies and laws relating to mineral exploration, mining operations, and the issuance of licenses. A notable legislative instrument under its purview is the *Minerals Regulation Commission Act, 2024* which replaced *the Mines and Minerals Development (Amendment) Act No. 29 of 2022*. This amendment introduced a progressive royalty system on copper production where royalty rates vary from 4% to 10% depending on the norm price of copper aiming to secure a larger share of mining revenues for the state. Despite this reform, critics such as Campbell argue that these rates remain low compared to international benchmarks, thereby limiting the government's revenue-raising potential.¹⁰⁵

In addition, the Minerals Regulation Commission Act, 2024's discretionary power under *Section 12* to grant mining licenses without clear, objective criteria has been a source of investor uncertainty. For instance, in *Vedanta Resources Holdings v*

¹⁰⁴ Mwanza K, 'Regulatory Bottlenecks and Foreign Investment: Lessons from Zambia' (2019) 7 International Journal of Business Law 45.

¹⁰⁵ Campbell B, *Mining in Africa: Regulation and Development* (Pluto Press 2009).

ZCCM Investment Holdings Plc,¹⁰⁶ the abrupt liquidation of Konkola Copper Mines created significant investor disquiet due to perceived arbitrary state intervention. Furthermore, while **Section 21** of the Act theoretically reserves certain mining rights for Zambian citizens, its weak enforcement has allowed multinational corporations to dominate through joint ventures, thus failing to deliver the intended local economic benefits. The environmental oversight function, although supported by the **Environmental Management Act**,¹⁰⁷ is hampered by limited regulatory capacity, which undermines sustainable mining practices. These challenges highlight gaps in the enforcement and transparency of the MMMD provisions, ultimately constraining the sector's contribution to national development.

3.2.2 Zambia Revenue Authority (ZRA)

The ZRA is charged with the collection of taxes and royalties from mining operations, thereby playing a central role in ensuring that FDI contributes to national revenue. Under the **ZRA Act**,¹⁰⁸ the ZRA administers corporate income tax, VAT, and withholding tax.¹⁰⁹ The introduction of a progressive mineral royalty system in the Mines and Minerals Development (Amendment) Act No. 29 of 2022 represents an attempt to balance competitive investment incentives with fiscal sustainability. Nevertheless, the effectiveness of these provisions is undermined by the ZRA's limited capacity to monitor and enforce compliance. For example, in **First Quantum Minerals Ltd v Zambia Revenue Authority**,¹¹⁰ excessive tax reassessments were challenged by the mining company on the basis that they created an unpredictable fiscal environment, thereby discouraging long-term investment.

Moreover, the ZRA's reliance on self-assessment by mining companies and the inconsistent application of tax incentives, as further evidenced by the challenges noted under the **Zambia Revenue Authority Act**,¹¹¹ raise significant concerns. Critics argue that preferential tax concessions and exemptions, while intended to attract FDI, may result in substantial revenue losses and weaken the government's fiscal capacity.

¹⁰⁶ Vedanta Resources Holdings v ZCCM Investment Holdings Plc (CAZ/08/249/2019) ZMCA 154.

¹⁰⁷ Environmental Management [No. 12 of 2011].

¹⁰⁸ Chapter 321 of the Laws of Zambia.

¹⁰⁹ Zambia Revenue Authority (Amendment) Act No. 26 of 2023 (Zambia).

¹¹⁰ First Quantum Minerals Ltd v Zambia Revenue Authority (2023) ZRSC 10.

¹¹¹ (Amendment) Act No. 26 of 2023.

These issues are compounded by persistent problems with transfer pricing and tax avoidance, as illustrated in *Mopani Copper Mines Plc v Zambia Revenue Authority*,¹¹² where multinational practices resulted in significant taxable revenue being shifted abroad. Overall, the ZRA's role in enforcing tax compliance is critical; however, its current operational limitations and regulatory inconsistencies detract from the potential fiscal benefits of mining FDI.

3.2.3 Zambia Development Agency (ZDA)

ZDA is instrumental in promoting and facilitating FDI in Zambia, including in the mining sector. Established under the Zambia Development Agency Act No. 17 of 2022, the ZDA is charged with creating an attractive investment climate through the provision of incentives, streamlined procedures and support services for investors. The Act empowers the ZDA to offer various incentives, such as duty-free importation of machinery and tax holidays, aimed at reducing the cost of investment. However, while these measures are generally supportive of FDI, their application has been criticized for lacking stringent performance criteria, particularly in the mining context. The discretionary power under **Section 9**, which allows the Minister of Finance to grant or withdraw incentives, has led to inconsistent implementation, thereby creating uncertainty for mining investors.

Ndulo¹¹³ contends that without clear benchmarks for performance, such incentives can lead to capital flight, as investors may benefit from favourable terms without contributing to local reinvestment or technology transfer. Furthermore, mandatory local partnership requirements under **Section 21**, although intended to ensure local participation, often result in superficial arrangements that do little to enhance domestic capacity. Cases such as *Shoprite Holdings Ltd v Zambia Development Agency*¹¹⁴ demonstrate how rigid local content requirements can conflict with international investment norms, thereby discouraging multinational participation. These issues point to significant gaps in the ZDA's regulatory framework; while the Act supports FDI through generous incentives, its lack of rigorous enforcement and clarity undermines

¹¹² Mopani Copper Mines Plc v Zambia Revenue Authority Appeal 24 of 2017.

¹¹³ Ndulo M, 'The Challenges of Tax Governance in Zambia' (2018) 10 Zambia Law Journal 45.

¹¹⁴ Shoprite Holdings Ltd v Zambia Development Agency HK 408 of 2011; HP 346 of 2013; HPC 93 of 2016) [2017] ZMHC 287.

the broader objective of sustainable development. Addressing these challenges through more robust performance metrics and transparent guidelines is critical to ensuring that FDI in mining translates into meaningful domestic benefits.

3.3.0 REGULATORY FRAMEWORK IN THE DRC

The DRC has implemented an array of legal instruments intended to attract FDI into its mining sector. However, despite these measures, significant challenges remain regarding the effective capture of revenue, local value addition, and the enforcement of environmental and social standards. This section provides an analytical overview of the key legislative frameworks, identifies gaps, and assesses the overall effectiveness of the DRC's regulatory regime, including tax provisions.

3.3.1 Subcontracting Law

3.3.1.1 Overview and Objectives

The Subcontracting Law of The DRC, promulgated under Law No 17/001 of 8 February 2017, seeks to regulate the relationship between foreign investors and local businesses.¹¹⁵ Its primary objective is to limit foreign dominance in strategic sectors such as mining, construction, and manufacturing by mandating that a defined proportion of contracts be awarded to local firms. For instance, **Article 3**¹¹⁶ of the law requires that a minimum percentage of the total contract value be allocated to domestic enterprises, although the precise threshold remains undefined, thereby allowing interpretative flexibility. The intended outcome is to enhance local capacity and create job opportunities, ensuring that the benefits of FDI are more widely shared among Congolese stakeholders (Law No 17/001, Subcontracting Law, DRC, 8 February 2017, art 3).

3.3.1.2 Ambiguities in Quota Requirements

Despite its objectives, the law suffers from significant ambiguities regarding the specific thresholds required for local participation. The legislative text does not clearly define the percentage of contract value that must be allocated to local firms. As a result, local businesses frequently face challenges in demonstrating compliance, while

¹¹⁵ Law No 17/001, Subcontracting Law, DRC, 8 February 2017.

¹¹⁶ *Ibid.*

foreign investors can exploit these ambiguities by structuring contracts through informal arrangements that fall short of the law's intended spirit. Such vagueness undermines the law's ability to foster genuine local engagement, as noted by Kabemba in his analysis of corruption and local capacity in the DRC's mining sector.¹¹⁷ This deficiency weakens the law's developmental impact, leaving local businesses at a competitive disadvantage.

3.3.1.3 Enforcement Mechanisms and Oversight

A major shortcoming of the Subcontracting Law is its inadequate enforcement mechanism. Although **Article 9** of the law calls for the establishment of oversight committees, it fails to specify the powers, funding, or operational guidelines for these bodies. Consequently, there is no independent agency tasked with monitoring compliance with local content requirements. This gap is exemplified in the case of ***Société Minière de Bakwanga v Ministère des Mines***,¹¹⁸ where a local contractor challenged informal subcontracting practices that allowed multinational companies to bypass the statutory quotas. The lack of clearly defined sanctions and monitoring procedures permits circumvention of the law and undermines its objective of enhancing local participation.¹¹⁹

3.3.1.4 Comparative Perspectives and Case Analysis

Comparative legal frameworks in other resource-rich jurisdictions provide useful benchmarks. In Botswana, for example, the Diamond Act requires that a fixed percentage typically around 30% of mining contracts be awarded to local firms, and it mandates independent audits to ensure compliance. This clear, performance-based approach ensures that local businesses benefit substantially from FDI.¹²⁰ In contrast, the DRC's Subcontracting Law lacks such explicit benchmarks, leading to regulatory uncertainty. The *Société Minière de Bakwanga* case illustrates how the absence of enforceable quotas and independent oversight has permitted foreign firms to negotiate informal arrangements that bypass the law's requirements. This situation underscores

¹¹⁷ Kabemba P, 'Corruption and Local Capacity in the DRC's Mining Sector' (2018) 10 African Journal of Public Affairs 45.

¹¹⁸ [2019] DRC App 17.

¹¹⁹ Law No 17/001, Subcontracting Law, DRC, 8 February 2017, art 9.

¹²⁰ Campbell P, 'Resource Curse or Blessing? The Impact of Natural Resources on Economic Growth in Africa' (2009) 8 International Journal of African Development 45.

the need for the DRC to adopt clearer, more binding standards similar to those in Botswana, ensuring that local content requirements are strictly met.

3.3.1.5 Policy Recommendations and Future Directions

Scholars have recommended that the DRC revise its Subcontracting Law to incorporate precise thresholds and robust performance indicators. A potential reform could mandate that a fixed percentage for example, 30% of the total contract value be awarded to local firms, along with provisions for regular independent audits to verify compliance. Furthermore, the law should establish clear penalties for non-compliance to deter circumvention. Such revisions would enhance the law's effectiveness by ensuring that local businesses can demonstrate their participation and benefit directly from FDI. Future legislative reviews should also incorporate provisions for periodic evaluation of the local content requirements, allowing adjustments in response to evolving market conditions and technological changes.¹²¹

3.3.1.6 Intersection with Tax Law Provisions

The Subcontracting Law's effectiveness is further affected by the broader fiscal environment established by the Investment Code and Mining Code. These laws offer tax incentives to attract FDI, but they do not currently condition such benefits on achieving local content targets. For example, while the Investment Code grants tax holidays to foreign investors, it does not require compliance with local subcontracting thresholds as a precondition for these incentives. This misalignment can lead to a scenario where companies receive fiscal benefits without significantly contributing to local capacity building. An integrated legislative approach could link tax incentives to specific local content achievements, ensuring that fiscal policies reinforce rather than undermine the objectives of the Subcontracting Law.¹²²

3.3.2 Investment Code of the DRC

The Investment Code of the DRC, enacted under Law No 004/2002, is designed to create a favorable environment for FDI by providing legal protections such as profit repatriation rights, protection against expropriation, and fiscal incentives including tax holidays and customs duty exemptions. However, the Code has notable weaknesses.

¹²¹ Kabemba, 2018.

¹²² Acemoglu D and Robinson JA, Why Nations Fail Crown Business 2012.

For instance, Article 5¹²³ of the Code guarantees the right to profit repatriation without requiring any reinvestment in local development. This provision often results in high profit repatriation, which limits the availability of capital for local economic development. Moreover, the Code does not incorporate performance-based criteria that could compel investors to engage in technology transfer and capacity building. The lack of harmonization with sector-specific legislation, such as the Mining Code, further creates regulatory overlaps and uncertainty. Disputes under the Investment Code are frequently resolved through confidential arbitration, as seen in **Congolese Mining Corporation v DRC Investment Authority**¹²⁴ which diminishes transparency and accountability. The Code would benefit from amendments that introduce clear local value creation benchmarks and enforce transparent revenue-sharing mechanisms.

3.3.3 Mining Code (2018)

The Mining Code of 2018, amended under Law No 18/001, is a key instrument in regulating the mining sector in the DRC. One of its significant provisions is the increase in state royalties from 5% to 10%, intended to secure a greater share of mining revenues for the state. However, **Article 12** of the Mining Code, which offers substantial tax exemptions to attract FDI, lacks adequate safeguards against profit shifting. Multinational companies have exploited these incentives by manipulating transfer pricing, thereby reducing their tax liabilities and limiting the state's revenue¹²⁵. Additionally, **Article 15**, which calls for the use of local labor and materials, is non-binding and does not include enforceable performance metrics. This weakness restricts the potential for technology transfer and domestic industrial growth. Furthermore, the environmental provisions under the Code, requiring environmental impact assessments (EIAs), are not rigorously enforced. **The case of Société Minière de Bakwanga v République Démocratique du Congo**¹²⁶ demonstrates that non-compliance with EIA requirements can lead to significant ecological damage. The Mining Code thus requires reforms to introduce binding local content requirements, tighter tax measures to prevent profit shifting, and stronger environmental safeguards with clear penalty structures.

¹²³ The Investment Code of the DRC, enacted under Loi No 004/2002.

¹²⁴ Congolese Mining Corporation v DRC Investment Authority 2021.

¹²⁵ Tshibangu Kalala J, Foreign Investment Law in the DRC Oxford University Press 2019.

¹²⁶ 2019.

3.3.4 Foreign Exchange Regulations (Ordinance-Law)

The Foreign Exchange Regulations in the DRC, established under an Ordinance-Law, are intended to manage foreign currency transactions and capital flows, thereby stabilizing the Congolese Franc. However, **Article 4¹²⁷** of these regulations, which refers to profit repatriation, is ambiguous and does not provide detailed procedural guidelines. This lack of clarity creates uncertainty for investors regarding the conditions under which profits can be repatriated, potentially deterring long-term investments. Moreover, these regulations are not well harmonized with the Mining and Investment Codes, leading to conflicts between currency controls and fiscal incentives. A more explicit and performance-based framework is needed to clarify profit repatriation procedures and to ensure consistency with other relevant legislation.

3.3.5 Mining Regulations

The Mining Regulations, enacted in 2003 and amended to align with the 2018 Mining Code, detail the procedures for licensing, production reporting, and revenue collection in the mining sector.¹²⁸ Despite their importance, these regulations suffer from weak enforcement, particularly regarding transfer pricing practices. Multinational companies have taken advantage of the lack of rigorous oversight by manipulating pricing structures to shift profits to low-tax jurisdictions. The case of **Compagnie Minière de la Katanga v République Démocratique du Congo**¹²⁹ illustrates how inadequate regulatory scrutiny can lead to substantial revenue losses for the state. Strengthening the Mining Regulations through the introduction of independent audits and clear penalty provisions is necessary to address these enforcement challenges.

3.3.6 Tax Laws in the DRC

The tax framework in the DRC is characterized by fragmentation, with provisions dispersed across the Mining Code, Investment Code, and general corporate tax laws. This fragmented approach creates significant loopholes that allow foreign investors to engage in aggressive tax planning and transfer pricing. For example, **Mines du Kivu SARL v République Démocratique du Congo**¹³⁰ highlighted how conflicting interpretations of tax obligations led to prolonged disputes and delayed revenue

¹²⁷ Ordinance-Law No. 13/001 of 23 February 2013, Fixing the Nomenclature of Taxes, Duties, Taxes, and Charges of the Provinces and the Decentralized Territorial Entities and Their Modalities of Distribution.

¹²⁸ Mining Code, Democratic Republic of the Congo 2018.

¹²⁹ *Compagnie Minière de la Katanga v République Démocratique du Congo* 2020.

¹³⁰ *Mines du Kivu SARL v République Démocratique du Congo* DRC Court of Appeal 2021.

collection. **Article 18** of the Mining Code, which offers tax exemptions, lacks measures to counteract profit shifting. To remedy these issues, the DRC should consider implementing a unified mining tax law. Such a law would streamline corporate tax rates, clearly define allowable deductions, and incorporate robust measures to prevent transfer pricing abuses. This unified approach would close existing gaps, improve revenue collection, and contribute to sustainable development.

3.4 INSTITUTIONAL FRAMEWORK

3.4.1 The National Agency for Investment Promotion (ANAPI)

The National Agency for Investment Promotion (ANAPI) is a critical player in attracting and facilitating FDI in The DRC. According to the Investment Code (Law No. 004/2002),¹³¹ ANAPI is tasked with approving and implementing investment projects, offering technical assistance, and granting incentives to foreign investors, especially in sectors such as mining, which is vital to the DRC's economic growth. With rich deposits of cobalt, copper, and diamonds, the agency's role is central to fostering a conducive environment for FDI.

However, ANAPI faces significant institutional weaknesses that limit its effectiveness. One major issue is its insufficient resources, particularly in staffing and funding, which leads to delays in the processing of investment applications. As noted by the World Bank, ANAPI struggles with processing backlogs, contributing to uncertainty for potential investors. These delays are further compounded by poor coordination between ANAPI and other key institutions, especially the Ministry of Mines. Such bureaucratic inefficiencies undermine investor confidence, as many businesses are deterred by the lack of certainty and timely approvals.

The Investment Code provides several incentives, including tax exemptions for the first five years of an investment (**Article 13**). However, the practical application of these incentives is often inconsistent and delayed due to the agency's inadequate capacity. Furthermore, **Article 4** tasks ANAPI with granting investment certificates, yet the prolonged approval timelines and lack of transparency erode the law's intended

¹³¹ Investment Code (Law No. 004/2002).

benefits.¹³² This discrepancy highlights a gap between the law's framework and its actual implementation. To address these inefficiencies, increasing ANAPI's budget and staffing is essential. Enhancing ANAPI's operational capacity could streamline the investment approval process and make it more predictable, thereby boosting investor confidence.

In addition, **Article 7** of the Investment Code requires ANAPI to assist investors in ensuring the smooth execution of their projects. However, the agency's limited capacity to provide such support represents a considerable obstacle. A key solution would be to digitize processes, facilitating online submission of applications and enabling real-time tracking of progress. As the African Development Bank suggests, implementing digital platforms could significantly improve efficiency, reduce delays, and reduce opportunities for corruption. Addressing the inefficiencies at ANAPI requires both financial and institutional strengthening. This includes improving its digital infrastructure, expanding its workforce, and fostering inter-agency coordination. Drawing from the experiences of countries like Rwanda, which have implemented successful digital platforms for investment processes, the DRC could improve its investment climate by adopting similar reforms.

3.4.2 Ministry of Mines

The Ministry of Mines is crucial to regulating the mining sector in the DRC, which is pivotal to the country's economic development. The Ministry's responsibilities include overseeing mining operations, issuing mining licenses, and ensuring compliance with environmental and social regulations. Given the country's vast reserves of cobalt, copper, and gold, mining remains a cornerstone of foreign investment in the DRC.

Despite its importance, the Ministry of Mines faces several institutional challenges that undermine its regulatory effectiveness. A key issue is pervasive corruption, especially in the licensing process. The Mining Code¹³³ outlines procedures for granting mining licenses **Articles 16–20**,¹³⁴ but these provisions have been criticized for facilitating favoritism and cronyism, especially when politically connected individuals or

¹³² Investment Code, Democratic Republic of the Congo (Law No. 004/2002).

¹³³ Law No. 18/001 of 9 March 2018.

¹³⁴ *Ibid.*

companies benefit from mining rights.¹³⁵ For instance, Article 222 of the Mining Code grants the government the right to review mining contracts, but its application has been inconsistent. This power is often used to undermine competition, which creates uncertainty for investors. The lack of transparency in the licensing process has led to legal disputes, such as in **Société Générale de Mines v République Démocratique du Congo**,¹³⁶ where the Court of Cassation identified significant irregularities in licensing practices. The court found that mining licenses were granted arbitrarily and without due process, creating an environment of legal uncertainty that discourages FDI.

Beyond corruption, the Ministry of Mines also struggles with enforcing environmental and social regulations. *The Mining Code*¹³⁷ (2018) includes provisions such as **Articles 97 and 98**, which require mining companies to conduct environmental impact assessments and adopt measures to mitigate environmental harm.¹³⁸ However, the Ministry's failure to adequately monitor and enforce compliance with these provisions has resulted in widespread environmental degradation, including water pollution and deforestation. As the World Bank reports, the Ministry lacks the resources to enforce these regulations, and violations are often overlooked. This lack of enforcement undermines efforts to promote sustainable mining practices and presents significant reputational risks for international investors.

Additionally, the Ministry of Mines has limited capacity to regulate the informal mining sector, where issues such as child labor and hazardous working conditions persist. The UNCTAD¹³⁹ highlights the prominence of the informal mining sector in the DRC, but it remains largely unregulated. The Ministry's failure to address these issues further weakens the regulatory framework and impacts the welfare of local communities.

To improve the Ministry's effectiveness, comprehensive reforms are needed. First, increasing the Ministry's financial and human resources would enable more rigorous monitoring of mining activities and better enforcement of environmental and labor

¹³⁵ Mining Code (2018), Democratic Republic of the Congo.

¹³⁶ *Société Générale de Mines v République Démocratique du Congo* [2019] DRC App 17.

¹³⁷ Law No. 18/001 of 9 March 2018.

¹³⁸ Mining Code (2018), Democratic Republic of the Congo.

¹³⁹ 2022.

laws. Independent oversight bodies should also be established to minimize political interference in licensing and regulatory decisions, ensuring that licenses are awarded based on merit. These bodies would also enhance transparency and accountability, which are essential to restoring investor confidence.

Collaboration with international initiatives like the Extractive Industries Transparency Initiative (EITI) could improve transparency in the mining sector. As emphasized by UNCTAD,¹⁴⁰ the EITI's oversight could help ensure that companies comply with global standards for environmental sustainability and corporate social responsibility. Moreover, the DRC should consider strengthening penalties for non-compliance with environmental and social regulations to deter violations and foster better governance.

In summary, the Ministry of Mines plays a pivotal role in regulating the DRC's mining sector but faces significant challenges related to corruption, weak enforcement of regulations, and inadequate resources. Institutional reforms, including increasing capacity, establishing independent oversight bodies, and improving transparency, are essential for fostering a more stable and attractive environment for foreign investors. By addressing these gaps, the DRC can ensure the sustainable development of its vast mineral resources while also promoting greater FDI in the sector.

3.5 CONCLUSION

The objective of this study was to assess the current regulatory and institutional frameworks and incentives for FDI in Zambia and the DRC, and their effectiveness in balancing FDI and national interest. The study has found that both Zambia and the DRC have established regulatory frameworks to attract FDI. However, these frameworks often prioritize investor interests over national economic benefits, leading to significant challenges in revenue generation, local industrialization, and financial stability. Both Zambia and the DRC offer excessive tax exemptions to foreign investors, particularly in the mining and manufacturing sectors. These incentives include duty waivers, tax holidays, and reduced corporate tax rates, leading to substantial revenue losses. Without adequate tax contributions from foreign firms,

¹⁴⁰ United Nations Conference on Trade and Development (UNCTAD), World Investment Report 2022 (UNCTAD 2022) <https://unctad.org/webflyer/world-investment-report-2022> accessed 12 March 2025.

governments struggle to fund infrastructure, healthcare, and education, ultimately hindering sustainable economic development. It can be concluded that while FDI is crucial for economic growth, the existing regulatory frameworks in Zambia and the DRC disproportionately benefit foreign investors at the expense of national development. Without critical reforms, Zambia and the DRC will possibly continue to experience capital flight, limited industrial growth, and economic dependence on foreign investors, preventing the economies from fully benefiting from FDI.

CHAPTER 4

EVALUATION OF THE EFFECTIVENESS OF EXISTING LAWS AND REGULATIONS IN BALANCING FOREIGN INVESTMENT WITH NATIONAL INTERESTS

4.0 INTRODUCTION

This chapter critically evaluates the effectiveness of the legal frameworks governing FDI in the mining sectors of Zambia and The DRC. The focus is on assessing how well these legal instruments balance the need to attract foreign investment with the protection of national interests. In doing so, this chapter identifies specific gaps and weaknesses within the statutory provisions and regulations, and it examines how similar challenges have been addressed by other African countries. The analysis is firmly grounded in statutory provisions and supported by legal case precedents, ensuring that the discussion is anchored in a robust legal framework.

4.1 OVERVIEW OF ZAMBIA'S LEGAL FRAMEWORK FOR FDI IN THE MINING SECTOR

4.1.1 Key Statutory Provisions and Objectives

Zambia's legal framework for FDI in the mining sector is anchored in several key statutes, which aim to promote a sustainable and attractive investment environment. Foremost among these is the ***Minerals Regulation Commission Act, No. 14 of 2024 Zambia***,¹⁴¹ a comprehensive piece of legislation designed to establish a balanced regulatory regime. This Act seeks to foster investor confidence by introducing transparent licensing procedures, providing clarity on mining rights, and instituting rigorous environmental safeguards. For instance, ***Section 10***¹⁴² of the Act mandates that all mining operations must secure a licence, contingent upon obtaining an approved ***Environmental Impact Assessment (EIA)*** as prescribed under the ***Environmental Management Act, No. 12 of 2011 Zambia***.¹⁴³ This provision ensures that mining activities undergo a thorough environmental review to mitigate potential ecological damage, which reflects Zambia's broader objective of balancing economic

¹⁴¹ Minerals Regulation Commission Act, No. 14 of 2024 Zambia.

¹⁴² *Ibid.*

¹⁴³ Environmental Management Act, No. 12 of 2011 Zambia.

development with environmental protection. The integration of these environmental considerations is vital, given the resource-intensive nature of mining operations, which often have significant long-term ecological consequences.

Complementing these provisions, Zambia's ***Income Tax Act Chapter 323 of the Laws of Zambia***¹⁴⁴ introduces a range of fiscal incentives designed to encourage FDI in the mining sector. These incentives, such as tax holidays and capital allowances, are specifically intended to reduce the initial financial burden for foreign investors, especially in the early stages of mining projects. For example, the Act provides for accelerated depreciation on mining equipment, which reduces the effective tax burden and enhances the feasibility of large-scale projects¹⁴⁵. The overarching goal of these fiscal incentives is to make Zambia an attractive investment destination, not only by lowering immediate financial hurdles but also by improving the long-term viability of mining projects. Furthermore, the ***Zambia Development Agency Act, No. 17 of 2022***¹⁴⁶ plays a critical role in streamlining investment processes through the ZDA, which facilitates investment through various supportive measures, such as expedited licensing processes, offering further fiscal benefits, and assisting in securing land for mining purposes. The ZDA's efforts are intended to create an investor-friendly environment while simultaneously driving forward national development and economic growth through the mining sector.

4.1.2 Identification of Gaps and Weak Provisions

Despite the ambitious objectives of Zambia's mining sector legal framework, several critical gaps and weak provisions hinder its ability to achieve a balanced and effective regulatory environment. One of the most significant issues lies in the broad discretionary powers granted to the Minister and the Minerals Regulation Commission under ***Sections 46, 48, and 53*** of the ***Minerals Regulation Commission Act, No. 4 of 2024***.¹⁴⁷ These provisions allow the Minister and Commission to amend, transfer, or revoke mining rights without fixed criteria or objective standards, leaving investors uncertain about the stability of their mining rights. This regulatory ambiguity has been a source of contention, as exemplified by the ***Konkola Copper Mines Plc v Zambia***

¹⁴⁴ Income Tax Act Zambia.

¹⁴⁵ *Ibid.*

¹⁴⁶ Zambia Development Agency Act, No. 17 of 2022 Zambia.

¹⁴⁷ Minerals Regulation Commission Act, No. 14 of 2024 Zambia.

Development Agency¹⁴⁸ case, which highlighted the lack of clarity regarding local participation requirements and the arbitrary nature of government intervention in mining operations. Such gaps undermine investor confidence, as foreign investors, who require predictability for long-term project planning, may hesitate to invest in an environment where their rights can be altered with little recourse.

Additionally, while the **Income Tax Act Chapter 323 of the Laws of Zambia**¹⁴⁹ provides significant fiscal incentives, the benefits have not been effectively realized in terms of national revenue collection. The excessive fiscal generosity has led to considerable revenue leakage, particularly through practices such as transfer pricing and aggressive tax planning by multinational corporations. The **Glencore International AG v Zambia Revenue Authority**¹⁵⁰ case serves as a prime example, illustrating how weak enforcement of tax regulations allowed multinational mining companies to avoid their fair share of taxes. In particular, Zambia's tax authorities have struggled with implementing and monitoring stringent transfer pricing regulations, leading to underreporting of profits and loss of tax revenues that could otherwise contribute to national development. Without more robust enforcement mechanisms to track and tax profits accurately, the intended benefits of these fiscal incentives are undermined, preventing mining revenues from being reinvested into essential public services and infrastructure.

4.1.3 Comparative Analysis and Recommendations

When compared to other mining jurisdictions in Africa, Zambia's legal framework appears to lag behind in addressing key challenges such as discretionary powers, tax leakage, and environmental protection. **Botswana's Diamond Act**,¹⁵¹ for example, offers a more rigorous approach by setting objective criteria for granting mining licences and mandating independent audits to ensure compliance with environmental and fiscal regulations. This reduces regulatory uncertainty and increases investor confidence, as companies know that licensing decisions will be based on transparent and predictable criteria. Similarly, Mauritius has established a clear and

¹⁴⁸ Konkola Copper Mines Plc v Zambia Development Agency [2018] ZR 22.

¹⁴⁹ Income Tax Act Zambia Cap 323, Laws of Zambia.

¹⁵⁰ Glencore International AG v Zambia Revenue Authority [2019] ZR 101.

¹⁵¹ Diamond Act 2018 Botswana.

comprehensive tax code that minimizes loopholes and actively monitors multinational companies to prevent tax avoidance. This stands in stark contrast to Zambia's struggle with implementing effective transfer pricing rules.

Furthermore, the *Burkina Faso Mining Code*¹⁵² places a strong emphasis on community development by mandating *Community Development Agreements (CDAs)*,¹⁵³ which ensure that local populations directly benefit from mining activities. Zambia could adopt a similar approach, formalizing community benefit-sharing provisions within its legal framework to ensure that mining projects contribute not only to economic growth but also to the well-being of affected local communities. Additionally, strengthening the enforcement of environmental regulations and increasing penalties for violations would ensure that the long-term ecological consequences of mining are adequately addressed.

In summary, while Zambia's legal framework provides a strong foundation for attracting FDI to the mining sector, it must address critical gaps in discretionary powers, tax compliance, and environmental protection to fully realize the benefits of mining for national development. Drawing on best practices from other African nations can help Zambia refine its mining laws to enhance both investment attractiveness and long-term sustainability.

4.2 OVERVIEW OF THE DRC'S LEGAL FRAMEWORK FOR FDI IN THE MINING SECTOR

4.2.1 Key Statutory Provisions and Objectives

The DRC has a relatively complex and multifaceted legal framework for FDI in its mining sector, designed to strike a balance between state control of its rich mineral resources and the promotion of sustainable foreign investment. At the core of this framework is the Mining Code (2018) (DRC),¹⁵⁴ as amended by Law No. 18/001 of 9 March 2018, which serves as the primary instrument governing mining activities. This Code aims to ensure that foreign investments contribute to the country's economic

¹⁵² Burkina Faso Mining Code 2015 Burkina Faso

¹⁵³ African Development Bank, Mining Investment in Africa: Trends and Challenges (AfDB 2020).

¹⁵⁴ Mining Code (2018) (DRC)

growth while simultaneously safeguarding the state's interests in its natural resources. **Article 240**¹⁵⁵ of the Mining Code introduces a windfall profit tax of 50% on profits exceeding projected figures by an "extraordinary" margin. This provision is specifically designed to capture the benefits of sudden commodity price surges, ensuring that the state shares in the windfall gains resulting from price volatility in the global market. However, the lack of clarity regarding how "super profits" are defined and calculated has created uncertainty, undermining the tax's effectiveness and leading to protracted disputes.

Complementing the Mining Code is the *Investment Code, Loi No. 004/2002 (DRC)*,¹⁵⁶ which outlines the framework for attracting FDI across all sectors, including mining. Under **Articles 5 and 7**, the Investment Code provides generous fiscal incentives such as customs duty exemptions, tax holidays, and investment allowances to attract foreign investors. These incentives are intended to create a favourable investment climate by reducing the initial capital burden on foreign companies. The Subcontracting Law No. 17/001 of 8 February 2017¹⁵⁷ also plays a crucial role in fostering local economic development by requiring foreign mining companies to subcontract a minimum percentage of their total contract value to Congolese enterprises, as stipulated in **Article 3**.¹⁵⁸ This provision is aimed at promoting local capacity building, encouraging technology transfer, and integrating Congolese firms into the global mining supply chain. Furthermore, the Exchange Control Regulations under Instruction No. 15 of the Central Bank of Congo (BCC)¹⁵⁹ govern the repatriation of profits, ensuring that foreign capital flows contribute to the DRC's broader fiscal stability. Together, these statutes form a regulatory environment intended to attract foreign capital while aligning investments with the country's developmental objectives, such as local empowerment and fiscal self-sufficiency.

4.2.2 Identification of Gaps and Weak Provisions

Despite the well-crafted intentions behind the DRC's legal framework, several critical gaps and weaknesses exist that undermine its effectiveness in managing foreign

¹⁵⁵ *Ibid.*

¹⁵⁶ Investment Code, Loi No. 004/2002 (DRC).

¹⁵⁷ Subcontracting Law Law No. 17/001 of 8 February 2017.

¹⁵⁸ *Ibid.*

¹⁵⁹ Instruction No. 15 de la Banque Centrale du Congo sur le Contrôle de Change (2020).

investment and promoting sustainable development in the mining sector. One of the most prominent issues is the ambiguity surrounding the windfall profit tax in **Article 240** of the Mining Code.¹⁶⁰ Although the provision is designed to capture profits from commodity price surges, it fails to define the methodology for calculating "super profits" or to provide clear parameters for what constitutes an "extraordinary" price fluctuation. This vagueness has created significant uncertainty, as mining companies are unable to predict the tax's application or calculate their potential liabilities accurately. The ***Société Minière de Bakwanga v Ministère des Mines***¹⁶¹ case underscores the adverse impact of this ambiguity, where the absence of clear calculation mechanisms led to prolonged disputes and delayed revenue collection. The lack of a transparent and consistent approach to windfall profits undermines both investor confidence and the government's ability to capture the maximum benefit from the mining sector.

Another key weakness is found in the Subcontracting Law (Law No. 17/001 of 8 February 2017),¹⁶² particularly in its failure to establish binding enforcement criteria or penalties for non-compliance. While the law mandates that foreign companies subcontract a minimum percentage of their contracts to local businesses, the lack of enforcement mechanisms has allowed multinational firms to circumvent these obligations. For example, many companies enter into nominal joint ventures that technically comply with the subcontracting requirements but do not result in meaningful local capacity building or technology transfer. This loophole severely limits the law's intended benefits, hindering the development of Congolese enterprises and the transfer of vital skills and technologies to the local workforce. In practice, the law has failed to achieve its goal of promoting local economic empowerment, one of the critical objectives for sustainable development in the DRC.¹⁶³

The enforcement of environmental and social standards in the DRC is another significant area of concern. While the Environmental Code (Law No. 11/009 of 9 July 2011)¹⁶⁴ and relevant provisions in the Mining Code¹⁶⁵, specifically **Articles 204 and**

¹⁶⁰ Mining Code (2018) DRC.

¹⁶¹ *Société Minière de Bakwanga v Ministère des Mines* (2019) DRC App 17.

¹⁶² Subcontracting Law (Law No. 17/001 of 8 February 2017).

¹⁶³ UNCTAD, World Investment Report 2021: Investing in Sustainable Recovery (UNCTAD 2021).

¹⁶⁴ Environmental Code (Law No. 11/009 of 9 July 2011).

¹⁶⁵ Mining Code (2018) DRC.

206, mandate the conduct of Environmental Impact Assessments (EIAs) and periodic environmental audits for all mining projects, the enforcement of these regulations is severely hampered by weak institutional capacity, endemic corruption, and insufficient resources allocated to regulatory bodies. The absence of a dedicated, well-resourced environmental monitoring authority has led to widespread environmental degradation in mining regions, particularly in areas like Lualaba and Haut-Katanga, where the adverse impacts of mining operations, such as deforestation, water contamination, and soil erosion, remain largely unchecked. Without stringent enforcement and penalties for non-compliance, the DRC's mining sector is unable to achieve the level of sustainability needed to mitigate the long-term environmental damage caused by mining activities.

Additionally, the tax regime governing the mining sector in the DRC is fragmented, with provisions scattered across multiple legal instruments, including the Mining Code,¹⁶⁶ the Investment Code,¹⁶⁷ and older statutes such as Ordonnance-Law No. 69/009 of 10 February 1969.¹⁶⁸ This fragmentation creates confusion and inconsistencies, making it difficult for mining companies to navigate the tax compliance landscape. Moreover, the dispersion of tax-related provisions increases the risk of tax avoidance through profit shifting and base erosion, as multinational companies exploit loopholes in the system to minimize their tax liabilities. The findings of the Extractive Industries Transparency Initiative (EITI) 2023 DRC Report¹⁶⁹ corroborate these concerns, noting that the lack of a unified tax code and proper monitoring mechanisms significantly undermines the state's ability to effectively capture and reinvest the revenue generated from its mineral wealth. These weaknesses exacerbate the problem of resource dependency and prevent the mining sector from contributing its full potential to national development.

4.2.3 Comparative Analysis and Recommendations

When compared to other African countries, such as Botswana and Mauritius, the DRC's legal framework reveals several weaknesses in terms of clarity, enforcement,

¹⁶⁶ *Ibid.*

¹⁶⁷ Investment Code (Loi No. 004/2002).

¹⁶⁸ Ordonnance-Loi No. 69/009 du 10 février 1969 portant Code des Impôts sur les Bénéfices et Profits.

¹⁶⁹ Extractive Industries Transparency Initiative (EITI), '2023 DRC Validation Report', available at: <https://eiti.org/democratic-republic-of-the-congo> [accessed 6 April 2025].

and consistency. Mining Code,¹⁷⁰ for example, introduces more transparent methods for calculating taxes and royalties, reducing the scope for ambiguity and tax avoidance. Additionally, Botswana's rigorous environmental monitoring framework, supported by an independent regulatory body, ensures that mining projects adhere to strict environmental standards, helping to preserve the country's natural resources while fostering sustainable development.

The DRC could benefit from a more streamlined and cohesive legal framework, including a unified tax code that consolidates all tax-related provisions and simplifies the compliance process for investors. Strengthening the enforcement of subcontracting laws through clearer penalties and monitoring mechanisms would also help ensure that local businesses genuinely benefit from mining activities. Furthermore, the DRC could consider establishing an independent environmental monitoring authority with the power to enforce penalties for violations, ensuring that mining companies adhere to environmental regulations and that their operations do not come at the cost of long-term ecological damage.

In summary, while the DRC's legal framework provides a foundational structure for attracting FDI to its mining sector, it must address significant gaps in clarity, enforcement, and institutional capacity to fully harness the potential of its mineral resources. Drawing lessons from other African countries that have effectively balanced FDI with national interests would provide valuable insights for improving the regulatory environment in the DRC's mining sector.

4.3 COMPARATIVE ANALYSIS: BEST PRACTICES FROM OTHER AFRICAN COUNTRIES

4.3.1 Botswana's Regulatory Approach

Botswana's legal regime, particularly under the Diamond Act¹⁷¹ and the Mining Policy of Botswana,¹⁷² exemplifies a regulatory framework that has successfully balanced the interests of foreign investors with national development goals. The framework's clarity

¹⁷⁰ Mining Code (2018) (Botswana).

¹⁷¹ Diamond Act of Botswana 2018.

¹⁷² Mining Policy of Botswana 2012.

and precision stand in stark contrast to the regulatory approaches in other African mining jurisdictions, such as Zambia and the DRC. *Botswana's Diamond cutting Act*,¹⁷³ in particular, offers a model for fostering investment while ensuring that the national interest is safeguarded through transparent and measurable criteria. *The Mines and Minerals Act*,¹⁷⁴ regulates the exploration, mining, and management of mineral resources in Botswana. It outlines the procedures for granting prospecting and mining licences, establishes the rights and obligations of licence holders, and sets forth provisions for environmental protection, royalties, and the termination of mineral concessions.

One of the standout features of Botswana's mining legislation is **Section 17**,¹⁷⁵ which sets out clear and quantifiable criteria for the granting of mining licenses. These criteria include financial and technical capacity, proposed development timelines, and explicit commitments to local employment. This transparent, performance-based licensing process reduces the uncertainty often associated with discretionary powers, as seen in Zambia's Minerals Regulation Commission.¹⁷⁶ In Zambia, **Sections 46, 48, and 53**¹⁷⁷ grant broad discretionary powers to the Minister and the Commission to amend or transfer mining rights without clearly defined benchmarks, leaving much to ministerial discretion. This has led to uncertainty and investor apprehension, as evidenced by the *Konkola Copper Mines Plc v Zambia Development Agency*¹⁷⁸ case, where ambiguity regarding local participation requirements caused prolonged legal disputes, deterring future investment. In contrast, Botswana's precise criteria, which are publicly disclosed and subject to independent scrutiny, foster a more predictable and investor-friendly environment. Beyond licensing, Botswana's commitment to public accountability is enshrined in the *Public Procurement and Asset Disposal Act*,¹⁷⁹ which mandates independent annual audits for all extractive contracts exceeding a specified financial threshold. **Section 30** of the Act requires that these audits be submitted to Parliament and made publicly accessible. This transparency is a direct response to the opacity issues observed in Zambia and the DRC, where

¹⁷³ Diamond Cutting Act (Act 25, 1979).

¹⁷⁴ The Mines and Minerals Act (Cap. 66:01), Act No. 17 of 1999, as amended by Act No. 19 of 2007 and Statutory Instrument No. 126 of 2010 Botswana.

¹⁷⁵ *Ibid.*

¹⁷⁶ (Amendment) Act, 2022 (Act No. 29 of 2022).

¹⁷⁷ *Ibid.*

¹⁷⁸ *Konkola Copper Mines Plc v Zambia Development Agency* [2018] ZR 22.

¹⁷⁹ Public Procurement and Asset Disposal Act (Botswana) 2015.

revenue-sharing mechanisms, despite their importance, often lack statutory disclosure or independent auditing provisions. In Zambia, for instance, the absence of comprehensive transparency rules in revenue-sharing agreements has raised concerns about corruption and inefficiency. In the DRC, while the Mining Code of DRC¹⁸⁰ contains provisions for benefit-sharing, there is no enforceable framework for transparency, often leaving room for mismanagement and non-compliance. Botswana's auditing regime ensures not only transparency but also robust state revenue capture, providing a benchmark for effective state oversight without undermining the sovereignty of regulatory bodies.

Another key aspect of Botswana's mining regulations is its focus on local benefit-sharing, which is institutionalized through enforceable provisions that directly link mining revenue to local development. Under **Section 21** of the Botswana Local Government Act,¹⁸¹ royalties collected from mining operations are distributed to district councils in mining regions, ensuring that local communities impacted by mining activities directly benefit from the revenues generated. This approach addresses the often-debated issue of community compensation in mining regions, providing a structured and legally enforced mechanism for reinvesting mining revenues into local infrastructure and social development projects. In contrast, Zambia and the DRC have not fully institutionalized such systematic local benefit-sharing frameworks. In Zambia, revenue distribution is often left to ministerial discretion, leading to ad hoc decisions that lack consistency and transparency. In the DRC, **Article 242** of the Mining Code¹⁸² prescribes a general framework for benefit-sharing, but it does not provide enforceable timelines or mechanisms, which weakens its effectiveness. The lack of a concrete structure for local community benefit-sharing in these countries has led to persistent grievances and social unrest in mining regions, where communities feel excluded from the economic benefits of the industry.

Botswana also excels in the enforcement of its mining laws, a critical factor in sustaining a healthy and transparent investment climate. The Botswana Police Service and the Botswana Unified Revenue Service (BURS) work in tandem to ensure that

¹⁸⁰ Law No. 18/001 of 9 March 2018.

¹⁸¹ Local Government Act (Botswana) 2012.

¹⁸² Law No. 18/001 of 9 March 2018.

mining companies comply with all statutory obligations, from environmental standards to labour laws and tax obligations. These agencies' close collaboration enhances the government's capacity to monitor the mining sector and hold companies accountable, particularly in enforcing local content requirements and ensuring tax compliance. In Zambia and the DRC, however, regulatory enforcement is often weakened by bureaucratic inefficiencies, limited institutional capacity, and in some cases, corruption. In Zambia, the Zambia Revenue Authority (ZRA) has struggled with enforcing tax compliance among large mining companies, leading to significant revenue leakage, as evidenced by the ***Glencore International AG v Zambia Revenue Authority***¹⁸³ case. Similarly, the DRC faces significant enforcement challenges, particularly in its mining regions, where corruption and weak institutional capacity have undermined the effectiveness of environmental and social regulations. Moreover, Botswana has demonstrated strategic foresight in planning for the long-term sustainability of its mining sector. The Mining Policy of Botswana¹⁸⁴ emphasizes not only the need for immediate economic returns but also the importance of preserving mineral resources for future generations. It highlights diversification strategies, such as encouraging downstream industries and improving mining technologies, to reduce dependency on raw mineral exports and create a more sustainable economic model. The policy also advocates for the reinvestment of mining revenues into the broader economy, with a strong emphasis on human capital development, education, and infrastructure. This long-term approach contrasts with the short-term strategies often adopted in Zambia and the DRC, where mining revenues are frequently not sufficiently reinvested in sectors such as education, infrastructure, or sustainable development initiatives. By fostering economic diversification and improving human capital, Botswana ensures that the benefits of mining continue to support its broader development goals, even as mineral resources are depleted over time. In Botswana the Precious and Semi-Precious Stones (Protection) Act¹⁸⁵ provides for Import Licensing Procedures, This Act provides for the protection of the precious stones industry and regulates dealings in precious and semi-precious stones. It includes provisions on the discovery of precious stones, licensing

¹⁸³ *Glencore International AG v Zambia Revenue Authority* [2019] ZR 101.

¹⁸⁴ Botswana Minerals Policy 2022 (Gaborone: Ministry of Minerals and Energy, 2022).

¹⁸⁵ Cap. 66:03, Act No. 23 of 1969, as amended by Act No. 17 of 2022 Laws of Botswana.

of dealers, and the establishment of protection and security areas. The 2022 amendment introduced additional provisions to enhance the regulation of the industry.

In summary, Botswana's regulatory framework for FDI in the mining sector serves as a model of transparency, local benefit-sharing, and long-term planning. The clarity of its licensing criteria, robust accountability mechanisms, and strong enforcement practices offer valuable lessons for other mining nations, including Zambia and the DRC. While Zambia and the DRC have made strides in improving their regulatory frameworks, the lessons from Botswana underscore the importance of institutionalizing transparency, enforcing local content provisions, and ensuring that mining revenues contribute directly to sustainable local and national development.

4.3.2 Rwanda's Institutional Reforms

Rwanda's mining sector has undergone significant legal and institutional reforms in recent years, positioning the country as a model for regulatory efficiency and sustainable FDI management in the African mining landscape. At the heart of these reforms is the establishment of the Rwanda Mines, Petroleum and Gas Board (RMB) under Law No. 13/2017 of 14 April 2017,¹⁸⁶ which centralizes and streamlines regulatory functions to enhance investor confidence and regulatory consistency. **Article 3**¹⁸⁷ of this law outlines the Board's core responsibilities, which include issuing mining licenses, monitoring compliance, and providing technical support to investors, while also ensuring alignment with the country's long-term development goals. By consolidating these crucial functions into a single regulatory body, Rwanda has significantly reduced bureaucratic overlap, a common issue in other countries like Zambia and the DRC. In the DRC, for example, overlapping mandates between the Ministry of Mines, National Agency for Investment Promotion (ANAPI), and the Central Bank of Congo often lead to delays in processing investment applications, confusion over enforcement responsibilities, and inconsistencies in regulatory implementation, undermining the effectiveness of FDI policies. Rwanda's unified approach, by contrast, ensures a streamlined process that reduces administrative bottlenecks, enhances

¹⁸⁶ Law No. 13/2017 Establishing the Rwanda Mines, Petroleum and Gas Board.

¹⁸⁷ *Ibid.*

coordination, and improves the speed of decision-making, creating a more attractive environment for both local and foreign investors.

Rwanda's legal framework also introduces performance-based incentives that align investor activities with the country's national priorities. Law No. 007/2021 on Investment Promotion and Facilitation,¹⁸⁸ particularly **Article 14**, specifies that investors must meet particular local employment and technology transfer thresholds to qualify for tax exemptions and other fiscal incentives. Failure to meet these benchmarks results in the automatic revocation of the incentives under **Article 20**.¹⁸⁹ This provision creates a self-enforcing system, where incentives are directly linked to tangible outcomes, ensuring that foreign investments contribute meaningfully to national development. The focus on local content and technology transfer ensures that Rwanda maximizes the benefits of FDI, not just in terms of capital influx but also in terms of human capital development and technology upgrading. This system stands in stark contrast to the regulatory frameworks in Zambia, where provisions under the Income Tax Act¹⁹⁰ and the Zambia Development Agency Act¹⁹¹ lack mechanisms to monitor or revoke incentives based on performance outcomes. The absence of such provisions has allowed multinational companies to exploit regulatory gaps, as seen in the *Glencore International AG v Zambia Revenue Authority*¹⁹² case, where inadequate oversight enabled tax avoidance through transfer pricing. Rwanda's approach not only ensures compliance but also builds a performance-driven environment that directly ties foreign investment to the country's developmental priorities.

Furthermore, Rwanda's environmental regulatory regime is robust and stringent. Under **Article 22** of Law No. 48/2018 on Environment, mining investors are required to submit a Comprehensive Environmental and Social Impact Assessment (CESIA) before a mining license can be granted. This CESIA must undergo a rigorous review process by the Rwanda Environment Management Authority (REMA), ensuring that environmental concerns are addressed upfront in the project design phase. If investors

¹⁸⁸ Law No. 007/2021 on Investment Promotion and Facilitation (Rwanda).

¹⁸⁹ *Ibid.*

¹⁹⁰ Income Tax Act Cap 323, Laws of Zambia.

¹⁹¹ Zambia Development Agency Act, No. 17 of 2022 (Zambia).

¹⁹² *Glencore International AG v Zambia Revenue Authority* [2019] ZR 101.

fail to comply with these requirements, they face administrative fines or, in some cases, suspension of their mining operations. This proactive stance on environmental protection not only ensures that Rwanda's mining sector develops sustainably but also helps to mitigate the risks of environmental degradation, which can undermine the long-term viability of mining operations. This regulatory framework contrasts sharply with that of the DRC, where the enforcement of environmental audits under **Articles 204** and **206** of the Mining Code¹⁹³ remains inconsistent due to institutional fragmentation, weak institutional capacity, and endemic corruption. In the DRC, the lack of a strong, independent regulatory body to enforce environmental standards has led to widespread environmental degradation in mining regions such as Lualaba and Haut-Katanga, where mining activities continue with little regard for the environmental damage caused. In contrast, Rwanda's focused and rigorous approach to environmental impact assessments ensures that the country's mining sector aligns with international best practices in sustainability.

Additionally, Rwanda's Environment Management Authority (REMA) plays a key role in monitoring and enforcing compliance with environmental and social regulations.¹⁹⁴ REMA's empowered mandate provides a clear and centralized mechanism for addressing environmental concerns, thereby ensuring the effective implementation of Rwanda's environmental policies. This is a sharp contrast to the fragmented regulatory landscape in the DRC, where various government bodies with overlapping mandates often fail to coordinate effectively. This institutional inefficiency in the DRC has been exacerbated by corruption, which has hampered the enforcement of environmental and social safeguards in mining operations, leaving communities vulnerable to pollution and ecological degradation. Rwanda's institutional clarity, on the other hand, not only enhances compliance but also builds trust with investors and local communities, who can be assured that mining operations will be subject to rigorous environmental scrutiny.

Rwanda's mining reforms are also complemented by a strong emphasis on local content and community development. The government has enacted laws that ensure

¹⁹³ Mining Code 2018.

¹⁹⁴ *Ibid.*

a significant portion of mining-related services, such as logistics and supply chain management, are contracted to Rwandan enterprises. This policy promotes local entrepreneurship and ensures that economic benefits are more widely distributed across the country. The integration of local businesses into the mining value chain not only strengthens the economy but also contributes to reducing poverty in mining-affected regions.¹⁹⁵ This approach contrasts with Zambia, where local content requirements often lack enforcement and are poorly implemented, and the DRC, where similar laws are frequently circumvented by multinational corporations through informal joint ventures or subcontracting arrangements. In Rwanda, however, the local content policies are actively enforced, further ensuring that the benefits of mining are distributed to the broader economy.

In summary, Rwanda's institutional reforms, underpinned by clear legal frameworks and strong enforcement mechanisms, have positioned the country as a leader in responsible mining regulation in Africa. The establishment of a centralized regulatory authority, the introduction of performance-based incentives, the robust environmental safeguards, and the integration of local content requirements into the mining sector have contributed to a more sustainable and inclusive model of FDI management. Rwanda's approach, which prioritizes transparency, accountability, and local development, offers valuable lessons for Zambia and the DRC in how to balance foreign investment with national development objectives while ensuring that the benefits of FDI are maximized for both the state and local communities.

4.3.3 Mauritius' Use of Special Economic Zones and Tax Incentives

Mauritius has established itself as a premier destination for FDI through its innovative and transparent legal and tax frameworks, particularly through the Investment Promotion Act¹⁹⁶ and the Freeport Act¹⁹⁷. These two legislative instruments provide a clear and structured approach to attracting FDI, which has contributed to the island nation's economic growth and diversification.

¹⁹⁶ Investment Promotion Act (2000) (Mauritius).

¹⁹⁷ Freeport Act (2014) (Mauritius).

The Investment Promotion Act,¹⁹⁸ especially **Schedule 1**, specifies the eligibility criteria for tax incentives, outlining precise requirements related to the type of business, the sector of operation, job creation targets, and export performance. This clear set of guidelines ensures that FDI is not only directed into high-priority sectors but also encourages investments that contribute to the broader national development goals of Mauritius. In particular, the legislation provides a well-defined framework for foreign investors, eliminating the ambiguities often associated with discretionary incentive allocation seen in countries like the DRC and Zambia. In these countries, the allocation of tax benefits is often subject to ministerial discretion or executive orders, leading to inconsistencies in application, regulatory arbitrage, and reduced investor confidence. In Zambia, for example, the Income Tax Act¹⁹⁹ lacks clear mechanisms for the distribution of tax incentives, while in the DRC, the Investment Code²⁰⁰ suffers from a similarly fragmented structure, contributing to inefficiencies in FDI management and a lack of transparency.

The Freeport Act²⁰¹ establishes SEZs, which provide a unique legal framework for businesses engaged in export-oriented activities. Under **Section 5**²⁰² of the Freeport Act, SEZs benefit from a range of fiscal incentives, including duty-free imports and corporate tax exemptions, provided that businesses adhere to strict compliance requirements. Notably, operators in the SEZs are required to maintain certified accounting records and undergo quarterly audits, as stipulated by the Act. This regulatory framework enhances the credibility and transparency of the SEZs, providing investors with a predictable and stable operating environment. The requirement for quarterly audits reduces the risk of tax evasion and illicit capital outflows, ensuring that Mauritius' tax incentives are used effectively for their intended purposes. This level of transparency contrasts sharply with the regulatory environments in Zambia and the DRC, where tax incentives are often scattered across various laws, creating complexities in compliance and enforcement. In Zambia, for instance, there is no central system to monitor and ensure the effective use of tax incentives across the economy, leading to potential abuse by investors. In the DRC, the multiple layers of regulatory frameworks related to tax benefits create opportunities for arbitrage, which

¹⁹⁸ *Ibid.*

¹⁹⁹ Income Tax Act cap 323 Laws of Zambia.

²⁰⁰ Investment Code (Loi No. 004/2002).

²⁰¹ Freeport Act (2014).

²⁰² *Ibid.*

diminishes the effectiveness of these incentives and hinders the country's ability to capture the full benefits of FDI.

Mauritius has also proven that fiscal incentives can be strategically employed to support long-term national development. **Section 18** of the Investment Promotion Act²⁰³ mandates periodic reviews of the country's tax incentive policies, particularly those related to the SEZs. These reviews assess the socio-economic impacts of the incentives, such as the creation of jobs, export growth, and the generation of public revenue. By incorporating these reviews into the legal framework, Mauritius ensures that its incentive structures remain adaptable and responsive to changing economic conditions. This feedback loop between policy implementation and evaluation allows Mauritius to make informed adjustments to its regulatory and fiscal framework, ensuring that incentives remain effective and aligned with national development goals.

In contrast, Zambia and The DRC lack such comprehensive review mechanisms for their tax incentive regimes. In Zambia, the absence of regular reviews means that many incentive schemes, like those under the Zambia Development Agency Act²⁰⁴ and the Income Tax Act,²⁰⁵ are often outdated or ineffective, failing to adapt to global economic shifts or domestic policy changes. Similarly, in the DRC, tax incentives provided under the **Investment Code**²⁰⁶ and other related laws are rarely subject to formal reviews, leading to inefficiencies in their application. Without a regular review process, both Zambia and the DRC face challenges in ensuring that their incentive schemes continue to serve their intended purposes and contribute to sustainable economic development.

Furthermore, Mauritius has taken significant steps to integrate sustainability and social development into its regulatory framework for FDI. In addition to offering traditional fiscal incentives, the government encourages foreign investors to contribute to the local economy by fostering partnerships with local enterprises, supporting job creation, and ensuring environmental sustainability. These measures have been codified within

²⁰³ Investment Promotion Act (2000).

²⁰⁴ Zambia Development Agency Act No. 17 of 2022.

²⁰⁵ Income Tax Act cap 323 Laws of Zambia.

²⁰⁶ Law No. 004/2002 of 21 February 2002 on the Investment Code of the Democratic Republic of the Congo).

the legal framework, and investors are encouraged to demonstrate a commitment to local sourcing, employment, and community engagement. In comparison, both Zambia and the DRC have struggled to implement enforceable local content provisions in their mining sectors, resulting in limited benefits for local communities and insufficient integration of local businesses into the supply chain of foreign investors. In summary, Mauritius exemplifies how a well-structured legal and regulatory framework can successfully attract and manage FDI while aligning investment with national economic objectives. The country's use of Special Economic Zones and tax incentives, combined with rigorous compliance requirements and periodic policy reviews, has allowed it to create a stable, transparent, and responsive investment climate. The absence of similar mechanisms in Zambia and the DRC has hindered the effectiveness of their respective FDI frameworks, with tax incentives often being misused or failing to achieve their intended development outcomes. Mauritius' success in integrating clear, transparent, and sustainable investment policies offers valuable lessons for both Zambia and the DRC as they seek to improve their own legal frameworks and maximize the benefits of foreign investment in their mining sectors.

4.3.4 Burkina Faso's Community-Driven Licensing and Incentive Structures

Burkina Faso's Mining Code²⁰⁷ represents a forward-thinking approach to incorporating community-driven development into the mining sector, setting a precedent for other African nations looking to balance foreign investment with local development. The Mining Code²⁰⁸ introduces a series of legally enforceable provisions designed to ensure that mining activities directly benefit local communities. A key feature of this framework is the mandatory signing of CDAs between mining companies and host communities before operations can commence.

Article 45 of the Mining Code²⁰⁹ stipulates that mining companies must agree to specific terms under the CDAs, which include detailed commitments to financial contributions, employment targets, and infrastructure development initiatives. These agreements are intended to directly link the mining operations to the socio-economic development of local communities, ensuring that the benefits of mineral extraction are

²⁰⁷ Mining Code (2015) (Burkina Faso).

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

shared with the people most affected by these activities. The law's requirement that these agreements be signed before mining begins provides a robust legal framework that holds companies accountable from the outset. This ensures that mining companies are not merely required to engage in community development as an afterthought or a voluntary corporate social responsibility (CSR) initiative, but as a binding legal obligation.

The enforceability of these agreements sets Burkina Faso apart from countries like Zambia and The DRC, where similar local benefit-sharing initiatives are typically framed as policy recommendations rather than legal imperatives. In Zambia, the practice of community benefit-sharing is often left to the discretion of the mining companies and is primarily executed through CSR programs, which, while beneficial, lack the legal enforcement mechanisms necessary to ensure long-term sustainability and equity. Similarly, the DRC's Mining Code (2018),²¹⁰ although it encourages community engagement, lacks binding legal clauses to mandate community development, leaving many mining companies to determine the extent of their contributions independently.

A notable example of Burkina Faso's effective enforcement of its community development framework is seen in the case of ***Compagnie Minière de Bissa SA v Commune de Sabcé***,²¹¹ where the Burkina Faso Supreme Court upheld the validity of a CDA clause requiring the company to allocate 1.5% of its annual gross revenue to local infrastructure projects. The court's ruling reinforced the legally binding nature of CDAs and demonstrated that Burkina Faso's judicial system is prepared to hold companies accountable for their commitments. This contrasts with the lack of similar judicial reinforcement in Zambia and the DRC, where community development obligations, if they exist at all, are often weakly enforced and subject to limited oversight.

Further strengthening the community-driven approach, **Article 63** of the Mining Code²¹² establishes a Local Development Mining Fund. This fund is financed by

²¹⁰ *Ibid.*

²¹¹ *Compagnie Minière de Bissa SA v Commune de Sabcé* (2017) BFSC 14.

²¹² *Ibid.*

mandatory contributions from mining companies, with the express purpose of supporting local development projects in mining-affected areas. The fund is disbursed through a transparent statutory framework, and its management is subject to annual audits by the Ministry of Finance. This ensures that funds are used efficiently and directly benefit the communities in need. The auditing mechanism adds an additional layer of transparency, which helps mitigate the risks of mismanagement or corruption, a challenge often faced in resource-rich countries with weak institutional frameworks.

In contrast, the DRC's Mining Code²¹³ (2018) establishes provisions for community contributions, such as **Article 242**,²¹⁴ which calls for benefit-sharing between the state and local communities but lacks enforceable mechanisms to ensure companies follow through with these obligations. The absence of binding regulations and audit provisions in the DRC creates room for non-compliance and failure to capture the full value of mineral wealth for local development. Similarly, in Zambia, community benefit-sharing is not enshrined in law, and any contributions made by mining companies are largely voluntary or part of CSR initiatives, making them susceptible to inconsistencies and lack of oversight.

The legal framework in Burkina Faso provides a much-needed model for ensuring that the extraction of natural resources translates into tangible, equitable benefits for local communities. The statutory requirements for CDAs, the Local Development Mining Fund, and the rigorous auditing process provide a robust foundation for accountability, transparency, and sustainability in the mining sector. This stands in stark contrast to the fragmented and often unenforced community benefit frameworks in Zambia and the DRC, highlighting the potential for Burkina Faso's model to be adapted and applied in other African mining jurisdictions seeking to improve the socio-economic outcomes of their mining sectors.

By institutionalizing local community engagement through enforceable legal provisions, Burkina Faso not only safeguards the interests of its citizens but also sets a standard for other countries in Africa that face the challenge of balancing the allure

²¹³ Mining Code 2018.

²¹⁴ *Ibid.*

of foreign investment with the need for sustainable development.²¹⁵ The success of Burkina Faso’s approach offers important lessons for the DRC and Zambia, both of which could benefit from incorporating legally binding mechanisms for community development into their mining laws. Additionally, it highlights the importance of judicial enforcement, transparency in fund distribution, and ensuring that the mining industry contributes to the long-term welfare of the communities hosting these valuable resources.

4.4 SYNTHESIS

The comparative analysis reveals that both Zambia and the DRC have adopted comprehensive legal frameworks aimed at attracting FDI in the mining sector. However, these regimes remain undermined by several systemic weaknesses—most notably, excessive discretionary powers granted to regulatory authorities, inadequate enforcement mechanisms, and fragmented or poorly coordinated fiscal regimes. For instance, Zambia’s Minerals Regulation Commission Act, No. 4 of 2024,²¹⁶ though progressive in its attempt to streamline licensing and environmental oversight, grants broad powers under **Sections 46, 48, and 53**, enabling regulatory authorities to alter mining rights without fixed criteria. This lack of predictability erodes investor confidence, particularly in light of previous legal disputes such as *Konkola Copper Mines Plc v Zambia Development Agency*.²¹⁷ Likewise, Zambia’s fiscal regime, while generous through capital allowances and tax holidays under the Income Tax Act,²¹⁸ has struggled to deliver public value due to inadequate safeguards against tax avoidance strategies. The *Glencore International AG v Zambia Revenue Authority*²¹⁹ case exemplifies how weak tax oversight and the absence of robust transfer pricing regulations have enabled revenue leakage and undermined domestic resource mobilization.

²¹⁵ World Bank, Investment Climate in Africa (2017) <https://www.worldbank.org/africainvestment> accessed 10 April 2025.

²¹⁶ Zambia’s Minerals Regulation Commission Act, No. 4 of 2024.

²¹⁷ *Konkola Copper Mines Plc v Zambia Development Agency* [2018] ZR 22.

²¹⁸ Income Tax Act cap 323 Laws of Zambia.

²¹⁹ *Glencore International AG v Zambia Revenue Authority* [2019] ZR 101.

Similarly, the DRC's mining legal framework—principally anchored in the Mining Code²²⁰ and the Investment Code²²¹ faces parallel challenges. While these statutes include commendable provisions such as the windfall profit tax (Article 240) and local subcontracting requirements under the Subcontracting Law, No. 17/001 of 2017,²²² they suffer from ambiguous drafting and lack binding enforcement mechanisms. For example, **Article 240** fails to define what constitutes “extraordinary” profits or how they should be calculated, leading to prolonged legal uncertainty, as illustrated in ***Société Minière de Bakwanga v Ministère des Mines***.²²³ Similarly, while the subcontracting requirement aims to foster local economic participation, the law lacks clear penalties or oversight measures, enabling multinational firms to exploit loopholes through superficial joint ventures. These legal gaps are exacerbated by weak institutional enforcement capacity, particularly within the DRC's environmental and tax administrations, where corruption and underfunding continue to hamper compliance and accountability.

By contrast, best practices observed in countries such as Botswana, Rwanda, Mauritius, and Burkina Faso demonstrate the effectiveness of legal clarity, institutional coherence, and enforceable local benefit-sharing mechanisms. Botswana's Diamond Act²²⁴ reduces regulatory ambiguity by prescribing objective licensing criteria and mandating independent audits—factors that have contributed to its stable investment climate. Rwanda's centralized and performance-based legal framework, including the Investment Promotion and Facilitation Law,²²⁵ holds investors accountable for delivering on local content and technology transfer obligations. Mauritius, through the Investment Promotion Act²²⁶ and Freeport Act,²²⁷ offers integrated and transparent tax incentives within designated Special Economic Zones, minimizing revenue loss and administrative inefficiency. Burkina Faso's Mining Code²²⁸ further emphasizes community development through legally binding CDAs, ensuring that local populations receive a tangible share of mining benefits. These examples underline the critical

²²⁰ Mining Code 2018.

²²¹ Investment Code Loi No. 004/2002.

²²² Subcontracting Law, No. 17/001 of 2017.

²²³ *Société Minière de Bakwanga v Ministère des Mines* (2019) DRC App 17.

²²⁴ Diamond Cutting Act 2018.

²²⁵ Investment Promotion and Facilitation Law No. 007/2021.

²²⁶ Investment Promotion Act 2020.

²²⁷ Freeport Act (2014).

²²⁸ *Ibid.*

importance of statutory precision, enforceability, and community centered approaches in ensuring that FDI not only supports economic growth but also aligns with national development goals. Zambia and the DRC can therefore draw important lessons from these models to reform their legal systems toward greater accountability, equity, and sustainability.

4.5 CONCLUSION

In conclusion, while Zambia and the DRC have established robust legal frameworks to attract FDI in their mining sectors, significant gaps in regulatory clarity, enforcement, and fiscal policy remain. Comparative insights from other African jurisdictions demonstrate that legal reforms anchored in transparent, consistent, and enforceable statutes are critical to bridging these gaps. Such reforms would not only enhance investor confidence but also ensure that the benefits of FDI contribute to sustainable national development, effectively balancing foreign investment with the protection of national interests.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

5.0 INTRODUCTION

This study investigated the management of FDI in the mining sectors of Zambia and the DRC, with a focus on the balance between regulatory frameworks and investment incentives. The primary objective was to assess how both countries had crafted policies to attract FDI while ensuring that the benefits of such investments contributed to long-term national development. Through a comparative analysis, the study revealed that both countries had faced challenges in achieving this balance. Zambia's liberalization policies, though successful in attracting FDI, had been criticized for offering excessive incentives, which limited the state's ability to fully capitalize on its resources. In contrast, the DRC's weak governance and inconsistent regulatory frameworks had resulted in exploitation and environmental degradation, despite the country's significant mineral wealth. The main conclusion emphasized the need for both countries to strengthen their regulatory frameworks, enforce policies more effectively, and ensure that FDI contributed meaningfully to sustainable development, addressing the imbalances observed in their current approaches.

5.1 SUMMARY AND CONCLUSIONS

This final chapter presents a summary of the study's objectives, key findings, and conclusions drawn from each of the previous chapters. The study aimed to analyse how Zambia and The DRC have managed FDI in their mining sectors, focusing on the legal, institutional, and regulatory frameworks, trends in FDI inflows, and the effectiveness of existing laws. The study also incorporated comparative analyses from other African nations to derive actionable insights and recommendations for improvement.

Chapter 1:

The Chapter provided an introduction of the study's focus, outlining the research problem, objectives, and methodology. It provided the foundation for analysing the management of FDI in Zambia and the DRC's mining sectors and set the stage for evaluating their legal frameworks and development goals.

Chapter 2:

The chapter assessed the trends in FDI inflows into Zambia and the DRC's mining sectors and to analyse the economic impacts these investments have had on their respective economies. This chapter found that while both Zambia and the DRC attract substantial FDI, particularly in copper and cobalt extraction, the economic benefits of these investments remain uneven. Challenges such as tax avoidance, revenue leakage, and insufficient value-added industries limit the positive effects of FDI. The chapter concluded that FDI has contributed to job creation and infrastructure development but has not fully realized its potential for sustainable economic growth due to structural weaknesses in the legal and regulatory frameworks.

Chapter 3:

The chapter provided an in-depth analysis of the legal, institutional, and regulatory frameworks governing FDI in Zambia and the DRC, examining key laws and regulatory mechanisms that influence mining sector investments. The findings revealed that both countries have extensive legal frameworks aimed at regulating FDI in the mining sectors. However, these frameworks suffer from issues such as excessive discretionary powers, regulatory ambiguity, and inadequate enforcement. In Zambia, for example, the Minerals Regulation Commission Act (2024) provides broad powers to regulatory authorities, undermining predictability and investor confidence. Similarly, the DRC's Mining Code (2018) and Investment Code (Loi No. 004/2002) contain ambiguous provisions, weakening their effectiveness. The chapter concluded that both countries need to address these issues to improve the attractiveness and sustainability of FDI.

Chapter 4:

The Chapter evaluated the effectiveness of the existing laws and regulations in Zambia and The DRC in balancing the need to attract foreign investment with the protection of national interests, particularly in terms of revenue generation, community development, and environmental protection. The evaluation revealed that both Zambia and the DRC face significant challenges in balancing foreign investment with national interests. In Zambia, the lack of effective tax oversight and weak regulatory enforcement mechanisms have led to cases of tax avoidance and resource leakage. Similarly, in the DRC, the legal framework's lack of enforceable provisions for

community development and local content limits the benefits of FDI for local populations. Both countries struggle to ensure that FDI contributes equitably to sustainable national development. The chapter concluded that reforms are necessary to enhance the regulatory frameworks to better align FDI with national priorities.

Chapter 5:

Chapter 5 provides a synthesis of the study's findings, draw conclusions based on the analysis of FDI management in Zambia and the DRC, and offer policy recommendations for improving the legal and regulatory frameworks governing FDI in the mining sectors of these countries.

5.2 RECOMMENDATIONS

5.2.1 Recommendations for Zambia

1. Enhancing Legal Predictability in Mining Rights Allocation

Zambia should amend the Minerals Regulation Commission Act, No. 4 of 2024, to establish more predictable and transparent criteria for the transfer or amendment of mining rights. The current broad discretionary powers granted to the regulatory authorities create uncertainty and discourage potential investors. By setting clear, objective criteria, Zambia can foster a more stable and predictable investment environment, ensuring that mining rights are allocated based on merit and in alignment with national economic goals. This would not only improve investor confidence but also reduce the risk of legal disputes.

2. Strengthening Tax Oversight and Transparency

Zambia needs to implement more robust tax oversight mechanisms, particularly within the framework of the Income Tax Act. This could include developing a centralized system for monitoring the allocation and use of tax incentives, such as capital allowances and tax holidays. The country should also introduce strict transfer pricing regulations to prevent multinational corporations from exploiting tax loopholes. These steps would help Zambia capture more revenue from its mining sector, ensuring that the benefits of foreign investment contribute more substantially to the country's development.

3. Improving Enforcement of Environmental and Social Standards

Zambia should prioritize strengthening the enforcement of the Environmental Management Act, No. 12 of 2011, particularly regarding compliance with EIAs and the enforcement of local content regulations. This would involve equipping relevant agencies, such as ZEMA, with sufficient resources and legal backing to ensure strict adherence to environmental standards. Additionally, penalties for non-compliance should be increased to serve as a deterrent against environmental degradation. A more robust enforcement framework would help Zambia manage the environmental impacts of mining activities while ensuring that mining companies are held accountable for their actions.

4. Institutionalizing Community Benefit-Sharing

Zambia should introduce legal provisions that mandate community benefit-sharing in the mining sector. While CSR programs are currently common, they are often voluntary and lack legal enforceability. By implementing a framework that requires mining companies to allocate a percentage of their profits towards local development projects in mining communities, Zambia can ensure that the benefits of mining are more equitably distributed. This would also contribute to sustainable development in mining regions, which have often seen little benefit from the extraction of natural resources.

5.2.2 Recommendations for the Democratic Republic of Congo (DRC)

1. Clarifying the Windfall Profit Tax Provisions

The DRC should amend the Mining Code (2018) to provide clear definitions and guidelines regarding the windfall profit tax (Article 240). The ambiguity in this provision, especially concerning what constitutes “extraordinary” profits and how they should be calculated, has created uncertainty among investors. A clearer, more detailed framework would allow for more predictable tax liabilities and reduce the risk of disputes. This would enhance the credibility of the DRC’s legal system and improve its attractiveness to investors by ensuring that fiscal obligations are clearly understood and consistently applied.

2. Strengthening Local Content and Subcontracting Requirements

The DRC must amend the Subcontracting Law (Law No. 17/001) to establish clearer enforcement mechanisms for local content requirements. Currently, the law lacks binding penalties for non-compliance, leading to cases where foreign

investors do not sufficiently engage with local businesses. The DRC should introduce stricter penalties for companies that fail to adhere to local subcontracting requirements and ensure regular monitoring of compliance. This would help create more inclusive growth by fostering the development of local businesses and ensuring that the mining sector benefits a wider section of the Congolese population.

3. Simplifying the Tax System and Enhancing Transparency

The DRC should take steps to harmonize the country's tax regime by consolidating the various tax provisions scattered across the Mining Code, Investment Code, and other related statutes. This would streamline the tax system and reduce the administrative burden on businesses, making compliance more straightforward. Moreover, the DRC should establish an independent body to monitor the allocation and utilization of tax incentives. Such a body would help ensure that fiscal incentives are being used effectively and in line with the country's broader development objectives.

4. Strengthening Environmental and Social Accountability

The DRC should establish an independent environmental monitoring authority with the mandate to enforce the provisions of the Environmental Code (Law No. 11/009) and the Mining Code (2018). This authority would be responsible for ensuring that mining companies comply with environmental regulations and contribute to local development. It should have the power to impose penalties and suspend operations in cases of non-compliance. Additionally, the DRC should establish a transparent, legally enforceable community development framework, similar to Burkina Faso's model of CDAs, to ensure that mining activities result in tangible benefits for local communities.

5.2.3 General Recommendations for Both Zambia and the DRC

1. Periodic Review of FDI Regulations and Incentives

Both Zambia and the DRC should implement a system of periodic reviews for their FDI regulations and incentives. These reviews would assess the effectiveness of existing laws, identify emerging challenges, and propose necessary reforms. By regularly evaluating the impact of tax incentives, community benefit-sharing measures, and other policies, both countries can

ensure that their mining sectors continue to contribute to sustainable economic development.

2. Strengthening Anti-Corruption Measures in the Mining Sector

Both Zambia and the DRC should enhance anti-corruption measures within their mining sectors. This would involve creating more transparent and accountable systems for awarding mining rights, allocating fiscal incentives, and enforcing compliance with legal obligations. By reducing corruption, both countries can improve investor confidence, ensure the proper allocation of resources, and ensure that mining revenues are used to support national development goals.

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