

EXPLORATION AND MINING TITLES IN AFRICA: AN INTRODUCTORY REVIEW

*Russell Hetherington, Hetherington Exploration
and Mining Title Services Pty. Ltd., PO Box 765,
Willoughby NSW 2068*

Keywords: Africa, Botswana, Eritrea, Ghana, South Africa, exploration, mining, titles, legislation, regulation.

PREAMBLE

The opportunities arising from the development of the exploration and mining industries in Africa are, in the writer's opinion, considerable and at the time of accepting the invitation to present this paper, Hetherington Title Services was on the verge of extending its operations into Africa.

Research has been conducted into the industry in Africa, with particular emphasis on the legislative requirements to gain exploration and mining tenure in the various countries of the continent. Whilst this company is anxious to expand its operations into Africa, and financial support is available, business commitments in Australia have for the time being utilised all this company's available human resources.

For the reasons set out above, Hetherington Title Services has not ventured to Africa since February 1997 and the information now presented is therefore accurate at that date.

INTRODUCTION

It is not the intention of this paper to address the problems which present themselves to exploration and mining companies in Australia. However, members of the Institute and SMEDG would be well aware of the demands and imposts (particularly in relation to access to land) being placed on the resources industry in Australia. It is these factors which, along with Africa's prospectivity, are causing companies to seriously consider exploration and mining in that continent.

The writer has been fortunate to have travelled with AGC Woodward-Clyde Pty Limited to Eritrea as part of an institutional strengthening project organised by

the Australian Agency for International Development (AusAID). As a result of that trip in March/April 1996, a "Report on Eritrean Mines Control" was prepared and subsequently welcomed by the Eritrean Government.

In February 1997 Africa was again visited and, as well as having informal discussions with major corporations in South Africa, discussions were held with governments from various nations which attended a conference in Capetown titled "African Mining Conference/Endaba 97". At that Conference, the African nations which participated extended an open invitation to explorers and miners from around the world to invest in exploration and development in Africa. Various Australian companies have already heeded that invitation by conducting exploration which, in some instances, has led to mine development.

Following the assignment in Eritrea and subsequent discussions with various other African nations, it was obvious that even though there may be adequate legislation in place in most African nations, implementation and management of such laws is lacking. Certain developing countries need assistance to formulate basic philosophies and title management principles or, where such basic factors are in place, assistance is needed in the implementation and management of such programs.

The writer's basic assessment of mining law in Africa is that: provided explorers and miners are comfortable with the fiscal regime which will exist for development within the particular country, then it is in most instances possible to obtain secure exploration and/or mining title within a reasonable time.

The issue of sovereign risk is one which would generally come to mind when considering investment in Africa, and in this regard various major reputable financial institutions have conducted risk profiles. The writer is of the view that once a company has established which countries represent an obviously high risk, then the remaining countries within Africa would represent no greater sovereign risk than that which currently exists within Australia. In this regard, the effect of the uncertainties and inequalities of the Native Title Act 1993 (Commonwealth) which influence access to land within Australia are

already obvious, not to mention political interference in projects such as Coronation Hill and Lake Cowal. Should there be more cases such as these, there must be a time when Australia can no longer bear the cost of such social engineering.

Today, because past political influences in Africa have left nations which are richly endowed in mineral resources relatively unexplored, an opportunity exists which Australian companies should not let pass. It is this contrast of richness and challenge which will see the participation of more Australian exploration and mining companies in Africa and it is anticipated that, over time, mining law procedures and registration practices already adopted in Australia will have a major influence on the direction of the industry in Africa.

AFRICA IN PERSPECTIVE

In the Introduction to this paper, reference was made to the mineral wealth, global exploration, fiscal regimes and political stability in Africa. By reference to the Figures in this paper, it is easy to illustrate where and why the industry may have developed in some countries of Africa, rather than others.

Figure 1 is an atlas of the countries comprising and adjoining the African continent.

Figure 2 illustrates, in order, the top 25 countries in Africa according to value of mineral production in Africa. Noteworthy statistics are that the continent of Africa contains at least 50% of the world's known resources of at least five major metals or commodities.

<u>Mineral</u>	<u>Resource</u>
Chromium (Chrome)	99%
Platinum	85%
Tantalite	70%
Cobalt	68%
Gold	54%

Figure 3 records that private sector exploration expenditure in Africa was US\$320 000 000 in 1995. That represented a 60% increase on the previous year's exploration expenditure. It is noted that in Ghana and South Africa, annual exploration expenditure exceeded \$20 000 000. Further, 10 out of the remaining 53 countries accounted for the majority of exploration expenditure during that period.

Figure 4 shows 8 (out of 55) countries in Africa where minerals account for over 50% of exports from the individual countries. In this regard, it is also relevant to mention that South Africa produces 70% of all metals exported from Africa.

Figure 5 shows that even though there are isolated incidents of war or conflict throughout the continent (including conflicts on the fringes of more stable countries), there seems a close nexus between mineral wealth, adherence to International Monetary Fund policies and general political stability.

Figure 6 records the status of mining legislation throughout the continent of Africa. It can be noted that the majority of the continent is operating under mining law that was adopted post-1990 or the current legislation is under review.

As an obvious example of the opportunity which exists in Africa, Figure 7 is what the writer interprets to be a map of known gold occurrences in Gabon. Figure 8 is a similar map showing Permits current for gold in 1996. Figures 7 and 8 were extracted from a text written in French. However, notwithstanding the language difficulty, it would seem that many opportunities exist to obtain title to gold occurrences in Africa's second most mineral-rich country.

In summary, the Figures provided with this paper draw an interesting comparison of the mineral potential, with the risk and level of legal or legislative stability, that exists throughout Africa.

MINING LAW

With the notable exception of South Africa (see later comments), the majority of countries within Africa have legislation in place which recognises that minerals are the property of the people and the government of the day is responsible for the issue of exploration and mining tenure.

By way of illustration, set out below are basic tenement requirements for Eritrea, Botswana and Ghana. These countries' laws derive from different sources and customs. However, a comparison of the basic requirements demonstrates the similarities which exist in each piece of legislation. By way of example, Ghana is English speaking, Eritrea's legislation is derived from Ethiopian law and the Botswana legislation evolved out of the Roman-Dutch legal system (with English criminal law) — yet similarities are obvious.

Whilst there is a clear consistency of intent set out in the respective pieces of legislation, the backgrounds of these three countries in the northeast, south and west, of the continent illustrate another difficulty for Australians conducting activities in Africa — that is, language and cultural differences.

Figure 1

Figure 2

Figure 3

Figure 4

Eritrea Tenement Requirements (1995)

<i>TENURES</i>	<i>AREA</i>	<i>INITIAL TERM</i>	<i>RENEWABLE</i>	<i>COMMENTS</i>
Prospecting Licence	100 km ²	1 year	Not renewable	Right to obtain EL
Exploration Licence	50 km ²	3 years	2 x 1 year	Special circumstance renewals beyond 5 years
Mining Lease	10 km ²	2 years	20 years	

NB: For larger exploration areas multiple simultaneous continuous applications for Exploration Licences are permitted.

Botswana Tenement Requirements (1977)

<i>TENURES</i>	<i>AREA</i>	<i>INITIAL TERM</i>	<i>RENEWABLE</i>	<i>COMMENTS</i>
Reconnaissance Permit	For land parcel	1 year	N/A	Similar to Miners Right
Prospecting Licence	1000 km ²	3 years	2 x 2 years	Right to apply for Mining Lease
Mining Lease	as appropriate	25 years	25 years	

Ghana Tenement Requirements (1986)

<i>TENURES</i>	<i>AREA</i>	<i>INITIAL TERM</i>	<i>RENEWABLE</i>	<i>COMMENTS</i>
Reconnaissance Licence		1 year	1 year	
Prospecting Licence	150 km ²	3 years	2 x 2 years	Reduction upon renewals, Mark out
Mining Lease	50 km ²	30 years	30 years	

Even though the fundamental titles and the legal processes are not difficult for Australian companies to contend with, the legislation in force in many of the countries provides for significant government participation, variable royalty provisions or other imposts upon development. An illustration of how government constraints, or participation, may be imposed upon development of a project will illustrate this. Whilst the requirements may seem onerous, it is noted that Resolute/Samantha recently negotiated more amenable terms with the Tanzanian Government in respect to that company's Golden Pride Mine in Tanzania. The reported terms of these arrangements are summarised here.

Figure 6. Mining legislation in Africa, using the date and status to provide a simplified map.

Figure 7

Figure 8. Map of Gabon, showing permits for gold in April 1996

Royalty	-	3% of net value of minerals sold
Tax	-	30% corporate rate
	-	Nil export tax
	-	10% on dividends to non-residents
	-	Nil import tax on mine items
Allowance	-	100% depreciation allowance on mining capital expenditures

By comparison, the current fiscal regime in Eritrea is as follows.

Royalty	-	5% on precious metals
	-	3.5% on other metals
Tax	-	38% mining income tax
	-	Nil export tax
	-	Nil dividend tax
	-	20% expatriate income tax
	-	0.5% import duty
	-	10% imported services tax

In Eritrea, the so-called "State Free Carry" is 10%, plus up to an additional 20% by negotiation.

On the other hand, in Zambia, where mining constitutes the largest contributor to that country's economy, the government has embarked on a program to privatise the Government's substantial interests in the copper industry and is turning the Government's role to a "facilitator, rather than of an investor".

The problem with the level of Government participation in many countries is that the level or position which the Government of the day may take in the development of a project is not always known when commencing exploration in a country. For instance, certain mining laws provide for varying degrees of participation of government and, without a clear knowledge of what these levels may be, it is difficult to prepare an accurate cost benefit analysis or resource estimate that may be required to profitably develop a mine in that particular country.

In South Africa, mineral rights are presently divided into four categories.

- Tribal lands mineral rights
- State lands mineral rights
- Private land mineral rights
- Company owned rights

The African National Conference (ANC) has expressed the clear view that minerals are the property of the people and is of the opinion that the different forms of mineral ownership restricts development in South Africa.

A White Paper is currently under consideration by the ANC and whilst the South African Chamber of Mines seems comfortable with the recommendations set out therein, the writer is of the view that the lack of government money available for compensation is the main reason why private mineral rights will be retained, at least temporarily. Another, more logical, reason is that the Lessees of the most profitable mines have mined the main areas for so long, that only established miners can economically continue to mine these resources at depth.

GOVERNMENT PROCEDURES AND POLICIES

Most companies can operate in a country where the rules and procedures are set in a sound legislation framework. However, all mining law provides for discretion and it is the limit or interpretation of discretion, together with the lack of knowledge of simple registration and drafting/surveying procedures, which also causes much concern in developing countries.

For example, more than one country in Africa has interpreted legislation more than literally when determining the level of security that must be lodged in respect of exploration or mining tenements. That is, if the applicant company undertook to spend \$150 000 per year on exploration over the three year term of a Licence, the government, upon the issue of that Licence, would request a security of \$450 000 and in the event that the company failed to expend \$150 000 in each of the three years, then in any one year that shortfall was deducted from the security and credited to that country's treasury. Furthermore, if expenditure in any one of those years exceeded the commitment, no credit is given to the next year's exploration expenditure.

Obviously, a policy that requires the deposit of an amount equal to the proposed expenditure ties up valuable exploration funds which could be used for exploration of other projects and must be to the detriment of the exploration and mining industry in that country.

Many governments also tend to waste considerable time and manpower in assessing exploration reports submitted by companies, and thence rigidly enforcing the commitments, rather than using the reports to differentiate between bona fide and speculative explorers. In the writer's mind and experience, any country's mineral potential could be better assessed sooner, if the government was quick to recognise more speculative explorers and strictly police the issue, renewal and/or cancellation of titles where those

companies have been tardy in satisfying commitments which attach to titles.

Another observation regarding the implementation of legislation is that the administration of a number of government Departments is unqualified and inexperienced. To this end, proper and thoughtful drafting of the government forms prescribed by legislation will ensure the lodgement of all information required by statute and enable the Department's administration to more properly assess applications for exploration and mining tenure in a particular country. Forms, properly completed, will ensure all details required by statute are submitted for consideration by government. In turn, this must lead to the issue of a title which has complied with the legislative requirements and, accordingly, greater security of tenure should follow.

Another concern which derives from the administration of legislation is the accuracy of survey, plotting and/or location of exploration and mining tenure within the particular country. In some countries, accurate survey/mapping information is available. However, in others, the absence of adequate tenement maps or plans, together with the almost total lack of ground control for survey, causes concern.

One of the more unfortunate consequences of seeking to explore or mine in Africa is the difference in styles and levels of governance. The increased participation of Australians and major world-wide corporations in Africa could see changes in the regulatory framework and procedures.

Another issue which causes concern, and is an area where Australian exploration and mining companies can assist, is the almost total absence of occupational health and safety within certain countries. By way of illustration, the writer, in the company of the Senior Mines Inspector and the Directorate of a Department, commented on the risk of silicosis when observing quarry workers almost choking on dust particles and was advised that, because the workers were miners, "it was their destiny".

It is the writer's belief that health and safety issues such as the one described are more important and reflect more unfavourably on the industry than many environmental issues, which need to be considered, but not before the lives of mine workers. Indeed, in South Africa in 1994, 485 mine workers were killed as a consequence of health and safety issues and this is a serious issue currently confronting the South African Government. With respect to the environmental lobby at work in Africa, it is the writer's opinion that health and safety issues demand a greater priority and closer attention by the industry in that continent.

Because of the range of legislation which exists throughout Africa, it is difficult to address specific issues for the purposes of this paper. That said, the writer trusts that readers will have gained some insight into the industry as a result of this paper and if further specific information is required, the writer can be contacted at Hetherington Title Services in Sydney. Copies of the Report prepared for Eritrea, along with legislation and research material compiled by this firm, are available for perusal by contacting the writer.

In conclusion, the writer is reminded of a paper titled "South Africa and the New Great Trek" which was presented at this year's Endaba Conference. It is the writer's view that Australian companies operating in Africa will not only be part of this Trek, but that this country's exploration and mining practices and procedures have the opportunity to influence to a large degree the direction and development of mineral wealth in Africa for many years to come. The level of influence should be encouraged and the resultant knowledge and experience should enable Australian companies to have an advantage over other overseas competitors operating in Africa.

CONCLUDING REMARKS