



**Supporting Inclusive Resource Development (SIRD)  
East Africa  
TRAINING PROGRAM  
2019**



THE CANADIAN  
BAR ASSOCIATION



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UGANDA LAW SOCIETY

# 5. Governing Legal Framework: International

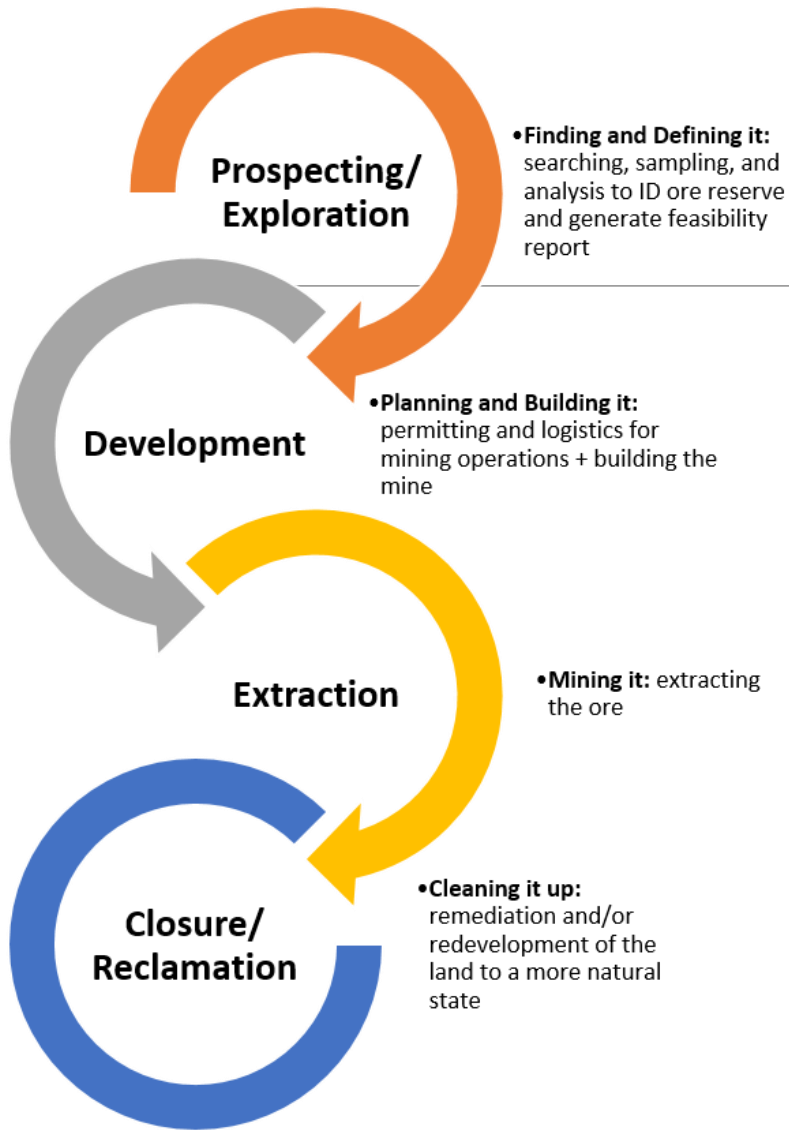
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## Introduction and Overview

- *Overview of the life cycle of a resource project*
- *How do tenure rights shape the extractive sector?*
- *What are the key legal instruments granting mining rights in Canada?*
- *What governance models are used in other countries for mineral tenure?*
- *How can we compare legal regimes?*
- *What is the relationship between these different legal instruments and the legal regime they operate in?*



# Life Cycle of a Resource Project



- Resource projects go through four distinct phases
- Statutory regime will require certain processes and permits at each stage
- Each stage has opportunities to make the process more inclusive



# Prospecting and Exploration

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- The process of finding a mineral deposit or oil and gas reserve
- Takes several years and most money is focused on exploration and feasibility studies
- Low impact on community and environment
  - Temporary camps and some test drilling
  - Some local employment/supplying opportunities
  - Has the potential to set the tone for the project
- Most projects do not move beyond this stage.
- Dependent on global markets and underlying mineral tenure system



• **Finding and Defining it:** searching, sampling, and analysis to ID ore reserve and generate feasibility report



# 2017 Global Exploration Spend

- US\$8.4 Billion spent globally in 2017 on non-ferrous minerals
- Up from 2016, but down from peak of \$21B in 2012



- Trend over last decade has been away from greenfield sites to near existing operations
- 14% of budget was spent in Africa (roughly the same as Canada) with 2% in East Africa



# Mineral Tenure Comparison

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- Project proponents do not start with rights to mine, they start with an exploration license and then move through stages of development and ownership rights
- Three types of mineral tenure: “Free Entry”, “Latin American Model” and “Private Allocation”
- Free Entry allows for free exploration and then the ‘staking of a claim’ to the mineral *in situ*
  - common in countries with ties to British Commonwealth
- Private Allocation vests all minerals in the State. No right to the minerals until they are removed. Need to allocate (through negotiation or auctions) to third parties for development.
  - Common in countries with a Napoleonic civil code
- Latin American model is a statutory granting of rights refined in Chile and other Latin American countries in the 1970’s and 1980’s
  - Modified the Private Allocation model to address many of the shortfalls



# Statutory Regime in Canada (British Columbia) Mineral Access

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## 1. Exploration license

- Allows temporary structures and exploration activities.
- Nominal fee or proof of activity to maintain. Cannot mine.

## 2. Mineral tenure achieved through

- Mineral claims and **Mineral leases** - provide freehold ownership of the land and the minerals.
- Grants - provide freehold rights to the land above ground as well as to the minerals, (rare – none in several decades).

### Mineral Leases in BC – a comparison

- Leases are granted for a maximum term of 30 years.
- Can be renewed an unlimited number of times, subject to approval of the Commissioner with proof of mining activity.
- Can be mortgaged and otherwise legally encumbered.
- All leases must be mined in accordance with the *Mines Act* (BC).
- Mineral lease permit specifies any restrictions or obligations relating to the mining, any processing facilities at the mine site, details for the reclamation of the mine site and procedures for the preservation of water ways and cultural heritage resources.
- If permit conditions are breached, the government may stop mining until the breach is remedied; apply financial security reclamation or required preservation efforts; close the mine; or cancel the permit.



# Assessment of a mining project

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- Once a particular project is identified, it will go through three phases of study
- Preliminary Economic Assessment (PEA)
  - A scoping exercise to determine possible mining scenarios and economic activity
  - Will set out next steps to move the project forward
- Preliminary Feasibility Study (Pre-Feas)
  - A reality check after more data and various factors explored
  - Help determine areas that need more focus (e.g. more drilling, community issues, tenure ownership, environmental issues)
- Feasibility Study
  - A technical and economic analysis of whether or not to proceed with the project

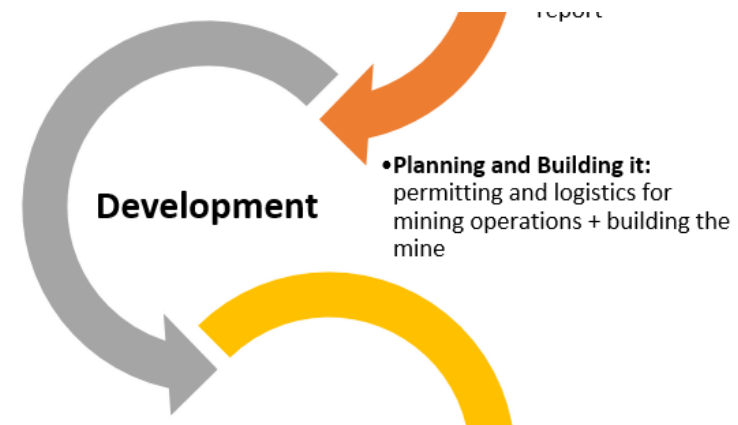




# Development of a Resource Project

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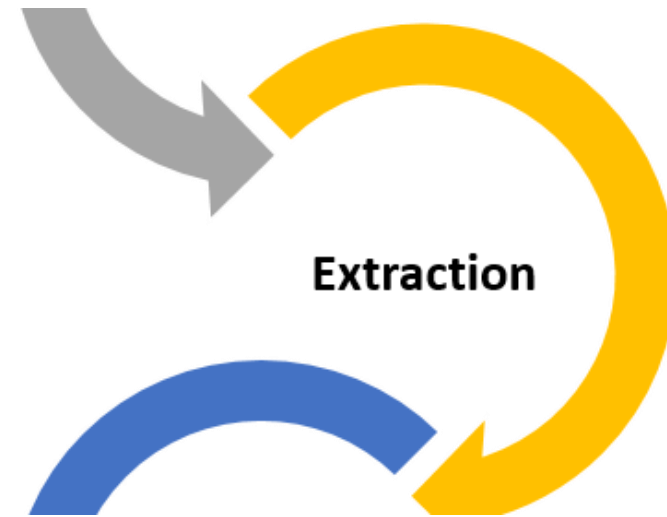
- Once the decision to build a project, need to move to detailed permitting and logistics
- Numerous studies and engineering design for
  - pit/underground mines
  - Tailings, treatment
  - Mills and other processing
  - Operation plans
- Environmental impact assessments (including social)
- Relocation of communities
- Financial bonding for closure



# Extraction Phase

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- Operations phase
- As few as 5 years or more than 50 years
- High impact on community and environment
- May be built in phases, or developed further as new resources, closed or put on care and maintenance. Any change will require more consultation, redesign and permitting.



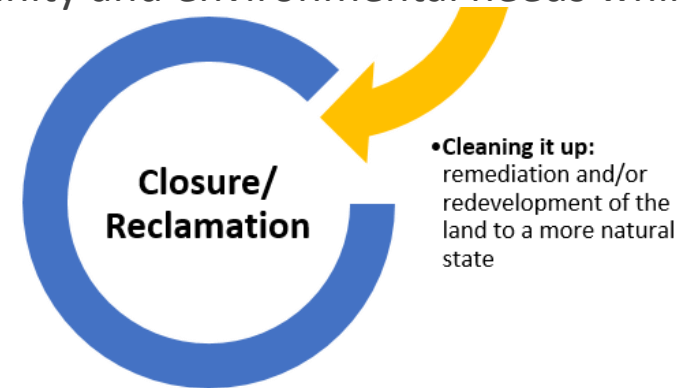
• **Mining it:** extracting the ore



# Clean Up and Life After a Mine

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- All projects come to an end
- Sustainable resource extraction is about balancing community and environmental needs while extracting resource and ensuring a transition after
- Closure and remediation is addressed in most modern mining regimes, but not in all regimes
- Public bears the cost of legacy sites if closure is not addressed and financed up front
- Often a draft closure plan that is partially funded before operations start, updated over life of mine



# Comparing Legal Frameworks

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- John Merryman factors for comparing legal regimes.
- When determining why laws are different, or why the same laws have different impact, one tool is to look at the legal regime that the laws embedded in
- Group Discussion



# Factors that shape laws:

## How do laws granting mineral rights impact inclusive resource development?

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### A. Legal Extension.

Legal extension is the social reach of the legal system, the area of social activity to which it attempts or purports to apply.

### B. Legal Penetration.

The social grasp of the legal system. Legal extension and penetration are social dimensions of the legal system.

### C. Legal Culture.

The history of legal establishments, prior laws and interactions between elements of the legal system. Often referred to as the legal tradition of a nation.

### D. Legal Institutions.

The courts, legislatures, administrative agencies, police departments, law schools, legal research institutes and bar associations are familiar examples of legal institutions. They are the composite units that maintain, perpetuate and carry on the daily work of the legal system.

### E. Legal Actors.

The lawyers, judges, police, bureaucrats, politicians.

### F. Legal Processes.

The activities performed by legal institutions and actors: the private ordering of legal relations, legislation, judicial and administrative proceedings, legal scholarship and legal education.

### G. Secondary Rules.

Customs, local practices and other rules that are not law but impact the implementation of laws.

### H. Legal Expense.

What it costs the society to establish, maintain and operate the legal system.

# Increased inclusivity in resource extraction

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- Multiple stages to a mining project
- Variety of legal regimes that impact a project and overlap
- Discussion question (5 minutes)
  - What are some of the ways lawyers can advocate for discussion of community, regional and gender issues during the life of a mining project? E.g. what is our role during exploration versus during an environmental and social impact assessment ?

