

CHAPTER 44:02
MINES, QUARRIES, WORKS AND MACHINERY
ARRANGEMENT OF SECTIONS

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Act 20, 1973,
S.I. 128, 1978,
Act 4, 1979,
Act 15, 1995.

An Act to provide for the safety, health and welfare of persons engaged in prospecting, mining and quarrying operations including any works which are part of and ancillary to mining and quarrying operations and to make provision with respect to the inspection and regulation of mines, quarries, works, and of machinery used in connection therewith, and for matters incidental thereto.

[Date of Commencement: 1st November, 1978]

PART I
Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Mines, Quarries, Works and Machinery Act.

2. Interpretation

In this Act, unless the context otherwise requires-

"boiler" means any apparatus, with all its fittings and appurtenances, adapted to convert any liquid continuously into steam or vapour of a higher pressure than that due to the atmosphere, and includes any super-heater, economizer and steam accumulator, with all their fittings and appurtenances, and where any such apparatus consists of two or more parts, each of which is capable of being adapted for use as a separate boiler by the mere closing of a valve, means each of such parts with all its fittings and appurtenances;

"Chief Government Mining Engineer" means the Chief Government Mining Engineer appointed under section 3;

"engine" means any appliance or combination of appliances by which power, other than man or animal power, can be applied to do mechanical work;

"excavation" means any cavity in the ground and includes trenches, pits, sewers under construction, shafts, winzes, raises, open cuts, tunnels, adits, drives and all underground passages and workings;

"Government Mining Engineer" means a Government Mining Engineer appointed under section 3;

"inspector" means an inspector of mines, quarries, works and machinery appointed under section 3;

"machinery" means any engine, boiler or appliances or combination of appliances which is used or intended to be used for generating, developing, receiving, storing, converting, transforming or transmitting any form of power or energy, or for conveying persons, materials or minerals, and which is situated at a mine, quarry or works and used or intended to be used in connection with operations at, and pertaining to, such mine, quarry or works;

"mine" means any excavation in the ground, whether abandoned or being worked, made for the purpose of searching for or winning any mineral, and any place where any mineral deposit is being worked, but if two or more such excavations or places are being worked in conjunction with one another, they shall be deemed to constitute one mine, unless the Chief Government Mining Engineer notifies the owner thereof in writing that such excavations or places shall constitute two or more mines, and any place at or near or in connection with a mine where any building, construction, dump, dam, machinery or appliance is used or intended to be used or any demolition effected by the owner of the mine for any of the following purposes, or for any purpose necessary or incidental thereto, shall form part of such mine-

- (a) searching for or winning a mineral;
- (b) crushing, reducing, dressing, concentrating, leaching, drying or smelting a mineral;
- (c) producing a product of commercial value, from a mineral; or
- (d) extracting, concentrating or refining any constituent of a mineral;

"mineral" means any substance, whether in solid, liquid or gaseous form, occurring naturally in or on the earth and having been formed by or subjected to a geological process, but does not include water and soil unless they are taken from the earth for the production or extraction therefrom, of a product of commercial value;

"mines, quarries and works safety committee" means the mines, quarries and works safety committee established under section 5;

"mining" means the activity of obtaining or extracting or attempting to obtain or extract any mineral occurring naturally in or on the earth's crust, by any mode or method, or any purpose directly or indirectly connected therewith or incidental thereto and includes the working of any dump or tailing;

"owner", in relation to a mine, quarry, works or machinery, includes the lessee of the mine, quarry, works or machinery or any part thereof, but does not include a person who owns

only rights to the surface of the land on which a mine, quarry, works or machinery is situated;

"prospecting" means the activity of searching for minerals or mineral deposits;

"quarry" means any working at which quarrying operations are carried on;

"quarrying" means the activity of obtaining or extracting or attempting to obtain or extract any rock, stone, gravel, sand, clay or similar material for commercial or industrial use by any mode or method, or any purpose directly or indirectly connected therewith or incidental thereto;

"Principal Government Mining Engineer" means the Principal Government Mining Engineer appointed under section 3;

"serious bodily injury" includes-

fracture of skull, spine, pelvis, arm, forearm, thigh or leg;

dislocation of shoulder, elbow, hip, knee or spine;

amputation of hand or foot, or substantial part of a hand or foot;

loss of sight of an eye;

internal haemorrhage, burns, asphyxia, or other injury likely to endanger life, cause permanent incapacity for work or substantially impair efficiency;

"working" means any excavation of a mine or quarry made or being made for the purpose of searching for or winning minerals;

"works" means any place connected with prospecting, mining or quarrying operations, at which any of the following operations and any operation necessary or incidental thereto are carried out-

- (a) the crushing, screening, washing, classifying, concentrating or leaching of any mineral;
- (b) the treating of any mineral or mineral product in the form obtained from a mine or quarry including the production of coke, and including the production of a metal in any shape or form by smelting;
- (c) the working and treating of any mine tailings, deposit or mine or quarry dump for the recovery of any content thereof;
- (d) the extracting of any metal from any mineral or concentrate;
- (e) the extracting or treating of any mineral or mineral product by chemical means;
- (f) the refining of any metal;
- (g) the drying or calcining of any mineral;
- (h) the making, repairing, re-opening or closing of any subterranean tunnel;
- (i) the generating, transmitting and distributing of any form of power at or to a mine or quarry;
- (j) the making, repairing and maintaining of engines, machinery and vehicles.

PART II

Administration (ss 3-5)

3. Appointment of officers

There shall, for the purposes of this Act, be appointed-

- (a) a Chief Government Mining Engineer who shall exercise the powers and perform the functions conferred upon him under this Act;
- (b) a Principal Government Mining Engineer and as many Government Mining Engineers as may be necessary who shall be inspectors for the purposes of this Act; and
- (c) such other subordinate officers as may be deemed to be necessary to carry out general duties and functions under this Act.

4. Official supervision of mines, quarries, works and machinery

The Chief Government Mining Engineer and, subject to his directions, inspectors and any other subordinate officers appointed or deemed to have been appointed under section 3, shall exercise supervision over all prospecting, mining and quarrying operations, and works and machinery connected therewith.

5. Establishment of mines, quarries and works safety committee

(1) There shall be established a mines, quarries and works safety committee whose functions shall be to advise the Minister on the supervision to be exercised over mines, quarries and works, or on any thing or practice which affects or is likely to affect the safety, health or welfare of persons employed in or at mines, quarries and works.

(2) The members of the committee shall be-

- (a) the Chief Government Mining Engineer, who shall be chairman; and the following members appointed by the Minister-
- (i) an inspector;
 - (ii) one person nominated by an organization or organizations' representative of owners of mines, quarries and works;
 - (iii) one person nominated by an organization or organizations' representative of daily-paid workers employed in or at mines, quarries and works; and
 - (iv) one person nominated by an organization or organizations' representative of supervisory staff (other than daily-paid workers) employed in or at mines, quarries and works.

(3) The Minister may, at his discretion, refuse to appoint or may withdraw the appointment of any person nominated under subparagraph (ii), (iii) or (iv) of subsection (2)(a) if he has reason to believe that such person is not suitable to be a member.

(4) The Principal Government Mining Engineer shall act as a member and as chairman thereof whenever the Chief Government Mining Engineer is for any reason absent.

PART III

Powers of Inspectors (ss 6-7)

6. Official powers of inspectors and officers

(1) Any inspector and any other officer appointed under section 3 and authorized by the Chief Government Mining Engineer in that behalf may-

- (a) at any time of the day or night enter any mine, quarry or works and make inquiry, survey, sample for official purposes, inspect or examine the state or condition of such mine, quarry or works or part thereof or any machinery thereat, including the ventilation of a mine, quarry or works, or any book, record, document, plan or drawing, kept in terms of this Act to determine whether there is any contravention of any of the provisions of this Act; and
- (b) exercise such other powers as may be necessary for carrying into effect the provisions of this Act:

Provided that the powers conferred by this subsection shall not be exercised so as to impede or obstruct unnecessarily the working of such mine, quarry or works.

(2) Where an inspector finds at any mine, quarry or works that any thing or practice in any way connected therewith, or the absence of any thing or practice, is likely to cause bodily injury to, or be injurious to the health of any person, or to cause damage to any property, he shall give notice in writing to the manager of the mine, quarry or works stating the particular thing or practice that he requires to be done, or not to be done, or observed or discontinued, and may give such written instructions in connection therewith as he may deem necessary, and such instructions may include an order suspending or closing operations at the mine, quarry or works or any machinery thereat, or part of a mine, quarry or works or any machinery thereat.

(3) A copy of any such instructions shall be forwarded to the Chief Government Mining Engineer immediately together with a report on the circumstances and reasons for the instructions.

(4) An appeal, in the prescribed manner, shall be to the Chief Government Mining Engineer against any instructions given under subsection (2).

(5) The Chief Government Mining Engineer may suspend the operation of any instructions given under subsection (2) unless he is of the opinion that any delay in giving effect to such instructions would be dangerous to life or property at the mine, quarry or works.

(6) Subject to subsection (7), the Chief Government Mining Engineer shall consider an appeal made to him under subsection (4) and may confirm, vary or cancel the instructions.

(7) Where an appeal is against any instructions to suspend or close operations the Chief Government Mining Engineer shall submit it together with his remarks thereon to the Minister who may confirm, vary or cancel such instructions.

7. Infliction of summary penalties

(1) Subject to subsection (5), the Chief Government Mining Engineer or an inspector, if satisfied after suitable investigation that a person has committed an offence under this Act or any special rule made under section 12, may summarily demand payment of a penalty not exceeding P30 for such offence.

(2) Any person from whom a penalty has been demanded under this section may elect to admit his liability and pay the penalty or dispute his liability and await prosecution, and he shall be so informed at the time by the Chief Government Mining Engineer or inspector, as the case may be.

(3) The payment forthwith, or within such time as may be specified, of any penalty demanded under this section, shall operate as a bar to any further criminal proceedings against such person for such offence.

(4) Should any person fail to pay the penalty demanded forthwith or within the time specified, as the case may be, such summary demand shall in no way relieve such person of any liability he may have incurred or be a bar to his conviction and punishment by a competent court in respect of such offence.

(5) No penalty shall be demanded under this section where the offence has resulted in the death of any person.

PART IV

Accidents (ss 8-10)

8. Inquiries into accidents and other matters

(1) Where any accident causing death or serious bodily injury to any person occurs at any mine, quarry or works an inquiry into the cause of the accident shall be held by an inspector, and where any other accident occurs at a mine, quarry or works, such an inquiry may be held by an inspector.

(2) Where an inspector has reason to suspect that there has been a contravention of any provision of this Act or of any special rule made under section 12, he may hold an inquiry into such suspected contravention.

(3) Where the Chief Government Mining Engineer considers it necessary or desirable that an inquiry be held into any occurrence at any mine, quarry or works or into safety, health or welfare conditions at any mine, quarry or works, he may depute an inspector to hold an inquiry into such occurrence or conditions.

(4) The Minister may require the Chief Government Mining Engineer to cause an inquiry to be held by an inspector into any occurrence or condition at any mine, quarry or works affecting or likely to affect safety, health and welfare of persons working in such mine, quarry or works.

(5) The Chief Government Mining Engineer may at any stage before or during an inquiry held under this section appoint such other inspectors as he may consider necessary to assist in the inquiry and may appoint any inspector to preside at such inquiry.

(6) An inspector holding or presiding at an inquiry under this section shall, if necessary with the assistance of an interpreter, take or cause to be taken down in writing or by mechanical means the evidence given thereat, and shall transmit a copy of such evidence with his report thereon to the Chief Government Mining Engineer, who shall, in the case of an accident causing death, transmit copies of the finding to the Minister and other persons with interest therein.

(7) If, on consideration of such evidence and report, the Chief Government Mining Engineer is of the opinion that a further inquiry is necessary, he may depute another inspector

to hold such further inquiry.

(8) Nothing contained in this section shall affect any written law requiring and regulating inquests or other inquiries in cases of death caused by accident, but an inquiry under this section may be held jointly with an inquest held by a magistrate or any other such inquiry.

(9) A magistrate shall preside at any such joint inquest and inquiry but the inspector shall make a separate report as required by this section.

9. Attendance and examination of witnesses at inquiries

(1) An inspector who is to hold or holds an inquiry under section 7 or 8, or who is to preside or presides at such an inquiry may, for the purpose of such inquiry, summon any witness, or require any person present, to give evidence or to produce any document or thing which the inspector may require for the purposes of the inquiry.

(2) Where at any inquiry evidence has been given from which a person may reasonably infer that he may be charged with contravening any provision of this Act or may be held responsible in any manner for the accident forming the subject of the inquiry, he may cross-examine any witness, may require the inspector holding or presiding at the inquiry to summon any witness in his behalf either to give evidence or to produce any document or thing, and may appoint any other person to represent him at the inquiry.

(3) Any person summoned under subsection (1) or (2) who fails without reasonable excuse to comply with the summons shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

(4) Any person, whether summoned or not, who-

- (a) while under examination refuses to answer to the best of his knowledge and belief any question lawfully put to him by or with the concurrence of the inspector holding or presiding at the inquiry;
- (b) at such inquiry wilfully insults any such inspector; or
- (c) at such inquiry wilfully interrupts the proceedings,

shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

(5) An inspector may administer an oath to any witness at an inquiry:

Provided that where a witness objects to taking an oath, such witness may make an affirmation and such affirmation shall be of the same force and effect as an oath.

(6) A witness shall have the same privileges in respect of answering questions and producing documents as he would under the same circumstances if he were summoned as a witness in a court.

10. Obstruction of or failure to assist officials

Any person who-

- (a) obstructs or hinders any officer appointed under section 3 in the discharge of his duty; or
- (b) refuses or neglects to furnish any such officer or person with the means and assistance necessary for making any entry, inspection, examination or inquiry under this Act, or to attend, when required to do so by any such officer or person, any such inspection or examination,

shall be guilty of an offence.

PART V **Regulations (s 11)**

11. Regulations

(1) The Minister may make regulations for the better carrying out of the objects and purposes of this Act and for giving effect to its principles and provisions, and in particular, but without prejudice to the generality of the foregoing, such regulations may, in relation to all mines, quarries and works or any mine, quarry or works, make provision concerning-

- (a) the proper and efficient working of mines, quarries, works and machinery;

- (b) prescribing anything which may or which is required to be prescribed;
- (c) the form of any document to be used for any of the purposes of this Act;
- (d) the manner of making applications to the Chief Government Mining Engineer or through the Chief Government Mining Engineer to the Minister;
- (e) the protection and preservation of the surface of mines, quarries and works and adjoining land, of buildings, roads, railways and other structures and enclosures on or above the surface of such land, and of water resources, the conditions under which any such surface, buildings, roads, railways, structures or enclosures may be undermined, and the conditions under which mining may be carried on, under and in the vicinity of such water resources;
- (f) the protection and rehabilitation of the environment where it is affected or likely to be affected by mining or quarrying operations or any works;
- (g) the prohibition or restriction in relation to the making or use of roads or railways or the erecting, demolishing or use of buildings or other structures or objects over or in the vicinity of workings of mines and quarries;
- (h) the disposal and control of waste products;
- (i) the making, maintenance and support of excavations and safety pillars, including filling of stopes, underground and surface excavations;
- (j) the connecting of workings together and to the surface and the connecting of adjacent or adjoining mines;
- (k) the cessation or abandonment of mining and quarrying operations, including the preservation and protection of disused or abandoned excavations and matters incidental thereto;
- (l) the powers, duties and practices of owners, agents and managers;
- (m) the duties and responsibilities of persons engaged in or about mines, quarries, works and machinery;
- (n) the maintenance of order and discipline;
- (o) the safety, health and welfare of persons employed in or at mines, quarries or works and the safety of property;
- (p) the number of hours and the number of shifts during any specified period which employees may work or be permitted to work in and at mines, quarries or works and the travelling time taken in getting employees from the shaftheads or other entrances to mines to their working places at the commencement of their shift and back again to the shaftheads or other entrances to mines at the conclusion of their shift;
- (q) the minimum rates of remuneration in relation to ordinary rates of remuneration to be paid to employees in and at mines, quarries or works in respect of overtime or work on a Sunday, Christmas Day, Good Friday, or on Botswana Day;
- (r) the minimum number of days of paid leave and sick leave to which employees in and at mines, quarries or works shall be entitled and the conditions and circumstances under which such leave shall be granted;
- (s) the making of surveys, plans and sections and keeping of plans and sections for mines, quarries and works and the filing of copies thereof with the Chief Government Mining Engineer;
- (t) the making of statistical returns and other reports and the keeping of records relating to employees in and at mines, quarries or works;
- (u) the use of electricity and compressed air and the conditions upon which machinery may be erected or used;
- (v) the inspection of books or documents;
- (w) the carrying out of drilling and prospecting;
- (x) ventilation and the control of dust, gases, and toxic or deleterious substances;
- (y) travelling ways;

- (z) the reporting of accidents occurring at mines, quarries and works and the provision of transport and medical aid in case of accident;
 - (aa) the manner of holding inquiries at or in connection with any mine, quarry or works, the procedure to be followed at any inquiry, and the mode of securing the attendance of witnesses thereat;
 - (bb) appeals from any decision of, or instruction given by, the Chief Government Mining Engineer, an inspector or other officer;
 - (cc) certificates of competency required for employment in any particular occupation in, at or about mines, quarries, works or machinery, the grant, cancellation and suspension of such certificates, and the prohibition of employment of persons not in possession of the required certificates of competency;
 - (dd) the fees to be paid in connection with the examination for, and the grant of, any such certificate as is referred to in paragraph (ee);
 - (ee) the fees to be paid for any inspection or test under this Act;
 - (ff) the fees payable to any member of a commission or committee appointed under this Act;
 - (gg) underground contract work on mines, the measurement of such work and the procedure to be adopted in the settlement of disputes arising therefrom,
- and generally for ensuring the proper working and management of all mines, quarries, works and machinery.

(2) Regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding the penalties mentioned in section 14, and may prescribe daily penalties for a continuing contravention or non-compliance, and increased penalties for a second or subsequent contravention or non-compliance, subject always to the limitations mentioned in section 14.

PART VI

Special Rules, Offences and Penalties (ss 12-16)

12. Special rules for order and discipline at mines, quarries and works

(1) The manager of a mine, quarry or works may make special rules, not inconsistent with this Act, for the maintenance of order and discipline and the prevention of accidents at any such mine, quarry or works, and if he makes such rules he shall submit them to the Chief Government Mining Engineer for approval, and when approved they shall take effect after they have been posted up in a conspicuous place at the mine, quarry or works for 14 clear days.

(2) If the Chief Government Mining Engineer considers any such rule unreasonable, unnecessary or otherwise undesirable, he may disallow it or at any time require it to be altered.

(3) Any objection to any such rule may be lodged at the office of the Chief Government Mining Engineer, who shall submit such objection with his remarks thereon to the Minister who may either confirm or alter the rule regarding which the objection may have been lodged.

(4) When and so long as such rules are so posted up they shall, so long as they are legible and until they are so disallowed, and except insofar as they are so altered, have the same force and effect as the regulations, and any person who contravenes or fails to comply with any provision of such rules shall be guilty of an offence and liable to a fine not exceeding P50 or to imprisonment for a term not exceeding three months, or to both.

13. Obtaining of certificate of competency fraudulently

Any person who obtains or attempts to obtain any certificate of competency under any regulations made under this Act by means of fraud, false pretences or any false document shall be guilty of an offence.

14. Endangering safety or causing serious bodily injury

If any person is guilty of any act or omission whereby in or at any mine, quarry, works or machinery-

- (a) the safety of any other person is endangered or likely to be endangered; or

(b) serious bodily injury is caused to any other person, he shall be guilty of an offence and liable, in the case of an offence referred to in paragraph (a), to a fine not exceeding P500 or to imprisonment for a term not exceeding 12 months, or to both, and in the case of an offence referred to in paragraph (b), to a fine not exceeding P1 000 or to imprisonment for a term not exceeding two years, or to both.

15. Offences when not expressly provided for

Any person who-

- (a) contravenes any provision of this Act; or
- (b) fails to comply with the terms of any notice or instruction given under this Act by any officer appointed under section 3,

shall, where such contravention or failure is not elsewhere declared an offence, be guilty of an offence.

16. Penalties when not expressly provided for

If any person is convicted of any offence under this Act for which no penalty is expressly provided, he shall be liable on conviction to a fine not exceeding P300 or to imprisonment for a term not exceeding 12 months, or to both.