

INTERESTS AND RIGHTS IN LAND UNDER THE LANDS ACT 2020 (ACT 1036)



INTRODUCTION

OBJECTIVES

1. **Understanding Land Interest**

By the end of this session, you'll have a clear understanding of the different types of land interests under the law. Whether it's an allodial title, customary law freehold, or leasehold interest, we'll break down what each one means and how it applies in our communities.

2. **Knowing Your Rights and Responsibilities**

We all need to know our rights when it comes to land. But just as important is understanding the responsibilities that come with those rights. Today, we'll cover both, so you can protect your land and make informed decisions.

3. **Building Legal Knowledge**

The legal system can sometimes seem complicated, but it's essential that we understand it. This session will help you become more familiar with the laws around land transactions, registration, and dispute resolution. This knowledge will empower you to support your community more effectively.

4. **Advocating for Sustainable Land Management**



INTRODUCTION

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4. **Advocating for Sustainable Land Management**

Land is a precious resource, and managing it sustainably is key to our communities' future. We'll discuss how the principles in the Lands Act can help us advocate for practices that protect our land and ensure it's used responsibly.

5. **Empowering Our Communities**

Your voice matters. This training is about giving you the tools to ensure your community's interests are heard and protected in land-related decisions. By the end of today, you'll feel more confident to engage in these processes.

6. **Resolving Disputes Peacefully**

Land disputes can divide communities. We'll explore practical ways to resolve conflicts, using both customary practices and formal legal options. The goal is to equip you with strategies that promote peace and fairness in your community.

Together, we're going to dive into these topics, share our experiences, and come away with actionable knowledge that you can take back to your communities. Let's get started!



PART 1 :OVERVIEW OF INTERESTS IN LAND

Definition of Land Interests:

When we talk about "interest in land," we're simply talking about the different kinds of rights or claims that people or groups can have over a piece of land.

These rights tell us how much control or power someone has over that land and what they can or cannot do with it. The Lands Act recognizes several types of these rights, and each one has its own rules and characteristics.

Categories of Land Interests:

○ Allodial Title:

Think of this as the topmost ownership of land. It's like being the ultimate landlord. This kind of ownership is usually held by the government, traditional leaders like chiefs (stools or skins), clans, families, or even individuals. It can be obtained in different ways, including in particular settling on the land first.

If you hold this title, you have the highest level of ownership. You can do almost anything with the land, but you also have the responsibility to respect the cultural and community rights tied to it.

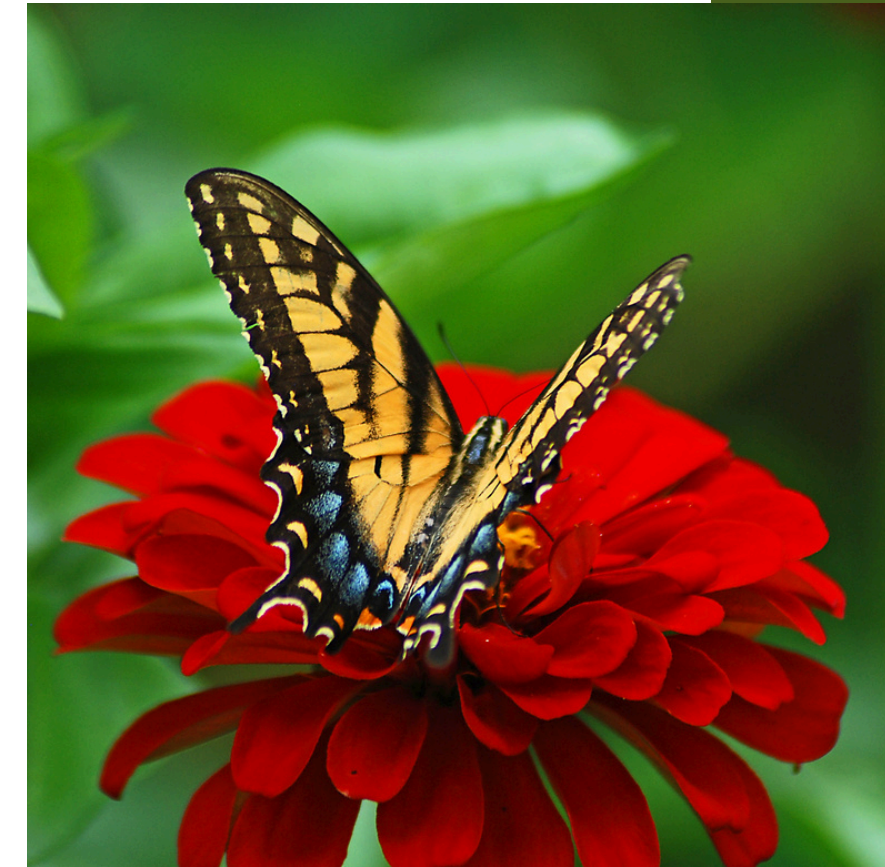
- Customary Law Freehold: Interests based on customary transactions.

This is a type of land ownership that lasts forever or for an unknown amount of time. It follows the rules of the general law. While the person owns the land, they still have to respect the government's rights and the cultural rights of the traditional leaders or families who originally owned the land.

This type of ownership usually comes from following traditional or customary practices.



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This type of ownership usually comes from following traditional or customary practices. For example, generations of families who have settled, farmed these lands and passed them down for many generations typically have this kind of ownership. It can be passed down to children and sold to others, but it must still respect the traditional rules of the community.

- Usufructuary Interest: Rights acquired by subjects or members of the landholding community.

Acquisition by Indigenes: This is the right to use and enjoy the land, usually granted to members of a family, clan, or community (subject or a member of a stool or skin). For instance, someone can farm or live on the land because they are part of the community that owns it. They can even pass this right to their children or sell it, but they might need to get permission from the community or traditional leaders, in some circumstances.

Acquisition by Non-Indigenes: If someone or a group of people who are not originally from the community (non-indigenes) have lived and used the land for at least 50 years, they can gain a usufructuary interest. This means they can continue to use the land as if they are part of the community, but they need to have gotten permission from the person or group that holds the highest ownership of the land, known as the allodial title holder.

PART 1 :OVERVIEW OF INTERESTS IN LAND

Descendants of Non-Indigenes: The right to use the land can also be passed down to the children or grandchildren of these non-indigenes, allowing them to continue using the land under the same terms.

In simple terms, this rule allows people who have lived and worked on the land for a long time, even if they are not originally from that area, to have secure rights to continue using the land, as long as they have permission from the main landowners.

- Leasehold Interest: Interests granted for a specific period under agreed terms.

This is like renting the land for a certain period. The person who owns the land (like the government or a chief) allows someone else to use it for a fixed number of years. The person renting the land has to follow certain rules and can only use it for the time agreed upon.

- Customary Tenancy: Interests created by contract, typically involving payment or sharing of land produce.

This happens when someone enters into an agreement with a landowner under traditional laws. For example, they might agree to farm on the land and share the crops with the owner or pay rent in another form. This type of right is based



Incidents of Land Interests: The bundle of rights and obligations attached to each type of land interest.

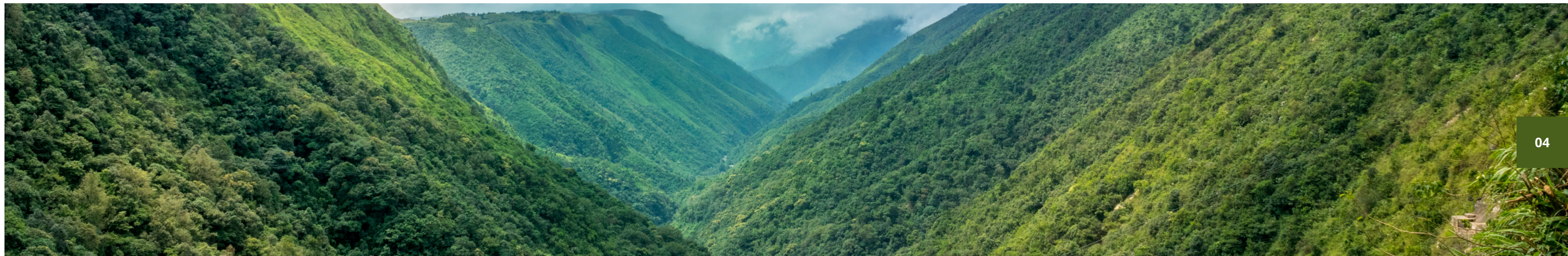
PART 2

WHAT CAN YOU DON AND WHAT CAN YOU NOT DO WITH LAND

Allodial Title:

Difference between Vacant Allodial Land and Allodial Land subject to the Usufruct
Vacant Allodial Land

- Definition: Vacant allodial land refers to land that is under the control of the allodial title holder (such as a stool, skin, clan, family, or individual) but is not currently being used or occupied by anyone. This land has not been developed or claimed by any member of the community, and it remains under the direct authority of the allodial title holder.
- Rights: The allodial title holder has full rights over this land and can decide how it will be used or allocated. Since it is vacant, there are no competing claims or rights by others, such as farmers or settlers, who might use the land.
- Usage: Because the land is vacant, it can be allocated or sold to others, including for development or other purposes, without the need to consider existing users or occupants.

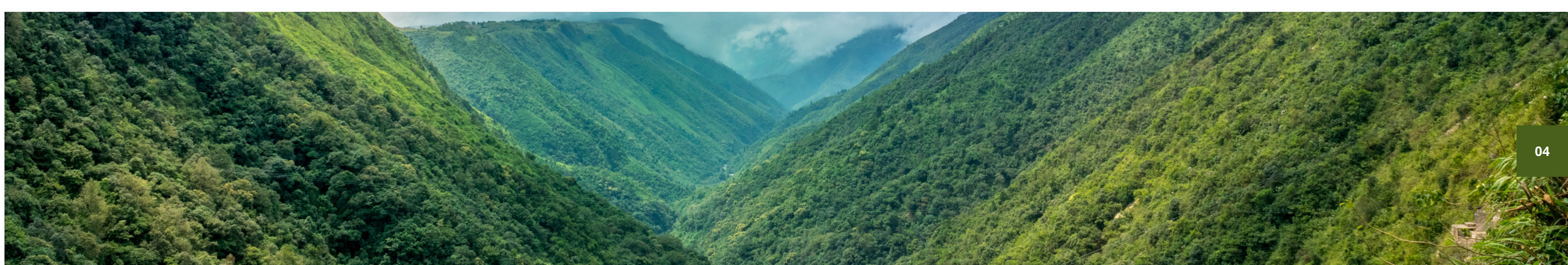


PART 2

WHAT CAN YOU DON AND WHAT CAN YOU NOT DO WITH LAND

Allodial Land Subject to the Usufruct

- Definition: Allodial land subject to the usufruct refers to land that is owned by the allodial title holder but is currently being used or occupied by someone else, typically a member of the community. The person using the land (the usufructuary) has rights to use and enjoy the land for specific purposes, like farming or building a home.
- Rights: While the allodial title holder still owns the land, the usufructuary has significant rights to use it. These rights are protected under customary law, meaning the usufructuary can often continue using the land for as long as they need, and they may even pass these rights on to their descendants. The allodial title holder cannot arbitrarily remove the usufructuary from the land.
- Usage: Because the land is subject to the usufruct, the allodial title holder must respect the rights of the usufructuary. Any decisions about the land, like selling it or changing its use, must consider the existing rights of the person or people using the land.





KEY DIFFERENCES

- **Vacancy vs. Occupancy:** Vacant allodial land is not currently occupied or used by anyone, while allodial land subject to the usufruct is being actively used by someone who has a right to that use.
- **Control:** The allodial title holder has more direct control over vacant allodial land, while their control over allodial land subject to the usufruct is limited by the rights of the usufructuary.
- **Usability:** Vacant land can be freely allocated or sold, whereas land subject to the usufruct involves considering the rights of the current users before any changes can be made.



PROTECTION OF USUFRUCTUARY RIGHTS

When land is subject to the usufruct, it means that members of the community, or their descendants, have the right to live on, farm, or otherwise use that land. These rights are protected by law and cannot be ignored or overridden by the allodial title holder.

- **No Forced Removal:** The allodial title holder cannot forcibly remove or displace usufructuary holders from the land to make way for mining companies, large projects, or any other developments. The rights of the people using the land are protected, and they cannot be compelled to give up their land or any part of it against their will.
- **Illegal Seizures:** Unfortunately, there have been instances where chiefs or traditional leaders have arbitrarily seized lands from people in their communities, often to sell or lease to companies or for other personal benefits. This is illegal and goes against the protections provided under the law. The allodial title holder cannot act unilaterally to take land away from the usufructuary holders.
- **Community Conflicts:** These unlawful actions have led to many conflicts and problems within communities. People have been unfairly removed from their lands, leading to loss of livelihoods and social tensions. It is important to understand that such actions by allodial title holders are not supported by law, and those affected have the right to challenge these actions and seek protection for their land rights.

LEGAL RECOURSE



If an allodial title holder tries to seize land illegally or displace people, those affected have the right to challenge this in court.

The law supports the rights of the usufructuary holders, ensuring they can continue to use their land without fear of being unfairly removed. In essence, the power of the allodial title holder is limited by the rights of the people who use the land.

They cannot ignore these rights or act against the interests of their community members.

ALIENATION BY USUFRUCTUARY

When a person who holds a usufructuary interest (the right to use and enjoy land) decides to transfer or alienate that interest to someone else, there are specific rules that must be followed, particularly when the person receiving the land does not belong to the original community (stool, skin, clan, or family) that holds the allodial title.

If the usufructuary (the person using the land) wants to transfer their right to someone else, the rules differ based on who that person is:

1. Transferring to a Non-Member of the Community (Stool, Skin, Clan, or Family):

- If the land is being transferred to someone who is not a member of the stool, skin, clan, or family that holds the allodial title (meaning they don't originally belong to the community that owns the land), the usufructuary must first get written consent from the allodial title holders.
- This means the chiefs, elders, or leaders of the community must agree in writing to the transfer.
- Additionally, the person receiving the land might need to fulfill certain customary obligations, such as paying specific fees or performing traditional rites, as required by the community's customs.

2. Transferring to a Non-Indigene (Someone Who Isn't Originally from the Area):

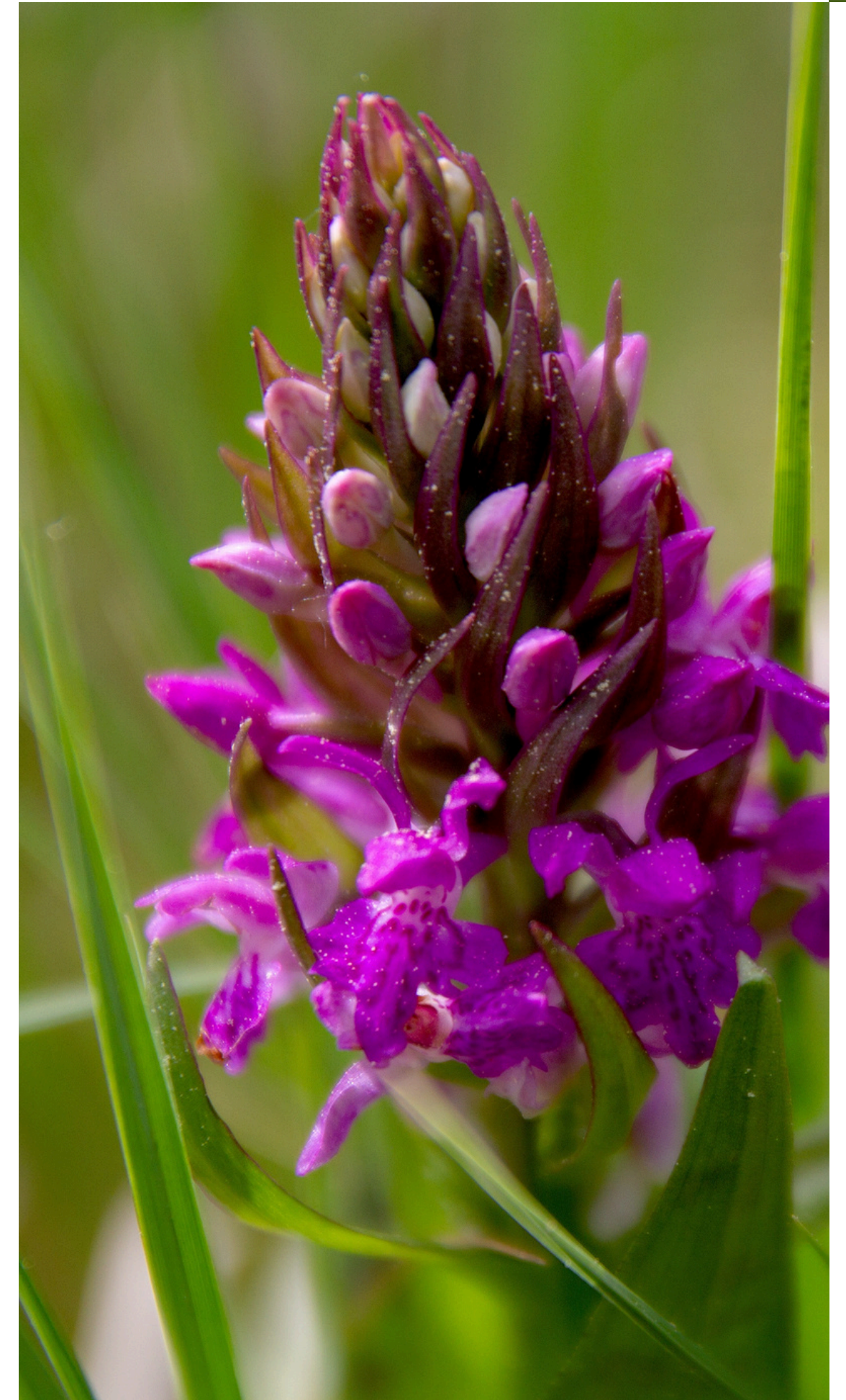
- Similarly, if the usufructuary wants to transfer the land to someone who is a non-indigene (someone not originally from the area or community), they must also get written consent from the allodial title holders.
- Again, the transfer is subject to any customary obligations that need to be performed, ensuring that the community's traditions and rights are respected.



WHY IS THIS IMPORTANT

These rules are in place to protect the interests of the community and ensure that land does not change hands in ways that could disrupt the social and cultural balance. The written consent and customary obligations serve as a safeguard, making sure that the community's approval is secured before any significant changes are made to who uses the land.

In summary, when a usufructuary wants to transfer their land rights to someone outside their community, they must first get permission from the community leaders and follow the necessary customs. This helps maintain the integrity and continuity of the community's land rights and traditions.





SECTION II

COMPENSATION

The Minerals and Mining Act (Compensation and Resettlement) Regulations 2012 LI 2175 governs the claims for compensation of persons whose right or interest in land has been affected by the grant of a mineral right

PROCESS FOR CLAIMING COMPENSATION UNDER MINERAL RIGHTS

1. Notification

Within 14 days of receiving a mineral right, the holder must notify anyone who has a right or interest in the affected land. This includes:

- i. Those who claim ownership or have an interest in the land covered by the mineral right.
- ii. Those whose rights or interests has been affected by the grant of a mineral right.

The notice should be posted in public places like markets, churches, mosques, and schools in the affected community.

2. Submission of Compensation Claims:

- Affected persons have 60 days from the date of notification to submit a written claim for compensation to the mineral right holder

The claim must include:

Details of the claimant's right or interest in the land.

How the right or interest has been or is likely to be affected by the mining operations.

Any damages incurred.

The type of compensation being sought (cash, property replacement, training, etc.) and the basis for calculating the amount.

Information on other individuals who have an interest in the land and the details of their interests.

- A copy of the claim must be sent to the Minister, the Commission, and the Government Agency responsible for land valuation.

3. Valuation and Compensation

- If a compensation claim is not made within the 60-day period, the Minister will instruct the Government Agency responsible for land valuation to assess the land.

PROCESS FOR CLAIMING COMPENSATION UNDER MINERAL RIGHTS

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- If a compensation claim is not made within the 60-day period, the Minister will instruct the Government Agency responsible for land valuation to assess the land.
- The valuation will serve as the basis for any future compensation claims made after the deadline.

4. Negotiation

- Upon receiving a compensation claim, the holder of the mineral right must negotiate with the claimant to determine fair and adequate compensation.

It must be noted that the mineral right holder is not required to pay compensation for speculative developments made on the land after the mineral right was granted.

The claimant may also hire a qualified professional to assess and determine the amount of compensation they should receive.

Both the claimant and the mineral right holder can choose to form a committee to handle the compensation negotiations. Any agreed-upon amount must be documented in a written agreement, which each claimant must approve before the compensation is paid.

Where a dispute arises between the claimant and the mineral right holder under this regulation, either party may refer the matter to the Minister. The Minister, in consultation with the Government Agency responsible for land valuation, will then determine the appropriate compensation to be paid.

5. Payment of Compensation

- The holder of the mineral right must pay the determined compensation to the entitled persons within three months after the compensation amount has been finalized.
- If the holder fails to pay the compensation within the specified three-month period, they will be liable to pay an additional interest of ten percent on the compensation amount for each month the payment is delayed.
- If a claimant is dissatisfied with the compensation amount determined by the Minister, they have the right to apply to the High Court for a review of the Minister's decision, subject to the provisions of the Act.

RESETTLEMENT



Where a mining leaseholder's operations result in the displacement of its inhabitants the leaseholder is required under the regulations to resettle these individuals on suitable alternative land. The resettlement must take into account the economic well-being and socio-cultural values of the displaced persons, aiming to improve their livelihoods and living standards.

The mining leaseholder must develop a resettlement plan that includes:

- Proposals for land use.
- Action programs.

Measures for carrying out the resettlement in compliance with the Local Government Act, 1993 (Act 462), the National Building Regulations, 1996 (L.I. 1630), and other relevant planning regulations and District Assembly by-laws.

The displaced inhabitants must, based on mutually agreed terms and conditions, enter into a resettlement agreement with the mining leaseholder, as required by the Act.

RESETTLEMENT

Resettlement Requirements



1. Engagement with Stakeholders:

- The holder of a mining lease must conduct consultations with the District Assembly, local chiefs, and the residents who will be resettled to discuss the upcoming resettlement activities.

2. Data Collection and Analysis:

- Gather, analyze, and document information on the socio-economic and environmental conditions of the people who will be resettled.

3. Development Plan Preparation:

- Develop a comprehensive plan for the resettlement area that includes measures, policies, and strategies to guide the future development of the area.

4. Strategic Action Plan:

- Prepare a strategic action plan that outlines specific projects and programs, including action plans, guidelines, and institutional arrangements for implementation.

RESETTLEMENT



Surface rights and compensation outside the mining area

Surface Rights

A lawful occupier of land within an area subject to a mineral right may graze livestock or cultivate the land, provided that such activities do not interfere with the mining operations of the mineral right holder.

Exercise of surface rights in a mining lease area

Within 30 days of receiving a mining lease, the leaseholder must, with the approval of the Commission, designate a specific area within the lease as the mining area. This designation must be communicated to the affected persons, and appropriate compensation must be paid.

The boundaries of the mining area may be changed with the approval of the Commission, provided that the affected persons are notified and compensated accordingly.

Once a person is paid compensation, no one may exercise surface rights within the area designated and approved by the Commission as a mining area

A holder of a mining lease cannot restrict lawful occupiers of land outside the designated mining area from exercising their surface rights.

RESETTLEMENT



Surface Rights and Compensation Outside Mining Areas

- If compensation has been paid to affected persons or lawful occupiers outside the mining area but within the lease area, these individuals cannot graze livestock, cultivate the land, or erect structures without the leaseholder's consent.
- If consent is granted, the leaseholder and the lawful occupier must agree that no additional compensation will be paid if mining activities extend to that area.
- If the leaseholder needs to extend mining activities to land outside the designated mining area where compensation has already been paid and the land is under cultivation, they must notify the farmer or lawful occupier.
- This notice should allow sufficient time for the farmer to harvest their crops.
- Alternatively, the leaseholder may choose to compensate the farmer or lawful occupier instead of providing a notice period.

COMPENSATION PRINCIPLES

When assessing the compensation a claimant is entitled to, the following principles should be taken into account:

1. Crops

Loss of Expected Income: This depends on the type of crops and their life expectancy.

- Loss of Earnings or Sustenance: Consider the losses suffered by the farmer, especially under customary tenancy or any other interest the farmer may have in the land.

- Other Disturbances: Any additional disruptions experienced as a result of the mineral right grant.

2. Deprivation of Land Use:

- Disruption of Socio-Economic Activities: Assess the impact on the claimant's social and economic activities.

- Change in Land Use Post-Mining: Consider how the land's use may change after mining operations cease.

- Duration of Mining Lease: The length of time the mining lease is in effect.

- Reduction in Land Value: Evaluate the decrease in the land's value due to limited or altered use.

- Severance: Any separation of one part of the land from other parts.

- Surface Rights or Access: Consider any issues related to surface rights or access to the land.

3. Commercial Structures:

- Relocation Costs: The expense of re-establishing commercial activities in a similar location.

- Loss of Net Income: The loss of income during the transition period.

- Transfer and Reinstallation Costs: Expenses related to moving and reinstalling plant, machinery, or equipment.

4. Immovable Property:

- For loss or damage to immovable property, compensation should be based on the full replacement cost.

5. Annual Price List for Crops

- The Government Agency responsible for land valuation, in collaboration with the Ministry of Agriculture, will publish an annual price list for crops. This list will be used to assess compensation for crop-related claims.



Thank You