

COMPARAÇÃO DAS LEGISLAÇÕES MINERÁRIAS BRASILEIRA E ESTRANGEIRA

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RESUMO

A regulamentação das atividades minerárias é importante para que os recursos minerais do nosso planeta sejam utilizados de maneira consciente, buscando também promover o desenvolvimento econômico das comunidades onde se localizam os empreendimentos minerários. Esse trabalho é uma revisão bibliográfica sobre as legislações minerárias de seis países: Austrália (e seus territórios), Brasil, Canadá, Chile, Estados Unidos e Peru. Tais legislações foram

sistematicamente comparadas em relação ao sistema jurídico aplicado, à extensão da aplicação da legislação de mineração e ao principal documento em atividade. Com base nos resultados desta pesquisa, foi elaborada uma tabela relacionando esses aspectos para cada um dos países estudados. Com isso, foi criada uma referência sobre o assunto, que pode servir de base para trabalhos mais abrangentes.

PALAVRAS-CHAVE: Legislação minerária, sistema jurídico, código de mineração, atos de mineração, lei geral de mineração.

COMPARISON OF BRAZILIAN AND FOREIGN MINING LEGISLATION**ABSTRACT**

The regulation of mining activities is important for the mineral resources of our planet to be used consciously, also seeking to promote the economic development of the communities where mining companies are located. This work is a review article about the mining legislation in six countries: Australia (and its territories), Brazil, Canada, Chile, the United States, and Peru. These laws were

systematically compared regarding the juridical system applied, the extent of the application of mining legislation and the main document in activity. Based on the results of this research, a table was elaborated relating these aspects for each one of the studied countries. Through this, a reference has been created on the subject, which might serve as a basis for further studies.

KEYWORDS: Mining legislation, juridical system, mining code, mining acts, general mining law.

1 INTRODUCTION

The earliest records of mining law or legislation date from the time of the Roman Empire, when the owner of a land also owned everything above or below it, according to the statement “usque sidera et ad inferos” - from the stars to hell. However, in territories conquered by the Romans, non-Roman inhabitants had to apply for permission to exploit mineral resources to the Roman Empire by paying a tenth of the exploited mineral good as tribute. This is the first conception of Mining Law Grant (Feigelson, 2014).

In the Modern Age, during the absolutist governments, mining law was changed in its conceived form, considering the monarchs as owners of all natural resources, and thus the mines also became the property of the monarchs. So, those who wanted to exploit a mine should ask the monarch for authorization and, if the grant was approved, the explorer should pay to the empire the tenth part of the exploited product, the so-called mining perk (Feigelson, 2014). Since then, countries have developed their mining laws accordingly to the political and economic issues they have been through, so they present differences among them.

The purpose of this work is to systematically compare the mining legislation in six countries: Australia (and its territories), Brazil, Canada, Chile, the United States, and Peru, by the consulting of official documents and reports.

2 METHODOLOGY

This work is a review article about the mining legislation in six countries: Australia (and its territories), Brazil, Canada, Chile, the United States, and Peru. National and territorial legislation, documents issued by mining and environmental ministries and secretariats, as well as reports from companies and government bodies from the mentioned countries were consulted in this research.

3 BIBLIOGRAPHIC REVIEW

3.1 LEGISLATION

The differences between the countries laws start with the legal system applied in each country. Brazil, Chile, and Peru use the Civil Law system, which has its origin in Continental Europe, which is a legal system based on an abstract and general command seeking to encompass, in a frame, a diversity of future cases (Campos, 2017).

In Australia and most of Canada and the United States, the Common Law system is used which is originated in the 13th century England and it is based primarily on jurisprudence. In this system, judicial decisions are immediate sources of law, generating binding effects. The rule of law is extracted from a concrete decision and applied through an inductive process to identical cases in the future (Campos, 2017). The Canadian province of Quebec and the US state of Louisiana use similar systems, which fall into a mix between Common and Civil Law (Costonis, 2002).

In Figure 1, the countries that use Civil Law are represented in blue, in red, Common Law, and Quebec and Louisiana are in pink.

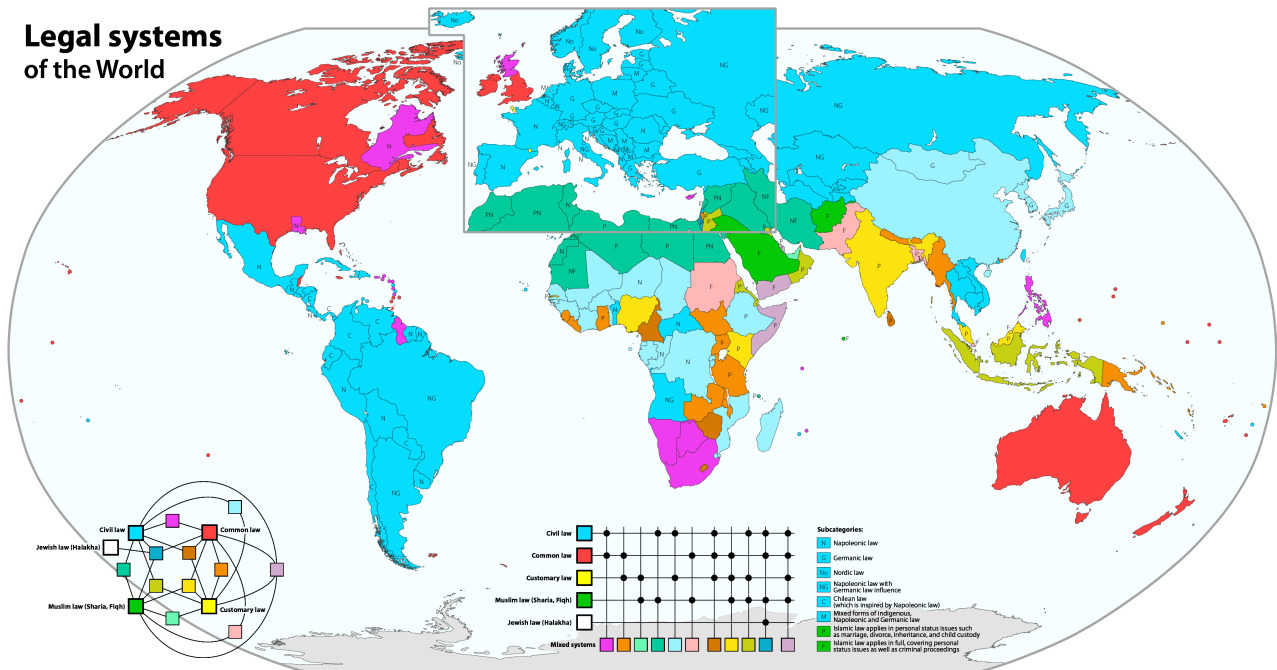


Figure 1. Juridical systems on the World. Source: Wikimedia Commons (2018).

Figure 2 displays the caption of the Figure 1 with zoom.

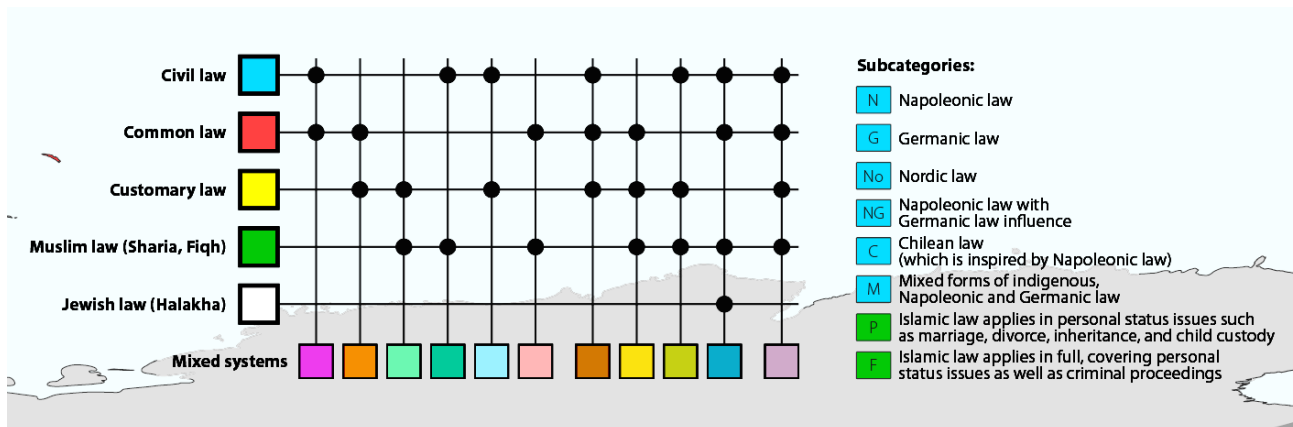


Figure 2. Zoom of Figure 1 caption. Source: Wikimedia Commons (2018).

3.2 MINING LEGISLATION

3.2.1 Brazil

In Brazil, the main document in force is the Decree-Law No. 227, of 1967, which gave new wording to the CM – *Código de Mineração* (Mining Code) of 1940, which defines the rights over deposits and mines; establishes the rules for their use and regulates Federal Government intervention in the mining industry; as well as the supervision of companies that use mineral raw materials (Brasil, 1967).

The agency responsible for promoting the planning and promotion of exploration and exploitation of mineral resources, and controlling and supervising the exercise of mining activities throughout the national territory is the ANM – *Agência Nacional de Mineração* (National Mining Agency), created by the Law No. 13,575, of 2017, which is responsible for replacing the DNPM – *Departamento Nacional de Produção Mineral* (National Department of Mineral Production) (Brasil, 2017). In 2018, the federal government issued the Decree No. 9,406, which, among its provisions, repeals the previous regulatory decree of the CM (Decree No. 62,934 / 1968) (Sion, 2019).

3.2.2 Australia

In Australia, mining is currently governed by the location of the activity. In offshore activities, from three nautical miles (5.55 km) of the coast, the national legislations should be followed. In case of various minerals, the 1994 Offshore Minerals Act should be used, which its most recent compilation has dated of 2016; and, for oil, the National Offshore Petroleum Titles Administrator (Australia, 2018). For land activities or for sea activities located less than three nautical miles from the shore, mining activities must follow the laws of each territory (Australia Minerals, 2019). In Western Australia the official document on mining and related matters is the Mining Act of 1978, in its latest version of February 2017, which legislates on the land and until three nautical miles from the shore (Western Australia, 2017).

In New South Wales, the Mining Act of 1992 regards about mining and it is the tool used to control mining activities by regional authorities. Another document, the 2016 Mining Regulation, is also in activity, in a regulatory action on the 1992 Mining Act, giving new definitions to some terms referred in the 1992 Mining Act, as “mineral”, group of minerals and “landholder” (New South Wales, 2019).

In Queensland, the current document is the Mineral Resources Act of 1989, which aims at assessing, developing and using mineral resources in the best possible way, following solid economic and land use management. Subsequently, the Mineral Resources Regulation 2013 made some changes to the Mineral Resources Act of 1989 (Queensland, 2018). Other energy resources also have their own legislation, drafted by the Department of Natural Resources, Mines and Energy, such as water, for various uses, like domestic, rural and industrial, electricity (Electricity Act of 1994 and Electricity Regulation of 2006) and liquid fuels (Liquid Fuel Supply Act of 1984). Through open consultation based on various Australian energy laws, the Queensland Government intends to modernize territorial energy laws (Queensland, 2018).

In South Australia, the main documents are the Mining Act of 1971 and its amendments made by the Mining Regulations of 2011, which regulate mining activities in the territory, the Offshore Minerals Act of 2000, and the Offshore Minerals Regulation of 2002, responsible for maritime activities up to 3 nautical miles, and also the Opal Mining Act of 1995, which regulates the exploration and extraction of opals and other precious stones (South Australia, 2020a).

In Tasmania, the Mining (Strategic Prospectivity Zones) Act was approved in 1993, which defined the concept of Strategic Prospecting Zone, which is an area with great potential for mineral exploration, and guaranteed access to these areas without any influence on other areas (Tasmania, 1993). In 1995, the Mineral Resources Development Act was approved, which regulates the

possession and activity of mineral extraction in the territory, categorizing minerals and activities into groups, and implying some different characteristics to some of these groups. Some changes were made in 2016 by the Mineral Resources Regulations, such as the redefinition of some terms and reclassification of minerals into groups (Tasmania, 2019).

In the Northern Territory, the current document is the Mineral Titles Regulation of 2011, which re-defined several terms from the Mining Management Act of 2001 (Northern Territory, 2011), which provides mining permits, management of mining sites, protection of the environment and provide economic and social benefits to communities in some areas affected by mining activities (Northern Territory, 2001). The Mineral Titles Act of 2010 is a document that acts along with the Mining Management Act of 2001; it sets forth legislation for all mining processes in the Northern Territory and authorizes other mineral or extractive activities to be conducted without mineral titles (Northern Territory, 2010).

In Victoria, mining legislation is governed by the Mineral Resources Act No. 92 of 1990, which regulates territorial and maritime activities up to 3 nautical miles. The contents of this act were amended by the Mineral Resources (Sustainable Development) (Mineral Industries) Regulations of 2019, a document that prescribes various procedures and definitions, as well as updating various information. These changes are authorized by Article 124 of the Mineral Resources Act No. 92 (Victoria, 2019).

Besides this document, the territory of Victoria also has some specific legislation for some elements, and other energy sources. There is the Geothermal Energy Resources Regulations, 2016, which addresses the legal, technical and environmental issues of geothermal energy use in the territory (Victoria, 2016). For oil in continental areas, the Petroleum Regulations of 2011 are followed (Victoria, 2011). For Alcoa's Anglesea mine, which is no longer operating, the Mines (Aluminum Agreement) Amendment Act - No. 68 of 2011 was applied. Although Victoria has no maritime mineral activity within or beyond the 3 nautical miles limit, the 1963 Underseas Mineral Resources Act addresses this issue (Victoria, 2019).

3.2.3 *Canada*

In Canada, according to the Constitution Act of 1867, federal and provincial governments can regulate mining activity. Exploration and extraction of mineral resources, as well as construction, development, operation and closure of mining sites are the responsibility of the Provinces of Canada, Yukon, and the Northwest Territories. In Nunavut and certain areas of the Northwest Territories, public lands and mineral resources are administered by the Federal Government. The performance of federal law in mining operations is limited to those covered by federal law, such as uranium mining, activities related to Canadian state companies, and also mining in federal and maritime lands (Abdel-Barr; MacMillan, 2018).

The Canadian Constitution gives the federal government of Canada the power to create laws related to trade, shipping, fishing in maritime and continental areas, among other things. On the other hand, provincial governments have the power to create laws related to civil and property rights, natural resources, works and local enterprises, among others. There may be cases in which both federal and provincial laws collide; in this case federal law prevails. In the Northwest Territories, Yukon, and Nunavut, there are no territorial laws, and their legislative powers are listed in specific

federal statutes (the acts of Yukon, the Northwest Territories, and Nunavut). For practical reasons, territorial legislative powers are similar to those of provinces under the Constitution, but statutes should be consulted in each case when necessary (Abdel-Barr; MacMillan, 2018).

3.2.4 Chile

In Chile, the ministry responsible for mining activities is *Ministerio de Minería* (Ministry of Mining), created in 1953, and the current mining legislation is the Mining Code, which was approved by Ley-18248/1983, and regulated by Decree No. 1/1987, which declares the State's sovereignty over mineral resources and mining rights and mining concessions and how to acquire them (Chile, 1987). In addition to the bodies that regulate the mining activity itself, there are others that are responsible for the environmental part of mining, such as *El Ministerio, el Servicio de Evaluación Ambiental y la Superintendencia del Medio Ambiente* (Environment Ministry, the Environmental Assessment Service and the Environment Superintendence), created by Law No. 20417 in 2010 (Chile, 2010). And some important documents also give definitions of environmental terms and measures, such as the Law No. 19300, of 1994 – *Aprueba Ley sobre Bases Generales del Medio Ambiente* (Approves the Law on General Bases of the Environment), Law No. 20551, of 2011 - *Regula el Cierre de Faenas e Instalaciones Mineras* (Regulates the Closure of Mining Works and Facilities), and Law nº 20920, of 2016 – *Establece marco para la gestión de residuos, la responsabilidad extendida del productor y fomento al reciclaje* (Setting of a framework for waste management, extended responsibility for the producer and promotion of recycling) (Chile, 2016).

3.2.5 Peru

In Peru the *Decreto Supremo* No 0.14 (Supreme Decree No. 014) of 1992 is the document that approves the text of the *Ley General de Minería* (General Mining Law), which was reinforced by new regulations, principles and values established in the *Constitution Política del Peru* (Political Constitution of Peru) of 1993, such Reinforcements seek to establish a model of free economic market and ensure equal treatment for domestic and foreign investments and also unrestricted respect for private property (Palomino, 2019).

The agencies responsible for mining and environmental legislation are *MINEM – Ministerio de Energía y Minas del Perú* (Ministry of Energy and Mines of Peru), the main mining regulatory and supervisory body in the country, *MINAM – Ministerio del Ambiente* (Ministry of Environment), responsible for the environmental part, and also *INGEMMET – Instituto Geológico Minero y Metalúrgico* (Geological, Mineral and Metallurgical Institute) (Elias, 2018).

3.2.6 United States of America

In the USA, the GML – General Mining Law, of 1872, is the main law regulating minerals found on federal lands. GML gives USA citizens the opportunity to explore, discover and purchase mineral deposits on federal land. Localizable minerals include non-metallic (asphalt, bog, cement, diamonds, feldspar, granite, marble, salt, slate, umber, uranium, etc.) and metallic minerals including copper, gold, lead, nickel, silver and zinc (Kahalley; Nannini, 2018).

The concept of a “citizen” who may manage mining securities must be a born-American citizen, as well as a foreign-owned company, but organized under USA or some state law, provided

that the shareholders of the company are from countries whose legislations do not deny any right to American citizens (Kahalley, 2018). The 1920 Mineral Leasing Act transferred certain minerals (including oil, natural gas, coal, shale, phosphates and sodium) to a lease-based system under which the federal government retains ownership and the lessee pays a percentage to the government, and is also responsible for mining-related environmental issues (United States of America, 1920).

In 1947, the Materials Act established separate processes for the sale of "federally owned common variety minerals such as sand, stone, gravel, ash and pumice". A series of laws enacted in the 1960s and 1970s (including the Multiple Use Sustained Yield Act, the National Forest Management Act, the National Environmental Policy Act, the National Environmental Policy Act). And the Federal Land Policy Management Act) addressed environmental protection, multiple use, and federal land management in general. As a result, some land was taken out of development. According to the Congressional Research Service, the 1872 law remains unchanged for minerals and land that is still subject to it (Graves, 2014).

4 PRESENTATION AND DISCUSSION OF RESULTS

It can be noted that the three countries that use the Civil Law system have a national document that rules the mining activities, and although the USA uses Common Law, its mining legislation is national. Despite of Australia and Canada have territorial/provincial laws, in some situations and for some minerals national laws are applied.

Table 1 was elaborated to summarize the topics covered in the work for each of the studied countries.

Table 1. Comparison of the Mining Legislation in the countries mentioned in the paper.

Country	Juridical System	Mining Legislation Type	Main Document
Brazil	Civil Law	National	<i>Código de Mineração</i> (Mining Code)
Australia	Common Law	Territorial (for onshore activities)/Nacional (for offshore activities)	Mining Acts/Mining Regulations (onshore areas); Offshore Minerals Act/National Offshore Petroleum Titles Administrator (offshore areas)
Canada	Common Law	National (Uranium)/Provincial (other minerals)	Constitution Act/Provincial Legislations
Chile	Civil Law	National	<i>Código de Minería</i> (Mining Code)
Peru	Civil Law	National	<i>Ley General de Minería</i> (General Mining Law)
United States of America	Common Law	National	General Mining Law/Mineral Leasing Act/Materials Act

5 CONCLUSIONS

The mining legislation among the studied countries is heterogeneous, which makes the comparing them a difficult task. Therefore, international standards bring alignment and should be promoted. The analysis of Table 1 shows that countries can have documents governing mining

activities, nationally or regionally, to allow more efficient control of the regulatory agencies and the consequent application of rules and eventual punishments. Moreover, it is observed that most of the studied countries, important countries in the world scenario, tend to adopt national legislation for mineral resources, even the countries that have administrative subdivisions, such as Brazil and the USA.

It can also be noted that all the countries in the work that use the Civil Law system have a national document that rules the mining activities, and although the USA uses Common Law, its mining legislation is national. Although Australia and Canada have territorial/provincial laws, in some situations and for some elements national laws are applied.

Another important feature to be noted is that the main documents in activity are the first of their kind to be applied in the mentioned countries, having undergone some changes and regulations over time, but without losing the original structure.

In order to expand the comparative studies of international mining legislation, we recommend for further studies to cover more topics, such as mining in indigenous lands and the importance of mining in the countries' economies. It is also suggested to include more countries e.g. one that uses other legal systems, or has a very high or low Human Development Index, compared to those presented in this work.

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