

ELEMENTS FOR A MINES AND MINERALS DEVELOPMENT BILL

CENTRE FOR ENVIRONMENTAL POLICY AND ADVOCACY

JUNE 2014

SUMMARY

The Department of Mines has prepared a draft Mines and Minerals Bill 2013. The draft has made a number of revisions to the current Mines and Minerals Act 1981. We have considered this draft in the light of the draft policy elements that we have prepared separately. This short brief outlines some of the key issues we have highlighted and some recommendations that may be considered to improve the draft bill. Some of the issues we have considered include:

- The title of the Act: We propose that it be called Mines and Minerals Development Bill so that the emphasis is on developing the mining industry and ensure that the provisions reflect that goal;
- The institutional framework: We propose that the Act establishes the Mining Development Commission as a regulatory body for the development of the mining industry. This body will comprise of key professionals from the public sector, the academia, private sector and civil society. The Minister responsible for mining will appoint members of the Commission and will provide policy guidance and political representation on mining issues. We have also proposed that the law should set up a Mining Development Corporation to hold government equity in mining and in general spearhead growth of the mining sector through joint venture and public private partnership investments. The Commissioner for Mines will be Secretary to the Mining Development Commission and provide necessary managerial leadership for the department of mines.
- The licensing framework: We have proposed that licensing be the responsibility of the proposed Mines Development Commission. The Commission will also be responsible for negotiating mining development agreements and stipulate conditions that ensure that Malawi not only attracts foreign investment in mining but that she fully benefits from these. The licenses and agreements have to deal with land acquisition procedures and compensation; corporate social responsibilities through community agreements and social contracts; integrating mining into the local economy; citizen empowerment and government equity or public private partnerships; among others.

The draft Mines and Minerals Bill 2013 repeats many of the more formal provisions in the Mines and Minerals Act 1981. These could be retained subject to revisions to reflect some of the recommendations we have made in model Mines and Minerals Development Policy submitted herewith.

MINES AND MINERALS DEVELOPMENT BILL 2014

PART I PRELIMINARY

1. Long Title

An Act to provide for the search for, mining minerals and development of the mining sector in Malawi and the repeal of the Mines and Minerals Act and for matters incidental and connected therewith.

2. Short Title

Mines and Minerals Development Act 2014

We have proposed change of title of the Act to emphasize the developmental aspect of the mining industry.

3. Definitions

- Define key and special terms

4. Objectives of the Act:

5. Those under the draft Mines and Minerals Bill are adequate

6. Vesting of Minerals

- Mineral resources to vest in the Republic; Government to have power to license minerals exploration, mining and development in accordance with the Act

PART II – ADMINISTRATION

7. Institutional framework

- Establish a Mining Development Commission to be appointed by the Minister; provide the requisite criteria for qualifications of Commissioners;
- The Commission to consist of representatives of key government departments such as mines development, environmental affairs, finance, economic planning, lands, geological survey, civil society representatives, law society, accountancy body, academia;
- Provide power to the Commission to establish sub committees to advise the Commission on specific issues; these may coopt special interest groups where

necessary including local communities around a mining area, which is the subject matter under consideration.

- Provide functions of the Commission including grant, renewal and revocation of licenses; negotiating mining agreements and setting the requisite investment targets and monitoring compliance with applicable policies and legislation.
- Provide usual operational provisions for the Commission.
- Provide for appointment of Commissioner of Mines who shall be secretary for the Commission; to be assisted by such public officers as may be appointed by the Minister responsible for Mines. Provide for functions and powers of the Commissioner, other public officers such as inspectors as the Act may establish.
- Establish a Mining Development Corporation, with a board of directors, chief executive and management; provide functions which are mainly facilitating development of the mining industry, development of public private partnerships in the mining industry including investment decision making;
- Provide a framework for institutional accountability and transparency including mechanisms for access to information. Any restrictions on access to information should be those, which can be acceptable under the Constitution.

PART III- MINERAL RIGHTS

- Provide for definition of mineral rights, various types of mineral rights, how they can be acquired, who may acquire, restrictions on acquisitions and related;
- Provide for registration of applications for mining rights so as to establish priority; that rights to be determined, among other requirements, in relation to the order in which the applications were received.
- Provide for annual expenditure requirements for a mineral right with specific requirements for reporting for monitoring purposes.
- Makes provision requiring compliance with existing policies and legislation; hence grant of a mineral right is no license to do that which is prohibited under any other written law.

PART IV – RECONNAISSANCE LICENCE

- Standard provisions as provided for under the draft Mines and Mineral Bill

PART V – EXCLUSIVE PROSPECTING LICENCE

- Standard provisions as provided for under the draft Mines and Minerals Bill 2013

PART VI- MINING LICENCES

- Standard provisions generally provided for under the draft Mines and Minerals Bill 2013.
- New provisions proposed under the draft Bill including free Government equity in mining operations which may be through a state owned mining enterprise. This can be placed under the proposed Mining Development Commission.
- For large scale mining ventures provide at least 30% equity for local participation under the Public Private Partnership Act;
- Need to provide for requirements in the application for mining license, such as the feasibility study to address land acquisitions and compensation for displacement including packages for relocation; integrating the mining operation into the local economy; as well as value adding prospects.
- Make provision for the negotiation and adoption of mining development agreements; grant power to the Commission to enter into development agreements. Consider whether such agreements will be binding on Malawi irrespective of any existing law changes. To avoid abuse of the powers, the law to provide guidelines on minimum terms and conditions that may be contained in the agreement;
- Provide power to the Commission to facilitate the development of community agreements with mining companies, which will provide among other things a social contract and consent for the company to operate within the community. The agreement would embody the corporate social responsibility framework, which is enforceable. In addition the agreement can provide a percentage of the profits to be invested into the community through a community fund to be administered by the local government.

- Provide for acquisition of land for mining and compensation for any dispossession or loss of use of land; ensure compensation regime provides for market value for the land involved.
- Provide for the participation and role of local government authorities in mining development over and above licensing small-scale mining development ventures.

PART VII- NON-EXCLUSIVE PROSPECTING LICENCES AND MINING CLAIMS

- Standard provisions as provided for under the draft Mines and Minerals Bill 2013

PART VIII-MINERAL PERMITS

- Standard provisions providing for licensing local small-scale mining operations to citizens of Malawi;
- Specifically prohibits mining in protected areas; need for these provisions to cover large-scale mining license applications;
- Need to address land acquisition as well;
- Preferably these general conditions are in one general part that covers all mining operations.

PART IX- RESERVED MINERALS

- Standard provisions dealing with possession of and dealing in precious metals and precious; provided for under the Mines and Minerals Bill

PART X- RESTRICTIONS AND SURFACE RIGHTS

- New provisions for addressing land subject to mining related operations including issues of compensations;
- Need to safeguard interests of customary occupiers of land who may not be able to negotiate adequate compensation;

PART XI- INSPECTIONS

- Makes provision for inspection regime; the provisions are fairly adequate

PART XII- TRANSFERS AND REGISTRATION

- Make provisions for transfer of various rights, permits or licenses issued in accordance with the Act including requisite conditions and approvals.

PART XIII – FINANCIAL PROVISIONS

- Provisions for payment of royalties and taxes, requires editing

PART XIV – ENVIRONMENTAL CONSIDERATIONS

- Fairly adequate provisions for environmental management, requires editing

PART XV – DISPUTES

- Provisions for dispute resolution, requires editing