

STATUS OF POLICY AND LEGAL FRAMEWORK FOR MINING IN MALAWI

POLICY BRIEF

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1.0 INTRODUCTION

Malawi is one among the countries whose economy has for a long time been dependent on agriculture with tobacco as the main export product. However, the anti smoking lobby affected Malawi's economy base. In 2004, government policy instruments focused on economic diversification and mining was identified as a potential sector for economic growth. Consequently, the country has of recent observed the entry of major international mining players such as Paladin Africa; Globe Metals and Mining Limited; Mkango Resources, Malcoal Mining Limited and Spring stone. Despite the growth of the mining industry, Malawi is yet to finalize the revision of the regulatory framework that guides operations in the sector. With unrevised laws for governing at hand, the sector would be exposed to inefficiencies in its management of mineral resources.

A robust legal and policy framework on mining is therefore needed to support effective development, implementation and monitoring of policies and strategies to manage the economic, social, environmental and other costs and benefits related to mining. This policy brief which CEPA has developed with support from the Tilitonse Fund outlines key policy considerations towards a more responsive mining governance framework. It provides a summarized analysis of the policy and legal framework governing the mining industry in Malawi. It also presents some concrete recommendations for a robust policy, legal framework that will ensure that the mining industry promotes sustainable development and is governed in a transparent, accountable and inclusive manner.

2.0 GAPS IN THE EXISTING POLICY AND LEGAL FRAMEWORK

The Malawi Growth and Development Strategy II notes that the contribution of the mining sector to the country's GDP grew from 3% in 2005 to 10% in 2009 as a result of the opening of the Kayelekera Uranium Mine. It is however recognized that the sector faces some serious challenges for it to reach its full potential and account for 20% of GDP. The sectors regulatory framework is challenged as it has inadequate institutional capacity and lacks an independent regulatory authority for mining and also low investment in mining. This could be a constraint in realizing the full potential that this mineral sector could bring.

2.1 Mining governance

The Mines and Minerals Policy that was developed in 2013, does not adequately address governance issues. This gap needs to be addressed since the mining policy is the key driver of mining development. Mining governance needs to be informed by certain generic principles. It must articulate issues of capacity, transparency and accountability of its institutions. The Mines and Minerals Policy does provide for mining governance but has no statement of principles nor does it provide mechanisms for enhancing capacity, accountability or transparency in decision-making. Malawi is implementing a decentralized governance framework which needs to be reflected in the mining sector also. The Mines and Minerals Policy needs to articulate the levels of decision making for resource utilization and management.

2.2 Involvement of non-state actors

The Mines and Minerals Policy 2013 and Mines and Mineral Act (MMA) 1981 do not provide mechanisms for the involvement of non-state actors including local communities in decision making in the sector. The Economic Recovery Plan (ERP) comes close to promoting public participation by advocating for transparency in mining contracts as well as close monitoring of the mining contracts. There is need to reflect the ERP provisions which call for transparency in negotiation of mining contracts in the Mines and Minerals Policy.

2.3 Corporate social responsibility

The need for a mining company to consider the social welfare of surrounding communities is important in sustainable mining. Neither the Mines and Minerals Policy nor MMA has provisions to facilitate corporate social responsibility. There are also no provisions for resettlement plans for local communities displaced by mining operations. It is important for the MMA to establish principles and procedures that can be incorporated in development or concession agreements between Government and mining companies.

2.4 Mining development, value addition and taxation

Though partially addressed in the Mines and Minerals policy 2013, The Mines and Minerals Act 1981 is silent with regard to mining development, value addition and taxation issues that are peculiar to mining. The Mines and Minerals Policy lacks specific directions or guidelines regarding appropriate taxation regimes, which are sensitive to price movements and can stimulate investment and national development, local capacity building and entrepreneurship as well as research and development. It is important that both the Mines and Minerals Policy and the Act specifically mandate institutions that can deliver these and provide for coordination between training and research institutions on one hand and the mining institution on the other hand. In particular, it is important to align these mandates with the MGDS and the Malawi Constitution and ensure that the visions of the instruments are reflected in the new policy and legislation.

2.5 Artisanal and small-scale mining

The Mines and Minerals Policy provides for artisanal and small-scale mining (ASM) and its significance to economic growth and poverty reduction. The Policy, however, fails to outline the legal financial, commercial technological and human resources challenges faced by ASMs. There is a need for concrete strategies for dealing with these challenges against the backdrop of policy requirements in the MGDS.

3.0 NEED FOR NEW LAW

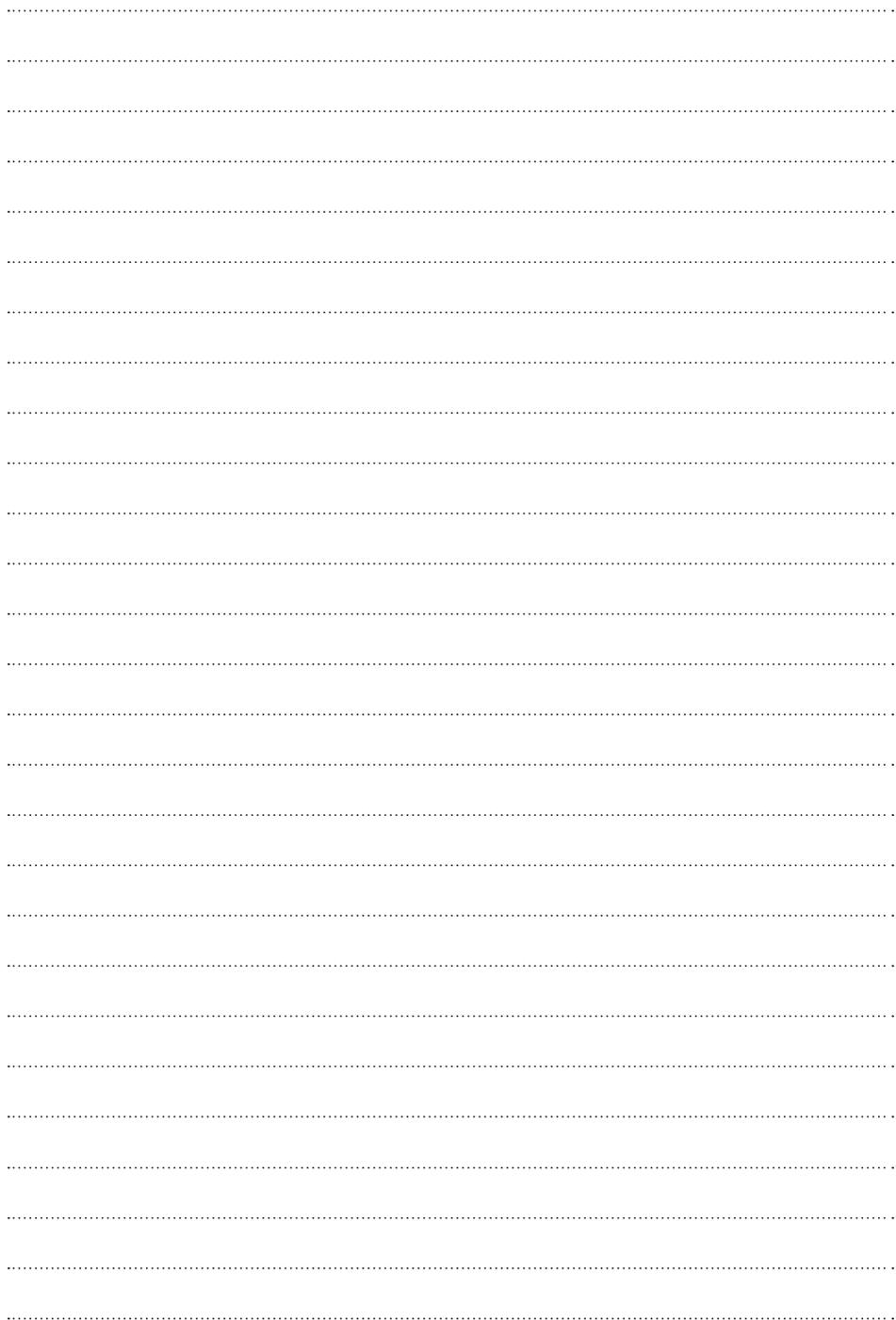
The mining sector has not kept pace with the rapid modernization of mining codes as have other countries in Africa. The mining legislation therefore needs to be positioned to improve efficiency, transparency and sustainability of the mining sector in tandem with policy reform. The Mines and Mineral Act should in this regard be informed by the principles of stability, consistency, stakeholder dialogue, management of expectations, social obligations, tradability of mineral rights and integrated land use planning and development plans. The impacts of mining on the environment are significant in which case sustainable development principles should provide the necessary guidance.

There is a need to address the following elements in the legal and legislative framework for mining in Malawi to enable the sector to contribute significantly to sustainable social and economic development;

- 3.1 Land Acquisition for Mining
- 3.2 Mineral Beneficiation
- 3.3 Mineral Marketing
- 3.4 Safety, health and social welfare
- 3.5 Environmental Management
- 3.6 Security and continuity of tenure
- 3.7 Artisanal and Small-Scale Mining (ASM)
- 3.8 Research and Development (R&D)
- 3.9 Integrating the mining sector in the domestic economy
- 3.10 Citizen Empowerment in the Mining Sector
- 3.11 Human Resources Development in the Mining Sector
- 3.12 Women and Mining
- 3.13 Mining Fiscal Environment
- 3.14 National and International tax issues
- 3.15 Local Government/Regional tax issues

4.0 CONCLUSION

As Malawi seeks to diversify its economy in accordance with the Malawi Growth and Development Strategy (MGDS) 2011-2016, mining is an important sector to contribute to the process. The Mines and Minerals Policy 2013 is the first stand-alone policy document adopted by Government; the Mines and minerals Act 1981, however, remains the key piece of legislation regulating mining operations. While the Mines and Minerals Policy 2013 is very recent, a number of policy issues need to be addressed or elaborated further.





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