



SUMMARY OF KEY ISSUES ON MINING

Introduction

This brief write up puts forward three potential areas for possible consideration for Tilitonse's thematic call for proposals. These are drawn from the mining PEA study report that identified a wide range of potential areas for consideration. The proposed areas are as follows:

- 1) policy, institutional and legal framework reforms of the mining sector;
- 2) capacity building for collective action of civil society organizations to enhance their engagement with the mining sector; and
- 3) development a framework for stakeholder engagement at community level.

The rest of this write up therefore justifies the importance of these areas and spells out possible project activities that can be carried out in order to contribute to efforts to develop a transparent, accountable and responsive mining regime that benefits the people of Malawi as a collective and not merely specific segments of society.

Policy, institutional and legal framework reforms for the mining sector

The PEA revealed that the policy, institutional and legal framework for the mining sector is in a state of flux. This is not something new. It is an issue that is well recognized. The Mines and Minerals Act 1981 and the Petroleum (Explorations and Production) Act 1983 are outdated. The World Bank (2009) Mineral Sector Review identified several bottlenecks that are holding progress in the mining sector with particular reference to the Mines and Minerals Act 1981. Some of these include the following:

- (a) the Act vests exclusive ownership of the mineral resources in the people of Malawi through the President;
- (b) the Act gives too much discretionary powers to the relevant Minister to decide on critical issues without due regard to the role of technical advice;
- (c) the Act lacks a model mineral agreement which implies that contracts are decided on a case by case basis which undercuts the potential of developing a shared vision in the mining sector;
- (d) the Act does not outline how mining ventures would address the needs of vulnerable segments of society as well as promoting value addition and community development;

- (e) the Act is so outdated that it is out of tune with new pieces of legislation that have a direct bearing on the mining sector, for instance, the Environmental Management Act 1996, which makes a transparent and accountable Environmental Impact Assessment (EIA) a mandatory requirement before any mining activity is commissioned; and
- (f) the Act accords mining companies exclusive rights without taking into account the livelihoods of the people displaced.

The draft mining policy exists but it is yet to be formally adopted. It awaits Cabinet approval pending the final phase of consultation. In addition to the Mines and Minerals Act 1981, the Petroleum (Exploration and Production) Act requires urgent revision although this would be dependent on the existence of an enabling policy framework. This is yet to be developed. Strikingly, although the policy, institutional and legal framework of the mining sector is clearly in a state of flux, mining activities have greatly accelerated in recent years principally as an integral part of the frantic efforts to find an alternative to the fledging tobacco industry as the leading foreign exchange earner. This is a huge paradox since in its current state; the mining sector is very unlikely to the anticipated strategic benefits.

With the sector's regulatory framework in a state of flux, it means it is difficult to guarantee unity of purpose and direction including ensuring transparency, accountability, consistency, predictability and fairness. It renders the entire framework susceptible to capture by vested interests, fraud and corruption which undermines its overall integrity. The fact that although these challenges are widely recognized but efforts to reform the policy, institutional and legal framework proceeds at a snail's pace suggests that the sector might as well already be captured by vested interests and is a hotspot for fraud and corrupt activities. This makes a strong case for a project that would advocate for policy, institutional and legal reform of the mining sector. The overall objective of the project would be to develop a viable and enforceable policy, institutional and legal framework for the mining sector for it to deliver on the intended benefits.

The question is how can such a broad project proposal be operationalized in order to achieve the intended objective? The point of departure is to think about the nature of a possible coalition that can deliver on a project of this magnitude. The main challenge is that local expertise on mining issues is quite limited. The situation is even more pronounced in the civil society. The main implication of this is that any coalition bidding for this project would have necessarily to include academics. The ultimate goal would be to facilitate the development of a coherent and comprehensive policy, institutional and legal framework for the mining sector in the country.

Some of the major activities under this project would include the following:

- Comprehensive mapping of the key actors in the mining sector including their underlying interests vis a vis various aspects of the mining regime.
- Comprehensive audit of efforts and initiatives to reform the policy, institutional and legal framework of the mining sector in order to understand what has been done and what needs to be done including the opportunities for change and constraints to action.
- Develop an engagement strategy with different stakeholders in order to determine what is possible and what is not possible.

- Building on insights from preceding activity, develop a reform programme working with various stakeholders to implement the desired changes to the policy, institutional and legal framework including capacity building for the relevant stakeholders.
- Develop and advocacy programme to push for the adoption and implementation of the reforms to the policy, institutional and legal framework for the mining sector in Malawi.

Capacity building for collective action of CSOs to enhance their engagement with the mining sector

The PEA established the desire among civil society organizations to engage government and other related stakeholders with a view to establishing a mining regime that is transparent, accountable and responsive to the needs of Malawians. They either work individually or collectively as networks. However, instead of working for a common goal, civil society organizations or networks tend to be competitive to the extent of working entirely at cross purposes in some cases. This undermines unity of purpose and direction in their bid to stimulate and sustain positive changes in the sector. Yet the overall goal of any development thrives on collective action. Thus the absence of development, however, defined can be explained by the failure of interest groups to cooperate around common goals.

This project proposal is thus motivated by the fact that development depends on collective action problems, which require different interest groups to find ways of cooperating to produce positive sum outcomes, and deliver broad public benefits. The achievement of this project goal would require a coalition of actors committed to developing capacity of civil society organizations in the following areas:

- Development of a national CSO strategy in the extractive industries.
- Conducting human rights and gender impact assessments of mining agreements and projects.
- Reviewing environmental impact assessment reports to ensure that they meet the basic minimum standards.
- Conducting independent environmental audits.
- Monitoring the implementation of mining agreements and activities.
- Conducting advocacy on various relevant aspects of the mining sector that have a bearing on the overall integrity of the mining regime.

Development of a framework of stakeholder engagement at community level in the mining sector

The weaknesses of the overall policy, institutional and legal framework for the mining sector are further manifested in the unending conflicts at community level where mining activities actually take place. The PEA established there are several hotspots of conflict between mining companies and communities triggered by misunderstandings of various sorts arising out of lack of clarity of simple but very vital procedures. The district councils often find it difficult to mediate these conflicts because they are not privy to the negotiations between the central government and the investors. They are often drawn into the fray when misunderstandings erupt which makes it difficult for the councils to intervene meaningfully.

Communities and investors in the mining sector are inevitable because the procedures of engaging communities are ad hoc, not transparent and accountable. The creation of a predictable framework of

engagement at community level is imperative because mining involves expropriation of massive tracts of land from people which is the main productive asset. This is a cause of concern because the average land per capita has fallen to as low as 0.4 ha. The framework would not only help address the land question in a progressive manner but also create linkages with district level structures to ensure transparency and accountability through a well-defined monitoring role as well as arbitration of disputes that may erupt from time to time.

Some of the activities under this project would include the following:

- A comprehensive audit and documentation of experiences at community and district level to fully understand the nature of the problem.
- Learning from those countries within the region that reportedly have best practices in as far as the engagement between community level structures and investors in the mining sector.
- Development of a comprehensive model framework for engagement between local level structures and mining investors which could then be adaptable to the specificities of particular context and nature of investment.
- Development and implementation of a focused capacity building programme for key stakeholders for the model framework to work. This would, inter alia, include community exchange visits. The idea would be to empower community level structures to engage meaningfully not only with the mining investors but also government officials.
- Development of an advocacy programme that would popularize the model framework of engagement both in mining and non-mining areas.