

MINING & TRADE *Review*

ISSUE NO. 37

May 2016

The Voice of the Business Sector in Malawi

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Government slammed!

INSIDE

- Policies threatening survival of local cement industry
- Coal industry dying on its watch

By Marcel Chimwala

Local industry captains have taken a swipe at the Malawi government for failing to protect the country's strategically important cement and coal industries whose survival is hanging on a thread due to stiff competition they are facing from dumped products from neighbouring countries.

Experts interviewed by *Mining & Trade Review* expressed concern that while neighbouring countries such as Tanzania are seriously protecting their local industries, Malawi is proving a soft spot in the region as the government has issued licences to importers of cement allowing massive imports into the country, which are posing huge competition to the local infant industry.

Likewise, the coal industry in the country is collapsing with companies such as Intra Energy Corporation and Eland Coal Mines suspending their coal mining operations in the northern region due to market challenges following an influx of cheap coal from Mozambique.

Former Principal Secretary for Trade and Industry who also served as Minister of Natural Resources, Energy and Environment in the late Bingu Wa Mutharika's administration, Grain Malunga, said cement and coal industries are strategic industries which need protection from government since they are big employers and are crucial for economic development of any poor country.

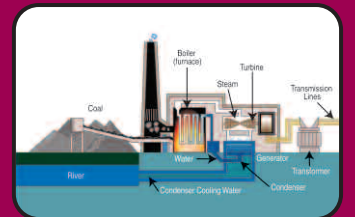
"The imported cement impacts negatively on Malawi's infant cement industry. Any country that wishes to grow economically protects its



Mwanamveka assured of govt protection when he toured Shayona Cement Corporation factory

infant industry until the industry has matured," said Malunga, who is also a founder and executive member of the Malawi Chamber of Mines and Energy.

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Aussie firm pens deal with Escom for 120MW power plant

By Marcel Chimwala

ASX-listed Intra Energy Corporation, which is developing the 120MW Pamodzi Coal-fired Power Plant in Malawi's lakeshore district of Salima, has announced the signing of a term sheet relating to the power purchase agreement with the Electricity Supply Corporation of Malawi (Escom).

CEO for Intra Energy Corporation, Tam Brereton, says in a press statement that the company has signed the term sheet agreement with the state-owned power utility following lengthy discussions with the Malawi Government.

Brereton says the company is intending to produce electricity at the plant using coal sourced from its Tancoal Mine in Tanzania and not Malawi's Malcoal mine as it was previously planned as the company is currently pondering over the sale of Malcoal mine and the rest of its Malawi subsidiaries.

"Intra Energy Corporation continues discussions in relation to the sale of its Malawian subsidiaries, Malcoal Mining Limited, Pamodzi Power Limited and Intra Energy Trading Limited with a view to the long-term supply of coal to the 120 MW Pamodzi Power Station from its Tancoal mine," says Brereton.

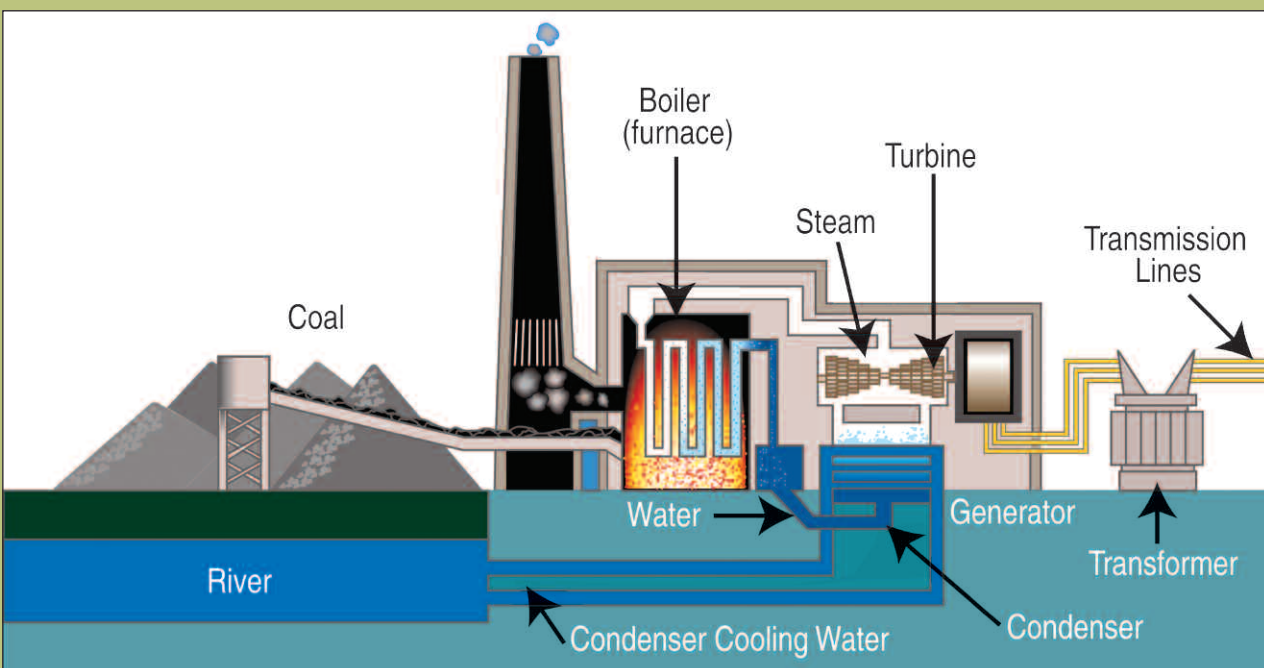
Intra Energy earlier announced that it had suspended mining operations at its Malcoal Mine in the northern region of the country due to low sales as most of Malawi's coal users opt to import coal from Mozambique.

"Sales in Malawi remained low for the quarter as imports increased from Mozambique coal producers," Brereton said in the company's activities report for the quarter ending December 2015.

Malawi is in the process of opening up its power market currently dominated by Escom to independent power producers (IPPs) in order to solve the current power crisis which has emanated from low generation capacity and insecurity of power due to overreliance on hydro-power plants located on the Shire River.



Operational coal power plant: Will Malawi have similar infrastructure?



An illustrative diagram of a coal power plant

In total, the Malawi Government has signed term sheet agreements with 27 IPPs which will generate power from coal, liquid fuels, biomass, solar, wind and hydro-sources.

The firms include a French company, CDEN, which has planned to generate 100MW using solar and large-scale batteries at a base in the northern district of Mzimba.

CDEN has similar projects in Europe and other African countries such as Rwanda, Chad, Tanzania, Uganda, Guinea and Democratic of Congo.

CEO for CDEN, Hugues Antoine-Guineau, says the company has set aside US\$200-million to roll out the project starting with feasibility studies.

The Malawi Government also awarded another potential project, the 41MW Bongozi hydropower project on Bua River to an IPP, Su-KAM Energy Limited.

Su-Kam signed a memorandum of understanding with the government on June 24, 2011 through a locally registered special purpose vehicle, Hydro Electric Power Limited (HE Power Ltd).

The investor conducted both feasibility studies and environmental and social impact assessment (ESIA) which

were concluded in 2013.

"The investor is now looking for financing for the project and it is expected that once financing is finalized, HE Power will develop the 41 MW - Bongozi Hydropower plant and connect it to the ESCOM grid for supply of power in the country," says Spokesperson for Energy Affairs at Malawi's Ministry of Natural Resources, Energy and Mining, Joseph Kalowekamo.

Currently, low water levels on the Shire River due to insufficient rains experienced over the years has resulted in insufficient power generation forcing Escom to embark on prolonged load shedding programmes, which are affecting operations of the country's industries which mostly rely on power from the national grid.

Malawi generates 351MW of electricity against a growing demand of 400MW and besides climate change problems such as the low water levels, heavy siltation in the river, which produces up to 98% of electricity, also affects the operations of the machines creating insecurity of power which has prompted the country to explore alternative power sources ■



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JICA visits Mining & Trade Review offices

...hails the "great work" of the publication



Kubo: "The publication provides very important information"

By Chiku Jere

Japanese International Corporation Agency (JICA) Assistant Resident Representative Suguru Kubo paid a surprise visit to *Mining & Trade Review's* Lilongwe offices where, he appreciated the role the publication is playing in facilitating free flow of information between the mining sector and general public.

"We really appreciate the work you have done in covering the JICA funded Malawi Mining Sector Capacity Building Project; as well, we applaud the great endeavour you invest in providing important information about mining and other related activities in Malawi. We would like to encourage you to continue with your good work, because it is really helpful," said Kubo.

JICA recently concluded a two-year (2014 to 2016) Malawi's mining sector capacity building project, whose focus areas included mineral exploration, mineral beneficiation, capacity building and short term/long term training and *Mining & Trade Review* provided extensive coverage of the project from the onset.

In this regard, Kubo purchased several copies of the

publication which he said he will be sending to Tokyo, for his colleagues in Japan to appreciate the vital information that comes out monthly in the news magazine.

He said as JICA they cherish the relationship Japan has with Malawi and that they are proud to contribute to the gradual development of the mining sector, which they believe, will positively contribute to the growth of the country's economy.

In his remarks, *Mining & Trade Review* Publishing Editor Marcel Chimwala thanked the Japanese envoy for the visit, which he described as a humble gesture.

He also said the visit in itself denotes some quite encouraging recognition that the publication is increasingly getting from the diplomatic community.

"We do not take your visit for granted and we render ourselves available to work with your organisation in any other project that may need our services," said the publisher.

JICA has been working with Malawi's Geological Survey Department on a number of mining projects since 1980s, providing volunteer experts, who come and share experience that matters in the mining industry ■

Government's lip-services on local industry protection slammed

...from front page

He also said it is rare for industrial minerals such as limestone to benefit from Foreign Direct Investment and therefore it is important to promote local investors to develop these minerals for import substitution, and employment creation.

Cement Products Limited Managing Director, Aslam Gaffar, said the massive importation of cement is a threat to the existence of the local industry citing that the situation would force his company to consider suspending its Mangochi factory expansion plan, which is set to create more jobs for Malawians.

"If the government does not do enough to check the massive cement imports, we will consider suspending the second phase of our factory expansion which, if completed, will double our production capacity to 20,000 bags per day," said Gaffar.

Minister of Industry and Trade Joseph Mwanamveka, however, said the government is permitting cement imports to encourage competition and protect consumers from overpricing by the local producers.

He said the country cannot ban imports because it is a signatory of protocols for the World Trade Organisation, Common Market for Eastern and Southern Africa and Southern African Development Community which require the country to open up to trade with other countries.

The Minister also said the issuance of cement imports is not in contradiction with the 'Buy Malawi Campaign' as it gives freedom to Malawians to choose whether to buy Malawian made cement or the imported one.

Malunga, nonetheless, maintained that it is inconceivable to argue that imported cement will bring competition to local cement pricing when these local companies are struggling to access investment capital and favourable taxation.

He said: "The best that this imported cement can do is to slow growth of the local industry and effect loss of jobs. Government should put in place investment incentives to promote the growth of the industry and ensure that those investment incentives promote competitive pricing of local cement."

"Likewise, the coal industry has seen restriction of export of coal to Tanzania because Tanzania is protecting its coal industry. It is unfortunate that Malawi is happy to kill its coal production by putting favourable conditions to importation of coal from Mozambique. Coal is a strategic commodity which requires serious support to its development for energy generation and steam generation for agro-processing and manufacturing."

He said the prevailing situation is a clear testimony that the country is not prudent enough to utilise its foreign exchange wisely as all these imports we see locally have created jobs for the exporting countries.

Malunga said the government needs to engage industrial economists and strategists to come up with an implementable industrial policy related with manufacturing for import substitution, manufacturing for export and value addition of its natural resources for greater economic benefits.

On the coal mining front, Managing Director for Rukuru Mining Bruno Kloser asked the government to regulate the coal industry as a way of protecting local investment.

"It may be difficult for Malawi to ban coal imports and the only way to nurture the coal mining industry in Malawi is to regulate the industry and ensure that there is no excessive importation. We believe that quality coal like that from our deposit will find a market in this case," said Kloser, whose company is prospecting for coal in northern Malawi.

Meanwhile, Eland Coal Mine has suspended its operations while Intra

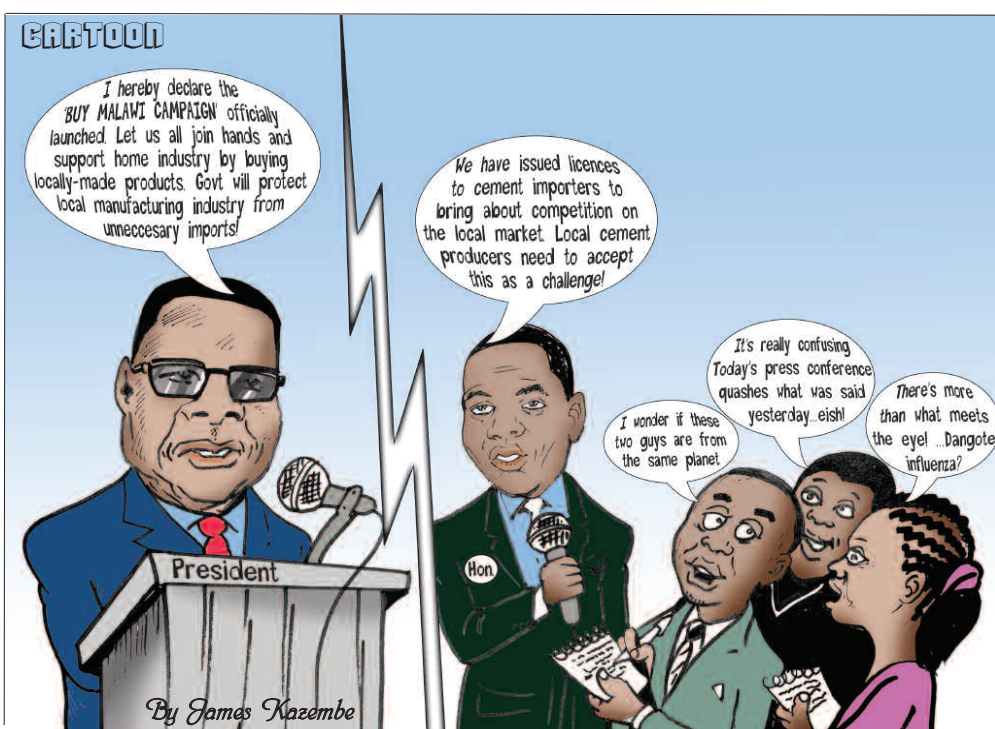
Energy has announced that it is pondering over the sale of its Nkhachira Coal Mine in Malawi and other local operations due to market challenges as a result of massive importation of coal from Mozambique by Malawian coal consumers.

Intra Energy stopped exporting Malawi coal to Tanzania due to restrictions by the Tanzanian government on coal imports in order to protect that country's coal industry ■

(Read our article on Page 2 for details on Intra Energy Malawi coal project)



Kloser: Local investment needs protection





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EDITORIAL

Malawi needs sound policies to nurture local industries



BY MARCEL CHIMWALA,
PUBLISHING EDITOR

It is sad that the local cement industry is under threat from competition it is facing from cement being imported from neighbouring countries.

Likewise, the coal industry which is equally a large employer is collapsing due to similar reasons. Due to laxity of government policies, many coal consumers are opting to import coal from Mozambique leaving out stockpiles of the locally mined coal.

Sad still, government has added salt to the wound on the cement front by issuing licences to cement importers to permit them to haul into the country up to 25% of the total cement requirements.

Minister of Trade and industry Joseph Mwanamveka and the Ministry's spokesperson Wiskes Mkombezi say granting of the licences is a means of regulating the cement industry to encourage competition and ensure fair prices to consumers.

While competition is very important in a free market economy, we believe Malawi has not reached the stage where by its local industries can compete with imported goods on equal footing.

Just to agree with what an Executive Member of the Malawi Chamber of Mines and Energy, Grain Malunga is saying, Malawi's cement industry is still in its infancy.

Local companies such as Cement Products Limited and Shayona Cement Corporation are struggling to access investment capital and attract favourable taxation from government in order to expand their investments and it is very unfair for the government to expose them to full-throttle competition with regional established companies that can deliberately lower prices to kill the local cement industry.

The government should also consider that local cement companies including La Farge, Shayona and Cement Products employ a lot of Malawians at their factories and limestone prospecting and mining investments.

It would, therefore, significantly add to Malawi's burgeoning unemployment rate if these companies downsize their workforce due to market challenges brought by the imported cement.

Mwanamveka says that Malawi cannot ban cement imports because it is a signatory of a number of trade pacts including the Common Market for Eastern and Southern Africa, World Trade Organisation and Southern Africa Development Community.

We find his statement unfortunate because Malawi is a sovereign state so it is incumbent for its government to prioritise local benefits before international obligations.

In this vein, we call upon the government to seriously regulate the cement industry to ensure that imports are reduced and create a more conducive environment for local investment.

Malawi has reserves of limestone, which is the main ingredient for cement production, in a number of areas in the country notably Bwanje Valley in Ntcheu, Chenkumbi in Balaka, Wimbe in Kasungu and Changalume in Zomba. In the coal front, Malawi has a number of coal fields in the north and lower Shire Valley area.

Surely, sustainable utilization of these resources will enable the country save foreign exchange through import substitution and it is absurd for the government to pursue policies that promote imports other than utilization of these local resources as no country in the world has developed because of imports.

Malawians will recall that during Kamuzu Banda's reign, Malawi seriously nurtured its industries and it was during that time when unemployment was low with big employers such as Portland Cement and David Whitehead having their mark.

It is, therefore, high time the government revisited its policy as far as regulating the industry is concerned and save the collapsing coal industry and the crying cement industry. Controlling the influx of imports will also help the country save foreign exchange and avoid the scenarios of recent times when Malawians had to pass the night queuing for fuel due to low supply emanating from forex shortages ■

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EYE ON
MALAWI'S

EITI
Extractive
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By
Rachel Etter-Phoya



Examining Malawi's journey towards EITI compliance

MWEITI and the Africa Mining Vision

In February 2009, Malawi's Head of State, the late Bingu wa Mutharika, endorsed the African Union Africa Mining Vision (AMV). This watershed document outlines how the continent can best use its non-renewable natural resources for sustainable development. In its own words, the Africa Mining Vision seeks "transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". Proponents argue that the AMV, developed during the commodity price boom, is set apart from other governance initiatives in the extractive sector: it is Africa's home-grown initiative that emphasises how resources can be harnessed for social and economic transformation with a shift away from Africa being solely an exporter of raw materials. I will look at the AMV briefly in this column and how the EITI can complement the domestication of the AMV in Malawi.

Seven years after the AMV was endorsed, most countries are yet to domesticate the vision. The African Union set up the African Minerals Development Centre in 2013 to provide technical support and spur on countries to domesticate the AMV in the form of a 'Country Mining Vision'. Over the last year, the AMDC has reached out to the Government of Malawi and is expected to support Malawi in developing its own Country Mining Vision as well as in building the capacity for negotiation of contracts in the extractive industries. This is in line with President Arthur Peter Mutharika's commitment, made when he took office in 2014, to establish a mining contract negotiation unit. Over the last couple of months, a number from Malawian civil society and one traditional leader have also participated in continental discussions on developing a multi-stakeholder monitoring framework for measuring the realisation of countries' progress towards the AMV.

The AMV includes a number of pillars and approaches that countries should take to ensure mining is a means to development and not an end in itself. Like the EITI, it focusses on fiscal regime and revenue management yet with emphasis on how revenues are used. It also highlights the following areas as important for realising the developmental benefits of minerals: geological and mineral information systems; artisanal and small-scale mining; the legal and institutional environment; linkages, investment and diversification; community, environmental and social issues; and institutional capacity. Countries are expected to develop their own Country Mining Vision that addresses all these areas and then to monitor progress towards realising the vision.

The EITI provides a useful tool to ensure that revenue is managed well by reconciling payments made by companies to government with government receipts. The initiative is implemented by a multi-stakeholder group and should increase transparency and access to information on the extractives sector that is not always readily available. In Malawi, the initial Scoping Study, which I wrote about last month, has already begun to reveal areas of needed improvement in the way revenue is being managed and recorded by the respective Government institutions. When the first complete report is out in one year, it should make useful recommendations to Government on how to improve revenue management and enforcement; it does not yet go so far as tracking how revenue is utilised.

Managing revenues is only part of the conundrum, where pervasive poverty exists despite mineral wealth, which the AMV seeks to address. According to the AMV online portal "it's not just a question of improving mining regimes by making sure that tax revenues from mining are optimized and that the income is well spent - although that is clearly important. Rather it's a question of integrating mining much better into development policies at local, national and regional levels".

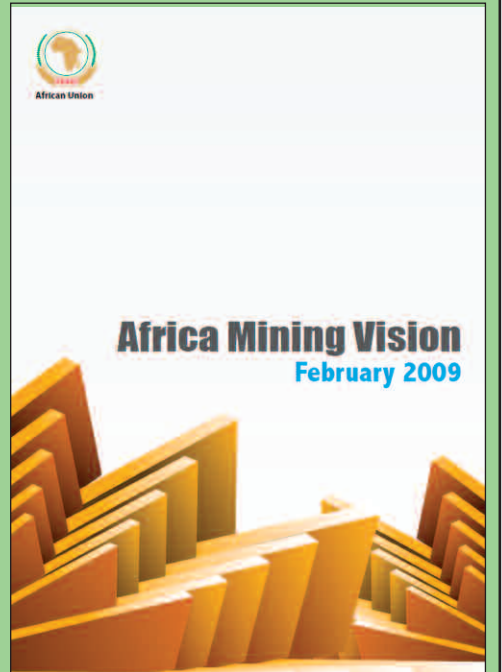
Whether or not this AMV can be realised is very much up to individual governments and evidently must go beyond creating more visionary documents that gather dust. However, the EITI, which is already being implemented, can be used as a resource for providing recommendations and information on revenue management which is at least part of why Heads of State endorsed the Vision in the first place ■

For more information:

Africa Mining Vision - www.africaminingvision.org

African Minerals Development Centre - www.uneca.org/amdc

Country Mining Vision Guidebook - http://www.uneca.org/sites/default/files/PublicationFiles/country_mining_vision_guidebook.pdf



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COMMUNIQUE ON THE OUTCOME FROM THE 2ND ALTERNATIVE MINING INDABA

Following the 2nd Alternative Mining Indaba themed “*Making Laws Work For the People: Effective Legal and Regulatory Frameworks are Indispensable*” held on February 2nd – 3rd, 2016 under the umbrella body of Natural Resources Justice Network (NRJN) with support from **Norwegian Church Aid, ActionAid Malawi and Oxfam**, together as the Natural Resources Justice Network we have drawn together in this Communique the most important issues that came out during this Indaba.

Community members, civil society organizations (CSOs), government officials,

between the government and investors, and the awarding of contracts to potential investors. This has resulted in the community and citizens losing faith in the government’s management of the mining sector and the demand from community members for more inclusive and participatory processes.

It is against this background that civil society and faith-based organizations have launched an advocacy campaign aimed at protecting the human rights of the communities where mining is taking place and at promoting accountability and transparency in the mining sector to ensure that the public benefits from mining in Malawi.



Group photo of participants at the 2nd Alternative Mining Indaba 2016 taken at Bingu International Conference Centre in Lilongwe



Norwegian Church Aid Country Representative Stain Villumstad having a chat with PS for Ministry of Natural Resources, Energy and Mining Keister Kaphaizi

resources benefit the people and to strengthen relationships between various players in the mining sector while facilitating information sharing to reach the nation on pressing issues facing the management of our natural resources.

Malawi’s mining sector an overview

Malawi’s mining sector though considered new dates back to the late 1980s when mining activities took place in few areas around the country. Had the industry been well regulated with legal frameworks promoting transparency and accountability, Malawi would by now have realized greater economic growth and community empowerment from this sector. Unfortunately to date there is a lot of secrecy around the handling of mining agreements

academia, faith based organizations, faith leaders, and traditional leaders gathered in Lilongwe to discuss and share experiences on how mining, oil and gas can drive Malawi’s socio-economic development and what laws and regulations exist or are needed to make this a reality. The mining indaba was aimed at providing a platform for communities and organizations that represent them to take a stand on ensuring Malawi’s mineral resources

2ndALTERNATIVE MININGINDABA 2016 RESOLUTIONS

The Mines and Minerals Bill

Mining activity in Malawi is guided primarily by the Mines and Minerals Act of 1981, the Petroleum (Exploration and Production) Act of 1983, the Explosives Act of 1968, and the Environmental Management Act of 1996.

Realizing that our Mines and Minerals Act is outdated and does not stand the current context where mining has evolved, civil society organizations launched a campaign to ask government to revise the Mines and Minerals Act. The government of Malawi deserves credit for taking steps towards reviewing the Act and presenting a revised draft bill. However, the Alternative Mining Indaba observed that involvement of communities in areas where there is mineral exploration or mining activities is very significant. The Indaba agreed that the Mines and Minerals Bill needs to be strengthened to include community needs. The Bill should respond to community demands by including clauses that are honoring and recognizing the need for communities to negotiate development contracts and establishment of mines and minerals boards as mediation mechanisms with sufficient mandates and powers to represent community needs and concerns.



Traditional leaders also formed part of the high-level delegation at the event. Standing is Paramount Chief Kyungu of Karonga and Chitipa making a contribution

cont. on page 8

CEPA reports sub in Mining Govern



Participants at a mining policy advocacy training workshop that CEPA conducted in Phalombe.

By Marcel Chimwala

A local civil society organization, Centre for Environmental Policy and Advocacy (CEPA), says it is coming up with encouraging results in its “Strengthening Mining Governance in Malawi” project which it is implementing with funding from the Tilitonse Fund.

Programme Officer, Cynthia Simkonda, explains that since inception, CEPA has made progress towards strengthening policy and institutional framework for

regulating the mining sector. In particular, CEPA has worked with Natural Resources Justice Network (NRJN), an umbrella network of CSOs working in the mining sector, to influence the review of policy and legal framework for mining in Malawi. “Through research and analysis, recommendations have been made to the current draft Mines and Minerals Bill 2015 (MMB) to ensure that the Bill provides for an effective legislative framework for stakeholder engagement in mining activities.”

The project whose overall goal is “making governance in the mining sector more inclusive and accountable” is

being implemented at national level, with three districts (Phalombe, Karonga and Kasungu) selected to generate evidence for policy advocacy. CEPA collaborates with Action Aid International Malawi to facilitate policy dialogue sessions in the impact districts. In this regard, CEPA has facilitated the training of three local structures in policy advocacy to equip the local structures with skills to advocate, lobby and influence policy and decision making processes in the mining sector. The structures namely Ufulu Wathu Community Based Organization (CBO), Tipone Development CBO (TIDECO) and Uraha Foundation of

Substantial progress inance Project



Chanza: CEPA Executive Director



Stakeholders listening to a presentation of CEPA-commissioned study on mining policy implementation

policy development and implementation in the mining sector. The report can be accessed on <https://miningin-malawi.files.wordpress.com/2015/09/2015-08-implementation-of-mining-policy-in-malawi.pdf>. The research findings were presented to the stakeholders in the mining Sector at Crossroads Hotel in Lilongwe. Among other key findings, the survey cited the need for robust infrastructure in terms of data, roads and energy supply for the development of the mining sector.

The study, which CEPA conducted, using the services of a private consulting firm Geomine Services, pointed out the existing gaps in energy and transportation sectors, as some of the shortfalls that are stifling growth of the sector. Welton Phalira of Geomine Services, who presented the study findings, also noted that participation of local Malawians in medium to large scale mining investments was still low as there was no effective vehicle (implementation strategy) for their engagement and support. The report recommended the need to work towards developing requisite technical and financial capacity amongst Malawians in order for them to

competitively venture into mining business. It also called for initiatives towards acquiring expertise as regards mineral development and research.

But on positive note, the report noted of the increased interest and engagement of the private sector in mineral development and increased discourse on mineral development. It was also observed that there has been active participation of the civil society, a development which will enhance transparency, accountability and good governance of the sector. This far, government and CEPA have been able to conduct joint inspections in the northern region of Malawi to assess mining companies' compliance with the legislations.

CEPA's Executive Director William Chadza commends government for the direction it has taken towards regulating the mining sector for the mutual benefit of both the investors and local people.

"Let me also applaud government for initiating measures that would curb the exploitation of Artisanal and Small Scale Miners (ASMs) by unscrupulous middlemen who always take advantage of the current legal framework," he says.

Chadza says the initiative that government has rolled out of sponsoring regional trips for ASMs for experience sharing and learning is quite encouraging, but he further urges government to spearhead formation of cooperatives for ASMs, so that they speak with one voice and deal as a block to avoid being duped by middlemen ■

Phalombe, Mzimba and Karonga respectively have since been able to use their knowledge to speak for themselves and even represent the community on issues regarding

mining in their localities through the Reflection Action Cycles. The Reflection Action Cycles have so far been able to interact with media to report on different mining experiences and issues in their vicinities through the print media and Nyengo ndi Chilengedwe radio programme on MBC radio 1.

Recognizing that the issuance of licenses and mining activities in Malawi progressed alongside the review of the mining legislation, CEPA undertook an assessment of mining policy implementation to understand the extent to which ongoing mining activities comply with the existing regulatory framework. Simkonda says the assessment report has helped in analysing the extent to which mining activities comply with the current Mines and Minerals Policy 2013 and the Mines and Minerals Act of 1981. The report was also envisaged to promote effective

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...from page 5

Access to Information Bill

The bill is crucial in ensuring that transparency and accountability is achieved in mining sector. The secrecy in mining sector has resulted in speculations and disappointments by the public on how government has handled investors and



A cross-section of attendees were seen busy taking notes as the deliberations got interesting, with various contributors making a diverse of recommendations and suggestions

consequently their contracts. Lack of information has led to mistrust by the public citizens towards government and mining investors. It is a human right for citizens to have access to information about issues that directly impact their lives, including issues related to mining in their communities.

The Mining Indaba observed that the Mines and Minerals Act should be enacted together with The Access to Information Bill to ensure its effective implementation. The draft mines and minerals act contains some requirements that can only be done if information is released and made public by duty bearers. Therefore, effectiveness of The Mines and Minerals Bill is dependent on the Access to Information Bill. Otherwise it will be like assembling a vehicle and then denying it the engine to move the wheels. Moreover, effective implementation of EITI will depend on the right to access information and basic information flow.

Domestication of Free Prior and Informed Consultation

Free, prior, and informed consent (FPIC) refers to the right of local communities, particularly indigenous peoples, to participate in decision making about issues affecting them. This has not been the case with projects in the past with communities not being given the right to give consent to projects and activities that displace them or their livelihoods and traditions. The Indaba observed that the community is minimally considered as a vital stakeholder in mining and most life changing decisions are made on their behalf by duty bearers with inadequate feedback mechanisms between citizens and duty bearers. This means that the rights of communities are not sufficiently protected from infringement of their right by company and government actions.

It is against this background that the Indaba agreed that free, prior and informed consent should be recognized by government and enforced as well in the Mines and Minerals Bill and other relevant pieces of legislation.



Local mining sector captains, left is Burton Kachinjika of Mkango Resources, 3rd left Grain Malunga from Chamber of Mines; right Chimwemwe Chikusa of Rakgas, posing at the Indaba with Elvyn Nkhonjera Chawinga (2nd left), a human rights activist at Oxfam responsible for extractives office

Utilization of revenue from mining sector

Funds collected by government from mining sector are transferred to Government Account Number 1 for general distribution within the National Budget. While communities are bearing the negative consequences of the mining activities, there is no mechanism to channel portions of the revenue back to them as compensation for these inconveniences. Moreover, no significant earmarked development in infrastructure or social services have clearly emanated from mining. The Mining Indaba concluded that part of Government revenue from mining should be entrusted a trust fund with

transparent management procedures, and governed in ways that community interests are acknowledged.

ON PUBLICATION OF AGREEMENTS THAT GOVERNMENT ENTERS WITH INVESTORS AND INVESTORS INFORMATION AND REVENUE COLLECTED

To ensure that transparency is achieved, the government should make public agreements made with investors. This will inform the general public on progress being made in mining sector and enable citizens to hold both government and companies accountable for the terms of agreements. The general public deserves to know the investors involved in extracting their natural minerals. Furthermore reporting in line with licences should be encouraged as well to improve enforcement of licence conditions for the benefit and protection of communities and the environment. Government and companies are urged to comply with the Extractive Industries Transparency Initiative so that there is clear information on finances collected from natural resources extracted in Malawi.

PETROLEUM POLICY

Government has issued exploration licences to all six petroleum exploration blocks covering all of Lake Malawi and part of Malawi's land including the Shire River Basin. However, Malawi needs to develop a Petroleum policy to inform the development of a new Petroleum Act that reflects the emerging issues facing Malawi and best practice and best fit solutions from the region and continent. Broad consultation is needed for this as well as in the development of a model Production Sharing Agreement which the government has already started without acceptable consultation of communities, civil society, traditional leads and citizens.



Members of Parliament were also present and standing is the Chairperson of Parliamentary Committee on Legal and Constitutional Affairs Peter Chakhwantha emphasizing a point

CAPACITY DEVELOPMENT AND ESTABLISHMENT OF LABORATORY FOR MINISTRY OF MINES

It was observed that the country lacks capacity in both petroleum production and mining, it was agreed during the Indaba that government should increase investment in capacity building of young people in the above stated fields. The trained Malawians will assist in negotiation and scrutinizing contracts, analysing samples and conducting research in the geological sector. It is therefore vital for Malawi to have homegrown capacity. In addition, the country should source financing to establish a laboratory that can test samples within the country and to improve knowledge and research in the country and also reduce operating costs in mineral development.

Publicize the *Kauniuni* report

The Countrywide Airborne Geophysical Survey branded as *Kauniuni* covered over 65 percent of the country since its inception in 2013. People in the country are impatient to be informed on the *Kauniuni* report because the outcomes have taken ages before the nation is informed. The outcomes will not only clear speculations that the public has on the outcomes of the survey but it will provide insight to different stakeholders on the mineral potential of the country. This will allow potential investors both national and international to do a detailed analysis to assess the quality and quantity of the resources depending on their interest.

CONCLUSION

The Alternative Mining Indaba supports the Government's vision for effective mining that will benefit the community and the nation. The Indaba was a contribution to provide insights, thereby helping the Government to improve in the sector. The Alternative Mining Indaba encourages all stakeholders to continue engaging with government to effectively respond to demands made by Malawians. The Government has the major role and responsibility in ensuring that the minerals and oil in Malawi and the extraction of those natural resources benefit the country and its people. The country infrastructural, social and economic developments should be improved through mining.

Following the 2nd Alternative Mining Indaba, the organizing committee and the Natural Resources Justice Network will make appropriate follow up with the Government and all stakeholders to ensure that issues and concerns in these resolutions are addressed ■

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TECHNICAL FILE

by Grain Wyson Phillip Malunga FIMMM

Mining and Environmental Management Expert

THE NATURE OF MINING CONTRACTS

Abstract

Mining contracts are agreements entered into between government and a mining company with an aim to develop mineral resources. They cover issues related with government revenue and other social economic issues affecting mining communities. Security of tenure and stability clauses are included. To avoid revenue from the natural resource sector benefit a few influential individuals, Mine Development Agreement becomes the most important document which is guided by the constitution, mining laws, business and labour laws, taxation acts and related regulations.

These contracts become relevant where governments are characterized by weak institutions, corruption and political instability. One of the most important contracts is the Mine Development Agreement. Negotiations are done with a team of experts in natural resource development and development economics.

In order to build national consensus in the development and utilization of revenue from natural resource exploitation, these agreements should be accessible to the public.

1.0 INTRODUCTION

Mineral resources development has a long period of gestation from exploration to mine development and post mining. Several contracts are awarded and these include; Mineral Rights Agreements, Environmental Management Licence, Mining Development Agreement and Community Development Agreements. All these try to bring national consensus on issues related with extraction and utilization of benefits from minerals sector.

Transparency, accountability and beneficial ownership become the main issues of concern and are aimed at mitigating against resource curse which is common among resource rich poor countries.

2.0 TYPES OF MINING CONTRACTS

Minerals and petroleum resources are usually owned by the state on behalf of its citizens. Their exploration and exploitation rights are often granted to private companies or in partnership with state owned companies. Where well-developed legal system exists and governs the rights and obligations of the state and private companies, mineral rights are granted without subsidiary contracts. Common mineral rights/contracts are Exclusive Prospecting Licences (EPLs) and Mining Licences (MLs). Where mineral laws are weak or inadequate, mineral rights are granted to private companies through individually negotiated agreements that contain most, if not all the rights and obligations of the concerned parties. These negotiated agreements are in form of Mining Development Agreements (MDA) and Production Sharing Agreements (PSA). Production Sharing Agreements are common in oil and gas sector.

Modern agreements include or support inclusion of ancillary agreements that include responsibility for the development of infrastructure, promotion of local content and Community Development Agreement (CDA).

3.0 REFERENCES FOR NEGOTIATIONS

Mining contracts or agreements are usually a product of existing policies, legal and regulatory framework and international standards/framework.

EXISTING POLICIES

a. Social

The Mines and Minerals Policy (2013) points out that government shall ensure that mining related social issues are adequately addressed by mining companies. These include economic empowerment of local people, corporate social responsibility, mainstreaming issues on gender and HIV/Aids and other diseases, and resettlement issues related with mining activities.

b. Fiscal

Mining Contracts cover taxation and fiscal issues protected under a stability period, especially in countries with unstable governance regime. In order to mobilise resources from shareholders and finance institutions and to protect revenue for the host country and its people, mining contracts become a safety net. The most important document becomes the Mining Development Agreement (MDA).

Taxation and fiscal regime covered in this DA include equity in the project, Corporate Tax, Resource Rent, Royalty, Value Added Tax, capitalization in terms of debt: equity ratio and means of Capital Write Off for tax purposes.

Government has reviewed the taxation and fiscal regime in the mining sector in order to come up with a coherent and standardized fiscal package for mining contracts. There will be no discretion in grant of fiscal incentives such as royalties, resource rent, corporate tax. Issues of ring fencing and double taxation will be reviewed in such a manner that they will not bring potential loss of revenue for the country.

c. Environmental

The 1996 National Environmental Policy provides how the principles of sustainable development in mining can be reviewed. Environmental Management Plans (EMP) and

compliance with international standards for occupational health and safety form part of the Development Agreement.

4.0 EXISTING LEGAL AND REGULATORY FRAMEWORK

Chapter III of the constitution of Malawi spells out fundamental principles of the constitution and national policy. These include sustainable development of natural resources, wealth creation through responsible economic management and guarantee of public trust and good governance.

The legal and regulatory framework to be included in the Mine Development Agreement must comply with the constitution through the laws and regulations governing the mining sector.

The following regulatory framework has to be referred to:

1. Environment

Mining can have a serious negative impact on the environment. Air and water gets polluted from dust and chemicals while landscape gets deformed through pits and waste piling. Noise can be the order of the day. These are mitigated through guidance from Environment Management Act and sectoral specific policy guidelines.

Social impacts are also mitigated through community engagement in order to obtain Free Prior Informed Consent (FPIC). Malawi's Environmental Management Act came into effect in 1996. Mining Sector Guidelines were prepared in 2002.

Other Natural Resources Laws that need to be consulted include the National Parks and Wildlife Act (2004), Fisheries Conservation & Management Act (1997) and Forestry Act (1997) because they deal with conservation and management activities.

2. Mining

Mineral activities in Malawi are governed by the Mines and Minerals Act 1981 (CAP61:01), and complemented by the Explosives Act (CAP14:09). The new Mines and Minerals Bill is awaiting parliamentary approval. This has had wide consultation and covers areas of corporate social responsibility, community development agreement and entrusting ownership of the mineral resources in the state. Community engagement to obtain Free Prior Informed Consent cannot be taken lightly.

3. Business

Business laws will inform how parties to the agreement will form consensus on issues related with equity participation, human resource development, employment and settlement of disputes.

In Malawi, Business laws include The Business Registration Act 2013, Companies Act, Chapter 46:03, The Labour Relations Act, 1996, The Employment Act, 2000, Workers Compensation Act, Occupational Safety, Health and Welfare Act, 1997 and Technical, Entrepreneurial and Vocational Education and Training Act, 1999.

4. Taxation

Taxation Act guides how government collects its revenue for budgetary support. Government realises most of its revenue through Excise Duty, Customs, Company Tax, Non Resident Tax (NRT), Pay As You Earn (PAYE), Withholding Tax (WHT), Fringe Benefit Tax (FBT) and Value Added Tax (VAT). Financial incentives (grants and low cost of loans) come from this group while fiscal incentives (tax holidays and reduced tax rates) come from this taxation. Most companies that invest in machinery, plant and equipment enjoy waivers on customs duty, excise and VAT.

Malawi taxation issues are guided by Taxation Act (CAP 41:01). It is important to understand the conditions under which mining can become profitable and how to calculate highest taxation below profit line. It is not enough to talk about investment subsidy or governments losing potential revenue through tax incentives without understanding mining project risks.

5. Land

The Malawi Land Act (1965) and Lands Acquisition Act (1971) deal with issues of ownership, land transfer, use of land, and compensation. Mining will most likely occur in customary land and guidance from these Acts is very important on top of seeking consent from owners of land.

6. Water resources

Water abstraction and discharge of treated water are dealt with in Water Resources Act (1969), Waterworks Act (1969). Any water abstraction should allow for environmental flow and take into recognition of users downstream. Any treated water discharge has to be in line with chemical parameters as prescribed by Malawi Bureau of Standards (MS214:2005, MS 691:2005) or internationally recognized standards such as those of World Health Organisation. [cont. on page 10](#)

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from page 9

4.1 INTERNATIONAL STANDARDS/PRACTICE

1. Equator Principles

These are a baseline and framework for developing individual, internal environmental and social policies, procedures and practices. Member Finance Institutions will finance projects that promote sustainable environmental and social performance and those that lead to improved financial, environmental and social outcomes. This standard for due diligence, undertaken by banks, helps to mitigate against risks that come with projects in terms of building consensus for project acceptability in affected communities and mitigating risks against project finance losses.

2. Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a voluntary action or business that is conducted by a mining company with the aim of reducing negative environmental and social-economic impacts of mining through improving living conditions of the local communities where it operates. CSR helps to mitigate against unexpected social conflicts resulting from lack of satisfaction with infrastructure, social capital and human capital within mining communities. Areas of intervention include water, electricity and hospital (infrastructure), family planning and HIV/AIDS programs (social capital) and education and skills transfer (human capital). Recognition for this is given under ISO 14001 and 26000.

3. Public-Private Partnerships

Governments can enter into development agreements through Public-Private Partnership (PPP). This is an arrangement whereby the state enters into service agreement with a private entity to manage a business in which government has interest. The post-colonial era saw establishments of state owned companies to nationalise businesses and bring about accelerated economic transformation in neglected or strategic areas. Due to poor management and political interference in these companies, most governments realised the need to remain as a regulator and not a manager of business.

Most companies were privatized and government remained with minority shareholding. Other arrangements were service agreements in which government owned the infrastructure and contracted private entities to manage the business in exchange for management fees or production sharing arrangements.

In order to maximize its benefits, government should safeguard its interests through a state owned company that goes into equity participation with a private company. The state owned company should be free of political interference with management positions filled on competitive arrangement.

5. NEGOTIATING PARTIES

Mining contracts are negotiated with the aim of mitigating against political interests and changing political environment. As shown below certain clauses such as stabilization clauses provide assurance against unpredictable legal, regulatory or political changes that could affect the commercial viability of the project. Political economies usually have frequent changes on taxation and fiscal regimes and this needs to be mitigated against.

All these uncertainties require a team of experts in each party to come out with the best deal. These experts will be appointed by the Mining Company and Government.

1. Mining Company

The mining company engages its Project Development Team that includes local country manager, geologist, business development specialist, community relations specialist and lawyer.

2. Government

Challenges in coming up with a negotiating team are many. Government lacks experience of the industry and marketing of mineral products. Lack of trust in its employees and high turnover make negotiations difficult and lengthy thereby affecting costs and period of negotiations. A team of senior advisors is recommended headed by Chief Secretary while the political side decisions can be made by the cabinet.

The negotiating team should include relevant ministries responsible for mining and environment, finance and economic planning, justice, labour; and Investment and Trade Centre.

3. Technical Specialists

Technical specialists may be required in government as advisors when there is lack of relevant expertise in mineral resource development. Those sought are experienced geologists, mineral resource valuation specialists, mining engineers and mining finance modelers. It is important to note that these are usually very expensive and often assist through sponsorship and pro bono arrangements. Care must be taken in understanding the conditions under which they come in as those that sponsor them may have vested interests.

When these work as advisors, they should ensure that government owns the process and that their role is to build consensus among negotiating teams.

4. Community Representatives

Community representatives need to be involved when issues dealing with environmental protection, community development, and social impact management come on the table for negotiation. The parties under this group may include the District Commissioner, Traditional Authority and representative of the Civil Society (or Natural Resources Justice Network) where mining will take place. Prior to negotiations, they need to be made aware of how the central budgeting system works and what benefits they may have through mining activities in their area.

6.0 TOPICS FOR NEGOTIATIONS

1. Equity Participation

Equity participation by host government can be through State Owned Enterprise and not through central government due to more focus on (government) executive duties which leads to poor participation in monitoring and participation of the decision making process in the running of the companies.

3. Mining and Beneficiation

In order to promote beneficiation and value addition, parties should ensure that more mineral processing is done in Malawi in order to promote mining value chain/local content and reduce export of labour through further beneficiation abroad.

2. Marketing

The parties should agree on market arrangements and how prices of minerals will be determined with reference to the global metal exchange prices. Of particular interest is avoiding transfer pricing, purity of the processed metal and taking note of minor metal credits in the final product for export.

3. Environmental Management

Parties to the agreement must comply with the approved Environmental Management Plan and reporting. Any breach of existing Environmental Laws will be treated according to prescribed fines or penalties.

4. Equity Participation

Equity participation is usually agreed after consideration of costs of exploration and development by either party. It is always proper for government to own its equity through an independent state company through which it will collect its dividends. Equity participation by government through taxation or fiscal subsidies must be discouraged to avoid potential loss of revenue.

5. Taxation and Fiscal Regime

Governments should strive to offer a stable and competitive taxation and fiscal regime that is clear and with stability period that coincides with loan servicing. Thin capitalization should be discouraged as it affects taxable profit.

6. Local Content

Economic linkages with local businesses generates economic diversification and employment creation. This also strengthens relationship between mining companies and local communities. Mining Development Agreements should strive to promote this as it is a source of sustainable development.

7. Infrastructure Development

Mining in rural areas opens up infrastructure development such as roads, water and electricity. Government should endeavor to partner in improving supporting infrastructure and essential services for the benefit of local communities. Support to this initiative helps develop local businesses.

8. Community Development Agreement (CDA) and Corporate Social Responsibility (CSR)

CDA is a means of reducing risks in mining business through managing mining community expectations and contributing to development activities without taking over government obligations. A well drafted CDA will even take away CSR initiatives as all stakeholders including local government, mining communities and the civil society will be party to the agreement and will ensure that there is a transparent process through Free Prior Informed Consent. The MDA will have to recognize the need for entering into CDA with the local communities.

9. Termination

Termination of an MDA can automatically happen if procedures laid in the Mines and Minerals Act are followed. This is in case where the resource is exhausted, the concession period has expired and if market conditions of the commodity are not favourable for future rebound.

10. Settlement of Disputes

In terms of settlement of disputes, negotiations should take precedence. Where big differences arise and negotiations are not possible, the parties can call for mediation with the International Centre for Settlement of Investment Disputes.

7. CONCLUSION

Licensing and contracting are two regimes that government offers to regulate mineral resources development. Licensing is for mineral rights and contracting is for development agreements. In countries, such as Malawi, where mining is at its infancy stage and its regulatory framework is outdated and inadequate, there is need to enter into development agreements in order to give confidence in promoting mineral resource development and to give assurance to citizens on benefits that will be accrued for economic development. Government needs to build capacity in the mining sector and ability to understand commodity markets in order to maximize benefits arising from development agreements. Regular audits of production, export volumes, mineral valuations and cost calculations will help government manage its relationships and staying in regular communication with the company and local communities. Reliance on civil society to undertake this task is dangerous as CSOs are sometimes manipulated by their sponsors whose interest is to destabilise the path to economic independence.

It should be emphasized that investment incentives that are granted in projects with marginal profits can go a long way in building history of mining through attracting more mining investment. It is not enough to talk about investment subsidy or governments losing potential revenue through tax incentives without understanding mining project risks. In order to believe that government negotiates in good faith for the benefit of its citizens, there is need to be transparent in all contract dealings.

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Malawi eyeing several interconnectors to solve power woes

By Chiku Jere

Government says notable progress is being made towards sourcing power from neighbouring countries through interconnectors in an effort to address Malawi's historical power woes.

This was disclosed by Spokesperson for Energy Affairs in the Ministry of Natural Resources, Energy and Mining, Joseph Kalowekamo, in his response to *Mining & Trade Review* questionnaire as regards both long and short term remedies the country is exploring to address its energy problems.

Kalowekamo said groundwork has already been commenced and three feasibility studies are on course to set stage for actual work.

Among others, he said, feasibility studies are underway for the first phase of the Mozambique – Malawi interconnector which will involve the construction of a 400kV power link between Tete in Mozambique and Phombeya in Malawi.

“If all goes on well, the project is expected to be commissioned in 2018. Electricidade de Moçambique (EDM), the power utility in Mozambique, has committed to provide 50MW to Malawi as part of the agreement. World Bank is funding this Southern Africa Power Pool (SAPP) project,” said Kalowekamo.

He said the World Bank is also financing another feasibility study that will interconnect Malawi and Tanzania with a 400kV line from Nkhoma in Malawi through Songwe to Tanzania.

This project, which will also interconnect the SAPP with the Eastern African Power Pool making Malawi a key player in the power trade, is linked to the Songwe Hydro-Power Project which Malawi wants to implement in partnership with the northern neighbour.

Kalowekamo reported that a Memorandum of Understanding was signed between the Governments of Malawi and Zambia last year to facilitate implementation of a project to construct an interconnector linking the power grids of the two countries.

The World Bank is also financing the feasibility study for the project, which entails the development of a 330kV power line connecting Chipata in Zambia and Nkhoma in Malawi, under the Energy Sector Support Project (ESSP).

Interconnectors that are at concept stage include a



High voltage power lines

‘second phase interconnection’ between Malawi and Mozambique which will involve the construction of another 400kV line from Phombeya in Malawi to Nampula Province in Mozambique.

“This will enable Malawi wheel power from the energy-rich Tete Province which boasts of both hydro and coal fired power stations to Nampula Province. This interconnection offers a great relief in power deficit through power imports and also sets open a door for exports to the regional market in times of excess power,” he said.

Kalowekamo said Malawi also plans to upgrade the existing power connection between the border town of Lundazi in Zambia and Chikangawa in Malawi. Lundazi is supplied by a 33kV line from Chikangawa, which is a terminal substation on a 66kV line from Chintheche.

Malawi intends to upgrade the Lundazi – Chikangawa – Chintheche to 132kV which can deliver about 30MW.

Chikangawa is about 76km from Lundazi and 71km

from Chintheche.

“It is quicker and cheaper to do this option compared to the other options,” he said.

Malawi's current electricity demand is projected to be in the region 400 MW with the expected rise to 1000MW by year 2020 against the installed power generation capacity of 351.75MW, which is also riddled with intermittent power supply as a result of ageing generation, transmission and distribution equipment and environmental effects on the Shire River where the country sources up to 98% of electricity.

Malawi's low electricity access rate, pegged at 9.8% as of August last year with less than 2% in rural areas, has created overdependence on traditional biomass as a source of energy catering for 85% of the energy needs.

The Department of Energy Affairs attribute this wholesale reliance on traditional biomass energy as a major contributing factor to rapid environmental degradation and deforestation in the country ■



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