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Mining & Business News that Matters

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Wrangle over Ntcheu rubies

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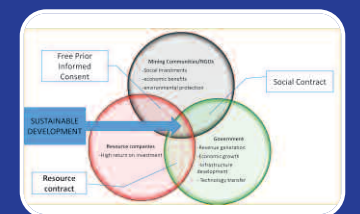
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Building Community Trust in the Mining Sector

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- Nyala Mines Limited injunction vacated
- New owner kick-starts geological assessment

By Chiku Jere

Government has won a legal battle involving mining rights for the highly-valued Chimwadzulu Hills corundum deposit in Ntcheu after previous tenement holder, Nyala Mines Limited, had sought a court injunction stopping authorities from awarding the tenement to a new applicant.

Acting Director for Department of Mines Atileni Wona confirmed to *Mining & Trade Review* that the new licence holder Mwalawanga Mining Limited which was awarded the mineral rights for Chimwadzulu was failing to kick-start its operations on the mine site due to Nyala's court action after government rejected the latter's application for renewal of the mining licence.

The government rejected Nyala's renewal of the licence due to the company's breach of some licence requirements, among them, failure to submit the application a year earlier before the expiry of the 10-year licence.

It is also alleged that the company was under-declaring production and was incessantly claiming that it was not making any profits, which deprived government of revenue from the extracted minerals.

New licensee Mwalawanga Mining Limited is said to be owned by several individuals, among them, lawyer Ismael Wadi, who is running front-line operations.

When *Mining & Trade Review* inquired about how far the new company has gone in as far as commencement of operations, Wadi said the company is ready to start implementing plans, but it was failing to go full-throttle because of the legal battle between government and the previous licence holder.

cont...on page 3



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...from front page “We have already been formally introduced to the communities, and we have started partial engagements with them in as far as corporate social responsibility and community development agreement are concerned. We, also, have deployed our geologist on the site who is doing some geological assessment. The only thing holding us back is the court case between the previous licensee and government. Once that is cleared, we are ready to go,” said Wadi.

He also reported that Nyala has maintained its security personnel at the site who are guarding the new equipment that the company bought.

“So as you can see, there is need to have these issues amicably ironed out first before we fully start our operations,” said Wadi, adding that his company was open to discussion with Nyala for the two entities to reach a deal which will allow Mwalawanga to hire or rent Nyala’s equipment.

But Wona said the successful vacation of the injunction by government means that the new licence holder can go ahead with operations, as the court found that the grounds of argument that Nyala Mines Limited presented were not holding water.

“In essence, the court found our action of rejecting Nyala’s licence renewal application not in conflict with any law, hence the vacation of the injunction implying that government’s decision has been upheld and validated,” claimed Wona.

Meanwhile, US-based buyers for Chimwadzulu mine products have expressed interest to work with the new licence holder in ensuring that there continues to be a ready market for the products.

US-based International Mining Consultant, David Hargreaves of Fair Trade Gemstones Ltd, told *Mining & Trade Review* in an email that despite the change in ownership of the mineral rights, his company is still interested to continue buying from the mine and promoting it worldwide.

He said: “I am a regular reader of your magazine. My interest in Malawi dates back to the early 1990s when I redeveloped the Chimwadzulu gemstone mine.”

“My company, Fair Trade Gemstones is still interested to buy from the mine and promote it worldwide through its associate, Columbia Gem House of the USA.”

“Columbia Gem House has done much work in developing the marketing and the financing of local facilities, including schools, hospitals and water.”

Hargreaves also said he could be materially useful to the restoration not only of the mine but also the furtherance of the gemstone industry in Malawi.

“If any of the involved parties wishes to contact me, we can progress. I bring over 20 years of experience of the project to the table. I appreciate that Malawi would like to build a mining industry, but it needs help. I consult to many of the leading gemstone producers worldwide and would like to help Malawi,” he said.

Wadi welcomed the proposal from Fair Trade Gemstones saying his company is ready to work with any party in the development of the mine at all levels starting from production to marketing.

“I find their proposal interesting, let them come up with something on the table,” he said.

Rubies and sapphires are highly valued gemstones and when well processed, their prices outdo diamonds on the world market.

Government has not yet made public the terms of the licence for Mwalawanga and when asked in an earlier interview Wona only said “we are working on the terms.”



Nyala had just bought processing equipment which now lies idle at the mine site



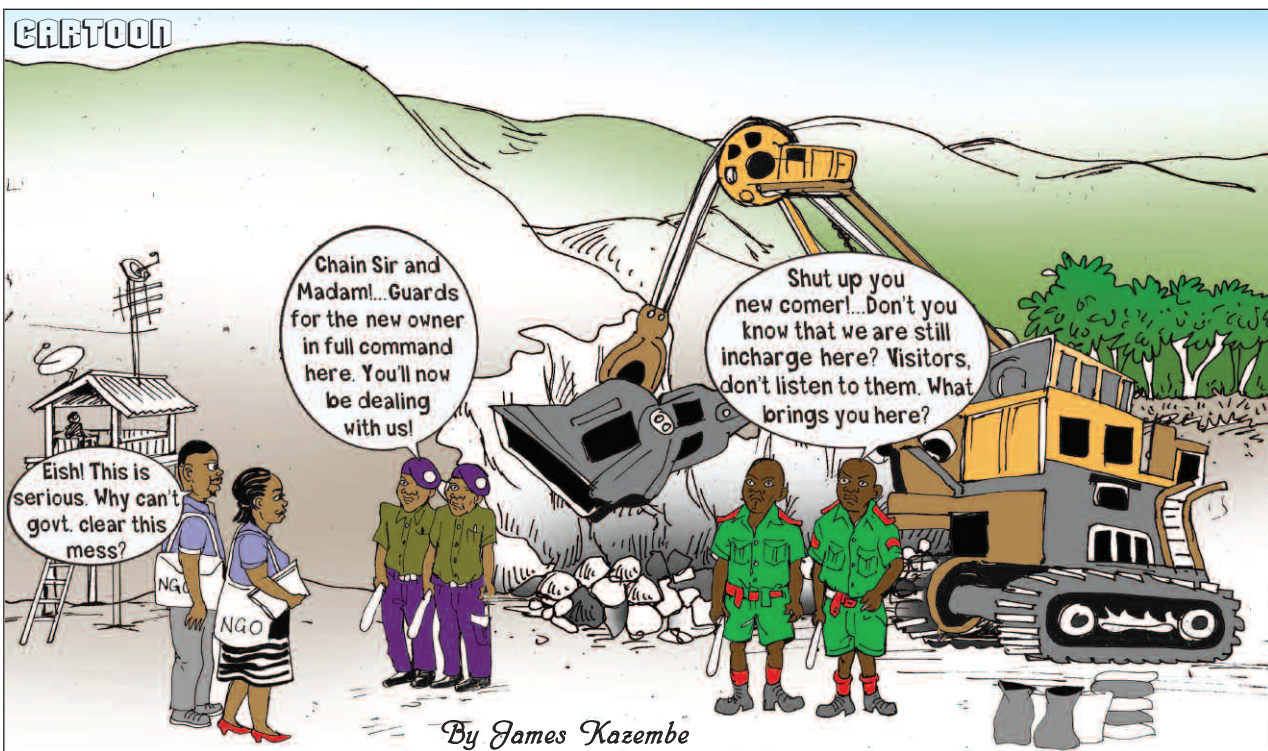
CSR formed part of Nyala’s development agreement

However, the Government signed a development agreement with the previous licensee Nyala Mines which stipulated that locals have 30% participation in the mine, 10% of equity is issued to government, and the government also receives 10% royalty of the gross value of corundum exported.

Under the agreement, Nyala was exempted from resource rent tax, value added tax on capital purchases, duty and tax for imported materials, equipment and consumables for use in mining and processing of minerals.

There was also a provision for training to Malawians, support to local education and health sector and annual provision of US\$20,000 for corporate social responsibility projects in the locality.

The development agreement also required Nyala to set up a lapidary in Malawi to ensure that the minerals are processed locally ■



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Malawi markets mineral potential at SA Indaba

...Mission very successful - Masi

By Marcel Chimwala

Minister of Natural Resources, Energy and Mining, Aggrey Masi, has described Malawi's participation at this year's International Mining Indaba in Cape Town, South Africa as a very successful undertaking in marketing Malawi's mineral potential to global investors.

Masi was speaking after leading a delegation of eight officials from his Ministry to attend the Investing in Africa Mining Indaba, the world's largest mining investment conference, which was held at the Cape Town International Convention Centre from February 4 to 9.

"The 2018 Mining Indaba was very successful as Malawi managed to promote its mineral potential on a global scale. The projects presented at the country case study attracted a lot of attention as the minerals being explored for are currently designated as strategic minerals," said Masi.

He said at the Malawi booth, his Ministry displayed updated geological, geophysical, geochemical and Mineral Resources and Occurrence Maps, posters and burners obtained courtesy of the World Bank and European Union funded Mining Governance and Growth Support Project (MGGSP) and French supported Geological Mapping and Mineral Assessment Project.

The Minister says the updated data attracted a lot of attention from the Indaba participants including potential investors.

The materials that were displayed and were handed out to those patronising the booth also included a booklet on Georesources of Malawi, a pre-assessment; brochures on Songwe Rare Earth, Tengani Titanium and Malingunde graphite projects; leaflet on Country-wide High-Resolution Airborne Survey and GEMMAP; leaflet on Mineral Tenements and Licensing procedures; leaflet on Reforms in Mining Sector of Malawi; one hundred memory flash disks containing information on geology and mineral resources of Malawi and the regulatory framework and computer demonstration of the mining cadaster system.

Masi said: "The booth was the venue for interaction between the Malawi delegation and a cross-section of delegates."

"Patrons to the booth enquired highly about the mineral resources of Malawi especially rare earth elements, uranium, coal, copper, gold, limestone, dimension stones, heavy mineral sands, platinum group metals and graphite."

"They were also interested to know how they can access the country's geoscientific data, procedures for acquiring mineral rights including updates on the installation of the mining cadaster system, progress on the review of the Mines and Minerals Act and other regulatory reforms being undertaken and the prevailing investment climate in Malawi's mineral sector including incentives offered to mining and exploration companies."

The Minister attended a number of sessions at the conference and delivered a key note address entitled "Malawi an Emerging Exploration and Mining Destination,"



Hon. Masi, 1st right, meeting with Western Australia's Hon. Johnstone, 2nd left

which highlighted the geology and mineral potential of Malawi; prevailing policies and the regulatory framework, specific mining projects, investment opportunities along with the country's mining vision and incentives.

Director for Geological Survey Department Jalf Salima made a presentation on Geological Information available in Malawi.

Four exploration companies working in Malawi were also given the platform to present their projects including Crown Minerals on Tengani Titanium Project; Globe Metals on Kanyika Niobium Project; Sovereign Metals on Malingunde Graphite Project and Mkango Resources on Songwe Rare Earth Project.

The companies expressed concern over the delays in the enactment of the Revised Mines and Minerals Bill (MMB) and the launch of the Geodata Management and Information System (GDMIS) for ease access to geodata.

Masi assured the audience that the bill shall be tabled in

by the companies to the Ministry of Finance.

"Inadequate energy in Malawi for mining was another issue raised at the conference. I highlighted the initiatives government is pursuing including the Kam'mwamba Coal fired project, Interconnector with Mozambique, and the Independent Power Producers (IPP) initiative," said Masi.

The investors further talked on the need for government to rehabilitate roads to potential mining sites and address resettlement issues around mining project sites.

The Minister told the investors that he will take up the issue of road rehabilitation with the Ministry of Transport and Public Works and work with the Ministry of Lands for smooth and orderly resettlement process.

At the Indaba, Masi also met representatives of cooperating partners including the World Bank and the African Legal Support Facility (ALSF)/International Senior Lawyers Project (ISLP) of the African Development Bank (AfDB).



Hon. Masi, seated right, with the Malawi delegation at the Malawi exhibition booth at 2018 Mining Indaba in South Africa

the May-June 2018 parliamentary session while the GDMIS will be functional by mid-March 2018.

There were also worries from the investors on unrealistic community expectations from mining projects, and the Minister assured the companies that such issues have been addressed in the new law.

The companies requested for tax waivers on mining and exploration equipment and Masi assured them that such exemptions shall be provided upon submission of a request

"On February 5, 2018, The Hon. Minister had a meeting with Mr. Christopher Sheldon of the World Bank. The Hon. Minister expressed his gratitude to the Bank for the assistance to Malawi, especially through MGGSP. The Hon. Minister highlighted the achievements of the project and how the project has transformed the mining sector," reads the report from the Ministry of Natural Resources, Energy and Mining detailing Masi's engagements at the global forum.

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EDITORIAL

We demand transparency from govt. on Chimwadzulu mine issue



BY MARCEL CHIMWALA, PUBLISHING EDITOR

It is interesting that government, which usually loses court cases, has successfully vacated an injunction which an investor, Nyala Mines, obtained restraining the Ministry of Natural Resources, Energy and Mining from awarding the Chimwadzulu Corundum licence to another miner, Mwalawanga Mining Limited.

The development certainly implies that the new investor, whose hands were tied by the injunction, is now free to start work at the mine for rubies and sapphires, the most expensive gemstones which are priced more than gemstones when well processed.

In fact, there were a number of reasons why the government never granted an extension of the 10-year mining licence to Nyala ranging from delays to apply for the extension of the licence, allegations of under-declaration of revenue from the mine for tax evasion purposes and failure to meet environmental conservation requirements.

We will not go into detail to try to prove these allegations because as the case has ended in government favour, these are water under the bridge.

However, our concern is lack of transparency on how the government has taken on board the new miner for these precious stones.

We are told this so called Mwalawanga Mining Limited is owned by a local consortium with renowned legal bull Ishamel Wadi as a front man but it is surprising that the other Directors who are to benefit from this Malawian treasure are still not known.

We would have expected the government and the Directors to come forward and address the media on what their plans for the mine are, their budget for development of the mine and what they have in store for the people of Malawi and Chimwadzulu community in particular.

In fact, the government signed a development agreement with the previous investor, Nyala Mines, which stipulated that locals have 30% participation in the mine, 10% of equity is issued to government, and the government also receives 10% royalty of the gross value of corundum exported.

Under the agreement, Nyala was exempted from resource rent tax, value added tax on capital purchases, duty and tax for imported materials, equipment and consumables for use in mining and processing of minerals.

There was also a provision for training to Malawians, support to local education and health sector and provision of US\$20,000 annually for corporate social responsibility projects in the locality.

The development agreement also required Nyala to set up a lapidary in Malawi to ensure that the minerals are processed locally.

This implies that government, among other things, used this development agreement to assess the eligibility of Nyala to be granted an extension of the licence.

But what about this Mwalawanga Mining Limited; how is the government going to monitor and assess its operations if we are not told that there is a similar development agreement in place?

The other question we have is on the competency of the company to successfully invest in such a mining venture.

We are told Mwalawanga is a new company; so did the government undertake any due-diligence on the company to find out if it has the technical know-how, financial muscle and market advantage for such a venture?

Certainly, such questions will keep on boggling the minds of Malawians more especially people of Chimwadzulu if the government continues to keep the licence terms for Mwalawanga under wraps.

This lack of transparency on the part of the government is also a threat to the strides that the country is making in fulfilling the requirements of the Extractive Industry Transparency Initiative (EITI), a global standard for good governance of oil, gas and mineral resources.

The other point is that it is laughable that guards for the two companies are still at Chimwadzulu with Nyala Guards guarding equipment and Mwalawanga guarding the precious stones which were being illegally mined by invaders.

We advise the government to sort out this mess by using its influence to do away with the previous investor and let Mwalawanga get to work ■

Masi reports success at 2018 mining indaba

...from page 4 The report says Masi requested for the need for a follow up project as MGGSP is phasing out in March 2018.

Masi suggested that the follow up project must build up on the foundation laid by the current project and should include; ground follow up of geophysical anomalies from *Kauniuni*, construction of minerals laboratory, capacity building and review of the petroleum legislative framework.

“Mr. Sheldon assured the Hon. Minister his support towards the follow up project. He advised that the issue should be brought before the Minister of Finance for inclusion in the financial package that the Bank provides to Malawi,” says the Ministry in the report.

Masi also attended a consultative meeting of African Mining Ministers on February 8, which was convened by the World Bank Group in collaboration with the AfDB and International Finance Corporation (ICF). The discussions focused on Sustainable development; increasing investor confidence and economic growth, mineral trade competitiveness, challenges, prospects and access to geological data.

The key issue during plenary was on World Bank’s support towards the acquisition of competitive and up to date geoscience data which is key to mining; strengthening of the weak governance structures prevailing in most African countries and mineral revenue management.

“The World Bank urged the Mining Ministers to engage their colleague Ministers for Ministry of Finance to allocate a portion of the World Bank country financial support package towards reforming the mining sector,” says the report.

The AfDB delegation that met Masi was led by Steven Karangizi who informed the Minister about the Bank’s support towards legal advice and capacity building to African countries on venture and fund litigation, complex commercial negotiations, and related sovereign transactions.

He also informed the Hon. Minister about the Bank’s approval of the Songwe River Power Generation Project and an offer to assist in renegotiation of the Pacific and RAKGAS Petroleum Sharing Agreements.

“He advised that Malawi should submit a formal request on capacity building and setting up of a multi-sectoral contract negotiating team,” says the report.

The Minister also held a fruitful meeting with a Japanese delegation led by Dr. Masaki Oguchi, Parliamentary Vice Minister for the Ministry of Economy, Trade and Industry of Japan.

The discussions focused on Japan’s interest in minerals such as nickel, cobalt, graphite, lithium following the advent of electric vehicles and green energy.

They also focused on Japan’s continued assistance to Malawi on capacity building in the areas of geological information systems and remote sensing for Malawian Geoscientists.

“The Hon. Minister expressed gratitude for the technical assistance Malawi gets from the Japanese Government. He pledged government’s support to exploration companies from Japan investing in Malawi,” says the report.

The report also mentions the meeting that Masi held with Bill Johnstone, Minister of Minerals, Petroleum, Commerce, and Industries of Western Australia (WA) in which he highlighted the mineral potential of Malawi and extended invitation to companies from Australia to invest in Malawi.

Masi acknowledged some companies from Australia working in Malawi including; Paladin Africa, Globe Metals and Sovereign Metals and Johnstone informed the Malawi Minister that Western Australia is the hub of mining in Australia and has many opportunities from which Malawi can benefit from.

The opportunities include: World class universities for capacity building; Reputable mining service companies in areas of mineral processing, engineering, and finance; Australian Scholarships to deserving students to study in Australian Universities; Vast experience in the oil and gas sector that can be shared; In-country training programs offered by experts from Australia; and Experience in community engagement, environmental management and occupation health and safety that can be shared.

“Hon. Johnstone invited the Hon. Minister to visit WA especially during the 2018 Africa Down Under Conference hosted in Perth in August for further discussions and visit to mining facilities,” says the report.

Masi also courted investors from Canada when he met Paula Caldwell St-Onge, Director General, Pan African Bureau for Canada and highlighted the mining potential of Malawi to which Canadian companies can invest.

The Canadian delegation in turn highlighted the areas for possible cooperation including: Capacity building targeting women, vocational training and oil and gas; Renewable energy technology; Community engagement and development; and Environmental management.

“Mrs. Caldwell invited the Hon. Minister to attend the 2019 Prospectors and Developers Association of Canada (PDAC) Conference which will offer an opportunity to Malawi to promote its mineral sector to Canadian and global audience,” says the report.

The Minister also attended the Ministerial Symposium, which is the only event on the African continent that engages the most prominent mining CEOs, African Mining Ministers and the major industry organisations and multilaterals such as the World Bank Group, United Nations Economic Commission for Africa (UNECA), Chamber of Mines South Africa and the African Development Bank.

The 2018 Mining Indaba was attended by over 7000 delegates from exploration and mining firms, mining service providers, investors, and government, who included 36 African Mining Ministers ■

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Sovereign targeting 2020 for commissioning

...company planning to produce 44,000 tonnes graphite

By Marcel Chimwala

ASX-listed Sovereign Metals, which is currently conducting a feasibility study for its Malingunde graphite project in Lilongwe, says mine construction at the site may commence next year with commissioning set for 2020.

Commencement of mining at the site would be contingent on completion of a successful feasibility study, approval of the environmental and social impact assessment (ESIA), granting of a mining licence, product marketing agreements, award of a mining licence and procurement of the necessary financing for construction, among other items.

Sovereign Metals' Country Manager for Malawi, Andries Kruger, says the company is on course to complete the ongoing feasibility study and ESIA for the project toward the end of this year, or early in 2019.

"We will likely be applying for a mining licence after we successfully complete the feasibility study and the Environmental Affairs Department issues us with a certificate for the ESIA. If all goes to plan, we will start mining graphite in 2020," says Kruger.

Sovereign completed a scoping study on Malingunde deposit in 2017 and Kruger says the study delivered the world's largest reported soft saprolite-hosted graphite resource with capital and operating costs per unit at the very bottom of the graphite supply cost-curve.

The study results indicate that the project's total operating costs are estimated at US\$301 per tonne concentrate (FOB Nacala Port) which is the lowest of any reported ASX-listed peer company of scale <300ktpa.

The results also show that the total capital cost of US\$29 million, (includes 35% contingency) for production of ~44,000 tonnes of concentrate per annum is the lowest capital intensity of all peers.

They demonstrate a very rare combination of low capital and operating costs for Malingunde at a realistic scale of production and a payback of under two years using conservative graphite pricing assumptions.

The results also indicate very low mining costs with the soft saprolite being free-dig with a low strip ratio of 0.5:1, and the project supports a simple process flow sheet with no primary crush or grind, leading to low processing costs and lower capital requirements.

The study shows that Malingunde will have simple plant design which uses "off the shelf equipment" allowing rapid and cost effective initial construction and future expansion options.

Kruger says: "With such low production costs compared to its peers, the other interesting aspect of Malingunde is that it has high quality product with excellent concentrate grades and a very large proportion in the Super Jumbo and Jumbo categories."

"Therefore, the project should still generate significant cash margins even in severe downside global graphite price scenarios."

The Malingunde deposit is large and relatively high grade, with visually coarse and jumbo flake graphite identified throughout.

Saprolite-hosted mineralisation has been identified in drilling over 3.4km of strike with cumulative across strike widths locally exceeding 200m and averaging about 120m.

Grades of mineralised saprolite average around 7% TGC (nominal 5% TGC cut-off) with a number of coherent higher grade zones well above 10% total graphitic carbon (TGC) identified.

Kruger says the company recently raised US\$5 million from the Australian Stock Exchange, which it is using to finance the ongoing Malingunde feasibility study and ESIA.

The feasibility study involves gathering baseline data,



Stephens: Negotiating transport arrangement with CEAR

metallurgical work, costing, mine design, logistics and other technical aspects of the project.

"We have a team of specialists with extensive international experience working on this study," he says.

The ESIA process has three phases, namely compilation of the project brief, environmental scoping and ESIA process.

"The project brief has been submitted to the Environmental Affairs Department (EAD) and the environmental scoping phase has now commenced. The EAD indicated that an ESIA will be required," says Sovereign Metals' Stakeholder Engagement Officer Annette Lotter.

The scoping phase of the study running from December 2017 to March 2018 includes project announcement through distribution of a project background information document and some meetings with stakeholders, production of a Draft Environmental Scoping Report to be available this month, meetings with stakeholders to be held this month to identify issues and concerns and production of a



Masi: Govt. providing attractive environment for investment

Final Environmental Scoping Report to be submitted to the EAD after stakeholder review and comments.

The ESIA phase will involve specialist assessments, production of Draft ESIA Report to be available in the fourth quarter of 2018, meetings with stakeholders to be held early September 2018 to present findings from the ESIA, and submission of the Final ESIA Report to the EAD.


The Malingunde Project is likely to have a range of impacts on the environment and the people living in the area.

The expected positive developments include creation of job opportunities, growth in the economy, improved infrastructure and social development.

However, some negative impacts may also be experienced including that some people may lose farmland or may have to be resettled, and the project may result in changes in the quality and quantity of water, levels of dust experienced, disturbance of vegetation and animals, and changes in noise and traffic levels may be experienced.



Drilling work at the Malingunde site

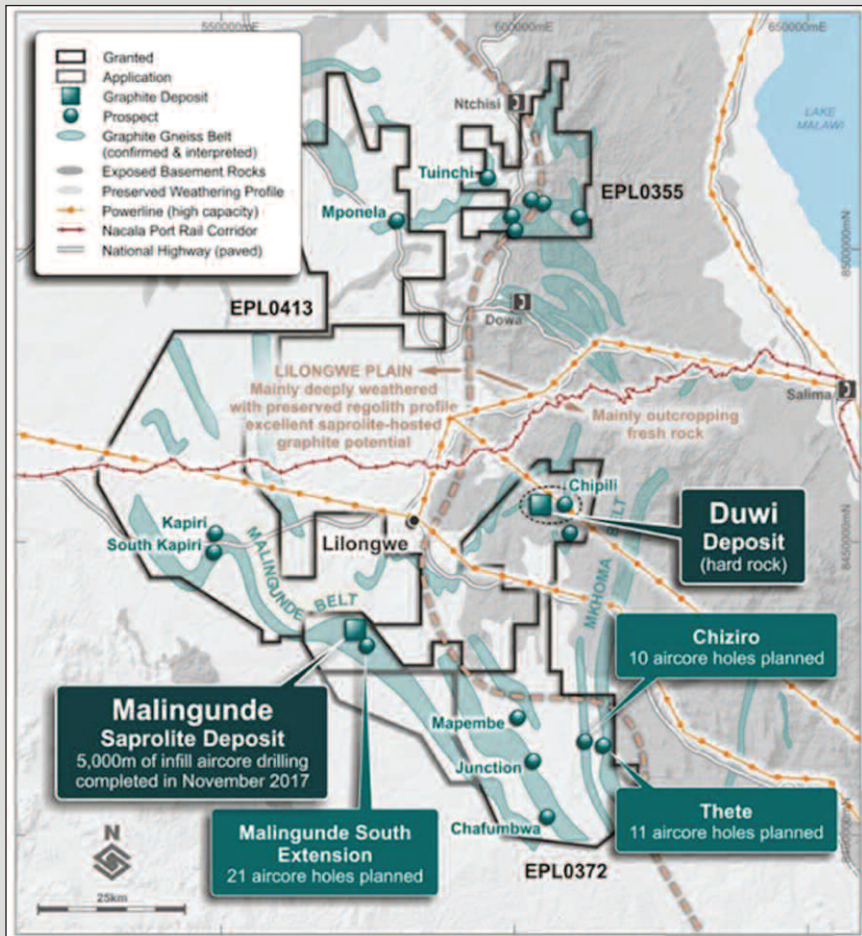


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Scoping of Malingunde graphite mine

concentrate annually over 17 years



Graphite

of approximately 44,000 tonnes per annum of graphite concentrates, equating to the movement of approximately 2000 twenty-foot shipping containers per year.

Under the agreement, CEAR will supply and maintain all infrastructure, equipment and personnel required to provide the services.

The Malingunde scoping study logistics cost estimate was circa US\$65 per tonne free on board (FOB), based on indicative pricing for the services.

Minister of Natural Resources, Energy and Mining, Aggrey Masi,

comments that the government of Malawi fully supports the project as it has always been the desire of the country's Head of State Professor Arthur Peter Mutharika to attract foreign investment to shore up the economy.

Masi says: "Malawi has taken significant action to provide an attractive environment for investors in the mining industry."

"We have successfully joined the EITI, a global standard for the good governance of oil, gas and mineral resources, which will provide accountability and transparency around mining and petroleum revenues."

"To this end, the Government of Malawi offers its full

support and assistance to Sovereign Metals in order to develop Malawi's first flake graphite operation at Malingunde."

Sovereign Metals welcomes the reforms that Malawi is undertaking to improve the investment climate in the minerals sector including joining of EITI and repealing the outdated Mines and Minerals Act.

"We only ask the government to ensure that the new law is enacted as soon as possible as it is an integral part of our feasibility study for the project since it will determine the government and community expectations from the project. Potential investors would always want clear guidelines on their operations," says Kruger.

The ongoing Malingunde feasibility study also involves a marketing study, and Sovereign is expected to sign off-take agreements with potential graphite buyers.

Sovereign Metals's other graphite tenements in Malawi include Duwi in Eastern Lilongwe where high-grade, coarse flake graphite mineralisation has also been identified over a cumulative ~24km strike length.

Around 2km of this trend has been drilled by Sovereign, resulting in the definition of the Duwi Main, Duwi Bend and Nyama graphite deposits, with a combined Mineral Resource Estimate of 85.9Mt at 7.1% TGC for 6.13Mt contained graphite.

Sovereign Metals has also been undertaking corporate social responsibility projects at Malingunde and the initiative saw the firm donating two boreholes to the people of the area ■

Sovereign Metals licence area

"The specialists will investigate potential impacts and develop measures and plans to manage the impacts to ensure that they are minimized," says Lotter.

Open pit mining with traditional excavator and haul trucks will be used to mine the ore at Malingunde but no drilling and blasting activities will be required for the operation as the material is relatively soft and suitable for free digging.

Mining will be undertaken in shallow open pits, with maximum depths of 25 m and maximum widths of approximately 150 m and once excavated, the ore will be loaded onto 40 tonne trucks and hauled from the pit to either the processing plant or if it is waste material, to the waste rock dumps.

After treating the ore in the plant (scrubbing and flotation), the tailings material will be pumped to the tailings storage facility site for final disposal.

The processed product will be transported on flatbed trucks by road over approximately 26 km to the Kanengo train station in Lilongwe, from where it will be sent by rail to the port of Nacala in Mozambique for export.

Meanwhile, Sovereign Metals is negotiating an infrastructure term sheet agreement with Malawi's rail operator Central East African Railways (CEAR) to use the rail network to transport graphite to the port of Nacala.

Sovereign's Managing Director Julian Stephens says a binding agreement between the two companies is expected to be signed by June this year.

Under the agreement, services will be provided over a 20 year period for the movement of up to 100,000 tonnes per annum of concentrates, providing upside to Sovereign's initial target of 44,000 tonnes per annum.

"Given that a single train can transport up to 84 containers at one time, the project will only require one train movement every two weeks," says Stephens.

The Malingunde scoping study considered production



Kruger handing over a borehole to the community



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The Author, *Ignatius Kamwanje*, is a Consulting Geoscientist with experience in Mineral Exploration, Mining Geology, ESIA, Ground Water Resources and Occupational Safety, Health and Environment.

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The Role of Development Agreement in Mining

'A Malawian perspective'

When a giant or a junior mineral exploration company engages an interest in an area commonly referred to as a tenement, it becomes the holder of the tenement. A series of technical aspects or activities in the long run lead to undertaking of a Bankable Feasibility Study (BFS) which is in relation to a typical mineral that is anticipated to be mined within the tenement upon meeting certain terms and conditions with the government.

Therefore, the government must ensure that it safeguards the interest of the people that will be affected while also ensuring that the operation benefits the company because a mining company is prone to risks and uncertainties and therefore it aims at securing significant returns from an investment.

Sound mining governance will adequately contribute to the socio-economic welfare of the people of a country let alone the people surrounding the mining area and perceived to act in a manner that is consistent with the community needs and also environmental protection through provision of successful mitigation measures.

One must also be mindful that in Malawi, pursuant to the Mines and Minerals Act of 1983, the Minister of Mines on behalf of the government is given powers to enter into agreement with the holder of the tenement. This ensures that the government of Malawi and the holder of the tenement, in this case a mining company, negotiate an equity stake as an agreement. This shall be of benefit to the company, the government, the community and the project itself. In this case, the company as a proponent of the project ensures that it persuades/or seeks comfort from the ruling elite (government) and the government must show full commitment and responsibility of supporting the terms and conditions as set forth therein for sustainability of the project.

It is therefore an expectation that certain matters and issues must be agreed upon and should be set out in the agreement as binding and also should reflect the national interest and stability of the project as an investment.

In development and operational matters, the mining company submits an approved programme of operations in accordance with Best Practices in Mining, Ore Processing/ Extractive metallurgy and Environmental Practices. This is in accordance with the Mines Act. In Malawi, as a case study, it is done to expand the investment commitment following the schedule of programmes set out by the company except in the event of a *Force Majeure* where the project might be suspended or curtailed. Of course the government has an obligation as set out in the agreement that it will act in a timely manner and in good faith when such a situation arises

The development agreement also contains agreements on waiver of duty free status, import and export. For example, in Malawi, under this, the company may be entitled to import and export materials, consumables for use in mining, ore processing, equipment and other services. Also under this agreement, the mining company is obliged to keep the mine product under adequate custody in terms of security on its premises, being transported and at the point of exit. The government may agree in facilitating the implementation procedure for the processes.

Under Local Business Development, a mining company is asked to develop a comprehensive programme encompassing development of Malawian businesses that will have the opportunity of supplying goods and services to the company. This programme forms part of the Bankable Feasibility Study (BFS).

There are also other essential services that form part of the development agreement that are crucial to the development of the area. These can be electricity, water, schools, clinics/hospitals, land and other infrastructure developments.

In the event of other unforeseeable conditions, the company is also required to disclose to the government how and why such a situation has arisen and list the necessary measures that will be taken into consideration. It is under these circumstances that a mining company engages itself in insurance of the operationalization and commercialization in accordance with the laws of the land. This mainly covers areas of OSHE (Occupational Safety, Health and Environment), Best Practices in Mining, Ore Extraction/ Processing and Environment.

In the event of suspension and curtailment of production, a mining company has the right to curtail or suspend production as stipulated in the Mines Act. This suspension can either be effected by the mining company or the government's action. For example, the Kayelekera Uranium Mine suspended its operation due to poor spot price of uranium. Suffice to say, this was the company's action due to economic disequilibrium and not the government. However, the government may also take such an action based on the same note or operational conditions that may have an adverse effect on either. There are also surface and other infrastructural rights that the public and the government can use within the tenement owned by the mining company provided that access will not jeopardize the security of the company and also interfere with the welfare/operation of the company.

The mining company is also obliged to submit records and reports, possibly annual reports submitted quarterly of operations to the government through the ministry concerned. This report outlines the mining and processing operations carried out within the tenement. These reports contain valuable information such as;

- Accounting
- quantity of mined ore (ore tonnage) and averaged grades
- the quantity of Mine product and the proceeds of the sales,
- quantities of Waste mined,
- operational costs,
- any geological and metallurgical investigations that may be obtained from time to time.
- It also includes ongoing exploration/prospecting activities taking place elsewhere within the tenement.

There are also other necessary undertakings contained in the development agreement. These may apply to foreign exchange, environmental issues, employment, occupational safety, health issues and corporate social responsibility (CSR).

For the general stability, taxation, royalties and consent, one of the components is sound fiscal regime. The company is entitled to enjoy its fiscal regime without limitations with support from the government in a timely manner. This is provided for in the Taxation Act. Besides, without limitation the government shall cause the Malawi Revenue Authority (MRA) to provide a duty exemption in writing to be issued by the Malawi Investment and Trade Centre.

The disturbance and resettlement issues in the development agreement is also crucial. The company may request to the government to permanently remove any person occupying any unauthorized structure within the mining area and the company is not required to provide any indemnity to the government with respect to removal of a structure or person. In the event that there is disturbance of land by the mining company and that the occupier of a structure needs relocation, then the mining company shall meet the costs

of resettlement and any other compensation as provided for in the Land Act and these costs must be in line with the government policy.

However, in my view, Malawi lacks behind in formulation and enactment of Compensation and Resettlement Act. Nothing much is gathered to implement it. In my opinion and understanding on issues to do with addressing involuntary resettlement, a mining company must commission an organization to prepare a Resettlement Action Plan (RAP) to facilitate involuntary resettlement of the Project Affected Persons (PAPs). Always a good practice is to include formal land acquisition in project specifications (World Bank, 2004). A mining company should treat the resettlement aspect as an integral component of the development process and devote the same level of effort and resources to resettlement preparation and implementation as to the rest of the project. This is because implementing resettlement as a development program not only helps the people who are adversely affected but also promotes easier, less-troubled implementation of development projects. The Resettlement Action Plans must therefore be developed with reference to a specific country and also International Standards. Through a participatory consultative process, the mine and the Project Affected Persons (PAPs) must agree on land compensation procedures. The RAP process may include negotiations between the mining company and Community Representatives leading to an agreement on the size of land to be relocated.

According to the RAP, the communities sometimes agree with the mining company to construct some facilities and infrastructure as part of the entitlements for the PAPs: You may wish to know that this RAP process does not in any way supersede as what is agreed in the Development agreement. This is totally a different entity aimed at assisting the displaced people due to land being occupied by the miner. In line with the World Bank Operational Policy 4.12 which describes the Bank's policy and procedures on involuntary resettlement, a mining company should comply with this since it claims to operate under international standards. According to this Policy, all displaced persons should be compensated for their losses with full replacement cost prior to the actual move, assisted with the move and supported during the transition period in the resettlement site. This is done to improve their former living standards, income earning capacity and production levels. Land, housing, infrastructure and other compensation should also be provided to affected populations that might only have customary rights to the land or other resources lost as a result of the project.

In conclusion, there are also general provisions that form part of development agreement. These can be summarized as

- Assignments
- extension to time
- termination disputes
- amicable settlement of disputes (negotiations and mediations)
- arbitration,
- expropriation
- expert determination
- performance to continue
- applicable law
- Force Majeure
- indemnity by the company
- variations,
- liaison committee
- notices
- waiver
- severability further acts
- representation and warranties



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TECHNICAL FILE

by Grain Wyson Phillip Malunga FIMMM
Mining and Environmental Management Expert

Building Community Trust in the Mining Sector

ABSTRACT

FPIC and Social Contracts offer opportunities for building community trust in the mining sector. During mining project development cycle, mining companies need to acquaint themselves with the environment in which they are going to operate. They become neighbours of local communities and for them to be welcomed, they need to identify interest groups whose rights and way of living needs to be protected or improved through benefit sharing and protection of the environment.

This paper is trying to encourage all stakeholders to work together to build community trust for obtaining social contract through FPIC.

1. INTRODUCTION

The global perception about mining is mostly negative. Resource rich poor countries are characterised by corruption and lack of transparency in the management of mining revenue. Mining communities feel there is lack of equitable benefit sharing of mine revenues and governments lack transparency and accountability. Environmental issues are not adequately addressed. The above issues have led to lack of trust between mining communities and mining companies. The only solution to this is to undertake community engagement to address issues that will lead to obtaining of "Social Contract" or what OXFAM prefers to call "Free Prior Informed Consent (FPIC)". This Social Licence leads to smooth and orderly implementation of mining projects through endorsement of local communities.

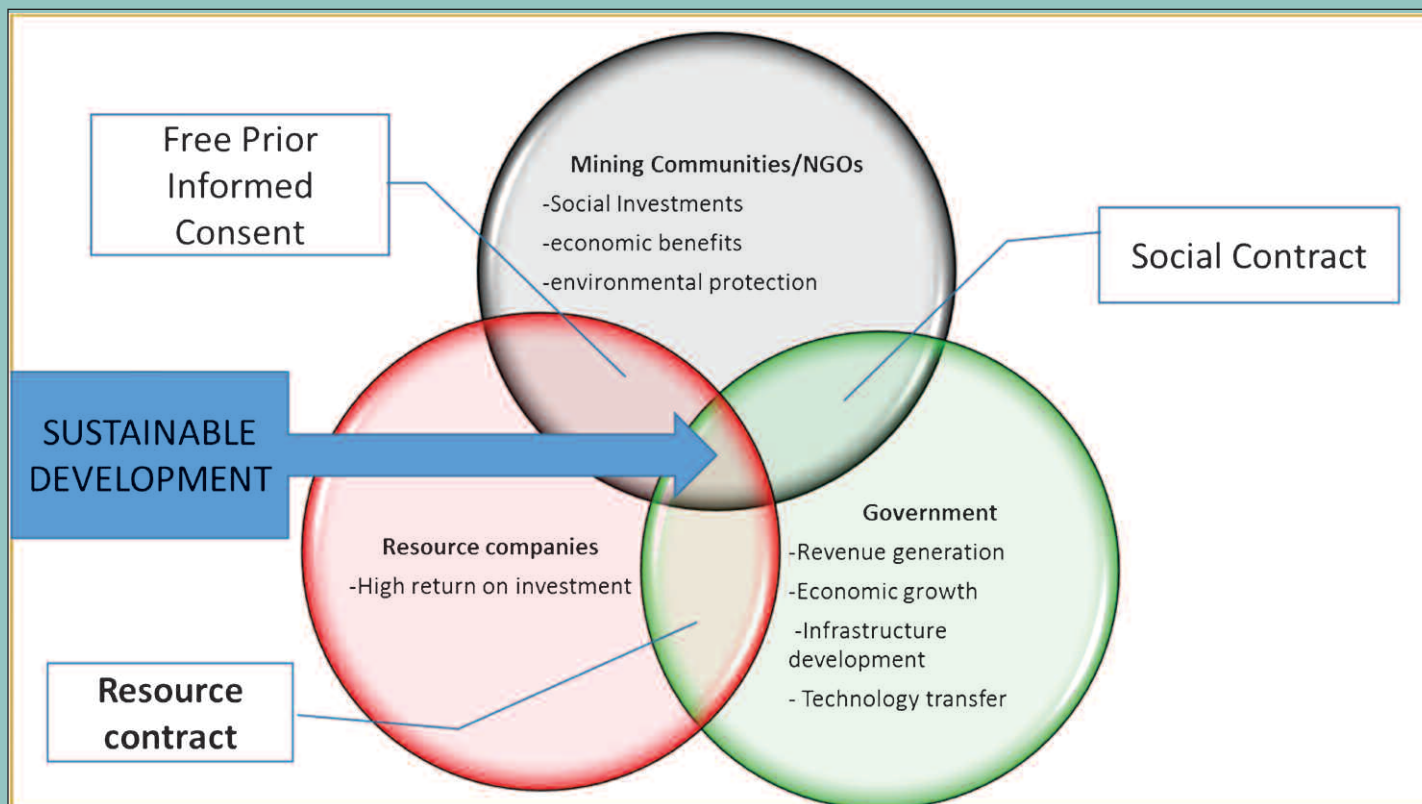
This looks at ways in which FPIC directly helps local mining communities to directly benefit from mineral resources.

2. FACTORS THAT BUILD COMMUNITY TRUST IN MINING

Governments should come up with pro poor mining policies that protect local communities and empowers them to have better livelihoods. Improving rural livelihoods requires provision of infrastructure, public utilities and promotion of local content through stimulation of entrepreneurship to support provision of goods and services in the mine. Bryan et. al., 2007, confirms this by stating that mineral resources can be used as a basis for industrialization, job creation, poverty eradication, capacity building and community empowerment and improvement of people's lives.

Government, mining communities and mining companies form a tripartite relationship that promote this trust and this tripartite relationship leads to sustainable development (Figure 1).

Figure 1: Building Community Trust in Mining - Malunga, 2016



Mining community expect social investments, economic benefits and environmental protection from mining companies under monitoring by government. Social investments include provision of water, health services and education facilities. These should be reasonable enough and should not replace government obligations. Communities are happy where mining companies contribute to local economic development such as employment, partnerships with local communities on programs that empower local people to supply agriculture produce and other services. Electricity and roads open up rural areas to industrialisation and access to markets. Environmental protection helps local communities to avoid pollution to water, air and land. Compensation and minimum deforestation build long lasting relationship with local communities.

Government is trusted by its people when it is transparent and accountable. Access to information on mine revenue generation and use is of paramount importance. Pre-agreed benefit sharing with local communities helps projects to be implemented smoothly without any disruptions. Community engagement at all levels of project implementation must have the presence of government officials too.

Mining companies are attracted by projects that offer high return on investment. This encourages them to engage communities on benefit sharing. Community engagement should dwell on benefit sharing, infrastructure provision, economic empowerment and environmental protection. These should be the basis for FPIC. Sustainable development is a product of the three stakeholders working together in a transparent and accountable manner driven by mutual respect for each other.

3. BENEFITS OF FPIC

FPIC is a process that helps mining companies identify interest groups whose rights must be protected. These groups or communities are first identified and participatory approach is used to understand socio-demographics, economic activities, political and cultural dynamics that are essential in building community trust during mining project implementation.

It is imperative that the mining sector should undertake inclusive participation throughout all stages of exploration, development, mining and post mining closure activities in order to obtain consent, minimize misconception and risks such as disputes and conflicts.

4. CIVIL SOCIETY ORGANISATIONS (CSOs)

The role of CSOs in promoting FPIC rests in them working with local communities and mining companies as mediators not instigators of social conflicts and violence. The more CSOs act on non-evidence based issues the more they will become irrelevant to mining communities, government and mining companies.

Mining is capital intensive, highly technical and does not generate super profits as communities think. This is why government has a special tax called resource rent to also benefit from super profits. Similarly arrangements can be made for local communities to benefit from such revenue. Mining companies expect CSOs to be responsible, respectable and relevant to all stakeholders in mining.

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Mkango scales up CSR activities in education sector ...hands over facilities for school feeding programme



Lemon and Hon. Namachekecha stirring a porridge pot while Langar looks on. A kitchen that Mkango has constructed at one school

By Deborah Manda

Mineral exploration and development firm, Mkango Resources, has pledged to continue assisting communities surrounding its flagship Songwe Hill Rare Earth Project in Phalombe with various interventions in the education sector.

Country Manager for Mkango Burton Kachinjika made the pledge recently when he handed over two kitchens and dining halls to Changa and Mphembedu primary schools in the area.

Kachinjika said Mkango decided to help with the school feeding facilities following its fact finding mission which confirmed that the two schools did not have a feeding programme, which negatively affected the lessons.

“Our fact finding mission established that Namalimwe Primary School in this same area has a feeding programme and noticed that learners there were more attentive and happier than the pupils at Changa and Mphembedu schools which did not have feeding programmes,” said Kachinjika.

Kachinjika explained that the President of Mkango Resources, Alexander Lemon, thereafter approached a well-wisher Nishkam Langar in London where the two agreed to pursue the project.

The community contributed bricks and sand while Mkango provided construction materials and equipment at a cost of 15 million Kwacha. UK based non-governmental organization, Zero Hunger and Langar, will be providing food stuffs to the schools.

“Our aim to improve class attendance as currently a good number of children do not go to school. We hope that with this school feeding programme, more children will be attracted to enroll at the schools and be able to concentrate on the lessons

without worrying about hunger,” said Kachinjika.

He said the company’s mission is to have an educated community in the Songwe Hill area and a part from coming up with the school feeding programme for the two schools, each year the company awards scholarships for secondary education to six students (three boys and three girls), and so far the company has 18 students under the scholarship scheme.

Zero Hunger Country Manager Amargeet Singh urged the school authorities to effectively coordinate with the organization to ensure that there is constant supply of food at the schools.

“The school committee should keep us informed on the stock so that we send the next stock of food in good time,” said Singh

Member of Parliament for Phalombe North East Denis Namachekecha Phiri commended Mkango and its partners for the initiative saying though the company is only in exploration stage, it is doing a lot for the people of the area.

“Surely, these are the kind of investors we need. Here, you have given our children hope with the roaming hunger as they are assured that they will be able to eat porridge at school,” he said.

Primary Education Advisor for Nazombe Zone Abdul Gama also expressed gratitude to Mkango for the initiative saying with the development his zone will continue to be a star performer in terms of education standards.

Gama said: “My zone has 11 schools and only three schools did not have feeding programmes. With the latest development, there will only be one school without a feeding programme. This will ensure that my zone continues shining in Phalombe district by getting more learners selected to national secondary schools.” ■

South African firm not renewing MW oil search licence

By Deborah Manda

South Africa’s Efora Energy Limited formerly SacOil has said that it will not renew its exploration licence for Block 1 in the northern part of the country.

In a report, the company says that in line with its strategy, it evaluated its position in Malawi and Botswana and the prospectivity of the respective fields.

“Those reviews indicated that the prospect of success on the two fields did not meet with our project investment criteria and as such we decided not to renew the exploration licences when they expired during the first half of 2018,” Says the report.

Efora recently conducted trainings for local geoscientists which saw Malawian technocrats trained in upstream petroleum sector processes as part of fulfillment of a commitment the company made in its exclusive prospecting licence.

The South African state-owned Oil and Gas firm was awarded 100% equity interest and operator status for Block 1, an area which stretches 12,265 kilometers of exclusive land mass.

The licence area starts from Chitipa, covering onshore north-western part of the country bordering Tanzania to the North and Zambia to the West on a trend with the East African Rift System which has the same tertiary proven for prolific oil discoveries, covering countries such as Sudan, Chad, Kenya and Uganda.

Efora Energy Limited is listed on the Johannesburg Stock Exchange and has a diverse portfolio of assets spanning production in Egypt, exploration and appraisal in Democratic Republic of Congo and also midstream project relating to crude trading in Nigeria and material downstream distribution operations throughout Southern Africa.

The company executed preliminary surveys in the Malawi Block including environmental screening ■

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