

# **CIVIL SOCIETY COMMENTS FOR THE REVIEW OF THE MINING AND MINERALS BILL, 2022**

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**Civil Society Organizations' Comments and  
Recommendations to the Parliamentary Committee on  
Environment and Natural Resource Committee**

## **Introduction and Background:**

Over the last three decades, the government of Uganda has taken steps to rehabilitate the country's mining sector back to its glory. This has been through legal and policy reforms, institutional and administrative reforms, and deliberate efforts to make Uganda an internationally competitive investment environment for the mineral sector. Pursuant to these efforts, the mining sector in Uganda has been on a positive trajectory in the last two decades with large and medium scale companies setting foot in the country to invest in exploration and/or mining of minerals like cobalt, marble, phosphates, rare earth elements, limestone and gold among others. Mining in Uganda is carried out by a combination of officially registered mining companies (both local and international) and artisanal and small-scale miners. Airborne geophysical surveys undertaken in 2011 indicated over 27 different minerals. The key minerals include gold, copper, tin, limestone, gemstones, wolfram, cobalt, tin, kaolin, and vermiculite. Development minerals include clay, stone aggregates, and sand. Other undeveloped resources include phosphate rock, iron ore, refined lead, niobium (columbium) and tantalum.

In line with the national requirement to review policies after every ten years, and the need to align Uganda's mining sector to the continental aspirations as espoused in the Africa Mining Vision, the Ministry of Energy and Mineral development embarked on the development of a new mining and minerals policy. The process that started in 2016 culminated into the Mining and Minerals Policy that was approved by Cabinet in May 2018 to replace the 2001 Policy. The goal of the policy is “to develop the mining industry through increased investment, value addition, national participation and revenue generation to contribute significantly to socioeconomic transformation and poverty eradication”. Among the many objectives, the policy sought to review and update mining codes, regulations and standards, hence the drafting of the Mining and Minerals Bill, 2021 which seeks to repeal the Mining Act of 2003. The new law also promotes the inclusion of resources that are currently excluded from the category of “Minerals” in the 2003 Act.

The Mining and Minerals Bill, 2021 has 22 parts. Each part has sub-parts/sections. The parts include: preliminaries; mineral rights; administration; mineral agreements, prospecting licenses, exploration licenses, retention licenses, small scale mining licenses, artisanal mining licenses; licensing of “building substances” exploited for commercial purposes under Article 244(6) of the Constitution; value addition and beneficiation of Minerals; Licenses to deal in, store, and fabricate minerals; general provisions relating to leases and licenses; surface rights; certification of mineral products (especially Tantalite, tungsten, tin and Gold i.e. “3TG”); Financing provisions; national content; Geological and mineral information; registration and records; protection of the environment; community engagement); occupational health and safety;

inspection of operations under mineral rights; enforcement; earth scientists and registration board; offences, penalties, and administrative penalties; and miscellaneous provisions.

## General comments

Besides the specific comments and recommendations provides in this memorandum in respect to given clauses of the bill, we took time to capture some comments that are general in nature. These comments do not relate to a specific provision of the bill per se, but provide relevant background knowledge in reviewing the bill. These comments have been categorized into positive ones, that we believe are progressive in nature and the negative ones, which ought to be addressed prior to passing the bill into law.

1. **Excessive Discretionary Powers of the Director:** One of the challenges the sector is grappling with under the current legal regime is excessive discretionary powers held by the Commissioner for Geological Survey and Mines department. The expectation was that the Bill would address this challenge. However, the Bill in its current form maintains this status quo by vesting the same discretionary powers in the Director. This challenge needs to be addressed.
2. **Gender Equality and Women Empowerment:** While the purpose of the Bill states that it will provide a framework for gender mainstreaming, equity and human rights and eradication of child labour in the mining industry, the provisions do not reflect this aspiration. This is reflected in the gender blindness in the wording of some relevant provisions and some provisions that allow child labour.
3. **Align the law to the Africa Mining Vision (AMV):** The AMV as strategy for integrating mining sector into broader social and economic development processes for countries on the continent. It calls upon countries to work towards “Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and economic growth”. It is for this reason that we believe the Bill should be aligned to the Africa Mining Vision, especially in respect to fiscal regime and the management of revenues from mining.
4. **Align with the Paris Agreement on Climate change:** While we all believe that the world must make a shift and the shift should be immediate to cut the greenhouse gas emissions, this needs to come out strong in the Bill. There have been attempts to promote the mining of minerals that will be used for the transition such as raw materials for solar panels, solar batteries and others. Enforcement is still weak in the Bill

5. **Regulation of Building Substances contrary to Article 244 of the Constitution:** The Bill seeks to bring construction materials under the ambit of the mining sector contrary to Article 244 which states that such building substances are not minerals for purposes of the minerals sector. There is an ownership question that cannot be addressed by the Bill as the constitution provides that all minerals are owned by the Government of Uganda on behalf of the citizens. Construction materials are not classified as minerals thus being owned by landowners, which creates a conflict between mineral rights and land rights.
6. **Silence on Critical Minerals:** The Bill in its current state does not address matters concerning *critical minerals* which are increasingly becoming of economic interest in light of **energy transition**. Critical minerals are mineral commodities that have important uses and have no viable substitutes, yet face potential disruption in supply and are critical to a nation's economic and national security. These include minerals such as; lithium, tantalum, cobalt, tin, tungsten, rare earth elements and titanium among others. Uganda is endowed with many of these minerals and failure to legislate on them may lead to their wasteful exploitation to the detriment of the country.

## Comments on Specific clauses of the Bill

	Clause	Observation	Recommendation
1.	<b>Clause 4: Environmental Principles;</b> Provision for Environmental and social impact assessment	While the Bill provides in this clause for the taking into account and giving effect to the principles and safeguards of environmental management prescribed under the National Environment Act, 2019, the text further on under Clauses 243 and 244 does not explicitly require the carrying out of a human rights impact assessment.	<p>Clause 243(1) should read;</p> <p><i>Every holder of a mineral right, license or permit shall carry out an environmental and social impact assessment, human rights risk assessment and environmental risk assessment of his or her proposed operations in accordance with the National Environment Act, 2019.</i></p> <p><b>The inclusion of human rights risk assessment should be continued under this part which refers to environment assessment.</b></p>
2.	<b>Clause 8 – Interpretation section of the Bill:</b>	<p>The Bill provides interpretation for several key words. However, the Bill does not provide interpretation for ‘primary host community’ in relation to clause 255(2).</p> <p>The term, ‘primary host community’ used in the Bill introduces an unnecessary disaggregation of host communities. This categorization risks disenfranchising sections of the community at the expense of others for failure to clarify who qualifies to constitute a ‘primary host community’. This discrepancy in the bill needs to be addressed before the bill is passed into law.</p>	The word primary host community should be defined to cure this discrepancy or in the contrary, the word primary should be removed so that the word host communities is used in a homogeneous manner.
3.	<b>Clause 22-26- Uganda National Mining Company together with Clause 206: State</b>	These clauses provide that the national mining company shall have 15% free equity in every mining operation and can also get another 20% paid for. The law also provides that the state can auction its stake without giving first opportunity to the developer. This is absurd and overly ambitious for the	This company is not necessary because of the context of our mining sector We do not have a conducive environment that will be required for the company to effectively operate. Therefore, the propose for

	<p><b>Equity Participation:</b></p> <p>government to not only be entitled to free stake in a mining operation, but also have the liberty to sell without giving the operator of the ne first priority. This proposal makes Uganda less competitive with peer countries in the region in terms of foreign direct investments in the mining sector.</p> <p>The National Mining Company has the potential to succeed in the minerals sector. However, there are enabling conditions which the government has to put in place to ensure success of the mining company. These can either be integrated in the bill or a provision made to commit the minister to make regulations for them subsequent of the passing of the bill. Some of these enabling conditions are listed below:</p> <ul style="list-style-type: none"> <li>• There must be clear distinction between the state as a company and as a regulator</li> <li>• The company must have capacity to excise autonomy in its governance, management and composition of the board</li> <li>• Commitment by the government to capitalize the company and guarantee continuous reinvestment until the company is self-reliant</li> <li>• Full transparency and compliancy with the requirements of the Extractives Industries Transparency Initiative (EITI)</li> <li>• Clear and Transparent goals, and sustained competitiveness (royalties, fees, taxes)</li> <li>• Ensuring a Level playing field between the National Mining Company and Private Mining Companies</li> </ul>	<p>establishing this company should be roped.</p> <p>In the contrary, if we have to keep the company, it should not be granted free equity participation in other mining project.</p>	
4.	<p><b>Clause 27- The Mineral Protection Force</b></p>	<p><b>Observations:</b> The law creates a specialized unit that is not linked to the Uganda Police force. The force in itself is okay to have in the Bill, but its mandate needs to be handled better. The force cannot report to the minister, a political figure as opposed to a technical agency such as is happening with the UWA Force. The mandate of the force is literally the regulator’s mandate, and it risks perpetuating the very chaos that was case. The</p>	<p>We propose that the force is struck out of the law and we rely of existing forces like the Uganda Police Force and the Uganda Peoples Defense Forces to provide the security and keep law and order in the mining sector.</p>

		regulator's mandate should be kept for the minister.	
5.	<b>Clause 29- Role of Local Governments:</b>	<p>First, we take cognizance of the introduction of a provision on the participation of local governments in the mining sector. The case in the old law was different and hence we find this progressive. Clause 29 provides for the role of local governments in the mining sector with specific mention to building substances.</p> <p>In the past, non-involvement of local governments in mining operations has made it difficult for districts, sub counties and land owners to assess the expected royalties from within their boundaries. Also, there have been reports of mining companies not allowing local authorities to access and inspected mines. Secondly, with the introduction of provisions on building substances, we believe that the local governments should be involved the process of <b>licensing for building substances</b> within their districts.</p>	<p>Clause 29 (1) should have another sub-clause that provides that; <i>“Local governments shall receive reports and plans of the companies operating in their jurisdiction every six months”</i>.</p> <p>The redraft should be as follows;</p> <p>Clause 29(1)(b) should be redrafted to include licensing and read as follows: <i>“License, regulate and monitor the exploitation of building substances in collaboration with the Directorate in a manner prescribed by regulations.”</i></p>
6.	<b>Clause- 85-95 Licensing of Small-Scale Mining:</b>	The law ring-fences some of the opportunities in the sector to the mining sector. However, this ring-fencing restricts companies that benefit from these opportunities to be wholly owned by Ugandans. Given the capital requirements for investing in the sector, these companies are always in need to financing and co-investors in order to generate revenue. Therefore, there should be room for some of the shareholding to be sold for purposes of financing and capitalization, as long as the companies remain with their majority shareholding as Ugandan.	Amend 86(d) to remove 100% shareholding of a company for it to be eligible to benefit from the ring fenced opportunity and provide that Ugandans should own more that 51% of these companies.
7.	<b>Clause- 91 Duration, renewal and revocation of small scale Mining Lease:</b>	<b>Observation:</b> In Tanzania, Artisanal has 7 years and small scale has 12 years' tenure, why should Uganda have 5 years. The term of these licenses is too short if we are to encourage local participation and guarantee security of tenure and certainty for ASMs in the sector.	We propose that the bill adopts the position in the Tanzanian mining law and set the term of the licenses for Artisanal miners at 7 years and for Small Scale Miners for 12 years

8.	<b>Clause: 92 on cancelation of small scale mining license</b>	There is no appeal procedure in case the licensees feel that the cancellation was not justified.	<p>The bill should provide for a right to a peal or a dispute resolution mechanism that can be accessed by an aggrieved party.</p> <p>We propose the establishment of a tribunal for the resolution of disputes in the sector e.g. the Tax appeals tribunal.</p>
9.	<b>Clause- 122 Acquisition of a Right to Exploit Building Substances for Commercial Purposes:</b>	The constitution in article 244 (5) is categorically clear that these substances are not minerals, and thus are not owned by the state but owned by the land owner. In essence, while government can regulate these substances, it cannot have the mandate to license their exploitation as the case is with other minerals. Although the law is clear on the process of licensing, their inclusion in this bill leaves many legal questions unanswered.	Part VI of the Bill on Building substances for commercial purposes, is inconsistent with the constitution which provides that building substances are not minerals. So their being included in this Bill is misplaced. Even for commercial purposes, we propose that they are regulated by the local government.
10.	<b>Clause: 199 (2) and (3) on acquisition of rights alongside clause 200 and 201</b>	The need to save the reversionary interest for the communities. Compulsory land acquisition as proposed by the Bill (clause 199 (2)) results into communities losing their land perpetually.	<p>As to 199(2) We propose that the government under this clause should grant government a lease, so that the reversionary interest returns to the original owner after the life of the mining operations.</p> <p>As to 199 (3) we propose that the Chief Government Value is redundant, and thus be deleted so that the parties can go to arbitration to settle the dispute</p>
11.	<b>Clause 207- Royalties:</b>	We appreciate the current royalty sharing provisions in the bill. However, given that the central government has other revenue streams beyond royalties, we propose that the percentage of royalties received by local	Increase royalties to local government in schedule 2 from 15% to 20% and reduce the government share



		governments be increased given that they are the ones that have to contend with the negative impacts of the project.	of from 70% to 65%.
12.	<b>Clause 210 – Waiver of royalties:</b>	The minister is granted powers to waive royalties while it is not only government that has stake in the royalties. This would disadvantage local governments, sub counties and land owners who would lose their share of royalties without having a say in it. More so, there are other means through which government can incentivize mining companies other than waiving royalties.	Delete this provision that grants the minister powers to waive all or part of royalties
13.	<b>Clause: 221 Powers of Minister responsible for finance in relation to taxation</b>	<b>Observation:</b> Clause 221 (4)(d) provides for tax incentives for companies that may be granted by the minister. However, one of the challenges the government faces is domestic revenue mobilization. Why should be continue making laws that are inconsistent with the need for domestic revenue mobilization. The bill is also not comprehensive on taxation, beyond a few provisions but we are aware of a statutory instrument that provides for levies on export.	The law should not encourage tax incentives by deleting this part. R in the event the incentives are kept in the law, provide that these incentives must be reviewed every 5 years in line with the OECD due diligence guidelines
14.	<b>Clause: 240 – 245 Environmental Considerations</b>	<b>Observation:</b> The penalty for operating without undertaking an Environment and Social Impact Assessment is low and not deterrent enough. Bill does not also address of access to the approved ESIA for these projects and the certificate of approval for the same.	<p>Punishment for mining without an ESIA should be increased so that it is more punitive</p> <p>The approved ESIA Certificate should be accessible and displayed at a conspicuous place at the mining site</p> <p>Mining companies should also undertake Human Rights risks Assessments</p>

15.	<b>Clause: 255 (2) on participation and community development agreement</b>	The uses of primary host cost communities may cause confusion as to who exactly has to be included in CDAs.	The word primary host community should be defined so that or in the contrary, the word primary should be removed so that we use the word host communities in a homogeneous manner.
16.	<b>Clause: 258 Safeties</b>	While this provision relates to safety in the mines, clause 258(4)(a) by implication allows child labor as to provides for only children aged below 14 not to be allowed in the mines. The clause provides that the operator of the mining shall not employ children below 14 years. Much as the maturity age as per the constitution is far above this one at 18 years, the age provided in the provision is even below the age for contractual consent and employment which is 16 years.	Clause 258(4)(a) should be revised and provide for non-employment of children below the age of 16 years.
17.	<b>Clause: 259 (1) Rights of workers</b>	All the rights in the clause are provided for under the employment. However, the wording of the provision does not extend this benefit to the causal laborers whose employment arrangements are not covered under the employment Act.	Add a clause (g) which provides that, <i>“the rights in 259 (1) to be enjoyed by causal labors who are not covered under the employment Act.”</i>
18.	<b>Clause: 302 (1) Prohibition of use of Hazardous chemicals</b>	First, the title of the section prohibits the unauthorized or use, where the detail of the provision prohibits the use generally. There is consensus in the sector that given the available technology locally, the use of mercury and cyanide especially in gold mining is inevitable but the efforts are geared towards proper and safe use of these chemicals with proper authorization.  This clause also, only prohibits the use, but does not extend the prohibition to the rest of the value chain of supply and procurement of these chemicals.	The detail of the section should prohibit the unauthorized use and the use per se.  The clause should add that the procurement, the importation in the mining operation. The provision should read that the unauthorized use is prohibited.  Also add a provision to provide that the minister to work on regulation to give effect to this provision

19.	<b>Clause: Transparency accountability</b>	<b>331 and</b>	Due to the challenges posed by lack of information on production and revenues from mining, the law should require companies to publish the production and revenue data on a project-project basis. This will not only improve transparency and accountability as required under the extractives industries transparency initiative, but also ease the computation and calculation of royalties	Require companies to publish the payment to government and government to publish revenues received from the sector on a project by project basis
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## Conclusion

Following a comprehensive analysis of the Bill, we have noted that the Bill has a number of progressive provisions as stated in the general comments. However, we have also come across a number of provisions that we believe need to be improved, amend, varied and/or deleted. We are a live to the hastiness with which this bill is being legislated but call upon parliament to comprehensively scrutinize the provisions of the bill, and legislate judiciously give the critical importance of this law to the development of the country through mining revenues, as well as protecting the environment from the adverse impacts of mining and compliance to the national and international commitments to fight climate change.