

CIVIL SOCIETY POSITION ON THE MINING ACT 2010

	Section	Key Issues	Identified Gaps/weakness	Recommendation
1	Section 23(6) read together with (7) Section 10	Lack of oversight functions of Mining Advisory and excessive powers given to the Minister and Commissioner	<ul style="list-style-type: none"> • This board lacks independence in implementing oversight roles • Bill has inserted clauses that takes away powers from the Board as Minister have given power to amend anything in the schedule there is no check and balance. • It should have a broad based representation – REMAS, TAMIDA, Market experts, CSOs, MPs and Mining professionals. • Powers to enter into MDA without checks and balances. This does not solve the problem of Government entering into bad contracts as before. 	<ul style="list-style-type: none"> ✓ Need to create independent authority with oversight function on mining sector ✓ Mineral authority should be given the mandate over sector development functions ✓ There is need for Parliament to set mechanism to ratify Mineral Development Agreement and provide checks to executive powers.
2	Section 10	Equity will be at discretion of the Minister	<ul style="list-style-type: none"> • The Act is quite vague on the question of equity, leaving the issue entirely to the Minister equity into the Act. 	<ul style="list-style-type: none"> ✓ Decisions about the level of ownership that the State will have in particular mines can have huge consequences for the broader economy. It may be worth considering the introduction of some parameters governing
3	Section 102	Absence of fairness in dispute	<ul style="list-style-type: none"> • The Commissioner has 	<ul style="list-style-type: none"> ✓ Formation of a competent

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		settlement Lack of due process of the law	<p>regulatory functions as well as dispute settlement.</p> <ul style="list-style-type: none"> • Commissioner assumes quasi judicial powers but we are not sure of his suitability and qualification. • The president may appoint appropriate person but have the quasi judicial powers. This is not fair. Too much power. • The law is based on assumption that the commissioner will consistently act in good faith 	<p>Mining Tribunal equivalent to sectors like land ,labour and commercial</p>
4	Section 43 read concurrently with section 11	Length of the Special Mining Licence and MDA	<ul style="list-style-type: none"> • Mineral Development Agreement is for the lifespan of the mine or special mining licence whichever period is lesser • However special license mining is granted as what the feasibility study report says about its life span. 	<p>✓ The Mineral development Agreements and Special Mining Licence should be for 20 years with reviews every 5 years</p>
5	Sections 10,11 and 12 read together	Mineral Development Agreement Vs Mining Contracts review	<ul style="list-style-type: none"> • Noting that MDA is a tool that provide fiscal stabilisation, then what was the basis for deciding which laws could be 	<p>✓ It is still very unclear about what the review would like to achieve due to stabilization clauses</p>

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			<p>stabilized?</p> <ul style="list-style-type: none"> • What mechanism is anticipated for the review of contracts every 5 years? • Reviews will not change anything due to stabilization clauses legally 	<ul style="list-style-type: none"> ✓ We expect that MDAs will allow for some amount of stabilization, but it is important that such stabilization be precisely defined and (ideally) limited narrowly to major revenue streams such as royalties, taxes, duties, and major fees.
6	Section 32 Section 38	Unreasonable time provided for prospecting and retention	<ul style="list-style-type: none"> • Computation of the different periods set under this provision adds up to to 11 years. • If you add the 10 years of retention licence then companies or individuals can speculatively and legally `hoard' land for 21 years. 	<ul style="list-style-type: none"> ✓ Prospecting should be 5 years and one time extension of 3 years
7	Section 55(2)	Beginning of the end for small scale mining and local participation	<ul style="list-style-type: none"> • The primary Mining Licence is given 5 years plus another 5years on renewal under this law • The Primary Prospecting Licence has been removed making it unlawful for locals to search and explore for minerals. 	<ul style="list-style-type: none"> ✓ The Primary Mining Licence should be for 10 years. ✓ Primary Prospecting Licence be reinstated to allow locals to search for minerals. ✓ The law should be clear on nature and extend of extension services to Small Services.

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8	Section 96(4) and Section 97	Is investor mining interest synonymous with public interest?	<ul style="list-style-type: none"> • The application of Land Acquisition Act will deny land occupiers fair compensation. • Land acquisition does not take into consideration market value of the land. • Vague criteria for compensation • Is assumed that investors' interest is paramount and synonymous to public interest. 	<ul style="list-style-type: none"> ✓ Mining Act and Land Act should be read harmoniously ✓ Compensation should be based on market value. ✓ Government and CSO should provide pro bono technical help to land occupiers during negotiation.
9	Sections 87,88 and Section 66	Royalty and local institutional Capacity	<ul style="list-style-type: none"> • Use of Gross value rather than net value will potentially increase government revenue. • However there questions about Ministry's institutional capacity to administer. • It provides for a 50% penalty in the case of a failure to pay royalties or taxes owed. There is no mention; however, of interest being accrued where failures persist. 	<ul style="list-style-type: none"> ✓ Use of Gross Value should go with capacitation and restructuring of the responsible departments of the ministry
10	Section 44(2) and	Environmental issues and community issues	<ul style="list-style-type: none"> • It requires the filing of an environmental management plan in an 	<ul style="list-style-type: none"> ✓ Best practice is for an Environmental and Social Impact

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	Section 47		<p>application for a special mining license</p> <ul style="list-style-type: none"> • However the Act is not clear with respect to the extent of the participatory process that is to be undertaken prior to the commencement of mining activity. • The Act makes no reference to any social aspects of such an assessment (it refers only to an environmental impact assessment). 	<p>Assessment to be undertaken, and this process is necessarily requires consultation with affected communities.</p> <ul style="list-style-type: none"> ✓ The Environmental Impact Assessment Report and Environmental Management Plans should be made public for scrutiny by the local communities and their representatives.
11	General	Poor mine closure proposal that lacks enforceability	<ul style="list-style-type: none"> • One major weakness of the new Mining Bill is the treatment of rehabilitation and closure costs. • A legal obligation on the part of a company to bear closure costs is meaningless without some assurance of the government's ability to enforce that obligation 	<ul style="list-style-type: none"> ✓ International practice is that companies must provide some form of financial assurance for closure and rehabilitation costs (whether through bonds, escrow accounts, parent guarantees, etc.). ✓ This is a matter of some great financial significance that should not be left to regulations or to excessive ministerial discretion.

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12	Section 25	Kick out EITI and Transparency???	<ul style="list-style-type: none"> • This provision section makes most information revealed under Section 100 confidential (subject to limited exceptions). • Section 100 refers not only to technical information, but also to books of account and information which may relate to payments or values of minerals produced 	<ul style="list-style-type: none"> ✓ There should include a specific reference to other laws requiring disclosure (such as EITI) to avoid legal uncertainty and to make clear government's commitment to such transparency.
13	Section 71	Tendering procedures	<ul style="list-style-type: none"> • The tender procedure spelled out in the Act (Section 71) is vague with respect to transparency issues. 	<ul style="list-style-type: none"> ✓ Transparency is especially key to a successful tender process ✓ Clear rules about the up-front disclosure of bid processes and criteria, and after-the-fact disclosure of both winning and losing bids and the basis for the decision made should be made clear are key.