

# **MODEL MINING DEVELOPMENT POLICY**

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## **Foreword**

(a) Provide an explanation of why the policy:

- Malawi's economy is predominantly agro-based; the need for diversification is identified under the MGDS. Mining has been identified as a key sector to facilitate economic diversification.

(b) Identify the weaknesses in the current policy necessitating the review:

- Thus while the current policy seeks to facilitate private sector mining investment and small and medium scale mining, to address issues such as citizen empowerment or public private partnership which are crucial to ensuring national ownership of the sector.

(c) Provide linkage to national objectives:

- Malawi's agro-based economy is threatened by various factors including climate change, high population growth and limited access to land. As articulated by the MGDS, mining has the potential to provide significant economic benefits such as employment and improved national revenues to cushion the impacts of reduced agriculture productivity.

(c) Expose the political commitment:

- Government is committed to diversifying the country's economy in accordance with the MGDS and mining provides an excellent opportunity to improve economic development, wealth creation, reduce unemployment and provide opportunities for enhancing rural development.
- The Mines and Minerals Policy should be informed by the principles of stability, consistency, stakeholder dialogue, management of expectations, social obligations and integrated land use planning and development plans. The impacts of mining on the environment are significant; sustainable development principles should provide the necessary guidance.

## **Preface**

State the technical explanation for the policy. For example:

- The Mining sector currently contributes just about 10% of the country's GDP but has the potential from both known minerals and favourable potential to contribute much more given a conducive investment climate. This Policy therefore seeks to provide direction for developing an efficient regulatory and management framework for the mining sector to stimulate private sector investment into the sector and ensure that the country benefits in terms of improved revenue, employment creation and sustainable economic development.
- This policy has been developed following extensive consultations with various stakeholders in the public, private and civil society sectors. The consultations also involved small and medium scale miners, women and traditional leaders to ensure that access to mining opportunities are shared at all levels of society. The policy also incorporates and specifically provides the framework for coordinating with policies and legislation that may be affected by mining such as those addressing environment and natural resources related issues; finance and taxation; labour and employment; local government and decentralization among others that may be affected by or may affect mining investments.

## **Acknowledgement**

## **List of Acronyms and Abbreviations**

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## **Introduction**

### **1. Background**

#### **Historical**

Malawi enacted its Mines and Minerals Act in 1981; this was followed by the Petroleum (Exploration and Production) Act 1983. No specific policy instrument was developed though the Statement of Development Policies the country was using addressed the mining issue though not in details.

The MGDS which provides a development policy framework for the country prioritizes mining as one of the key sectors for diversifying an economy which is heavily dependent on rain-fed agriculture.

Malawi adopted a Mines and Minerals Policy in 2013. There has been very little time to consider the effectiveness of the Policy; nevertheless there are glaring shortcomings in the Policy that need to be revised. In particular, recent experiences in the mining sector such as the Kayerekera uranium mine, the licensing and negotiation of niobium mining development at Kanyika in Mzimba district and rare earth exploration on Mulanje Mountain have provided challenges that require proper policy guidance.

#### **Rationale**

Provide the justification for the Policy

Malawi's economy is too dependent on agriculture to be sustainable. Mining has been identified as key sector to diversify the economy. While the Mines and Minerals Policy 2013 provides guidance on the development of the sector, there are a few issues pertaining to mining governance, which need to be addressed. In the first place the current Policy needs to address citizen empowerment or public private partnership, which are crucial to ensuring national ownership of the sector. Thus while the Policy deals with private sector involvement in mining as well as the role of small and medium scale miners, it is important that the Policy articulates the roles local communities, civil society and the public at large and how they can participate in mining investment processes. In addition, the institutional framework for mining governance needs to be revised from one in which all the powers are given to the Minister responsible for mining to one in which each public officer is fully accountable based on duties and responsibilities that are clearly spelt out in the law; as well as one which accommodates oversight and participation of non state actors.

In addition, the Policy needs to articulate various cross sector issues that are affected by mining investments. A few that can be highlighted including land acquisition for mining and the related questions of compensation and how to package these to ensure that local livelihoods are sustainable. In addition, Malawi needs to prepare the ground for addressing the economic imbalance that mining may bring by developing a clear direction for corporate social responsibility and addressing any social costs that mining can cause during the life and closure of mining operations. Finally, in order to maximize on mining

revenue generation, the policy needs to provide direction on the development of the taxation regime as well as facilitate resource mobilization for mining investments.

The Policy must create a balance between a competitive, thriving and sustainable mining industry that benefits the people of Malawi while concurrently enabling the private sector to recoup their investments.

### **Policy Coordination**

Mining affects a number of sectors largely because of the demands that mining operations have on land, water, forestry, air quality and related issues. Mining is also affected by access to these natural resources, the investment climate as articulated in various government policies, the relationship between local communities and mining companies around mining areas as well as available infrastructure and manpower development. The Mines and Minerals Policy therefore needs to provide clear direction on the interface between various sectors to facilitate a conducive environment for the growth of the mining sector.

## **2.0 Policy Goals and Guiding Principles**

### **2.1 Overall Policy Goal**

To have a thriving private sector and private-public partnership led mining sector that can contribute 20 per cent of GDP and overall sustainable economic development in the country by 2025

### **2.2 Policy Objectives and Outcomes**

The Government will pursue the following policy objectives in its efforts to realize the vision, mission and policy objective of the Policy:

- Facilitate local and foreign investment in the mining industry;
- Empower Malawians to become owners and shareholders in the mining industry;
- Integrate mining industry into the domestic economy by promoting entrepreneurship and demand for local goods and services, employment creation and value addition;
- Strengthen the institutional framework for mining governance to ensure that it facilitates efficiency, accountability and transparency in mining investments;
- Facilitate small-scale mining to enable it contribute to economic development, wealth creation and employment;
- Achieve sustainable mining through environmental stewardship and acceptable safety, health and social welfare standards;
- Facilitate corporate social responsibility in mining planning, development and decommissioning taking into account the needs and concerns of local communities.



- Ensure transparency and accountability in mining of mineral resources;
- Promote the participation of women in the mining industry
- Facilitate development of skills and human resources capacity; and
- Promote research and development in the mining sector.

### **2.3 Guiding Principles**

Provide the core values or guiding tools for the Policy.

- Commitment to ensure sustainable exploitation of mineral resources for the maximum benefit of the people of Malawi;
- Commitment to free market enterprise while ensuring that mining benefits Malawians;
- Commitment to gender equality women economic empowerment;
- Commitment to transparency, accountability, checks and balances in mining transactions and in dealing with mining revenues;
- Promoting empowerment of Malawians in the mining industry; and
- Adherence to mining safety, health and social welfare and sustainable environmental management.

## **3.0 Policy Priority Areas**

### **Policy Priority Area 1: Mineral Administration and Development Systems**

- Create simplified, transparent one-stop administration systems within the appropriate ministries;
- Expedite geological mapping through non tax incentives aimed at attracting private companies with financial and technological resources to partner with Government;
- Consider the merits of each application for an exploration license separately and negotiate an appropriate size of area after taking into account the circumstances (uniqueness) of the application, the credibility of the applicant, the work programme and national and regional policy objectives into account;
- Limit the initial term for issuing exploration licenses in order to reflect the exploration commitments in the work programme and make them re-renewable once for a shorter period. Provision for relinquishment should be made to enforce the 'use-it-or-lose-it' principle, as holders should demonstrate work.

- Maintain an efficient computerized cadaster system;
- Make it mandatory for holders of exploration and mining rights to regularly submit information in a standardized format, and upon the expiry of the right, submit a detailed report of exploration and mining activities;
- Provide for automatic progression from exploration to mining for those holders of exploration rights who comply with the rules;
- Introduce internationally competitive mineral royalties as compensation for mineral depletion. Royalty rates should be mineral-specific;
- Introduce an exploration fee structure that encourages exploration, avoids sterilization and is linked to work programmes;
- Establish surface rental fees by the property market, which will require negotiated rates with landowners. For state land, the rates could be standardized but reviewed regularly to reflect market values; and,
- Introduce incentives to stimulate specific policy objectives, such as economic development in mining areas, and the creation of value-adding (mineral beneficiation) industries.

### **Policy Priority Area 2: Land Acquisition for Mining**

- Provide for acquisition of land for mining purposes together with compensation and relocation requirements for the affected local communities.
- In the absence of legal requirements, provide for guidelines for addressing due process for land acquisitions, packages for compensation and community relocation; ensure that all stakeholders are properly consulted and that issues of gender and rights of women are addressed.
- Ensure that local communities affected by mining operations have alternative and sustainable livelihoods.

### ***Policy Priority Area 3: Mineral Beneficiation***

- Identify and analyze minerals that have potential for value addition and work on beneficiation projects in partnership with the private sector and regional partners;
- Review the supporting infrastructure (transport, energy and water), technology, skills and other inputs for value addition;

- Strengthen the regional markets for value added mineral products; and,
- Support initiatives of producer associations to deal with barriers to value addition, appropriate incentives should be provided.

*Policy Priority Area 4: **Mineral Marketing***

- Leave the marketing of minerals to the free market and only monitor through the responsible ministry. Assistance in marketing should be reserved for the artisanal and small-scale mining sector;
- Identify suitable niche markets for marketing of unique products like African-design jewelry;

*Policy Priority Area 5: **Safety, health and social welfare***

- Exploration, mining and processing of mineral resources to comply with requisite safety health and environmental regulations;
- Establish and or maintain an environmental fund;
- Harmonise and build capacity of institutions responsible for health, safety and welfare of mining workers;

*Policy Priority Area 6: **Environmental Management***

- Incorporate principles of integrated environmental management and basic environmental impact assessments before the granting of exploration rights. For mining rights, the international principles of integrated environmental management should apply for all projects;
- Adopt an integrated resource use and management framework which maps and profiles all resources in a mining area and seeks to enhance their sustainability;
- Make it mandatory for mining companies to provide for rehabilitation of land and pay for adverse impacts on community livelihoods;
- Incorporate post-mining use of land issues into the process of granting exploration and mining licenses;
- Incorporate multiple land use planning into the license granting process; and,
- Introduce a Minerals Development Fund to include provision for environmental disasters and social decline as a consequence of mining into mining policy and legislation.

### *Policy Priority Area 7: Governance*

- Introduce sustainable development objectives into mineral policy and law;
- Ensure security and continuity of tenure with reasonable exclusivity, enforceability and transferability of rights;
- Put in place programmes towards meaningful empowerment and participation of nationals to enable them hold public officials who manage mineral benefits accountable;
- Government should impose reasonable social obligations upon holders of exploration and mining licenses and should make commitment to social obligations a requirement for the granting and renewing of exploration and mining licenses; the principles and modalities of these obligations should be articulated in policy and legislation and be incorporated in mining licenses/development agreement; and,
- Link corporate social responsibility programmes with the granting of exploration and mineral development rights; and,
- Establish broad-based mineral development and investment parastatal body to act as advisor and public watchdog in minerals administration.
- Restructure, streamline and strengthen the administrative and organizational framework necessary for efficient regulation and service to the mining industry.
- Consider and review the roles of the Geological, Mines Development and Mines Safety Departments in terms of operational complementarity and independence as necessary

### **Policy Priority Area 8: Artisanal and Small-Scale Mining (ASM)**

- Develop specific and appropriate legislation for the ASM sector and allocate resources for administration of relevant legislation, training and education in the sub-sector, providing support for the development of cooperatives; and assisting with seed finance, marketing of output and other technical matters;
- Revisit mineral policies in order to assess how the link between mining and poverty reduction is addressed and how ASM is factored into Poverty Reduction Strategies;
- Review existing ASM policies and legislation with implications for traditional land rights and the role of central government in land allocation;

- Increase awareness on the benefits of adding value to mineral commodities through education and increase value addition through establishing appropriate processing industries;
- Designate certain areas of known mineral potential for ASM and reserve the right to operate these designated areas exclusively for their nationals.
- Develop special mineral development rights for the sector that are simple to apply for, easy to comply with, transferable and give adequate security of tenure. Allocate the issuing, registering and managing ASM rights to local government authorities but coordinated by the mining ministry.
- Develop, adopt and enforce appropriate and uniform health, safety and environmental guidelines for the sector;
- Establish partnerships involving government, miners, NGOs, finance institutions, the formal mining sector, manufacturers of suitable ASM mining equipment and professional organizations to tackle problems in the sector;
- Enact policies to remove barriers to the participation of women in the sector;
- Ensure that employment and working conditions for miners are within internationally accepted standards through enforcing the adoption of health, safety and environmental standards;
- Make employment of child labour a punishable offence;
- Ensure that the ASM sector is integrated into rural community development programmes;
- Facilitate access to basic social services and transport infrastructure by the sector;
- Simplify the ASM taxation regime by introducing a standard tax based on a percentage of gross income and this rate should include all taxes, levies, mineral royalties and other payments to the state;
- Develop administrative structures within Ministries to provide assistance to the sector;

- Make mineral rights tradable to enable miners to use them as collateral in order to access finance from commercial banks;
- Provide the necessary environment in which miners can operate and also in which various stakeholders can participate effectively in the development of the sub-sector;
- Provide for networking and knowledge-sharing activities to ensure that mistakes are not repeated, already proven technological advance and ideas are not re-invented and lessons learned in one context are made freely available to others;
- Establish specific credit, savings and loan schemes to assist with technology and human resources, to finance ASM, and train participants in the ASM sub-sector; and,
- Establish flexible, equitable and free marketing systems to purchase legal mineral production from ASM at market-related prices.

#### **Policy Priority Area 9: Research and Development (R&D)**

- Fund fundamental research and encourage industry participation in funding applied research programmes in the mineral sector;
- Collaborate in research, encourage skills and technology transfers within the region; and
- Encourage technological innovation, support development of small-scale sector to fabricate for local markets and develop a sector strategy to include R&D, training, marketing, finance, technology and management skills.

#### **Policy Priority Area 10: Integrating the mining sector in the domestic economy**

- Develop plans for reinvesting mineral revenues to ensure the economy continues to benefit after mining operations close;
- Develop mining clusters to link mining sector to the broader economy;
- Promote linkages between mining and agriculture, mining and tourism and mining for the value adding process industries;
- Provide for social sustainability plans in mining development agreements;
- Undertake promotional events to sensitize the general public in mining opportunities and business development opportunities;
- Compel by law mining companies to give preference to Malawi products, local contractors and services and to employ Malawians.

### **Policy Priority Area 11: Citizen Empowerment in the Mining Sector**

- Encourage voluntary citizen empowerment policies in foreign investment and make mandatory for long term mining investment to float their shares on the stock market within a period of 10 years of granting them a license;
- Promote Malawian ownership of large scale mines through under the Public Private Partnership Act;
- Provide for certain categories of mining rights to Malawi citizens only;
- Reserve a portion of mining royalties for business development in the mining areas.

### **Policy Priority Area 12: Human Resources Development in the Mining Sector**

- Encourage industry participation in professional training and development programmes through the provision of fiscal incentives to encourage skills development and transfer programmes;
- Develop mining-related skills development programmes;
- Facilitate mining skills transfer by incorporating requisite conditions in mining licenses and mining development agreements with foreign firms;
- Require companies to present social and labour plans as part of the package for accessing mine development rights and encourage companies to train employees in alternative skills in order to manage downscaling; and,
- Take advantage of regional centers of excellence for skills development through sharing and utilization of existing training infrastructure.

### **Policy Priority Area 13: Women and Mining**

- Implement and enforce specific provisions for gender equality and equity and develop targeted policies to empower women in mining and/or support gender equality in mining policies with appropriate legislation;
- Develop and implement education programmes to increase women's access, adaptability in the minerals industry and ensure retention of skilled women in the minerals sector. Training programmes should be extended to include officers in the mining ministry.
- Introduce communication and sensitization programmes to remove resistance against women empowerment and to remove cultural barriers preventing

women's participation and contribution to the sector and develop and apply punitive policy measures aimed at discouraging discrimination against women in the minerals sector;

- Adopt an "Affirmative action" approach to foster the enrolment of women in technical and other key disciplines for minerals development.
- Facilitate the creation of strong women miner's network and link these with rural women groups and deploy resources to these associations and networks;
- Address social issues associated with women in mining effectively and involve women in the adoption of minerals policies that tackle Human Rights issues;
- Strengthen and/or create national Gender and Women in Development Policies in order to guide empowerment of women in the mining sector. In the medium term, initiatives similar to the empowerment charters in South Africa should guide the women empowerment process in the region; and,
- Develop educational programmes aimed at both increasing men's sensitivity to women issues and women's empowerment in all sectors of minerals development.

#### **Policy Priority Area 14: Mining Fiscal Environment**

##### **4.14.1 International tax issues**

- Negotiate tax treaties with the home countries of investors to avoid double taxation on the investor;
- Use withholding taxes but set rates at internationally competitive rates;
- Provide relief for import and export duties on minerals sector items; and,
- Protect the domestic tax base by introducing transfer-pricing rules based on OECD (arm's length) principles.

##### **National tax issues**

- Avoid tax stability or tax holiday agreements for specific investors unless as a temporary measure;



- Provide royalty tax by law rather than by negotiation with individual investors;
- Ensure that the minimum tax rate is kept at an internationally competitive minimum;
- Introduce after profit tax to share bonanza profits over and above the required investor return on investment;
- Allow for accelerated amortization and depreciation schedules for the treatment of exploration and mine development expenditures;
- Limit either the period of loss carry forward or the cost amount as determined in the income tax calculation;
- Consider using depreciation schedules for capital equipment based on the item's useful life; and,
- Consider including realized capital gains (or a portion thereof) in the annual income tax calculation.
- Establish a mechanism for distributing mineral revenues at the district and village levels to strengthen decentralization processes and to optimize the contribution of mining growth to sustainable development at the local level.

#### **Local Government/Regional tax issues**

- Ensure that the local taxes are kept to a minimum to reduce adverse impact on attractiveness of particular regions.

### **5. Implementation Arrangements**

#### ***Institutional Arrangements***

A number of stakeholders are involved, affect or are affected by mining issues; these need to be engaged in the implementation of this policy. The Ministry responsible for mining has a key role in this regard. The prime goal of this leadership is to convene, facilitate and guide to assure an integrated approach towards the common goals and objectives of this policy. This leadership role must also embrace district and local levels of government as well as the national level, and also seek community based engagement and action.

Key stakeholders include: government, non-governmental organizations and civil society, the private sector, academia, development partners, local communities and identified disadvantaged groups.

### **Government coordination**

At government level in addition to the Ministry responsible for mining there is need for a cabinet committee on mining to provide a coordinated cabinet response to mining issues. Similarly there is need for a Parliamentary Committee on mining. The Cabinet Committee will provide executive direction on all government departments to coordinate their actions. The Parliamentary Committee will serve to provide oversight of mining issues.

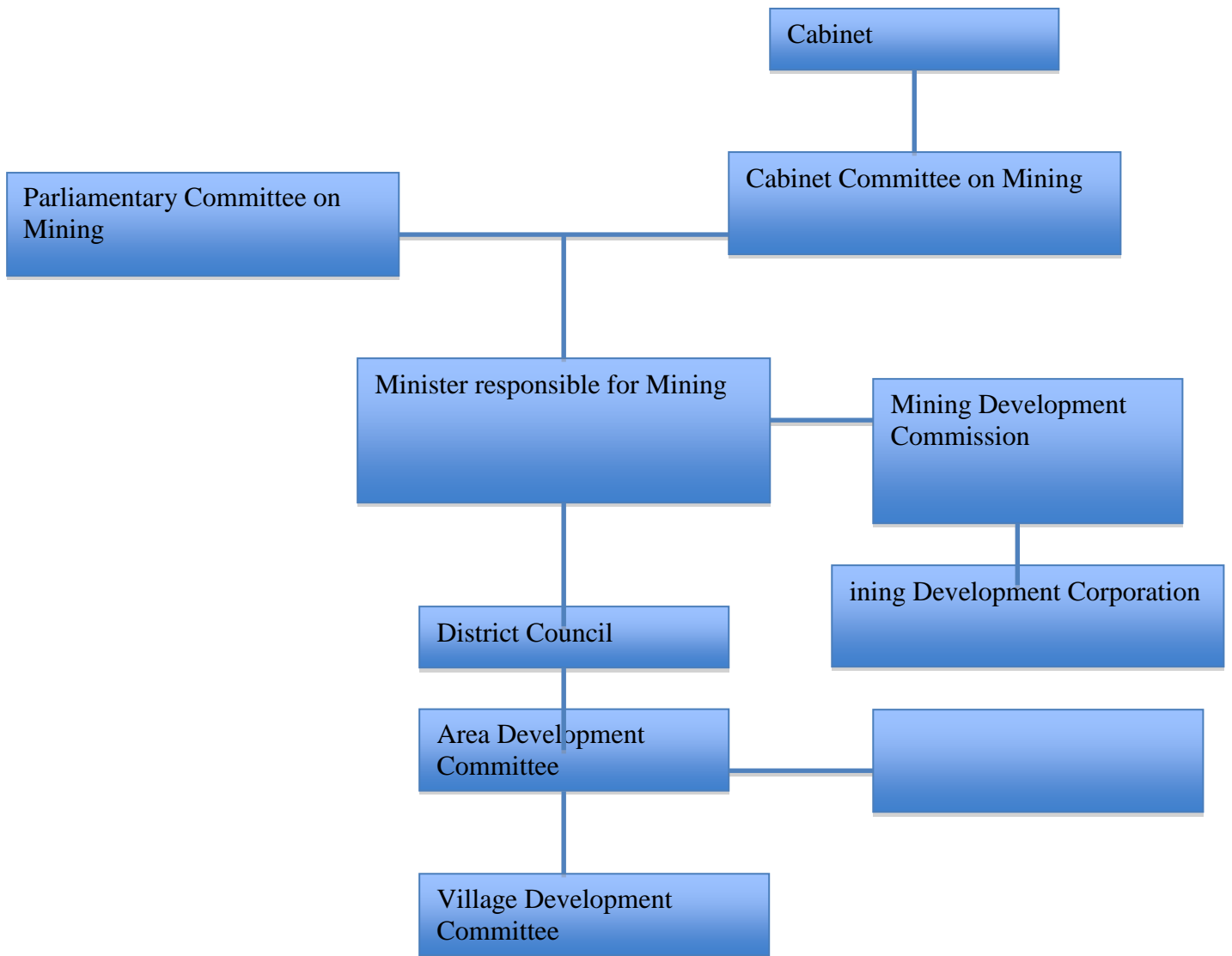
The Minister responsible for mining will coordinate all mining related issues. The Minister will appoint a Mines Commission to be composed of experts from various government departments, academia, civil society and private sector to provide regulatory oversight. The commission will be responsible for scrutinizing mining applications and issuing licenses and concession, negotiating mining development contracts, including monitoring compliance.

The Commission will be headed by a Commissioner for Mines who will act as Secretary to the Commission; the Commissioner will have subordinate staff. The Minister will provide political oversight and report to Parliament on mining developments. The Commission will act as a coordinating body, since the key sectors such as lands, water, forestry, environment, finance and economic planning will be represented on the Commission. Civil society and the private sector will also have voice and participation.

The Commission will establish subcommittees on which can serve experts and representatives of communities where mining is taking place. The composition may change as appropriate to ensure representation and required expertise.

Government will establish a Mining Development Corporation which will be a body corporate and through which Government can own shares in mining ventures and also develop mining ventures and related infrastructure. This body will also act as a mining investments facilitation body and can enter into joint ventures and other investment structures to develop the mining sector.

The organogram below summarizes the institutional framework



### **Legal Framework**

The Mines and Minerals Act 1981 is the key legislation governing mining in Malawi. Related legislation includes the Petroleum (Exploration and Production) Act 1983, the Explosives Act, and the Environment Management Act, among others. The Mines and Minerals Act is currently being revised and will take into account the objectives, principles and priorities addressed in this Policy.

### ***1.1 Implementation Plan***

#### **Development of a National Mining Strategic Plan**

The Ministry responsible for mining, and in conjunction with the key structures outlined in the institutional framework, will develop a national strategic plan to implement this policy.

### **Incorporation of Mining Issues into Sectoral and Partners' Strategic Plans**

The bodies established in the institutional framework will review and promote the incorporation of mining issues into all relevant Sector Wide Approaches, ministerial and partner strategic plans.

### **Review of Progress**

The bodies established in the institutional framework will provide regular review of progress in the implementation of the policy and advice on how to take the policy forward.

#### **1.2      *Monitoring and Evaluation***

Government is mindful of the need to monitor and evaluate the implementation of this Policy to ensure that it facilitates a responsive mining governance framework. This will enable it to make evidence based decisions and to plan and respond effectively to improve mining governance. Monitoring and evaluation also provides a mechanism for institutional accountability. Progress with national developmental goals such as the MGDS II can also be assessed.

The Ministry responsible for mines will be responsible for developing appropriate indicators, in consultation with the bodies identified in the institutional framework, and reporting regularly on those indicators. The Ministry will further develop measureable and verifiable indicators to monitor and evaluate implementation of this policy. Where possible these indicators could be extended to cater for activities, sectors and institutions dealing with climate change issues. NGOs, civil society and the private sector may also participate in monitoring and evaluation, thereby improving national data availability and accountability.