

Minerals and Mining (Compensation And Resettlement) Regulations, 2012 (L.I. 2175)

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MINERALS AND MINING (COMPENSATION AND RESETTLEMENT) REGULATIONS, 2012

IN exercise of the powers conferred on the Minister responsible for Mines under section 110(1) of the Minerals and Mining Act 2006 (Act 703), these Regulations are made this 20th day of March, 2012.

Regulation 1—Claims for compensation

(1) A holder of a mineral right shall, within fourteen days after the grant of the mineral right, give notice to a person

(a) who claims a right or an interest in land over which a mineral right has been granted under section 5(1) or 82(1) of the Act; or

(b) whose right or interest in any land is affected in any manner by the grant of a mineral right.

(2) The notice shall be posted in public places including markets, churches, mosques and schools in the affected community.

(3) Within sixty days from the date of the notification to the affected person by the holder of the mineral right, the affected person may submit in writing a claim for compensation to the holder of the mineral right which shall include

(a) particulars of the claim or interest in the land;

(b) the manner in which the claim, right or interest has been affected or is likely to be affected by the operations or activities of the holder of the mineral right;

(c) the extent of damage done, if any;

(d) the type of compensation claimed, whether in cash or in kind, which includes replacement of property, provision of training, and the basis for computation of the amount of compensation claimed; and

(e) particulars of other persons known to the claimant to have an interest in the land and details of that interest.

(4) A claim for compensation under subregulation (3) shall be copied to the Minister, the Commission and the Government Agency responsible for valuation of land.

(5) Where a claim for compensation is not made within the stipulated time, the Minister shall authorise the Government Agency responsible for valuation of land to value the land affected.

(6) A valuation done under subregulation (5), shall be the basis for the payment of compensation to any person who makes a claim for compensation after the stipulated time.

(7) The holder of the mineral right shall on receipt of the claim for compensation under subregulation (3), negotiate with the claimant for the payment of fair and adequate compensation from the holder.

(8) The holder of the mineral right is not liable to pay compensation to any person who undertakes speculative development on land subject to a mineral right after the cut-off date.

Regulation 2—Assessment of compensation

(1) A person who claims compensation in relation land which is subject to a mineral right or a person whose interest in land is affected by the grant of a mineral right may engage the services of a qualified person for the purpose of assessing and determining the amount of compensation payable.

(2) The holder of the mineral right shall on receipt of the compensation claim enter into negotiations with the claimant for the settlement of the amount of compensation.

(3) The claimant and the holder of the mineral right may appoint a committee to negotiate the amount of compensation and any amount that is agreed on shall be in the form of a written agreement and approved by each claimant before the compensation is paid.

(4) Where the parties appoint a committee to negotiate the amount of compensation, the committee shall include the following:

- (a) a qualified person who represents the claimants;
- (b) a qualified person who represents the holder of the mineral right;
- (c) a representative of the government agency responsible for valuation;
- (d) three representatives of the affected persons being farmers and affected communities;
- (e) a representative of the traditional authorities in the project area;
- (f) a representative of the relevant District Assembly; and
- (g) other members mutually agreed on by the parties.

(5) Where the parties appoint a committee to negotiate the amount of compensation, the holder of the mineral right shall pre-finance the costs incurred by the claimants in engaging the services of qualified persons.

(6) A dispute between the claimant and the holder under this regulation shall be referred by either party to the Minister, who in consultation with the Government Agency responsible for land valuation, shall determine the compensation payable.

Regulation 3—Compensation principles

(1) To assess the compensation which a claimant is entitled to, the following principles shall be considered:

(a) in respect of crops,

- (i) loss of expected income, which depends on the nature of crops and their life expectancy;
- (ii) loss of earnings or sustenance suffered by the farmer under any customary tenancy or any other interest the farmer may have in the land; and
- (iii) any other disturbance suffered as a result of the grant of the mineral right;

(b) in respect of deprivation of use or a particular use of the natural surface of land,

- (i) the disruption of the socio-economic activities of the claimant;
- (ii) change or conversion of use of the land after mine closure;
- (iii) duration of the mining lease;
- (iv) diminution of the value of the land as a result of the diminution of the use made of or which may be made of the land;
- (v) severance of any part of the land from other parts;
- (vi) any surface rights or access;

(c) in respect of commercial structures which affect a business,

- (i) the cost of re-establishing commercial activities elsewhere in a similar locality;
- (ii) loss of net income during the period of transition;
- (iii) the costs of the transfer and reinstallation of plant, machinery or equipment; and

(d) in respect of immovable property, where there is a loss or damage the payment of compensation based on full replacement cost.

(2) The Government Agency responsible for land valuation and the Ministry responsible for Agriculture shall publish a price list for crops annually, which shall be used in the assessment of compensation for crops.

Regulation 4—Time for the payment of compensation

(1) The holder of the mineral right shall not later than three months after the amount of compensation payable has been determined, pay that compensation to the persons who are entitled to the compensation.

(2) A holder who fails to pay the determined amount of compensation within the time specified in subregulation (1) is liable to pay an interest of ten percent on the amount of compensation for each month that the compensation remains unpaid.

Regulation 5—Determination by High Court

Subject to the Act, a claimant who is dissatisfied with the compensation determined to be payable, may apply to the High Court for a review of the determination by the Minister.

Regulation 6—Resettlement

(1) Subject to the Act, where the operations of a holder of a mining lease involves the displacement of inhabitants, the inhabitants shall be resettled by the holder on suitable alternative land and the resettlement shall have regard to the economic well-being and socio-cultural values of the persons to be resettled, with the objective to improve the livelihoods and standards of living of those persons.

(2) For the purpose of subregulation (1), the holder of a mining lease shall prepare a resettlement plan which shall include

- (a) land use proposals;
- (b) action program; and
- (c) measures for the execution of the resettlement in accordance with the Local Government Act, 1993 (Act 462), National Building Regulations, 1996 (L.I. 1630) and other relevant planning regulations and by-laws of the District Assembly.

(3) Subject to the Act, the inhabitants to be resettled shall on the basis of the terms and conditions agreed on between the parties execute a resettlement agreement with the holder of the mining lease.

Regulation 7—Resettlement requirements

The holder of a mining lease shall

- (a) engage in prior consultations with the District Assembly, chiefs and the inhabitants to be resettled on the impending resettlement activities;
- (b) collect, analyse and document information on the socio-economic and environmental conditions of the inhabitants to be settled;
- (c) prepare a plan for the overall development of the resettlement area which shall include the measures, policies and strategies to guide the future development of the area; and
- (d) prepare a strategic action plan which outlines specific projects and programmes with action plans, guidelines and institutional arrangements for execution.

Regulation 8—Matters to be addressed in resettlement plan

In preparing a resettlement plan, the holder of a mining lease shall

- (a) undertake an analytical study of the existing land use and population distribution patterns;
- (b) carry out a demographic and socio-economic survey of the displaced population to determine the population mix and other planning parameters;
- (c) carry out a housing inventory and a survey of conditions of buildings in the existing settlement to establish basic planning parameters which include plot size, house types, occupancy rates, materials and housing construction preferences and facilities;

- (d) identify physical and environmental conditions and analyse the environmental opportunities and constraints through a study of settlement pattern, drainage, physical geography and barriers of the resettlement area;
- (e) identify existing land tenure and management system; and
- (f) prepare cadastral maps on a scale of 1:2500 covering the resettlement area.

Regulation 9—Plan formulation

From the outcome of the studies conducted in accordance with regulation 8, the holder of a mining lease shall produce

- (a) a draft baseline study report and present the report for discussion at a public forum of key stakeholders which include the District Assembly, Traditional Authorities in the District, Civil Society Groups in the District, District Officer of the Environmental Protection Agency and the inhabitants to be displaced;
- (b) a draft plan or preliminary resettlement land use planning scheme drawn to the scale of 1:2500 to be made up of
 - (i) drawn plans; and
 - (ii) a written report on the studies, analysis, proposals and formulation of the development plan, which shall be subjected to a stakeholders discussion;
- (c) a final plan which shall be the revised version of the draft plan which takes into consideration the comments, suggestions and recommendations which arise out of the presentation and discussion of the plan by the stakeholders;
- (d) an action plan with implementation strategies, guidelines, costing and timing of the various components for execution of the resettlement plan.

Regulation 10—Approval of resettlement plan

- (1) A resettlement plan shall not be implemented unless it is approved by the district planning authority within whose jurisdiction the resettlement is to be carried out.
- (2) The district planning authority shall within sixty days after receipt of a resettlement plan, review the resettlement plan and may make recommendations as the authority considers necessary, and where the resettlement plan is found unacceptable shall give notice to the holder of the mineral right in writing requiring the holder of the mining lease to
 - (a) submit a revised resettlement plan; or
 - (b) conduct further studies that the district planning authority considers necessary.
- (3) A resettlement plan shall not be approved by a district planning authority if the district planning authority is not satisfied
 - (a) with the evidence of consultation and participation of the chiefs and inhabitants of the community to be resettled;
 - (b) that the direction, control and enforcement of physical development in the resettlement area as outlined in the resettlement plan is in accordance with the National Building Regulations, 1996 (L.I. 1630) and the by-laws of the District Assembly and planning regulations.

Regulation 11—Implementation of resettlement plan

- (1) A district planning authority shall after approval of a resettlement plan, submit the plan to the Minister.
- (2) The Minister or a person authorised by the Minister shall take the necessary action to give effect to the settlement plan.
- (3) The costs for implementing the plan shall be paid by the holder of the mining lease and that holder shall be responsible for meeting obligations imposed on the holder of the mining lease in the plan.
- (4) An activity or operation under a mining lease shall not be undertaken by a holder of the mining lease unless the inhabitants to be displaced by the proposed mining operation have been resettled.
- (5) Where the holder of the mineral right decides not to proceed with the mining operations, the abandonment or surrender of the mining lease shall be without limiting any liability or obligation incurred by the holder prior to the date of surrender or abandonment.

Regulation 12—Resettlement Monitoring Committee

- (1) Where the operations of a mining lease holder involves the displacement of inhabitants, there shall be established under these Regulations a Resettlement Monitoring Committee which consists of the following members appointed by the Minister:
 - (a) the District Chief Executive or a representative of the District Chief Executive who shall be the chairperson;
 - (b) the District Engineer;
 - (c) the District Town and Country Planning Officer;
 - (d) the Assembly member of the area of the mining lease;
 - (e) the most senior chief of the area of the mining lease;
 - (f) two persons nominated by the inhabitants to be resettled, one of whom is a woman;
 - (g) a representative of the Regional Lands Officer;
 - (h) a representative of the mining lease holder; and
 - (i) a representative of the Minister.
- (2) The Committee may co-opt not more than three other persons to serve on the Committee.
- (3) The Committee shall assist the Minister to effectively monitor the implementation of the resettlement plan.
- (4) The sitting allowances of the Resettlement Monitoring Committee shall be payable by the holder of the mining lease.

Regulation 13—Surface rights

A lawful occupier of land within an area subject to a mineral right may subject to regulations 14 and 15, graze livestock on or cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations of a holder of a mineral right in the area.

Regulation 14—Exercise of surface rights in a mining lease area

(1) A holder of a mining lease shall within thirty days after the grant of the mining lease and with the approval of the Commission, designate an area within the lease area as a mining area subject to notification and payment of the appropriate compensation to the affected persons.

(2) The boundaries of the mining area may vary from time to time subject to the approval of the Commission and to the notification of and the payment of the appropriate compensation to affected persons.

(3) Subject to the payment of compensation, a person shall not exercise any surface rights in an area that has been designated by the holder of the mining lease and approved by the Commission as a mining area.

(4) A holder of a mining lease shall not restrain or restrict any lawful occupier of land outside the mining area from exercising surface rights over that area.

Regulation 15—Surface rights and compensation outside the mining area

(1) Where compensation has been paid by the holder to the affected persons or claimants outside the mining area but within the lease area, a person or lawful occupier of land within that area shall not retain the right to graze livestock, cultivate the land or erect a building or structure without the consent of the holder of the mining lease.

(2) Where the consent of the holder of the mining lease is granted, the holder shall enter into an agreement with the person or lawful occupier to the effect that no compensation shall be paid to that person or that occupier by that holder if mining activities are extended to the area.

(3) Where the land outside the mining area after compensation has been paid is under cultivation and it becomes necessary that the holder of the mining lease should extend mining activities to that area, the holder shall notify the farmer or lawful occupier.

(4) Any notice under subregulation (3) shall be for the period that the farmer may need to harvest the crop.

(5) The holder may elect to compensate the farmer or lawful occupier instead of giving that farmer or occupier notice.

Regulation 16—Interpretation

In these Regulations, unless the context otherwise requires:

- “Act” means the Minerals and Mining Act, 2006 (Act 703);
- “claimant” means any person who has an interest in land or is a lawful occupier or owner of land subject to a mineral right;
- “cut-off date” means the date agreed by the holder of a mineral right and the Commission for the payment of compensation following the designation of a mining area and which is published in the relevant district;
- “district planning authority” means a District, Municipal, or Metropolitan Assembly;

- “full replacement cost” means the cost of purchasing or building a new structure, within an area and with a quality similar to or better than that of the affected structure or of repairing a partially affected structure, which includes labour and contractors’ fees and transaction costs in the nature of registration and transfer fees among others;
- “inhabitant” means an owner or lawful occupier whose permanent dwelling or other immovable property is affected by a proposed mineral operation prior to the declaration of a mining area or a moratorium on further developments by the holder of a mining lease;
- “mining area” means the area designated for the actual mining operations by the holder of a mining lease with the approval of the Commission;
- “qualified person” includes a lawyer and any other professional with knowledge in valuation or recognised by a registered professional body as a valuation surveyor;
- “speculative development” means any improvement to the existing condition of the land after the cut-off date that is intended to merit or enhance compensation to a person who is otherwise not entitled to that compensation.

HON. MIKE ALLEN HAMMAR, M.P.

Minister responsible for Mines

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