

Comments on the National Minerals Policy (6th and 7th Drafts)

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Introduction / Overview

On the 26th November 2008, I attended a Public Consultation on the Draft National Minerals Policy in Brown's Town, St. Ann. Despite the very late start of the meeting, the participants who were able to stay till the end were given ample opportunity to make comments. I brought with me some notes I had made on the 6th Draft of the Policy, and even though I am satisfied that I did convey most of these points at the public meeting, I am now submitting written comments on the 6th Draft as **Part 1** of my input.

Part 2 consists of comments on the 7th Draft of the Policy, which I received by e-mail from Mr. Oral Rainford on the 7th January 2009. In his cover letter, Mr. Rainford said, "The document was recently the subject of an island-wide series of public consultations, and has therefore been amended to reflect the suggestions made by the public." In reviewing the 7th Draft I compared it to the 6th Draft, looking for signs of the input that I and others had made on November 26, and taking note of other changes.

I found few examples of recommendations from the public meeting I attended being incorporated into the document, even indirectly. There are some added references to increasing local benefits and improving communications and enforcement, but in most cases, the 'good intentions' of the additions are rendered meaningless by the vagueness of the language used.

Most of the changes in the 7th Draft reflect an increased aggressiveness in promoting the exploitation of minerals, with more incentives to be provided to commercial mining interests, which is certainly NOT what I heard at our public meeting. I heard the public calling for a holistic approach to land use that focused on sustainability, food security, protection of ecosystems and rural communities, landowners' rights (particularly the protection of farming rights) and increased accountability from mining companies. The revised Policy does not reflect in any significant way the public's calls for increased monitoring, enforcement, and environmental protection.

Moreover, the revised policy certainly does not reflect the current global financial crisis and the plunge in demand for raw materials, especially aluminium, which has resulted in a huge debt for Jamaica (instead of profits). There is no mention of an 'exit strategy' for bauxite mining, which the government of Jamaica must inevitably face.

The 7th Draft calls for a "*consistent and organised public relations campaign*" (p. 3), but a public relations campaign will do nothing to ameliorate the negative image of a mining industry that has wrecked the environment, dislocated communities, and destroyed the agricultural and tourism potential of so many parts of Jamaica, while providing economic benefits to a small minority, mainly foreigners to boot. The evidence of these impacts is plain for all to see, and leads me to ask, **is the national interest assumed to be the same as that of the minerals industry?**

PART 1 – Comments on the 6th Draft

Lack of holistic approach. The Minerals Policy is an example of the compartmentalisation of economic options for Jamaica. What we need, instead, is a holistic view of the country's natural resources – land, water, minerals, forests, terrestrial and marine biodiversity, seascapes and landscapes (etc.). I find that the policy lacks perspective in terms of global environmental realities. It appears to put minerals exploitation above all else, including food security and the protection of water resources through forest and watershed conservation.

The Policy is filled with 'green-washing'. Minerals are non-renewable resources which are extracted by mining and quarrying, therefore minerals extraction is inherently unsustainable. Casting the minerals industry in a 'sustainable' light is simply green-washing. There are numerous instances of vague and meaningless statements implying that the minerals industry is good for the environment, when the opposite is true. Here are examples of such 'green-washing':

Particular effort has been made to ensure that sustainable development considerations, especially environmental considerations, are infused into the strategies outlined for the development of the industry and the guiding principles that will be followed. (p. iv)

Sustainability considerations, particularly economic cost, social improvement and effective environmental stewardship, are the general guiding principles in Jamaica's strategy to develop its mineral wealth. (p. 18)

Conservation of minerals shall be construed as a positive concept enabling augmentation of resource base through improvement in mining methods..." (p. 29). [This is nonsense! No matter how much you conserve, you cannot augment the minerals resource base.]

It is false to claim that mining "plays a major role in sustaining the livelihood and social fabric of a large percentage of persons in these communities" (p. 3). Mining disrupts and dislocates communities, destroys cultural heritage and benefits only a small percentage of community residents, compared to alternatives such as agriculture. Mining forces many people to leave their rural communities and migrate to urban areas seeking employment. [This point was made vociferously by residents of SW St. Ann, especially farmers, who attended the consultation.]

The Vision (p. 4) is not realistic. Mining does not "protect environmental integrity" or socio-cultural values - it is a destructive industry that stymies and precludes competing land use interests in areas designated as bauxite reserves, and once mining has been done the land is rendered unsuitable for almost all other uses. The mining laws limit investment in other possibilities that are potentially much more valuable and sustainable than mining, such as agriculture and tourism.

The definition of 'sustainable mining development' in Appendix II is another example of green-washing:

Sustainable Mining Development: *Financially viable mining development that takes place in an environmentally and socially responsible manner with sound governance that provides benefits that last beyond the life of the mine to the communities where mineral development, production and transportation take place. (World Bank)*

Sustainable means indefinite, not simply 'beyond the life of the mine.' Despite the recognition that these are finite resources, the Policy fails to deal with the imminent (i.e. less than 30 years) exhaustion of exploitable bauxite reserves in Jamaica.

Conflicts with other policies. Contrary to what this draft states, policy conflicts have NOT been avoided by intra-government negotiations. It is false to claim that "*policy conflicts have been avoided by aligning the provisions of this Policy with those of the draft Watershed Policy and the Policy for the National System of Protected Areas.*"

There are many, many areas of conflict between the Minerals Policies and those concerned with the protection of natural and cultural heritage. The tone of this document is that that wherever the choice has to be made between mining or not mining, it is the Minerals Policy and archaic mining laws that will prevail. As for the mention of 'minerals-related tourism' as a means of supporting the objectives of the Master Plan for Sustainable Tourism Development – this is quite ridiculous and should be omitted, even if there is a possible market for stone and mineral crafts.

No justification for mining as a priority. There is no logical reason why the minerals industry should take precedence over any other land use, especially forest conservation and agriculture. There must be a full comparison of alternative land uses and land use capability, including economic options (e.g. agriculture, tourism) as well as ecosystem services, biodiversity, cultural heritage, housing, recreation, intangible values such as health and amenity value of preserving landscape. Mining should only be allowed where no sustainable alternatives are possible.

Protected areas. Regarding the acquisition and protection of mineral-bearing lands, this should take a back seat to the acquisition and protection of environmentally important lands. Protected Areas of all categories must be respected (not just the equivalent of IUCN 1 and 2, which are, respectively, 'Strict Nature Reserve', managed mainly for science, and 'Wilderness Area' managed mainly for wilderness protection). Jamaica does not currently have any protected areas equivalent to these two categories, so in effect this provision of the Minerals Policy is meaningless. Also, the Policy mentions areas of socio-cultural significance in reference to the 'Protected Areas System Policy', but this policy deals with natural areas, not cultural heritage. The Policy does not mention the protection of archaeological heritage, which is the purview of the Jamaica National Heritage Trust, although the JNHT Act is listed in Appendix 1.

Archaic and unjust laws. Subsurface "rights" given to the Crown are bestowed by an archaic law from colonial times, which should be changed to reduce the state's rights to mine private lands. Landowners' rights to use their own land in a sustainable manner should be upheld. However, the Policy views modernization as the opposite of this, promoting mining at all costs. Is this in the national interest or the interest of the minerals industry?

Decision-making on mining and quarrying should be broadened: Decisions to allow mining should rest with a committee that includes experts in environmental conservation, forestry, agriculture, tourism, planning, health and other disciplines, and should provide for public consultation in the case of large-scale extraction such as bauxite mining.

Fuzzy economics. There is no clear connection between the levels of capital investment quoted by mining companies and the benefits for Jamaicans. These 'investments' need to be compared to the existing and potential investments in other enterprises that are being lost as a

result of the minerals laws. The economic importance of the minerals industry appears to be overestimated – especially bauxite mining. It is considered a high value industry, but what are the true costs and benefits? The Human Development Index (HDI) rather than GDP should be used as an indicator of 'development'.

Health. The evaluation of economic costs and benefits must include health impacts, which to date have not been recognised let alone comprehensively studied. The Policy states that the Government is “committed to increasing and strengthening...linkages” with various segments of the economy, including health services (p. 4). Certainly it can be said that mining and quarrying have significantly increased the demand for health services in communities adjacent to mines, ports and plants, but is this really what is meant by strengthening linkages?

Why incentives? The need for incentives for mining (especially foreign investors) is not justified, given the extremely high profits realised by the foreign mining conglomerates. Jamaica has allowed its non-renewable assets to be exploited by foreigners, creating a huge environmental debt that is unaccounted for. How can this ecological debt ever be repaid if we continue to subsidise rich, multi-national companies? These incentives as a result of a 1997 Cabinet decision include:

- i. a ten year tax holiday for all new businesses*
- ii. no custom duties (on non-CARICOM goods) for machinery and equipment*
- iii. no GCT on goods and services connected with the project*
- iv. no withholding tax of any nature on dividends, interest or other branch profit remittances to the extent such dividends, interest or remittances are exempt in the country of domicile.*

PR? Why does the industry need a public relations campaign? If it's so beneficial, why aren't the benefits obvious? Why should taxpayers pay for this propaganda?

Access to Information. The Policy mentions the need to improve communications, but only “*within the industry*” – a phrase which is repeated several times. Instead of public relations propaganda, the public needs to be provided with more hard facts on the industry – such as the status of bauxite reserves, the health, environmental and social costs of mining, the taxes collected, which companies have had waivers, and details of how the bauxite levy has been used. (The public might be surprised to know that waivers of the bauxite levy have been made for companies – e.g. St. Ann Bauxite has had a waiver of the levy since at least 2005 and extending through December 2008.)

Accountability and transparency. There needs to be a fair and transparent mechanism for the allocation of monies from the Bauxite Community Development Fund towards social and economic development and sustainability in areas affected by mining. There has been a deplorable lack of accountability on the part of the Jamaican Government in this regard, and there is little or nothing to show for decades of revenues from the mining industry.

Lack of confidence in government's ability to protect the public interest. There is a widespread lack of confidence in the government to adhere to policies, laws and regulations to protect the environment. This is derived from the demonstrated failure of the chief regulatory agencies (NEPA and its agent the JBI) to enforce regulations that protect the environment, including restoration of mined out lands.

Furthermore, there is an obvious conflict of interest in the delegated of monitoring and enforcement to the JBI. The local minerals industry (quarrying) appears to be largely unregulated and untaxed, with illegal sand mining occurring along many rivers and beaches. As for voluntary compliance (p. 11) – even the oft-cited World Bank knows that there is no such thing!

The document refers to a policy initiative of “ensuring the existence of an enabling regulatory environment...” (p. iv and also Section 4.3). This is a contradiction in terms: surely what is needed is an *effective* regulatory environment? In the same vein, the purpose of improving the competence and capacity of the regulatory agencies should not be “in order to ensure partnership within the industry in the regulatory and approval processes” (p. 11) but to oversee the industry and make sure that companies comply with the laws and their licences.

A few recommendations:

1. Prior to any new "investment" that will open up lands to mining, all mined out lands should be restored.
2. The Government needs to enforce the restoration laws instead of exempting companies from their obligations. A spirit of 'partnership' should not pre-empt rule of law.
3. To avoid an obvious conflict of interest, the regulation of the minerals industry should be separated from its promotion.
4. Top soil and beach sand should be added to the list of quarry materials to be regulated by the government.
5. The Capital Development Fund should be used for amelioration of impacts on environment and communities, NOT for the "development of the minerals industry."

A few additional comments on the Policy (applies to both drafts):

There are too many objectives. Instead of a string of 14 different objectives and strategies, they could be divided into four major categories (in this revised order) as follows, with the remaining points subsumed into one or another of the categories:

1. Management of mineral resources (item 3 et al. on Draft)
2. Environmental regulation (item 7 et al. on Draft)
3. Economic benefits and integration (items 8 and 10)
4. Institutional and legislative framework (include training and HRD in this item)

PART 2 – Comments on the 7th Draft

I noted the following additions that were somewhat related to comments I heard (or made) at the Brown's Town meeting:

- Promotion of *good corporate citizenship* (p. 5).
- Commitment to *facilitate new local as well as foreign entities* (p. 9) and to *increase their market share in various markets* (p.13)
- “*The interest of private landowners will be protected by allowing, where possible, for non-mining development on mineral-bearing lands*” (p. 10).

What is meant by “where possible”? Who will decide? The inclusion of this item is meaningless in the absence of specific criteria for allowable non-mining development.

- “The government *will consider purchasing mineral-bearing lands for which development approval has been denied...*” (p. 10).

Landowners cannot be left in limbo while the government “*considers*” buying them out; they must be compensated if the government intends to mine their lands. But better yet, the government should “*respect*” the landowner’s choice of development if it meets all other planning criteria and environmental conservation requirements.

- Ensuring compliance with *operating conditions of licences and leases* (p. 12)
- “*Establish community-based Mine and Quarry Monitoring Committees (MQMC)*” (p. 12).

How will these committees be constituted? By invitation/appointment or by transparent and open mechanisms? Will they be like Mincenco’s ‘Community Advisory Group’, intended to “assist [the] management in determining the best ways to optimize stakeholder value and *gain acceptance for the project* and its successful integration into the community” (Source: Terms of Reference for the group, presented at a meeting on October 17, 2008)? Or will these committees be truly representative of stakeholder concerns, including the need to restrict mining and limit impacts in affected areas?

- “*Allow the general public to make recommendations regarding the award of minerals and mining-related licences and leases and the operating conditions of said licences and leases*” (p. 12). [But will the authorities be guided by these recommendations?]
- A review of the Bauxite Community Development Programme (BCDP) and a commitment to invest “*at least fifteen per cent of the revenues generated by the minerals industry*” in these communities (although it is not clear on what the funds would be spent) (p. 12)
- A commitment to “*ensure that mined lands are rapidly rehabilitated [within three years], certified and brought into non-mining economic activities. This must particularly be the case in communities that were either hitherto heavily reliant on farming or which have the ability to benefit from agricultural activities. Where possible, mining companies will be encouraged to maintain and expand agricultural activities on mined lands in partnership with the host communities*” (P 13).

This statement implies good intentions, but the vague language (“where possible” and “encouraged”) negates the value of this provision.

- Inclusion of an intention to require the planning authorities to “*advise landowners planning to pursue non-mining-related development projects about the presence of mineral-bearing lands, especially lands over which mining leases and quarry licences have been issued. This is necessary to assist in minimizing conflict between private landowners, the state and minerals-related companies in respect to the development of said lands for non-mining purposes*” (p.13).

This makes no sense! Landowners planning development projects inevitably find out the status of their lands when approval for their projects is denied. How else are the planning authorities to know when landowners are planning projects except when they apply for planning permission? The onus should be on the Mines and Geology Division in collaboration with the Titles Office to notify all owners of mineral-bearing lands of the status of their lands upon any application for transfer of ownership.¹ Learning about their

¹ A recommendation made by J. W. Lee in a paper presented at the Bauxite Reserve Land Management Seminar, April 10, 1982.

predicament after the fact does nothing to minimise the landowners' problems or conflicts with mining interests.

- “*The Quarries Control Act will be amended to specifically address the exploitation of beach sand*” (p. 14) [What about top soil? This is being mined, too.]
- “*Maintain clear policies on mineral tenure, revocation, penalties and compensation as set out in legislation applicable to the minerals sector*” (p. 28). This statement is redundant. This IS supposed to be the National Policy, so it should articulate the relevant policies, such as the entitlement to full compensation for the lost potential of the land for alternative uses if mining is to be allowed. That is what I heard at the meeting, but I do not see it in the 7th Draft.

Minor edits, MAJOR policy changes. Under the objective of enhancing competitiveness, the 7th Draft adds financial incentives for exploitation to “entities associated with [bauxite and alumina companies]” (p. 19). To which entities does this refer?

The 7th Draft also includes the bauxite industry, which in the 6th Draft was excluded from financial incentives – a major policy shift effected by the deletion of two words! Here is the relevant section, with deletions highlighted in grey and insertions in yellow:

Section 4.3 Creating an Enabling Regulatory Environment

*Item ii: Minerals Industries (Encouragement) Act which will apply to the development of all minerals, ~~except bauxite~~. Cabinet Decision #3 of 1997 which sets out a number of incentives for new investments in the Industrial Minerals Sector will be the base for this piece of legislation. Bauxite and alumina companies **and entities associated with them** will continue to benefit under the Bauxite and Alumina Industries (Special Provisions) Act and the Bauxite and Alumina Industries (Encouragement) Act **until both are subsumed into the Minerals Industries (Encouragement) Act.***

In a greatly expanded section on *Opportunities*, the addition of a reference to “**diversifying into sectors such as the Metallic Minerals Sector**” (p. 2) is an ominous inclusion in the Policy. Further down, we find a corresponding strategic objective to “**facilitate the availability of adequate energy supplies**” as a “**fundamental necessity to allow for the industry’s expansion and improved competitiveness.**” (p. 8).

These additions can only mean that the Government of Jamaica is in favour of introducing the **smelting** of alumina and other ores, and allowing the construction of **coal-fired power plants** to provide the required energy. There are numerous examples in the world and even in the Caribbean (e.g. Trinidad) of the devastating health and environmental impacts of alumina smelting, and I (and many others) would be strongly opposed to the introduction of smelting in Jamaica. **But why was this major and undoubtedly controversial element of the Policy not included from the beginning and presented to the public at the consultations?** How could such a significant policy be overlooked at first, and thrown in seemingly as an afterthought? This is a serious flaw in the public consultation process and needs explanation.

No to fast-tracking. Another addition was the recommendation to “streamline” (i.e. fast-track) quarry applications to allow for renewal within four months of the application date (p. 8), but there is no reference to provisions for environmental assessment, which could require much more time. A more rational approach is needed, that allows for thorough environmental assessment rather than fast-tracking of applications.

Meaningless jargon. The 7th Draft contains even more unnecessary verbiage and meaningless jargon than the 6th Draft. Examples include:

- The addition of ‘largely’ as a qualifier in this sentence: “*Minerals are valuable, finite and largely non-renewable natural resources*” (p. 1). This goes beyond greenwash to hogwash!
- “...the prevention of sub-optimal and unscientific mineral exploitation” (p. 19). [???
- The 7th Draft states that, “*The right of private landowners to pursue non-mining developments will be respected*” (p. 26), but this announcement is immediately negated by the following proviso: “*However, where the pursuit of this right threatens the development or continuation of nationally important mineral exploitation projects the government will encourage the mining companies involved to accelerate mining and rehabilitation of the lands in an effort to accommodate non-mining developments. The government will also consider purchasing such lands or pursuing a policy of land swapping so as to protect the minerals and to allow the landowner to enjoy the use of his property*” (p. 26).

If mining is incompatible with the landowners’ chosen form of development, how can accelerated mining possibly be considered an accommodation of ‘non-mining developments’? In the vast majority of cases where there is a land use conflict, it is the original property that the landowner wishes to enjoy, not a replacement property somewhere else.

Unrealistic goals. In a section entitled, ‘*Strategic land-use planning and management of mineral-bearing lands*’ (p. 26), the policy speaks to the need for “*sequential land-use planning, where maximum benefits are derived from the use of lands.*” The Minerals Policy presumes that deriving ‘maximum benefits’ from lands necessitates the extraction of minerals, but this may not be the case. The public would like to see a realistic comparison of mining with non-mining land uses. Also, due to a general failure to apply land use planning principles in the development approvals process at all levels over the past several decades, this goal can be compared with trying to close the gate after the horse has long gone through it. The wording should be changed to ‘sequential land use planning, where feasible’.