

S/HO
BURKINA FASO

N° 031-2003/AN of
Unity – Progress – Justice

Decree N° 2003-308/PRES
Of Burkina Faso Mining Act
8 May 2003

**THE PRESIDENT OF FASO,
PRESIDENT OF THE COUNCIL OF MINISTERS,**

Considering the Constitution;

Considering Letter N° 2003-46/AN/PRES/SG/DGSL/DSC of 4 June 2003 from
the Speaker of the National Assembly on the promulgation of Act N° 031-
2003/AN of 8 May 2003.

HEREBY ENACTS

Art.1.:

Burkina Mining Act N° 031-2003/AN of 8 May 2003 shall be enacted.

Art.2.:

This enactment shall be published in the Faso Official Gazette.

Ouagadougou, this 30 June 2003.

Signed: Blaise COMPAORE

BURKINA FASO

Unity – Progress – Justice

NATIONAL ASSEMBLY

4TH REPUBLIC

Third Mandate of Parliament

BURKINA FASO MINING ACT N° 031-2003/AN

THE NATIONAL ASSEMBLY

Considering the Constitution;

Considering Resolution N° 001-2002/AN of 5 June 2002 on the mandate of representatives;

Deliberated at its sitting of 8 May 2003 and passed the following law:

TITLE I – GENERAL PROVISIONS

Part 1: SCOPE AND FIELD OF ACTIVITY

Art.1.:

This Burkina Faso Mining Act aims at promoting investments in the mining sector in Burkina Faso. It also seeks to support exploration and mining of mineral resources needed for the social and economic development of Burkina Faso.

Art.2:

The mining Code shall apply to exploration, research and mining of mineral substance deposits as well as treating, transporting, and processing of mineral substances except water and liquid and gaseous hydrocarbons.

Art.3:

Provisions in this code shall apply without prejudice of those relating to specific areas governed by Agrarian and land reorganisation Act (RAF), Code of Public Health, Water management Act, Tax Code, Customs Code, Code of Investments, Code of Incorporation and Stamp, Income on real values, Labour Code, Decentralisation Acts, Code of Environment, Forest Code, Civil Code and Criminal Code.

Part 2: DEFINITIONS

Art.4.:

In this code, the following must be understood as:

1. Mining Administration: the Ministry in charge of Mines and its departments.
2. Mining Code: this law.
3. Date of First Commercial Production: date when the mine reaches a continuous sixty-day period of production at 70% of its production capacity as provided in the feasibility study and which was notified to the Ministry of Mines or the first shipment for commercial purposes.
4. Mining : all operations which consist in exploiting or extracting mineral substances from a deposit with the intent of using them for utilitarian purposes including development work, mining proper, installation and use of processing, enrichment and treating facilities.
5. Preparatory work : all the activities relating to the realisation of infrastructures such as access roads, site preparation, construction and extraction equipment, transport and treatment needed to start mining.
6. Traditional Small-scale Mining: all operations consisting in extracting and concentrating mineral substances and to recover their marketable products and dispose of the same in using manual and traditional processes and methods. Traditional mining shall not use equipments, mechanical energy; and it shall not be sustained by the discovery of a deposit or deposit.
7. Semi-mechanized small-scale Mining: all operations consisting in extracting or concentrating mineral substances and recovering their marketable products and disposing of the same in using some mechanical means in the line of operations. Yearly production and tonnage of marketable product (ore, concentrated or metal) shall be set per substance and by the Ministry of Mines.

8. Small Mining: all permanent, small-sized mining exploitations based on the justification of an existing deposit, in using suitable rules, semi-industrial or industrial processes and whose yearly production in due speed does not exceed a certain tonnage of the marketable product (ore, concentrated or metal) set per substance and by mining regulation.
9. Barrows, Mining waste heaps and quarrying residues: all rejection, cuts, mining and quarrying residues.
10. Small-scale mining: small-sized mining which gather small mine, semi-mechanised small-scale mining, mining of barrows and mining waste heaps s and quarries and traditional small-scale mining.
11. Deposit: all natural concentrations of mineral substances exploitable in the current economic terms.
12. Natural deposits: all natural concentrations of minerals in a determined area of the Earth crust.
13. Prospection: all the investigations limiting to surface work in order to highlight signs of mineral substances either by simple processes and methods or by modern exploration methods used for regional detection.
14. Research: all the work carried on the surface and in-depth to discover signs of mineral substances, state its continuity and importance and the study of mining requirements and of industrial and commercial use of discovered deposits so that to conclude the existence or absence of deposit.
15. Mineral substances: crystalline or amorphous, solid, liquid or, gaseous natural substances, petrified organic substances, and geothermic ores.

Natural deposits of mineral substances shall be classified in mines and quarries:

- Deposits of building material, metalling and viability, restorations for cultivation, and substances serving in ceramic industry and other analogous substances, except for phosphates, nitrates, alkaline salts and other associated salts in the same deposits and peat bogs are deemed to be quarries. Quarries are reputed not to be separate from the ground whose propriety regime they keep with.

- Natural deposits of mineral substances, which are not classified as quarries, shall be deemed mines. Mines do not have a property different from the ground property.
 - Installations and additional facilities are subject to the same legal arrangement as natural deposits of mineral substances to which they relate. All installations needed for mining shall be deemed additional.
 - Yet, certain natural deposits of mineral substances may be classified as quarry substances or mining substances depending on the usage they are meant for under conditions provided by mining regulation.
16. Assignment: transfer of a mining title or permit by assignment, merger or conveyance by legacy.

Part 3: GENERAL ARRANGEMENT

Art.5:

Natural deposits of mineral substances contained in Burkina Faso ground and underground are ex officio, State property.

State shall ensure their development by resorting to private initiative in keeping with provisions in this law.

Art.6:

Physical or Legal entities, irrespective of nationality, may undertake or conduct activities governed by the mining code on the lands of the public or private domain.

Of course, all Physical or Legal entities wishing to exercise an activity in Burkina Faso, must, first obtain a mining title or a permit issued under the conditions provided by the mining code.

State, in association with third parties, may undertake activities governed by the mining code. Yet, it must be subject to the same duties and liabilities as the private holders of mining titles or beneficiaries of authorisations issued in accordance with the mining code.

Still, State alone may undertake research activities through the Ministry of Mines, in order to enhance geological knowledge or for scientific purposes, which do not require a mining title.

Art.7.:

Research and mining of mineral substances are authorized in accordance with the mining code, except for, traditional small-scale mining, research and mining of quarry substances, mining other than mining of barrows and mining waste heaps and quarry mining residues, which are subject to a simple administrative authorisation.

Exploration, treatment, transport, and processing of mineral substances are equally subject to an administrative authorisation.

Authorisations will not entitle to a mining title.

The same person may hold several mining titles or authorisations. Surface areas covered by each mining title or authorisation, are not necessarily contiguous.

Modalities of granting, maintenance, renewal, assignment, conveyance, revamping or withdrawal of mining titles, authorisations, and information, which related applications and procedures must contain, shall be established by the mining regulation.

Mining titles and authorisations must be publicised by the Mining Administration.

Art.8:

Mining installations or quarries and extracted substances will be levied or dispossessed by State only when a reason of public requirement provided by law and against a fair compensation set by an independent arbitral tribunal.

Art.9:

Mining titles and authorisations will be overwritten partly or wholly, only after the agreement in writing of the holder of the mining title or pre-existing authorisation.

Art.10.:

Small-scale mining exploitation will be authorised in accordance with this law. Mining regulation must determine modalities thereof especially, conditions under which production activities must be conducted.

TITLE II – MINING TITLES AND DIVERSE PERMIT S

Part 1: MINING TITLES

Section 1: RESEARCH PERMIT

Art.11:

Research permits shall be granted, subject to earlier rights, by decree of the Ministry of Mines, to all Physical or Legal entities that submitted an application in keeping with the mining regulation.

Applications for research permits shall be accompanied by a work schedule, which the applicant intends to carry out in the first year of permit validity, and the matching budget.

Art.12:

Research permits shall confer to their holders the exclusive right to research mineral substances applied for and to dispose of extracted products for research purposes within their perimeters in-depth and on surface, under the conditions provided in the mining code. Holders of research permits may apply for and extend their research permit to other mineral substances within their perimeters.

Research permits also shall confer to their holders, the exclusive right to apply any time, during the validity of the research permit, for a production permit by the time one or several ore deposits are discovered within the limits of its perimeter, when they have fulfilled their related obligations in accordance with the mining code. Production permits so obtained may however, partly cover the perimeter of several research permits belonging to the same holders, when the ore deposits discovered include certain parts of these permits.

Research licensing shall not exclude the granting of a permit relating to quarry substances on the same perimeter, if quarry working does not impede on research work and with the prior consent of the holders of research permit.

Art.13.:

Research permits shall be valid for three years as of the date of the decree of attribution. They may be renewed, de jure for a consecutive period of three years subject to the payment of duties and obligations provided by the mining regulation.

Art.14:

The maximum surface area for which research permits are granted shall be two hundred and fifty square kilometres.

On the second renewal of the research permit, the permit surface area shall be reduced by one fourth. The holder shall still define the remaining surface.

The returned portion will have to include a unique area as defined by the mining regulation.

Art.15:

Holders of research permits shall implement the work schedule they have produced at the beginning of each year before the Mining Administration and shall spend for these activities the minimum amount per square kilometre provided by the mining regulation. Any derogation to the submitted research program shall be declared to the Mining Administration.

Holders of research permits shall start research activities in the perimeter of the permit within six months as of the date of validity and continue promptly with the works.

Art.16.:

Holders of research permit shall be entitled to use freely products extracted at the time of research and assays which the same may involve provided that research activities do not take on the character of production works and subject to prior declaration to the Mining Administration.

Section 2: INDUSTRIAL OPERATING PERMIT

Art.17:

Industrial operating permits for large or small mine are granted de jure, by decree passed in the Council of Ministers on proposal of the Minister of Mines , and following the opinion of the minister of environment and the National Commission on Mines, to holders of research permits who have complied with obligations that befall on them in accordance with the mining code and who have submitted an application in keeping with regulation, at least three months before the expiry of the validity period of the research permit by virtue of which it is formulated.

Applications for Industrial operating permits for large or small mine shall be accompanied by a case file containing:

- A feasibility study and,
- An ore deposit mining and development plan including among other things a study or note of environmental impact according to the case, matched with results of public investigation, a plan of attenuation of the negative impacts and reinforcement of the positive impacts and an environmental monitoring plan.

Licensing for industrial operation of large or small mine shall entail termination of the research license inside the perimeter of the production permit. However, research related to production can continue there.

Art.18:

Licensing for industrial operation of large or small mine shall not entail allotment of 10% of the shares or vendor's shares of the venture, free of charge, to the State. Such State contribution shall not be reduced in case of new issue of social capital.

Art.19.:

Industrial operating permits for large or small mine shall confer their holders the exclusive right to research and mine deposits on the surface and in-depth within their perimeters under the conditions provided by the mining code.

Art.20:

Subject to regulation in force, industrial operating permits for large or small mine shall entitle their holders to:

- own, hold, transport or get transported extracted mineral substances, their concentrates or primary by-products as well as the produced metals and alloys to storage, treatment or processing sites;
- sell these products on domestic or foreign markets at global price set by free markets and to export them.

Industrial operating permits for large or small mine also shall include permit to establish extraction and packaging, treatment, refining and processing facilities for mineral substances in Burkina Faso.

They shall be true real estate rights open to mortgage or pledge.

Art.21:

Industrial operating permits for large mine shall be valid for twenty years as of the date of granting decree. They are renewable de jure for a consecutive period of five years until exhaustion of the deposit.

Industrial operating permits for small mine shall be valid for ten years as of the date of granting decree. They are renewable de jure for a consecutive period of five years until exhaustion of the deposit.

Art.22.:

The surface area for which the industrial operating permits for large or small mine is granted shall be subject to the deposits for which the mining is meant, including satellite deposits, as defined in the feasibility study prepared by holders of research permits.

Holders of industrial operating permits for large or small mine shall get the perimeter marked out by a chartered surveyor in accordance with mining regulation and practices in force.

Art.23:

Subject to exemption, holders of industrial operating permits for large or small mine shall begin ore deposit development and production activities within two years maximum, as of the date of permit validity. They shall be bound to continue promptly, in accordance with commitments made.

An exemption to begin development and production activities or continue deposit mining may be obtained by decree of the Minister of Mines . Exemption shall be valid subject to payment of fees set by the mining regulation, for two years and renewable for two other two-year periods. It shall always be granted when the given reason is the unfavourable economic situation for the marketing of the products concerned at the time of applying for an exemption, as shown by an economic survey. After six-year exemption, the authority which issued the permit, may withdraw it in compliance with article 38.

Holders of industrial operating permit for large or small mine shall operate the ore deposit while keeping with the feasibility study and ore deposit development and production plan previously presented to Mining Administration. Any change shall be subject to the prior consent of the Mining Administration following the opinion of the National Mining Commission.

Section 3: SEMI MECHANISED SMALL-SCALE OPERATING PERMIT

Art.24:

The Mining Administration following the opinion of the relevant administrative authorities and concerned local communities shall grant semi-mechanised small-scale operating permits.

Mining regulation shall determine conditions under which production activities will be conducted.

Semi-mechanised small-scale operating permits shall be granted only after a public survey.

Art.25.:

Semi-mechanised small-scale operating permits shall confer their holders within their perimeters the exclusive right to research and mine deposits on the surface and in-depth under the conditions provided by the mining code.

Subject to regulation in force, industrial operating permits for large or small mine shall entitle to :

- own, hold, transport or get transported extracted mineral substances, their concentrates or primary by-products as well as their produced metals and alloys to storage, treatment or processing sites;
- sell these products on domestic or foreign markets at global prices set by free markets and to export them.

Industrial operating permits for large or small mine also shall include permit to establish extraction and packaging, treatment, refining and processing facilities for mineral substances in Burkina Faso.

They shall be true real estate rights open to mortgage or pledge.

Art.26:

Semi-mechanised small-scale operating permits shall be valid for five years as of the date of granting decree. They are renewable de jure for a consecutive period of three years each, by decree of the Authority which issued them and in the same forms, when holders fulfilled their related obligations and submit an application in compliance with mining regulation.

Art.27.:

Surface area for which semi-mechanised small-scale operating permits are granted shall be one hundred hectares.

Holders of semi-mechanised small-scale operating permits shall get their perimeter marked out by a chartered surveyor, in compliance with mining regulation and practices in force.

Art.28:

Holders of semi-mechanised small-scale operating permits shall mine mineral substances rationally while observing standards of public health and work safety, environment conservation, and product marketing, in compliance with regulation in force.

Subject to provisions in parts 2 and 3 of Title III in this mining code, holders of semi-mechanised small-scale operating permits cannot except, by mutual contract with owners, undertake activities in cultivation fields nor block normal irrigation of cultures. In case of damage, they shall be bound to pay compensation for losses suffered by farmers.

Holders of semi-mechanised small-scale operating permits shall mine deposits while complying with deposit summary evaluation and mine plan, provided earlier to the Mining Administration. Any change shall be subject to the prior permission of the Mining Administration.

Art.29.:

Mining of masses consisting in barrows, waste heaps and quarrying residues, shall be subject to the obtainment of a mining title when they are undertaken by persons other than the operating permit holder or recipient of an operating authorisation for the surface containing such masses.

Provisions in this section relating to semi-mechanised small-scale mining shall apply to such operation.

Section 4: MINING RIGHTS AND OBLIGATIONS

Art.30:

Research and Operation permits shall be matched with a mining agreement, which the State passes with permit holders.

Mining agreement shall be valid for maximum period of twenty-five years. It may be renewed for a ten-year period.

Mining agreement shall add to provisions in the mining code. It shall determine parties' rights and obligations and may guarantee for holders, stability of conditions, which they are offered, especially as to tax system and change regulation.

The Minister of Mines shall have authority to sign mining agreement, following the opinion of the National Commission on Mines and with the permission of the Council of Ministers.

After its entry in force, the mining agreement shall be enforceable and bind all the parties. It may be amended under the same conditions.

Art.31.:

All holders of a mining title or beneficiary of an authorisation in accordance with the mining code, except when they reside in Burkina Faso, shall reside there and have a representative whose identity and qualifications shall be notified to the Mining Administration. Authorised agents so appointed shall be informed enough about activities undertaken so as to provide the Mining Administration with requested information.

Art.32:

No person may get a mining title or authorisation issued in accordance with the mining code, when he/she is in involuntary liquidation or business failure.

To hold an operating permit, all physical entities shall be incorporated in accordance with laws in Burkina Faso and have its registered office there.

Not all agents working in the Mining Administration , shall be holders of a mining title or beneficiaries of an authorisation in accordance with the mining code. Besides, they shall not hold any interest in a mining title or authorisation.

Art.33:

Rights of mining title holders shall relate to the extent of the surface area located in the mining title, positioned North-South and East-West and indefinitely extended in-depth by verticals, which rest on the perimeter, defined on the surface.

Delimitation of mining title perimeters shall be established either by Cartesian co-ordinates or geographical landmarks or a combination of both as provided by the mining regulation.

Art.34.:

Extension of the geographical perimeter of a mining title shall be authorised, subject to rights or applications for earlier mining titles under the conditions set by the mining regulation.

Art.35:

Mining titles may be renewed by the Authority, which issued them and in the same forms, on the holder's applications, submitted at least three months before the expiry of current validity period.

Their renewal shall be de jure when holders complied with obligations befalling on them in accordance with the mining code and submitted an application in compliance with mining regulation.

If a decision is not made on a mining title renewal application before the expiry of current validity period, validity of the same mining title shall be deferred ex officio, without formality, until regularisation by the Mining Administration.

Still, such deferment shall apply only to the portion of the research permit perimeter set out by the mining title renewal application or operating permit issue.

If renewal is refused, lands covered by the title shall be cleared from all rights resulting as of midnight the new day following notice of refusal decision.

Art.36:

Mining titles shall be assignable under the conditions provided by the mining regulation.

For this reason, mining titles holders must communicate to the Minister of Mines, all contracts or agreements by which they confer, assign or convey partly or wholly, rights and obligations resulting from mining title.

Assignments and conveyances shall entail taxation on unearned premiums in compliance with the Tax Code.

If assignees offer at least the same guaranties to execute obligations as assignors provided in accordance with the mining code, agreement of the Minister of Mines shall be de jure when assignors comply with obligations befalling on them in accordance with the mining regulation.

All persons happening to get a mining title by legacy shall within six months following the holder's death or personal incapacity, submit an application to the Minister of Mines to profit from a transfer of mining title. Beyond this deadline, mining titles shall be withdrawn by the authority, which issued them.

Art.37.:

Abandonment of part or the complete surface area of a mining title and mining title itself shall be authorised any time without penalty or compensation. It must however be accepted by the Mining Administration under the conditions provided by the mining regulation.

Acceptance by the Mining Administration shall occur after payment of amounts actually owed and due based on the period running from the abandonment date and on completion of activities prescribed by the mining regulation relating to restoration of sites for the abandoned surface area. All claims or State assertions following holders' abandonment shall be produced within a year as of abandonment date.

After such acceptance, the rights and obligations of holders shall be adjusted, based on the abandoned surface area when such abandonment only covers part of the permit surface area. The surface area which holder abandons partly or wholly shall be cleared from all duties and obligations for the future, as of midnight the day after the decision is made by the Mining Administration.

Legal effects of total abandonment shall concern the surface area as of the same date.

Art.38:

All mining titles duly allotted may be subject to withdrawal, without compensation or indemnity in the forms provided by the mining regulation.

Withdrawal may only intervene after a sixty-day enforcement order without effect, is declared in the following situations :

- Holders of research permit have been undertaking production activities inside the perimeter;
- Research activities have been delayed or suspended, without valid reason, for more than one year;
- Mine or production activities are delayed or suspended, without authorisation, for more than two years and, with authorisation, for more than six years for industrial operating permits;
- Mines or production activities are delayed or suspended, without authorisation, for six months and, with authorisation, for one year for semi-mechanised small-scale mining;
- Non authorised assignment or conveyance;
- Non payment of duties and taxes;
- Non realisation of unit yearly minimal expenditure provided by the mining regulation;
- Holder's default;
- Dereliction of obligations relating to study or notice of environmental impact and public survey;
- Serious violation of public health and work safety regulations.

Following final decision, holders whose operating permits have been withdrawn, shall have six months to remove their installations.

Art.39:

Subject to State pre-emption right here after provided, in case of withdrawal of mining title or holder's default, the perimeter covered becomes cleared of duties and obligations resulting thereof as of midnight the day following publication date of decree or related order.

In either case provided in this article and in case of total abandonment of mining title, if holders wish to sell machines, appliances, units, installations, plant, materials and equipment which they own, State shall have a pre-emption right which it may exercise under conditions provided by regulation in force.

Premises, outbuildings, wells, galleries and generally speaking, all long-lasting installed structures for mine shall be left ex officio to State under conditions provided in environmental management and mining site restoration program.

Forfeited holders may not apply for a mining title within one year of the date of forfeiture.

Every time a surface area is cleared from duties and obligations as provided in this article, the Mining Administration shall inform the public by advertisements in compliance with mining regulation.

Part 2: DIVERSE PERMITS

Section 1: PROSPECTING AUTHORISATION

Art.40:

All Physical or Legal entities irrespective of nationality may undertake prospecting activities subject to prior obtainment of a prospecting authorisation issued by the Mining Administration.

Art.41.:

Prospecting authorisations shall give to their holders the non-exclusive right of prospecting applicable to all the mineral substances on the surface of the granted perimeter.

Prospecting shall be forbidden in areas classified as prohibited areas or protection areas or subject to a mining title or an operating authorisation in observance of provisions in articles 63 and 64 in this code.

Prospecting authorisations shall not entitle to any subsequent obtainment of a mining title or other authorisation.

Art.42.:

Prospecting authorisations shall be valid for one year as of their issue date. They shall be renewable by decision of the authority that issued them and in the same forms, for an identical period as many times as requested by their holders when they have complied with obligations befalling on them and submitted an application in compliance with mining regulation.

Art.43:

Prospecting authorisations are personal and nominal. They shall not be assignable or conveyable.

Art.44:

Prospecting authorisations may be withdrawn by the authority that issued them, in the same forms, for dereliction of obligations befalling on holders in accordance with the mining code.

Section 2: TRADITIONAL SMALL-SCALE OPERATING PERMIT

Art.45.:

Traditional small-scale operating authorisations shall be granted, subject to earlier rights, by decision of the Mining Administration , following the opinion of relevant administrative authorities and of concerned local communities, to:

- Burkinabe physical entities ;
- Exclusively Burkinabe sharing cooperatives;
- Enterprises and companies governed by Burkinabe law whose authorized capital is Burkinabe in majority.

Art.46:

Traditional small-scale operating authorisations confer their recipients the exclusive right of traditional small-scale mining of mineral substances within the perimeter therein described, under the conditions therein determined and until a depth compatible with the workers safety as set by the mining regulation.

Traditional small-scale mining authorisations shall not confer their holders any special right for the subsequent obtainment of a mining title.

Traditional small-scale mining authorisations cannot prevent research activities on the surface covered by the aforementioned authorization. In the event of granting of an operating title covering the same surface, authorization shall not be renewed, but recipients shall be entitled to indemnity from the new owner in compliance with regulation in force.

Traditional small-scale mining authorisations shall be real property not open to mortgage. They shall be lease of land following the authorisation of the Mining Administration under conditions defined by the mining regulation.

Art.47:

Traditional small-scale operating authorisations shall be valid for two years. They shall be renewable for a period of two years each, by decree of the Authority which issued them and in the same forms, when recipients fulfil their obligations and submit an application in compliance with mining regulation, provided however that the perimeter concerned is not subject to a request for industrial operating permit.

Art.48.:

Surface area for which traditional small-scale operating permits shall be granted and defined in the authorisation. Their perimeters shall be of square or rectangular form ranging from one hectare to one hundred hectares.

Recipients of traditional small-scale operating authorisations shall proceed to the location of such surface area by setting up landmarks and reference marks, in compliance with mining regulation and practices in force. If after an enforcement order, the demarcation is not carried out, the Mining Administration shall ensure ex officio execution, at the recipient's expenses. A chartered surveyor shall establish marking out.

Art.49:

Recipients of traditional small-scale operating permits shall mine mineral substances rationally while observing standards of public health and work safety, environment conservation, and product marketing, in compliance with regulation in force.

Subject to provisions in parts 2 and 3 of Title III in this mining code, recipients of traditional small-scale operating permits may not except, by mutual contract with owners, undertake activities in cultivation fields nor block normal irrigation of cultures. In case of damage, they shall be bound to pay compensation for losses suffered by farmers.

Art.50.:

Traditional small-scale operating authorisations shall not be assignable; they may be conveyed following death or personal incapacity, subject to the prior approval of the Mining Administration.

Art.51:

Abandonment of traditional small-scale operating authorisations shall any time be authorised, without penalty or compensation, subject to observation by owners of their obligations provided by the mining regulation.

Art.52:

Traditional small-scale operating authorisations may be withdrawn after a thirty-day enforcement order by the authority, which issued them, and in the same forms, for any dereliction to obligations befalling on their recipients in accordance with the mining code.

Art.53.:

In case of expiry, abandonment or withdrawal of traditional small-scale operating authorisations or event of default, perimeter covered becomes cleared from all duties thereof resulting as of the next day of:

- expiry date for expiry cases and
- date of notification for cases of holders' abandonment, withdrawal or event of default.

Section 3: QUARRYING AUTHORISATION

Art.54.:

Provisions applicable to mining titles shall not apply mutatis mutandis to quarrying of substances subject to those provided in this section.

Art.55:

Research of quarrying of substances shall be authorised by the Mining Administration in compliance with mining regulation.

Quarrying authorisations shall concern two types:

- authorisations for permanent quarries called authorization for permanent quarrying of substances and
- authorisation for temporary quarries called authorisations for temporary quarrying of substances.

Art.56:

Authorisations for permanent or temporary quarrying of substances either by daylight or underground entries, shall be granted subject to earlier rights, by decree of the Minister of Mines , following the opinion of administrative authorities and concerned local communities, to all Physical or Legal entities who submit an application in compliance with mining regulation.

Temporary operating authorisations for quarries shall intervene only after payment of operating tax related with the cubage for which they are asked for.

Landowners shall be bound to obtain such authorisations if they wish to operate quarrying themselves on their lands. Yet, quarrying by landowners for exclusively interior purposes shall not need an authorisation or prior statement. Such interior mine shall remain subject to regulation concerning public health and work safety and environment.

Art.57.:

Permanent or temporary quarrying authorisations shall confer their recipients, the exclusive right to quarry substances within their perimeters and under the conditions provided.

Subject to regulation in force, quarrying authorisations shall entitle their holders to:

- own, hold, transport or get transported extracted mineral substances, their concentrates or primary by-products which belong to them until the place of storage, treatment or processing;
- dispose of these products on domestic markets and to export them.

Operating permits also enable the establishment of packaging and primary processing facilities for quarrying substances in compliance with mining regulation.

Art.58:

Permanent quarrying authorisations shall be valid for five years as of the date of granting decree. They shall be renewable de jure for three years each, under the same conditions as mining titles.

Temporary quarrying authorisations shall be valid only for the period defined. Such period shall not exceed one year. They shall not be renewable.

Art.59.:

Surface area for which quarrying authorisations are granted shall be defined in the authorisation.

Recipients of permanent quarrying authorisations shall get their perimeter described in the authorisation marked out in compliance with mining regulation and practices in force. If after an enforcement order, the demarcation is not carried out, the Mining Administration shall ensure ex officio execution, at the recipient's expenses. A chartered surveyor shall establish the demarcation.

Art.60:

Recipients of operating authorisations shall operate quarrying while complying with operating and development plan and environment management and conservation programme, produced at the Mining Administration. All changes shall be subject to the prior authorisation of the Mining Administration.

Art.61:

Permanent quarry substances exploitation authorisations, which are not used within the two years following the date of granting, shall become invalid. Temporary quarrying authorisations shall be invalid after six months.

No quarries so abandoned shall be re-activated without a new operating authorization.

Art.62.:

Operating other than mining of masses consisting in barrows, waste heaps and quarrying residues shall be subject to an operating authorisation when it is undertaken by anybody but the holder of operating permit or the recipient of an operating authorisation for the surface area containing such masses. Yet, the latter shall state this to the Mining Administration.

Provisions in this section relating to authorisations to quarry substances shall apply to such mine.

TITLE III – RIGHTS AND OBLIGATIONS ATTACHED TO THE EXERCISE OF MINING AND QUARRYING OPERATIONS

Part 1 : IN PROHIBITION OR PROTECTION ZONES

Art.63:

Except under conditions set by the mining regulation, no prospecting, research, or operating activity shall be undertaken inside a protected zone of at least one hundred meters established to the sides or around the properties enclosed by a wall or similar structure, without the owner's or holder's consent.

The same shall apply for:

- clusters of dwellings;
- wells, religious buildings, burial places or places deemed as sacred, without the consent of the concerned communities;
- outbuildings in the public domain without State authorisation.

Art.64.:

Inside the prospecting, research, or operating perimeters, zones of various dimensions may be established for environment conservation and protection of archaeological sites, public interest activities, structures or services. The same shall apply to zones where national security or general interest is involved. In such cases, joint decrees by Ministers of Mines and Territorial Administration, Security, Environment and Territory Development.

The decree creating a protection zone shall only be passed after a public survey whose conditions shall be favourable to the realisation of such activity.

This decree shall define the limits of the same zone while showing authorised access ways and appointing authorities in charge of its management. It shall set work schedule and activities needed in the achievement of sought protection.

Part 2: RELATIONS WITH LAND OWNERS AND OTHER OCCUPANTS

Art.65:

Occupation of lands needed for prospecting, research, and operating activities for mineral substances and for relating industries, both inside and outside the perimeter of the mining title or authorisation and passage on these lands for the same purposes, shall be carried out following conditions and modalities set by regulation in force.

Occupation of such lands shall entitle landowner or traditional or customary occupant to compensation. Yet, simple passage on these lands shall not entitle to compensation if no damage to the land is incurred.

Besides, passage shall occur under the best conditions of environmental conservation.

Such occupation shall involve, if necessary, the right to cut wood needed for such activity and use free water falls and surface and underground waters, all inside the perimeter defined in the mining title or authorisation, subject to compensation or payment of taxes and royalties provided by laws or regulations in force.

Art.66:

Activities conducted earlier either by the land owner or the State within the perimeter of an operating permit or authorisation shall entitle the person to whom this activity belongs, to a repayment of incurred expenses or payment of their right value, deducted, if necessary, from benefits the latter may get.

Art.67.:

The occupation mentioned in article 65 and activities referred to in article 66 above may be declared public utility under conditions provided by legislation in force, subject to particular or complementary obligations which may happen to be imposed on holders of mining titles or authorisation recipients.

Art.68:

Holders of operating licenses or operating authorisation recipients for the sake of their mine and relating industries shall be entitled to dispose of mineral substances other than those they are operating and whose activities necessarily entail breaking ground. Landowners may apply to get permission to dispose of such substances if they are not used by the operator against payment of a right indemnity if necessary, except when they result from the treatment of extracted mineral substances.

Part 3: RELATIONS BETWEEN OPERATORS

Art.69:

Communication ways, electric lines and other facilities or infrastructure works belonging to operator and likely to be of common use may be used by close establishments and be opened for public use, provided that no inconvenience thereof results for the operator and against payment of a fair compensation and coverage of implementation and maintenance costs.

All agreement made between neighbouring operators shall define the opening conditions and modalities of such facilities for common use and all agreement made between concerned operators, the Ministry of Mines and any other concerned Ministry, shall define the opening conditions and modalities for such facilities to public use.

When environment conservation requires it operators shall be bound to negotiate such an agreement. In the event of dissension, the Ministry of Mines shall intervene and set the conditions of common use of infrastructures.

Art.70:

If deemed necessary to carry out activities aiming to either connect close mines for ventilation or water run-off, or to open ventilation, draining or emergency ways for close mines, holders of mining titles or operating authorisations shall not oppose execution of activities and shall be bound to participate under conditions deemed acceptable by the Mining Administration. Such activities shall be carried out at the expense of the one or those benefiting from them.

Art.71.:

When mining activities cause damage to the operation of a neighbouring mine parties at fault shall redress.

When the same activities aim at evacuating water from other mines, wholly or partly, by machine or galleries, they shall possibly entitle to indemnity of one mine to another.

Art.72:

A sufficiently wide boundary pillar must be built to prevent the works of one mine from interfering with those a neighbouring mine already existing or which may exist.

Activities of the boundary pillar referred to in this article shall be prescribed if necessary by decree of the Ministry of Mines.

Part 4: PUBLIC HEALTH AND WORK SAFETY

Art.73.:

All Physical or Legal entities carrying out research or operating activities in accordance with the mining code shall be bound to carry them following professional rules, in a way to guarantee the safety of individuals and property.

Rules of public health and work safety applicable to prospecting, research, and operating activities and transport, storage and use of explosives shall be set by the regulation in force.

Art.74:

Before undertaking research or operating activities, holders of mining titles or authorisation recipients shall first develop a regulation relating to public health and work safety for activities considered. Such regulation shall next be subject to the approval of the Mining Administration. Once regulation is approved, holders or recipients shall be bound to comply with and enforce it.

Art.75.:

Any accident occurring on site, in a mine, a quarry or their outbuildings and any danger identified, shall be immediately reported to the Mining Administration by the holder of the mining title or authorisation recipient.

In the event of imminent danger or accident on a site or in a mine, the Mining Engineers of the Mining Administration or any other agent duly empowered as well as senior police officers of the criminal investigation department, may take all the necessary actions to stop danger and prevent its progression. In case of emergency or in the event of refusal of the holder of the mining title or authorization recipient to observe these measures, they shall be carried out ex officio at the latter's expense.

Part 5: ENVIRONMENT CONSERVATION

Art.76:

Activities governed by the mining code shall be conducted so as to ensure environment conservation, management, and restoration of mining sites following standards, conditions and methods set by the regulation in force.

Art.77:

Any applicant of a mining title except for research permit or quarrying authorisation, willing to undertake in the field an, activity likely to attack environment shall in compliance with the code of environment, depending on the case, provide a note or undertake an environment impact study matched with a public survey and negative impact mitigation or positive impact reinforcement plan.

Any change in the actions provided shall be subject to prior permission of the Mining Administration.

Art.78.:

Holders of a mining title other than research permit or recipients of an operating authorisation, except for quarrying authorisation, shall be bound to open and make deposits in a fiduciary account with the Central Bank of West African States (BCEAO) or a commercial bank in Burkina Faso. Such account shall serve as capital to cover the costs of implementation of environment conservation and restoration. Sums thus used either free from industrial and commercial tax. Methods of operation and supplying this funds shall be set by the mining regulation.

Art.79:

Beside provisions in the mining code, holders of mining titles and recipients of authorisations may also be subject to regulations and legislations of general nature in force, especially those relating to environmental conservation and management, establishments deemed dangerous, unhealthy or inconvenient and protection of the forest and cultural inheritance.

TITLE IV – TAX SYSTEM

Part 1: MINING TAXES AND CHARGES

Art.80:

Holders of mining title or recipients of authorisation shall be subject to the payment of fixed duties and proportional fees including a surface-based tax and a proportional charge.

Art.81.:

Granting, renewal, and transfer of mining titles or authorisations shall be subject to payment of fixed duties whose amount and settlement modalities shall be determined by the mining regulation.

Art.82:

All holders of mining titles or recipients of authorisations shall be subject to yearly payment of surface-based tax set on the basis of the described surface in the title or in the authorisation and period of permit or authorisation validity and whose amount and settlement modalities shall be determined by the mining regulation.

Twenty percent (20%) of the amount of surface-based tax shall be paid to the community where the land is located.

Art.83:

All holders of operating title or recipient of operating authorisation shall be subject to payment of a proportional charge whose rate, basis and settlement modalities shall be determined by the mining regulation.

Part 2: TAX ADVANTAGES AT THE RESEARCH PHASE

Art.84.:

All holders of research permit for mineral substances at research stage and within their mines, shall benefit from an exemption of:

- value added tax (VAT) for:
 - internal basis imports and procurement of goods needed for the realisation of geological and/ or mining activities, excluding goods excluded from the right to deduction in compliance with provisions in the mining code;
 - services rendered by businesses of geo-services and absorbed;
 - industrial and commercial tax (BIC);
 - commercial and industrial professions' minimum flat-rate tax (IMFPIC);
 - employer's and apprenticeship tax (TPA);
- registration fee for acts relating to increase in capital.

Exemption of tax on benefits and contribution in franchise tax shall not impede on the discharge of the mandatory declarations provided for in the Tax Code especially in its articles 16, 17, and 251.

Subject to provisions in tax agreements duly ratified, holders of research permit shall be bound to deduct at source sums paid in remuneration of service of any nature to people not having professional installations in Burkina and payout of said deduction in compliance with provisions in the Tax Code.

Art.85:

Material, raw materials, materials meant for research activities and whose importation shall be necessary to the completion of research program shall pay category I customs duties at the rate of 5%.

Such entry tax system shall also extend to components and spare parts intended for machine and equipment. In any case, the value of parts and spare parts shall not exceed 30% of the total value of cost, insurance and freight (CIF) of imported machine and equipment.

The Tax system shall also extend to fuels and lubricants for fixed installations, drilling materials, machine and other equipment intended for research activities.

Materials used for research, imported professional equipment, machine, as well as special use or site vehicles other than passenger vehicles shall benefit from temporary admission plan.

A list of items that can benefit from tax system indicated above shall be set by joint decree of respectively line ministers of mines and finances. On issuing research permit, such list shall be added as an integral part. If certain items to be imported thereafter are not on the list, a list supplementary list may be set by the Ministers of Mines and Finances.

Companies of geo-services, including drilling companies, laboratories of ore samples assaying offering services relating to research and operating activities, shall be given this tax system in so far as they act as sub-contractors.

However, plants, materials and equipment for which one can find the equivalent manufactured in Burkina Faso and available under conditions of procurement at least equal to those of goods to be imported as well as vehicles used only for personal or family purposes cannot profit from the tax system indicated above.

Part 3: TAX ADVANTAGES DURING DEVELOPMENT WORK

Art.86:

During development work period, holders of operating permits or recipients of operating authorisations shall be zero-rating for:

- equipment imported and equipment manufactured locally excluding goods excluded from right to deduction in compliance with provisions in the Tax Code;
- services provided by companies of geo-services and absorbed.

Duration for such exemption shall not exceed two years for daylight and underground mines.

Still, only one-year deferment as of the date of expiry of exemption date shall be granted when the rate of investments realised reaches at least 50% of projected investments.

The list of plants, materials, machine and equipment and components and spare parts that can profit from the exemption provided for in the preceding subparagraph, shall be appended to the operating permit of which it forms integral part.

The list of plants, materials, machine and equipment that served at the research or prospecting stage and that must be used at the operating stage shall be mentioned again in the list of operating equipment.

Art.87.:

During the mining development work period, which shall be three years maximum holders of operating permits or recipients of operating authorisations shall be exempt of customs duty on importing material, raw materials, plants, fuels and lubricants intended for power generation and operation of vehicles and equipment relating to the same activities, and their components and spare parts as well, excluding:

- statistic charge;
- community solidarity levy (PCS);

- community levy (PC);
- any other forthcoming community taxes.

Such exemption shall end on the date of first commercial mine. Such benefits shall extend to venture sub-contractors, on production of a contract passed in line with development work.

Part 4: TAX ADVANTAGES DURING MINING

Art.88:

At the operating stage, holders of operating permits or recipients of operating authorisations shall be subject to:

- commercial and industrial tax (BIC) at the common duty rate reduced by ten points;
- securities tax (IRVM) at the common duty rate reduced by half.

Art.89:

At the operating stage, all expenditure intended to generate an income by holders of operating titles or recipients of operating authorisations shall be admitted in computing industrial and commercial tax, especially:

- the cost of service provisions and supplies delivered to the companies by third parties or affiliated companies provided that, in this case, costs do not exceed those normally offered by third parties for similar services;
- depreciation really effected by the company within the limits of taxable profit. Mining companies may profit from accelerated depreciation;
- overheads relating to mines, including, in particular, set-up costs, rental expenses for movable and real property and insurance contributions ;
- interests and bank interests on debts contracted by the company, including debts contracted directly or indirectly with shareholders or

associated, insofar as interest rates do not exceed rates authorized by tax regulation in force;

- losses on foreign currency transactions recorded next to exchange rate fluctuations;
- deduction on depreciation already practised, value of materials or goods, damaged or unusable like irrecoverable credits and allowances paid to third parties for damage;
- losses suffered during the previous five years and not resulting from depreciation;
- Depreciation resulting from all research expenditure in Burkina Faso inside the research permit;
- reserves regularly made up for site reconstruction;
- contributions intended to supply the funds of recovery of mining sites.

Art.90:

Holders of operating permits or recipients of operating authorisations shall be exempt for seven years for:

- commercial and industrial professions' minimum flat-rate tax (IMFPIC);
- patents contribution;
- employers and apprenticeship tax (TPA) and
- property in mortmain tax.

However, for mines whose duration is inferior to fourteen years, period of exemption shall not exceed half of the forecast operating duration.

Holders of operating permits or recipients of operating authorisations shall be exempt from registration charges on deeds relating to increase in capital.

Exemptions provided for in this article shall apply starting from the date of first commercial production.

Subject to provisions in tax agreements duly ratified, holders of operating permits or recipients of operating authorisations shall be bound to deduction at source of sums paid in remuneration of service of any nature to people not having professional installations in Burkina Faso and to transfer the aforementioned deduction in compliance with provisions in the Tax Code.

Art.91.:

At the operating stage, as of the date of first commercial production, holders of operating permits or recipients of operating authorisations, shall be bound to pay taxes and duties, an accrued rate of 7.5% considered for goods fitting in category I of the West African Economic and Monetary Union (UEMOA) rate classification when importing materials, raw materials, plants, fuels and lubricants intended for power generation and operation of vehicles and equipment and their components and spare parts for the remainder of mine lifespan.

Notwithstanding this special customs system, holders of operating permits or recipients of operating authorisations may apply for temporary admission.

Such advantages shall extend to subcontractors of the venture, on production of a contract passed in line with mining operation.

Obtaining and auditing conditions for temporary admission shall be determined by the regulation in force.

Art.92:

Holders of operating permits or recipients of operating authorisations shall be authorised to form, industrial and commercial tax duty-free, a reserve for deposit recovery. Methods of formation and use of such reserve shall be determined by the regulation in force.

Part 5: STABILISATION OF TAX AND CUSTOM SYSTEM

Art.93.:

Tax system stabilisation shall be guaranteed for holders of operating permits or recipients of operating authorisations during the permit gold authorization period of validity so that they may not be penalized by any change having as effect an increase in fiscal burden. For this period, the rates and bases of the

taxes aforementioned shall remain such as they existed at the permit or authorization date and no new tax or imposition, whatever its nature shall be valid to holders of operating permits or recipients of operating authorisations for this period except for mining rights, taxes and duties.

Part 6: DECLARATION FOR VARIOUS OPERATIONS

Art.94:

Any physical or legal entity undertaking regular and repeated operations of purchase, sale, transport, storage, export or importation of mineral substances governed by the mining code shall declare them to the Ministry of Mines. Such obligation of declaration shall also extend to treatment, packaging operations, processing, including development of metals and alloys of these substances or their possible primary concentrates or by-products. In any case, the results of such operations shall be recorded in a register updated in compliance with the regulation in force.

TITLE V – FINANCIAL GUARANTEES AND EXCHANGE REGULATIONS

Art.95.:

Holders of operating permits or recipients of operating authorisations in accordance with the mining code shall be subject to exchange regulations in Burkina Faso. In this respect and subject to fulfilling their obligations, particularly as regards exchange regulations, shall be authorised to:

- import any funds acquired or borrowed abroad and needed for the execution of their mining operations;
- transfer abroad funds intended to repay debts contracted abroad in capital and interests; pay foreign suppliers for goods and services needed for mines;
- transfer abroad dividends and capital yields invested as well as yield from liquidation or realisation of their assets;
- access freely currencies at the market rate and
- freely convert national currency into any other currencies.

They may be authorised by the Minister of Finances to open with an intermediate bank agreed locally or abroad a foreign exchange account for their mines. Operation of foreign account shall be subject to regulation in force.

They may also, on request profit from the opening with the Central Bank of West African States (BCEAO) on the one hand, of a domicile account to collect receipts generated by the mine of extracted mineral substances and on the other hand, of an account for external payments for the various payments of financial commitments abroad.

Free exchange and free transfer of whole or part of the sums paid or due them, including social security contributions and pension fund to their home country, subject to discharged taxes and various contributions, applicable to them in compliance with the regulation in force, shall be guaranteed for the expatriate personnel of holders of operating permits or recipients of operating authorisations residing in Burkina Faso.

TITLE VI – RIGHTS AND DUTIES OF MINING ADMINISTRATION

Art.96:

The Mining Administration shall be responsible for the enforcement of the mining code and promotion of the mining sector, subject to tax provisions mainly under the jurisdiction of the ministry of finances. It shall have follow-up and control functions and bring its contribution and assistance to the continuation of activities governed by the mining code. It shall be responsible for the collection, processing and dissemination of data relating to the mining sector.

Art.97:

The Mining Engineers of the Mining Administration or any other agent duly empowered, shall be responsible for ensuring enforcement of the mining code as well as administrative and technical monitoring of activities above referred to in article 96.

Their jurisdiction shall cover all operating and research activities, conservation of buildings and stability of ground. They shall observe the way in which mine is conducted, either to inform the owners about its disadvantages or improvement, or to inform the appropriate authority of defects, abuses or possible dangers.

They shall have the duty to enforce the rules of environmental management and conservation standards as set by the regulation in force, and they shall have the powers needed to this effect.

They shall carry out the development, conservation and dissemination of documentation relating to mineral substances in particular. They shall have for this purpose the capacity to proceed constantly with any operation of checking indices or deposits.

They shall contribute to the enforcement of the industrial legislation relating to craftsmen and workers safety in the enterprises concerned by the Mining Code.

Art.98.:

The Mining Engineers of the Mining Administration or any other agent duly empowered, shall have access, either during, or after their execution whatever their depth, to all drilling, underground work or excavation work in order to check if provisions in the mining code, in particular, the rules relating to health and work safety are observed. They shall also have access to research and mines activities and installations to carry out the same inspection there.

Holders of operating permits or recipients of operating authorisations as those carrying out activities or their employees shall provide the engineers and agents of the Mining Administration with their needed means of access and inspection. They shall get them accompanied by qualified agents.

On each of their visits, the Mining Engineers of the Mining Administration or any other agent duly empowered may request to be shown all the plans, registers and documents whose keeping is required by the mining regulation and labour regulation as regards public health and work safety. They may voice technical observations on issues subjected to their monitoring. Such observations shall however be executory only in the case set in article 75.

Art.99:

Holders of operating permits or recipient of operating authorisations in accordance with the mining code shall be bound to maintain up to date registers and provide the Mining Administration , declarations, information, reports and documents whose contents, form and production frequency shall be specified in the mining regulation.

The Mining Administration may not, without the holder or recipient's permission, make information, data and documents thus obtained public or communicated to third parties before a three years deadline as of the date on which they were obtained. Any Mining Administration agent, who happens to get information and contents of these documents, shall be subject to the same obligation of confidentiality.

After processing and when they do not need drill cores any more for their own ends, holders of operating permits or recipients of operating authorisations shall give them to the Mining Administration for conservation.

Art.100:

The Mining Administration, to register mining titles and authorizations in accordance with the Mining Code, shall keep updated mining plans. For each title or authorization on these registers, date, act of attribution as well as all administrative, civil or legal acts with regard to the same shall be mentioned.

Up to date mining plans and geographical charts on which the layout of mining titles and authorizations in force is reported, with mention of the registration number corresponding on the register of titles and that of authorizations shall also be kept by the Mining Administration.

Registers, mining plans and charts shall be made available to the public and their contents communicated to any applicant justifying by his identity.

The mining regulation shall establish the form and contents of registers, mining plans and acts that must be kept by the Mining Administration.

Art.101.:

The Ministry of Mines shall be responsible for the establishment and management of an information and resource centre with an aim to make all the documents and information available for potential mining investors, who may need them for the realization of their investments. The Centre shall promote the mineral resources in Burkina Faso.

Art.102:

Drillings, work underground, excavation work, under execution, whatever their purpose, whose depth exceeds twenty meters, and conducted by any person holding a mining title or any recipient of an authorization shall be subject to a prior declaration to the Mining Administration and the local Authority.

Art.103:

The Mining Administration and administrative authority or local communities shall be bound to record formally and answer any request for opinion or authorization introduced in accordance with the mining code before the expiry of a three months deadline. In default, such opinion shall be deemed acquired and the authorization obtained ex officio.

Art.104.:

Before an action touching on the requested rights or benefits in accordance with the mining code, shall be undertaken against holders of mining titles or recipients of authorization, by the Mining Administration , a notice in writing shall be sent to the concerned person or published in compliance with mining regulation.

TITLE VII – VIOLATIONS, SANCTIONS AND PROCEDURES

Part 1: VIOLATIONS AND SANCTIONS

Art.105:

Infringements of the mining code and its enforcement texts shall be governed by this title. Penalties provided for shall be declared without prejudice of those under the jurisdiction of laws referred to in article 3 of this code.

Art.106:

A fine of five hundred thousand (500,000) to five million (5,000,000) CFAF or imprisonment from six months to two years or one of these two penalties only shall be inflicted on whoever:

- operates a quarry for needs other than domestic without authorization on its own grounds, the grounds of the public domain or private grounds;
- transports or sells quarry materials coming from an unauthorized mine.

The same penalty shall be applicable to holders of research permits who sell products extracted during their research activities without making a declaration thereof to the Mining Administration.

Art.107.:

A fine of five millions (5,000,000) to twenty-five million (25,000,000) CFA Francs and of two to five years imprisonment or one of these two penalties only, shall be inflicted on holders of mining titles or recipients of authorisation who:

- undertake activities governed by the mining code without complying with the rules of public health and work safety and environmental conservation;
- do not comply with the statute of limitations in the regulation on public health and work safety developed in compliance with article 73;
- do not comply within fifteen days or in cases of extreme urgency, immediately with injunctions by agents of the Mining Administration relating to rules of public health and work safety, environmental conservation and management and restoration of mined sites;
- do not provide the Mining Administration , within the specified time with the information and documents required in accordance with the mining regulation;
- do not regularly update registers required by the mining regulation or who refuse to produce them for the agents empowered to control them;
- do not pay after written notice, fixed duties, surface-based royalties and proportional taxes;
- undertake mining or quarrying activities in a forbidden or protected area;
- do not inform the Mining Administration of any accident or a danger identified on a mining site or in the mine or their outbuildings;
- exert violence or assault and battery against agents of the Mining Administration in the discharge of their duty.

Art.108:

A fine ten million (10,000,000) to fifty million (50,000,000) CFAF and of a five to ten years imprisonment or one of these two penalties only, shall be inflicted on whoever:

- falsifies or modifies a title or a mention on the title register, of mining plans and charts of the Mining Administration ;
- provides inaccurate information in order to obtain a mining title or authorization;
- modifies or tries to modify a perimeter regularly granted;
- destroys, removes or modifies illicitly signals or terminals;
- undertakes activities governed by the mining code without a mining title or authorization or under the terms of invalid or out-of-date mining titles or authorizations.

Art.109:

The penalties shall be inflicted on whoever:

- helps or assists authors of an infringement provided for in this Title;
- prepares or facilitates one of the infringements provided for in this Title particularly by obtaining for such authors transportation means, meeting facilities and accommodation or working instruments;
- gets busy ensuring impunity for authors of infringements provided for in this Title, particularly, in allowing them to escape investigations or to abscond from research by obtaining them transportation means, meeting facilities, hideaway or accommodation or by interfering with the action of justice through voluntarily erroneous information or by any other means.

Art.110:

Unlawfully extracted mineral substances shall be seized and their confiscation pronounced. Working instruments and transportation means used, may also be seized and their confiscation declared.

Art.111.:

In any cases of infringement, the Mining Administration may require in the event of sentencing:

- posting of the sentence at the infringement place and in the main towns of the concerned territorial units for three months;
- publication of the sentence in three daily newspapers issued in Burkina Faso three times successively at the expenses of the sentenced person;
- local banishment in compliance with provisions in the Criminal Code.

Art.112:

In the event of repetition, such fine shall be doubled and a five-year imprisonment at least may be passed.

Art.113:

Legal entities may be declared criminally responsible under conditions provided for in the Criminal Code and jointly incur fines provided for in this Title.

Part 2: PROCEDURES

Section 1: ASCERTAINMENT OF VIOLATIONS AND ACTION

Art.114.:

The Mining Engineers of the Mining Administration or any other agent duly empowered, as well as senior police officers of the criminal investigation department, may proceed to research and ascertainment of infringements of the Mining Code. Moreover, they can proceed to investigations, searching and confiscations on sites. Research of infringements may involve body search.

The other agents duly empowered shall be bound to send to the Mining Administration their official reports on search and ascertainment of infringements of the mining code as well as the seized mineral substances.

Civil, military, and paramilitary authorities shall be bound to come to assist agents of the Mining Administration on first requisition.

Accounts or entries abroad and relating to mining operations in Burkina Faso may be subject to control by agents duly empowered by State. State and account holders shall jointly support expenses relating to such controls.

Art.115:

In any cases of litigations relating to mining activities, reports and opinion of the Mining Administration shall serve as experts' reports.

Minutes ascertaining infringements and seized products shall be sent to the District Attorney of the Faso.

Section 2: SETTLEMENT OF LITIGATIONS

Art.116:

In the event of dissension between holders of mining permits or recipients of authorisations and State, regarding any purely technical matter governed by the Mining Code, the Mining Administration and holders or recipients shall jointly nominate one or several independent experts to settle the dispute and abide by the arbitral decision.

Any dispute between the same parties, in relation with other than technical matters governed by the Mining Code, shall be adjudicated in last resort by Burkinabe ordinary law tribunals having jurisdiction or by a court constituted in accordance with Burkinabe law or by international arbitration court when mining agreement provides for this.

Until final decision, the Mining Administration may take all conservation measures, which it shall deem necessary for the protection of people, assets, environment and mine.

TITLE VIII – FINAL AND TRANSITIONAL PROVISIONS

Part 1: TRANSITIONAL PROVISIONS

Art.117.:

Valid mining titles and authorisations on the date of this mining code entry in force shall remain valid for the duration and substances for which they were delivered. They shall preserve their definition throughout all their validity. Agreements in force on this same date shall remain also valid for the duration of validity period.

Part 2: FINAL PROVISIONS

Art.118:

Decrees passed by the Council of Ministers and following the proposal of the Minister of Mines shall set the modalities of Mining Code enforcement.

Art.119:

This law shall repeal any former otherwise contrary provision in particular, provisions in Law n° 023/97/II/AN of 22 October 1997, pertaining to the Mining code, except for texts made for the enforcement of the same, which shall remain in force in anything that is not contrary to this law, so much and as long time as no new regulation of administration is made.

Art.120:

This law shall be enforced as a State law.

So issued and deliberated in public
in Ouagadougou, this 8 May 2003.

On Behalf of the Speaker of the
National Assembly,
The First Vice-President,

Oubkiri Marc YAO

The Secretary of Meeting

Mamadou Christophe OUATTARA