

The principal Law for Geothermal Resource Development in Kenya

By

Florah Mwawughanga

Purpose

- Highlight the role of Geothermal Resources Act in geothermal development in Kenya.
- Give brief on role of supplementary laws
- Discussion and recommendations

Introduction

- Legal framework-vital in development, regulatory
- Geothermal Resources Act (GRA)-Principal Law
- Enactment of Geothermal Resources Act-1982.
- Regulations-1990.
- Supplementary Laws applied with GRA
- Electricity production began 1981, production expansion has been slow.

Provisions of the Act

- 1) Geothermal Resources – Vested in the Government.
- 2) Declaration of GR area by Minister for Energy
- 3) Unauthorised use of GR without authority or licence.
- 4) **Authority for search of geothermal resources –given by the Minister.**
 - Survey, investigate, test, Measurements, sink bore and any related activity

Cont

Authority is subject to :

- Proper closure bore supervision, maintained safety, being bore left in lasting safety condition
- Authority –Lasts for one yr and is not transferable
- Renewable for one yr
- Authority may be revoked due to:
 - Non compliance with Act, effect on other bores, public interest

Cont.

5) Conditions of granting of Geothermal Resources Licence – By Minister

- Application in prescribed format
- For a period not > 30 yrs
- Renewable for period not > 5 yrs
- Not transferable without Minister's authority
- Annual rent paid 3 months prior to due date, failure attracts 10 %

Cont

- Forfeiture of licence may be due to:
 - Cessation of work continuously for 6 months without consent
 - Breach of any of the provisions
- After licence expiry or forfeiture, licensee can apply to Minister within 90 days to enter land and remove machinery

6) Rights under the licence

- Enter land with geothermal resources

Cont.

- Drill and construct necessary bore hole & undertake any necessary associated activities.
- Construct and maintain buildings and machinery
- Utilise geothermal resources
- Construct and maintain roads and other communication means
- Use any water subject to Water Act

Cont.

7) Areas exempted include from licensing:

- Burial ground
- vicinity of churches, mosques, or sacred places of worship
- 1000m of aerodrome
- National park or nature reserve

Cont.

- Areas within 50 m in vicinity of a building in use or dam
 - Any area within a municipality or town
 - Any public road
- *Entry to areas above - subject to consent from competent authorities
- *Directional drilling is allowed in subsurface of exempted areas.

Cont.

8) Safety or compensation of persons in geothermal production areas- licensee's responsibility

- Compensation for damage to property or land - by licensee
- If one being compensated is dissatisfied, one may appeal to high court

9) Closure of geothermal bore - by Minister may be due to:

- Source of danger to persons or property nearby
- Affecting other bores for specified purposes

Cont.

- Bore is a nuisance or for public interest
- Bore is no longer necessary for operation as per approved plans
- For environmental protection, including ground water
- For conservation of geothermal resources

Other important (supplementary) Laws

- 1) Electric Power Act
- 2) Environmental Management and Co-ordination Act
- 3) Water Act
- 4) Local Government Act
- 5) Factories Act
- 6) Public Health Act
- 7) Wildlife (Conservation and Management) Act
- 8) Restrictive Trade, Practices, Monopolies & Price control Act
- 9) The Standards Act
- 10) Forests Act

Electric Power Act no. 11 of 1997

- Principal law of the power sector.
- Establishes the Electricity Regulatory Board (ERB) -process & recommend issuing of licences to generate, transmit, supply electricity, enforce environmental & safety regulations, regulate tariffs
- Restructured the power sector to allow private sector participation in geothermal development.

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- licensing considerations -need for environmental protection, natural resource conservation, technical & financial capacity, community energy needs etc.
- Producer licence - term not exceeding 15 yrs, renewal application done 3 yrs before termination date.
- Power sale/transmission contracts between & among producers, suppliers & large retail consumers need Board approval (ERB)

Environmental Management and Co-ordination Act of 1999

- Act provides legal framework for management of environment and natural resources.
- Act includes procedures on EIA, Environmental Audits, Monitoring & Environmental quality standards.
- Upon EIA completion -EIA licence issued for development.
- Electrical infrastructure & drilling to utilise underground water resources -requires EIA.

Cont.

- Administered by the National Environmental Council & implemented by the National Environmental Management Authority (NEMA).
- ERB - lead Agency to enforce the environmental & safety regulations in the power sub-sector.
- Other Licences required - effluent discharge licence, Emission licence for air pollutants, Waste disposal licence & noise exemption permits.
- Restoration - mandatory after project completion.

Factories Act (CAP 514) of 1972

- Categorizes energy generating stations as factories.
- Labour commissioner- responsible for administration of Act.
- Provides for maintenance of health & safety through cleanliness, sanitary conveniences, fencing, protective clothing, workers welfare etc.

Water Act (CAP372) of 1972, repealed in 2000

- Vests all water resources on the Government & establishes rules and procedures for water use.
- The Water Apportionment Board - regulates water use among other duties.
- Any waterworks - need a permit.
- The Minister, may declare an area a protection area & construction, water diversion or abstraction will require a special permit.

Public Health Act (CAP242) of 1986

- Act is administered by Central Board of Health
- Empowers the Minister to make rules and enforcement in connection with:
 - Inspection of dwellings, buildings, factories etc. in connection with cleanliness, security, drainage, lighting, ventilation & overcrowding prevention, nuisance & any danger (eg. Offensive smells, liquids).
 - Construction of buildings & factories and prohibition of construction in unsuitable localities- pose health & safety risks.
 - Inspection of lands & buildings - whether fit for habitation (certificate of fitness issued).

Local Government Act, CAP 265

- Electric Power Act requires that any licence applicant liaises with local authorities affected by proposed activities and obtain consents prior to submitting licence application to the Electricity Regulatory board

Forest Act (CAP 385)

- Act prohibits road construction, tree cutting, burning, erecting building etc. in a Forest area or unalienated Government land without the authority of the Director of Forests.
- For nature reserves, a licence is issued for conservation purposes only thus exploitation of geothermal resources may not be allowed.
- Already there are confirmed resources in some forest areas e.g. Eburu

Wildlife Conservation and Management Act (CAP 376)

- Act establishes the Kenya Wildlife Service (KWS) - mandated to manage National Parks and Reserves - conservation & management of all flora and fauna.
- Act prohibits introduction of any unauthorised flora and fauna into the park.
- Currently all geothermal developments -in the park.
- The Act, policies and agreement between KWS and Geothermal resource developers ensure harmony with the goals of KWS.

Restrictive Trade, Practices, Monopolies & Price control, CAP 504

- The Act establishes a legal framework for competition.
- It is the principal law on competition though the EPA authorises ERB to ensure genuine competition in the power sub-sector.

The Standards Act, CAP 496

Under the Act, the Electricity Regulatory Board is empowered to enforce safety regulations and ensure electrical apparatus meet standards set by the Kenya Bureau of Standards (KEBS) or international standards approved by KEBS.

Discussion

- Geothermal energy is the source of power of the future for Kenya – High potential, highly technically qualified personnel, its environmentally benign and indigenous and due to fact that most high potential hydropower sites are exhausted & risk of weather unpredictability.
- Expansion of geothermal industry has been slow, especially in the last 20 yrs or so, partly due to legal and regulatory framework issues. For long there was no clear policy on the sector.

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- But the Energy policy paper of 2004 addresses most factors that have inhibited rapid expansion of the sector. However, specific measures focusing on geothermal are required to speed up growth.
- The necessary legal framework to ensure effective implementation of the energy policy is yet to be realised (Bill).

Conclusions

- Has been long since the GRA was enacted. This needs review to accommodate changes that have occurred over the years. Likewise some of the supplementary laws (old) require repealing.
- There is need for specific policies and enactment of laws to provide incentives that may invigorate faster growth of the sector. Speedy enactment of the energy bill into law is needed for effective implementation of the energy policy.
- Establishment of a sustainable fund, backed by laws/policies, for exploratory studies which are expensive

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- Major incentives backed by legal framework/policies - needed to make geothermal energy development more attractive especially to the private sector.
- Establish mechanisms to cushion developers from risks where drilling may not yield steam.
- There is need to put in place a single body to deal with licensing on geothermal development.

*Thank you for your
attention*