

# THE FEDERAL GOVERNMENT OF SOMALIA



## MINISTRY OF PETROLEUM AND MINERAL RESOURCES

### NATIONAL MINERAL RESOURCES POLICY

[INSERT DATE AND MONTH] 2019

## Table of Contents

ACRONYMS.....	4
FOREWORD .....	5
ACKNOWLEDGMENTS .....	6
EXECUTIVE SUMMARY .....	7
1. INTRODUCTION .....	8
2. THE MINING SECTOR IN SOMALIA.....	9
2.1. Historical reflections.....	9
2.2. Mineral resources.....	9
2.3. Existing regulatory framework .....	9
2.4. Key challenges .....	10
3. POLICY VISION, GUIDING PRINCIPLES AND OBJECTIVES .....	12
3.1. Vision.....	12
3.2. Guiding Principles .....	12
3.2.1. Equity and shared benefits.....	12
3.2.2. Clarity and stability .....	12
3.2.3. Inclusivity.....	12
3.2.4. Protection.....	12
3.3. Objectives.....	13
4. PRIORITY THEMES AND STRATEGIC INTERVENTIONS.....	15
4.1. Mining promotion and development .....	15
4.1.1. Economic value.....	15
4.1.2. Reliable geological data.....	15
4.1.3. Conducive fiscal regime.....	15
4.1.4. Infrastructure .....	16
4.1.5. Technology .....	16
4.1.6. Administrative efficiency.....	16
4.2. Mineral rights and ownership .....	17
4.3. Local Content and capacity development .....	17
4.3.1. Overall objective.....	17
4.3.2. Creation of employment .....	18
4.3.3. Procurement from local businesses (goods, services and equipment) .....	18

4.3.4.	Training and education.....	18
4.4.	Land Rights and Access.....	18
4.4.1.	Land ownership .....	18
4.4.2.	Resettlement and compensation .....	18
4.5.	Environment.....	19
4.5.1.	Environmental regulation.....	19
4.5.2.	Explosives .....	20
4.5.3.	Water, waste and effluent discharge .....	20
4.5.4.	Mine reclamation and rehabilitation.....	20
4.5.5.	Artisanal mining peculiarities .....	20
4.6.	Health, safety and fair labour practices .....	20
5.	GOVERNANCE AND INSTITUTIONAL FRAMEWORK.....	22
5.1.	Federal level institutions .....	22
5.1.1.	Ministry of Petroleum and Mineral Resources.....	22
5.1.2.	Somalia Mining Authority.....	22
5.1.3.	Mining institute .....	22
5.1.4.	Chamber of mines .....	23
5.2.	Member state level institutions .....	23
6.	ENFORCEMENT AND DISPUTE RESOLUTION FRAMEWORK .....	24
6.1.	Monitoring compliance .....	24
6.2.	Enforcement options.....	24
6.3.	Judicial and arbitral framework.....	24
6.3.1.	Mining tribunal.....	24
6.3.2.	Arbitration .....	24
7.	POLICY IMPLEMENTATION AND COORDINATION .....	25
7.1.	Amendment of Mining Code and Regulations .....	25
7.2.	Stakeholder sensitization .....	25
7.3.	Implementation planning and monitoring .....	25
7.4.	Regular policy review .....	26

## ACRONYMS

Chamber	Chamber of Mines
Code	1984 Mining Code and Regulations
Constitution	Constitution of Somalia promulgated on [insert date]
DFI	Development Financial Institution
FGS	Federal Government of Somalia
LCIA	London Court of International Arbitration
Minister	Minister for Petroleum and Mineral Resources
Ministry	Ministry of Petroleum and Mineral Resources
Policy	National Minerals Resources Policy
SMA	Somalia Mining Authority

Draft

## **FOREWORD<sup>1</sup>**

The Ministry has entered an exciting phase of streamlining and revamping the extractive sector in order to unlock value for Somalia and its people. The development of specific policy documents such as this one, for the mining sector, and a separate petroleum policy, which is already in place, forms part of a new chapter for the Ministry.

We are pleased to set out in this Policy, clear, achievable and value-realizing objectives for the mining sector in Somalia. We are proud of what our country has to offer and look forward to gradually taking our place on the world's mining stage.

Draft

---

<sup>1</sup> GoS to edit as appropriate

## **ACKNOWLEDGMENTS**

The preparation of this important Policy would not have been possible without the time and efforts of the team at the Ministry, led by Minister [*name*]. The FGS would like to acknowledge all those who played a part including the Development Partners, the representatives from various Member States and communities, the Civil Society organizations, other Government departments and the advisors contracted to support this process.

Draft

## **EXECUTIVE SUMMARY**

Somalia is endowed with a wealth of mineral resources and this inaugural Policy forms the foundation for the development of the mining sector in Somalia. This Policy lays out the vision for the development of a vibrant mining sector, wherein all parties are required to adhere to fair minimum standards and where all parties can participate in or benefit from the activity within the sector.

Crucially, this Policy articulates the FGS' objectives around the following key elements:

- Mining promotion and development
- Mineral rights
- Land rights
- Local content and the community
- Environment
- Health and safety
- Regulatory and institutional framework

The Policy also distinguishes between larger scale industrial miners and smaller scale artisanal miners, since their profiles necessarily require a different policy approach.

The key principle of this Policy is to create an enabling environment for the sustainable growth of the mining sector, in a manner that is fair and beneficial to the relevant stakeholders. Accordingly, the Ministry proposes to work with all stakeholders to make the vision outlined in this Policy a reality.

Draft

## **1. INTRODUCTION**

### **Overview**

Somalia has significant unexploited mineral potential and the FGS is desirous of creating an enabling framework to unlock the value of the country's mineral wealth, for the benefit of its citizens. The first step towards creating a conducive framework is to have a clear policy which sets out the vision and objectives for the mineral sector in Somalia. This Policy is intended to provide long term direction to address industry needs. This will in turn set the stage for the legal and institutional reforms required for the regulatory agenda. This Policy will also facilitate the development of a strategy for the marketing and promotion of Somali minerals locally, regionally and internationally.

This Policy therefore constitutes a pivotal move towards reviving the mining sector by the Ministry.

### **Approach**

The development of this Policy followed a consultative process involving all key stakeholders including the Ministry of Finance, federal member states, lawmakers, civil society and artisanal miners. Their input was instrumental in developing this Policy and identifying the reform priorities.

Furthermore, from an international benchmarking perspective, considerations included international best practice relating to the mining industry in areas such as technology, investments, financing mechanisms and developing mineral markets. Due regard was also accorded to regional and local issues affecting the mining and mineral resources sector. This Policy is intended to set a firm foundation for establishment of an enabling framework for the accelerated and sustainable development of the country's mining and extractives sector. The drafting of this Policy (and subsequent legislative amendments) also drew upon local and international legal expertise.

The formulation of this Policy will contribute to the creation of an environment that attracts both foreign and local investment in mining, safeguards local content and gives the country a competitive edge in the mining industry. The ultimate result will be the creation and development of opportunities for the Somali people to benefit from their country's mineral resources to a far greater degree than has been the case in the past.

## 2. THE MINING SECTOR IN SOMALIA

### 2.1. Historical reflections

From the colonial times to the period between 1960 and 1991, Somalia's mineral exploration was sporadic and its contribution to GDP was fairly nominal. In 1988 for example, it was estimated that this sector contributed only 0.3% to GDP.<sup>2</sup> From 1991, the country experienced some years of anarchy until 2012 when a new internationally backed government was established. Somalia has made commendable strides in terms of political stability, having gone through elections successfully in 2017.

At present, there is minimal small scale mining activity, primarily artisanal in nature, hence the impetus to grow this sector, given its economic potential.

### 2.2. Mineral resources

Limited geological surveys have been carried out in Somalia as a comprehensive survey and mapping exercise is yet to be conducted to determine the full extent of mineral resources available and their locations. However, the available data suggests that the country is endowed with a number of mineral resources including the following:

<b>Category</b>	<b>Mineral resources</b>
<b>Metallic</b>	Tin, iron, copper, gold, platinum, molybdenum and lithium
<b>Gemstones</b>	Emerald, sapphire, ruby aquamarine, opal, garnet and beryl
<b>Industrial</b>	Gypsum, limestone, quartz, kaolin, bauxite, feldspar and silica sand
<b>Agro-minerals</b>	Phosphorites, bird guana deposit, apatites, sepiolite and salt
<b>Building materials</b>	Granite, marble, sandstone, crushed rocks and aggregates
<b>Energy minerals</b>	Uranium and coal

In light of the above, it is imperative that a conducive and well regulated environment for both large scale industrial and artisanal mining be created. This calls for a deliberate and comprehensive policy that will aid in the development of the sector and guide the FGS in the process of reforming the Code. Essentially, the FGS shall spearhead a reform process that will modernize, harmonize, streamline and consolidate the existing mining regime, to enable the government achieve its objectives.

### 2.3. Existing regulatory framework

The mining industry in Somalia has over the last three decades been regulated by the Code. To date, there have been no amendments or reviews of the Code hence the need for reform so as to meet the dictates of the present day regional and global mining industry.

The mining activities that have so far been carried out in the country are small scale and artisanal in nature. In the absence of large scale or industrial mining activities, there is virtually no participation

---

<sup>2</sup> Based on "Minerals of Somalia" paper published by Abdulkadir Hussein in 2013, which was provided to us by FGS. FGS to review and confirm issues of copyright

of international investors nor application of international mining norms and principles in the mining sector. Following the adoption of this Policy, a review of the Code shall be undertaken to develop a legislative regime that adheres to the requirements of a modern, safe, investor friendly and progressive mining industry.

#### **2.4. Key challenges<sup>3</sup>**

There are several challenges currently facing the mining sector in the country and key among them are the following:

##### **Political conditions and security concerns**

There has been limited large scale mining activity due to the challenges arising from historical political instability as well as the security risks posed by the activities of terror groups. As the country stabilizes and rebuilds its economy and governance structures, it is expected that local and international investors will take advantage of the opportunities in the mining sector. The FGS is committed to providing adequate security for intellectual and physical property and investments of mining project developers and operators.

##### **Infrastructure**

Due to the limited development of the mining sector and the economic challenges faced by the FGS, there has been little development of infrastructure to support larger scale mining activities such as enhanced road, rail and port facilities.

##### **Inadequate geological data and facilities**

At present, the research data available on mineral resource quantities and locations is scanty. Furthermore, the FGS lacks the laboratories and equipment for testing and certification of mineral samples. This inevitably means that miners end up incurring costs in determining the potential of mineral sites and in arranging for samples to be evaluated. Comprehensive geological mapping and adequate geoscience facilities will be required to support the development of the sector and the FGS is minded to partner with investors on this.

##### **Lack of capacity**

The local labour force and entrepreneurs do not yet have the required skill and expertise to engage in or benefit from modern, large scale and industrial mining activities. Building local capacity in terms of technical knowledge, exposure to technology and business management skills shall therefore be a key imperative for the FGS.

##### **Budgetary constraints**

As alluded to above, one challenge for the mining sector is the limited resources available to dedicate to the expansion and regulation of the sector. In this regard it is necessary to rank the priorities of the Ministry so as to allocate resources where they are most needed and where they will provide a significant impact. The FGS is committed to working with various Development

---

<sup>3</sup> FGS to indicate whether there are additional challenges to be highlighted in this Policy

Partners to accomplish the objectives within its mandate. As the mining sector grows and generates revenue for the FGS, additional resources will be available for further development of the sector.

Draft

### **3. POLICY VISION, GUIDING PRINCIPLES AND OBJECTIVES**

#### **3.1. Vision**

Under this Policy, the vision is to develop the mining sector in Somalia to its fullest potential through the diligent and equitable stewardship of resources. The FGS is committed to efficiently and responsibly growing, managing and regulating the mining sector to the advantage of Somalia and its people.

#### **3.2. Guiding Principles**

The guiding principles which form the foundation for this Policy are as follows:

##### **3.2.1. Equity and shared benefits**

This Policy requires that profits and benefits arising from the exploitation of mineral resources in the country are shared equitably between the investors, the government and the people of Somalia. The government has a responsibility to maximize the beneficial impact of the mining industry to the economy of the country. Revenues generated from the mining sector have the potential to transform the nation by enabling investment in food security, education, healthcare, infrastructure and security for the benefit of all citizens.

##### **3.2.2. Clarity and stability**

This Policy shall bring clarity and stability to the regulation of the sector. All stakeholders need to be clear on what is required from them and what advantages accrue to them. As this information is an integral part of the decision to invest in the sector, the regime also needs to be stable so that investors can accurately predict their return on investment. The regulators and administrators of the sector also need to be clear on their role and powers in ensuring that matters are resolved in an efficient and consistent manner.

##### **3.2.3. Inclusivity**

A key tenet of the mining industry is that, in line with the Constitution, it should enable access and enjoyment of benefits to all groups of people within Somalia regardless of their socio-economic backgrounds, ethnicity or culture. This Policy also seeks to consider the needs of marginalized communities, women and youth, persons with disabilities and other specialized groups for whom additional intervention may be required. Local content regulations shall be developed to ensure gradual capacity building so as to give as many people as possible a chance to participate in the mining industry.

##### **3.2.4. Protection**

This Policy ensures that mining activities shall be conducted in a manner which conserves the environment and ensures the health and safety of all those working in or close to the mining operation sites. In addition, miners who are operating in compliance should be protected from unfair economic practices and criminal activity. The issue of protection is non-negotiable and is considered a paramount priority for the FGS. In developing safeguards to achieve this objective, reference shall be made to international best practice.

### 3.3. Objectives

The key objective of this Policy is to ensure sustainable, affordable, competitive, secure and safe conduct of mining activities within Somalia. Although not exhaustive, the list below further breaks down the objectives, which are to:

- Utilize mining revenue as a tool to accelerate economic empowerment for the FGS and the member states to spur both urban and rural development.
- Incentivize increased participation in small scale and artisanal mining activities and improve miners' access to affordable and reliable mining technologies.
- Provide a conducive environment for the development of large scale and industrial mining activities.
- Create sustainable employment and business opportunities arising directly or indirectly from the mining sector.
- Prioritize and promote local content, including the development and use of locally available capital, skills, equipment, resources and technology in the mining sector.
- Ensure that prudent environmental, social, health and safety considerations are factored into development of the mining sector.
- Ensure that a comprehensive, integrated and well informed mining sector plan is put in place for effective development.
- Foster international co-operation and attract international investors in the development of and investment in the mining sector, and trade in Somali minerals.
- Promote capacity building in the mining sector through research, development and training.
- Promote local manufacture of plant, equipment, appliances and materials.
- Promote appropriate standards, codes of practice and specifications for equipment, systems and processes in the sector.
- Promote diversification of mineral sources to ensure security of supply.
- Promote competitive pricing of minerals and prevent illicit trade in minerals.
- Protect investor, producer, supplier, consumer and other stakeholder interests.
- Provide incentives for local and international investments in the mining sector.
- Promote and develop government owned agencies in the development of mining activities.

- Provide an elaborate response strategy in the management of mining related disasters.
- Provide for the efficient and optimal distribution of functions between the FGS and member state governments in the sector while fostering cooperation with relevant public institutions.

Draft

## 4. PRIORITY THEMES AND STRATEGIC INTERVENTIONS

### 4.1. Mining promotion and development

#### 4.1.1. Economic value

As mineral wealth is finite, it creates an imperative for careful stewardship of mineral resources so as to maximize the economic value to the country. The FGS is committed to the promotion and development of mining in a manner that maximizes the value of these non-renewable resources by:

- Promoting sustainable mining practices.
- Prohibiting issuance of licenses for speculative purposes.
- Providing technical support to small scale miners.
- Gradually providing the additional infrastructure and access required to get the products to market.
- Promoting Somalia as an investment friendly location for mining investors.
- Scaling up the mining sector so as to attract large scale investment.
- Marketing Somalia minerals to key global markets.
- Providing mineral trading platforms.
- Entering into bilateral and multilateral agreements for the trading of minerals.

#### 4.1.2. Reliable geological data

The FGS requires an up to date and exhaustive geological survey and map of the mineral resource types to include information on their quality and quantity. This will enable the FGS to forecast and prepare projections based on expected returns from untapped mineral deposits. There is potential for more minerals to be discovered as a result of the mapping exercise. In addition, accurate geological data will enable the FGS identify the areas suitable for artisanal/small scale mining as well as large scale/industrial mining. The FGS through the mining geology department or institute shall be responsible for regularly updating and maintaining the minerals survey data. The information contained in the survey shall be instrumental to both local and international investors.

#### 4.1.3. Conducive fiscal regime

The fiscal regime (taxes and incentives) governing a country's mining sector is a key factor in determining mining companies' investment in exploration and exploitation projects. There is huge potential for fiscal benefits to be generated from the exploitation of the country's mineral resources. In this regard, the FGS will develop a fiscal regime that not only generates revenue but also attracts sustainable long term investment in the mining sector. The fiscal regime should, *inter alia*:

- Be standardized and transparent taking into consideration international trends in mining and incorporating these into the fiscal regime.
- Specify the incentives applicable to investors in the mining sector.

- Enable investors to predict and plan for fiscal obligations.
- Set out the methods of determination of taxes due and exemptions applicable, as well as the administration mechanics for both.
- Provide for mineral royalties and appropriate/ practical methods for determination of amounts due and associated administrative procedures.

#### **4.1.4. Infrastructure**

In order to accelerate infrastructure development, mining companies will be incentivised to contribute significantly to mining related infrastructure. Incentives will include enhanced tax breaks for the associated costs and higher scores when evaluating tenders for industrial mining rights. The FGS shall particularly encourage the development of infrastructure which has a wider public benefit such as roads, power connections and housing. The FGS has the role of providing socio-economic infrastructure and with time, will increasingly invest in both socio-economic infrastructure as well as specific mining related infrastructure such as power, rail, roads, ports, and communications.

#### **4.1.5. Technology**

The government shall encourage miners to use mining technology that is affordable, efficient and less harmful to the environment. The FGS intends to engage DFIs to sponsor technical assistance to bring the Ministry resources up to speed on mining technology. In addition, mining companies which employ more advanced technology shall be entitled to fiscal incentives but they shall also be required to train local Somali teams in the use of the technology.

#### **4.1.6. Administrative efficiency**

The FGS, through its mining regulatory authorities, will strive to carry out its mandate with administrative efficiency. This shall entail several initiatives such as:

- Using digital platforms to the extent possible.
- Responding to applications and queries within a specific timeframe.
- Tracking performance statistics and seeking to improve results.
- Having dedicated and qualified teams to handle various regulatory requirements such as carrying out inspections at mineral prospecting sites or mining operation sites.
- Producing and publishing detailed plans and budgets.
- Having an internal audit mechanism as a control to identify and propose solutions for bottlenecks and to suggest process improvements.
- Continuous monitoring of systems and processes.
- Set up of a one stop shop for ease of processing mining applications and approvals.

#### 4.2. Mineral rights and ownership

The Constitution vests ownership of minerals in the FGS. The allocation of mineral rights should be carried out in a fair and transparent manner. In addition, the mineral rights granted should give the holder sufficient time and latitude to accomplish their economic objectives. Furthermore, applicants for mineral rights should not be subjected to arbitrary requirements or undue delays.

The intention of the FGS, from a policy perspective, is to create a hybrid regulatory framework which distinguishes between large industrial mining companies and artisanal miners as shown in the table below.

	<b>Large industrial mining</b>	<b>Artisanal mining</b>
<i>Basis for allocation of mineral rights</i>	Large industrial miners shall be awarded mineral rights on the basis of competitive international tenders, unless there are clear and compelling grounds for single sourcing or if there is only one interested qualified bidder.	Artisanal miners shall qualify for mineral rights based on the 'first-in-time' approach.
<i>Type of mineral rights</i>	Concessions as documented in a Concession agreement.	Permits or licenses.
<i>Scale of operations</i>	Expected to be substantial. A minimum US\$ value of investment will be stated as well as a minimum land surface area.	Expected to be small and sporadic.
<i>Regulations</i>	Detailed and specific regulations will apply to large industrial mining concerns around the environment, health and safety.	Artisanal miners will be expected to adhere to a simpler set of regulations which are less burdensome.
<i>Administration</i>	Administration will be handled by the Federal authorities.	Administration will be handled by the member states.
<i>Incentives</i>	Pegged on level of investment.	Standardized incentives.
<i>Term</i>	Long term.	Shorter term with possibility of renewal.

#### 4.3. Local Content and capacity development

##### 4.3.1. Overall objective

The development of the mining industry in Somalia is expected to benefit local enterprises and the community. This shall be accomplished by ensuring that some aspects of local procurement and employment are preserved for Somali citizens. This shall be accomplished by drafting mining legislation which contains local content requirements that promote the use of locally available material, equipment and personnel. In addition, the FGS is committed to building capacity in this industry through training and practical experience. Mining investors will be required to provide plans on how they will incorporate local capacity building into their operations.

#### **4.3.2. Creation of employment**

One of the key benefits of growing the mining industry is the creation of employment for locals. Miners who are applying for mineral rights will be required to provide details of the locals they intend to employ at various stages of their activities, and this will help to inform the tender evaluation process, in the case of large industrial mining concerns. It is acknowledged that in the early stages of industrial mining activity, the local employees may not have the requisite skills to be involved in technical or managerial level roles. However, with time, training and exposure, a greater proportion of local staff will be involved in the mining sector, and they shall be able to satisfactorily hold positions of higher seniority or competency.

#### **4.3.3. Procurement from local businesses (goods, services and equipment)**

The mining sector is intended to support and promote local enterprise by procuring goods, services, equipment and works from local suppliers. In the earlier phases of industrial mining activity, the local procurement may be limited to the supply of non-specialized items such as vehicles, foodstuffs and fuel, as well as the provision of basic services such as cleaning and security. Some Somali specific expertise will also be required for legal and audit services. Gradually however, it is expected that more specialized equipment and services, of comparable quality and price, shall be available from local providers.

#### **4.3.4. Training and education**

Increased mining activity, especially by experienced industrial miners, presents a unique opportunity for Somali miners to receive training on more modern and technology enabled mining practices. In addition, industrial mining entities shall be required to commit a certain amount towards tertiary level mining scholarships as well as contributing towards mining studies and a mining institute, to benefit the country.

### **4.4. Land Rights and Access**

#### **4.4.1. Land ownership**

In Somalia, all land belongs to the government but the government grants occupation rights to certain persons (including institutions, individuals and corporate bodies) and communities. In the past, there have been some disputes due to using the same land for multiple purposes. For example, there have been clashes between farmers and miners regarding whose activity takes precedence over a particular area. It is therefore crucial that the allocation of land rights for mining activities clarifies the extent of the miners' rights. Miners shall enjoy undisturbed access to the land over which they hold mining rights, for a specified period, but they are still required to provide for through way and access to other parties, where necessary. Once clear land rights and usage provisions are set out in the updated mining legislation, local communities need to be sensitized on this issue so as to mitigate future disputes regarding land use.

#### **4.4.2. Resettlement and compensation**

Where land needs to be vacated to enable mining activities be carried out, the law should clearly provide for the resettlement and compensation of the affected people, in a fair, timely

and efficient manner. The mining regulations should provide clear details of the criteria which must be satisfied in order to instigate a resettlement program and should comply with international practice on resettlement. In addition, the regulations shall require the involvement of the mining authorities before the resettlement can commence.

Where the miners are unable to reach an amicable agreement with those occupying the land, the government can assist to compulsorily acquire the land, provided that the occupants shall be adequately compensated and/ or resettled in a comparable area. Where the occupants' livelihoods are negatively impacted by the resettlement, additional compensation may be payable and the miners should try to incorporate as many of such persons in their operations as possible (as employees or suppliers).

#### **4.5. Environment**

##### **4.5.1. Environmental regulation**

Protecting and conserving the environment is a key priority for the Somali government. Mining activities can have an adverse effect on the environment hence the need to establish a mining regulatory framework which compels miners to comply with minimum environmental standards in their operations.

The common environmental issues to be considered in the development of medium to large scale mining projects are the surface and ground water system; the physical land including the soil, rock stability, deforestation; spillage of toxic chemicals/ metals; air; noise; dust and the reduction of aesthetic value of the area.

The FGS shall enact clear laws and regulations to protect the environment, including matters such as:

- Mandatory environmental assessment reports required at various stages of the mineral exploitation process. The reports will need to be vetted by the mining authorities and must include the impact on water resources; air quality; human, plant and animal life; soil quality; historical, cultural heritage and sacred sites and natural landmarks. In addition, industrial miners will be required to submit and adhere to detailed environmental management plans to mitigate any negative impacts identified.
- Regulations regarding minimum standards required to protect the environment.
- Disaster management protocols and procedures.
- Sanctions and penalties applicable in cases of non-compliance as well as compensation and remediation required where illness, injury or death result from mining related contamination. Where historical, cultural or sacred sites or artefacts are damaged, compensation may also be payable to the relevant authority or community.

#### **4.5.2. Explosives**

Miners shall be required to obtain explosives permits where their activities reasonably require blasting. In order to qualify for the permit, the miner shall be required to demonstrate that the process shall adhere to the required standards to protect all persons and the environment. In addition, the storage and transportation of explosives shall be carried out with adequate security in order to mitigate the risk of loss or misuse.

#### **4.5.3. Water, waste and effluent discharge**

One particular area of focus for environmental management is the handling of water, waste and effluent discharge. Any non-compliance in respect of these items will attract severe penalties and sanctions based on the "polluter pays" principle. The management of water, waste and effluent discharge related to mining operations shall be subject to random inspections and testing by FGS representatives.

The FGS will put in place standards and guidelines to control the disposal of waste. In addition, there will be clear prohibitions in the regulations regarding actions which are not permitted. Reference shall be made to global industry practices when developing the regulations on this subject.

#### **4.5.4. Mine reclamation and rehabilitation**

As mineral rights are granted for a limited period of time, it is necessary to require miners to restore the mining site when their license expires, or when they abort their operations. The mining site should be restored to a state which is safe for surrounding human, plant and animal life. The mining legislation will establish a clear legal framework, procedures and obligations concerning rehabilitation of mines and the penalties payable for those who abandon mines without undertaking the required rehabilitation program. The legislation may also require mining rights holders to set aside an environmental deposit bond to meet rehabilitation and mine closure obligations. Alternatively, a percentage of the miners' revenues or profits can be deposited in an environmental fund, which then meets the costs of rehabilitating the mines once the licensees/ concessionaires have completed their projects.

#### **4.5.5. Artisanal mining peculiarities**

Artisanal and small-scale mining is crucial to rural livelihoods. In developing environmental regulations, consideration shall be given to the capabilities of artisanal miners to comply with those requirements. The intention is to ensure that artisanal miners are not unduly burdened with onerous environmental rules such that the costs of compliance render them unable to provide for themselves and their families, while at the same time balancing the interests of environmental protection.

#### **4.6. Health, safety and fair labour practices**

Mining activities can cause adverse effects from an occupational health perspective. Miners shall be required to adhere to minimum health and safety practices within the mine sites, including any residential camps and offices which serve the mines. Those working within the mine sites must be

provided with good quality protective clothing and must be briefed on safety before being permitted within such sites. In addition, areas which are particularly dangerous shall be restricted such that only a few qualified individuals are permitted therein, subject to taking sufficient safety precautions.

In addition to the above, medical services should be available on site with clear plans as to how to handle accidents.

Further, all employers in the mining sector will need to comply with fair labour practice laws, such as those in respect of:

- Minimum wage and wage protection
- Working hours
- Minimum leave periods (including annual leave, sick leave and maternal leave)
- Overtime
- Termination and redundancy
- Discrimination and harassment
- Prohibition of child labour

Draft

## 5. GOVERNANCE AND INSTITUTIONAL FRAMEWORK

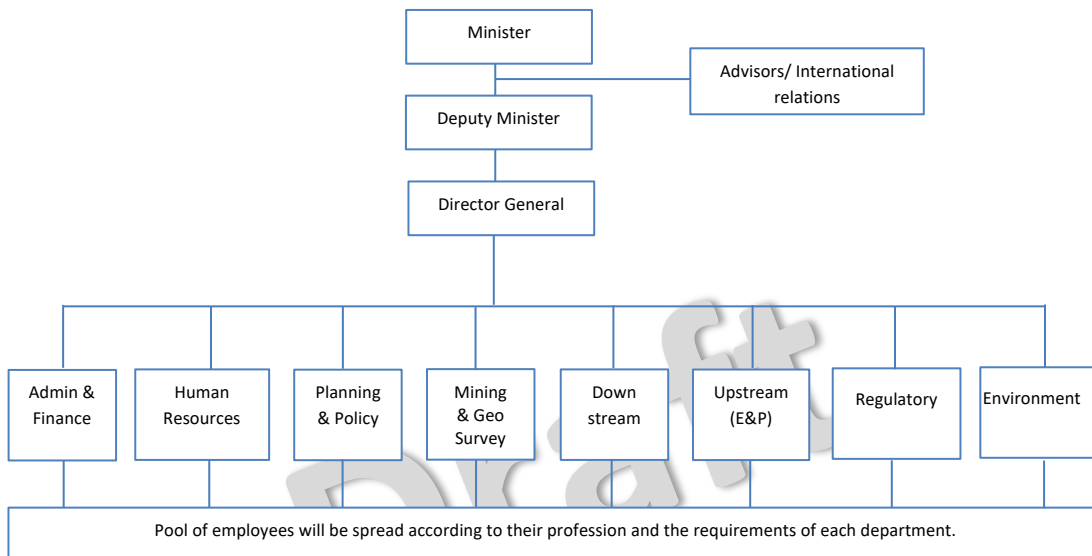
There is need for all the mining sector institutions to work together towards the successful implementation of this Policy. A coherent governance structure is required to ensure that all mineral related issues are dealt with efficiently and competently.

### 5.1. Federal level institutions

The federal institutions shall play an overall regulatory role in the mining sector over both artisanal/ small scale mining as well as industrial/large scale mining activities. The federal authorities shall be responsible for setting policy and regulations for the mining industry.

#### 5.1.1. Ministry of Petroleum and Mineral Resources

The senior most authority in mining matters is the Minister. The current structure of the Ministry is as shown in the diagram below.



#### 5.1.2. Somalia Mining Authority

It is the intention of the FGS to establish an independent authority to implement the policy for the mining sector, known as the Somalia Mining Authority. The SMA shall be managed by a Board led by a Chairman and shall contain representatives from the national government and each member state. The Board will also include appointees from the private sector, with relevant professional experience and good standing.

The day to day operations of the SMA will be overseen by a Director General appointed by the Board and confirmed by the Minister.

#### 5.1.3. Mining institute

As the mining sector grows and expands, a mining institute shall be established for mining related education and research. The institute may be embedded within a leading local university but the Ministry will be responsible for providing financial and technical support,

especially around the development of the curriculum and the geo-scientific research to be carried out and published. A significant proportion of funding for the institute is expected to be sourced from mining education levies charged on active industrial mining concerns.

#### **5.1.4. Chamber of mines**

The FGS shall support the establishment of a chamber of mines by the private sector, in order to bring together all private sector stakeholders in the mining sector. The chamber will thus be the main voice articulating the concerns of those in the industry in order to enable consultation and dialogue with the FGS.

#### **5.2. Member state level institutions**

The Federal authorities and institutions will ultimately be represented at the member state level through the establishment of SMA offices within each member state. The local SMA offices shall be responsible for handling the licensing administration and responding to queries related to artisanal and small scale mining activities. The local SMA teams shall also have a role in implementing administrative directives issued by the federal authorities for the mining sector.

Draft

## **6. ENFORCEMENT AND DISPUTE RESOLUTION FRAMEWORK**

### **6.1. Monitoring compliance**

The FGS, through the SMA, shall ultimately be responsible for ensuring that all mining related regulations are adhered to. This places a clear imperative on the authorities to monitor compliance by:

- i) Reviewing applications, assessments, reports and periodic returns filed by miners or prospectors.
- ii) Carrying out inspections.
- iii) Receiving tips and complaints and investigating them.
- iv) Maintaining records and statistics on compliance levels, in order to inform future policy.

### **6.2. Enforcement options**

The mining law shall impose penalties for noncompliance with the law and regulations. Penalties may take the form of fines, imprisonment (or both fines and imprisonment), revocation of licenses, or any other penalties that the government may deem fit.

### **6.3. Judicial and arbitral framework**

#### **6.3.1. Mining tribunal**

The FGS proposes the creation of a mining tribunal at the level of the regional courts. Appeals therefrom will be determined by the Court of Appeal and thereafter the Supreme Court. It is expected that disputes related to artisanal miners will be wholly resolved at the tribunal level. The tribunal will have a panel of at least 3 qualified persons, including a chairperson who meets the criteria to qualify as a judge of a regional court. At least one person must be a mining or mineral expert with some years of practical experience.

#### **6.3.2. Arbitration**

In the case of large industrial mining corporations, depending on the terms of their concession agreements, they should have the option of dispute resolution by way of arbitration. In order to align with the petroleum sector, the proposed seat of arbitration for mining disputes would be London and the London Court of International Arbitration (LCIA) rules would therefore apply.<sup>4</sup> Given the expensive nature of such arbitral proceedings, mining companies are encouraged to seek resolution through mediation or other amicable means in the first instance, and only resort to arbitration where other methods are unsatisfactory.

---

<sup>4</sup> FGS to consider whether Nairobi, Mauritius or Dubai would be alternatives for the seat of arbitration

## **7. POLICY IMPLEMENTATION AND COORDINATION**

The Ministry shall take primary responsibility for developing policy and overseeing its implementation. The implementation shall be executed in phases, subject to having adequate human and financial resources. The Ministry shall work with the SMA and other stakeholders to ensure that views from all segments of society are sought for the policy development process. The Ministry shall also engage other relevant ministries such as the Ministry for Finance and institutions, such as local universities, to ensure the successful implementation of the minerals policy.

### **7.1. Amendment of Mining Code and Regulations**

The mining sector is currently regulated by the Code. As the Code is 35 years old, a reform process has commenced to update the legislation to respond to the present market conditions and to take into account global best practice. Extensive stakeholder engagement shall be undertaken to ensure that the new laws address the issues outlined in this Policy. In addition, the updated code should maximize the economic benefit to the community and the country, while ensuring that returns for investors are competitively attractive.

### **7.2. Stakeholder sensitization**

Once the process of reforming the Code is complete, the FGS shall embark on a campaign to sensitize all local stakeholder groups, such as local communities in mineral rich regions as well as relevant public officials, on the changes introduced by the new law and policy. This may be done through seminars, workshops or other appropriate caucuses. In addition, the FGS plans to undertake a global marketing roadshow or campaign to showcase the mining sector opportunities in Somalia and to advise investors of the favourable regulatory environment.

### **7.3. Implementation planning and monitoring**

The first step in implementing this Policy shall be to develop a detailed 5 year strategic plan with milestones, timelines and which allocates responsibility to the relevant parties. It is envisaged that the strategic plan will include details of initial steps such as:

- i) Review of the Code.
- ii) Preparation of a model mining concession agreement.
- iii) Constituting, funding and operationalizing the SMA.
- iv) Establishing the chamber, mining tribunal and mining institute.
- v) Mapping out the country's mineral resources and publishing the findings.
- vi) Holding an international mining roadshow.

Once adopted, the implementation plan shall be rolled out and the Ministry shall monitor the deadlines for the various steps of the plan, in order to ensure timely execution. Where necessitated by new developments or budgetary constraints, the steps of the implementation plan can be modified accordingly.

Once the implementation of the policy is in full swing, the Ministry will also undertake to conduct a study to gauge the effectiveness of the policies and whether they are achieving their goals. The study report should include statistics on key performance indicators and it should also highlight any

challenges faced and propose remedial solutions. The findings of the study will then inform future policy and regulatory changes.

#### **7.4. Regular policy review**

At a minimum, this Policy should be reviewed every 10 years, along with the regulatory framework which is underpinned in this Policy.

Draft