Policy and Legislative Options Report

Ethiopia Mining Sector Development

#7175163

1 February 2016
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<td>AM</td>
<td>Artisanal Mining</td>
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<tr>
<td>AMDC</td>
<td>African Minerals Development Centre</td>
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<td>AMV</td>
<td>African Mining Vision</td>
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<td>ASI</td>
<td>Adam Smith International</td>
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<td>ASM</td>
<td>Artisanal and Small Scale</td>
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<td>CDA</td>
<td>Community Development Agreement</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>ECCO</td>
<td>Ethiopia Canada Coordination Office</td>
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<td>EDRI</td>
<td>Ethiopia Development Research Institute</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EITI</td>
<td>Extractive Industries Transparency Initiative</td>
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<td>EMP</td>
<td>Environmental Management Plan</td>
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<td>ERCA</td>
<td>Ethiopia Revenue and Customs Authority</td>
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<td>EU</td>
<td>European Union</td>
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<td>FCFS</td>
<td>First Come First Served</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<td>GEUS</td>
<td>Geological Survey of Denmark and Greenland</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit</td>
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<tr>
<td>GPC</td>
<td>Gold Purchasing Centre</td>
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<td>GTP</td>
<td>Growth and Transformation Plan</td>
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<td>ICMM</td>
<td>International Council of Mines and Metals</td>
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<td>ICSID</td>
<td>International Convention on Settlement of Investment Disputes</td>
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<td>IFC</td>
<td>International Finance Corporation</td>
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<td>MDA</td>
<td>Mineral Development Agreement</td>
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<td>MoLSA</td>
<td>Ministry of Social and Labour Affairs</td>
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<td>MoMPNG</td>
<td>Ministry of Mines, Petroleum and Natural Gas</td>
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<td>PSG</td>
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<td>SMA</td>
<td>Strategic Mining Assessment</td>
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<td>SME</td>
<td>Small and Medium Enterprise</td>
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<td>TOR</td>
<td>Terms of Reference</td>
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<tr>
<td>UNECA</td>
<td>United Nations Economic Commission for Africa</td>
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<td>WB</td>
<td>World Bank</td>
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Executive Summary

Ethiopia has many advantages as a destination for mining investment. These include promising geology, a well-designed fiscal regime, stable government and a growing domestic market. Additionally, it has a well-managed and successful artisanal and small scale mining sector. Under the second phase of Ethiopia’s Growth and Transformation Plan, Ethiopia has the ambitious target for the mining sector to contribute 10% of GDP by 2025. Ethiopia must overcome significant challenges to achieve this target. These challenges range across simplifying the licensing regime, developing its investment promotion efforts and clarifying institutional responsibilities for social and environmental management to enhancing stakeholder engagement in the governance of the sector.

Simplifying the regime for acquiring exploration and mining licenses would be a vital first step in encouraging the growth of the sector as well as improving Ethiopia’s ability to manage the sector. This includes a more vigorous application of the ‘First-Come-First Served’ principle, an improvement which requires some changes to regulations as well as improvements to the Cadastre. However, we recommend specific scenarios where competitive bidding is advised in order to maximize returns from allotment of licenses. The use of more standardized Mining Development Agreements, with a scope more limited than it is currently, is also advised in order to reassure investors; this will ensure greater benefits for Ethiopia. We also recommend that measures are introduced to minimise waste of exploration licenses by ensuring that they are used, as well as measures to avoid ‘overlapping’ licenses which can lead to uncertainty over rights and potential conflicts.

The relationship between licenses and agreements is an area where we believe decisions have to be made in advance of a large scale mining sector developing. In the long-term, we believe it would be best to rely on legislation, regulation and licenses, but recognize that sudden moves in this direction may be difficult and potentially incompatible with the Ethiopian legal process. Therefore, we provide an option of a ‘hybrid’ system whereby agreements may be slowly phased out, should the legal system change, relying more heavily on detailed, subject-matter specific regulations in the future.

Although the fiscal regime for the mining sector is attractive for investors as well as allowing a reasonable return for Government, reviewing the 5% free share and reducing the delays for the disbursement of VAT refunds would be clear improvements. The review of the free share that the government has in mining companies is supported by the fact that Ethiopia’s first Extractive Industries Transparency Initiative (EITI) Report notes that the government does not have adequate statistics as to the details of the free-share holdings, and their corresponding value. Additionally, we have some concern over the new draft Income Tax Proclamation (ITP), believing that minerals and petroleum should be separated out in this legislation and that the Minerals Income Tax Proclamation should be the basis of the mining section in the draft ITP.

In addition to Government revenue, the economic benefits from a large scale mining sector should include export earnings, employment and increased value addition in country. We recommend that legislation is not the primary method used to achieve these objectives. Given Ethiopia’s federal structure, strong co-ordination between Federal and Regional Government is essential, with increased sharing of information as well as attempts to improve capacity at a regional level to plan for local development. Improving specialized vocational and technical training focused on the mining sector should be a key focus of activities, as well as establishing, with private sector support, a skills inventory identifying those skills needed by the sector. The Government of Ethiopia should also consider cooperating with mining companies on the establishment and financing of multi-user infrastructure.

The provision of geo-data should be a top priority, although we understand that there are budgetary constraints to this. There can however be substantial improvements made to the provision of geo-data from exploration license holders to the Geological Survey of Ethiopia (GSE). The GSE should also enhance its investment promotion function through co-operation with the Ministry of Mines, Petroleum and Natural Gas (MoMPNG) and the Ethiopia Investment Commission. This includes the use of geological data published online as well as participation in international investor events. Following good practices on increasing access to geo-data are vital to the cause of investment promotion. The website of the MoMPNG is a first point of entry for many investors and should thus be improved to include such information. Access to information for investors could further be increased by restating the MOP so that it includes cross-references to other sector legislation and regulations where necessary. Ethiopia also stands to benefit if private companies engaging in mining exploration and extraction re required to submit their detailed geo-data obtained through exploration to the
government in a standardized format. Once such data becomes non-confidential, it can be used by Ethiopia to encourage the competitive bidding process.

The development of a large scale mining sector will bring substantial environmental challenges which need to be managed. An initial step would be for the environmental policy to be updated and for national environmental standards to be developed. We recommend that mining specific guidelines for Environmental and Social Impact Assessment (ESIA) and Environmental and Social Management Plan (ESMP) are created. At licensing stage, license applications should be required to submit mine closure plans. An Internationally accepted resettlement standard should also be introduced. The regulatory framework should require that companies update their Environmental and Social Management Plans regularly and that these updates should be based on environmental and social audits.

Large scale mining also leads to difficult relationships between the mining company and the community within which the mine is based. A National Corporate Social Responsibility policy could be developed in order to provide guidance on all points of interaction between the mining industry and society. As part of a mining license, a Community-Mining Company Development Agreement should be required. We also recommend that there is increased legislative clarity around existing Community Development Agreements and have set out various legislative options in the legislative options report.

Stakeholder engagement should be considered a higher priority and communities should be engaged at earlier opportunities by both companies and government. This includes engagement in ESIA and ESMP’s as well as on community development issues. Clarifying the institutional arrangements for occupational health and safety is also recommended, as is establishing a directive for managing occupational health and safety. Special guidance should be provided for underground mining as well as artisanal and small scale mining.

The artisanal and small scale mining sector is to some extent unique in Ethiopia due to its development and level of organisation. As part of our licensing recommendations, we recommend that the non-renewal of AM licenses is reconsidered as well as the hierarchy giving priority to LSM, despite the LSM industry’s opinions to the contrary. Otherwise, the legal framework appears to be fit for purpose. AM/SSM access to credit can also be improved, with future sales revenue being potentially used as collateral for bank loans. Increased value addition for the gemstone sector should also be a priority, and we recommend the ratio of cut or polished stones to total exports is increased.

Underlying mineral governance in Ethiopia are institutional arrangements setting out how the sector is governed. These institutional arrangements are essential to making the improvements necessary for ambitious targets to be met. Clarifying the mandates of different stakeholders (particularly for environmental and social issues) would be a big improvement. Increasing co-operation and improving communication between the federal MoMPNG and the regional mining bureaus is important. Consideration should be given to separating out the licensing and inspection function of the MoMPNG into a semi-autonomous agency, rather similar to ERCA. A recruitment and retention strategy should also be implemented in the Ministry in order to overcome the challenge caused by insufficient retention of staff.

Both the Policy Options and the Legislative Options report have resulted from a process of dialogue with the Government of Ethiopia, particularly the MoMPNG, through a series of fact-finding missions, stakeholder workshops and seminars as well as desk research from the team of consultants. This report considers comments made by officials from the MoMPNG in response to earlier drafts. Additionally, as a final deliverable we have submitted a draft implementation plan to guide the implementation of recommended reforms.
Final Policy Options Report

Ethiopia Mining Sector Development

#7175163
1. Introduction to Policy Options Report

Purpose of Report

This Mining Sector Policy Options report explores and evaluates policies the Government of Ethiopia could consider to fulfil the potential of Ethiopia’s mining sector. Ethiopia has vast ambitions for the sector, with the Growth and Transformation Plan setting out the ambition for the mining sector to contribute 10% of GDP by 2025. Currently, the sector contributes 1.5% of GDP, meaning significant growth in the sector is required within a limited period of time. This paper sets out how Ethiopia can encourage growth in the sector whilst also managing the social and environmental impacts from the mining sector.

This report commences with an identification of priorities for the Government of Ethiopia as understood through both policy documents as well as discussions with stakeholders. The bulk of the report is then descriptive analysis of different technical areas of mining sector governance in Ethiopia through which particular challenges are identified and a variety of policy options are proposed. Finally, we summarise our recommendations across the different technical areas in our ‘Conclusions and Recommendations’ section.

This report is the outcome of two missions to Ethiopia exploring policy issues in collaboration with key stakeholders in the MoMPNG as well as other government institutions. These took place from:

- i) July 27th to August 7th – Olle Ostensson and Steve Macey were in Addis Ababa for this period, with Lois Hooge joining them on August 2nd, and

- ii) August 17th to August 21st – John Tychsen completed a mission to Addis Ababa and Assosa.

In addition, our findings consider issues identified in our inception report as well as documents reviewed during the project, which are listed in the project background section below. Provisional findings were shared with the MoMPNG and this report has considered the feedback received from them. We would like to express our gratitude to Almaz Belayneh of the MoMPNG and Lydia Mesfin of the World Bank for their support. In addition, we would like to thank all those who met with our team during both missions and contributed to our knowledge and understanding. A full list of all those met during the missions is attached in Annex.

Project Background

The ‘Ethiopia Mining Sector Development’ project, is a successor to the 2014 Strategic Mining Assessment (SMA) Study, which evaluated the potential of Ethiopia’s mining sector. An ‘Oil Sector Development’ project is simultaneously being implemented by Adam Smith International with World Bank funding. Although separate projects, we are ensuring that there is strong co-ordination between two projects, including having one joint initiation workshop and conducting missions in parallel. However, deliverables (including Policy and Legislative Options papers) are being submitted separately. The original Terms of Reference are attached as an annex.

The key reference documents used for the report were:

Proclamations

- Ethiopia Labour Proclamation 2003
- Ethiopia Minerals Proclamation 2010
- Amendment to Mining Proclamation 2013
- Ethiopia Proclamation to Promote and Regulate Transactions of Precious Minerals 2001
- Ethiopia Proclamation to regulate Mining Income Tax. 1996
- CSO Proclamation
Policies and regulations
- Ethiopia Draft Mineral Policy 2014
- Council of Ministers Draft Regulations for Mining Operations 2014
- Draft Mining Regulation – to be approved
- Ethiopia Model Mine Agreement
- Ethiopia EIA Guideline for Mining and Petroleum Operations 2003 (draft)
- Environment Policy 1997

Studies, plans and assessments
- Africa Mining Vision (AMV) UNECA 2009
- Action Plan for Implementation of the AMV. UNECA 2012
- Strategic Assessment of the Ethiopian Mineral Sector (SAMS) 2014
- Overview of Global and Ethiopian Coloured Gems Market 2013
- Minerals and Africa’s Development UNECA 2011
- Socio-economic Baseline Survey of the ASM Communities in Rural Ethiopia SUDCA 2013.

Project Team
The team is comprised of:
- **Lead Mining Expert:** Olle Ostensson (ASI)
- **Mining Policy Expert:** Lois Hooge (ASI)
- **Mining Legal Expert:** Susan Maples (ASI)
- **Artisanal Mining Expert:** John Tychsen (GEUS)
- **Local Legal Expert:** Yohannes Tsehai (ASI)
- **National Economist:** Berihu Assefa (EDRI)
- **Project Manager:** Steve Macey (ASI)
- **Project Director:** Anne-Claire Howard (ASI)

Short biographies of the staff are attached in Annex A. The project is led by Adam Smith International (ASI) with contributions from Geological Survey of Denmark and Greenland (GEUS) and Ethiopia Development Research Institute (EDRI). Profiles of the three institutions are available in Annex B.
2. Identification of priorities

This chapter sets out what we have identified as the key priorities for the Government of Ethiopia with regard to its mining sector through a combination of official policy documents and stakeholder discussions. The purpose of this chapter is to help guide the rest of the report by ensuring that the analysis and recommendations consider the priorities of the Government of Ethiopia, as well as provide the reader with some essential background information.

2.1 Draft mineral policy

The draft mineral policy, 2008, is a concise document setting out the high-level objectives for the Government of Ethiopia’s management of its mineral sector. The document arose from consultation with Government officials at a federal and regional level, private sector investors and local and international NGO’s. Thus, it is a vitally important document for understanding the ambitions which the Government of Ethiopia has for the mining sector. High level ambitions for the mining sector include both the creation of more foreign exchange for the Government of Ethiopia and reduction in poverty.

The policy is clear that development in the sector must be private sector led, a policy put into practice by the privatization of the Lege Dembi mine in 1998. In order to attract private sector investors, the draft mineral policy sets out a licensing and fiscal regime designed to appeal to investors. This includes provisions such as accelerated depreciation, ring fencing, tax deductions for exploration, mine development, capital and operating costs incurred in mining projects.

In addition to an attractive legislative and regulatory framework, the draft mineral policy sets out a more pro-active approach to attracting investment. A ‘Mining Investment Promotion Strategy’ is envisaged, with a dedicated office within the MoMPNG developing and implementing the strategy, one component of which is the provision of geological information to private investors. A ‘Minerals Marketing Policy’ is also envisaged with the Government of Ethiopia facilitating trade of minerals.

The draft mineral policy also sets out objectives for the mining sector to integrate with the rest of the economy, including the development of multi-use infrastructure and the promotion of mineral beneficiation. The Government of Ethiopia offers to co-operate with mining companies on the establishment, maintenance and operation of ‘multi-use’ infrastructure. The promotion of mineral beneficiation aims to support the industrialization of Ethiopia by developing mineral-based industries adding value to the raw materials extracted in Ethiopia.

The draft mineral policy also seeks to maximize the employment benefits from the mining sector by insisting on the prioritization of Ethiopian nationals when qualified candidates are available. In order to facilitate this, the Government of Ethiopia seeks to enhance the education and training system for the mining industry, including the development of appropriate accreditation of mining sector skills. Specific mention is given to promoting the participation of women and the disabled in the sector, including the requirement for mines to submit their employment policies as part of their mining license application.

The draft mineral policy also encourages the economic integration of Ethiopia’s mining sector across the East Africa and Gulf regions by encouraging harmonization of mineral legislation, cross-border mineral processing and the removal of barriers to labour and capital.

The draft mineral policy also contains provisions focusing on ‘environmental, social and sustainable development’, with specific and detailed policy measures related to environmental protection, including compliance with the National Environmental Policy. Further measures include implementing the principles of ‘integrated environmental management’ across the mining industry. For specific mining projects, Environmental Impact Assessments (EIA’s) and Environmental Management Programmes (EMP’s) will be necessary before a license is granted.

Specific reference is given in the draft mineral policy to the Artisanal and Small Scale Mining sector, due to both the size and significance of the sector, as well as the distinct challenges and issues facing the sector. The objectives and policy measures in the draft mineral policy have a similar thrust to the policies for the large-scale sector, with a focus on supporting the sector through both a favourable legislative regime and pro-active measures such as training and skills
development. Similarly, there is also mention of the government's role in the mitigation of social and environmental problems.

Implementing such reforms requires an effective institutional framework capable of governing a large mining sector. The draft mineral policy sets out governance of the sector at both a federal and regional level with an intention for 'decentralized management' of the sector explicitly stated. At a federal level, a lead agency will be responsible for the promotion and regulation of the industry with a separate geological survey responsible for the gathering, collection and storage of geological data.

At a regional level, offices should be established in each state with specific responsibility for regulating the mining sector at a regional level. In order to ensure co-ordination between the two offices, the draft policy envisages a consultative forum between both levels of government.

### 2.2 Strategic assessment of Ethiopia’s mining sector

A strategic assessment of Ethiopia’s mining sector was conducted from May 2013 to March 2014, with the report published in October 2014. It was commissioned by the World Bank and its partners (DFID, IFC, DFATD and the IFC) with a view to guiding the Government of Ethiopia in how it could develop and manage its mining sector.

The report was based upon two interlinked sets of analysis:

1. Geological/Mineralogical analysis of potential mining projects in Ethiopia
2. Economic analysis focusing on the potential revenues which could be generated from the sector

The strategic assessment noted the breadth of the draft mineral policy and the supreme importance of both a policy and legal framework establishing clearly the role of the state as well as a modern and effective mining cadastre system. The assessment recommended drafting new regulations so they correspond to the 2010 Mining Operations Proclamation (and its 2013 amendment), as well as revising the Model Mining Agreement. Despite the commissioning of a computerized mining cadastre system in 2011, technology problems as well as changes to licensing rules have restricted the effectiveness of the system.

The strategic assessment also identified capacity challenges, both inside and outside government. In government, capacity challenges applied at both a federal and regional level whilst in the private sector, a lack of mining vocational skills and educational centres for developing these was seen as a threat to job creation. The fiscal regime was not seen as a deterrent, whilst there was a distinct revenue sharing formula in place for distributing revenues between federal and regional government.

For Artisanal and Small Scale mining, the assessment notes its importance to Ethiopia but claimed the sector was poorly understood and thus required more detailed investigation. Provisional findings in the assessment suggested that problems affecting this sector included low productivity, unaccountable diversion of minerals and land use conflict.

The assessment noted that currently linkages between the mining sector and the Ethiopian economy are weak partly due to the small size of the mining sector. However, it noted that there was specific potential in the cement industry, whilst potash production should enable links to be made with the agricultural sector (due to the need for fertilizer).

Transport infrastructure was also recognized as a major challenge for the sector. Although the Government of Ethiopia is planning a state of the art rail network, it is unclear how this will link in with potential mining projects, the location of which is unknown. For the import of capital goods necessary for mineral production and for the exporting of mineral products, Djibouti provides the only realistic port route. It was recommended that for future mining projects, a resource corridor approach should be considered.

### 2.3 Conclusions from initiation workshop

From June 24th to June 26th 2015, an initiation workshop was held at Desalegn Hotel, Addis Ababa. The workshop involved Adam Smith International consultants presenting on different aspects of mineral sector governance, including
economic, fiscal, social and environmental challenges. These presentations set the scene for interactive sessions between the invited participants and the consultants.

During the 'Way Forward' meeting on Friday 26th June, it was agreed that the team will treat the Draft Mineral Policy document as the starting point for our analysis of policy and legislative options. Through discussions during the presentations and panel discussions, we understand the priorities of the MoMPNG to be:

- Promoting Ethiopia as an attractive destination for foreign mining investment, including through comparison with peer countries, development of legislation and regulations aimed at eliminating uncertainties, reducing discretion and streamlining regulatory detail.
- Integrating the mining industry into the fabric of the economy; including by building linkages, expanding employment, exploiting opportunities for supplying local industry with raw materials and enhancing the added-value potential of the minerals sector
- Building capacity in terms of human resources and institutional strengthening
- Ensuring the protection of the environment and communities as well as investigating ways of using mining as a catalyst for community development (this would include support on how to define the scope and process for concluding Community Development Agreements and providing mining related specificity to EIA/EMP processes)
- Improving stakeholder engagement through provision of formalised mechanisms (recognized as weak in GTP1 and thus is a priority)

2.4 Other implicit priorities, based on stakeholder discussions

During the missions, we have understood in greater depth the policy priorities for Ethiopia’s MoMPNG and these are examined in more detail during this report. Pre-eminent amongst these priorities was the need to attract greater investment in the sector. The Investment Promotion Conference organised for September 2015 entitled 'Utilising Ethiopia's Natural Resources as the Engine for Sustainable Development' is an example of such efforts to enhance investment.

The licensing system is clearly a major factor determining the quantity and quality of investors interested in Ethiopia and thus will be a major area of focus in both this paper and the legislative options mission this year. During our legislative options mission, we are thus proposing to have a specific round-table discussion based purely on licensing with several key stakeholders.

A broader consideration which affects the mining sector relates to Ethiopia’s capital controls. We understand that it is the priority of the Government of Ethiopia to control foreign exchange, a priority which clearly impacts importers and exporters from every sector, including the mining sector. We have considered this priority when making our recommendations.

The Ministry recognized that staff capacity was currently insufficient to manage a large-scale mining sector, explaining that inadequate remuneration of staff led to insufficient retention. It was agreed that the development of capacity in the sector had to be closely linked with Ethiopian higher education and vocational institutions.

The Ministry is determined to achieve EITI compliance and has a dedicated Directorate established for that purpose. Support for this process is being provided by the World Bank and USAID. Given the upcoming deadline for its first report (19th March 2016), obstacles to achieving EITI compliance must be overcome rapidly.
3. Exploration and mining rights

The rights to explore and to mine are at the centre of mineral policy and the way that governments choose to design their systems for allocating and defining rights accounts for a large part of how a country is viewed by potential investors. The present report does not attempt to provide precise recommendations for legal texts but only to sketch options that can be the subject of discussion. The Legislative Options report sets out options for how to make such reforms in legislation.

3. Allocation of rights

3.1. Background and international practice

The purpose of legislation surrounding the rights to explore and to mine a mineral deposit is to define how the rights are acquired as well as the content and scope of the rights.

With regard to the first point, there are three distinct ways of deciding who gets an exploration or mining right:

- **First come first served**, that is, the first to apply for an exploration license for a given area gets the right to be considered for the granting of an exploration license. This consideration relates to the **applicant’s adherence to the terms and conditions in the regulation** attached to the awarding of the right (usually the applicant has to provide documentation showing technical and financial resources as well as an understanding of the geological aspects of the ground under question).

- **Auction**, where the highest bidder for the rights to an area gets them.

- **Discretionary decision**, sometimes based on negotiations with one or several interested parties.

Of the three alternatives, auctions are usually not feasible since generally not enough information is available to allow potential bidders to estimate the mineral potential with any degree of confidence. They can work where there is significant geological information provided by the government (through own exploration efforts or through access to geological work done by previous license holders). This is however seldom the case and while geological information is valuable when planning an exploration campaign it is not often that it is sufficiently detailed and reliable to allow a valuation of the mineral potential of an area with any degree of confidence. One needs to keep in mind that very few exploration projects actually result in a mine being developed. Historically, Rio Tinto developed one mine for every 3000 prospect ideas. The rate has since been reduced to one mine for every 2000 ideas, but it is still too high to allow rational bidding in an auction. In fact it is estimated that for gold it is more likely to be 1 in 10,000 programmes that have a probability of success. Professor R. J Eggert of the Colorado School of Mines has explained geologic risk as: “Think of geologic risk here as the probability that a specific exploration or development project leads to an operating mine. It sometimes is said that it takes 500-1,000 grassroots exploration projects to identify 100 targets for advanced exploration, which in turn lead to 10 development projects, 1 of which becomes a profitable mine”. According to the Swedish Geological Survey,

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Sweden develops one new mine for every 200 exploration permits. This demonstrates a good state of geological knowledge which limits the risk in exploration.

Russia has a system where all licenses are issued by auction to the highest bidder. Whether because the auction procedures are not trusted or for other reasons, Russia receives very little foreign mining investment. In China auctions blocks for coal mining. This is possible because coal resources are usually known with much greater accuracy than metallic mineral resources.

The difficulty with an auction system is the need for transparency, that there is a fair procedure and that it takes into account the financial viability of the resource that exists or might exist in the area being tendered. The geological risks need to be addressed so the government must provide detailed information on the geology of the area being put to bid. It is much more difficult to attract investment in greenfield areas where there is little information or where that information must be reviewed and confirmed. The auction system requires substantial upfront costs on the part of the bidders. If there is a lack of geological data and/or administrative or political uncertainty it is less likely that investors will be attracted to the area being posted.

It could be argued that auctions might be the best method to use when a mining license has run out and the present owner cannot continue mining. First, this is a very unusual occurrence and could only result from a badly designed regulation. If a deposit can still be mined, there should always exist a possibility to extend the license. Otherwise, the license holder has little incentive to conserve the resource and to maintain production equipment when the license approaches the end of its life. If a situation where licenses run out and cannot be renewed is possible under the legislation, then the present license holder will almost always have a considerable advantage over other presumptive bidders by virtue of much better information. Under such circumstances, an auction risks leading to suboptimal outcomes.

Where auctions have been successful in generating revenue for governments it has usually been in the context of privatization of state owned mines where of course the geology is well known and where other assets are part of the deal. It should be noted, however, that even in such cases, bids are likely to be highly dependent on the current market situation. This means that high bids are likely when prices are high and low bids when prices are low. The Zambian experience of privatization in the late 1990s and early 2000s is a good example of the risks associated with negotiating when metal prices are low. The same reasoning applies to bids for licenses: if a license is auctioned when prices are low, there is significant risk that bids will be lower than otherwise, thus locking in a situation that is unfavourable to the government.

For these reasons, most countries apply the first-come-first-served principle. For example, in the Swedish mining law, Chapter 2, section 3 states: “If an area is the subject of several applications for an exploration permit… the applicant who first submitted his application shall have precedence.” The first-come first-serve system is simple and fair which is why most jurisdictions use it. It is also easy to administer especially now when applications are made on-line and can therefore be timed by computer application. Finally, it assures explorers that rights will not be allocated arbitrarily.

The third option, discretion, which introduces a considerable degree of discretion into decision-making, is clearly the least beneficial. It has all the drawbacks of the auction system but lacks that system’s incentive to compete. It is likely to result in a lack of investor interest than first-come-first-served and less revenue than an auction system.

Another important issue is whether the holder of an exploration license has first right to obtain a mining license for the area in question, provided that all other requirements for obtaining a mining license is met. This is the case in most jurisdictions and this right is crucial for the attraction of foreign investment. Even in many systems where mining rights are otherwise granted by the government by auction, preference is given to the holder of an exploration license. The French

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4 Peru privatized several state owned mining companies in the 1990s with good results. Payments received were larger than expected and the assets sold have generated considerable fiscal revenue since.
mining code for instance, states in article 132-4 that a mining concession is granted pursuant to a bidding process. However, if there is a valid exploration license for the area and mineral in question, the holder of that license shall be granted the concession (article 132-6).

3.1.2 Current Policy and Regulatory Framework

The draft mineral policy is not completely clear on the principle of first-come-first-served. It states that “applications will be handled in the order in which they are received” (section 4.2.1.3), which is not wholly unambiguous. Regarding the link between exploration and mining rights, the draft policy states, however, that “the Security of tenure of any mining right will be guaranteed, subject to administrative compliance, with the added guarantee that an exploration license will be converted into a mining license in the event that a mineable deposit has been discovered”.

The draft mining policy is however not reflected in current legislation. The first-come-first-served principle is not stated explicitly anywhere in the legislation. Instead, the Mining Proclamation establishes an order of processing applications in article 13. The first clause of the article states that the order applies “unless the Licensing Authority determines otherwise on the basis of the economic benefit of the minerals or other appropriate investment objectives”. Applications for large scale mining licenses take precedence over applications for small scale licenses and applications for small scale licenses take precedence over applications for artisanal licenses. The proclamation assumes that two or more applicants may apply for the same kind of license at the same time and specifies the procedure to be followed in this case: “Where two or more applicants lodge applications for licenses of the same status at the same time covering the same mineral and area, the Licensing Authority shall constitute a technical team to evaluate the applications and the priority shall be determined on the basis of the evaluation of the technical work plan, the financial proposal, and the technical competency of the applicants” (article 13.1.c) and 13.2). Finally, according to article 13.4, the “Licensing Authority may, where it deems appropriate, disregard the applications and opt for bidding for the area in question”.

From the preceding, it should be clear that the current procedure for allocating rights cannot be characterized as first-come-first-served. First, the reservation in article 13.1, together with the introduction of the possibility of competitive bidding in article 13.4, means that an explorer has no guarantee that the order in which applications are received will be respected when decisions to grant a license are taken. It is likely that this limitation on first-come-first-served acts as a considerable deterrent for investors. Moreover, whereas foreign investors in large scale mining projects probably do not have any objections per se against being given priority over other kinds of applicants, the use of a ranking order among applicants risks creating conflicts. Artisanal miners who have been working in an area in full legality will not take kindly to being told that they have to get out because somebody has been granted a higher order mining license for the area.

Finally, according to interviews, under the current procedure, when granting applications for exploration licenses, all licenses that have been received during one month are considered as having arrived at the same time and the provisions of article 13.1.c), 13.2 and 13.4 apply. This means that an explorer who wants to establish his/her prior claim to a contested area may have no practical means of doing so. Moreover, as in other first-come-first-served systems where procedures introduce an element of discretion or uncertainty, the current procedure is unnecessarily vulnerable to corruption. There have been cases in other countries where once a license area is sought after by a company — particularly a well-known one — cadastre or ministry officials let others know so that other companies with which they may be “friendly” can then apply and receive what the larger company has established as valuable land for exploration.

3.1.3 Policy options

As already described, the principle of first-come-first-served is a cornerstone of most licensing regimes. Where investors are not assured that it will be observed, their interest wanes quickly. The Ethiopian licensing regime cannot claim to meet a reasonable interpretation of the principle. Accordingly, a simple way to raise the attractiveness of Ethiopia as an exploration and mining investment destination would be to strengthen the first-come-first-served principle in the text and in the application of the relevant legislation. This could be done through the following measures:

- Strengthen the mining cadastre system in place for registering the exact time of applications. In principle, this should already be the procedure, but various practical problems (lack of Internet connections and trained staff at regional bureaus) have stood in the way of the implementation.
Introduce a strict rule that the first application received for an area will be considered against clear regulatory criteria. These clear regulatory criteria could be used to prevent ‘strategic minerals’ being allocated to inappropriate license holders.

Modify article 13.4 about competitive bidding to reserve this possibility only for areas that (a) have not been made available through FCFS and where there is a known resource; and, (b) licenses have been relinquished or terminated and have not been made available again through the FCFS system.

Abolish the ranking of applications and introduce a rule that clarifies that a license cannot be granted over an area that is already covered by any kind of license.

With respect to the fourth point, it could be argued that it is in the interest of the national economy that large scale efficient mining takes precedence over small scale or artisanal mining with comparatively lower productivity. This may be so, but in practice the holder of a large scale mining license that covers previous artisanal mining license areas will have to negotiate with the artisanal miners in any case and offer them compensation. To do so in the context of a purely commercial transaction where the mining company acquires the artisanal mining license and then extinguishes it to be replaced with a large scale mining license is probably preferable from the point of view of future relations with communities, to having the artisanal miners’ license taken away from them. Admittedly, this is a point where culture and tradition plays an important role and our assessment of what would be the more desirable procedure may not take those factors fully into account.

3.2 Exclusivity of rights

3.2.1 Background and international practice

One important aspect of exploration and mining titles is that they should be exclusive. The exclusivity is important because no investor will risk capital to investigate or develop a deposit unless it is clear that nobody else can legally explore or exploit ore deposits covered by the right. This principle gives the holder of the exploration licence the exclusive right to explore for any minerals in the area over which the licence is granted or for all minerals in a specified area.

Some countries, including Ethiopia, have allowed licences to different holders for different minerals on the same areas. Others give a licence to explore for all minerals in a specified area. Allowing different explorers to explore for different minerals in the same area gives rise to problems. If a large deposit is found by one explorer, others who may also be exploring that area for different minerals must be accommodated. Normally they will resolve the situation between them. If not, the law must allow for a resolution of any dispute. There is potential for uncertainty and more difficulty in administering such titles.

A majority of jurisdictions have opted for solving the problem by giving the license holder the right to all minerals in the area. For instance, The Chilean mining law in Article 27 states that “A mining concession cannot be granted on substances existing in tracts already covered by mining concessions.” Section 116 states: “the Owner of a concession shall have the exclusive right to freely explore and mine his claim, without limitations”. The mining law of the Philippines states in Section 20: “An exploration permit grants the right to conduct exploration for all minerals in specified areas.”

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3.2.2 Current Policy and Regulatory Framework

The draft mineral policy states that “the right to explore and mine for all minerals in Ethiopia will be administered by a system of exclusive licenses”. However, it appears from legislation that “exclusive” means that two or more companies cannot be granted the same type of license for the same mineral over the same area. It is possible, however, for two or more companies to be granted licenses for different minerals in the same area (articles 36 and 37 of the Proclamation).

There would appear to be no important practical reason for allowing overlapping mining licenses, even if they are for different minerals. It does not require a lot of imagination to think of the very difficult complications that could result, for instance with respect to responsibility for environmental degradation, infrastructure and the economic damage caused by one mining operation intruding on another. While it may be possible to resolve most such difficulties through negotiation, since licenses are transferable and can therefore be bought and sold, it is probably simpler and more practical to allow the company that has a right to a certain area to decide how to organize the exploitation of all minerals in the area and to what extent to accommodate other exploration or mining interests. Abolishing the possibility of multiple mining licenses for the same area would also lead to some administrative simplification. At present, if a company has a license for mining limestone but decides that it also wants to mine clays for ceramics it has to apply for a separate license. This procedure constitutes a waste of time both for the applicant and the licensing body.

3.2.3 Policy options

In order to reduce the uncertainty regarding the scope of rights and the possibility of conflicts, the proclamation could be changed to state that a license for a specific area gives the right to exploit all the minerals found therein.

3.3 Relationship between licenses and agreements

3.3.1 Background and international practice

Most developing countries today use a combination of agreements and simple application of the law to regulate mining. This means that the law sets out basic conditions such as the duration of licenses and tax rates, while agreements, particularly Mineral Development Agreements, specify other conditions such as employment, community relations and sourcing of inputs from local enterprises. Exactly how the balance is struck between what is included in an agreement and what is stated in the law varies from one country to another. A particular issue is of course to what extent an agreement can void conditions set down in law. Most countries tend to avoid this issue by specifying in the law what is and what is not negotiable. It should be noted that in the event of a conflict, national legislation cannot be assumed to always provide certain guidance. If the agreement makes reference to international arbitration, that arbitration does not necessarily have to proceed from the assumption that the national law takes precedence.

Few countries today apply a policy where everything is negotiable. Instead, many are applying the model pioneered by Indonesia (but now abandoned there), where basic conditions are defined in the law and agreements (in Indonesia called Contracts of Work or COWs) are tailored to suit the circumstances of individual mining projects. In Indonesia, all COWs were approved by Parliament. This gave the COWs the status of laws, which meant that they had at least equal status to other legislation. Conflicts could thus be resolved simply by reference to the COW and investors had a stability guarantee that in theory could not be changed by subsequent legislation (although this point is disputed at the moment).

Some countries, particularly developed ones, apply a policy of strict application of the law where no room is left for negotiation. This is the practice in Finland and Sweden, for instance, where it is felt that any agreements needed can be negotiated on an ad hoc basis. In practice, this has usually meant that a variety of agreements concerning infrastructure, training and other aspects have been negotiated individually, often with lower level governments, but these agreements do not affect the status or content of mining rights.

The advantage of agreements is that they allow the government to negotiate conditions for individual projects in order to accommodate government objectives such as employment that are important but difficult to specify in sufficient detail in legislation. The drawback is that investors are unable to anticipate the government’s demands, which creates uncertainty and may deter investors if the uncertainty is important enough.
3.3.2 Current Policy and Regulatory Framework

The present practice in Ethiopia is perhaps best described as a variation of the Indonesian COW. The legislation does not mention agreements but the Model Agreement provides guidance on what can be included. Most importantly, the Model Agreement reproduces exactly the current fiscal conditions and in article 23 it states that the agreement is valid for the time of the license, thus providing a stability guarantee. Moreover, the same article also makes it clear that if fiscal conditions are changed in a way that is to the licensee’s advantage during the validity of the agreement, then those new conditions will apply if the investor so requests.

The Model Agreement also contains provisions concerning environmental protection, community development and employment and training.

Two questions may be posed with regard to the present practice as reflected in the Model Agreement:

- Should a more explicit reference to agreements, including their scope and content, be made in the legislation?
- Is it necessary to include all the details that are included at present or could some of them be left to legislation or even not be regulated at all?

As regards the first question, it would seem to add to transparency if the legislation explained in more detail what may and what may not be the subject of a separate agreement. This could also prove useful by facilitating negotiations.

The second question concerns both the issue of whether it is necessary to at all regulate all details and whether some items are better left to legislation. Section 3.5 will address the issue of simplicity in general. For the time being, however, it can be noted that the Model Agreement is quite detailed and that simplifications may be possible.

With respect to what should be left to legislation it should first be noted that mining licenses have a duration of twenty years. This must be considered a long time to freeze all conditions. The International Study Group Report on Africa’s Mineral Regimes, which provides the basis for the African Mining Vision, states (page 95):

“Stability clauses facilitate capital raising for large projects, but they are often unnecessarily extensive. One factor in determining their duration should be the period required for repaying the initial loans to the project from outside lenders, if any.”

From this perspective, a period of twenty years seems unusually long, particularly when combined with the provision that the licensee can opt to have legislative changes in his favour apply to the agreement.

3.3.3 Policy options

First, in order to increase transparency and to facilitate negotiations it may be considered useful to include a description of the possible content and scope of agreements in the mining proclamation.

Second, the possibility of reducing the duration of future agreements, for instance, to ten years, could be considered. Alternatively, a practice that is used in Chile could be applied. Under Chilean law, companies can choose between stability for a fixed period or having the law apply. In the latter case, they benefit from lower tax rates and can also benefit from any future legislative changes that ease their tax burden, although they would of course also have to accept any changes that increase the tax burden. Similarly, in Afghanistan, the investor can choose the prevailing corporate income tax of 20% with no stability or receive stability and pay 30%. For Ethiopia, it could be envisaged to exclude those who opt for stability from any future changes in their favour, thereby providing incentives for investors to be subject to legislation.

3.4 Ensuring efficiency in exploration

3.4.1 Background and international practice

The right to explore must be limited in time since explorers would otherwise be able to monopolize promising areas indefinitely; for the same reason, and to ensure that the maximum of effort is mobilized in each area with mineral potential, explorers should be given incentive to conclude their work speedily.
Work programmes are one way of ensuring that the land gets explored. The completion of the programme is a prerequisite for renewal of the exploration right so the holder must do the work (or get an amendment) in order to get a renewal of the permit. In Chile, the absence of a work programme requirement is judged to have affected exploration as companies can renew the concession without doing any work. This is thought to be a reason why so little greenfield exploration is being done in that country.\(^6\)

In addition, most jurisdictions require a relinquishment of a part of the exploration area on renewal. It ensures that the title holder is focusing on the most prospective areas in their title. The relinquished land is then available for new entrants to explore thereby increasing the number of explorers. It also means that the geoscience information generated on those lands is acquired by the Geological Survey and can be used to update its own research as well as being made available for provision to new entrants, who are able to licence the relinquished areas. Relinquishment is used in many or even most countries to stimulate exploration. Its effectiveness may be limited, however. Chile has relatively strong relinquishment requirements (half of the exploration area has to be relinquished when licenses are renewed after two years for a new two year period), but as just argued, exploration there is considered insufficient.

Another method is to use escalating fees for exploration. This means that the fee per unit of land area goes up each time the license is renewed. This system is used in South Africa among other countries. Either alone or in combination with other measures such as work programmes or relinquishment requirements, escalating fees provide an assurance that explorers will work fast and target priority areas.

3.4.2 Current Policy and Regulatory Framework

Ethiopia uses work programmes and relinquishment requirements. Compared to some other countries, the relinquishment required is relatively small – a quarter of the area each time the license is renewed. Exploring companies can thus hold on to half of their original area or a maximum of 10 square kilometres, for up to five years (three years plus two renewals of one year each). Since there is nothing in the law that forbids an applicant to apply for, and be granted, several licenses for adjacent areas, the area covered could potentially be considerably more important. The cost of doing so is low since Ethiopia has very low fees for exploration licenses (500 Birr for the first license and 200 Birr for renewal). This means that Ethiopia has to rely mainly on effective monitoring of the work programme to ensure that exploration companies do not block large tracts of prospective land unnecessarily. Since effective monitoring requires experienced staff, which is a scarce asset for the Ministry, and since an increase in exploration interest would place the system under even greater strain, alternative solutions should be considered.

3.4.3 Policy options

Given the scarcity of qualified staff to monitor work programmes it could be considered whether relinquishments should be increased, escalating fees introduced or some combination of the two measures be applied. This would reduce the burden on the Ministry staff and would serve the purpose of achieving rapid turnover in exploration.

\(^6\) Sofreco, 2013, p. 23.
3.5 Simplicity

3.5.1 Background and international practice

Simplicity is always an objective in all legislation. Simple laws are easily understood by citizens, easily applied by authorities and easily interpreted by courts. There may, however, be other interests that argue in favour of more detailed legislation. For instance, the government may have specific policies regarding employment, environment or land use that need to be accommodated or it may not be prepared to trust that mining companies, if left to their own devices, will choose the technical solutions that are preferred by other interests. Accordingly, governments may introduce strict requirements concerning the qualifications of license applicants, they may subject the applicants to stringent and detailed reporting obligations and they may attempt to anticipate a vast range of contingencies, necessitating multiple checks.

Whether governments prefer a more detailed legislation depends partly on their capacity to enforce it. Western Australia, for instance, has a quite demanding legislation, but it also has a long experience of mining and a good supply of experienced professionals. On the other hand, Chile, with an even longer mining history and an equally good supply of professionals, has opted for a very simple legislation with minimal reporting obligations being imposed on license holders. Sweden accepts license applications from anybody except those manifestly unsuited (the assessment of which may be based on the applicant’s past record). For countries such as Ethiopia, which are faced with substantial challenges in applying the law because of a chronic shortage of qualified staff, reducing the time and effort needed to review applications and monitor companies’ activities is of particular interest.

3.5.2 Current Policy and Regulatory Framework

The Ethiopian regulatory framework relies heavily on detailed review of applications and monitoring of work programmes. In this respect it resembles the legislation of jurisdictions such as Western Australia, although the resources available to implement it are much more modest. It would appear that a detailed review of the current requirements could identify a number of areas where regulations could be simplified without any harm done to any vital interests of society.

The legislation also contains some details that appear at least superficially superfluous. For instance, the usefulness of the retention license could be questioned. There is probably no harm in allowing the holder of an exploration license to hold on to a limited area (100,000 square metres) for a maximum of two years after the ordinary exploration license has expired. No other vital interests are obviously disturbed. However, the granting of a retention license requires the MoMPNG to devote time and effort to assess if there is a likelihood that prices will improve or technology change in a way that will make a mining project in the license area commercially viable within two years. There may be simpler ways to achieve the objective, in this case, to allow the license holder some more time to establish the viability of the project. Very few if any mining projects are sufficiently developed to allow the application for a mining license once actual exploration work is completed. The law should recognize this fact and allow for an extension of the exploration license – preferably for a restricted area and at a higher fee. Similarly, the case for the Specialised Small-Scale Mining License appears weak and as is noted later in this report, it has not attracted a great deal of interest. Finally, if the possibility to issue licenses for different minerals to different applicants in the same were abolished and if the present ambiguities in the application of the first-come-first-served principle for granting mining licenses were cleared up, it is difficult to see the need for a separate certificate of discovery. Another minor detail is the size limit for a reconnaissance license (50 square kilometres according to the draft regulation). Since the license is not exclusive it is difficult to see any need for a limit to the area for which a license can be sought.

3.5.3 Policy options

In order to reduce the workload of the Ministry it is recommended that present regulations be reviewed with a view to identifying any regulations that are not absolutely necessary for the protection of other interests or for the efficient management of mineral resources. In this context, the possibility of replacing the retention license with an optional and limited extension of the exploration license could be considered as could the need for the Specialised Small-Scale Mining License and for the certificate of discovery.
3.6 Other issues

There are a number of other aspects in addition to those that have been discussed that could be included in a critical assessment of a licensing regime for mining. They include:

- The right to mine must be immune to discretionary decision making by the authorities, that is, the conditions under which it can be taken away must be clearly defined and must not be seen as arbitrary;
- The conditions for granting a right must be equal for all; and
- The right must be transferable.

The Ethiopian legislation meets all these requirements and there is no reason to go further into a review of the exact modalities of all the provisions.

Institutional aspects are of course also important. Legislation is only as good as its application. Since institutional aspects involve many other areas in addition to licensing, we have chosen to discuss them in a separate chapter.
4. Fiscal policies

“Obtaining an adequate share of mineral revenue and utilizing it in an equitable manner is crucial. An efficient and transparent fiscal regime should catalyze social, physical and knowledge infrastructure development” (African Mining Vision)

Taxation is at the centre of mining investment regimes, with taxes being both the aspect of the investment regime that creates most controversy and that is perceived as most important to governments. Quite simply, the sums involved are too large to ignore, particularly for smaller developing countries with few other comparable sources of export revenues or fiscal income.

Several features make mining taxation distinct from the rest of the legislation governing taxation:

- Unlike most other industries, mining is taxed on the basis of both profits and turnover
- Mining is subject to sector specific taxes, justified by its distinct economic characteristics
- In many jurisdictions, tax conditions for mining are subject to negotiation

Most developing countries today have adopted a fiscal regime with two major characteristics. First, it is based on royalties and ordinary taxes. Royalties are specific to mining and some other sectors and constitute one of the most important mining taxation instruments. Second, it combines mining law – including tax provisions specific to mining - with general tax legislation. Usually, royalties, surface tax and mining tax incentives are stipulated in the mining code and the corporate income tax in the general tax code.

Most experts agree that mining activities have special features and characteristics. Unlike most other economic activities, mines extract non-renewable resources. As the owner of minerals, the state has the right to claim a reasonable compensation for the permanent loss of resources. Royalties are levied to realize this purpose. Although the general trend has been to regulate mining investment by statute rather than by ad hoc arrangements, the possibility of negotiation of mining agreements still exists in many countries, especially for large projects.³

4.1 Profit based taxes and royalties

4.1.1 Background and international practice

A royalty is any type of tax that exhibits one or more of the following attributes⁸:

- The law creating the tax calls that tax a royalty.
- The intent of that tax is to make a payment to the owner of the mineral as compensation for transferring to the taxpayer the ownership of that mineral or the right to sell that mineral.
- The intent of the tax is to charge the producer of the mineral for the right to mine the minerals produced.
- The tax is special to mines and is not imposed on other industries.

³ In Africa, for instance, countries where mining agreements can be concluded include Guinea, Mauritania, Namibia, Senegal, Sierra Leone, South Africa, Tanzania, Uganda and Zambia (United Nations Economic Commission for Africa, mining legislation database).

Mineral royalties are appropriations normally assessed against either the volume or value of production or exports. In the pursuit of revenue maximisation, a royalty can operate as a double edged sword. On the one hand, royalties are attractive to governments, because they ensure much-needed up-front revenue from the moment production starts and a predictable and stable flow of revenues throughout the life of the project, including when companies do not declare any profits. On the other hand, if they are too high they can deter investment by increasing marginal cost and by making it unprofitable to develop marginal reserves. Royalties have traditionally been the most important instrument for taxing mines. Despite some shift in emphasis over time from royalty-based systems to income or profit-based taxes, most mining jurisdictions still levy some sort of royalties, and several have introduced royalties or raised royalty rates in recent years, in order to capture a larger share of revenues from high mineral prices.

Two basic elements of the corporate income tax are the statutory rate and the tax base. The statutory rate is normally uniform across sectors. However, in some cases a separate income tax regime applies to mining activities.

A high income tax rate does not necessarily imply high tax payments. The actual tax burden also depends on the tax base, which is the value to which the tax rate is applied i.e. reported profits in the case of corporate income tax. The taxable income depends on deductible items, including depreciation on capital expenditures as well as amortization of exploration and engineering costs. Many countries provide tax incentives by narrowing taxable income. Through these special treatments, investors are able to recover their costs earlier and increase the after-tax present value of earnings while governments share more geological and commercial risks.

The fact that mining companies often declare income in different jurisdictions opens the way for tax avoidance through “transfer mispricing”, where intra-firm transactions are priced in such a way that profits are declared in jurisdictions where the tax regime is more favourable. As a first step to prevent this practice, mining or tax codes often include safeguard provisions to counteract transfer mispricing actions, by requiring that transactions be assessed on an arm’s length basis - and by empowering authorities to re-set prices. Some countries also use “thin capitalization” rules that limit the debt-equity ratio of projects or companies in order to discourage the particular variety of tax avoidance that uses “transfer pricing” involving interest payments from subsidiaries.

4.1.2 Current Policy and Regulatory Framework

Ethiopia can be considered to have an attractive tax regime for mining investment. It appears to have struck a reasonable balance between royalties – which are in line with those charged in most African countries - and income tax. Mining companies benefit from a lower rate of income tax than other businesses, 25 per cent rather than 30. Dividends are taxed at 10 per cent (same for domestic and foreign shareholders) which is relatively low compared to most jurisdictions. The rules and procedures for establishing the tax base are also or will be in line with international standards, particularly as a result of the review of the corporate income tax being carried by the International Finance Corporation, which includes a special focus on transfer mispricing.

Ethiopia has no provisions for taxing windfall profits and to our knowledge there are no plans to introduce such taxes. As a relatively new mining country, Ethiopia is probably right not to make any plans in this direction since windfall taxes tend to act as a deterrent on investment.

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9 Reference is here made to royalties based on production volume/weight or assessed on the value of production. Royalties can also be based on some measure of profitability or income, with different implications.

10 While it is not too difficult to assess if prices for products do indeed reflect normal commercial practice, since minerals prices are relatively transparent, this is often a much more challenging task in the case of payments for goods and services purchased from related companies.
4.2 Tax incentives

4.2.1 Background and international practice

In order to attract investment and accommodate the unique characteristics of mining activities, most governments have set up a series of incentives to modify the magnitude or the timing of revenue appropriations. Some incentives such as exploration expense carry-forward, loss carry-forward and accelerated capital cost allowances involve the adjustment of the tax base; others involve reduction of the rates, or even exemption of certain types of taxes during a given period. For investors, all these measures allow them to obtain an earlier payback or gain a larger net cash flow. Governments agree to postpone taxes to later years or sacrifice part of revenues in return for a larger investment flow in the mining sector. Another special incentive - tax stability - is of critical importance for investors as it freezes fiscal terms during the whole life of project or less. It is usually realized by minimizing changes of fiscal policy by the government of host country or through special clauses regarding tax stability in the mining law or in investment agreements. However, stability clauses do not always guarantee an unchanged fiscal regime. Some countries have changed tax incentives that were deemed too generous.

4.2.2 Current Policy and Regulatory Framework

Ethiopia follows international standards as regards tax incentives for mining:

- Pre-production expenditure can be deducted from taxable income;
- Losses can be carried forward for ten years, which is somewhat longer than normally allowed;
- Accelerated depreciation is possible;
- Stability is usually guaranteed for the life of the mining license (see chapter 3);
- Consumables, assets, plant, equipment, machinery, vehicles, spare parts, and supplies necessary for mining operations can be imported free of duties and taxes, both by the mining company and by its contractors.

If anything, Ethiopia’s incentives are somewhat more generous than average. On the other hand, some of the incentives such as accelerated depreciation do not constitute a loss of tax income but rather a postponement of taxes. The blanket exemption from duties could, however, become expensive in terms of foregone revenue if mining investment were to increase substantially. It would be difficult to eliminate this incentive, however, since it also applies to other sectors and is part of a government policy to promote both foreign and domestic investment.

4.3 Division of tax revenues between the federal and regional governments

4.3.1 Background and international practice

In several countries tax revenues are divided between the central government and lower level governments, usually according to a predetermined formula. The arguments for such revenue sharing are that lower level governments may be better at identifying local spending priorities and that local communities feel that they are entitled to some compensation for suffering the inconveniences of having a mine in their neighbourhood. Revenue sharing schemes often struggle with equity problems: since the tax revenue from mines varies enormously, some local communities may experience considerable wealth whereas for others the mining revenue does not make any significant difference.

In federal systems, local or regional governments tend to have greater liberty to set tax rates which reduces inequalities at one level, between communities, but may increase it at another, between regions or provinces.

Whether revenue sharing consists of redistributing mining tax revenues or of lower level governments having taxation power, a common problem is that lower level governments often have limited capacity to plan economic development and invest revenues. Accordingly, revenue sharing systems are often supported by efforts to build capacity for revenue management at the local/regional level.
4.3.2 Current Policy and Regulatory Framework

In Ethiopia, mineral revenues are shared between the federal government and the regions in a relatively straightforward manner. The State (region) collects payment of royalty from artisanal, special small scale and small scale mining license issued by any licensing authority. It also collects government free share interest from the special small scale and small scale mining license issued by all licensing authority. Finally, it collects other fees paid by artisanal, special small, small and large scale mining licensee issued by State licensing authority. All other royalties and fees are collected at the federal level. Corporate income tax is collected at the federal level. Regions have the right set royalty rates with an upper limit determined by the federal royalty rate.

It has proved difficult to obtain information on exactly how much is collected at each level. The partial numbers obtained seem to indicate that regions do not use the opportunity to levy royalties at the maximum rate tax. Alternatively, they are less than perfectly efficient in collection of fees and royalties. However, it appears from information gathered during field visits that the collection of royalties on gold production at least is quite efficient.

4.4 Government ownership

4.4.1 Background and international practice

Many developing countries, especially in recent years, have included provisions for a government ownership share in mines. In most cases, the share is "free carried interest", which means that it is not paid for directly by the government. The justification for the ownership share varies. The most commonly used arguments are a need to have greater insight into operations, using government shares to promote industrial policy objectives and, finally, to supplement tax revenue. It is difficult to finds examples of the shareholdings actually having worked towards these objectives. While a seat on the company board usually means better access to information, this need can be met in other ways, particularly since board members may face conflicts of interest precisely when the information which they are given might be most useful to the government. Second, in most cases the government is a minority shareholder which makes it very difficult to influence corporate decision making in a direction that meets industrial policy objectives. It is clearly not possible for most governments to acquire anything approaching a controlling share, particularly not without cost. Third, dividends depend on profits and profits can be taxed. It would be an irresponsible company indeed that failed to take into account the effect of free government shares on profitability. Accordingly, whatever is gained through this route is likely to be lost in other ways so that the total revenue remains more or less unchanged.

4.4.2 Current Policy and Regulatory Framework

In Ethiopia, the government has the right to 5 per cent of the shares for free. It is not clear exactly what the justification is for this free share. Neither is it clear what role the government plays in corporate decisions by virtue of its ownership. The fact that income from shareholdings in some cases go to the regions would seem to indicate that revenue collection is the main motive. This 5% ownership of the government in mines will benefit from being examined from a corporate law perspective in terms of the rights of minority shareholders, and what sacrificing or holding such rights entails for the government.

4.5 Tax administration

Tax audits take place relatively frequently and appear, according to industry sources, to be carried out in a competent manner. VAT procedures are a problem. We have heard that reimbursement of VAT takes up to a year, which, since the VAT rate is 15 per cent, constitutes a significant drain on companies’ cash flow.

Ethiopia has bilateral tax treaties with a number of countries, including the most important sources of investment such as China, India and Turkey. The country has also concluded bilateral investment promotion and protection agreements with a number of European, Middle East and African countries. Finally, Ethiopia has signed the International Convention on Settlement of Investment Disputes between States and Nationals of Other States (ICSID).
4.6 Foreign exchange regulations

Regulations concerning foreign exchange can be cumbersome for domestic enterprises in other sectors. For mining companies, particularly foreign owned ones, they are not unduly onerous.

Exporters are in principle obliged to repatriate all foreign exchange income. Normally, 90% of export income can be retained for 28 days, the rest indefinitely. Mining companies and presumably other large exporters can obtain more favourable conditions. For instance, Midroc can hold 10% of foreign exchange income indefinitely, 40% can be used for project expenditure and 50% can be held for 28 days. Exporters can take up loans in foreign currency offshore. Local non-exporting firms can take up loans from foreign shareholders if they have any (for instance, joint ventures). Foreign investors are not required to change their funds into domestic currency. Currency hedging is not legal at present. This may change as the banking system is opened up to foreign banks.

4.7 EITI

Ethiopia is a candidate country to the EITI and its first reconciliation report is due in March 2016. The division of responsibility between the MoMPNG and regional bureaus and the apparent absence of clear communication channels between them mean that up to date and disaggregated information on government revenue from mining is scarce. Accordingly, the reconciliation report should lead to a significant improvement and should make it possible to establish a formal basis for decision making on fiscal issues concerning mining.

The revised guidelines for EITI reporting approved in 2013 encourage countries to report on ASM activities as a part of the reporting from the mining sector (solid mineral sector). The Ethiopia EITI (EEITI) is in a unique position to actually report on revenue from the ASM (AM + SSM) mining sector. The regional and woreda authorities can report on:

- Woreda: license fees and royalties for AM construction licenses
- Regional authorities: Land fees, license fees and royalties on licenses issued at regional level
- Regional Revenue Authority: Income tax from licensed brokers
- Gold Purchasing Centers on the gold production purchased by central bank
- MoMPNG: License fees and royalties from licenses issued at federal level
- Federal Revenue Authority: Income tax from LSM and SSM licenses issued at federal level.

Once the data from all these sources have been collated and reconciled, a clear picture of revenue streams from mining in Ethiopia should emerge.

A number of other African countries are working on a similar system, details of which are below:

In Nigeria, the NEITI worked on this subject for a couple of years. They will be able to report on license fees as well as income tax and royalties for the SSM sector.

In Cameroon, the CEITI be able to report on license fees and royalties from the SpecSSM licenses collected by CAPAM.

In Zambia, the ZEITI is working on a verbal description and possible report on license fees from AM and SSM.

In Tanzania, the TEITI expect to report on license fees as well as some royalties especially from the tanzanite sector.

Other African countries are at different level in possible reporting. The general impression is that they would like to use this opportunity to enforce the collection of information and revenue.
4.8 Policy options

There is little in the fiscal policy vis-à-vis mining that can reasonably be questioned. Ethiopia has mostly followed standard policy prescriptions and practices and there are no features of the legislation that stand out as constituting serious problems, either from the point of view of investment attraction or with respect to revenue generation.

Nevertheless, there would seem to be some room for improvement in a small number of areas:

First, it would seem important in order to be able to formulate overall fiscal policy for the mining sector to have a better idea of how much tax revenue is collected at each level. At present, it is difficult to acquire a good overview of payments. However, since the EITI reconciliation process would be expected to throw light on this, there is at present no need for any specific recommendations on this point except to note that the results of the EITI reconciliation exercise need to be taken into account when formulating policy.

Second, in the absence of any clear strategic objectives tied to the government 5 per cent free share, it could be considered whether it should not be abolished. Ethiopia is clearly eager to attract mining investment, and doing away with government ownership would seem to be an interesting option since it would increase the country’s attraction considerably while costing little in revenues foregone.

Third, the long delays for reimbursement of VAT are a potential problem and possible actions to reduce these delays could be investigated.
5. Employment, local content and downstream processing

It is usually assumed that mining projects create relatively little employment. The basis for this assumption is that mining in itself, except for artisanal small scale mining, is capital intensive and needs few employees in relation to the capital invested. Moreover, mining is considered to have few linkages to the rest of the economy and is often thought of as an “enclave”. In recent years, the validity of the enclave characterization has been increasingly questioned, as the linkages between mining and other economic activities have become better understood and as it has been increasingly realized that diversification and employment can be influenced by company actions and government policy. For instance, the report underlying the African Mining Vision states:

“For the mining sector to improve its contribution to broad-based development, it must be better integrated into the national and regional economic fabric through linkages. To harness linkage opportunities, challenges such as those relating to deficiencies in human capital formation, particularly in knowledge intensive areas, as well as infrastructure inadequacies must be addressed.” (Minerals and Africa’s Development: The International Study Group Report on Africa’s Mineral Regimes, Addis Ababa, 2011.p. 101)

The government of Ethiopia also recognizes the dynamic effects of the mineral sector, as seen from the draft mineral policy:

“Although the current economic policy of Ethiopia has identified the agricultural sector as the priority sector to initiate industrialization in the country, it is increasingly being recognized that the mineral sector also has the potential to be a very important trigger for industrialization. It is increasingly acknowledged that the supply of mineral raw materials will form the basis for the development of a large range of manufacturing industries (including fertilizers), that it would play a critical role in the earning of foreign exchange, result in increasing the levels of import substitution, particularly for manufactured commodities, and in the creation of employment opportunities in the primary and secondary industries. Furthermore, the development of a mineral and mineral processing sector will provide the economic justification for the establishment of new physical infrastructure, serve as a basis to attract direct foreign investment, and accelerate the economic diversification process”.

Figure 1. Typical distribution of spending in mining projects


It is also worth noting that most of the expenditure during a mining project’s life goes to employees, suppliers of goods and services and infrastructure (see figure 1). Therefore, if even a modest share of the expenditure on these items is spent domestically, the revenues concerned can be substantial.
5.1 Potential for employment related to mining

5.1.1 Background and international experience

Employment effects are usually divided into the following categories (see also Figure 2):

**Direct employment** refers to those that are employed by the company that owns and operates the extraction site. Contractors’ staff are usually included if their regular work place is at the site.

**Indirect employment** concerns those working with other companies that supply goods (such as machinery and raw materials) and services to the extractives project in question or that uses its outputs. These employees are part of the supply chain. This employment is often comparable in size to direct employment.

**Induced employment** includes those who are employed as a result of in-country spending of those receiving income from the extractives sector (i.e. government in the form of taxes and salaries, and wages and dividends of those employed and contracted by the sector). Usually, induced employment is more important than the other two in terms of numbers. This is so in particular in countries with low income levels, since mine workers have high wages and one mine worker can support several employees in other industries with his/her spending.

*Figure 2. Direct, indirect and induced employment*

**Source:** Bill and Melinda Gates Foundation, 2015, Leveraging natural resources to accelerate human development in Africa: Flagship Report Paper Series Paper 7: Leveraging extractive industries for skills development to maximize sustainable growth and development

The size of the direct employment opportunities depends on a range of factors, including geological properties, environmental considerations and engineering design. For example, underground mining typically generates higher direct employment numbers than open-pit mining, relative to production volume and value, as it is more labour intensive.

Multiplier effects – the number of indirect and induced jobs created by each direct job – can be considerable but numbers quoted should be treated with caution. For example, a study showed that the Escondida copper mine in Chile created 5.7 indirect or induced jobs for every direct job, whereas the same country’s Candelaria mine created only 1.76 – but much of this discrepancy is explained by the fact that Escondida subcontracted many activities (McMahon, G., and Remy, F., 2001, *Large Mines and the Community: Socioeconomic and Environmental Effects in Latin America, Canada and Spain*, (Ottawa, Canada: International Development Research Centre and The World Bank)).

The timing of the labour demand is crucial when analysing how direct employment opportunities can be expected to translate into indirect and induced demand for labour. The highest demand for labour arises during the construction phase of the project life cycle, which is also when most opportunities for local labour participation exist. Once a project has been set up and is operating, the demand for labour not only drops significantly but also tends to be more
specialized. It is also during the construction phase that the demand for \textit{transferable} (or portable) skills also required by other related economic sectors (e.g. infrastructure development, provision of utilities, construction industry) is usually highest.

Many governments pursue policies aimed at maximizing employment of their nationals in mining. The policies employ three broad categories of means:

- A general requirement stating that where possible nationals should be given preference over expatriates
- Consultations with national and/or local governments on employment and training aiming at maximizing national/local employment over the long term and taking into account the effect on other sectors requiring the same skills
- Quantitative targets for employment of nationals and training

The first of these methods is generally not very effective unless it is complemented (as in the case of Ethiopia, see section 5.1.3) with the preparation of plans for employment and training. Even so, many mining companies view the imposition of a planning requirement as yet another administrative burden with the associated risk that the plans reflect minimum ambitions rather than a serious recruitment and training policy.

The second method requires more effort on the part of both government and companies but is more likely to lead to good results over the longer term. In particular, consultations allow training needs to be identified some time in advance, thereby making it possible for government and companies to take necessary action. Although the establishment of training facilities and the training itself require time, the long lead times in mining mean that it is not unrealistic to plan ahead. In addition, through consultations temporary peaks in employment during mine construction can be identified ahead of time, which allows local governments to take the necessary actions with respect to the provision of public services.\textsuperscript{11}

The third may appear to be the most robust but carries two risks: that companies meet targets by adding unqualified jobs that do not yield any skills improvement\textsuperscript{12} or that critical functions are located abroad.\textsuperscript{13}

5.1.2 Labour supply for mining and related economic activities in Ethiopia

The mining industry still accounts for a very small portion of employment in Ethiopia. However, it competes with other industries, mainly construction, for trained manpower, which is in short supply. This is so in particular since the construction industry is booming and increases its employment continually. This shows in the wages paid to skilled labour in the building trade. According to anecdotal evidence, carpenters and masons are commonly paid a monthly salary of 10,000 Birr or about ten times the GNI per capita. So far, demand from the mining industry has hardly made a dent in the labour market and mining companies interviewed for this report state that they have no difficulties recruiting the staff they need. An acceleration in mining investment could easily change this, however. The mining industry also recruits from the public administration, although it is hardly the main factor behind the serious staff shortages experienced in the MoMPNG.

\textsuperscript{11} See Bill and Melinda Gates Foundation, Flagship Report Paper Series Paper 7: Leveraging extractive industries for skills development to maximize sustainable growth and development, for a discussion of these aspects.

\textsuperscript{12} This is not necessarily an entirely negative effect. The Sepon mine in Laos employed more staff than needed as part of an explicit policy of contributing to local development and maintaining good relations with the local community (ICMM, 2011, Utilizing mining and mineral resources to foster the sustainable development of the Lao PDR).

\textsuperscript{13} For example, Ghana’s Minerals and Mining Act of 2006 includes quotas for nationals to be employed in the sector, and companies are forced to strongly justify why certain positions cannot be nationalised. To adjust to the requirements, some companies have found it easier to relocate company divisions outside of Ghana than to recruit sufficient nationals to satisfy regulations (SDSG (2012), African Mining and Mining Administration Skills Gap Analysis. Prepared by Sustainable Development Strategies Group for the Australia-Africa Partnership Facility (AAPF). 18 October 2012).
Mining companies also state that the qualifications of the staff they hire is satisfactory, although they do have to carry out internal training. This is nothing unusual: most mining companies anywhere in the world do the same, since there are many aspects of mining work that are different from other industries.

5.1.3 Current Policy and Regulatory Framework

The draft mineral policy lists a number of actions that the Government will undertake in order to ensure that the human resource needs of the mining industry are met, all of which are appropriate and in conformity with good practices in other countries, albeit quite ambitious for a country at Ethiopia’s level of development:

- Support and facilitate the establishment of an appropriate education and training system for the mining industry and place emphasis on adult basic education, vocational training, and the training of technicians and artisans with the required competencies, and health and safety training.
- Ensure that all learning achievements in the mining industry are registered through a system of accreditation to facilitate people to progress through various learning pathways.
- Encourage and facilitate the establishment of uniform norms and standards for the vocational training of mine workers, artisans and technicians.
- Cooperate with the mining industry to establish a framework for sector-based qualifications accreditation.

The policy also sets out as an objective to facilitate the employment of Ethiopian nationals in the mining industry and states that the Government will:

- Facilitate “in service” vocational training programs for Ethiopian nationals working in the mining sector.
- Promote the establishment of a cooperative bursary system by employers for Ethiopian nationals through which skills and professional competencies are developed.
- Promote the establishment of cooperative training facilities and programs in which the Government and the private sector can cooperate to produce the required technical competencies for the mining industry.
- Give priority to the employment of Ethiopian Nationals when candidates with the required qualifications are available

Again, all of these actions are in line with what is being done in countries with a much longer and more extensive experience of mining. While all of the actions may not be strictly necessary for a positive development of the mining industry in the short term, they will clearly be useful in the longer term.

The Mining Operations Proclamation (678/2010) obligates the license holder to give preference to the employment of Ethiopian nationals provided such persons have the required qualifications and to ensure that employees get the training and education necessary for mining operations (36.1). The draft regulations contain more precise language in the form of two requirements. The first is that the holder of a license “may employ a qualified foreign national if he can provide evidence that shows qualified Ethiopian national cannot be found to fill a position and obtained approval thereof from the licensing authority” (Article 39.1) and that “the foreign national shall be replaced by Ethiopian national where it is ensured by the licensing authority that the foreign national has been working for enough time to transfer his skills and knowledge to an Ethiopian national” (Article 39.4). The second is that all holders of licenses have to submit employment and training programmes annually for approval by the licensing authority (Articles 39.6 and 39.8).

The Model Large Scale Mining Agreement contains two relevant articles. In article 20.1 it is stated that “the Licensee may at all times choose its employees and shall be free to employ such persons who are not Ethiopian nationals as are required for the efficient conduct of the Project”. Article 20.2 requires the Licensee to “participate in contributing mutually agreed amount of funds for training, seminars and the like when such needs and actions will help both the Licensee and the Licensing Authority in their effort to enhance the advancement of mining and mineral processing technology and methodology as well as experience in Ethiopia”.

There appears to be some contradiction between the relatively strict formulation on preference for Ethiopian nationals in the draft regulations and the more liberal language in the Model Agreement, perhaps as a result of practical experiences of negotiating agreements.
The ambitious commitments set forth in the draft mineral policy will need to find concrete expression in a process of consultation with the industry, where a first objective could be to identify any current or projected gaps in skills availability. Such an exercise can be useful to identify training needs.

5.1.4 Key issues

A possible way to resolve the apparent contradiction between the formulations in the draft regulation and the Model Agreement concerning employment of nationals might be to negotiate more detailed conditions for inclusions in future agreements. Such conditions could include an obligation for companies to consult with national and local governments on their training and recruitment plans over the long term (annual plans are not of much use for planning training) and to introduce mechanisms for regular monitoring of the implementation of the plans.

Consultations of this kind would also make it easier for the Government to meet the commitments in the draft mineral policy since they would provide the Government with information on projected staffing needs by the mining industry. They would also eliminate the need for the Government to set quantitative targets for employment, which would probably require as much effort on the part of MoMPNG staff as consultations but with less certain results.

Possibilities to promote indirect or supply chain employment are discussed in section 5.2. It should be noted already at this point, however, that skills requirements are demanding also in the industries that supply the mining industry. Moreover, these industries often recruit people with similar qualifications as the mining industry itself, which means that there is a risk of competition between the two for qualified staff. For this reason, it is important to include mining industry suppliers in any discussions between the Government and the mining industry on employment plans and on training and education needs.

As concerns induced employment, it is usually concentrated close to the project site, provided that those directly and indirectly employed reside and spend some of their income in the area. This adds to the possibility of building a diversified local economy around extractive industries. The sectors that are most important for induced employment are services of different kinds, including bars and restaurants, transport and financial services and retailing, and agriculture. The skill requirements in all of these are usually lower than in mining, and local people may therefore find it easier to meet the skill requirements. The skills needed are also more likely to be transferable, and although the jobs are strongly linked to the mine, they may in the long term form the nucleus of local economic development, particularly if the extractives project in question has led to an improvement in transport infrastructure. In order for induced employment to play this role, it is important that local government and communities are informed about mining companies’ plans and that they have the capacity to plan for local development. Companies’ CSR projects usually provide a good opportunity to initiate a process of consultation and information sharing.

5.2 Backward linkages and local content

5.2.1 Background and international experience

By implementing policies that increase the ‘local content’ of activities in the oil, gas and mining sectors, governments aim to increase opportunities for local businesses in the extractive industry value chain, thereby increasing growth, incomes, and ultimately human development. Such policies usually aim to create an environment that will drive structural change and industrial transformation. Not only does greater participation in extractive industry supply chains create employment and industrial development, but since local firms and their employees pay taxes, fiscal revenues are also positively affected.

Many governments try to use regulation to achieve these results, for instance, by imposing targets for local procurement. Such policies may succeed in increasing sales of local enterprises and in improving the integration of the extractive sector with the local economy but may carry hidden costs. Extractive sector companies may have to pay higher prices for inputs because they are bound to purchase from a small number of suppliers. This will raise costs and reduce earnings, thereby also reducing government tax revenues. The linkages that are established may also be fragile and unsustainable and the beneficiary local enterprises may not survive a downturn in mining activity. Moreover, local content policies may allow the suppliers to the mining industry to draw resources from other enterprises where they might already be employed. There is
therefore a risk that local content policies result in an inefficient reallocation of resources rather than the mobilization of resources that were underutilized earlier.

Finally, most countries are, in principle, constrained by World Trade Organization (WTO) commitments in terms of the requirements they can impose with respect to local content. Members of the WTO are bound by the national treatment obligation (NTO) clause under which foreign companies cannot be forced to buy goods\(^{14}\) from local suppliers or hire suppliers of certain services\(^{15}\) if a better alternative in terms of price or quality exists abroad. Legislation can still require investors not to discriminate against local suppliers and (under one interpretation) legislation can also require investors to accord local suppliers preferences if their prices and quality are equal to those of foreign suppliers. Some low-income countries have been subject to exemptions from these WTO rules. Those exemptions have all expired except the blanket exemption that applies to Least Developed Countries (LDCs), including Ethiopia, and that will expire in 2020.

An alternative to such policies is to strive to create an enabling environment for mining industry suppliers by removing obstacles to establishing and operating small and medium sized enterprises (SMEs). A common measure of the friendliness of the economic and regulatory environment to SMEs is the World Bank’s ease of doing business index. Ethiopia is ranked 132 out of 189 countries in this index and scores low on items such as opening a business or getting credit. On the other hand, it has good rankings on items such as dealing with construction permits, getting electricity and enforcing contracts (http://www.doingbusiness.org/data/exploreeconomies/ethiopia/). Efforts to reduce some of the administrative requirements and improving the banking system could thus yield positive results.

An enabling environment can be complemented by positive contributions on the part of companies. Many large mining companies have supplier development schemes whereby small suppliers in host countries are assisted to attain the standards with respect to quality, timeliness and reliability that mining companies require. Anglo American’s Zimele scheme, which was developed to allow the company to meet its commitments with respect to support to firms owned by disadvantaged South Africans, is a good example (see http://southafrica.angloamerican.com/our-difference/zimele-enterprise-development.aspx), as is Barrick’s Local Supplier Development Program (www.barrick.com). From supplying enterprises’ point of view, the attraction of participating in such programmes, apart from the additional income, is the reputational value of being a supplier to a major mining company. As far as is known, none of the mining companies now operating in Ethiopia has a systematic approach to supplier development.

5.2.2 Capacity of Ethiopian suppliers to the mining industry

Industry accounts for a small share of Ethiopia GDP, about 12%, a large portion of which is accounted for by construction. Since much of mining consists of moving earth, a large part of the expenditure in mining projects is on companies that also work in the construction industry. The size of the construction industry in Ethiopia means that there are good prospects for supplying mining. The situation is less positive with respect to other goods and services and at least initially, it is likely that local supplies will be concentrated in relatively low skill areas such as catering, security and maintenance.

\(^{14}\) All World Trade Organization (WTO) Members must adopt and abide by the obligations of the Trade Related Investment Measures (TRIMs). The TRIMs Agreement clarifies existing rules contained in Articles III (National Treatment Obligation (NTO)) and XI (Prohibition on Quantitative Restrictions) of the General Agreement on Tariffs and Trade (GATT), 1994. The following types of local content requirements are covered by TRIMS: requiring a company to purchase or use products of domestic origin – TRIMs prohibits discrimination between goods of domestic and imported origin; limiting the amount of imported products that an enterprise may purchase or use depending on the volume or value of local products that the enterprise exports; restricting foreign exchange necessary to import (e.g., restricting the importation by an enterprise of products used in local production by restricting its access to foreign exchange); and restricting exports.

\(^{15}\) A separate WTO agreement, the General Agreement on Trade in Services (“GATS”), covers investment measures related to services (in Article XVI). GATS only applies to those service sectors that the country chooses to include in its Schedule of Commitments.
5.2.3 Current Policy and Regulatory Framework

The draft mineral policy provides some guidance on the priorities assigned to the development of the mining supply industry. It states that the Government will:

- Create an enabling environment for State Governments to maximize the positive role the mining sector can play in promoting integrated regional economic development.
- Encourage private sector mining companies to integrate their business strategies into the rural development strategies to pursue sustainable development objectives.
- Implement measures to create a market for minerals, construction materials, goods, and services produced by small Ethiopian enterprises.
- Promote the establishment of vocational and technical training centres for the mining sector, particularly in areas where mining activities are taking place to develop key competencies for the artisanal and small-scale miners.

The recommendations are relatively vague and could probably be made more effective and targeted.

Neither the Mining Operations Proclamation nor the draft regulation mentions local content and supplier development explicitly. Article 7.1.7 of the Model Mining Agreement states that the licensee is obliged to “give preference to Ethiopian goods and services, where they are readily available at a competitive price and are of a comparable quality to goods and services outside Ethiopia”. This general statement is very similar to that contained in the Model Mine Development Agreement drawn up by the International Bar Association (http://www.mmdaproject.org), and could possibly be tightened by following that formulation more closely.

5.2.4 Key issues

A first step to facilitate for mining companies to contact and make deals with Ethiopian suppliers should be to prepare a skills inventory. Such an inventory, which should be prepared jointly by mining companies and the Government, would improve the state of information and could serve to identify companies that would be willing to participate in supplier development programmes. It would also help identify the gaps and provide an answer to the question: what is missing for Ethiopian enterprises to become competitive suppliers to the mining industry? As with employment, the obvious place to define companies’ responsibilities would be in a Mineral Development Agreement. In parallel with consultation activities with the companies, the possibility of increasing local content should be a powerful argument in favour of eliminating some of the obstacles to doing business in Ethiopia.

5.3 Downstream processing and production for domestic markets

5.3.1 Background and international experience

A number of countries attempt to influence mining companies with a view to increase downstream processing. Various methods are used, from relatively vague commitments by investors to give such possibilities careful consideration to export taxes on unprocessed products and outright bans on such exports. The idea underlying export taxes and bans is that it is a natural progression for a country exporting raw materials to move downstream into the processing of these materials, and therefore policies encouraging such downstream processing can improve trade performance and speed up the structural transformation of the economy.

16 “The Company shall, when purchasing goods and services required with respect to Mining operations, give first preference, at comparable quality, delivery schedule and price, to goods produced in the State and services provided by the State citizens or businesses, subject to technical acceptability and availability of the relevant goods and services in the State”
However, it has to be recognized that companies probably have reasons not to process raw materials into processed products by their own account. That is, if companies are not already doing it, it is probably not profitable, for instance, because of missing economies of scale, because important inputs have to be procured at high cost, or because the facilities are too far from consumers and being able to deliver rapidly is important. It is of course possible that the cost to the mining company of undertaking downstream processing may be offset by benefits accruing to the rest of society, for instance, in terms of economic diversification and an improved skills base. Export taxes or bans based on an analysis showing that the benefits outweigh the costs could thus be justified. It is, however, very rare that such analyses are carried out and result in the introduction of export taxes.

A better way to promote optimal downstream processing would be for companies and government to work together in order to identify potential markets and eliminate barriers to processing, such as restrictions on land use. In a landlocked country such as Ethiopia, local producers have an inbuilt advantage over imports due to transport costs. This advantage can be exploited to allow both downstream processing and, maybe more importantly, mineral production for domestic markets.

5.3.2 Downstream processing and the Ethiopian market for minerals

Ethiopia has one of the prerequisites for processing minerals, relatively low cost power. However, high transport costs mean that any processed minerals may find it difficult to compete on export markets. In addition, the limited size of the domestic market limits the opportunities for incremental growth.

On the other hand, the high transport costs provide certain domestically produced minerals with a competitive advantage over imports on the Ethiopian market. This is the case for many construction minerals and other industrial minerals and, of course, for fertilizer minerals such as potash, given the importance of agriculture in the country. Opportunities in this area may be worth investigating, particularly also in connection with the exploitation of natural gas, which opens up the possibility of supplying any processing industry with low cost fuel.

5.3.3 Current Policy and Regulatory Framework

The draft mineral policy states as an objective “to ensure that the minerals produced in Ethiopia are maximally processed and that the mining sector is increasingly being integrated into the industrialization process in Ethiopia.” In order to achieve this policy objective, the Government will:

- Establish a system through which government offices involved in economic and industrial development can cooperate to develop mechanisms to promote mineral beneficiation and the application of minerals in industrial manufacturing.
- Implement research and development programs to support consumer-based mineral product manufacturing.
- Establish a consultative forum between the Government, the private sector and other stakeholders to promote mineral beneficiation and the production of value-added products in Ethiopia.

In order to promote mineral beneficiation, the Government will:

- Establish cooperation between the relevant government offices in respect of mineral beneficiation.
- Introduce incentives for projects that would include beneficiation.
- Promote investment in mineral beneficiation activities through ensuring competitive and stable costs of services and goods.
- Support research in view of developing or adapting new or improved beneficiation techniques and developing new applications for locally produced mineral products.
- Implement a range of support, as well as targeted tariff protection measures, to promote mineral beneficiation in Ethiopia.
- Review policies and regulations that may impede the beneficiation of minerals in Ethiopia.
In line with the actions just identified, which all use supportive mechanisms rather than regulation, the existing legislation and the Model Mining Agreement lack any references to further processing.

5.3.4 Key issues

The actions set out in the draft mineral policy are all intended to facilitate and support downstream processing when economically justified over the long term. With two exceptions the planned actions are likely to make a substantive contribution to meeting the objective. These exceptions are the targeted tariff protection measures, which should probably be used sparingly if at all, and the incentives for projects that include beneficiation, which if at all used should be based on a thorough cost-benefit analysis. If the two policy measures just mentioned are excluded, the rest constitutes an ambitious but realistic programme for expanding the role of the mineral sector in Ethiopia’s economy.

5.4 Infrastructure

5.4.1 Background

Mining companies usually finance the infrastructure they need and thus do not require any government support in this area (that the government finances road construction and power lines, as in the case of the potash extraction in Ethiopia, is unusual). At the same time, infrastructure built to service mines may be of considerable use to other economic activities. For instance, better roads can have a major impact on the viability of local enterprises and agriculture. Arrangements for adapting infrastructure to the needs of a wider circle of interests are often included in Mineral Development Agreements (MDAs).

It is important that the regulatory framework surrounding extractive industry related infrastructure is clear and understood by all parties. Investors want to be sure that permits for road building and other investments will not be held up. It is also important to define conditions for third party access to infrastructure, particularly when the third parties are actual or potential competitors. In the case of power supplies, in particular, relations between government, suppliers and extractive industry customers frequently become muddled and result in obstacles to the industry’s development.

5.4.2 Infrastructure in Ethiopia

Ethiopia is faced not only with the challenge of being landlocked, but the state of its internal infrastructure could constitute an obstacle to economic growth and development. The government has ambitious plans for road and railway construction and also for power supply. Provided that the financing can be found, new infrastructure investment could very well provide a boost to Ethiopian growth. In the short term, however, high transport costs constitute a disadvantage and reduce Ethiopia’s attractiveness as a destination for mineral investment.

5.4.3 Current Policy and Regulatory Framework

The draft mineral policy provides clear guidelines with respect to infrastructure:

- The Government will provide bilateral agreement between the Government and the Mining Company in connection with the establishment, maintenance and operation of enabling infrastructure on the basis that the Government will not accept responsibility for the dedicated infrastructure, but will take appropriate responsibility for multi-user infrastructure.
- Provisions will, however, be made for further negotiations in cases where a dedicated infrastructure develops into a future multi-user infrastructure. Such agreements will be based on multi-party negotiations and discussions, which will include the relevant government offices, the Mining Company and the financing institutions.

The Model Mining Agreement adds nothing of significance.
5.4.4 Key issues

The draft mineral policy contains appropriate actions to promote the efficient user of infrastructure. These provisions should be incorporated in Mineral Development Agreements.

5.5 Policy options

The draft mineral policy lays out a number of initiatives aiming at enhancing the contribution of the mining industry to employment, industrial development and improvement of infrastructure. Several of them can be undertaken by the federal government, either by itself or together with regional bureaus. Others require cooperation with mining companies. As already noted, a more clearly defined role for Mineral Development Agreements (MDAs) could facilitate such cooperation.

Regarding employment, the following measures could help to reinforce the employment effects of mining projects:

- Cooperation between Federal and State Governments needs to be improved and information needs to be exchanged on a systematic and regular basis between different levels of government and the mining industry, particularly on training and recruitment plans.
- Promote, including through government-private sector cooperation, the establishment of vocational and technical training facilities and programmes for the mining sector.
- The federal government could take steps to improve the capacity of regions to plan for local development.

Industrial development can be supported through measures aiming to strengthen the backward linkages of the mining industry. Possible measures include:

- Prepare a skills inventory in cooperation between mining companies and the federal government, in order to identify gaps and to serve as a register of local companies that would be suitable and willing to participate in supplier development programmes.
- Encourage private sector mining companies to integrate their business strategies and CSR activities into the rural development strategies.

In order to enhance the benefits of infrastructural investments undertaken by mining companies, agreements could be negotiated between the federal and local government and mining companies in connection with the establishment, maintenance and operation of infrastructure, including the possibilities for multi-user arrangements.

Finally, with respect to downstream processing and development of domestic markets for mineral products, it is important to be aware of the risks of creating rent seeking structures whereby producers of particular products are protected by tariffs or subsidies to the detriment of the rest of the economy. Accordingly, any proposed support measures should be based on thorough cost-benefit analyses covering all economic actors. The following measures could be envisaged to facilitate the development of domestic markets and downstream processing:

- Improve cooperation between government offices in respect of mineral beneficiation, including in the area of support to research on new or improved beneficiation techniques and new applications for locally produced mineral products.
- Review policies and regulations that may impede the local marketing of mineral products and the beneficiation of minerals and ensure competitive and stable costs of services and goods.
6. Geo data

Investors are drawn to a large extent by geological prospectively, as exemplified by the large investments being made in countries with what is regarded as unstable and/or comparatively less attractive mining regulatory regimes. The best marketing possible are “success stories” that in themselves attract interest, and draw investors to the country. In the absence of success stories, the collection of new geological data, and the subsequent marketing of these data assume vital importance. Ethiopia has a prospective geology but there is only one operating large-scale mine and there are few advanced stage exploration projects compared to other countries with prospective geology.

6.1 Geological Survey of Ethiopia (GSE)

The government agency responsible for collecting and storing geo-science data is the Geological Survey of Ethiopia (GSE). GSE was established in 1968 with the primary aim to conduct systematic geological mapping and mineral exploration. Prior to the 1970s’ very little geological mapping work had been undertaken. A broad description of available geoscientific information is provided below.

Geological mapping: A national geological map at the scale of 1:2,000,000 was first published in 1973, and revised in 1996.
Regional maps at the scale of 1:250,000 have been produced since the early-mid 1970’s and today cover has reached 72.4% (i.e, including geological - 82.4%, hydro geological – 78.6% and geo hazards – 29%), including most areas of the country apart from the Ogaden basin in the east. No regional geological mapping has been undertaken at scales finer than 1:250,000.

Geochemical mapping: Geochemical surveys have been undertaken at different scales over the years, with focus on the Proterozoic areas. About 20% of the country has been mapped at the 1:100,000 or finer scales. In 2009 systematic surveys at the scale of 1:250,000 were initiated in parallel with the geological mapping.

Airborne geophysical surveys: Airborne geophysical surveys focused on mineral exploration have been undertaken over some parts of the Proterozoic terrains. However, the surveys were mainly done in the early 1970’s (and to a lesser extent in 1996) with a line spacing of 1-2km and the data is of low quality compared to what can be achieved today with modern methods and tighter line spacing.

Ground gravity surveys: Ground gravity measurements have been performed intermittently since the 1940’s. The gravity network was significantly expanded during the countrywide gravity survey 1990-2001.

Mineral potential studies: The GSE has over the years investigated a number of deposits through petrographic and geochemical studies, and to a lesser extent through drilling and assaying.

Geoscience data and information management: The GSE houses bibliography and mineral occurrences meta-data databases at the Geoscience Data Centre. There is, however, a large amount of data and information at the GSE that is not yet entered into databases.

6.2 GTP 1 and GTP 2.

The Geological Survey of Ethiopia performed very well during the GTP 1:

- Basic geoscience mapping at 1:250,000 scale was increased from 34% at 2009/10 to 63%.
- Hydrogeological mapping at 1:250,000 scale has also increased from 42% to 79%.
- Coverage of Geo-hazards investigation of the country in 1:250,000 scale has reached 29% from 9.6% in 2009/2010
- Increased the identified potential areas for placer gold from 40 to 74.
Decline in the performance of the Geoscience Laboratory and drilling services

Nevertheless, coal and oil shale exploration & evaluation, and petroleum exploration were not accomplished as planned due to high turnover of skilled manpower.

Fig 3: Status of the coverage of geological maps in 1:250,000 and geoscience mapping projects during GTP 1: 2011/12 to 2014/2015
The Geological Survey of Ethiopia (GSE) has field equipment for geological mapping as well as own equipment for drilling.

Fig 5: Storage of geological map at GSE

The MoMPNG has defined a number of major program goals for the GTP 2. Some of these are related to HR issues, particularly mitigating the high turnover of experienced staff and the wish of continued upgrading of Geoscience data:

- Capacity building program;
  - Human resource development sub program
  - Institutional capacity building sub program.
- Enhance basic geoscience mapping coverage and mineral exploration;

6.3 Policy options for development of geo-science sector

Airborne geophysical data is of fundamental importance to mineral exploration and the availability of this type of data is of very high interest to investors. Airborne geophysical surveys are very expensive and the areas to be covered should be considered very carefully.

Modern regional geological mapping relies heavily on airborne geophysical data and airborne data is a prerequisite to quality geological mapping. More detailed geological maps, at a finer scale (eg. 1:50,000), would facilitate exploration. Geochemical mapping programs are important as follow-up of the airborne geophysical mapping and as an element in the mapping of mineral deposits in selected regions.

The extent to which the generation of geo data can be accelerated is very much a budgetary issue. Considering that Ethiopia is relatively unexplored and that good geo data can speed up the exploration process considerably, it can be argued that raising the ambition in the provision of geo data should be a high priority.

In the near future the implementation of an integrated geological and data and information management system, also including geochemical data, will be an important element in the promotion of mineral resources in Ethiopia, mainly through disseminating data to the international companies. It is important that information is made available online and that the cost of acquiring it continues to be very low. The first step in the selection of where to explore is nowadays taken in front of a PC, using on line geo data. It is therefore important that data are provided in a manner that enhances Ethiopia’s competitiveness vis-à-vis other mining investment destinations. To ensure continued provision of data, the obligation for holders of exploration licenses to deliver data and samples should be better monitored, including by ensuring that the GSE is informed about all new licenses. Future legal texts and agreements should also clearly specify
that data and samples are to be delivered directly to the GSE rather than via the MoMPNG so as to avoid loss of data due to oversights and lack of communication.

Private companies that are engaging in mineral exploration have with them large amounts of detailed geological data relating to the feasibility of the proposed/operational mines. Regulations may be established to ensure that such data is shared with the GSE in a pre-defined template format, in order to ensure that there is a repository of detailed exploration data with the GSE. Whenever such data becomes non-confidential, it may be released by the government along with the other publicly accessible geo-data. The presence of such detailed exploration data will provide an impetus to competitive bidding.
7. Investment promotion

7.1 Overview

Background
The MoMPNG has been present at the Mining Indaba fair in Cape Town, has an active and fairly informative web-page, has produced specialized promotional brochures; a number of good promotional documents were produced in 2009-2011, in part with support from external development partners (GEUS), available at the GSE website.

7.1.1. Current Legal and Regulatory Framework
The draft Mineral Policy under consideration in the parliament contains recommendations for investment promotion and some clear policy measures. These are repeated below:

The Policy Objective

- To establish and implement an integrated Mining Investment Promotion Strategy, involving all key role players.

Policy Measures
In order to achieve this policy objective, the Government will:

- Establish a component within the government office in charge of mines that will manage the national Mining Investment Promotion Program
- The said component will devise the country’s mineral investment strategies and implement same upon approval.
- Provide geological information to private investors.

MoMPNG and GSE should consider establishing a promotion strategy for the Ethiopian mineral sector, in cooperation with the Investment Promotion Agency. This may include

- Publishing in international trade journals;
- Generating promotional material for wider circulation;
- Make geological data available on the website of GSE
- Plan presence at international mineral sector conferences and events;
- Direct contact with targeted investors;
- Production of monthly newsletters;

For a holistic strategy to take into account investors’ perceptions and concerns, as well as their requirement/request for information etc, the formulation of the strategy would benefit from an initial survey of investors’ perception of Ethiopia as a mining destination. It would be important to include current investors, past investors that have withdrawn, and potential investors. The survey should also include different sized companies, i.e. juniors and majors.
Fig 6: Investors can visit the Geoscience Information centre at Geological Survey of Ethiopia (GSE) to see existing geo-science material and discuss with geologists from GSE.

MoMPNG and GSE developed in 2010 with assistance from Geological Survey of Denmark and Greenland (GEUS) a number of fact sheets for specific commodities as well as fact sheet on the legislation and mapping data available. Further GEUS assisted with establishing a booth at the INDABA conference in Cape Town in 2011 and 2012.

7.2 Policy options for increased promotion

In the short-term,

- Ethiopia would benefit from developing a promotion strategy
- International good practices in terms of providing increased access to geo-data for investors should be adopted
- The currently available promotional material developed by GSE and GEUS should be reviewed and updated
- A future presents at INDABA or similar mining conference should be considered
- Workshops with national investors to assess the interest and potential at national level should be arranged
- The promotion of the Ethiopian opals should be branded more professional especially at the international gemstone fairs in Las Vegas, Munich etc.

In the longer term

- The material developed by GSE and GEUS should be further updated and new fact sheets developed.
- The promotion of Ethiopian opals mined and value added in Ethiopia should be improved.
- If MoMPNG increase the effort to have value addition of other gemstones done in Ethiopia should specific promotion be considered
- The future presence at international mining conferences should be considered.
- The GSE website currently being redesigned has to be made more user-friendly and attractive
- Geo-data and data on licenses should be made accessible on the website of GSE.
- The website is often the first point of contact for potential investors and the MoMPNG website could provide more detailed information to assist potential investors, in terms of for example applicable regulatory processes and procedures and a user friendly system for viewing the mining cadaster.
Fig 7: The Honourable Minister at the Ethiopian Booth at INDABA in 2011

Fig 8: Some of the promotion materiel developed by GSE & GEUS for the INDABA 2011 and 2012
8. Environmental management

A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender & ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities (Goal of the Africa Mining Vision, 2009)

Large-scale, hard rock mining is an industrial activity that takes place in the natural environment, potentially disturbing large amounts of material and land area. Large volumes of waste are created due to the high waste-to-product ratios associated with producing most ores. The controlled and effective management of this waste is required to mitigate or eliminate environmental impacts from mining.

This section will include policy options to deal with environmental impacts of mining on natural resources. It will also include issues related to resettlement and mine closure (specific components of an EIA/ESMP). The primary environmental impact from mining activity relates to the management of waste from mining processes. Some of the key potential issues arising from managing the waste from mining include:

- Acid Mine Drainage
- Erosion and Sedimentation
- Cyanide and other chemical releases

1. Acid Mine Drainage: a pollutant that results from sulphide oxidation in rocks exposed to air and water.

Mining and beneficiation operations greatly increase the rate of these same chemical reactions by removing sulphide rock material and exposing the material to air and water. Acid generation and drainage affect both surface water and groundwater. The receptors of contaminated surface water include birds, fish, and other aquatic organisms. Humans can also be affected by direct ingestion of contaminated surface water or direct contact through outdoor activities such as swimming.

Problems generated by acid mine drainage can be prevented with mining operations that are well-designed, well-operated, and well-regulated. These problems tend to occur at abandoned mine sites or in mines that are not sufficiently well designed or regulated. New mines anticipated to be developed in Ethiopia over the near to medium term are anticipated to be either gold or base metal mines. Hence, the potential for AMD to develop and affect scarce water resources is high.

2. Erosion and Sedimentation

Erosion can be caused by water, primarily through direct impact with raindrops and precipitation run-off, or by wind in arid environments. Sedimentation occurs when eroded particles are deposited at a different location than the source of origin. In Ethiopia, the National Environment Policy 1997 indicates that soil erosion is a serious problem that affects the productive capacity of land for agricultural purposes.

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17 These aspects of an EIA/ESMP can be particularly contentious and have far-reaching implications for the management of impacts from a mining operation. Thus, they merit special attention.


19 Strategic Assessment of Ethiopia’s Mining Sector
The extent of erosion and sedimentation depends on various factors, including the degree at which the surface has been disturbed, the prevalence of a vegetative cover, the type of soil, the slope length, and the degree of slope. Disturbed areas with little or no vegetative cover, soil high in silt, or a steep slope are areas most likely to erode. Erosion and sedimentation affect surface water and wetlands more than any other substances. Erosion can also adversely affect soil organisms, vegetation, and revegetation efforts because it results in the movement of soil, including topsoil and nutrients, from one location to another.

3. Cyanide and Other Chemical Releases

The mining industry has a long history of cyanide use. For decades, cyanide has been used as a pyrite depressant in base metal flotation. It has also been used for over a century for gold extraction. Cyanide is used in gold leaching processes in Ethiopian mines. There needs to be effective regulation of cyanide use in artisanal and small scale mining, particularly. Cyanide exists in many forms, depending on the starting compound and environmental conditions. Cyanide released into the environment can adversely impact water, soil, aquatic organisms, wildlife, waterfowl, and humans. Cyanide-contaminated solution in tailing ponds and solution retention basins has proven to be attractive to unsuspecting waterfowl and wildlife. These organisms have suffered both acute and chronic poisoning as a result of direct contact with and ingestion of cyanide-contaminated solution. Leakage from lining failure at heaps can allow the release of cyanide and other toxic constituents directly into the environment.

Other chemicals used during the beneficiation process, stored on-site for use, or used in vehicles and equipment can impact human health and the environment if released. These chemicals include oil, petroleum products, solvents, acids, and reagents.

8.1 Analysis of Current Policy and Regulatory Framework

Mining Proclamation 2010/2013

The Mining Proclamation was created in 2010 to provide a sustainable development approach to mineral development in Ethiopia. In the preamble to the Proclamation, there is a stated obligation on the part of the Government to protect the environment for the benefit of present and future generations and to ensure ecologically sustainable development of minerals. Part 7 requires an EIA for mining and exploration licenses (not including non-invasive licenses such as retention or reconnaissance). These license holders are also required to allocate funds to cover the costs of reclamation. However, further details regarding implementation of an EIA (including an EMP) to manage impacts from mining are not provided.

Draft Mineral Policy

Section 4.2.8. Environmental, Social and Sustainable Development aims to encourage the sustainable development of mineral resources and application of international best practise in environmental management. The policy calls for compliance with the prescribed standards and principles contained in the Environmental Policy, 1997. However, the Environmental Policy is outdated and does not reflect current thinking in terms of environmental management (including standards for monitoring mining impacts on air, water, soil, wildlife, etc).

There is reference to the requirement for a project EIA to be completed prior to the granting of a mineral license. However, the policy notes that the processes of considering the mining license application and the EIA will be undertaken concurrently and that there is a shared responsibility between Federal and State Environmental Offices. There is a provision for “procedures” to be drawn up by the responsible mining authority, to accommodate requirements of the license holder, but these are not elaborated. The point here is that the mining license should not be granted until the EIA has been approved, even if the approval process for both requirements is being undertaken at the same time.

The policy notes that clear environmental assessment guidelines for mining projects will be provided, including procedures for adjudication. However, there are currently no finalised guidelines yet in the Ethiopia legal framework (although a draft EIA guideline for the EI sector was completed in 2003).
In terms of regulating environmental impacts throughout the mining lifecycle, the policy provides for Integrated Environmental Management (IEM) to be applied to the mining industry. These will include “cradle-to-grave” management of environmental impacts, effective monitoring and auditing, financial guarantees for environmental rehabilitation, controlled decommissioning and closure procedures, procedures for the determination of possible latent environmental risks after mine closure and retention of responsibility by a mine until an exonerating certificate is granted.

The draft mineral policy includes many internationally accepted principles regarding management of environmental impacts from mining. For example, Ethiopia is instituting a “polluter pays” system to be applied in the regulation and enforcement of environmental management. This requires the license holder to be responsible for costs related to the impacts of the operation on the environment. However, this section does not specify the “social” element of this principle, but it is recommended that it should. Compensation should be paid for damage to the physical environment, but also to the social environment, including houses and other physical assets, as well as to human health impacts of pollution.

Other requirements such as “no go” options where risk to the environment is considered unacceptably high, as well as provisions for reclaiming abandoned mine sites and promotion of recycling and reuse of waste products are positive inclusions and reflect best practice. In terms of public participation in the EIA process, the policy provides for public consultation, an appeal process and access to information.

**Council of Ministers Draft Regulation for Mining Operations**

Section 41. Environmental protection deals with the management of environmental impacts of mining. The regulation includes three broad areas of environmental management including: land reclamation; notification requirement regarding operational risks to the environment (spills, etc); and provisions regarding artisanal mining (also related to reclamation and prohibition of the use of mercury). The draft regulation does not provide the necessary detail or prescription to enable a mining company to comply with the broad objectives outlined.

**Environmental Policy 1997**

Ethiopia established a national Environmental Policy almost two decades ago. For its time, it provides a set of international best practice objectives and principles on environmental protection. There are general provisions that apply to environmental management generally, and then sections that provide guidance on specific economic sectors. Section 3.6 deals with Mineral Resources. The policies under this heading include the need to reclaim land used for mining, especially for agricultural purposes; as well as a role for communities in environmental protection matters when they are adversely affected by impacts from abandoned mine sites. Continuous education and training on environmental matters for the public as well as for artisanal miners is noted, as is the need for environmental impact assessment and management plans to mitigate or reduce environmental impacts. Notably it calls for the creation of “specific mining environmental protection legislation” (3.6.h. of the Environmental Policy).

There is a section on control of hazardous materials and pollution from industrial waste (3.8.) that also refers to mining. It calls for standards to be applied to the monitoring of land, air and water pollution as well as the handling, storage and transportation of hazardous waste and other materials.
Large-Scale Model Mine Agreement

The large-scale model mining agreement (Section 17) also includes provision for environmental protection. It calls for compliance with all parts of the legal framework in Ethiopia related to the environment to minimise or avoid the negative impact of mining operations, damage or pollution of the environment. It also calls for the establishment of an environmental and social management plan implementation unit within the company and to ensure that all employees are trained in plan content and implementation. The Environmental and Social Management Plan is to be reported on quarterly and annually. Companies are responsible for environmental reclamation carried out during all phases of a mining lifecycle. In keeping with the Ministry of Mine’s delegated responsibility for the EIA and ESMP, the company’s environmental programme must be approved by the licensing authority.

While the license holder must provide annual funding toward the eventual implementation of the mine closure plan, the determination of the level of funding for this purpose is not included in the Contract. It is also notable that some provisions drawn from the EIA Proclamation have been highlighted while others (such as public consultation requirements) have been left out. To increase regulatory clarity, it would seem that either all aspects of and EIA and ESMP should be included or none at all.


These documents provide the basis for environmental impact assessment and environmental management planning for projects that have been determined to have a There should be greater attention paid to the requirement for baseline studies (social and environmental) so that measurements of mining impacts on these environments can be more accurately assessed throughout the lifecycle of the project. Public consultation is required, but there is insufficient detail or definition of what “consultation” means, how technical information will be provided to the public or whether consultation should be an on-going process or only occur at the EIA approval stage.

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Ethiopia EIA Guideline for Mining and Petroleum Operations 2003 (draft)

This guideline has been drafted to provide specific direction in terms of defining, mitigating and reducing environmental impacts from mining and petroleum operations. It requires updating to reflect modern processes and standards, and should be formalised as part of the legal framework.

Figure 10: Housing of resettled traditional communities from Chiadzwa, Zimbabwe

Legislative References to Compensation/Involuntary Resettlement

Major mining projects, especially open-cast operations, can take up significant areas of land and potentially displace people living on that land, or the economic generating activities (farming, cattle rearing, etc.) of the land. In Ethiopia, land ownership is fully vested in the State. Under the existing expropriation proclamation, land can be expropriated from use for public interest, benefit or good. In this context, public purpose is understood as an activity that may be carried out by public bodies, private investors or non-governmental organizations and that provides direct and indirect benefits to the society (Ethiopian Expropriation Proclamation 2005, Article 2.5). The “direct and indirect benefit” standard allows the Ethiopian government to exercise its expropriation power without limit. The Mining Proclamation also includes reference to the principle of land being available for mining purposes and this is deemed to be in the public interest. There is also reference to compensation.

Although the draft Mineral Policy (4.2.1.5 Land Use) further emphasises the according of a priority land use option to mining on any land, provided that compensation is paid to the land user, there is no reference to the principle of resettlement. Given that resettlement of communities from a mineral lease area is one of the potentially most contentious aspects of managing mining impacts, the absence of this guidance is problematic.

21 www.msnbc.com
There do not appear to be references to resettlement as part of any of the environmental policy or legislative instruments in Ethiopia (this should be confirmed by the legal expert). Since resettlement could be viewed as the most substantive impact from a mining operation, the inclusion of this aspect of an EIA/ESMP should be considered.

8.2 Key Issues

**Environmental Protection**

The MoMPNG has received delegated authority from the Environmental Protection Authority (EPA) to approve environmental impact assessments and management plans. However, the Environment and Community Development Directorate appears to lack the resources and capacity to carry out this function adequately. The provision of technical environmental monitoring equipment to measure soil, water, air, etc. impacts from mining (and the requisite training to go along with it) appears to be problematic. Given that there is little environmental monitoring on the part of the regulator, mines are largely left to self-monitor with no government oversight provided. As larger and more complex mining projects are developed in the country, management of significant environmental impacts will become more challenging. Low capacity in monitoring environmental impacts can form part of a country risk assessment and can leave the company exposed to criticism from civil society and communities (from a governance perspective, government should not count completely on company self-regulation).

The delegation of the environmental protection mandate of the government of Ethiopia to the ministry in charge of mining could be viewed as a conflict of interest. The mandate of the mining authority is to ensure that a mine is up and running as soon as possible. Government needs mining revenue, and the associated benefits from a mining project. The mandate of the environmental authority should be to ensure that the environment is protected, regardless of how long it takes (within reason) for the company to assess impacts and develop mitigation strategies. However, some stakeholders noted that the capacity of the EPA is lower than that of the MoMPNG and that there has been an improvement in the response of government to environmental management since delegation occurred.

Interviews with stakeholders revealed other problems in the current environmental assessment and management planning process. The public consultation process appears to be flawed in that technical information needed by communities is often not communicated in an understood format. Further, social and environmental baseline studies are not performed, and the social component of the EIA/ESMP is not given the same emphasis as the environmental component.

The role of civil society in terms of assisting communities with accessing information and registering concern with development decisions taken appears to be limited. Some stakeholders indicated that the EIA process should start at the screening stage, with go-no go options clearly available when environmental values may be more important than economic ones.

**Resettlement**

Information gained from stakeholder interviews indicate that some resettlement efforts by mining companies have resulted in an improved standard of housing for the inhabitants, while other resettlement processes have not been as positive. The larger companies that have in-house capacity to manage environmental and social aspects of mineral development have greater capacity to dedicate to these matters. However, the absence of a clear legal framework that specifies internationally recognised resettlement guidelines as well as shared oversight responsibilities means that resettlement efforts will be ad hoc and inconsistent across mining development projects throughout the country.
8.3 Policy Options

Create a consistent legal framework and clarify the institutional framework

The Environmental Policy should be updated and used to inform the legal framework regarding environmental management in Ethiopia. The government may wish to develop a proclamation (and regulations) that provide an overarching environmental management direction for the country that goes beyond the current EIA Proclamation (in terms of scope).

While the delegation of approval for the EIA/ESMP has been transferred to the MoMPNG from the EPA, the resources necessary for the implementation of this mandate have not been provided to the extent necessary to the Directorate in charge of this function, the Environment and Community Development Directorate. As well as lacking technical instrumentation to monitor a company’s stated environmental impacts on soil, air, water, etc., the staff require training to be able to assess the EIA and to follow progress on the ESMP (as well as supervise third-party environmental and social audits).

Ideally, the EPA should retain responsibility for this function, purely because the mandate of the MoMPNG is to develop the mining sector and the mandate of the EPA is to carry out the Ethiopian Constitution’s requirement that citizens are entitled to a clean environment that will be available to future generations. However, if the capacity of the EPA to undertake its mandate is lower than that of the MoMPNG, practicalities may dictate that this delegated authority remains with the MoMPNG.

Finalise mining specific guidelines for ESIA/ESMP

The Government of Ethiopia should consider the promulgation of Sectoral Guidelines for ESIAs in the mining sector. These would provide much-needed additional detail on ESIAs in the sector, recognising its overall importance to the economic future of Ethiopia. It is notable that a number of countries have generated specific guidelines for ESIAs in the mining sector, and these could be utilised in creating a version of specific relevance to Ethiopia. The guidelines should specify at what stage the EIA process should be triggered (i.e. some exploration projects perhaps would not require an EIA, depending on how “significant adverse impact” is defined). A draft guideline for EIAs in the Extractive Sector was prepared more than a decade ago but this was never finalised.

Develop National Environmental Standards

One of the difficult issues arising in ESIAs – and in the regulation of the minerals sector in more general terms – involves the specific environmental standards to be employed. These standards have not yet been developed in Ethiopia for application to large scale mines (except what is included in the draft EI Guideline 2003 that has never been finalised. Some larger companies, such as MIDROC, use international standards such as the IFC Performance Standards for Environmental and Social Performance in the absence of national standards. This may be considered appropriate for such large internationally-financed projects. However, an adherence to stringent standards (seeking to maximise environmental protection levels) is sometimes considered to act as a deterrent to investment in the mining sector, and this issue relates particularly important to investment into smaller-scale operations. However, there should be consistency applied across all large scale companies in terms of the environmental standards used.

22 Unlike other sections of the report where there may be clear disadvantages to accepting policy options, these options are presented as recommendations as there are few discernible disadvantages to the adoption of any of them.
Require Environmental (and Social) Audits of Company Performance

The regulatory framework should require that companies update their Environmental and Social Management Plans regularly and that these updates should be based on environmental and social audits. These updates should be submitted by the mining entities themselves, but need to be completed by third parties (in much the same fashion as ESIA's are produced). These documents should be available to the public through the legal framework governing access to information (legal expert to investigate if such legislation exists). This approach links self-regulation of the industry with the potential of the regulatory authority to check on any finding of an ad hoc environmental audit performed at any time. When public sector capacity is weak (it was noted in a number of stakeholder interviews that government capacity in this area requires strengthening) the concept of marrying self-regulation to Government oversight can be a viable policy option.

The legislative framework should include environmental and social auditing procedures and the provision of checklists. Clear oversight mechanisms that could include ministries with social mandates should be stipulated.

Require Implementation of an Internationally Acceptable Resettlement Standard: Include in the Draft Mineral Policy (and in subsequent amendments of the mining proclamation and environmental legislation)

The section on Land Use in the draft Mineral Policy (4.2.1.5) should include reference to the obligation on the part of the (large-scale) license holder to follow an internationally accepted standard on Involuntary Resettlement of Communities (such as the World Bank Policy on Involuntary Resettlement and the Resettlement Action Plan). There should be clear oversight mechanisms created that allow for a joint responsibility between the federal MoMPNG and the appropriate Regional authority.

Require Mine Closure Plan at Licensing Stage and update incrementally – provide a formula for determination of the amount of mine reclamation funds

Many countries require large scale mines to provide a mine closure plan at the mining license application stage. This can take the form of an initial "mine closure concept" that the company (in consultation with communities, government and other relevant stakeholders) is then required to complete incrementally throughout the lifecycle of the mine. There are often requirements to complete a full mine closure plan within five years of the planned closure.

Briefly, Mine Closure planning includes the following components,\textsuperscript{23}

\begin{itemize}
  \item Site information, such as topography, property lines, structures, and facilities
  \item A description of closure procedures, including an analysis of alternative measures
  \item Site-specific and regional hydrologic and geologic characteristics
  \item Detailed closure methods for each facility
  \item Groundwater model demonstrating that future impacts to water quality from facilities that will continue to discharge (such as drainage from unlined impoundments) will not be above regulatory levels
  \item Financial assurance that the company is fiscally sound to complete the closure
  \item Demonstration that the company (or its subcontractors) have the technical ability to complete closure
\end{itemize}

Closure approval should be based on conditions after closure and the plans for long-term monitoring:

- As-builts of closed facilities that will remain (such as the heap leach and tailings impoundments)
- Assessment of soil conditions after closure
- Monitoring plan for physical inspections of closed facilities that will remain and sampling for groundwater quality
- Contingency plan for discharges above approved levels, groundwater quality degradation, or physical damage to closed facilities
- Recordkeeping and reporting schedule
- Future updates of the groundwater model.

There are a number of international standards that can be required of the applicant and included in the draft Mineral Policy. These include the ICMM’s Integrated Planning for Mine Closure Toolkit as well as the IFC Performance Standards on Environmental and Social Performance.24

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9. Social Issues

9.1 Community Development

“A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities”—Goal of the Africa Mining Vision (2009)

The promise of a large-scale mine development into a rural area that is battling low development constraints or few economic opportunities beyond subsistence farming usually elicits a positive response by communities. Local and regional governments look forward to tax revenue and economic development. However experiences from community-mine interaction in many parts of the world demonstrate that benefit streams do not always flow from a mine in a way that contributes to raising the standard of living of communities. These experiences have shown that the mine can either be a strong catalyst for development, or simply a feature in the area that is an ultramodern, high value, high tech asset existing in an isolated manner in a “sea” of rural poverty.

While great strides internationally have been made in ensuring that mines do contribute to local development, the proper policy and legal framework must be in place for this objective to be facilitated. Global companies that raise money through listings on stock exchanges must comply with requirements around corporate governance that include attention to social, labour and environmental impacts of mining. Companies that are supported by funding through the IFC also require a high degree of compliance with international standards such as the IFC Environmental and Social Performance Standards. Also, financing institutions that become involved in funding mining operations frequently comply with the Equator Principles, a set of requirements that include attention to sustainability objectives. However, for smaller mining companies that may not have a global reach, ensuring some level of benefit stream from the mine into communities usually needs some form of domestic regulatory requirement.

In some developing jurisdictions there may be concern that creating a requirement for community development adds to costs and regulatory burden of mining companies. These jurisdictions may worry that this additional requirement may deter investment. However, most companies now realise that corporate social responsibility represents good business sense. All over the world there are examples of communities exerting a measure of civil disobedience to register their complaints against a mine that is failing to provide adequate benefit streams and that expects the negative impacts of mining to be borne by communities in silence.

Companies must now achieve an informal “social license to operate” which is granted by communities implicitly when a company is behaving as a good corporate citizen and contributing to the development of mining affected communities. This informal “license” improves company reputation, reduces the likelihood of production delays and improves relationships with all levels of government. Further, a good CSR programme is not necessarily expensive. Funding provided by the mine can be matched with targeted and available donor technical assistance support, particularly in the areas of education, health and business development. The mine should be seen as a partner in development, not the sole provider that replaces government. These distinctions are often not well understood and lead to unrealistically high levels of community and government expectation. A good communications, awareness building and training programme that extends to a range of stakeholders at the national and local levels, usually greatly assists in the managing of these expectations and in defining a company’s social investment priorities.
9.1.2 Analysis of Current Policy and Regulatory Framework

Draft Mineral Policy

In the preamble, the Ethiopian Draft Mineral Policy “recognizes the important contribution that the development of the country’s mineral resources can make to alleviate poverty and achieve sustainable development”. Further it specifies that mineral development should take place in an **environmentally and socially** responsible manner and that it contributes to the development and wellbeing of all citizens. It specifically notes the potential of this industry’s contribution to **poverty reduction** and sustainable development. (Ethiopia Draft Mineral Policy)

Specific reference to community development mechanisms are included in the policy where Institutional Arrangements are described. The policy calls for a regulatory function ‘to oversee, in cooperation with the Environmental Authority…the administration of a social and labor plan in the mining industry’ (Institutional Framework, EDMP, 4.2.1.8).

The requirement for a “social and labour plan” (a term specific to the requirements for social investment contained in the South African Mineral and Petroleum Resources Development Act) to some extent conflicts with requirements in other legislative instruments noted in the rest of the section (where various documents specify the requirement for a “community development plan”). The SLP includes requirements for both community development (including local content) and for human resource development plans related to the participation of Ethiopians in various levels of the formal mining sector. It is important to draw the government’s attention to these different ways of describing socially related obligations of the mining sector – both to ensure clarity for investors and so that the regulator can provide effective oversight and monitoring.

Mining Proclamation 2010

The Mining Proclamation of 2010 provides the legal requirements for exploration and mineral license holders regarding requirements for social investment. It requires that license holders participate in a **community development plan** of the residents within the license area and that they allocate money for such a plan. (Article 60/3).

The inclusion of this sub-article provides the legal basis for social investment obligations of the license holder. However, the question arises as to how the obligations of the exploration license holder differ from that of the mining license holder. This is an important distinction that must be clarified through regulations. Government should be aware that these small exploration companies often operate on a “shoe-string” budget with all funds dedicated to finding a viable mineral deposit. There is no revenue generated at this early stage of mining development so it is difficult to require anything but modest expenditures on social investment.

However, it will be important to distinguish at which stage exploration is defined in this context. When exploration companies have been in the country for a time and are in the advanced stages of exploration and early development, these companies could reasonably be expected to contribute to some modest level of funding dedicated to local community development. This is also beneficial for the license holder (especially exploration companies who wish to attract large scale producers to develop their discoveries) to ensure future positive relationships between the mine and the community at the mine operations stage.

There are many components to a community development plan (or agreement) that require further elaboration, including how the amount of funding required is determined. These details are normally included in a mining regulation that accompanies the mining law. Further discussion on this issue will be presented under the section on the Council of Ministers Draft Regulations on Mining Operations.

Model Large-Scale Mining Agreement (MMA)

The Agreement (Article 19) specifies that the license holders fund community development activities in Woredas (communities) included in the “impacted area” throughout the duration of the license. A minimum annual amount (Birr 2.5 million) is prescribed as the minimum expenditure for these activities that are intended to commence at the awarding of the license. It does note that this amount should increase as the mine enters the revenue generating part of its lifecycle.
Community development projects are forwarded from the local government (in consultation with communities) and must include water, health and education facilities. The relevant licensing authority (federal or state) is required to develop a "workable system" that will include the license holder in the review and approval of projects and the authorization of transfer of funds. Local government is required to report on project implementation annually. This report is intended to be submitted to the license holder and to the licensing authority.

There are a few areas where this provision in the MMA requires attention. Firstly, it appears as though the amount of funding to be directed toward community development is fixed (at least the minimum) whereas in the Draft Regulation (below), there is a percentage of revenue or profits that must be spent on social investment. The Draft Regulation is still new and obviously the provision in the MMA predates this regulation. In any event, there will need to be consistency between the various parts of the legislative framework.

Secondly, the requirement for the mining company to provide at least some measure of basic services (water) to communities as well as responsibility for health and education bears reflection. When mining companies take on the role of government, there can be a number of unintended consequences. Mines can start out providing potable water for a limited number of community residents, but after the mine has been operational for short time and inward migration inevitably occurs, the numbers of people the mine may have to service with water may increase tenfold or more.

In terms of provision of education and health services, it is important the roles and responsibilities of the mining company and the government are examined. It is unlikely (and eventually unsustainable) that the mine will provide all services related to health and education for the community. Instead, there should be a partnership approach where the mine may provide (with the assistance of community labour, for example) construction materials and expertise for the construction of social infrastructure. But, the government needs to provide the professional staff and probably supplies. Mining companies have a finite life and at mine closure must hand over social infrastructure to government. Also, it is the government’s mandate to provide health and educational facilities to its people and a mine cannot be expected to replace government in this regard. Without an agreement in place (or explicit regulations that describe these roles and responsibilities), the mine may end up constructing buildings that over time become empty. This is because government has not fulfilled its responsibilities in terms of providing personnel and supplies to complement social infrastructure for health care and education. Unfortunately, this has been the outcome of such social requirements in many developing countries world-wide.

**Council of Ministers Draft Regulations on Mining Operations (Article 43)**

The draft regulation contains an Article (43) on obligations of the license holder regarding community development obligations. It provides considerably greater specificity than Article 63 (3) of the Mining Proclamation (2010).

Notably, it requires 5% of initial capital invested during the mine development phase, to be followed by 8% from annual revenue expenditure or net profit (whichever is higher) during the operations phase of the mining lifecycle. There is also a requirement for community development initiatives to align with the country's development strategy although it does not specify whether this refers to the national development strategy only or if there are regional or local development strategies. In terms of oversight, there is a role specified for the community and the "respective administrative organ". Greater clarity on the institutional arrangements for oversight is needed.

Reporting on the implementation of the plan including financing of projects is to be forwarded to the license holder and to the licensing authority. The definition of mining affected communities who would be project beneficiaries has not been provided for and it appears as though this definition is to be included in Directives that presumably have not yet been drafted.

The percentage amounts of mining revenue or profit noted in this draft regulation exceed international norms, at least as expressed in World Bank Community Development Agreement examples found in many parts of the developing world. It would be useful to understand on what basis these funding requirements were determined.

9.1.3 Key Issues

A number of issues related to mining-affected communities and the benefit streams they could expect from a mining operation were raised during the stakeholder consultations as well as through desk research. As these are mostly well
known to the MoMPNG and other key stakeholders engaged in this project, this section will only provide a list of the key issues that were identified at the Initiation Workshop and subsequent consultation and information gathering efforts:

i) Lack of consistently applied community development requirements by mining companies: The larger companies provide some measure of social investment, but smaller companies do not. Most CSR programming appears to be done on a voluntary, ad hoc basis. The process of project selection and oversight of implementation appears to be mostly the responsibility of the company.

ii) Absence of guidance in terms of expectations of corporate social investment at the exploration stage. The company is not producing and hence does not have a revenue stream. It can be problematic to expect small companies that rely on shareholder funding to spend significant investment in CSR at this stage. However, there is definitely a trend toward this practice and many companies view the value of initiating CSR in the exploration stage (especially in high conflict areas, the attention to CSR can mean that companies are either allowed by communities to stay or be forced by dissenters to leave).

iii) Dissatisfaction of communities: Communities have expressed dissatisfaction with the contributions of mining to local development although it was also noted that expectations are high and perhaps unrealistic.

Figure 12: School children playing

iv) Confusion around legislated community development funding/planning: There is a lack of clarity around the implementation of the community development agreement requirement in the Mining Proclamation 2010.

v) Capacity constraints and lack of clarity regarding roles and responsibilities of government entities involved in community development issues related to mining: several stakeholders noted that the federal and regional governments both had responsibilities regarding implementing and monitoring community development planning and funding, but there was some confusion as to respective roles.

vi) Weak transparency at the local government level regarding community development spending from mining royalties and from the community development fund (included in mining agreements/contracts): When regional governments do

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not use royalty payments or community development funds for social development projects, there is additional pressure on companies to provide basic services that should be government’s responsibility.

vii) The requirement for social investment into community development and for environmental management of mining’s impact on the physical and social environment appear in a number of documents describing the Ethiopian regulatory framework. These are not always consistently described and it will present difficulties for both the mining industry and the government to ensure compliance.

9.1.4 Policy Options

Develop a National Corporate Social Responsibility Policy

Mineral resource development in Ethiopia is a shared responsibility between the federal and regional governments. However, the federal government is responsible for developing the country’s mineral policy and act and regulations to guide mineral development. The regions (as well as the federal government) are also responsible for implementing this legal framework.

Thus, a national CSR policy could be developed in much the same way the national mineral policy has been created. There would be broad-based consultation with regional governments as well as a range of mining industry, civil society and federal government stakeholders. The policy would bring together all aspects of a mining company’s corporate responsibilities. It can be as narrowly focused or as wide-ranging as the government wishes. It could include socio-economic issues only, such social protection, community development, gender issues and local content. Alternatively, it could be expanded to include fair labour practices and environmental protection.

A far-reaching strategy would provide a way for all ministries and authorities to come together to develop a policy that would guide the individual mandates of all government entities that are affected by the mining sector, or that have a regulatory mandate that lies at the periphery of the mining-community interface (such as health and education).

Some developing countries are developing such as approach (Mozambique) while some developed countries such as Canada have developed a national CSR policy. In the case of Canada, there is a shared responsibility between the federal government and the provinces for mineral development. To ensure that the input and buy-in of a range of mining affected stakeholders would be considered, a round-table process was created that brought together all stakeholders across Canada (and held in each province). These stakeholders aimed to provide a consensus-based approach and collaborative effort to develop a CSR policy. In Canada, the policy includes the creation of a centre of excellence for CSR, as well as a CSR Counselor, and the adoption of international standards such as the IFC Standards on Social and Environmental Performance.

While Ethiopia may not wish to implement the same CSR instruments as countries such as Canada, it could still benefit from developing a coordinated response to CSR obligations of the mining industry. Stakeholder interviews suggested that there is an uneven response to CSR, depending upon the mining company, the region and the type of mineral mined. Such a national policy would standardize implementation of CSR programming and ensure that all licensed mines would operate as responsible corporate citizens.

An overarching policy would include guidance on all points of interaction between the mining industry and society, including communities, government, employees, civil society, supply chain actors, academics, women and vulnerable populations, and other relevant stakeholders.

Issues that would be addressed would focus on mining industry obligations to communities (including women and vulnerable populations) to employees, and to local and other regulatory entities involved in social development. The policy would provide guidance on types and processes of stakeholder engagement, clarity around roles and responsibilities of all parties involved in CSR, funding commitments required, and reporting and monitoring mechanisms, including grievance procedures.
The advantages of such an overarching CSR policy\textsuperscript{26} are the following:

\begin{itemize}
  \item One comprehensive policy would bring all the aspects of CSR into one “whole of government” document and reflect the values and aspirations of all stakeholders regulated or affected by the mining sector. This would provide clarity for the regulatory bodies, civil society and the mining and associated supply sectors.
  \item The national CSR policy for the mining sector would cater not only for mining companies but for exploration companies (and across the whole minerals value chain) that may be expected to contribute to community development, but have limited access to funding beyond operational requirements.
\end{itemize}

![Figure 13: ICMM Community Development Toolkit\textsuperscript{27}](http://www.icmm.com/community-development-toolkit)

\begin{itemize}
  \item Implementation of a comprehensive policy would demand greater communication and synergies between government ministries (both at the federal and at the regional levels) than currently exists. This would ensure that the mandates of other Ministries with social responsibilities would benefit from implementation of their social programming objectives through the mining sector.
\end{itemize}

\textsuperscript{26} Reference International Standards that provide guidance on the development of a national CSR policy including:

AMV, IFC Social and Environmental Performance Standards, ICMM/WB Community Development Toolkit, Natural Resource Charter, ISO26000

\textsuperscript{27} http://www.icmm.com/community-development-toolkit
A national CSR policy would provide sectoral input at the national development planning level and at the regional and local levels of development priority setting. The mining sector and its role as a development partner would be better integrated into poverty reduction strategies.

Regional governments would be involved in the development of the national policy and have some ownership around content, and thus be more likely to accept and implement.

Civil society would also be involved in this “bottom-up” consultative national policy development process and would be less critical of how government is developing the mining sector and also how mining companies are operating with regard to community issues (assuming the policy’s oversight provisions are implemented).

An overarching CSR policy would provide guidance for the development of relevant legislation, including specific Social Development Guidelines for the Mining Sector (such as those produced in Afghanistan).

The government’s aspirations to fund the development of such a policy (Canada funded the development of the national CSR policy in Mozambique, for example) would resonate with the international donor’s technical assistance planning in relevant areas of cooperation.

The EITI multi-stakeholder based process and the application of the 2013 EITI Standard that requires companies and countries to report on community development expenditure should be useful in the development of a national CSR policy. The interaction of civil society, government and industry representatives on the Multi-Stakeholder Group should result in better trust and stronger relationships between parties that may not have communicated effectively in the past.

The challenges to developing a National CSR Policy may include the following:

1. Achieving consensus on a national CSR direction and approach requires time and resources to implement a broad-based consultation process.
2. Multi-stakeholder policy development is the norm in many developed mining jurisdictions such as Canada, but experience and knowledge of these processes may be lacking in Ethiopia (as in many developing countries).
3. National ministries may not have the capacity or willingness to participate in a “whole-of-government” approach to development of an over-arching policy, given that there isn’t a model for this type of inter-ministerial policy coordination.
4. Civil society may be skeptical about the government’s interest or ability to engage at the level of policy development; equally, government may not trust civil society sufficiently to allow equal participation of all stakeholders.

Require a Community-Mining Company Development Agreement as part of Mineral License28 and Abolish Community Development Fund

Currently, there is a requirement for at least large-scale mines to contribute to a fund that is intended to support local development initiatives in mining affected communities. The fund receives projects from local government according to local needs, although it is not clear if communities themselves contribute to this project selection process. The projects are then submitted to the MoMPNG for consideration (whether they will be supported by the Fund). The MoMPNG then transfers funding for these projects to the local government.

The current process appears to be somewhat opaque and lacking in transparency. It is not clear how projects are selected, how procurement is undertaken, how oversight is managed to ensure that the projects are implemented in a timely and efficient manner, and most importantly, how well these projects meet community needs.

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28 This requirement would be included in a National CSR Policy but is included here as a discrete policy option for consideration.
A community development agreement model arguably would be more effective than the current process. It would provide for a transparent mechanism that would clarify process, implementation and oversight of company contributions to local development. It would also assist the mining company to achieve a “social license to mine” as its contributions would be directly applied to uplifting community standards of living, instead of being filtered through a local government office where accountability mechanisms are weak.

It is important that communities can see the tangible results of community development from mining revenue. Otherwise, companies are pressured to provide more benefits and governments are accused of bringing in mining development partners that are not contributing sufficiently to local upliftment.

It may be worthwhile, however, to retain the current Community Development Fund to benefit communities that may not be located close enough to a mine site to be eligible for a community development agreement. Further examination should be conducted to evaluate how many communities this might entail. However, even if the current Fund is to be maintained, the “governance” issues related to the structure should be addressed so that it is a more effective mechanism for this purpose.

To address issues related to consistent application of community development contributions from all levels of the mining sector (from small scale to large, foreign companies), a formal framework is very helpful. Such a framework could include a number of different models:

- **Impact and Benefit Agreements (IBAs):** IBAs are used all over the world but originated in Northern Canada (used in Australia, Canada, South America). The IBA includes local content issues such as quotas for indigenous participation in contracting opportunities and employment. It also incorporates the goals, objectives and mitigation strategies contained in the Environmental and Social Impact Assessment and Management Plan.

  The IBA tends to be applicable where groups of indigenous communities exist alongside a large scale mining project and there is a need for one consolidated agreement between the company and the community. This also works best when there is local ownership of land and the company is negotiating with the community as the land owner (examples include Papua New Guinea, Australia and Canada Aboriginal peoples). Hence, this model may not be applicable to Ethiopia since there is no private ownership of land.

- **The Social and Labour Plan (SLP):** A template that was developed in South Africa to achieve social objectives through mining legislation. It was specifically drafted to deal with lack of access to participation in the mining sector and its benefits due to the former Apartheid regime.

  The SLP does not tend to be replicated outside of South Africa due to the specific nature of its objectives, particularly those related to increasing numbers of indigenous South Africans in the mining professions.

- **The Community Development Agreement (CDA):** A template that has been subject to a wide-ranging consultation process and endorsed by the World Bank and used world-wide (comprises part of many African and Asian countries’ mining legislation). It includes details on negotiation, implementation, monitoring, reporting, funding and grievance procedures.

  This is the model that is the most easily replicated in any jurisdiction and as it already appears in various parts of the legal framework in Ethiopia, this is the model perhaps most applicable to the Ethiopia context.

Advantages of adopting a formal framework for social investment into mining affected communities include the following:

- It provides a clear and consistent guideline for investors, government and communities to follow: This clarity will result in a development plan that takes into account the communities needs and priorities, fewer on-going ad hoc requests for mine assistance by community members, integration with government development objectives and therefore more effective investment into social infrastructure, a clear funding, monitoring and implementation plan that can be monitored by signatories to the agreement, including government, industry and communities, and a clear grievance procedure should the plan not be implemented satisfactorily.

- A significant advantage of formalizing the social investment contributions of a mining sector involves differentiating between government and company responsibilities and managing expectations of all parties (in terms of the level of CSR support the mine can reasonably provide). The CDA is a public-private sector-partnership model with shared responsibilities inherent to the negotiation process.
The adoption of a formal community development framework would mean that the current Community Development Fund managed by the MoMPNG would no longer be required. The projects would be selected and monitored by the CDA committee at the mine site, thereby increasing the likelihood of effectiveness and eliminating the current two-tiered process that does not appear to be working well.

Disadvantages to legislating a formal community development framework:

- Mining companies instinctively resist government regulation in non-core mining related activities and may complain about a prescriptive community development plan. Usually this concern centers on unrealistic expectations of government and communities in terms of what the mine can provide. This concern is usually dealt with by explaining the advantages of such a process to the mining company.
- There is a sense that a formal process will result in higher costs to the company. This is largely untrue, as the CDA process should define the various roles and contributions all parties can play in the implementation of the community’s development goals. Often, international donor funding can be leveraged (for example in providing health care required by victims of HIV/AIDS, malaria, cholera, etc) to support contributions by the company.
- Lack of awareness, training or understanding of the CDA. A comprehensive capacity building plan is required to educate all participants about the CDA in advance of its implementation. To level the playing field in terms of negotiation of the CDA, quite often donor funding can be sought to build the capacity of non-industry stakeholders to participate effectively in the process.

Provide Legislative Clarity Around Existing Community Development Legislated Requirements (as noted in the legislative review above) and Provide New Legal Text According to the Policy Option Selected

The Community Development Agreement model is supported by the World Bank and templates are available to insert into the legislative framework. Further advice on the best legislative option tailored to Ethiopia is to be determined by the legal expert in the project.

9.2 Stakeholder Engagement/Inclusive Governance

This section will explore the issues of stakeholder engagement and inclusive governance within the context of mining sector development in Ethiopia. Inclusive governance means that the views, aspirations and values of society will be sought and considered in policy making and implementation. Countries that enshrine principles of inclusive governance in legal instruments demonstrate a commitment to ensuring that sufficient mechanisms and processes exist for this purpose. Other countries, usually in the developing world, may seek to include the requirement for public consultation within sector specific legislation as a first step towards inclusive governance.

Stakeholder engagement is the process by which government and companies seek the input of members of society. Government or companies engage with a range of “interested and affected parties” that can either influence or are influenced by the development of a project. In the mining sector context, there are internal stakeholders (which means employees, shareholders, company management, contractors, etc) and external ones. Both types of stakeholders can have an impact on a mining project’s success or failure. External stakeholders can include communities, local and national politicians, public and private security forces, the business community, religious leaders, civil society and international bodies including the World Bank/IFC, and country donors. The term “stakeholder event” includes reported
actions or expressions of sentiment from these groups that indicate cooperation with the mine owners, as well conflict with them.\textsuperscript{29} 

Reducing conflict with external stakeholders is the major objective of stakeholder engagement for companies. It has much the same objective for government. Government can gain needed “buy in” from the stakeholders impacted by a particular set of issues when it is introducing a new policy or legislative instrument.

For companies, achieving good relationships can greatly enhance the company’s chances that a mining plan will be implemented without delays or cost overruns. Shareholder value (for those larger companies listed on stock exchanges) can be increased due to a company’s corporate behaviour. Their reputation can be enhanced by achieving a “social license to mine” and hence experience fewer incidents of civil disobedience from potentially dissatisfied community neighbours.

Effective processes of stakeholder engagement have been proven to mitigate risk, increase competitiveness and profitability, and compliance with regulation. Given that stakeholder groups can directly impact a company’s reputation and operating efficiency, as well as the permitting process, it is imperative that companies initiate, keep track of, and act upon their communications with the various stakeholders who have the power to influence their success.

Mining projects can have a wide sphere of impact and influence -- through their on-the-ground projects, their supply chains, or their financial/political influence. Many individuals and companies are impacted by organizational business practices. The interests of these respective stakeholders cover the core issues that define a company’s corporate social responsibility (CSR): potential environmental and social impacts of resource extraction and development.

These issues play a significant role in the permitting process, the operating rules, and penalties set out by government regulations, and perhaps most importantly the social license to operate. And the pressure is building between the power of web-based communication and the rise of standards and principles that underpin financing and regulatory decisions.

Strategically-minded companies are therefore realizing the value of adopting systematic and genuine engagement and communication management practices that make it possible to manage key issues by creating an atmosphere that fosters understanding of stakeholder perceptions and expectations. This leads to long-term benefits that can outweigh short-term costs, since stakeholder consent is often the most critical issue for a resource project’s long-term viability.\textsuperscript{30}

The chart below illustrates that there is a kind of sliding scale of stakeholder engagement that is illustrative of the various steps of the process depending upon the nature of the engagement, and also the size and complexity of the project.

\textsuperscript{29} http://www.triplepundit.com/2011/08/stakeholder-engagement-mining-operations/

\textsuperscript{30} http://cdn2.hubspot.net/hub/58776/file-396686816-pdf/docs/eBook_-_Stakeholder_Engagement_in_the_Resource_Sector.pdf
9.2.1 Analysis of Policy and Legislative Framework

The Constitution of Ethiopia (1994 Article 43) recognises the principle of inclusive governance through the people’s right to development. These rights include the right to improved living standards and to sustainable development. Further, this section of the Constitution affirms that “all persons have the right to participate in national development and, in particular, to be consulted in respect to projects affecting their community”.

This section will only deal with the consultation processes prescribed through mining and environmental legislation. There is no single legal instrument in Ethiopia that deals exclusively with stakeholder engagement per se (other than the Constitution). Rather, requirements for public input into policies, programmes and planning appears to be implemented at the line ministry level and according to the type of legislative mandate of the particular ministry.

Draft Mineral Policy

There is a discrete section 4.2.1.2 in the draft policy entitled Stakeholder Consultation. However, the objectives under the policy objective are restricted to the establishment of an Advisory Council and do not describe other mechanisms for stakeholder engagement. Greater clarity is required regarding membership, mandate, and other governance matters concerning this Council. It should be noted that in the current Mining Proclamation there is reference to an Advisory Council. It is not clear whether the inclusion of this mechanism in the draft mineral policy represents a refinement of this requirement, or if it is repeating what already exists.

Under the section describing Environmental, Social and Sustainable Development, 4.2.8., consultation is called for in the public participation process related to the environmental impact assessment of a mining project as well as access to information and to an appeal process. Consultation is also required under ‘People Issues’ (section 4.2.10). This covers a range of issues including housing, skills development, labour issues and gender equality. Requirements related to stakeholder engagement should be more explicitly required for these socially related objectives. In this context, consultation with other government ministries charged with social objectives should be considered.

Mining Proclamation 2010

In the Mining Proclamation 2010 there is very little reference to the requirement for consultation at any stage of the exploration or mining license awarding process except when describing the environmental impact assessment process and requirement to participate in community development planning that is under Article 60 (and the latter does not explicitly require consultation as part of the community development planning). Article 58 requires a negotiation between the land user/owner and the license holder in terms of compensation that may be paid due to loss or damage caused by mining activities.

Most modern mining regimes now require community consultation as early as the exploration stage. When community members view exploration geologists surveying or conducting early exploration activities and they are not informed, this does not establish a good basis for trustworthy relationships further along in the exploration or mine development process. The lack of clear consultation requirements around community development planning suggests that companies decide the community's development priorities on their own. Effective corporate responsibility investment is best undertaken while engaging either local government or community leaders to better develop social development priorities.

31 IFC\http://www.ifc.org/wps/wcm/connect/938f1a0048855805beacfe6a6515bb18/IFC_StakeholderEngagement.pdf?MOD=AJPERES
Environmental management framework (National Environment Policy, EIA Framework Proclamation, etc.)

The various policy and legal instruments that describe the EIA/ESMP process do call for public participation. However, details regarding the definition of “consultation” and “participation” are not included. There are references to including public views on a “go no go” option regarding development project in the Environment Policy. However, the EIA/ESMP processes appear to assume that other options regarding land use may already have been considered, and the “go no go” option cannot be exercised.

9.2.2. Key Issues

Stakeholder engagement related to government

The MoMPNG has indicated an interest in working more closely with civil society groups to better integrate socio-economic and environmental priorities into policy making and implementation. It was noted that a culture of stakeholder consultation is not entrenched in the MoMPNG, unlike in some other ministries such as health or education where stakeholder input (other government entities, civil society, etc.) plays a more significant role in helping to define ministry priorities, plans and programmes. This tendency is more marked in the Regions where capacity generally is lower and there is less inclination to involve additional stakeholders in awareness building or information sharing around impacts of a mining project on resident populations.

Stakeholder engagement related to companies

Company consultation appears to centre on local government as the representative of the communities. There do not appear to be broad-based stakeholder consultation efforts, including regular updates and information sharing on mining operations unless undertaken in a limited, once-off manner through the EIA/ESMP process. Communities do not seem to have access to a grievance procedure in the event that companies are not complying with social investment commitments. This type of process could be legislatively entrenched formally in a company-community agreement around social investment initiatives (as mentioned in the Community Development section of this report).

As more large-scale mining projects are developed in Ethiopia, and there is more community awareness about rights and responsibilities around this development, it will be more imperative for government and companies to address stakeholder engagement issues up-front. Defining processes and increasing understanding about the benefits of stakeholder engagement to both parties will assist in this preparation. The policy options that follow are offered with these objectives in mind.

9.2.3 Policy Options

Build understanding and awareness of the importance of stakeholder engagement, especially multi-stakeholder processes

Many developing countries lack capacity or experience in managing stakeholder engagement. Some developed countries with a strong mining culture such as Canada have become world leaders in this area. Case studies and examples from these jurisdictions could provide the MoMPNG with valuable insights regarding the benefits and processes of stakeholder engagement. The MoMPNG should prioritise this aspect of its interaction with society as part of its programming going forward (and as a priority noted in the MoMPNG’s objectives to align with national development planning).

Training and outreach programmes to address these issues in the Regions could assist in raising the level of awareness and understanding about how to make the most of stakeholder engagement. This field is growing, particularly as it relates to the extractives sector, and there are lessons learned that could be applied to the growing mining sector in Ethiopia. Such initiatives also assist in helping government and communities to negotiate community-mining company agreements, seek and integrate input into policy making and implementation, and in improving public participation in mandated processes such as the EIA/ESMP.
Revise the mineral policy and legislative framework to address Stakeholder Engagement more fully

Currently, the Stakeholder Engagement section of the draft mineral policy requires an Advisory Council to be set up to advise on a range of mining issues. This is certainly a step in the right direction, but the policy could provide more substance on the role of stakeholder engagement, the commitment of the MoMPNG to more inclusive governance of the mining sector, and measures suggested to improve companies' performance in this area.

The Mining Proclamation/Regulations should require exploration and mining companies to undertake consultation at the earliest stages of interaction with communities. Different types of “consultation” that should be required (as noted in Figure 14 Stakeholder Engagement Process that describes the different phases of consultation depending upon the requirements, the number and categories of stakeholders included) should be clearly set out and targeted at various stages of the mining lifecycle.
As part of the community development agreement negotiation, training in multi-stakeholder negotiations should be required for all parties involved in the negotiation of these community-mining company agreements (including government).

There are a number of international standards that prescribe stakeholder engagement at various stages of an exploration or mining project. The Prospectors and Developers’ Association of Canada (PDAC) has developed the E3Plus series that provides guidance on how exploration companies should be interacting with communities from the moment they set foot on community land.

The IFC has provided an extremely good reference for companies operating in the developing world that is called ‘Stakeholder Engagement: A Good Practise Handbook for Doing Business in Emerging Markets’ and has been referenced in this Chapter.

Options for including a more formalised and descriptive stakeholder engagement process required of exploration and mining operations are included in the Legislative Options report.

**Improve the public participation process required in an EIA/ESMP**

While there is provision for public participation at the EIA/ESMP stage of mining license approval, this process could be more defined and prescriptive. Importantly, there should be requirements for information sharing throughout the lifecycle of the mine, and as the ESMP is updated (and linked to environmental and social audits). A mining project is a fluid operation – many social and environmental impacts are felt differently as time goes on. There may be significant unplanned inward migration into a mining area, causing pressure on water and other natural resources. Such issues will need to be managed using a multi-stakeholder approach.

There must be interaction between the license holder, government and the community as the mining operation progresses. The mine may require additional land for tailings disposal or for other waste management requirements; it may need to expand operations and thus gain community cooperation for resettlement, and it will need to involve the community far in advance of mine closure. The mine will also need to consult with the community around on-going corporate responsibility investment. For these and many other reasons related to good corporate citizenship, it is to the mine’s (and government’s) benefit that stakeholder engagement processes are clarified and required to the extent possible early on in project development and catered for throughout the life of mine.

**Support involvement of civil society (and the donor community) in community development**

As noted above, civil society input can be valuable to government in terms of providing balance and perspective to the development of the mineral sector. Civil society can also support mining company initiatives in delivering corporate social responsibility programming (particularly in health and education) to mining affected communities. The engagement of civil society in these roles can add needed capacity and provide a partnership approach to effective CSR. As part of the legal requirement for community development agreements, the role of civil society in helping to negotiation and implement these agreements should be included in the legislative framework.
9.3 Labour Issues

“A sustainable and well-governed mining sector that effectively garners and deploys resource rents and that is safe, healthy, gender and ethnically inclusive, environmentally friendly, socially responsible and appreciated by surrounding communities.” – Goal of the Africa Mining Vision (2009)

As has been noted in this report, at this stage of mining development in Ethiopia, most mining has been undertaken at an artisanal, small or medium scale. There are few large-scale mines producing at this time, but it is expected that new mines will be developed in the near to medium term. Thus, it is important that the country prepare for the arrival of these mines and ensure that the policy and regulatory framework that governs labour issues particular to this size of mining provides adequate protection to workers and necessary oversight responsibilities to the proper authorities.

9.3.1 Analysis of Current Policy and Regulatory Framework

Currently, there appears to be no regulatory authority for the MoMPNG to provide oversight on any aspect of labour related issues (conditions of work, occupational health and safety, labour-management contracts, and the like). There is no reference to these matters in the Mining Proclamation 2010 or the amendment of 2013, nor in the Large-scale Model Mine Agreement. However, in the draft mineral policy and in the Council of Ministers Draft Regulation on Mining Operations, reference to the MoMPNG’s role in health and safety matters is included.

Draft Mineral Policy

Under 4.2.1.8 Institutional Framework, the draft mineral policy calls for the MoMPNG to have a regulatory function to monitor health and safety at all mines and quarries. It is unclear as to whether the intention is to share this function with the Ministry of Social and Labour Affairs (MoSLA). This Ministry currently has the mandate for implementing the Labour Proclamation 2004 which includes aspects of health and safety generally applied to all industrial sectors. Clarity is required on the respective oversight roles of the two Ministries in Health and Safety regulation of the mining sector.

Further, there is a discrete section in the policy, 4.2.10.1 Mine Health and Safety that provides detail on how the Ministry intends to promote healthy and safe working conditions at all mines. The policy measures include the development of a Mine Health and Safety Regulatory framework for monitoring health and safety at mines. This seems to include a Mine Health and Safety Proclamation which will bring mining sector specificity to the current general labour regulatory framework. However, the policy could be improved upon if there were a general heading related to the Mine H&S Regulatory Framework and then sub-headings that would include a Mine Health and Safety Proclamation. There are other aspects of a Mine H&S policy that could be added to the existing section. These would include reference to different H&S requirements for underground mining as compared with surface mining, for example.

Other policy objectives include measures to address the spread and control of infectious diseases that affect the mining industry particularly (due to factors such as the practise of labour migration) such as HIV/Aids and accompanying diseases including tuberculosis. The policy also includes objectives to improve the hygiene and physical environment to reduce the incidences of malaria.

Council of Ministers Draft Regulation for Mining Operations

Article 40 of the draft regulation includes provisions related to employer responsibilities even though the mining proclamations of 2010 and 2013 do not include the Ministry’s responsibilities for occupational health and safety. Presumably, the appropriate legal instrument (a new Health and Safety Proclamation or Directive, for example) will be drafted to provide the legal basis for this regulation.

The provisions call for a proactive response of mining companies to identify potential causes of occupational injury and diseases, to take preventative measures and provide employees with personal protective equipment (PPE) as well as appropriate training.
The license holder is also expected to provide medical facilities (appropriate to the level and nature of operations) and to follow procedures for safe transport, storage, handling and use of explosives and chemicals. The regulation requires the prompt reporting of accidents or fatalities and the mitigation of this impact on the operational environment.

Figure 15: Safety Working at Heights

This regulation does not fully bring effect to the Draft Mineral Policy objectives with regard to health and safety management in the mining sector. More complete regulations that provide guidance regarding the health and safety requirements in large scale underground mining as well as requirements for company risk management planning, for example, are needed. Specific policy proposals to deal with these issues will be included under the Policy Options section.

**Labour Proclamation 2003**

According to the Director of the Labour section of the Ministry of Labour and Social Affairs, Ethiopia is a signatory to ILO labour standards and the labour proclamation has been “domesticated” based on these standards. Indeed, review of the Labour Proclamation 2003 indicates that it is in keeping with international best practise and that provides comprehensive guidance on employer and employee obligations with respect to all aspects of labour-management.

The Ministry has established specific Directives related to sector specific labour issues for a number of industrial sectors, but not for the mining sector. This has been recognised as a gap that needs to be addressed. There is an intention on the part of the Ministry to develop a mining specific Directive that would include greater specificity than exists in the Labour

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Proclamation 2003 regarding occupational health and safety requirements and compliance. However, the general Labour Proclamation does include features that are consistent with international best practise in risk management for H&S issues in the mining sector.

Part 3 (12) of the Proclamation deals with the obligations of the employer with respect to employment contracts and conditions of work, including those relating to health and safety. There is a requirement for the employer to take “all necessary occupational safety and health measures” and to comply with legislation in this regard.

There is further detail provided in Part 7 of the Proclamation that deals explicitly with the Occupational Safety, Health and Working Environment. The obligations of the employer are outlined and these comply with international best practise health and safety standards. They follow an accepted risk management format of: determination of hazards and the elimination of these to the extent possible through operational design, identification of remaining hazards, health and safety related training of employees to avoid risk, provision of personal protective equipment, the establishment of a safety officer, an occupational, health and safety committee and a system to report accidents, injuries or fatalities.

However, while the employer is required to pay for a medical examination of the worker if required, there are no provisions related to employer responsibilities to provide a health post at the mine site, or access to medical facilities in the event of an accident or other type of health emergency that may arise from a worker’s exposure to hazardous features of a mining activity.

There is also insufficient specificity to deal with mining related matters that would require consideration at the mining engineering and design stage of mine construction (such as allowing for sufficient ventilation, slope stability, tunnel specifications, etc.). These should be provided for in a mining specific Directive, Regulation or Proclamation depending upon the institutional arrangements that are agreed between the MoMPNG and the Ministry of Labour and Social Affairs.

In addition to occupational health and safety issues, the regulation of child labour and women’s participation in mining activities should be considered. Article 89 of the Labour Proclamation deals with the working conditions of young workers. Young workers are described as being 14-18 years of age. There are restrictions on employment of young workers in underground operations such as mines and quarries. The proclamation includes discretion for Ministers to specify types of work not suitable for younger workers. However, there does not appear to be provision to prohibit the employment of young workers in surface mine operations.

Section 87 notes various features of women’s participation in the mining industry. It includes non-discrimination clauses, as well as social protection elements related to restrictions on women’s employment in hazardous work environments, and especially while pregnant. There are internationally accepted provisions related to maternity leave and job security.

9.3.2 Key Issues

There is currently a regulatory gap in terms of mining specific regulation and oversight provisions for mining specific health and safety requirements. While the general Labour Proclamation does provide for internationally recognised health and safety standards, these need to be framed within the context of specific risk management requirements of a mining operation. There especially need to be guidelines related to health and safety risks particular to underground mining and for more comprehensive approach to risk management planning requirements for mining companies. It appears as though there is a degree of uncertainty in terms of the institutional responsibility for the regulation and oversight of health and safety requirements for the mining sector.

The capacity of existing authorities to require and monitor adequately the risk management plans of companies may require strengthening. As the current labour legislation only relates to industrial level mining activity, health and safety issues at the smaller scale and artisanal level are not being addressed.

There is incongruity between the Mining Proclamations 2010 and 2013 and the Draft Policy and Draft Regulations in terms of the Ministry’s mandate to provide oversight on O,H&S (Occupational Safety and Health) issues. These need to be reconciled in partnership with the MoLSA.

Interviews with stakeholders indicated that there are O,H&S problems within the artisanal and small scale mining sector. More specific regulation of this level of mining is required.
9.3.3 Policy Options

Clarify institutional arrangements for regulation and oversight of health and safety requirements specific to the mining sector

Currently, as noted above in the analysis of legislation related to O, H&S, there are conflicting instruments defining the institutional authority for regulating this aspect of the mining sector. Attention should be paid to clarifying the roles and responsibilities of the various authorities charged with inspection of mine sites.

Option 1: Recognise the role of the MoLSA in terms of its mandate to enforce national legislation on health and safety and remove the suggestion of MoMPNG taking on this responsibility from the Draft Mineral Policy and Draft Regulation. The advantages of this option are as follows:

- The Labour Proclamation 2003 reflects international best practice (ILO standards). While there is no specific directive on O, H&S features of the mining sector, an interview with the Director in the MoLSA indicated that this was recognised as a gap and the Ministry would seek to develop such a mining specific Directive in the near future.
- From a governance perspective, it is desirable to separate the mining regulatory and oversight responsibility (in terms of awarding of licenses and the monitoring of these) with other regulatory responsibilities related to environment, social and labour issues.

This is because the mine has a prior relationship with the MoMPNG through the awarding of the license. The mine depends on the MoMPNG to retain that license through compliance with various requirements beyond licensing terms and conditions. The nature of this existing relationship can compromise the neutrality of both the mine and the licensing authority when enforcing compliance with labour-management issues. The same argument holds true for management of environmental and social impacts.

- The capacity of the MoMPNG to undertake inspections on O, H&S would be required and the current organisation of the Directorate of Community Development and Environment’s mandate is already heavily taken up with monitoring the ESIA/ESMP processes. Monitoring of the O, H&S aspects of a mining operation should not comprise the ESIA/ESMP processes as these are very different in nature (i.e. they are not considered “impacts” of a mining operation as impacts are normally focused on communities and the environment).

The challenges to implementing this policy are the following:

- There has already been significant consultation on both the Draft Mineral Policy and Draft Regulation, and a role for the MoMPNG in regulating O, H&S aspects of a mining operation has been inserted into these documents. It may be difficult to reverse a trend that has already gained significant traction.
- It is not clear why the MoMPNG wishes to add this regulatory responsibility. It could be that the MoLSA does not have sufficient capacity to take on this role, or that the Ministry is not performing this function because there is no mining specific Directive that deals with the mining sector at this time (although the Labour Proclamation 2003 does contain sufficient regulatory provisions that would relate to a mining operation).
- The MoMPNG may be concerned that a specific Directive governing O, H&S issues in the mining sector may not be developed in a reasonable timeframe by the MoLSA and so it is taking on this task.
- The mandate of the MoSLA only extends to industrial level mining. There is a currently a gap for artisanal and smaller scale mining that perhaps the MoMPNG wishes to address within its own mandate.

Option 2: Provide for a shared responsibility for O, H&S with the MoSLA, the Ministry of Health and the Regional Mining Bureaux

This option recognises the primary role of the MoSLA in regulating O, H&S in the mining sector, but allows for a shared inspection function with the MoMPNG, the Regions, and coordination where relevant with the objectives and mandate of the Ministry of Health. Advantages of this option are the following:

- Given that there appears to have been agreement on including this role in the MoMPNG’s mandate (even to the Council of Minister level), following through with this decision will likely be less problematic than removing it from the
Draft Policy or the Draft Regulation. Adoption of this option will required revision of the legal text in the Mining Proclamation (to be reviewed by the Legal Expert).

A shared regulatory mandate will logically lead to joint inspection teams. These are very useful in that they can combine expertise from one or more Ministry in the same site visit. The MoLSA can provide expertise in labour-management issues including O, H&S and the MoMPNG can provide expertise in how a mine is designed and operates. Further, joint teams can reduce the impact of the inherent conflict of interest within the MoMPNG’s mandate of regulating labour issues on a mine that it has licensed. Further, mining companies appreciate joint inspection teams as it reduces interruption frequency to its operations.

O, H&S policy objectives related to health matters should be coordinated with the Ministry of Health so that there is synergy between the objectives and activities of the MoMPNG and the Ministry of Health. Many international donors are involved in these health matters and with a coordinated response to these type of health issues prevalent in the mining sector (but not necessarily exclusive to the sector), it is more likely that donor support for health oriented programmes can be achieved.

Formalising the O, H&S monitoring role of the Regional Mining Bureaus through legislation will provide needed clarity to the existing mining legislation framework that does not deal with these aspects of a mining operation.

**Develop a Directive (or some other legal instrument) for management of O, H&S issues specific to the mining sector**

The mining sector carries specific exposure to risk in terms of worker O, H&S. Hence, many countries have developed discrete legislative instruments to address the particular issues in this sector. One example is the South African Mine Health and Safety Act 1995. This Act’s objectives are the following:

- To provide for protection of the health and safety of employees and other persons at mines and, for that purpose:
  - To promote a culture of health and safety;
  - To provide for the enforcement of health and safety measures;
  - To provide for appropriate systems of employee, employer and state participation in health and safety matters;
  - To establish representative tripartite institutions to review legislation, promote health and enhance properly targeted research;
  - To provide for effective monitoring systems and inspections, investigation and inquiries to improve health and safety;
  - To promote training and human resource development;
  - To regulate employers and employees duties to identify hazards and eliminate, control and minimise the risk to health and safety;
  - To entrench the right to refuse to work in dangerous conditions; and
  - To give effect to the public international law obligations of the country relating to mining health and safety.

The MoSLA intends to develop a Directive with specific guidance to the mining sector (as it has done for other sectors in the economy including construction). Reference to legislative frameworks in countries with a long history of mining can help frame mining-specific O, H&S requirements. In addition, the International Labour Organisation has developed a

Convention that applies to the mining sector’s unique environment in terms of worker O, H&S. This should be referenced as well as other appropriate legal standards. The project’s legal adviser will provide further direction and guidance in this area.

Provide O, H&S guidelines specifically for Underground Mining and for Artisanal and Small Scale Mining

Currently, there is no provision for O, H&S requirements for both u/g mining and ASM. Neither the Draft Mineral Policy nor the Draft Regulation distinguishes between types of mining. Experience in South Africa and elsewhere where there are deep level u/g mines shows that specific health and safety issues are present in this type of mining (exposure to very high temperatures, managing excess water, slope and wall instability, etc). For ASM, there are problems with construction of mines using rudimentary methods and materials, leading to wall and tunnel collapse, and associated fatalities.

Advantages of including specific legislation to deal with these types of mining include:

For Underground Mining:

- Sufficient regulation to ensure that the authorities can demand of companies the necessary preventative measures to reduce the likelihood of injuries, accidents and fatalities from u/g mining
- Use of an international standard or country example for u/g mining will increase the effectiveness of the legal framework and encourage company adoption

For ASM:

- The drafting of a specific regulatory framework for H&S issues within this sub-sector should assist the Regional Bureaus in their inspection and monitoring function
- Specific regulation will make it easier to provide training and capacity building of ASM to meet legislated requirements
- Increased regulation and more effective and targeted monitoring should result in fewer injuries, accidents and fatalities.

Within the cultural context of Ethiopia, decide if young workers (between 14 and 17) should be allowed to participate in any form of mining.

The Labour Proclamation prohibits young workers from working in u/g mining but is silent on the employment of these workers from other types of mining. There should be synergy with the goals of the Government of Ethiopia with respect to education with the realities on the ground related to poverty reduction. If there is a concern that families need the income that young workers provide, policies should be adopted to address this issue.

Advantages of addressing the issue of young workers’ participation in open cast or ASM in the legislation include:

- Clarifying restrictions on employment of youths in any form of the mining sector and reducing the current level of Ministerial discretion (in the Labour Proclamation, Section 89) would assist in ensuring compliance.
- Implementing the government’s policy on education would ensure that longer-term objectives related to lifting communities out of the poverty cycle would be more likely to be realised.
- If families need some family income provided by young workers, there can be adjustments made so that the young person can work for half a day (if absolutely necessary) then participate in schooling activities for the rest of the day. If engaged in ASM, this type of mining is usually seasonal, so that young workers may work only a portion of the year in the mines, and attend school for the remainder of the year.

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34 C176 - Safety and Health in Mines Convention, 1995 (No. 176) ILO

Specific activities that young workers would be allowed to undertake should comprise part of the guideline on O, H&S management of all levels of the mining sector.

There may be cultural, traditional or poverty related challenges related to enforcing a policy of restricting youth employment in the mining sector. These can only be determined by consultation with a broad range of stakeholders.
10. Artisanal and small scale mining

10.1 Introduction

There is no consensus on what constitutes an artisanal and small-scale (ASM) mining operation; neither is the boundary between ASM operations clearly defined. This is partly because definitions vary from country to country. Despite differences in definition, miners regularly are seriously under-capitalized, rarely operate as proper business enterprises and lack appropriate and modern technology.

ASM operations exist in many developing countries and this part of the mining sector has been subject to intensive scrutiny in recent decades. There is an overall agreement that although these types of activities may assist with the development of local entrepreneurship, and overall economic development, it is also a sector which is associated with significant negative environmental impacts, and often with poor social conditions. Further, ASM is often performed in remote areas which government agencies may have difficulties in accessing, making supervision and control of the sector a significant challenge.

ASM mining is generally done by hand using simple technology in the form of shovels, picks and wheelbarrows. There is generally neither drilling equipment nor any explosives used, and there is no earth moving machinery employed. The activities are sometimes carried out without valid permits for conducting activities and with limited finance for development. The knowledge of the geology or deposits being mined is limited, leading to an activity with a very short planning horizon. These methods are wasteful, resulting in inefficient mineral recovery. The mechanized form of ASM has higher throughput and better recovery, but in turn is more labour intensive than medium to large-scale operations.

Encouragement and support for informal miners to form cooperatives or formal companies have in some cases led to considerable improvements with regards to the ability of the authorities to understand the sector, and thus to supervise the sector. Projects related to building the capacity of ASM miners in terms of technical, economic and/or environmental management skills have often been well received, although lasting benefits remain difficult to prove.

Ongoing conflicts between ASM and LSM operations have been reported in many developing countries (e.g. Tanzania, Zambia, Ghana and DRC). The issues are generally not clear cut, or easily resolved. The ASM miners may, in some cases, be the ones that initially discovered the mine, but in some cases ASM miners may be infringing on legally unassailable rights. This is not reported in Ethiopia, but could be an issue if more LSM operations are established.

10.1.1 The African Vision (AMV) on ASM

The ASM sector is recognized in the African Mining Vision (UNECA 2009), which has the following view on ASM:

In Africa, about 3.7 million are directly engaged in this sub-sector and about 30 million depend on it. It is an expanding sub-sector predicted to triple by 2012. Increasing numbers of people turn to it to seek alternative livelihoods, particularly in marginal areas with limited economic alternatives. In many cases, this is impelled by growing economic crises, (which increases unemployment), and decreasing rural livelihood choices, exacerbated by natural (mainly droughts and floods) and man-made disasters (e.g. conflicts).

ASM is labor-intensive and provides more employment than large-scale mining. Between 15 to 20% of the world’s non-fuel minerals, approximately 18% of Africa’s gold and almost all of the Africa’s gemstones, except diamonds, are produced by ASM.

ASM is also an important factor for income generation. Revenues derived from ASM can increase local purchasing power and have the potential to catalyze SME development and foster local economic multipliers. ASM also contributes to foreign exchange earnings, and helps reduce rural to urban migration of the youth (Africa Mining Vision. 2009).
The Action Plan for Implementation of the AMV, (UNECA 2012), has the following goal:

A viable and sustainable artisanal and small scale mining sector that contributes to growth and development.

The specific action suggested is:

- Regularize and mainstream ASM into broad stream socioeconomic activities;
- Develop policies laws, regulations, standards and codes to promote a viable and sustainable ASM sector;
- Develop programs to upgrade knowledge, skills and technologies in the ASM sector;
- Determine and designate geologically suitable areas for ASM;
- Promote youth employment and engagement in the ASM sector;
- Develop methodologies or templates for distinguishing potentially viable ASM operations for targeted support;
- Develop and strengthen ASM associations;
- Implement international and Regional instruments relevant to the ASM sector;
- Develop programs for promoting value-addition in ASM;
- Develop institutional linkages from national through to local levels for effective;
- Coordinate and facilitate technology development and transfer at sub regional level;
- Develop and promote implementation of a regional tool kit for engagement between LSM and ASM including requiring LSM to develop the capacity of ASM;
- Promote and coordinate standard measures for training examination and certification for the ASM sector;
- Adopt and strengthen measures to address illicit trade in minerals.

10.2 Current Policy and Regulatory Framework

10.2.1 ASM at present

One has to remember that Ethiopia like other countries has a distinction between AM, SpecSSM and SSM meaning that the “ASM” is a more general term for non LSM. Even this is changing and a number of countries have started to use AM, SSM, MSM (medium size) and LSM. The distinction is on area licensed and/or annual production.

AM/SSM mine sites in Ethiopia share a number of characteristics. The mining is mainly being done by hand using simple technology in the form of shovels, picks and wheelbarrows. The ore accessed is excavated from surficial deposits. There is generally neither drilling equipment nor any explosives used, and there is no earth moving machinery employed. The knowledge of the geology or deposits being mined is limited, leading to an activity with a very short planning horizon.

Artisanal and small-scale activities form an important part of the Ethiopian mining sector. Most AM/SSM is carried out in remote areas, and since at least a significant part of these activities are informal, the sector remains poorly understood. In recent years, MoMPNG has been active in studying and supporting the sector and the body of knowledge is growing.

Further, the MoMPNG has, with the support of the Japanese Social Development Fund (JSDF) and administered by the World Bank commissioned a number of studies that will lead to an improved understanding of the sector. Hence, a report on the baseline situation in 30 selected AM communities has recently been published (SuDCA 2013), and more work is to be done. Further, within the SAMS project (Strategic Assessment of the Ethiopian Mineral Sector. 2014 ) half a dozen AM sites in southern and western Ethiopia have been visited and studied as well as the on-going Danida project 14 mining sites has been visited.

The most important products mined through AM/SSM in Ethiopia include, in decreasing relative economic importance: gold, gems (sapphire, opal), salt, tantalum and dimension stone. The production of these commodities through AM/SSM is significant, and is reported to have grown rapidly in the last few years, especially with regards to gold but also gems, specifically opal.
In 2012, the production from AM/SSM was reported to be more important than large-scale operations for most metals and minerals mined, and also in terms of employment generation.

10.2.2 Draft Mining Policy
The draft Mining Policy defines the policy objective for ASM as:
To encourage, facilitate and regulate the artisanal and small scale mining sectors in order to ameliorate the operational environment, ensure optimal exploitation of mineral resources, and enable these sectors to make a positive contribution to the national, regional and local economy.

10.2.3 AM, SpecSSM and SSM Licensing
The draft Mining Policy defines one of the Policy Measures
Establish a legislative, regulatory and administrative framework with a view to promote a safe, secure, just and profitable artisanal mining sector that would regulate amongst others:

Ethiopian law makes a distinction between artisanal and small scale mining. Thus, artisanal mining is defined as being non-mechanised, and performed using rudimentary tool. Small scale mining is at least partly mechanised. There are separate legal licenses available to artisanal mining and small scale mining.

The Mining proclamation of 2010 proclaims that an artisanal mining (AM) license is applied for at the Regional Mining Bureaus. It may be granted only to Ethiopian and for the majority to Association. The license provides an exclusive right to explore and mine for the minerals within the license area. It is valid for 2 years, and may not be renewed. The AM license for construction material is applied for by the local woreda.

The Mining proclamation of 2010 define a small scale mining (SSM) license for precious and semi-precious minerals is applied for at the central level for international license holders and at the Regional level for Ethiopian license holders. It is concerned with mining operation with specified maximum levels of run-of mine ore production

The implication of the requirement that the AM license may not be renewed is significant, as it entails that such artisanal mining (which the GoE is supporting through technical and financial support) will be illegal due to their difficulties in meeting the requirements for a special SSM or other license.

With the Amendment to the Mining Proclamation of 2013 the Specialist Small Scale Mining (SpecSSM) license was introduced. The Amendment of the mining proclamation of 2013 proclaims that a specialist small scale mining (SpecSSM) license for precious and semi-precious minerals is applied for at the central level for international license holders and at the Regional level for Ethiopian license holders.

The draft regulation under consideration proclaims that “the machinery used at specialist small scale mining license shall be simple and very small in relation with what is used by the holder of the SSM license, the detail determine by directive”

This introduction of the SpecSSM is tendency seen in other countries as a measure to bridge the short AM licenses and the more demanding SSM licenses.

The Regional Mining Authority has very limited experience with this new type of mining license. The visited Benishangul-Gumuz Region has only issued 1 SpecSSM whilst they have issued 125 AM licenses to 125 Associations. The SpecSSM

We used the term ‘ASM’ here as ‘artisanal and small scale mining’ is considered as one section in the draft mineral policy
can be seen as an attempt the bridge between the non-renewal 2 year AM licenses and the SSM licenses. Similar development is seen in a number of other African countries like Tanzania and Cameroon.

It is the impression from interview with stakeholders at federal and at regional level the licensing system with the inclusion of the new SpecSSM licenses is a functional license system, which provides the necessary formal framework for a future development of the ASM sector. Further it is the impression that the Regional Mining Bureau has a professional approach to the administration of the system including the incentives to formalizing the sector. It has to be emphasised that the Regional Mining Bureau need improved training to be able to support this development at technical and financial level.

10.3 Policy Options

10.3.1 Licensing Issues

Re-consider the non-renewal of AM licenses.

The policy of moving AM to longer-term mining licenses is a good one and should certainly be supported legally, technically, and politically by GOE. The main flaw of the implementation of this policy is making AM workers illegal by prohibiting the renewal of an ASM license.

Since 2014, it is no longer possible for artisanal mining licenses to be renewed beyond the initial two year period. If the training and capacity building programme just outlined is indeed undertaken with sufficient resources, the government’s ambition to move artisanal miners into a more productive mode of production may succeed. However, in the absence of a major effort to train and support miners, there is a risk that they will be forced into illegality, with all the attendant consequences, including reduced incomes, lack of means to promote good environmental management and labour practices, and loss of export revenue. Accordingly, the MoMPNG should:

- Evaluate, together with NBE and regional bureaus of experience, the extent to which illegal mining and smuggling are increasing. Possible indicators include government purchases of gold as well as number of Special Small Scale Mining Licenses and Artisanal Mining Licenses issued.
- Depending on the outcome of the evaluation, consider the reintroduction of renewal of artisanal mining licenses

Eliminate the priority for LSM before AM and/or SSM, including Special SSM, rights. Allow these rights to be transferred to an LSM licensee.

This hierarchy mechanism should be phased out to avoid conflict. These licenses often are relatively short term, compared to LSM. The activities conducted under these licenses provide employment, foreign exchange, and contribute to the robust construction sector.

The current policy of increasing LSM through a more streamlined and best practice minerals law and policy is a good one; however, experience from countries around the world shows that rapid displacement of AM and SSM with LSM can create conflict that can deter investment instead of attract it. An LSM licensee or prospective licensee should negotiate with these licensees to buy-out those miners if there is an area that it wishes to mine. This will require transferability of the license. MOMPNG can facilitate and support these negotiations between large scale and artisanal miners, in a similar manner as the recommended CDA approach with local communities; and, the transfer should require MOMPNG approval like any other transfer in the LSM context (as would also be necessary under the CDA approach). The legal framework would need to be amended to allow for transfer of ASM, Special SSM and SSM licenses to an LSM or prospective LSM licensee.

In essence, LSM and/or prospective LSM licensees should be required to negotiate with both non-LSM miners on an area it seeks to mine as well as communities that are on that area or in the “catchment zone” of the LSM project. The MOMPNG still has a strong role to play as an honest broker of these negotiations and the ultimate approver of the negotiated agreement. This system takes administrative and legal pressure off of the Ministry in the current system. With approval power of these agreements, the MOMPNG is not relinquishing its oversight role.
An additional option to safeguard the rights of ASM miners and prevent potential conflicts with LSM and SSM industries is to create earmarked ‘zones’ for ASM where it is found that it is not possible for SSM and LSM to conduct their operations.

10.3.2 Financial Assistance to ASM

Review the current regulations for extending credit to ASM cooperatives through State owned banking system with a view to allowing loans to be made against collateral in the form of future sales revenue.

Access to finance is one of the biggest challenges facing many AM/SSM operators. Among the many reasons for this, especially for SSM, is that mining is a capital-intensive business and much of the high-risk early-phase work, such as exploration and ore reserve estimation, is typically financed from equity. This phase does not attract other forms of finance, including that from mainstream financial institutions.

These financial constraints mean that most AM/SSM operators cannot become involved in this early phase and consequently, without quantified ore reserves, they cannot develop the robust and credible business plans that banks require. (They rarely have the ability to develop such business plans anyway.)

AM/SSM operators have few, if any, assets acceptable to banks and other lending institutions as collateral. Unlike their LSM counterparts, they cannot use their mineral rights since the reserves are not quantifiable and their lack of a business plan forestalls risk analysis by creditors.

These factors place especially AM and also majority of SSM operators outside the realm of formal financing institutions, leaving their scarce internal resources and concessionary government support as sources of finance.

Ethiopia has the Government owned Credit and Savings Enterprise, which provides loans to the ASM sector. The main challenge for this, especially for AM, is that an in-kind contribution of 20 % is demanded. The Commercial Bank of Ethiopia also provides loans with the same constraints mentioned above. In view of the well organized and controlled nature of the gold value chain in Ethiopia (see the following), gold mining cooperatives may be considered a relatively good credit risk with little risk of sales proceeds being diverted. It may therefore be possible for the banking system to extend loans against collateral in the form of future revenues. This possibility could be investigated.

It is the impression from interviews with stakeholders at federal and at regional level that the financial support provided through the Regional Mining Bureau not is sufficient. This situation is not sustainable and the MoMPNG has to allocate resources to assess the situation and develop measures in line with other countries. A few examples for other countries are given below:

**Nigeria:** Through the Sustainable Management of Mineral Resource Project (SMMRP – WB loan) the Government provided financial support through the Small Grant Facility and an established revolving fund for loans. After the termination of the SMMRP in March 2013 has the Small Grant facility been terminated and the loan facilities is limited. A new initiative called The Mining Fund might change this situation.

**Tanzania:** The Sustainable Management of Mineral Resources Project (SMMRP – WB loan) has been revitalized and support to ASM sector has high priority. A Small Grant facility and revolving loan facilities is planned to be established

**Zambia:** The Government of Zambia has a couple of times provided some grants to ASM sector and a kind of revolving fund for loans are to some extent active.

**Cameroun:** The “Projet de Renforcement des Capacités du Secteur Miner” (PRECASEM – WB loan) are supporting the Government initiated program CAPAM (Cadre d’Appui pour la Promotion de l’Arasanat Minier), which to some extent provide loan to the ASM sector.

**Kenya:** The Ministry of Mines is very new and with limited human resources. A new mining law is at the Senate for final approval. The new mining law provides guidance on possible financial support from Ministry of Mines.

**Mozambique:** The Mining and Gas technical Assistance Project (MAGTAP-WB loan) will assist the Government to provide financial assistance to the ASM. A study has been initiated to recommend possible ways for this support

**Providing jewellers at regional level with the opportunity to buy gold from GPC to avoid the minor trade outside the GPC control should be considered**
The main value chain for gold in Ethiopia is very impressive and is actually working in a very dynamic fashion:

Value Chain: AM operator – Licensed broker – Gold Purchasing Centre (GPC)

The Gold Purchasing Centre is an entity in all regions and located at the Commercial Bank of Ethiopia in the capital of the respective regions. The GPC only buys amounts greater than 250 g. The GPC acts on behalf of the Central Bank of Ethiopia in Addis. The GPC pays 5% above the world market price. GPC only buys gold from licensed brokers and AM Associations.

The GPC reports name and quantity of gold bought to the Regional Revenue Authority to ensure collection of taxes. The licensed brokers have to apply for a license at the Regional Mining Bureau. The license can only be renewed if the broker has a letter from Regional Revenue Authority that taxes has been paid. This is compared to other countries a very well developed system providing good control of the value chain.

Fig 19: The Gold Purchasing Centre in Tigray Region is located in the Commercial Bank of Ethiopia. Endaselassie Branch

Fix 20: The brokers melt the gold from ASM operators into 250+g gold bars.

Fix 21: Two brokers selling gold at the Gold Purchasing Centre in Tigray Region

The amount of gold bought through the above system from ASM is reported to have increased dramatically in recent years: from a bit more than 400 kg (13,000oz) in 2008/2009, to in the excess of 8,000 kg (270,000oz) in 2011/2012. The latter amount is remarkably large, and well in excess of the gold produced by AM/SSM miners in such established gold mining countries as Ghana or Tanzania. Further, the findings of the few field visits performed during SAMS project and the DANIDA project as well as present project suggest that the ASM gold sector may be rather less developed than the impressive production figures would seem to indicate. This means that introduction of better technology and mining methods would improve production.

The SAMS project claims that “the smuggling and illicit sales of gold to non-licensed buyers is reported to be rather widespread, and this has occurred in spite of the government policy of paying a 5% premium over the daily gold price. The reasons behind these illicit sales include a wish to avoid paying royalty (5%), and a belief that the price paid by the illicit traders is higher than those being paid by the government. These findings are not in line with the prevailing belief that the gold buying mechanism that is in place is effective, which in turn suggests that further studies are required.”

The present project discussed this issue with stakeholders in the Benishangul-Gumuz during a 3 day field mission. The observations are the following:

The jewelers have to buy gold from Central Bank of Ethiopia, which is tiresome and costly due to the distance to Addis. Therefore gold is bought directly from AM operators or from brokers. One stakeholder mentioned that in near future (2-3 years) the jewelers will be able to buy gold from the GPC.

Trade in gold was reported over the Ethiopian/Sudan border. The central bank of Ethiopia pays 5% over world market price. Central Bank of Sudan pays world marked price, which is an incentive for trade into Ethiopia. Others claimed that Central Bank of Ethiopia pays in Birr and Central Bank of Sudan pays in USD, which in some cases could be an incentive for trade out of Ethiopia.

The amount of illicit trade is not known. A broker/jeweler estimated it at 2-3%. It is the impression from interview with stakeholders at federal and at regional level the value chain for gold is well organized and functional. It should be considered that jewelers at regional level will have opportunity to buy gold from GPC to avoid the minor trade outside the GPC control.
A similar value chain with the central bank buying the gold has been tried in Mozambique through a government Mining Company. This has been terminated due to lack of funding to buy.

The Government in Cameroun purchases gold from the SpecSSM (mainly Chines and Korean companies) and SSM with operational assistance from CAPAM. The intension is to expand this system. Best estimate is that less than 100 kg was purchased last year.

For the majority of African countries the official value chain is:

ASM operator – licensed buyers – licensed exporters

However, the smuggling and illicit sales of gold to non-licensed buyers is reported to be rather widespread in many countries.

In order to enhance value addition in the gemstone sector, the MoMPNG should adopt their policy for the opal sector for the gemstone sector and demand an increased ratio of exports which are polished or cut.

The most important gem in terms of value is opal, which is mainly being mined at one locality in the North Wollo Zone, northeast of Addis Ababa. Opal from this locality is of much higher quality than those of other areas in Ethiopia and the so called “Wollo Opal” has to some extent gained popularity in the wider global markets since 2010. Most of the other types of gems mined are found in in the south of the country.

The Opal production increased from just 658 kg in 2008/09 to 34.320 kg by 2013/14, with production figures being much higher than the targets set in the GTP1 (2010 to2015) The MoMPNG estimates in 2012 that there were about 2,000 people in 7 associations involved in gemstone production in 2012. Addis Fortune reports that there are 50,000 artisan gemstone miners and over 200 exporters in Ethiopia. Miners sell their stones to licensed brokers, who are selling to licensed lapidaries (56 licenses as of August 2015) and/or licensed exporters.

In 2008 the Amhara regional government (The Gemstone Processing and Lapidary Project) invested 120 million Birr (US$6.87 million) in lapidary equipment and established 17 lapidary programs to provide lapidary training to youth, women and rural populations, promoting self-employment and income generation. However, when the program ended, virtually all of the trainers and trainees left the industry due to a lack of demand for their skills. According to a DFATD-led scoping mission conducted in 2013, the lapidary equipment at TVET institutions is still in excellent condition and the people trained remain an excellent potential resource for the industry. The challenge is to bring their skills up to international standards and to ensure that the industry processes enough gemstones to keep them employed. (DFATD Summary Report 2014: Ethiopian gemstone maximizing potential)

The MoMPNG has been successful in putting pressure on the exporters to have value addition in Ethiopia. At present 40% of the export are cut/polished stones and 60% is export of raw stones. The MoMPNG hopes to continue to increase this ratio to ensure an increase in value added in Ethiopia.
The exporters interviewed did also have a lapidary license and to manage the demand from the MoMPNG the import trained cutters/polishers from their contacts in India to the Ethiopian staff.

The MoMPNG has separated the former AM Department into two departments. One of these has as one of its main objectives to improve access to the market and support promotion of Ethiopian gemstones. The potential for the opal sector in Ethiopia to contribute towards foreign exchange earnings, domestic revenue and employment within the country is dependent on the ability of the state to move the sector toward further value addition.

The exporters interviewed told that the present production can satisfy the export demands. The Opal mining is carry out by AM with a very poor technology. It is the impression from interview with stakeholders active in the opal sector that this is a sector with a large potential. To increase the production and by this the foreign exchange earning the following has to be considered:

- The MoMPNG and Regional Mining Authority has to improve the working conditions and mining technology used by the AM operators.
- The MoMPNG has to consider further improvement in the cutting/polishing capabilities among AM and not only leave this to the exporters.
- The GSE need to make a mapping of the geological very distinctive layer containing the opals to ensure future planning of new mining sites.

In addition to opals are the Amhara and Oromia regions particularly well known for quality gemstones. These regions have a wide array of gemstone deposits that include opal, fire opal, beryl (aquamarine and emerald), corundum (sapphire and ruby), garnet, peridot, tourmaline, apatite, obsidian, feldspars (amazonite and yellow orthoclase) and quartz (amethyst, citrine, chrysoprase, rock crystal, tourmalinated quartz, chalcedony and a wide variety of agates and jasper).

It is the impression from interview with stakeholders in the gemstone sector that this is a sector with a good potential. The majority of the non-opal gemstone mined in Ethiopia is exported as raw stones mainly to India. The MoMPNG should copy the development in the opal sector into the gemstone sector and demand an increased ration of polishing/cutting to the exporters.

**Develop guidelines for restoration and “mining closure” and better monitoring tools for the regions’ environmental work**

Environmental Monitoring at Federal level

The MoMPNG is responsible for issuing the different categories of LSM licenses as well as the different categories of SSM licenses to international companies. The Ministry of Environment and Forest (MEF) are responsible for developing and maintaining the EIA guidelines. The power to review and approve EIA for the mining sector has been transferred to MoMPNG. It has been agreed that MoMPNG report to MEF on a quarterly basis.

The MoMPNG will receive report on the Environmental Management and Monitoring from the companies having an EIA. This report has to be approved. The responsibility for the above are with the MoMPNG are in the Environment and Community Development Department. The department has in its work program to do independent inspection of mining sites but due to lack of funding is this not done very often. The Director of the Environment and Community Development Department mentioned that it was in the work program to start training the environmental officers in the Regional Mining Bureau.

The director of the Environment and Community Development Department confirmed that Ethiopia has signed the Minamata Convention and is awaiting ratification in the parliament. MoMPNG and MEF will then have to assess the issue of mercury use in mining in Ethiopia as a preparation for the first National Action Plan. The department has no reports of use of mercury in AM and SSM except the government own mining enterprise in Adola.

Environmental Monitoring and Regional and Woreda level

The Regional Mining Bureau is responsible for issuing AM licenses, SpecSSM licenses as well as the different categories of SSM licenses to Ethiopian nationals. The AM licenses and SpecSSM licenses can only be issued to Ethiopian nations. The Regional Bureau for Environment and Forest (RBEF) are responsible for developing and maintaining the EIA
guidelines. The power to review and approve EIA for the mining licenses issued at regional level is with the RBEF. The responsibility for the environmental monitoring of regional issued mining licenses is with the Regional Mining Bureau. The woreda issue AM licenses in for construction material and have the responsibility for environmental monitoring.

The responsibility for the above in MoMPNG is in the Environment and Community Development Department. The department has in its work program to do independent inspection of mining sites but due to lack of funding is this not done very often.

It is the impression from interview with stakeholders at federal and at regional level that the environmental monitoring through the Regional Mining Bureau not is sufficient. This situation is not sustainable and the MoMPNG has to consider the following measures:

- Train regional staff in environmental issues, particularly environmental monitoring
- Develop better monitoring tools for the regions’ environmental work
- Develop guidelines for restoration and “mining closure”
11. Institutional aspects

Properly resourced state institutions are key to the development of the industrialized and competitive economy (A Country Mining Vision Guidebook, AMV/AMDC)

Strong institutions are needed for government to implement its policy and legislative framework. If institutions lack clarity around roles, operate under a poor structure or have inadequate human, technical and financial resources, they will be unable to meet their mandates, and the objectives of government.

Fig 25
Institutions are only as strong as their people – if there is little attention paid to human resource development, employees can lack motivation, skills and ability to do their jobs. Lack of clarity around the institution’s mandate or objectives, or duplication with other Ministries’ mandates can lead to paralysis/indecision. Strong institutions are responsive to a variety of needs and can achieve a balance between government’s objectives, citizens’ aspirations, and industry’s requirements.

The strength of institutions has an important influence on the governance of industries – mining is one of the sectors that requires the highest (most frequent and over an extended period of time) degree of interface between government and the private sector. Many mining related permits or licenses are continually required throughout a very long mining life. Mining work plans and financial resources are highly vulnerable to operational delays. If the organisation structure, systems and human resources in institutions are not strong, this interface can impede responsible mineral development.

If there is poor inter-governmental coordination, decision-making on projects that require a multi-disciplinary approach to regulation can be negatively affected. These factors contribute to lack of investor confidence and can affect a country’s reputation.

Fig 26
The main regulatory agencies in most countries are usually those in charge of mining, environment and finance. However, to encourage a sustainable development approach, other Ministries with less obvious mandates must be considered: These can include ministries responsible for: Labour, Health, Education, Local Government, Land,
Investment Promotion, etc. Often mechanisms for inclusion of these aspects of mining related governance may be missing.

A sustainable development approach to mining has been recognised as the way forward by most major mining countries in the developed and developing worlds (and is in the Ethiopian Constitution and the National Environment Policy). Most governments and industry understand that mining policy is no longer focused on economic/commercial objectives but must consider the interests of communities, human rights, and the protection of the environment – otherwise, the mining company will lack a “social license” to operate and the country will not attract responsible investment. Strong institutional inter-relationships are needed to address the problem of the “silo” model where ministries make unilateral decisions, consult after decisions are made and then spend important political capital to repair damage caused.

In Ethiopia, there are a number of federal ministries charged with developing and regulating some aspect of the mining sector. A short summary of the responsibilities of these Ministries is provided here. Information was drawn from ministry websites. The most relevant Ministries in this regard include the following:

- The MoMPNG (MoM PNG) is the federal ministry charged with the responsible development of the mining sector. The Ministry’s mandate include generation of basic geosciences data of the country, promotion of the mineral and petroleum potential of the country, to negotiate and issue licenses to private investors and ensure that they conduct mineral and petroleum operations in accordance with their contractual obligations. The Geological Survey of Ethiopia (GSE) is an organisation under the MoMPNG that is charged with prospecting, exploring, and estimating mineral deposits and groundwater resources.

- The Ministry of Water and Energy of Ethiopia is responsible for the management of water and energy resources of Ethiopia. This involves development, planning and management of water and energy resources, providing technical support to regional water and energy bureaus and offices and negotiating relevant international agreements.

- The Ministry of Labour and Social Affairs has two major responsibilities: the Social Affairs component has a mandate to ensure the care of vulnerable members of communities including children, the disabled, the elderly, and those otherwise impaired. The Labour component has two sections: one is Labour Administration, and this section deals with regulating all conditions of employment in the formal sector. The other section deals with Employment Promotion and provides market information, and facilitates employment between Ethiopian nationals and foreign employers.

- The Environmental Protection Authority was established to ensure to promote a participatory system of environmental management to encourage a sustainable development approach to the use of environmental resources. Its mission is to create an environmental management system that supports national development efforts by avoiding duplication of effort among stakeholders, promoting sustainable utilization of environmental resources and strengthening coordinated but differentiated responsibilities. The EPA has delegated its formal authority for the approval of the EIA/ESMP process for the mining sector to the MoMPNG. Its current responsibilities include vetting EIA/ESMP technical consultants to ensure quality control and development of environmental laws and regulations.

11.1 Key Issues

1. Clarity of Institutional Mandates

As noted in other sections of this report under specific mineral policy themes, there are areas where greater clarity is called for regarding institutional mandates.

It appears as though the MoMPNG wishes to provide a kind of “one stop shop” for regulatory matters having to do with the licensing of exploration and mining companies. Its directorate of Environment and Community Development is charged with EIA/ESMP approvals, community development, and is adding competencies related to managing occupational health and safety issues. While the goal of providing institutional streamlining (in terms of permitting) and simplicity is a feature of many modern mining regimes, most developing countries require resources that may not be available to undertake functions beyond licensing and inspection (of licensing terms).
2. Inter-ministerial and Inter-governmental Coordination

If the MoMPNG wishes to develop these additional competencies and there are sufficient resources for this purpose, inter-ministerial coordination will be very important. It is simply not possible for one ministry to take on all the relevant responsibilities of the “whole of government” in Ethiopia. Some measure of inter-ministerial cooperation and information sharing would spread the responsibilities around and make use of resident capacity in other ministries.

Resource issues have already been identified as problematic for the Directorate of Environment and Community Development. Technical equipment for monitoring impacts, knowledge and experience of community development agreements, and specific legislation dealing with occupational, health and safety issues (including specific regulations for underground mining) are all somewhat lacking.

Therefore, it may be prudent to draw on the resources of other government ministries that are already charged with these aspects of mining regulation, and focus the MoMPNG’s efforts on developing greater technical capacity in the licensing and inspection areas. One of the reasons why the MoMPNG does not draw in other Ministries to mineral policy debates could be the lack of technical understanding and awareness on the part of other government ministries. This was noted as a weakness in the stakeholder information gathering phase of this project.

Clear challenges related to some aspects of managing federal and regional mining responsibilities require attention. While the mandate is clear in terms of delineation of which state level is responsible for awarding different types of mine licenses, the management of the cadastre (in terms of land allocation) is less clear. It appears as though the regional offices do not always have the facility to update the computerised Geographical Information System when licenses are awarded and that duplication of mining areas can result. There are also issues related to institutional arrangements for monitoring/oversight, especially in the social, labour and environmental areas. Mining occurs in remote areas of the country and even though licensing of certain mines (large scale, foreign owned, for example) may be a federal responsibility, it is inevitable that the regional offices located closest to the mine site will be involved in resolving disputes between large mines and communities or artisanal miners, and in responding to occupational health and safety or environmental emergencies.

Communication between the two levels (regarding licensing decisions and allocation of land, especially) needs to improve. Capacity constraints of both levels of mining authority need to be addressed, and greater cooperation between the two levels in oversight/monitoring would be advantageous (providing technical and financial/human resource capacity exists). Some of the capacity constraints could possibly be addressed through increased cooperation with other, better resourced parts of the regional administrations.

3. Recruitment and Retention of Staff

Interviews with stakeholders and comments provided through the Initiation Workshop indicated that the recruitment and retention of sufficient numbers and quality of MoMPNG staff have been problematic. The public service wage rates are low, especially considering the requirements for professional qualifications in demanding fields that require significant education such as mining sciences (mining engineering, geology, etc) economics and law. Further, many of the technical staff may enter the MoMPNG as fairly young graduates, but after a few years’ of experience and perhaps in-house training courses, these staff look for more lucrative options such as mining companies or international organisations that require staff with a mining background.

It also appears as though there are insufficient numbers of graduates coming out of the mining and earth sciences fields, particularly the former. While Ethiopia has made advances in this area through the construction of more universities, it will take some years before the gains from these efforts are felt. Hence, there is quite a skills shortage in government. It will be important for the MoMPNG to increase its capacity as larger and more sophisticated mining operations are developed in the country. The government must have the technical ability to be able to regulate a sector that can attract highly skilled, professional staff.

Although Ethiopia appears not to have the same issues with serious corruption as many countries experience when low-paid government officials interact with high value extractives companies, this issue may become more problematic with the arrival of more large scale mining companies. Mining is a sector that has more transactional opportunities between government and companies due to the regulatory requirements that call for almost continuous permitting (after licensing
and in the operations phase they can be requirements for a number of permits for fuel, water, energy, land, employees, etc) that continue through to mine closure.

11.2 Policy Options

Clarify Institutional Mandates and Build Institutional Capacity

Given capacity constraints throughout the federal and state institutions, it would be advantageous for the MoMPNG to partner with other Ministries (such as the EPA and MoLSA) to regulate and monitor impacts of mining on the environment, communities and the workplace populations. While MoMPNG has delegated authority for the EIA/ESMP, it could be useful to use the expertise resident in the EPA in joint inspection teams. In terms of labour monitoring (O, H&S), it would also make sense for joint responsibility and oversight to be shared between the MoMPNG and the MoLSA. This type of shared function requires a formal agreement (some countries use a Memoranda of Agreement) to specify exactly how this type of shared responsibility and oversight would function. Some examples include the joint use of vehicles to do site inspections, as well as the development of a schedule that both institutions can commit to. This type of shared institutional functionality could also be part of a Directive or Regulation depending upon the norms and practise in Ethiopia governing such arrangements (mining expert to advise).

Currently, the MoMPNG’s Environment and Community Development Directorate requires training, equipment and financial resources on an urgent basis. Mining companies appear to be self-regulating in terms of compliance with EIA/ESMPs (monitoring of environmental impacts) and oversight of community development initiatives also appears weak. The oversight responsibilities between the federal and regional levels in terms of monitoring these social and environmental impacts is unclear and the oversight mandates between these two levels of government requires review. Other Directorates, particularly the Licensing Directorate, are also faced with serious capacity problems in carrying out their mandated tasks.

Improve communication and coordination between the MoMPNG and regional bureaus

As already mentioned, communication between the two levels of government needs to improve. There is also a need for better coordination and cooperation in order to ensure coherence between decisions at the two levels. Capacity constraints at both levels need to be addressed.

Improve Inter-ministerial Coordination

One of the key impediments identified in encouraging other government ministries to become part of the sustainable development approach to responsible mineral development in Ethiopia is the lack of experience and technical understanding of the mining sector. Training in this regard should be provided, but if formal mechanisms are established where these other Ministries can engage with the MoMPNG on areas relevant to these mandates, gradually the awareness of the regulatory and impact areas of mining will build.

Ethiopia may wish to follow the example of Botswana which creates a Steering Committee for each large mining project that stickhandles all permitting issues throughout the lifecycle of the mine. Through this Committee, a company truly does have a “one stop shop” for permitting, but the mining authority is not required to have expertise in all areas (i.e. social, environmental, labour, and financial regulation, etc). Such a coordinated approach leads to better relationships between Ministries and is a boon to the mining investor as it is a streamlined and efficient way to gain permits and resolve any operational difficulties.

Particularly to facilitate the EIA/ESMP process through involvement of all ministries that deal with social and environmental issues, some countries, such as Cameroon have developed an Environmental and Social inter-governmental committee that has all social ministries as well as the mining and environment and finance ministries present. This committee makes decisions on ESIs/ESMPs and monitors compliance using a team approach across relevant ministries. Even if the MoMPNG has the delegated authority for the EIA/ESMP in Ethiopia, it could still benefit
from having the expertise of a range of governmental officials when dealing with the myriad social and environmental impacts of mining.

**Consider Separating Out the Licensing and Inspection Functions of the Ministry**

It has been well established that the MoMPNG has difficulty in recruiting and retaining professional staff due to the public service wage restrictions that it is under in terms of staff salaries. This is particularly problematic when mining companies, other private sector companies and international organisations are seeking qualified staff in these areas and can offer much more attractive remuneration packages. Some countries, such as Papua New Guinea, have created a separate Authority that is financed by a portion of tax revenue from the mining sector and that can offer salaries outside the normal civil service wage limitations. The Authority is still answerable to a Minister of the Government, but it has a different status than government ministries that allows it to operate somewhat more independently.

This type of organisational structure may assist the government to attract and retain professional staff much more successfully, thus leading to significantly higher technical capacity needed to regulate a growing mining sector. Ethiopia might consider this model and if there is interest in doing so, the project's legal expert can provide regulatory language to facilitate this shift.

**Develop a Recruitment and Retention Strategy**

Given that the current organisational structure of the MoMPNG does not allow for competitive (with the private sector) salaries to be paid, the Ministry must develop an effective recruitment and retention strategy to mitigate the effects of the salary limitations. Such a strategy should look at developing human resource development programmes that provide for a range of incentives for staff. Some of these incentives could include creation of career paths, mentoring services, job shadowing and other HRD strategies to attract and retain qualified people. More detail on this challenge will be provided in the Capacity Building Plan (to be completed further along in the project).
12. Conclusions and recommendations

The objective of the recommendations to be presented in the following can be summarized as follows, drawing on the conclusions of the inception workshop held in June 2015:

- To promote Ethiopia as an attractive destination for foreign mining investment, in particular through the development of legislation and regulations aimed at eliminating uncertainties, reducing discretion and streamlining regulatory detail;
- To integrate the mining industry into the fabric of the economy; including by building linkages, expanding employment, exploiting opportunities for supplying local industry with raw materials, improving infrastructure and developing domestic uses of mineral products and downstream processing;
- To protect the environment and communities as well as investigating ways of using mining as a catalyst for community development, particularly through a more systematic use of Mineral Development Agreements and Community Development Agreements and by providing mining related specificity to EIA/EMP processes; and
- To improve stakeholder engagement through provision of formalised mechanisms.

Our recommendations at this stage should be seen as ideas for directions of work rather than as definite proposals. They will need to be discussed with the MoMPNG and with other interested parties in order to sift out what is feasible and useful and in several cases they will have to be subjected to a legal analysis.

The recommendations are divided into nine areas:

- Exploration and mining rights
- Fiscal policy
- Employment, local content and downstream processing
- Geo data
- Investment promotion
- Environmental management
- Social issues
- Artisanal and small scale mining
- Institutional aspects

12.1 Exploration and mining rights

The recommendations under this heading are intended mainly to increase the attractiveness of the Ethiopian licensing regime through simplification. A first point to be made in this connection is that Ethiopian regulations and practices do not appear to give sufficient weight to the first-come-first-served principle. Accordingly, in order to raise the attractiveness of Ethiopia as an exploration and mining investment destination the first-come-first-served principle could be strengthened in the text and in the application of the relevant legislation. This could be done through the following measures:

1. Strengthen the mining cadastre system already in place for registering the exact time of applications. In principle, this should already be the procedure, but various practical problems (lack of Internet connections and trained staff at regional bureaus) have stood in the way of the implementation.
2. Introduce a strict rule that the first application received for an area will be considered against clear regulatory criteria.
3. Modify article 13.4 about competitive bidding to reserve this possibility only for areas that (a) have not been made available through FCFS and where there is a known resource; and, (b) licenses have been relinquished or terminated and have not been made available again through the FCFS system.

4. Abolish the ranking of applications and introduce a rule that clarifies that a license cannot be granted over an area that is already covered by any kind of license.

A second point where clarification may be useful is on the possibility of overlapping licenses. In order to reduce the uncertainty regarding the scope of rights and the possibility of conflicts:

5. The Mining Proclamation could be changed to state that a license for a specific area gives the right to exploit all the minerals found therein.

As will be seen in the following, we believe that a more systematic use of Mining Development Agreements could help protect vital interests and provide clarity to investors. Therefore:

6. It may be considered useful to include a description of the possible content and scope of agreements in the Mining Proclamation.

At present, the agreements concluded with mining companies contain a stability clause which could be considered to be of unusual duration:

7. The possibility of reducing the duration of future agreements, for instance, to ten years, could be considered. Alternatively, companies could be given a choice between stability for a fixed period or having the law apply. In the latter case, they would benefit from lower tax rates.

In order to ensure efficient exploration it is important that exploration licenses are not held for too long periods:

8. Relinquishments should be increased or escalating license fees be introduced or some combination of the two measures be applied.

Finally, in order to reduce the workload of the Ministry and simplify regulations:

9. It is recommended that present regulations be reviewed with a view to identifying any regulations that are not absolutely necessary for the protection of other interests or for the efficient management of mineral resources. In this context, the possibility of replacing the retention license with an optional and limited extension of the exploration license could be considered as could the need for the Specialised Small-Scale Mining License and for the certificate of discovery as well as the limit on the size covered by a reconnaissance license.

12.2 Fiscal policy

There is little in the fiscal policy vis-à-vis mining that can reasonably be questioned. Ethiopia has mostly followed standard policy prescriptions and practices and there are no features of the legislation that stand out as constituting serious problems, either from the point of view of investment attraction or with respect to revenue generation.

Nevertheless, there would seem to be some room for improvement in a small number of areas:

10. In the absence of any clear strategic objectives tied to the government 5 per cent free share and in order to increase Ethiopia’s attractiveness as an investment destination, it could be considered whether it should not be abolished.

11. The long delays for reimbursement of VAT are a potential problem and possible actions to reduce these delays could be investigated.

12.3 Employment, local content and downstream processing

The draft mineral policy lays out a number of worthwhile initiatives aiming at enhancing the contribution of the mining industry to employment, industrial development and improvement of infrastructure. Several of them can be undertaken by
the federal government, either by itself or together with regional bureaus. Others require cooperation with mining companies.

Regarding employment, the following measures could help to reinforce the employment effects of mining projects:

12. Cooperation between federal and State Governments needs to be improved and information needs to be exchanged on a systematic and regular basis between different levels of government and the mining industry, particularly on training and recruitment plans.
13. Promote, including through government-private sector cooperation, the establishment of vocational and technical training facilities and programmes for the mining sector
14. The federal government could take steps to improve the capacity of regions to plan for local development.

Industrial development can be supported through measures aiming to strengthen the backward linkages of the mining industry. Possible measures include:

15. Prepare a skills inventory in cooperation between mining companies and the federal government, in order to identify gaps and to serve as a register of local companies that would be suitable and willing to participate in supplier development programmes
16. Encourage private sector mining companies to integrate their business strategies and CSR activities into the rural development strategies
17. In order to enhance the benefits of infrastructural investments undertaken by mining companies, agreements could be negotiated between the federal and local government and mining Companies in connection with the establishment, maintenance and operation of infrastructure, including the possibilities for multi-user arrangements.

Finally, with respect to downstream processing and development of domestic markets for mineral products, it is important to be aware of the risks of creating rent seeking structures whereby producers of particular products are protected by tariffs or subsidies to the detriment of the rest of the economy:

18. Any proposed support measures should be based on thorough cost-benefit analyses covering all economic actors
19. Improve cooperation between government offices in respect of mineral beneficiation, including in the area of support to research on new or improved beneficiation techniques and new applications for locally produced mineral products

12.4 Geo data

To what extent the generation of geo data can be accelerated is very much a budgetary issue. It can be argued, however, that

20. Raising the ambition in the provision of geo data should be a high priority.

To ensure continued provision of geo data:

21. The obligation for holders of exploration licenses to deliver data and samples should be better monitored, including by ensuring that the GSE is informed about all new licenses. Future legal texts and agreements should also clearly specify that data and samples are to be delivered directly to the GSE rather than via the MoMPNG so as to avoid loss of data due to oversights and lack of communication.

12.5 Investment promotion

Investment promotion is important to ensure that the actions taken in order to attract investors are noticed by the investment community:

22. MoMPNG and GSE should consider establishing a promotion strategy for the Ethiopian mineral sector, in cooperation with the Investment Promotion Agency. This may include publishing in international trade journals, generating promotional material for wider circulation, make geological data available on the website of GSE, plan presence at international mineral sector conferences and events, direct contact with targeted investors and production of monthly newsletters.
The MoMPNG should also:

23. Train regional staff in environmental issues, particularly environmental monitoring.
24. Develop better monitoring tools for the regions’ environmental work
25. Develop guidelines for restoration and “mining closure”

12.6 Environmental management
On a number of points, the regulatory framework for environmental management in the mining industry needs to be brought up to date in order to ensure that an increase in exploration and mining development does not bring with it conflicts and unwanted consequences for the environment:

26. Create a consistent legal framework and clarify the institutional framework
The Environmental Policy should be updated and used to inform the legal framework regarding environmental management in Ethiopia. The government may wish to develop a proclamation (and regulations) that provide an overarching environmental management direction for the country that goes beyond the current EIA Proclamation (in terms of scope).

27. Finalise mining specific guidelines for ESIA/ESMP
The Government of Ethiopia should consider the promulgation of Sectoral Guidelines for ESIA in the mining sector. These would provide much-needed additional detail on ESIA in the sector, recognising its overall importance to the economic future of Ethiopia.

28. Develop National Environmental Standards
These standards have not yet been developed in Ethiopia for application to large scale mines, except what is included in the draft EI Guideline 2003 that has never been finalised.

29. Require Environmental (and Social) Audits of Company Performance
The regulatory framework should require that companies update their Environmental and Social Management Plans regularly and that these updates should be based on environmental and social audits. The legislative framework should include environmental and social auditing procedures and the provision of checklists. Clear oversight mechanisms that could include ministries with social mandates should be stipulated.

The section on Land Use in the draft Mineral Policy (4.2.1.5) should include reference to the obligation on the part of the (large-scale) license holder to follow an internationally accepted standard on Involuntary Resettlement of Communities such as the World Bank Policy on Involuntary Resettlement and the Resettlement Action Plan.

31. Require Mine Closure Plan at Licensing Stage and update incrementally – provide a formula for determination of the amount of mine reclamation funds
Many countries require large scale mines to provide a mine closure plan at the mining license application stage. This avoids improvisation that may prove costly both in environmental and financial terms. Regulations for the calculation of rehabilitation costs should be clarified and a formula for the determination of costs provided.

12.7 Social issues
As for environmental management, there is a need to strengthen the provisions of the present regulatory framework:

32. Develop a National Corporate Social Responsibility Policy
The policy would include guidance on all points of interaction between the mining industry and society, including communities, government, employees, civil society, supply chain actors, academics, women and vulnerable populations, and other relevant stakeholders. Issues that would be addressed would focus on mining industry obligations to communities (including women and vulnerable populations) to employees, and to local and other regulatory entities involved in social development. The policy would provide guidance on types and processes of stakeholder engagement,
clarity around roles and responsibilities of all parties involved in CSR, funding commitments required, and reporting and monitoring mechanisms, including grievance procedures.

33. **Require a Community-Mining Company Development Agreement as part of Mineral License and Abolish Community Development Fund**

To address issues related to consistent application of community development contributions from all levels of the mining sector (from small scale to large, foreign companies), a formal framework is very helpful. Such a framework could include a number of different models, including Impact and Benefit Agreements (IBAs) used all over the world but originated in Northern Canada, the Social and Labour Plan (SLP) developed in South Africa, or the Community Development Agreement (CDA) endorsed by the World Bank and used in many African and Asian countries.

34. **Provide Legislative Clarity Around Existing Community Development Legislated Requirements (as noted in the legislative review above) and Provide New Legal Text According to the Policy Option Selected**

The Community Development Agreement model is supported by the World Bank and templates are available to insert into the legislative framework. Further advice on the best legislative option tailored to Ethiopia is to be determined by the legal expert in the project.

35. **Build understanding and awareness of the importance of stakeholder engagement, especially multi-stakeholder processes**

The MoMPNG should prioritise this aspect of its interaction with society as part of its programming going forward (and as a priority noted in the MoMPNG’s objectives to align with national development planning). Training and outreach programmes to address these issues in the Regions could assist in raising the level of awareness and understanding about how to make the most of stakeholder engagement.

36. **Revise the mineral policy and legislative framework to address Stakeholder Engagement more fully**

The Mining Proclamation/Regulations should require exploration and mining companies to undertake consultation at the earliest stages of interaction with communities. Different types of “consultation” that should be required should be clearly set out and targeted at various stages of the mining lifecycle.

37. **Improve the public participation process required in an EIA/ESMP**

While there is provision for public participation at the EIA/ESMP stage of mining license approval, this process could be more defined and prescriptive. Importantly, there should be requirements for information sharing throughout the lifecycle of the mine, and as the ESMP is updated (and linked to environmental and social audits).

38. **Support involvement of civil society (and the donor community) in community development**

The engagement of civil society can add needed capacity and provide a partnership approach to effective CSR. As part of the legal requirement for community development agreements, the role of civil society in helping to negotiation and implement these agreements should be included in the legislative framework.

39. **Clarify institutional arrangements for regulation and oversight of occupational health and safety requirements specific to the mining sector**

Option 1: Recognise the role of the Ministry of Labour and Social Affairs in terms of its mandate to enforce national legislation on health and safety and remove the suggestion of MoMPNG taking on this responsibility from the Draft Mineral Policy and Draft Regulation.

Option 2: Provide for a shared responsibility for occupational health and safety with the Ministry of Labour and Social Affairs, the Ministry of Health and the Regional Mining Bureaus

40. **Develop a Directive (or some other legal instrument) for management of occupational health and safety issues specific to the mining sector**

The mining sector carries specific exposure to risk in terms of worker health and safety. The Ministry of Labour and Social Affairs intends to develop a Directive with specific guidance to the mining sector. Reference to legislative frameworks in countries with a long history of mining can help frame mining-specific occupational health and safety requirements.

41. **Provide occupational health and safety guidelines specifically for Underground Mining and for Artisanal and Small Scale Mining**
Currently, there is no provision for the special health and safety requirements for both u/g mining and for ASM. Neither the Draft Mineral Policy nor the Draft Regulation makes the distinction between types of mining. Experience in South Africa and elsewhere where there are deep level u/g mines has shown that specific health and safety issues are present in this type of mining. For ASM, there are problems with construction of mines using rudimentary methods and materials, leading to wall and tunnel collapse, and associated fatalities.

42. **Within the cultural context of Ethiopia, decide if young workers (between 14 and 17) should be allowed to participate in any form of mining.**

The Labour Proclamation prohibits young workers from working in u/g mining but is silent on the employment of these workers from other types of mining. There should be synergy with the goals of the Government of Ethiopia with respect to education with the realities on the ground related to poverty reduction. If there is a concern that families need the income that young workers provide, policies should be adopted to address this issue.

12.8 Artisanal and small scale mining

Compared to other African countries, Ethiopia has a well-developed and well organized system for regulation of artisanal mining (AM) and small scale mining (SSM). The system is, however, under resourced and needs strengthening, not least in order to avoid potential future conflicts with large scale mining:

43. To avoid forcing artisanal miners into illegal activities a major effort to train and support miners is urgently needed. There is a risk that they will be forced into illegality, with all the attendant consequences, including reduced incomes, lack of means to promote good environmental management and labour practices, and loss of export revenue.

44. Eliminate the priority for LSM before AM and/or SSM, including Special SSM, rights. Allow these rights to be transferred to an LSM licensee.

45. In view of the importance of technical assistance to help improve AM/SSM working conditions and safety, as well as the potential for increasing productivity in AMSSM, resources for technical assistance to artisanal miners and their cooperatives should be strengthened.

46. The current regulations for extending credit to AM/SSM cooperatives through State owned banking system could be reviewed with a view to allow loans to be made against collateral in the form of future sales revenue.

47. In order to increase the production and retained value from opals:
   - The MoMPNG and Regional Mining Authority has to improve the working conditions and mining technology used by the AM operators.
   - The MoMPNG has to consider further improvement in the cutting/polishing capabilities among AM and not only leave this to the exporters.
   - The GSE need to make a mapping of the geological very distinctive layer containing the opals to ensure future planning of new mining sites.

12.9 Institutional aspects

A number of the ideas and recommendations put forward in the foregoing will have a greater probability of success if they are accompanied by institutional change. Possible options include:

48. **Clarify Institutional Mandates and Build Institutional Capacity**

Given capacity constraints throughout the federal and state institutions, it would be advantageous for the MoMPNG to partner with other Ministries (such as the EPA and MoLSA) to regulate and monitor impacts of mining on the environment, communities and the workplace populations.

49. **Improve communication and coordination between the MoMPNG and regional bureaus**

There is a need for better coordination and cooperation in order to ensure coherence between decisions at the two levels. Capacity constraints at both levels need to be addressed.
50. **Improve Inter-ministerial Coordination**
One of the key impediments identified in encouraging other government ministries to become part of the sustainable development approach to responsible mineral development in Ethiopia is the lack of experience and technical understanding of the mining sector. Training in this regard should be provided, but if formal mechanisms are established where these other Ministries can engage with the MoMPNG on areas relevant to these mandates, gradually the awareness of the regulatory and impact areas of mining will build.

51. **Consider Separating Out the Licensing and Inspection Functions of the Ministry**
The MoMPNG has difficulty in recruiting and retaining professional staff due to the public service wage restrictions. Some countries have created a separate Authority that is financed by a portion of revenues from the mining sector and can offer salaries outside normal civil service wage limitations. The Authority is still answerable to a Minister of the Government, but it has a different status than government ministries that allows it to operate somewhat more independently. This type of organisational structure may assist the government to attract and retain professional staff much more successfully, thus leading to significantly higher technical capacity needed to regulate a growing mining sector.

52. **Develop a Recruitment and Retention Strategy**
Given that the current organisational structure of the MoMPNG does not allow for competitive (with the private sector) salaries to be paid, the Ministry must develop an effective recruitment and retention strategy to mitigate the effects of the salary limitations.
Final Legislative Options Report

Ethiopia Mining Sector Development

#7175163
1. Introduction to Legislative Options Report

1.1 Purpose of Report

Ethiopia has vast ambitions for the mining sector, with the Growth and Transformation Plan setting out the ambition for the mining sector to contribute 10% of GDP by 2023. Currently, the sector contributes 1.5% of GDP, meaning significant growth in the sector is required within a limited period of time. Our Mining Sector Policy Options Report set out how Ethiopia can encourage growth in the sector whilst also managing the social and environmental impacts from the mining sector. This Mining Sector Legislative Options report elaborates on the Mining Sector Policy Options Report by suggesting how the legislative framework can be adapted to incorporate recommendations made in the Policy Options Report.

This report thus assumes the reader is familiar with the contents of the Policy Options Report. This report has been written so that it corresponds to the Policy Options Report with identical chapter headings and structure. This report does not cover all issues raised in the Policy Options Report; rather, it considers how the most vital policy recommendations can be integrated into the legal framework and how the legal framework itself might change. Recommendations for technical assistance and improving coordination with government, although of critical importance, are only considered to the extent they require changes to the legal framework.

This report provides example language from other mining laws, regulations, model agreements and other texts. It also identifies places in the law where revisions might be considered. It is very important to note that a legislative revision requires a full review of the entire legal framework to ensure that changes made are consistent throughout the legal framework. A change in one place is rarely all that is necessary. Laws, regulations, directives, guidelines and contracts are inter-connected texts, where one change necessitates dozens of corresponding changes throughout related legal documents. Indeed, the Ministry is quite aware of this from the addition of the Special Small Scale license. The 2013 amendment is a good example of the numerous places in the Minerals Operations Proclamation (MOP) that required a change due to what might otherwise seem like a simple addition that needed only one change. This kind of review of the legal framework is impossible at this stage and should come after policy and legislative options are selected.

Though legal issues are addressed and the legal framework is discussed, this report does not constitute legal advice. Legal counsel, local and international, should be solicited. Legal counsel can ensure that the difficult task of updating, revising, restating, amending, and annotating the legal framework is completed in a thorough manner and in such a way that both the Ministry and investors have a clear view of the legal framework.

This report is the outcome of a mission in Ethiopia from Monday 5th October to Friday 9th October 2015, following from two policy options missions in July and August 2015. The mission comprised of Olle Ostensson (Lead Expert), Susan Maples (Mining Legal Expert) and Yohannes Tsehai (Local Legal Expert).

We would like to express our gratitude to Almaz Belayneh of the Ministry of Mines, Petroleum and Natural Gas and Lydia Mesfin of the World Bank for their support. In addition, we would like to thank all those who met with our team during both missions and contributed to our knowledge and understanding. A full list of all those met during the missions is attached in Annex A.

1.2 Project Background

The ‘Ethiopia Mining Sector Development’ project is a successor to the 2014 Strategic Mining Assessment (SMA) Study, which evaluated the potential of Ethiopia’s mining sector. An ‘Oil Sector Development’ project is simultaneously being implemented by Adam Smith International with World Bank funding. Although separate projects, we are ensuring that there is strong co-ordination between the two projects, including having one joint initiation workshop and sharing missions where possible. However, deliverables (including Policy and Legislative Options papers) are being submitted separately. The original Terms of Reference are attached as an annex. In addition, special issues highlighted in the TOR to be addressed in the Legislative Options report with the corresponding law and policy response summarized is included in Annex D.
The key reference documents used for the report were:

**Proclamations**
- Ethiopia Labour Proclamation 2003
- Ethiopia Minerals Proclamation 2010
- Amendment to Mining Proclamation 2013
- Ethiopia Proclamation to Promote and Regulate Transactions of Precious Minerals 2001
- Ethiopia Proclamation to Regulate Mining Income Tax 1996
- CSO Proclamation
- Ethiopia EIA Framework Proclamation 2002

**Policies, regulations, guidelines and directives**
- Ethiopia Draft Mineral Policy 2014
- Council of Ministers Draft Regulations for Mining Operations 2014 – to be approved
- Ethiopia Model Large-Scale Mine Agreement
- Ethiopia EIA Guideline for Mining and Petroleum Operations 2003 (draft)
- Environment Policy 1997
- Format For Mineral Exploration Work Program Proposal Guideline
- Amharic directive 2006, which appears to be the Exploration License Evaluation Criteria directive due to the evaluation matrix in Annex I
- Environmental Assessment Reporting Guide 2004

**Studies, plans and assessments**
- Africa Mining Vision (AMV) UNECA 2009
- Action Plan for Implementation of the AMV. UNECA 2012
- Strategic Assessment of the Ethiopian Mineral Sector (SAMS), World Bank 2014
- Overview of Global and Ethiopian Coloured Gems Market 2013, Ethiopian Gemstones: Maximising Potential, DFATD
- Minerals and Africa’s Development UNECA 2011
- Socio-economic Baseline Survey of the ASM Communities in Rural Ethiopia SUDCA 2013.

### 1.3 Project Team

The team is comprised of:
- **Lead Mining Expert**: Olle Ostensson (ASI)
- **Mining Policy Expert**: Lois Hooge (ASI)
- **Mining Legal Expert**: Susan Maples (ASI)
Artisanal Mining Expert: John Tychsen (GEUS)

Local Legal Expert: Yohannes Tsehai (ASI)

National Economist: Berihu Assefa (EDRI)

Project Manager: Steve Macey (ASI)

Project Director: Anne-Claire Howard (ASI)

Short biographies of the staff are attached in Annex A. The project is led by Adam Smith International (ASI) with contributions from Geological Survey of Denmark and Greenland (GEUS) and Ethiopia Development Research Institute (EDRI). Profiles of the three institutions are available in Annex C.
2. Identification of priorities

2.1 Draft mineral policy

The draft mineral policy, 2012, is a concise document setting out the high-level objectives for the Government of Ethiopia's management of its mineral sector. The document arose from consultation with Government officials at the federal and regional level, private sector investors and local and international NGO’s. Ambitions for the mining sector include both the creation of more foreign exchange for the Government of Ethiopia and reduction in poverty through job creation.

The draft policy sets out specific principles that should govern the legislative framework. One of these principles is that the Government’s role should be restricted to facilitating, promoting and regulating the industry whilst the private sector leads exploration and development of mines. This follows the post-1991 approach summarized in the Mining Proclamation No. 52 of 1993 and the Mining Income Tax Proclamation, No. 53 of 1993, which set out an attractive regime for foreign investors.

The draft mineral policy envisages the establishment of a system of exclusive licenses, with neutrality between foreign and domestic license applicants whose applications for mining licenses should be treated on a first come first served basis. The document is explicit that ‘applications will be handled in the order in which they are received’.

The Government accepts that all mining projects in Ethiopia will be taxed under the Mining Tax Proclamation, which will prescribe the responsibilities and procedures of the designated agencies to levy and collect royalties, land rentals and mining taxes. The Corporate tax rates will be the same as elsewhere in legislation, whilst the policy permits import duty relief and accelerated depreciations and ring-fencing of mining operations for tax purposes.

The policy sets out that Government is responsible for managing the social and environmental issues arising from mining sector development through regulation. The principles of ‘polluter pays’ and ‘integrated environmental management’ are specifically mentioned as guiding principles for the legislative framework. The drafting and creation of a Mine Health and Safety Proclamation and regulatory framework are also recommended in the policy.

2.2 Strategic assessment

The strategic assessment of Ethiopia’s mining sector was conducted from May 2013 to March 2014, with the report published in October 2014. It was commissioned by the World Bank and its partners (DFID, IFC, DFATD and the IFC) with a view to guiding the Government of Ethiopia in how it could develop and manage its mining sector.

The report was based upon two interlinked sets of analysis:

i) Geological/Mineralogical analysis of potential mining projects in Ethiopia

ii) Economic analysis focusing on the potential revenues that could be generated from the sector

The strategic assessment noted the breadth of the draft mineral policy and the supreme importance of both a policy and legal framework establishing clearly the role of the state as well as a modern and effective mining cadastre system. The assessment recommended drafting new regulations so they correspond to the 2010 Mining Operations Proclamation (and its 2013 amendment), as well as revising the Model Mining Agreement. Despite the commissioning of a computerized mining cadastre system in 2011, technology problems as well as changes to licensing rules have restricted the effectiveness of the system.

The assessment noted that the key legislative document governing the sector is the 2010 Mining Operations Proclamation, which is rather general and lacks regulations drafted in respect of the proclamation. Furthermore, there are a number of provisions that result in unclear and contradictory rules, in particular with regards to the order in which license applications are reviewed. Whilst 13-1 b implies a first come first served system of license allocations, this appears to be contradicted by the following sub-article, which implies that applications submitted at the ‘same time’ will have their work programme, technical proposal and financial proposal evaluated by a qualified committee. The 2006
Mining Licensing Application Processing Directive (which came into effect in 2013) suggests a similar approach with all applications being received in a one month period being evaluated. Further confusion is created by Articles 13-4 and 52-4 (c) of the 2010 Proclamation as they suggest that the licensing authority has the right to opt for bidding for licenses or negotiations of contracts after applications have been received.

A further issued identified was that the Model Mining Agreement had not been updated to be in line with the 2010 Proclamation (remaining in line with the 1994 proclamation no 52). The Agreement also could do with being strengthened in key areas, including financial, environmental and community aspects.

2.3 Conclusions from Policy Report

Ethiopia must overcome significant challenges to achieve its ambitious target for the mining sector to contribute 10% of GDP by 2025. These challenges range across simplifying the licensing regime, clarifying institutional responsibilities for social and environmental management to enhancing stakeholder engagement in the governance of the sector.

Simplifying the regime for acquiring exploration and mining licenses would be a vital first step in encouraging the growth of the sector as well as improving the Ministry’s ability to manage the sector. This includes a more vigorous use of the ‘First-Come-First Served’ principle, an improvement that requires some changes to MOP, the 2006 Directives and improvements to the Cadastre. The use of an updated Mining Development Agreement could also help provide increased reassurance to investors.

Measures should also be introduced to minimise waste of exploration licenses by ensuring that they are used, as well as measures to avoid ‘overlapping’ licenses. This can lead to uncertainty over rights and potential conflicts. Although the fiscal regime for the mining sector is attractive for investors as well as allowing a reasonable return for Government, reviewing the 5% free share and reducing the delays for the disbursement of VAT refunds would be clear improvements.

In addition to Government revenue, the economic benefits from a large-scale mining sector should include value addition in-country, as well as increased employment for Ethiopian nationals. Given Ethiopia’s federal structure, strong coordination between Federal and Regional Governments are essential here, with increased sharing of information as well as attempts to improve capacity at a regional level to plan for local development. Improving specialized vocational and technical training focused on the mining sector should be a key focus of activities, as well as establishing, with private sector support, a skills inventory identifying those skills needed by the sector. The Government of Ethiopia should also consider planning for the establishment and financing of multi-user infrastructure in cooperation with mining companies.

The development of a large-scale mining sector will bring substantial environmental challenges that will need to be managed. A start would be for the Ministry to issue its own mine-specific environmental policy and for national environmental standards to be developed. There should also be mining specific guidelines for ESIA and ESMP. At licensing stage, license applications should be required to submit mine closure plans. An internationally accepted resettlement procedure through, for example, the IFC’s Resettlement Action Plan framework, should be introduced. The regulatory framework should require that companies update their Environmental and Social Management Plans regularly and that these updates should be based on environmental and social audits.

Large-scale mining also leads to difficult relationships between the mining company and the community within which the mine is based. A National Corporate Social Responsibility policy could be developed in order to provide guidance on all points of interaction between the mining industry and society. As part of a mining license, a Community Development Agreement should be required.

Stakeholder engagement should be considered a higher priority and communities should be engaged at earlier opportunities by both companies and government. These processes, as well as resettlement, should be included in ESIA’s and ESMP’s. Clarifying the institutional arrangements for occupational health and safety is also recommended, for example, through joint inter-ministerial monitoring teams. Regulations and Directives for mining occupational health and safety would be beneficial. A full suite of mine-specific OHSE and environmental protection legal arrangements are needed.

Underlying mineral governance in Ethiopia are institutional arrangements setting out how the sector is governed. These institutional arrangements, set out in the legal framework, are essential to making the improvements necessary for ambitious targets to be met. Clarifying the mandates of different stakeholders (particularly for environmental and social
issues) would be a big improvement. Increasing co-operation and improving communication between the federal MoMPNG, other Ministries, and the regional mining bureaus is important. Consideration should be given to separating out the licensing and inspection function of the MoMPNG into a semi-autonomous agency, similar to ERCA.

2.4 Structure of the legal framework

A clear, coherent, and consistently enforced legal framework is one of the most important factors for investors when making a decision to invest. For citizens and a well-functioning government, it is essential.

It is important to note from the outset that the legal framework for mining (and areas of importance to it such as environmental protection and labour) demonstrates good subject matter coverage. Overall, the sector in Ethiopia has seen consistent improvement since the new Constitution was established. Despite the many strengths of the legal framework, GOE would like to see investment in the mining sector increase. The recommendations that follow identify the main potential barriers to increasing investment and legislative measures to ensure that social, environmental and community protections are not lost or suffer as a result of increased investment.

We understand that the typical legal structure in Ethiopia is to issue a general proclamation and then general regulations then subject-matter specific directives and guidelines. We also note that subject-matter specific regulations are not the practice as yet and that this would be a government-wide change that would require authorization from the Ministry of Justice and possibly the Prime Minister's office in order to be implemented. We would encourage the Ministry and other branches of government to consider adopting the practice of subject-specific regulations in addition to general regulations. Regulations are typically considered more “binding” than directives and certainly more so than guidelines, which may not be considered legally binding but rather guidance that may be interpreted. The Ministry would benefit from being able to issue regulations covering critical areas, ranging from mineral exploration licensing to all issues related to health, safety, environmental and social and community aspects of mining. Alternatively, subject-matter specific directives may be able to assume the same role as regulations.

Currently, GOE is using a hybrid system of licenses and agreements to govern the mining sector (in addition to the Proclamation, Regulation, Directives and Guidelines). This seems a satisfactory arrangement for the near term. While best practice generally recommends eliminating agreements. Using a phased approach may be more successful than a dramatic change to the legal framework. GOE may consider moving toward a legislative system that does not rely on contracts over time, and there are a number of suggestions to move in this direction throughout this report.

In addition, we observe that the legal framework has not been consistently harmonized across all of the relevant documents that make up the legal framework. Given that there is a significant policy reform on-going, it makes some sense that it has not been harmonized, as this is a significant task. An example of the kind of work needed to ensure harmonization is provided in Annex E, the Mining Policy Matrix. This is only a draft document that was used as a tool to analyse the legal framework for this report and should not be relied on for any other purpose. It is incomplete and unverified by legal counsel. Nonetheless, it shows the kind of analysis that is needed to analyse and identify gaps, overlaps, and inconsistencies not just in the mining legal framework but the other frameworks as well, i.e. environment, labour, etc. As soon as the policy decisions are made, harmonizing the legal framework should certainly be a priority. More about this issue is addressed in Chapter 7, Investment Promotion.
3. Exploration and Mining Rights

3.1. Allocation of rights and security of tenure

3.1.1 Summary of the issue

A transparent, clear, and impartial allocation of these rights and the security of the tenure they provide are essential features of a best practice and competitive mining law. The First Come First Serve (FCFS) system for allocating exploration rights is the most common and is widely considered best practice. Auctions may be used in situations well suited to such a process, such as known deposits and discoveries that have been relinquished or terminated. The draft Minerals Policy appears to adopt a FCFS system: “applications will be handled in the order in which they are received” (section 4.2.1.3).

3.1.2 Current legal framework

First Come First Served (FCFS)

The draft mining policy is not reflected in current legislation. The Mining Proclamation establishes an order of processing applications by type of application in Article 13. But this system of prioritization may be used or disregarded, at the Ministry’s discretion: “unless the Licensing Authority determines otherwise on the basis of the economic benefit of the minerals or other appropriate investment objectives” (13.1); or, the Ministry may disregard it “Licensing Authority may, where it deems appropriate, disregard the applications and opt for bidding for the area in question” (13.4).

Applications for large-scale mining licenses take precedence over applications for small-scale licenses and applications for small-scale licenses take precedence over applications for artisanal licenses. The proclamation assumes that two or more applicants may apply for the same kind of license at the same time and specifies the procedure to be followed in this case: “Where two or more applicants lodge applications for licenses of the same status at the same time covering the same mineral and area, the Licensing Authority shall constitute a technical team to evaluate the applications and the priority shall be determined on the basis of the evaluation of the technical work plan, the financial proposal, and the technical competency of the applicants” (article 13.1 c) and 13.2).

Security of Tenure

The MOP does provide for a guaranteed mining license in Article 26 so long as (a) the proposed work program is approved; (b) the applicant has access to financial resources and technical ability to conduct the proposed mining operations optimally and in a safe manner; (c) the EIA has been approved; and (d) the applicant is not in contravention of any obligations of the exploration license, if any. If the Licensing Authority refuses to grant a mining license, it shall notify, in writing, the applicant of the decision and the reasons for refusal.

3.1.3 Options

Claroify FCFS in law: abolish rankings and reservations in Article 13 and strictly interpret and consistently apply FCFS

There are both legal text changes and implementation changes recommended. In terms of implementation of the law, first come is currently not really first served, it is everyone that applies in a month is simultaneously screened and served. According to interviews, all licenses that have been received during one calendar month are considered as having arrived at the same time and the provisions of article 13.1.c), 13.2 and 13.4 apply. This is not a true FCFS system and it creates inherent uncertainty. It is recommended that this practice be discontinued and each application is reviewed when it is received and time-stamped upon receipt, ideally through electronic means. This will virtually eliminate any applications received truly at the same time.

It is important to note that an FCFS does not mean that there are no technical, financial and other qualification requirements that are reviewed before granting that applicant a license. FCFS only means that MoMPNG will review the first applicant in time first; not that MoMPNG must grant that first applicant a license regardless of whether the applicant...
meets requirements or not. We understand that there are qualifications that are consistently applied in the licensing process by MoMPNG and that these are in directives. It is recommended that those directives be made publicly available and easy to access so that all applicants can submit applications with the requisite documentation and have more confidence that there is a clear, fair and consistent system used by the MoMPNG to review applications on an FCFS basis. Should the first applicant not meet the technical and financial requirements, the Ministry would reject the application and move to the next in time applicant and review its application. This principle should be clearly stated in the MOP. MoMPNG could consider deleting the articles (13.1 c) and (13.2) that provide for this ranking system and instead provide clear rules for taking the licenses first come, first served. For a robust FCFS system, one might look at the rules in the Swedish mining law, Chapter 2.

There is significant Ministry discretion in the current system both in the text of MOP and the way it is implemented. It is not a clear, transparent and reliable FCFS system. The reservation in article 13.1, together with the introduction of the possibility of competitive bidding in article 13.4, mean that an explorer has no guarantee that the order in which applications are received will be respected when decisions to grant a license are made. It is likely that this limitation on first-come-first-served acts as a considerable deterrent for investors. The monthly reviews create further uncertainty. It is likely that the combination of a discretionary licensing system in the law with a discretionary application are among the most significant deterrents to investment in the legal framework—especially considering that the fiscal regime is competitive and would not be an obvious deterrent (discussed further in Section 4).

**Eliminate or limit auctions to exceptional circumstances: relinquishment or termination of a discovered mineral resource**

As noted in the last section, the discretionary ability to disregard license applications for an area and instead use an auction should be eliminated whether or not MoMPNG choose to continue having auctions in some circumstances. This ability to change course after applications have been submitted creates uncertainty and the opportunity for the FCFS system to be subverted, whether or not the MoMPNG exercises this prerogative. The MoMPNG could eliminate the possibility of competitive bidding in 13.4, which may be a reasonable option. While economic theory encourages competitive bidding whenever possible, it is usually only possible with considerable geological information and a sufficient number of interested bidders. Sufficient geological information is rarely available in Ethiopia, except sometimes for some bulk minerals, and the number of serious bidders is almost always very small. The latter factor illustrates that it is difficult to draw any conclusions from past auctions about how bidders evaluate properties.

If MOM wishes to maintain the option for competitive bidding, it could revise 13.4 to provide that the only areas that may be made available for competitive bid are those that (a) have not been made available through FCFS and where there is a known resource; and, (b) licenses have been relinquished or terminated and have not been made available again through the FCFS system.

**Provide regulatory clarity on the requirements for granting of the mining license**

The importance of the guaranteed right to receive a mining license upon exploration success can hardly be stressed enough. Without investors viewing both the law and the practice of a country as reliable in this regard, it will be difficult to attract companies for exploration investment. Here, in particular, practice is as important as the law.

One way the legal framework could be improved is by setting out, in directives, what the MoMPNG will consider as appropriate and acceptable documentation needed to receive the mining license. There could be directives or guidelines that provide that certain information must be included in the mining work program. This could include production estimates, timelines, infrastructure requirements, and a whole number of additional subjects that a mining plan might include.

Similar guidelines, we understand, exist for the technical and financial resources expected of exploration license applicants and EIA guidelines exist, though the latter are not specific to mining. Guidelines specific to mining operations in both of these areas would be usefully stated in regulatory documents.

Not only would these guidelines give guidance to investors about what they will be expected to provide (and the ability to challenge the Government should they provide appropriate documentation and they are denied the license—an important protection) but guidelines will help the Government administer applications by clarifying what applicants should expect and lead to a more uniform set of applications. This should make fair and consistent treatment of applicants more transparent and efficient—all of which will help raise the confidence of investors.
3.2 Exclusivity of rights

3.2.1 Summary of the issue

Another important aspect of exploration and mining titles is that they should be exclusive. The exclusivity is important because many investors will not risk capital to investigate or develop a deposit unless it is clear that nobody else can legally explore or exploit ore deposits covered by the right. This principle gives the holder of the exploration licence the exclusive right to explore for any minerals in the area over which the licence is granted or for all minerals in a specified area. The draft mineral policy states that “the right to explore and mine for all minerals in Ethiopia will be administered by a system of exclusive licenses”.

3.2.2 Current legal framework

The MOP allows two or more companies to be granted licenses for different minerals in the same area (articles 36 and 37 of the Proclamation). Mineral-specific licenses, while used in some jurisdictions, are less common than licenses for all minerals in the license area. Administratively cumbersome, especially from a legal enforcement perspective, they are not recommended for low capacity jurisdictions for policy reasons as well. Tracing liability in the event of pollution or otherwise would be extremely difficult. While in theory another license will only be granted if it will not disturb the first licensee, in reality, the majority of mining companies would likely say that there is no such thing as a second licensee that would not disturb it. Lastly, the economic benefit of mineral-specific licenses is not clear, a topic covered more thoroughly in the Policy Options Report.

3.2.3 Recommendations

A majority of jurisdictions have opted to give a license holder the right to all minerals in the area, and this would be a beneficial change for Ethiopia as well. Language along these lines could be considered: The Chilean mining law in Article 27 states that “A mining concession cannot be granted on substances existing in tracts already covered by mining concessions.” Section 116 states: “the Owner of a concession shall have the exclusive right to freely explore and mine his claim, without limitations”. The mining law of the Philippines states in Section 20: “An exploration permit grants the right to conduct exploration for all minerals in specified areas.”

3.3 Relationship between licenses and agreements

3.3.1 Summary of the issue

Most developing countries today use a combination of agreements and simple application of the law to regulate mining. This means that the law sets out basic conditions such as the duration of licenses and tax rates, while agreements, particularly Mineral Development Agreements, may specify a range of other conditions, such as production obligations, further tax specificity, employment, community relations, infrastructure and sourcing of inputs from local enterprises. While best practice recommends eliminating agreements and relying on legislation, regulations, and licenses, this is not always a viable option for developing countries where mining is new and investor confidence is low. A hybrid system with a view to eventually phasing out agreements may be a “good fit” option.

3.3.2 Current legal framework

The current legal framework is a hybrid system, using laws, regulations, directives, guidelines and a model large-scale agreement at the federal level. According to at least one region, regional bureaus supplement the licenses they issue with agreements as well. The MOP gives relatively little to no guidance on what is negotiable in these agreements at this time. We have not seen signed agreements other than the 2007 agreement that has become the model agreement, so we cannot speak to what is typically negotiated in these agreements. The current stability granted by these agreements—arguably the primary reason they are sought by investors—is the length of the license obtained under the agreement or the cessation of mining activities, whichever occurs first. The Agreement is to be in force for entire period of its validity in accordance with the Law in force at the time of issuance of the Mining License or conclusion of the Agreement. However, renewal of the Mining License automatically entails an end to the stability with the new conditions being those of the law in force at the time. (23.1)

3.3.3 Options

Maintain hybrid system with a view to eventually phase out agreements and move to a pure license system; limit contract coverage as much as possible and refer to legislation instead

In the near term, it may be a dramatic and difficult transition to eliminate agreements from the legal framework. It may deter investment, if there is a low level of confidence in the legal system and how it is implemented. Investors seek stability via contract if there are significant questions in this regard and where a Government is untested, as Ethiopia is.

Nonetheless, we suggest that the agreements be limited in coverage and leave as much as possible to the legal framework so that a transition to a purely legislation-license framework might eventually be adopted. In this regard, fiscal and operational terms should reference legislation. Community development should be included in a Community Development Agreement to be negotiated with the communities in question. A process for valid CDAs could be added to the MOP as well as CDA-specific directives. CDAs are discussed in Section 9.1.

The primary purpose of the agreement would be to provide the investor with stability and recourse to international arbitration. The key is to limit stability to the fiscal terms and for a limited time, for example once there is pay back of loans to third party investors in the project. A more limited stability clause could be included in the MOP and future model agreements.

MDAs are also useful for coming to agreement on project specific local content, employment, and infrastructure provisions. These areas tend to be more bespoke and better handled by contract than law. This area is discussed in more detail in Section 5.

Limit what is negotiable in the MOP and Model Agreements and include Model Agreement as an Annex to the MOP or Regulations / Directives)

In addition to limiting the coverage of agreements, GOE might consider limiting what is negotiable within those agreements. Given that the large scale mining sector is still nascent in Ethiopia, a complete move to a licensing system with no agreements may not be feasible. This state of the sector likely requires GOE to continue to negotiate some aspects of mining agreements, which can be a drain on resources and requires expertise in its own right. However, this can be mitigated by limiting what can be negotiated in the mining agreements, which is not currently the practice.

One way of doing this is issuing the Model Agreement as an annex to the mining law or regulations / directives. This increases transparency and predictability if the negotiable terms are stated in openly.

Continue to develop regulations and directives in technical and OHSE areas

We understand that GOE typically uses directives in a way that many other countries use regulations: to provide specificity on particular subject matter areas such as technical and Occupational Health Safety and Environmental standards. This practice should be continued and expanded to new areas such as:

- Exploration licensing and license requirements
- Mineral production reporting
- Mine specific EIAs
3.4 Ensuring efficiency in exploration

3.4.1 Summary of the issue

The right to explore must be limited in time since explorers would otherwise be able to monopolize promising areas indefinitely; for the same reason, and to ensure that the maximum of effort is mobilized in each area with mineral potential, explorers should be given incentive to conclude their work speedily. The main ways this is done are:

- Work programs
- Limits to length of tenure, i.e. limited renewals of the exploration license
- Relinquishment of part of titled areas
- Escalating fees

The Draft Mineral Policy states the following:

To enhance the efficiency of exploration activities, the legislation will require a licensee to:

- Submit a work programme.
- Make minimum annual exploration investments.
- Submit reports.
- Conform to regulatory requirements.
- Comply with environmental and social obligations.

3.4.2 Current legal framework

Ethiopia uses work programmes and relinquishment requirements. Compared to some other countries, the relinquishment required is relatively small – a quarter of the area each time the license is renewed. Exploring companies can thus hold on to half of their original area or a maximum of 10 square kilometres, for up to five years (three years plus two renewals of one year each). Since there is nothing in the law that forbids an applicant to apply for, and be granted, several licenses for adjacent areas, the area covered could potentially be considerably more important. The cost of doing so is low since Ethiopia has very low fees for exploration licenses (500 Birr for the first license and 200 Birr for renewal). This means that Ethiopia has to rely mainly on effective monitoring of the work programme to ensure that exploration companies do not block large tracts of prospective land unnecessarily. Since effective monitoring requires experienced staff, which is a scarce asset for the MoMPNG, and since an increase in exploration interest would place the system under even greater strain, alternative solutions should be considered.

The current MOP provides the power of inspection to the MOP to ensure that mining operations are carried out and that royalties may be audited in Article 54/4. A clear power of audit for obligations other than payment of royalties, rentals and other fees is not clearly stated in the MOP.

3.4.3 Recommendations

Relinquishments should be increased, escalating fees introduced or some combination of the two measures be applied

The current relinquishment and fees required for exploration licenses are relatively generous for investors and could be raised and still remain competitive internationally. MoMPNG may want to raise the fees and provide for appropriate escalating rates for renewals.
Mineral exploration regulations to provide clear, transparent, thorough processes for exploration obligations

Exploration will represent a large portion of the activity in the minerals sector for Ethiopia for the foreseeable future. As such, it may be useful to have regulations or directives specific to mineral exploration. In such regulations, GOE can use fees and fines and not just termination of the license to enforce the terms of the license. They can also provide for administrative resolution of disputes before recourse to international arbitration. Cancellation of licenses was mentioned in a number of discussions as a long process. Regulations could help in this regard. An example of a clear and thorough minerals exploration regulatory framework is from Liberia’s Regulations Governing Exploration under a Mineral Exploration License of the Republic of Liberia (Short title: Exploration Regulations) of March 2010.37

Clarify the power to audit and institute a process of auditing exploration licenses

Inspection and monitoring are certainly powers and activities that a well-functioning MoMPNG must undertake. Enforcement of obligations almost certainly requires a power of audit by the Ministry as well. The MOP could include this power in Article 54/4, expanding the power of audit beyond payments, as it currently states. While the power might be read into Article 54/4, investors may challenge an audit without clear legal grounds (even if a company may lose such an argument, it can “scare off” law enforcement). The process, cost allocation and the audit process could be specified in the previously mentioned exploration regulations.

3.5 Simplicity

3.5.1 Summary of the issue

Simplicity is always an objective in all legislation. The legal framework should be clear, coherent, and consistently applied. Simple laws are easily understood by citizens, easily applied by authorities and easily interpreted by courts. In this regard, the draft Mineral Policy states the GOE’s desire: To promulgate a competitive and transparent legislative framework that would enable Ethiopia to promote and develop its mining sector effectively through the full participation of the private sector. (4.1.2.3)

3.5.2 Current legal framework

The Ethiopian regulatory framework could be streamlined by eliminating some seemingly superfluous processes and licenses / certificates:

Retention license: The goal of the retention license—to allow an exploration license holder to have more time to determine whether he will go forward with mining—is a good one. And there is much said about the Retention license in the Draft Minerals Policy. There is probably no harm in allowing the holder of an exploration license to hold on to a limited area (100,000 square metres) for a maximum of two years after the ordinary exploration license has expired. No other vital interests are obviously disturbed. However, the granting of a retention license requires the Ministry of Mines to devote time and effort to assess if there is a likelihood that prices will improve or technology change in a way that will make a mining project in the license area commercially viable within two years. There may be simpler ways to achieve the objective, in this case, to allow the license holder some more time to establish the viability of the project. For instance, a possibility to obtain a third renewal of the exploration license, at a considerably higher fee, could be introduced. It is important to note that, if the Ministry is not consistently assessing prices and technology for each Retention License applicant, then it could find itself in a dispute should it deny an application. This is the challenge created by introducing

37 Available at http://www.eisourcebook.org/cms/June%202013/Liberia%20Regulations%20governing%20Exploration%20licenses%20(effective%202010).pdf (last viewed on October 8, 2015).
criteria that requires difficult analysis by the MoMPNG. It must be prepared to defend every approval and denial on the same consistent basis, in such a way that would hold up should a dispute go to arbitration.

**Special Small-Scale License:** Similarly, the case for the Specialised Small-Scale Mining License appears weak and as is noted later in this report, it has not attracted a great deal of interest to our knowledge.

**Mineral Specific Licenses:** This was treated early in this section, but it is worth reiterating that this part of the law runs the risk of creating a great number of administratively cumbersome licenses.

**Reconnaissance License:** A minor detail is the size limit for a reconnaissance license (50 square kilometres according to the draft regulation). Since the license is not exclusive it is difficult to see any need for a limit to the area for which a license can be sought and this provision could be removed from the draft.

### 3.5.3 Options

GOE might consider either eliminating or clarifying the licenses mentioned above to further streamline and simplify the licensing regime.

### 3.6 Other issues

There are a number of other aspects in addition to those that have been discussed that could be included in a critical assessment of a licensing regime for mining. The Ethiopian legislation meets all these requirements and there is no reason to go further into a review of the exact modalities of all the provisions.

Institutional aspects are of course also important. A piece of legislation is only as good as its application. Since institutional aspects involve many other areas in addition to licensing, we have chosen to discuss them in a separate chapter in the following.

**Consider allowing the transferability of ASM and SSM licenses**

One issue that is worth noting is that transferability of a license is a key feature of a competitive minerals legal framework. The Draft Minerals Policy states the principle that licensees should be freely allowed to sell transfer or cede the license with approval. The MOP provides that any license, other than a reconnaissance or retention license, may be transferred with prior consent of the Licensing Authority; provided however, that artisanal or special small scale mining licenses may only be transferred in the case of inheritance (40.1). The MoMPNG may want to consider allowing artisanal and special small-scale licensees to be transferred to a large-scale or prospective large-scale license holder so that a large-scale licensee may buy the license holder out. This is addressed further in Section 10 ASM.

Regarding the Mine Agreement, it has appropriate clear and competitive provisions on transfers:

- License can be transferred, assigned and encumbered with the prior written approval of the Licensing Authority. A refusal must be duly motivated and be based on valid reasons (27.1)
- Licensee can assign all (but not less than all) to an Affiliated Company so long as Affiliated Company takes on all obligations and has the capacity to perform (27.2)
- Licensee has the right, with prior written approval, to assign all of its rights and interest under the Agreement provided the third party assumes all obligations of the Licensee and has the capacity to perform (27.4)
- Licensee is released from obligations on effective assignment (27.5)

Lastly, transfers are often taxed and this can be a complex and difficult process, as transfers may take place several levels up the chain of ownership, making jurisdiction to tax a challenge if not clearly stated in the law. The draft Income Tax Proclamation seeks to address this area. Further refinements are needed to ensure that transfers are taxed in the way that GOE desires.
4. Fiscal Policies

4.1 Fiscal regime in the legal framework

4.1.1 Summary of the issue
A fiscal regime should be competitive, fair, and, like aspects of the legal framework, clear, coherent, and consistently applied. GOE’s draft Minerals Policy states that GOE wishes “to maintain a stable, transparent, and internationally competitive fiscal regime that will be attractive to prospective investors” (4.2.9)

4.1.2 Current legal framework
The current fiscal regime for minerals is largely in the Minerals Income Tax Proclamation (MITP) and the MOP. The income tax for large scale mining is 25 % and for small scale 35 %. Royalties are calculated on an ad valorem basis on sales revenue. The federal royalty rates are shown in table 1.

Table 1. Ethiopian federal royalty rates

<table>
<thead>
<tr>
<th>Precious minerals</th>
<th>7%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Semi-precious minerals</td>
<td>6%</td>
</tr>
<tr>
<td>Metallic minerals</td>
<td>5%</td>
</tr>
<tr>
<td>Industrial minerals and salt</td>
<td>4%</td>
</tr>
<tr>
<td>Construction minerals</td>
<td>3%</td>
</tr>
<tr>
<td>Geothermal</td>
<td>2%</td>
</tr>
</tbody>
</table>

Regions set their own royalty rates, which cannot exceed the federal rates.
The current regime is competitive, with commonly found incentives to encourage investment like accelerated depreciation. It seems appropriate for GOE’s goals. For the sake of comparison, corporate tax rates and royalty rates in some countries are shown in table 2.

Table 2. Corporate tax rates and royalty rates

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Corporate tax rate</th>
<th>Royalty rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia (Western Australia)</td>
<td>30%</td>
<td>2.5% Net Smelter Return</td>
</tr>
<tr>
<td>Argentina</td>
<td>35%</td>
<td>3% Gross Revenue</td>
</tr>
<tr>
<td>Brazil</td>
<td>34%</td>
<td>Gold 1% Gross Revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other 2% Gross Revenue</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>20%</td>
<td>Precious metals 3-5% Gross Revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Revenue, indexed on price</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other 5% Gross Revenue</td>
</tr>
<tr>
<td>Country</td>
<td>Percent</td>
<td>Gross Revenue</td>
</tr>
<tr>
<td>-----------</td>
<td>---------</td>
<td>-----------------------------------</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>25%</td>
<td>2-7%</td>
</tr>
<tr>
<td>Ghana</td>
<td>35%</td>
<td>5%</td>
</tr>
<tr>
<td>Guinea</td>
<td>35%</td>
<td>Precious metals 5%</td>
</tr>
<tr>
<td>Laos</td>
<td>24%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Sweden</td>
<td>22%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Tanzania</td>
<td>30%</td>
<td>Copper, Gold 4% Iron, Coal 3%</td>
</tr>
</tbody>
</table>


The issue here is that a program to harmonize the income tax laws of Ethiopia is underway, led by MOFED, which will be an omnibus tax proclamation, consolidating previously separate tax proclamations into one.

### 4.1.3 Options

**Separate minerals and petroleum in the omnibus draft ITP.**

**Ensure that current MITP is in the minerals chapter of the ITP.**

While this is a perfectly reasonable approach of income tax, there are a number of problems with the current draft Income Tax Proclamation (ITP) as regards minerals. Firstly, it consolidates minerals and petroleum in one chapter, which is not recommended. The industries are too different to treat together in a single chapter of the omnibus ITP. They should be separate chapters.

Secondly, the current minerals and petroleum chapter in the draft ITP leaves out a number of the good provisions in the current MITP. The starting point for the minerals chapter of the omnibus ITP should be the current MITP which should then be updated where necessary and harmonized with other sectors of the ITP.

### 4.2 Division of tax revenues between the federal and regional governments

#### 4.2.1 Summary of the issue

Revenue sharing between federal and regional governments is a common practice throughout the world as a general matter. However, the details of this practice can vary dramatically. The important feature of a well-functioning revenue sharing system is that it is clearly defined and well managed by the Federal and regional governments. The Draft Minerals Policy includes decentralization as one of its goals: *To establish a decentralized management for the regulation and administration of the mining sector (4.2.1.7).*

#### 4.2.2 Current legal framework

In Ethiopia, mineral revenues are shared between the federal government and the regions in a relatively straightforward manner. The Regional State (region) collects payment of royalty from artisanal, special small scale and small-scale, and construction minerals (undertaken exclusively by domestic investors) mining licenses issued by it. It also collects the government free share interest from the special small scale and small-scale mining license. Finally, the Regional State collects other fees such as surface rentals, land lease rentals and license fees paid by artisanal, special small, small and construction minerals mining licensees issued by the State licensing authority. All other royalties and fees are collected
at the federal level. Corporate income tax is collected at the federal level. Regions have the right to set royalty rates with an upper limit determined by the federal royalty rate stated in the MOP.

4.2.3 Options
The MOP is relatively clear on division of roles between federal and regional government. With the hoped for exploration success, one can imagine that there could be competing interpretations of the law as the revenues grow, i.e. as there is more to fight over. Processes like EITI should mitigate conflict over revenues, allowing citizens, investors, and Government officials to know what revenue is being collected and from which state organ. There may be a need, however, for MoMPNG to issue guidelines on land rents in order to ensure that these do not exceed a reasonable level, thereby distorting the incentive structure underlying the license fees.

In this regard, it has proved difficult to obtain information on exactly how much is collected at each level. The partial numbers obtained seem to indicate that regions do not use the opportunity to levy royalties at the maximum rate. Alternatively, they are less than perfectly efficient in collection of fees and royalties. However, it appears from information gathered during field visits that the collection of royalties on gold production at least is quite efficient. Once the first EITI reconciliation report is made public in March 2016 it should be much easier to assess the efficacy of the royalty collection system.

4.3 Government Ownership

4.3.1 Summary of the issue
State carried (that is, unpaid) equity is politically popular and can bring some management, capacity building and financial advantages; on the other hand, state equity can be difficult to administer, a challenge to finance, or reduce other revenue streams at the expense of dividends that may prove much more modest than expected. Given these challenges, required carried state equity is not typically considered best practice policy.

Investors typically do not favor state equity, as they prefer the Government to maintain its role as policy-maker and regulator and leave the commercial aspects of the minerals exploration and development to the private sector. An exception is where investors consider that a small equity participation by the government confers a “stamp of approval” and facilitates contacts with government authorities. From the point of view of government, however, this argument would normally be considered to weigh against government equity. It is worth noting that it is much less common in minerals than, for example, petroleum and power sectors.

The draft Minerals Policy does not speak directly to a state equity position in the minerals sector. It laudably addresses Ethiopian participation in the sector, but this is usually understood as a separate issue from government ownership through an equity stake in mining projects.

4.3.2 Current legal framework
The current Model Large-Scale Mining Agreement provides 5% “free” equity in Article 9. In sum, it provides:

- 5% free carry (9.1)
- Licensee will be notified in writing of the entity that will hold the interest (9.2)

Indeed, there already appear to be disputes beginning to arise about the role of the regional bureaus in drafting regulations for the licenses they issue. One could expect these debates to grow in type and intensity as mining activity does.
Option to purchase at market value an additional interest, on agreement of the parties. This must be done within 10 years of Commercial Production (9.3)

4.3.3 Options

Do not embed mandatory state equity into the Minerals Policy or legal framework.

Although there may be significant political pressure to maintain a nominal equity stake in mining projects, the best practice would be to forgo state equity and instead gain the additional revenues from taxation and management oversight through the tax code and minerals law.

If forgoing state equity is not an option, GOE might consider making the 5% more commercial by providing for a carry to be paid by the proceeds from commercial operations and having minority interest protections to ensure that it does have some power in the project in which it is investing; that it will not be diluted; and other such protections. These are challenging protections to write into the model agreement and to enforce, particularly in the absence of a clear policy statement defining the objectives to be achieved through state equity. Strong model language in mining agreements and regulations are not widely available; indeed, there are likely very few good models, as there are few examples of state equity in mining having met stated policy objectives.

4.4 Tax administration and audits

Governments around the world want to receive revenues from mining projects. This largely depends on an effective tax administration. Efficient collection and strategic audits are essential to making the fiscal regime agreed on paper a reality. This is an area that is less a matter of legislation than implementation of it, though a clear power of audit is important to have, as discussed earlier.

We understand that this area is largely theoretical at this point, since there is not much production at present. However, we understand that the tax administration is good as a general rule. ERCA appears to be preparing itself for future mineral revenues. The division of roles and responsibilities for the Ministry of Mines, MOFED, and ERCA vis-à-vis setting tax policy, revenue collection, and tax administration should be clear as among these government organs. This may be set in law or may be a matter of internal agreement of the Government. Either way, it is good practice to settle these issues before mineral revenues become significant.

One issue that was raised was that VAT reimbursement is heavily delayed. This delay is most likely attributable to a lack of personnel administering these reimbursements and it appears that 100% of VAT reimbursements must be reviewed prior to approval. This process of 100% reviews should be assessed to determine existence of bottlenecks and pathways for streamlining.

Recommendation to undertake an analysis of where the bottlenecks are in VAT reimbursement. Amend regulations if this analysis indicates there is a legislation or regulatory problem.

4.5 Foreign exchange regulation

4.5.1 Summary of the issue

Foreign investors will not want restrictions or requirements to use domestic currency, bank accounts, and other similar regulations that create the risk that the investor may not be able to move funds to meet demands outside the country should the need arise. This concern is more acute where the currency is volatile and a reduction in value could occur, making their deposits and/or earnings worth significantly less. This is also an expropriation risk: it is easier for a country to take liquid assets held locally.

The draft Minerals Policy does not speak to the issue, though it does note that GOE would like to increase its own holdings of foreign exchange.
4.5.2 Current legal framework

The MOP provides the following:

**Exchange Control**

1/ A holder of large-scale or small-scale mining license producing exportable minerals may retain a portion of foreign currency earning as may be determined by directives of the National Bank of Ethiopia and use it for settlement of transactions in foreign currencies.

2/ A foreign investor holding a large-scale or small-scale mining license may make the following remittances out of Ethiopia in the currency of investment or in an approved currency at the prevailing rate of exchange on the date of remittance:

   a) profits and dividends accruing from mining investment;
   b) principal and interest on a foreign loan;
   c) fees, royalties or other payments accruing pursuant to technology or management agreement relating to the mining investment;
   d) proceeds from the liquidation of a mining business enterprise;
   e) payment from the sale or transfer of shares of a mining investment or acquisition in part or in whole of a mining operation by a domestic investor.

3/ Expatriates employed in mining operations may remit salaries and other payments in accordance with the relevant exchange regulations.

We have not been able to see actual agreements to see to what extent these provisions are embedded in them. We would expect, however, that investors would want more flexibility than the law currently grants. From interviews, we understand that exporters are in principle obliged to repatriate all foreign exchange income. Normally, 90% of export income can be retained for 28 days, the rest indefinitely. Mining companies and presumably other large exporters can obtain more favourable conditions. For instance, Midroc can hold 10% of foreign exchange income indefinitely, 40% can be used for project expenditure and 50% can be held for 28 days. Exporters can take up loans in foreign currency offshore. Local non-exporting firms can take up loans from foreign shareholders if they have any (for instance, joint ventures).

Foreign investors are not required to change the funds that they bring into the country initially into domestic currency. Currency hedging is not legal at present. This may change as the banking system is opened up to foreign banks and as it evolves in sophistication.

4.5.3 Options

**Continue the present policy of adjusting conditions to the needs of investors while pursuing foreign exchange deregulation as a longer term objective**

Although the current law is not excessively stringent, this is a potential constraint, particularly since investors are wary of the possibility of suddenly being hit by more rigid rules. Therefore, the government, particularly the National Bank of Ethiopia (NBE), should continue its present policy of adjusting conditions to the needs of investors while pursuing foreign exchange deregulation as a longer term objective. If it does not already do so, a policy statement to that effect from the NBE could reassure investors.

4.6 EITI

4.6.1 Summary of the issue

Transparency of revenues is widely considered best practice, and EITI is an excellent multi-stakeholder forum for it. Ethiopia is a candidate country to the EITI and its first reconciliation report is due in March 2016. The Ethiopia EITI
(EEITI) is in a unique position to actually report on revenue from the ASM (AM + SSM) mining sector. To the extent that payments are material, the regional and Woreda authorities will report on:

- Woreda: license fees and royalties for AM construction licenses
- Regional authorities: Land fees, license fees and royalties on licenses issued at regional level
- Regional Revenue Authority: Income tax from licensed brokers
- Gold Purchasing Centers on the gold production purchased by central bank
- MoM: License fees and royalties from licenses issued at federal level
- Federal Revenue Authority: Income tax from LSM and SSM licenses issued at federal level

Once the data from all these sources have been collated and reconciled, a clear picture of revenue streams from mining in Ethiopia should emerge. Additional legal changes relating to revenues and their collection and distribution may become apparent.

4.6.2 Current legal framework:

The 2013 amendment to the mining law references and requires compliance with EITI. This is a good starting basis for EEITI being embedded in the legal framework.

4.6.3 Options

To further bring EEITI into practice, consider embedding EEITI into law, regulations or directives.

As EEITI comes into practice, Governments have found it beneficial to put the requirements of EITI into an EITI law. This has facilitated better compliance with EITI and complements the multi-stakeholder framework used to agree on how the EITI requirements are to be met.

Introduce EITI reference into model agreement

To ensure that individual investors do not argue that they are not required to comply with EEITI, ensure that there is a reference to the 2013 amendment that requires compliance.
5. Employment, local content, downstream processing and infrastructure

5.1 Summary of the issues

GTP II places significant importance on increasing foreign exchange, import substitution and value-added industries. Given the country’s strategic direction and success in industrialization so far, identifying ways in which the nascent mining sector can contribute to the further development of the country is critical. GTP II states:

**Strategic Direction**

The main strategic directions of the mining sector during the Second Growth and Transformation Plan (GTP II) are expanding the production of minerals for foreign exchange generation and import substitution for local industries.

**Major Objectives**

The major objectives include: improving policy, legal-frameworks, regulatory and working systems; Adding value to minerals, producing minerals inputs for the manufacturing sector development; enabling the mining sector to meet national and international environmental standards and regulations, and expanding the geo-sciences mapping coverage of the country both in quality and accessibility.

The local construction and industrial minerals sector is thriving in Ethiopia, and there may be more opportunity to use that sector in the large-scale mining sector. In addition, large-scale mining can certainly play a role in increasing foreign exchange as well through the payment of royalties and taxes in foreign currencies, but this is not the specific topic of this section.

GOE has identified the potential of the sector in the draft Minerals Policy:

“Although the current economic policy of Ethiopia has identified the agricultural sector as the priority sector to initiate industrialization in the country, it is increasingly being recognized that the mineral sector also has the potential to be a very important trigger for industrialization. It is increasingly acknowledged that the supply of mineral raw materials will form the basis for the development of a large range of manufacturing industries (including fertilizers), that it would play a critical role in the earning of foreign exchange, result in increasing the levels of import substitution, particularly for manufactured commodities, and in the creation of employment opportunities in the primary and secondary industries. Furthermore, the development of a mineral and mineral processing sector will provide the economic justification for the establishment of new physical infrastructure, serve as a basis to attract direct foreign investment, and accelerate the economic diversification process”.

It bears noting from the outset that these policy goals are not usually achieved through legislation. Increasing employment, the provision of local goods and services, value-added industries, and downstream processing do not have a track record of success when forced through legislation. If the legal requirements are too stringent, investors may not invest in exploration, move elsewhere if they are not in production, or move operations abroad if they are in production. In addition, there is an unfortunate history of corruption and elite capture when mandatory use of local firms for goods, services, or as joint venture partners / shareholders has been legislatively required. Instead of creating wealth for the entire population, politically well-connected elites have benefited at the expense of those in need.

Instead, collaboration with investors to find unique solutions to mutually benefit from increased participation from local employees and small and medium enterprises has a much better track record of success, in some cases creating flourishing entrepreneurial activity that is genuine and long lasting. GOE has very good policies in all of these areas, seeking to create enabling environments for industrialization, employment, and economic development through private sector growth. The Policy Options Report goes into much more discussion about policies that have worked to create jobs, services, value-added, and downstream processing that GOE may consider. The issues and policy options are not repeated here; instead, the focus is on the current legal framework and recommendations to further improve it.
5.2 Employment

5.2.1 Current Legal Framework
The Mining Operations Proclamation (678/2010) obligates the license holder to give preference to the employment of Ethiopian nationals provided such persons have the required qualifications and to ensure that employees get the training and education necessary for mining operations (36.1). The draft regulations contain more precise language in the form of two requirements. The first is that the holder of a license “may employ a qualified foreign national if he can provide evidence that shows qualified Ethiopian national cannot be found to fill a position and obtained approval thereof from the licensing authority” (Article 39.1, emphasis added) and that “the foreign national shall be replaced by Ethiopian national where it is ensured by the licensing authority that the foreign national has been working for enough time to transfer his skills and knowledge to an Ethiopian national” (Article 39.4, emphasis added). The second is that all holders of licenses have to submit employment and training programmes annually for approval by the licensing authority (Articles 39.6 and 39.8, emphasis added).

The Model Large Scale Mining Agreement contains two relevant articles. In article 20.1 it is stated that “the Licensee may at all times choose its employees and shall be free to employ such persons who are not Ethiopian nationals as are required for the efficient conduct of the Project”. Article 20.2 requires the Licensee to “participate in contributing mutually agreed amount of funds for training, seminars and the like when such needs and actions will help both the Licensee and the Licensing Authority in their effort to enhance the advancement of mining and mineral processing technology and methodology as well as experience in Ethiopia”.

As noted in the Policy Options Report, there appears to be some contradiction between the relatively strict formulation on preference for Ethiopian nationals in the draft regulations and the more liberal language in the Model Agreement, perhaps as a result of practical experiences of negotiating agreements.

5.2.2 Options
Consider an initial training and employment plan, then multi-year training and annual follow up plans and progress reports
The draft regulations introduce approval requirements by the MoMPNG that will create an administrative burden for the company and the Government, and that may not be as successful at encouraging the hiring of local employees at the same rate as a program of training planning and preparation in collaboration with the company. Instead of constant Ministry approval over each hiring decision made by a company, agreements could provide for both an initial training and employment plan for the life of the mine, then 5 year updates and progress reports as well as annual updates and reports. This will allow for much more sustained engagement and planning with far less administrative burden. In addition, penalties for non-compliance with the agreed plan can be attached to these plans.

For a number of example provisions regarding training and employment plans, see the Model Mineral Development Agreement by the International Bar Association, Section 24, available at http://www.mmdaproject.org/?p=1658. These requirements could be in an amendment to the MOP, or in regulations or directives, where such detail seems to usually occur in the Ethiopian legal framework. Alternatively, it could become a part of the model agreement if GOE is not yet committed to this type of program and would like to leave it more to negotiation with investors on a case-by-case basis.

Include a prohibition on foreign unskilled workers
One area that does lend itself well to legislative mandate is a prohibition on foreign unskilled workers. Nearly every country has unskilled workers--often a surplus. There should be no economic or operational reason to bring in foreign unskilled workers, though it does occur. To ensure it is legally prohibited, the MOP should include such a prohibition with steep fines and the model agreement should cite the law to ensure it is embedded in the contract as well.

Include consultation regarding training and employment in the CDA
In addition to the training plans and progress reports, the local community itself will likely have high expectations for employment at the mine. Training and employment with the local community will benefit from being a topic of negotiation in the CDA between the investor and community. More is discussed regarding this option in the Social recommendations.
5.3 Backward linkages and local content

5.3.1 Current legal framework

There is relatively little in the legal framework on backwards linkages, local content (i.e. local procurement of goods and services). This is, by and large, a good policy for these issues, as providing an enabling environment and cooperation with the investing company will typically have better results than legislative measures. The draft Mineral Policy identifies a number of actions. With further study, future GTP II and Mineral Policy documents might cite specific sectors where it wishes to see local content and backward linkages. Among those discussed in the policy options workshops were construction materials such as ballast for rail and other construction needed for large-scale mining and local Environmental Consultants to conduct small-scale EIAs and to be sub-contractors for large-scale mining environmental impact studies and reporting.

5.3.2 Options

Give current preference language in the MOP and model large-scale mining agreement more “teeth”

The Article 36 of the MOP and Article 7.1.7 of the Model Mining Agreement have the same principle, that the licensee is obliged to give preference to Ethiopian goods and services, where they are readily available at a competitive price and are of a comparable quality to goods and services outside Ethiopia. This general statement is very similar to that contained in the Model Mine Development Agreement drawn up by the International Bar Association (http://www.mmdaproject.org), and could possibly be tightened with obligations to demonstrate that local firms had a genuine opportunity to compete in any tender for services through notice in local publications, for example. Penalties for non-compliance could be considered, too.

Institute Local Content Plans and Progress Reports

As with employment, planning local content could be agreed with the company from the outset with a life of mine plan made at development and regular 5 year and annual updates and progress reports. In addition, ensuring that the local community has an opportunity to provide goods and services through the CDA negotiation and agreement process may also help open communication and cooperation locally. Such plans and reports could be required by law, regulation or in the model agreement—this largely depends on whether the government wishes to receive such reports from every investor (which would generate considerable documentation and administrative oversight) or would like the flexibility to negotiate this on a case-by-case basis. The size of the investment and the nationality of the investor (foreign or domestic) may make a difference, in this regard. Smaller, domestic investments may not need such significant oversight to encourage the use of local goods, services, and employees.

Undertake market analysis and consider reducing or eliminating duty free imports in the model agreement

This is a challenging area. Many if not most mining companies will want the freedom and flexibility to import machinery, equipment and other goods that they know and rely on to develop their mines globally. Many countries offer duty free imports, so it is a competitive area. On the other hand, duty free imports make it more difficult for local firms to compete as suppliers to mining companies. The draft Minerals Policy states as a goal to remove these exemptions other than for mine development or expansion. Market analysis may be useful here (i.e. what are companies importing, when, at what price; are there competitive local suppliers), then a potential change in the law or model agreement may be needed depending on these results. A more general move away from duty free imports for all sectors (and a lowering of tariffs as domestic industry becomes more competitive) would also facilitate eliminating this incentive for the mining industry.

39 “The Company shall, when purchasing goods and services required with respect to Mining operations, give first preference, at comparable quality, delivery schedule and price, to goods produced in the State and services provided by the State citizens or businesses, subject to technical acceptability and availability of the relevant goods and services in the State”
5.4 Downstream processing and production for domestic markets & infrastructure

These two topics were treated separately in the Policy Options Report, but here they are treated together. This is not to say that they are not very different; they are. From a legal perspective, they are similar in that the major decision to invest in downstream processing and large-scale infrastructure (often for export) often occur at the critical decision to invest and are negotiated in an MDA (or an MDA is amended or additional agreements are concluded). They may be considered one-time events, rather than ongoing matters, like training and employment and goods and services. Though some goods and services may be related to one time major capital expenditures, another significant portion—and one that may be provided by local SMEs, such as food inputs, catering, collecting soil samples for regular testing, etc—are ongoing operating expenditures. These service providers and supplier contracts may change throughout the life of the project; hence, regular updating and monitoring makes sense, ensuring opportunities for local suppliers and employees are not missed.

Downstream processing and large-scale infrastructure development decisions are typically part of a decision to produce minerals and considered in the overall economic feasibility of the project as a whole. And this makes sense: the investors will want to know who is buying their production (or is likely to buy) before investing potentially billions of dollars producing it. Local downstream processing is one such potential purchaser and exporting to foreign purchasers is another. They may not be mutually exclusive.

The challenge, legally, is that these areas are extremely difficult to legislate effectively. While including provisions like third party access to investor-built infrastructure is standard, there are very few examples of this actually occurring. This is due to the fact that the third party access must be commercially feasible or reasonable, and project developers will argue, usually successfully, that it is not commercially reasonable for them to build excess capacity for their competitors and to relinquish the benefits of exclusivity (24-hour, 365 constant export-import on the company rail, for example). Regarding the downstream, some countries have provided immediate tax relief or lower royalties in their model contracts or laws with the idea that this will incentivize downstream processing and create jobs and industry. There is no evidence that this is a good use of legislative incentives. It is more likely to result in less revenue than would otherwise have been collected while making little difference to the degree of downstream processing that is undertaken. Negative incentives such as export taxes on unprocessed products are likely to mainly result in lower investment.

5.4.1 Current legal framework

The MOP and model large-scale mining agreement do not specifically address downstream processing. GTP II and the draft Minerals Policy put significant policy emphasis on this area, which is a very good practice that should be maintained. The policy does indicate that it would like to promote downstream processing and beneficiation to develop through cooperation and an enabling environment for these businesses.

For infrastructure, the MOP addresses multi-user infrastructure in Article 36, which requires the Licensee to cooperate and financially contribute in the construction and maintenance of infrastructure to be used jointly with other licensees or other persons within the license area or lease area (36.1).

5.4.2 Options

Stay the course

The current treatment of these issues in the legal regime is very likely the best possible path at this point. The policy of encouraging an enabling environment for downstream and infrastructure projects (mining related or not) is a good one.

Prepare to negotiate downstream and infrastructure provisions in the MDA and other agreements

As these areas are likely best left to negotiation in the Ethiopian context, GOE may consider preparing for those negotiations by developing potential resource corridors based on current knowledge, for example. As the geologic prospectivity becomes better known and strategic areas are defined, GOE can strengthen its position in any negotiations for mineral rights linked to downstream processing and shared infrastructure by investing in pre-feasibility studies, financial modelling and other pre-negotiation activities that can help provide a strong commercial incentive for these activities. Comparative analysis of other downstream and mine-related infrastructure projects (including their contracts
and legal structures) that are active and successful in Ethiopia's peer group of countries will further help in crafting a desirable positions prior to negotiating these areas.
6. Geodata

6.1 Summary of the issue

It is hard to overstate the importance of geo-data in having an effective, efficient, and attractive minerals sector. GOE rightly recognizes this in GTP II, stating as one of its major objectives, that it will engage in the “expanding the geosciences mapping coverage of the country both in quality and accessibility”. For the many policy and practice recommendations provided by this study, please reference the Geo-Data section of the Policy Options Report.

6.2 Current legal framework

This is another issue that is largely a matter of policy and practice, instead of a matter of legal rights provided to the investor (i.e. licensing in the exploration and mining rights chapter) or legal rights to protect the Government and citizens (i.e. environmental standards, community development agreements in the environmental and social chapters).

That said, the current legal framework could be made more robust with regard to geo-data. Currently, Article 43 in the MOP provides that any licensee shall maintain in the country proper records containing the following info and submit reports to the LA: (a) info pertaining to his mining operations and the results connected therewith, including borehole core and core-log data (b) employment, financial, commercial and other relevant info (43/1). The licensee may not dispose of or destroy any record, borehole core or core-log data specified in (43/1) without the prior written consent of the LA (43/2).

6.3. Options

Future regulations and directives (if not the MOP itself) and agreements should clearly specify that data and samples are to be delivered directly to the GSE

Providing that the GSE should receive data and samples should facilitate the investor providing the right information to the right place. This should help avoid the loss of data due to oversights and lack of communication. Generally, the Ministry may want to consider providing more detailed provisions as to which directorate or other agency is to receive materials in regulations and directives (if not the MOP itself), which tend to use the general term “Licensing Authority”.

Draft standard provision for delivery of geo-data to GSE and MoMPNG

Establish procedures to ensure that holders of an exploration and exploitation license deliver geo-data as required in license conditions
7. Investment Promotion

7.1 Summary of the issue

While geological prospectivity is the most important factor for investors making an investment decision, the law and policy framework is almost as important. According to the well-known and widely used (although somewhat controversial) Fraser Institute Annual Survey of Mining Companies 2014: **While 60% of an investment decision is geological, 40% is policy and legal framework.** The factors on which mining companies are surveyed in the law and policy category are in 15 areas. Respondents, the majority of which are exploration President, Vice-Presidents, and Manager or Senior Managers, were asked to indicate how each of the 15 policy factors influenced company decisions to invest in various jurisdictions. It is worth noting how important uncertainty in the legal and regulatory framework is:

1. Uncertainty concerning the administration, interpretation, or enforcement of existing regulations;
2. Uncertainty concerning environmental regulations (stability of regulations, consistency and timeliness of regulatory process);
3. Regulatory duplication and inconsistencies (includes federal/provincial, federal/state, inter-departmental overlap, etc.);
4. Legal system (legal processes that are fair, transparent, non-corrupt, timely, efficiently administered, etc.);
5. Taxation regime (includes personal, corporate, payroll, capital, and other taxes, and complexity of tax compliance);
6. Uncertainty concerning disputed land claims;
7. Uncertainty concerning what areas will be protected as wilderness, parks, or archaeological sites, etc.;
8. Infrastructure (includes access to roads, power availability, etc.);
9. Socioeconomic agreements/community development conditions (includes local purchasing or processing requirements, or supplying social infrastructure such as schools or hospitals, etc.);
10. Trade barriers (tariff and non-tariff barriers, restrictions on profit repatriation, currency restrictions, etc.);
11. Political stability;
12. Labor regulations/employment agreements and labor militancy/work disruptions;
13. Quality of the geological database (includes quality and scale of maps, ease of access to information, etc.);
14. Level of security (includes physical security due to the threat of attack by terrorists, criminals, guerrilla groups, etc.);
15. Availability of labor/skills.

As of 2014, Ethiopia has much room for improvement, according to the Fraser survey. It came in the bottom quartile of countries that have interesting geologic potential, but whose policy and legal framework do not score well on the above indicators. It came in as one of the bottom 10 countries in the survey: **The 10 least attractive jurisdictions for investment based on the Policy Perception Index rankings are (starting with the worst) Honduras, Malaysia, Philippines, South Sudan, Zimbabwe, Sudan, Nigeria, Central African Republic, Ethiopia, and Venezuela.**

While this might initially seem like bad news, in fact it represents a huge opportunity for Ethiopia to adopt the law and policy suggestions from these reports and become a much more attractive destination for mining exploration and development investment. While the perception of geologic potential may take considerable time and financial investment to improve through better provision of geo data, a number of legislative and policy changes may be implemented with relative ease. The Policy Options and Legislative Options Reports are largely devoted to improving the policy and legal framework in ways that make it attractive to investors whilst ensuring the protection of Ethiopia’s environment and
communities. This section addresses the structure, clarity, and certainty of the law and policy framework. It does not discuss the substance in that framework, as the balance of the two reports covers those topics.

7.2 Current legal framework

The current legal framework is structured with a main sector law, the Minerals Operations Proclamation or MOP, which can be and has been amended, for example in 2013 (to largely add the special small scale license to the law, and a number of other minor adjustments).

There are then regulations that largely duplicate the law in terms of headings and subject matter coverage. They elaborate further on a number of the areas of the MOP. They are not subject-matter specific, such as underground mining OHSE regulations or mineral exploration regulations, as one often sees in other jurisdictions. The regulations add some detail to the MOP, but they are not comprehensive, subject-matter specific regulations. Additional detail is provided in guidelines (non-binding) and directives (legally binding).

A number of the law and policy documents are in draft form and some appear to remain in draft form for significant periods of time, i.e. the Ethiopia EIA Guide for Mining and Petroleum Operations 2003.

7.3 Options

Provide not just minerals legislation, but all relevant legislation (OSHE, Environment, Land, etc) on MOM website

As noted in the Policy Options Report, the first point of entry for most investors will be the website of the Ministry of Mines. As such, the more information this website can provide, the easier the decision to invest will be. With limited budgets, staff, and time, the easier it is for a potential explorer to get all of the information he needs, the better.

At present, there appears to be not one but two websites for the MoMPNG—one dating from 2011 and the other from 2013, according to the copyright dates on the sites. As an initial matter, this is a confusing overlap. The older website is easier to navigate in terms of locating the main minerals, petroleum and environmental legal documents that exist. The newer website appears to have more forms, but it is not clear how those forms interact with the legal framework.

The legal framework that a potential investor will want to review extends beyond mineral sector legislation. While some relevant environmental documents are available on the 2011 site, it is not clear that this represents all of the relevant legislation. Cross-references to other Ministry websites and legal documents would be useful. This is particularly true in Ethiopia, where other Ministries handle aspects of the mining sector, such as MOLSA for health and labour standards. The MOM could provide a much more comprehensive set of legal documents for investors on a consolidated site.

Provide a restated and amended and annotated MOP, ideally with cross-references to other sector legislation, regulations, etc.

In addition, it would be a great benefit to the Ministry and to potential investors to have a restated and amended and annotated MOP and model agreement. A restated and amended law or agreement simply takes any amendments (“amended”) and puts them directly in the full law or contract (“restated”) to include those amendments. This makes understanding the law or model agreement as its stands today far easier for everyone. This is a relatively simple exercise with a large payoff.

Annotating laws and contracts to cross-reference relevant regulations, directives and guidelines would take more work to do well and to truly be a valuable tool. It would need to be genuinely comprehensive, which will require quite some time. However, it would similarly pay considerable benefits by providing a holistic view of the legal framework governing the minerals sector. One version of this would only have the minerals sector legal framework in the annotation; a better but more difficult version would include other relevant laws and regulations. Ideally the latter would be undertaken. These should be made available to the public so that the legal framework is clear and easily understood by potential investors, citizens, and other stakeholders—and perhaps most importantly, throughout Government.

Limit policies, laws, and regulations that remain in a draft phase for long periods of time
Uncertainty is a major deterrent for attracting quality investment. While legislative and regulatory change should not be avoided simply because it can create uncertainty, these changes should be undertaken with a view to finalizing in due course. There appears to be a number of policy and legal documents that remain in draft status for long periods of time. This practice should be limited, as it creates significant uncertainty and there does not appear to be a compelling reason to keep these documents as drafts.
8. Environmental Management

8.1. Summary of Issue

The process of extracting mineral resources from the earth inevitably results in environmental impacts. If these are not properly managed, contamination of water or soil can occur, air quality can deteriorate, and flora and fauna of a mining affected region can be adversely affected. Therefore, a country’s regulatory system must ensure that the environment is protected. For Ethiopia, this requirement is enshrined in the country’s Constitution as well as in environmental legislation.

The key mechanism for ensuring that environmental impacts are identified and addressed by the developer is the Environmental Impact Assessment and Environmental Management Plan requirement. In Ethiopia, the responsibility for EIA/EMP has been delegated to the Ministry of Mines from the Ministry of Environment and the Forest (MEF). There are acknowledged weaknesses within the MoM to fulfil this mandate, given capacity constraints and lack of modern monitoring equipment. It should be noted that the regional bureaus also exercise responsibilities in this area. Companies are largely self-regulated, therefore, and while environmental audits are part of the regulatory system, they are rarely carried out. Specific EIA guidelines that relate to the mining sector’s specific environmental management challenges would also greatly assist in the management of impacts.

Interviews with stakeholders revealed other problems in the current environmental assessment and management planning process. The public consultation process appears to be flawed in that technical information needed by communities is often not communicated in an understood format. Further, social and environmental baseline studies are not performed, and the social component of the EIA/ESMP is not given the same emphasis as the environmental component. Also, mine closure planning has not been required at the outset of a mining project.

The lack of a comprehensive legislative framework and adequate monitoring of company EMPs have resulted in community complaints about adverse environmental impacts from mining.

Finally, resettlement of communities displaced by mining activity is also a problematic area that requires firmer legal guidelines. In some instances, mining companies have undertaken resettlement responsibly, but in other cases, very little regard for due process has been observed.

8.2 Current legal framework

The primary legislative authority for environmental protection is the EIA Framework Proclamation 2002 and EIA Procedural Guideline Draft, 2003. These documents provide the basis for environmental impact assessment and environmental management planning for projects that have been determined to have an adverse effect on the environment. The Ethiopia EIA Guideline for Mining and Petroleum Operations 2003 was drafted in 2003 but has never been formally adopted. There are no legislated provisions for involuntary resettlement of communities within the EIA Proclamation. There is no overarching environmental management legislation in Ethiopia that consolidates all issues related to environmental protection.

Ethiopia established a national Environmental Policy almost two decades ago. For its time, it provides a set of international best practice objectives and principles on environmental protection. There are general provisions that apply to environmental management generally, and then sections that provide guidance on specific economic sectors, including mining.

The large-scale model mining agreement (Section 17) also includes provision for environmental protection. It calls for compliance with all parts of the legal framework in Ethiopia related to the environment to minimise or avoid the negative impact of mining operations, damage or pollution of the environment.

The draft Mineral Policy provides considerable guidance on environmental management matters, probably because of its delegated responsibilities in this regard. The policy calls for Integrated Environmental Management (IEM) to be applied to the mining industry including “cradle-to-grave” management of environmental impacts, effective monitoring and auditing, financial guarantees for environmental rehabilitation, controlled decommissioning and closure procedures, procedures for
the determination of possible latent environmental risks after mine closure and retention of responsibility by a mine until an exonerating certificate is granted. These provisions are more up to date than the Environmental Policy that was drafted in 1997. It would be helpful to include these provisions in an environmental management law as they go beyond what is provided for in the EIA Proclamation.

8.3 Options

Develop a “full suite” of mine-specific environmental management directives and guidelines to be issued by MOM and jointly enforced by MoMPNG, MOLSA and MEF in the near term; consider a Mine Audit Authority and developing audit capacity in MEF in the longer term

In anticipation of much more mining activity in the future, the time is ripe to produce a full suite of environmental management directives and guidelines specific to the context of mining. Currently, the additional detail added to general subjects in the general regulations is far less than what one would typically see in regulations regarding environmental protection (and this goes for OHSE concerns as well, addressed in the next section). These environmental directives should adopt best international practice and international standards, such as the IFC’s performance standards for environmental and social impacts. These are very detailed standards that are required of any project the IFC finances.

The MEF is updating the 1997 Environmental Policy, and when asked in meetings, they have said that there are no mining specific provisions in this new policy. This would seem like a fairly clear indication that MEF does not intend to bring mine-specific environmental protection into its mandate in the near term. In the longer term, the Ministry of Environment and the Forest will likely want to develop audit capacity, or have a separate environmental audit agency.

As part of the mine-specific environmental management regulations and directives, update and complete mine-specific EIA requirements and add “social” into it for ESIA

This is really a sub-part to the previous: mine-specific EIA guidelines are needed to produce high quality EIAs for mining projects. This is critically important, as the ESIA is the document from which the ESMPs and all future management documents are based. If the potential impacts are not properly assessed, it is unlikely that they will be well managed in the future. The environmental impacts assessment process should be defined according to the extent of environmental disturbance caused by exploration or mining activity. Specific guidelines should be drafted for an EIA at the exploration stage, for artisanal or small scale mining and for large-scale mining. Since regional authorities, both the regional mining bureaus and the regional bureaus for environment and forestry, exercise responsibilities in this area, they should be involved in this task. Indeed, we understand that there is a desire by the regional authorities to draft regulations for the licenses they issue, but the MOP designates this task to the federal authorities. The Mining Operations Advisory Committee (discussed further in 11 Institutional Arrangements) could be used a way to engage the experience of the regional bureaus in the drafting of new regulations in this area without changing the current delegation of that authority, which could introduce conflicting and overlapping regulations issued by different levels of Government. The better approach is to work collaboratively through an official organ, such as the MOAC.

Adopt Resettlement Action Plans (RAPs) as part of the “full suite” of mine-specific body of directives and guidelines—either as a separate directive or part of ESIA and ESMP directives

For those affected by mining, resettlement is often the most significant and too often traumatic impact of mining. This impact should be included with guidelines specific to resettlement as part of the ESIA and ESMP process, and a resettlement action plan or RAP required if there is resettlement. The RAP should be approved by the Ministry and otherwise comply with Land laws in Ethiopia vis-à-vis compensation, etc. We note that there is a requirement for a Resettlement Plan in the model agreement; however this should be a legal requirement that is non-negotiable and stated in regulations or directives, if regulations are not a possibility.

Make the Mine Closure requirements a legal requirement in the “full suite” of mine-specific directives

The large-scale model mine agreement has a good start for provisions for mine closure in Article 17. There is the provision for Mine Closure Plan and for a dedicated bank account that has to be funded every year. The funds are to be released by the Ministry for mine closure, according to the ESIA/ESMP. More detail on what exactly should be included in a Mine Closure Plan, what kind of financial security is acceptable, and regular updates to the plan should be included in directives.
Ensure there is a clear right to conduct environmental audits in the MOP

While there is provision for audit of royalties and other various powers of monitoring and implementing the law in Article 54 of the MOP, there is not a clear right and power (and duty) of the MOM or the regions to undertake other forms of audits, like environmental and social audits or audits of any other kind to ensure compliance with the law. This would make this power a clear right of the Ministry and regions if it were explicit in the legal framework. It may well be argued as an implicit right—but better not to have this argument, particularly when a company is already suspected of potential non-compliance.
9. Social Issues

9.1 Community Development

9.1.1 Summary of the issue

Mines are often high tech, expensive installations located in often remote and underdeveloped parts of the world. The juxtaposition between the obvious wealth and sophisticated look of company infrastructure (and its access to electricity, potable water, etc) and the physical conditions of poor communities that are engaged in subsistence livelihoods can often give rise to conflicts arising out of communities’ dissatisfaction with the distribution of benefits and of negative impacts. Such conflicts undermine social cohesion, they can affect the international reputation of the jurisdiction, and can mean delays or interruptions in mining activity due to acts of civil disobedience. Such conflicts can affect the international reputation of the jurisdiction, and can mean delays or interruptions in mining activity due to acts of civil disobedience. In Ethiopia, some communities receive a measure of development benefits, but many do not. There is a need to ensure consistency and to require mining companies of all sizes (except true artisanal) to contribute to community development proportionate to the revenue obtained from their operations.

It is unwise to assume that communities (even impoverished ones) have limited power to affect a large mining company and stark examples of the opposite can be found in many countries worldwide. Simply put, communities need to see a benefit to a mining company operating in their midst, especially if they suffer myriad negative impacts from mining.

Therefore, most modern mining regimes have taken a proactive approach to addressing these issues. There are a number of approaches that can be taken, but the main two involve developing an overarching corporate social responsibility policy at the national level that would include a broad base of consultation and pull all the social elements and issues involved in mining into one policy document. This policy would inform other related policies, practises and legislation related to social responsibility issues. This report does not go into detail on such a policy, as it is focused on areas that have a more significant legal component. However, this is not to de-emphasize the importance of such a policy. Secondly, and as part of a national CSR, some form of mining company-community agreement should be negotiated that would provide a framework for the mining company’s community development obligations. Since the latter has significant implications for the legal framework, it is treated in more detail, though that is not a reflection of the relative importance of these two important social policies.

9.1.2 Current legal framework

Requirements that target the mining industry’s responsibilities regarding community development currently are scattered throughout a number of different policy and legal instruments. There are small but significant differences in the way these responsibilities are described in each of the instruments.

The Mining Proclamation 2010 (Article 60/3) specifies the requirement for both exploration and mining license holders to contribute financially to a community development plan.

It appears that the content of these plans is determined by local government and the plan funding that mining companies are required to contribute is held by the MoMPNG. This process circumvents the direct relationship between a community and a mining company, and is weak for a number of reasons: communities need to feel they are direct beneficiaries of a mining operation and that they have the first say in development priorities. Secondly, they need to participate in a monitoring exercise, and have recourse to a grievance mechanism if companies do not meet their obligations. Thirdly, community development projects should be in line with local and national development plans, and a negotiated process that includes government, communities and industry is the best way to achieve this synergy.

In the draft Mineral Policy specific reference to community development mechanisms are included in the policy where Institutional Arrangements are described. The policy calls for a regulatory function to oversee, in cooperation with the Environmental Authority…the administration of a social and labour plan in the mining industry (Institutional Framework, EDMP, 4.2.1.8). The SLP is a South African model and refers mostly to the South African situation where African population was excluded deliberately from participating in the mining sector. So, the SLP is meant to include
requirements for both community development (the “social” part) and for human resource development plans related to the participation of Ethiopians in various levels of the formal mining sector (the “labour” part).

Notably, the draft regulations require 5% of initial capital invested during the mine development phase, to be followed by 8% from annual revenue expenditure or net profit (whichever is higher) during the operations phase of the mining lifecycle. This is high by international standards.

It is important to draw the government’s attention to these different ways of describing socially related obligations of the mining sector – both to ensure clarity for investors and so that the regulator can provide effective oversight and monitoring. Usually, human resource development issues are dealt with through different mechanisms than are community development issues; the one relating to participation of Ethiopians at the trades or professional levels, the other relating to capacity building of community members at a much more basic level.

The requirement for training of professionals as well as local procurement requirements are contained in model mine agreements (as well as the same reference to the community development plan and the above noted process).

The Council of Ministers Draft Regulations on Mining Operations (Article 43) on obligations of the license holder regarding community development obligations. It requires quite high percentages of capital to be invested in community development, depending upon the stage of development. These are much higher than international standards and should be reviewed. There is also a requirement for community development initiatives to align with the country’s development strategy although it does not specify whether this refers to the national development strategy only, or if there are regional or local development strategies.

Lastly, it is important to distinguish between CSR efforts and expenditures required at the exploration stage compared with the mining stage. Currently, the legal requirements group the two together, but this is problematic and at the exploration stage there is no revenue stream for the company to fund CSR activities. It is also important to distinguish between community development and community consultation. While there is no revenue stream to speak of during exploration, exploration companies should engage in community consultations nonetheless. Since mining is usually a much longer-term presence and the opportunity to implement some form of community-mining company agreement is much more likely and sustainable, particularly if there were consultations during the exploration phase.

9.1.3 Options

Require Community Development Agreements and Restructure the Community Development Fund

The Mining Proclamation 2010 (Article 60/3) specifies the requirement for both exploration and mining license holders to contribute financially to a community development plan. We would suggest Community Development Agreements be required for the issuance of a mining license, just as a work program, EIA, etc. are requirements. For exploration license holders, it would be deterrent to investment to have legal obligations during the exploration period for community development. This is not to say that the exploration license holders should not do anything, only that consultation should be the priority and CSR contributions. The MOP, regulations, and model agreement would need to be revised to delete references to the community development plan and instead make reference to the CDA.

The MOP should include the fundamental requirements for the CDA process:

- Clearly states which projects must have a CDA
- Defines a community and provides a process for appeal if there is disagreement
- Provides minimum spending requirements for the community
- Lists an outline of issues mandatory, prohibited and options issues for the CDA;
- Ministry approval of the CDA and Ministerial dispute resolution.

The World Bank has produced a very good CDA framework that could further regulatory detail on the process and contents for CDAs. It is worth noting that the exploration community development contributions need to take into account the high expense and high-risk aspects of this stage of mining. Efforts should involve on-going consultation with those affected by exploration activities and include relatively inexpensive measures such as provision of a few boreholes for water, or use of local labour in assistance in setting up exploration camps. At the mining stage, the CDA, by definition, requires not just consultation but negotiation with the affected community.
The Community Development Fund could be financed from a percentage (1%, for example) from the mining royalties currently paid. This would not represent an additional cost to industry but it would require the national treasury to agree to dedicate a portion of mineral wealth to community development in areas not necessarily affected by mining. Equitable development and fair distribution of mineral wealth could result in a greater acceptance of communities and related stakeholders with regard to the arrival of large scale mining in the country.

**Forego using the South African model of Social and Labour Plans and use laws/regulations/guidelines and CDAs and mineral agreements**

In addition to the fact that the Social and Labour Plan concept was developed in response to the specific ownership and participation issues related to the South African apartheid era and therefore not easily adapted to the Ethiopian context, there are good reasons to have CDAs for social issues that are separate from labour plans. Social issues tend to be highly localized, while employees may relocate from across the country to work for a well-paying mining job. Some countries have even encouraged expatriates to return to their home countries and have allowed those “repatriates” to be counted as local hires by companies for highly skilled jobs (accounting, etc) that were not otherwise available. We would suggest considering social and labour issues as separate issues and revising the draft Minerals Policy to reflect this distinction.

### 9.2 Labour Issues

#### 9.2.1 Summary of the issue

At this stage of mining development in Ethiopia, most mining has been undertaken at an artisanal, small or medium scale. There are few large-scale mines producing at this time, but it is expected that new mines will be developed in the near to medium term. Thus, it is important that the country prepare for the arrival of these mines and ensure that the policy and regulatory framework that governs labour issues particular to this size of mining provides adequate protection to workers and necessary oversight responsibilities to the proper authorities.

#### 9.2.2 Current legal framework

In the Draft Mineral Policy under 4.2.1.8 Institutional Framework, the MoMPNG is expected to have a regulatory function to monitor health and safety at all mines and quarries. It is unclear as to whether the intention is to share this function with the Ministry of Social and Labour Affairs (MoSLA). This Ministry currently has the mandate for implementing the Labour Proclamation 2004, which includes aspects of health and safety generally applied to all industrial sectors. Clarity is required on the respective oversight roles of the two Ministries in Health and Safety regulation of the mining sector.

Further, there is a discrete section in the policy, 4.2.10.1 Mine Health and Safety that provides detail on how the Ministry intends to promote healthy and safe working conditions at all mines. The policy measures include the development of a Mine Health and Safety Regulatory framework for monitoring health and safety at mines. This seems to include a future Mine Health and Safety Proclamation or Directive that will bring mining sector specificity to the current general labour regulatory framework.

Labour issues in Ethiopia generally are regulated through the Labour Proclamation 2003. Ethiopia is a signatory to ILO labour standards and the labour proclamation has been “domesticated” based on these standards. Indeed, review of the Labour Proclamation 2003 indicates that it is in keeping with international best practise and that provides comprehensive guidance on employer and employee obligations with respect to all aspects of labour-management.

The Ministry has established specific Directives related to sector specific labour issues for a number of industrial sectors, but not for the mining sector. This appears to be the most glaring omission and it will be important for the two Ministries (MoM and MoSLA) to resolve institutional issue regarding drafting of mining specific guidelines, and implementation of these.
9.2.3 Options

Design and implement mine specific OHSE regulations and guidelines

The increase of mining to reach the goal of 10% of GDP will require a number of mines coming on-stream that do not currently exist, particularly large-scale, export-oriented mining projects. It makes sense that there has not been, to the point, an emphasis on mine specific OHSE regulations, policies and enforcement. In anticipation of the growth the sector will see, regulations or directives under the MOP and issued by the MOM are likely a good idea, in addition to any directives MOLSA plans to issue. All directives should be consistent with the MOP and Labour Proclamation of 2003, regardless of which Ministry issues them. This “full suite” of OHSE regulations and guidelines might cover on a number of issues, for example:

- Underground mining
- Transport of hazard materials
- Radioactive minerals
- Prevention or Regulation of Child Labour
- ASM OHSE
- Mineral specific OHSE, for example coal mining

Again, these are just examples. For implementation, discussions were held that contemplated joint-teams for monitoring and enforcement of the OHSE (and other) requirements. Joint teams of MOLSA and MoMPNG officials (specifically trained mine inspectors) could enforce this framework. A legal basis for joint inspection teams could be added to the MOP and MOUs (or other arrangements as are used for inter-ministerial cooperation in Ethiopia) could delineate the tasks amongst the Ministries and agencies involved. For example frameworks, Australia is considered a leader in mining OHSE and has a wide variety of mining in different minerals, from coal to iron ore. As such, these are good models for OHSE development, though seeking specific legal and OHSE expertise in this area will be important.
10. Artisanal and Small Scale Mining

10.1 Summary of the issue

AM and SSM (including the new Special SSM) are important sectors for jobs and revenues, especially for the rural communities that may have limited opportunity in other economic sectors. Supporting AM and SSM through education, finance, and technical assistance is key. Balancing AM and SSM with LSM is too, as it can be an area of conflict.

Generally, these sectors are doing very well in Ethiopia. The policy of recognizing and encourage these activities makes Ethiopia a notables success among other countries. The gold purchasing scheme is very successful, contributing foreign exchange and reducing the likelihood of smuggling and other illegal activity.

10.2 Current legal framework

Since the sector is doing well, recommended changes to the legal framework are few. The legal framework is largely fit-for-purpose. Most of the recommendations from the policy report focused on implementing the legal framework as opposed to increased regulation via the regulatory framework. Examples of those include:

- Develop programme for technical assistance to artisanal miners and their cooperatives, including to help improve AM working conditions and safety.
- Review potential for loans to be made against collateral under existing regulations that allow for extending credit to cooperatives under the state-owned banking system.
- Smuggling and sales to non-licensed buyers is an illegal activity that would require better law enforcement to reduce it.
- Provide technical assistance and machinery to improve cutting and polishing abilities to improve value of exported opals and gemstones. This is typically more successful than export bans, which may force activity underground and increase illicit activity.
- Increase funding for, among others, EIA review by the RBEF for SSM operations and inspections by the Environment and Community Development Department.
- Develop more simple environmental monitoring tools for use by RMB and RBEF at the regional level.

Nonetheless, there are some areas where the legal framework may undermine the goals of the ASM and SSM policy.

10.3 Options

The policy of moving AM to longer-term mining licenses is a good one and should certainly be supported legally, technically, and politically by GOE and the regional authorities. The main flaw of the implementation of this policy in the legal framework is making AM workers illegal by prohibiting the renewal of an AM license.

Since 2014, it is no longer possible for artisanal mining licenses to be renewed beyond the initial two year period. With a major training and capacity building programme with sufficient resources, the government's ambition to move artisanal miners into a more productive mode of production may succeed. However, in the absence of a major effort to train and support miners, there is a risk that they will be forced into illegality, with all the attendant consequences, including reduced incomes, lack of means to promote good environmental management and labour practices, and loss of export revenue. Accordingly, the MoMPNG should:

Evaluate, together with NBE and regional bureaus of experience, the extent to which illegal mining and smuggling are increasing. Possible indicators include government purchases of gold as well as number of Special Small Scale Mining Licenses and Artisanal Mining Licenses issued.

Depending on the outcome of the evaluation, consider the reintroduction of renewal of artisanal mining licenses
Eliminate the priority for LSM before AM and/or SSM, including Special SSM, rights. Allow these rights to be transferred to an LSM licensee.

This hierarchy mechanism should be phased out to avoid conflict. These licenses often have a relatively short term, compared to LSM. The activities conducted under these licenses provide employment, foreign exchange, and contribute to the robust construction sector.

The current policy of increasing LSM through a more streamlined and best practice minerals law and policy is a good one; however, experience from countries around the world shows that rapid displacement of AM and SSM with LSM can create conflict that can deter investment instead of attract it. An LSM licensee or prospective licensee should negotiate with these licensees to buy-out those miners if there is an area that it wishes to mine. This will require transferability of the license. MOM can facilitate and support these negotiations between large scale and artisanal miners, in a similar manner as the recommended CDA approach with local communities; and, the transfer should require MOM approval like any other transfer in the LSM context (as would also be necessary under the CDA approach). The legal framework would need to be amended to allow for transfer of AM, Special SSM and SSM licenses to an LSM or prospective LSM licensee.

In essence, LSM and/or prospective LSM licensees should be required to negotiate with both non-LSM miners on an area it seeks to mine as well as communities that are on that area or in the “catchment zone” of the LSM project. The MOM still has a strong role to play as an honest broker of these negotiations and the ultimate approver of the negotiated agreement. This system takes administrative and legal pressure off of the Ministry in the current system. With approval power of these agreements, the MOM is not relinquishing its oversight role.

Jewellers should be allowed to buy directly from Gold Purchasing Centres (GPCs) in the regions

Currently, jewellers are not allowed to buy directly from GPCs based in the regions, which forces them into legality if they are to avoid a long and costly trip to Addis Ababa. Jewellers in the regions are very likely a not in a very small portion of the gold buyers and allowing them to purchase in the regions should not impact the gold accrued by the Federal Government.

Include AM and SSM revenues in EITI regulations or guidelines

EITI is a voluntary multi-stakeholder initiative that takes many forms in each country implementing it. A number of countries have chosen to have an EITI law that gives the initiative “teeth”. While not required by the international EITI, it has proven useful for countries like Liberia and Nigeria, allowing them to ensure compliance. At present, the relative importance of AM and SSM could be fairly characterized as more significant to GOE than LSM. While the goal is to increase LSM and there are new LSM projects in Ethiopia, the vibrant AM and SSM sectors will continue. A better understanding of their contribution would benefit GOE by giving a more complete picture of the sector and its contribution. Better overall planning can be undertaken with better information and data about the revenues generated. It could further assist in the effort to migrate AM licensees to Special SSM licensees by ensuring that some of the revenues generated by the sector are going towards increased technical and financial services for these sectors.

Understand the AM and SSM revenues

Considering that the system is largely functionally well, in relative comparison to many other countries, there may not be a reason to change from the current system. However, understanding the revenues generated may lead to policy changes to improve the mining sector. Furthermore, a lack of knowledge about revenue collection of AM and SSM by the Regional Mining Bureaus (RMBs) would indicate that it is probably best to wait for data from, for example, the EITI process, before making a policy decision. It is worth noting that this may be an area to consider in the future.
11. Institutional Aspects

11.1 Summary of the issue

The best laws, regulations and contracts in the world require institutions, and the people in them, to bring them to life and achieve their mission. As such, appropriate institutional structures and retaining staff are critically important aspects of any minerals policy. The draft Policy and GTP II emphasize staff retention, and the issue has come up in our discussions with Ministry officials on a number of occasions. It is an area that the MOM has recognized as needing improvement and prioritized accordingly. Retention and capacity building (other than training provided by investors) is not an issue of law, but rather policy and planning. As such, it is not discussed much in this section.

Cooperation and coordination is always difficult amongst government institutions, whether across Ministries or with regional government and the draft Minerals Policy notes in several ways in which it would like to focus on cooperation, including in 4.2.1.7 “Cooperation between Federal and State Governments”. Much of this area is a matter of implementation of the draft Policy and the current law rather than adding new elements to the legal framework.

11.2 Current legal framework

The current legal framework is largely clear in terms of Federal and Regional power sharing. Which licenses are issued by which body, and to be monitored and enforced, is generally straightforward and seems to be running well, from discussions with various stakeholders. The main issue that did come up was that regional bureaus would like the ability to make regulations for the licenses they issue. However, this power is given to the federal Ministry in the MOP. This is not so much an issue of clarity in the legal framework so much as it is one of capacity and coordination: the regional bureaus have significant expertise to provide input and even be the de facto authors of regulations, but the power to issue these is with the federal Ministry.

It seemed to the team that coordination and cooperation could be further improved, including to work through issues like drafting regulations, directives and other documents in the legal framework. While this is largely a matter of practice and not law, we identify two options for the legal framework. The MOP already has what seems like a logical place for improved coordination: the Mining Operations Advisory Council (MOAC). The composition, responsibilities, and other particulars of the MOAC shall be determined by regulations (Article 55). There has been more detail added to the MOAC in the draft regulations in Article 58, which are very good and moving in the right direction. For example, the composition:

The mining operations advisory council shall be composed of the ministry, regional mining bureau or agency, the concerned environmental protection organs of federal government or regions, ministry of trade, ministry of finance, ministry of industry, revenue and custom authority, domestic investor those play significant role in the mining sector, non-governmental organizations, associations related with mining operations, and other relevant members of the council shall be determined by directives, where the ministry deems it appropriate.

This is a good example of a multi-stakeholder coordination body that includes the various bodies of Government needed to bring a holistic picture of the mining sector to the Ministry. There may still be a need for an inter-ministerial and inter-governmental coordination committee (more in 11.3 Options, below).

The draft regulations also introduce a number of regulatory provisions that should help the Ministry implement its mandate to monitor and enforce the minerals legal framework and be a more effective institution. These will not all be repeated here, but the provision of, for example, the controller and penalties should assist with the effective implementation of the minerals legal framework.

11.3 Options

Use the Minerals Operations Advisory Council to clarify institutional mandates
The Policy Options Report made a number of suggestions for clarifying responsibilities across Ministries. This ranged from inspections with MOLSA, environmental protection with the MEF, and revenue collection with MOFED and the regional bureaus. The MOAC is a good place to discuss these issues, especially since the main stakeholders affected by these decisions are included in the list of possible members of the group. One issue to bear in mind when creating the MOAC’s is to be explicit about whether membership is personal (i.e. the Minister is there in his individual capacity) or based on the office (i.e. if that particular Minister changes, the next Minister holds the office).

Create an inter-ministerial and/or inter-governmental advisory committee or MOAC sub-committee

If there is a desire to have a separate governmental body, and there is a lot of merit to that choice, then a similar body could be created to similar discussions as the MOAC but among the relevant government agencies. Different structures would be needed, as all members would be by office, not personal.

This body may also want to coordinate the monitoring and enforcement activities required in the legal framework. Inter-ministerial teams can engage in field visits to projects in a coordinated and cost-effective manner. The work of the group would not be conducive to doing through the MOAC, as private investors and other public stakeholders are contemplated to participate on it. This could be a compelling reason to create a separate committee for government bodies to coordinate their work.
12. Conclusions and Recommendations

The objective of the recommendations to be presented in the following section can be summarized as follows, drawing on the conclusions of the workshop held in June and the Policy Options missions during July and August:

- To promote Ethiopia as an attractive destination for foreign mining investment, in particular through the development of legislation and regulations aimed at eliminating uncertainties, reducing discretion and streamlining regulatory detail;
- To integrate the mining industry into the fabric of the economy; including by building linkages, expanding employment, exploiting opportunities for supplying local industry with raw materials, improving infrastructure and developing domestic uses of mineral products and downstream processing;
- To protect the environment and communities as well as investigating ways of using mining as a catalyst for community development, particularly through a more systematic use of Mineral Development Agreements and Community Development Agreements and by providing mining related specificity to EIA/EMP processes; and
- To improve stakeholder engagement through provision of formalised mechanisms.

Our recommendations at this stage should be seen as ideas for directions of work rather than as definite proposals. They will need to be discussed with the Ministry of Mines and with other interested parties in order to sift out what is feasible and useful and in several cases they will have to be subjected to analysis by legal counsel.

The recommendations are divided into nine areas:

- Exploration and mining rights
- Fiscal policy
- Employment, local content and downstream processing
- Geo data
- Investment promotion
- Environmental management
- Social issues
- Artisanal and small scale mining
- Institutional aspects

12.1 Exploration and mining rights

The recommendations under this heading are intended mainly to increase the attractiveness of the Ethiopian licensing regime through simplification. A first point to be made in this connection is that Ethiopian regulations and practices do not appear to give sufficient weight to the first-come-first-served principle. Accordingly, in order to raise the attractiveness of Ethiopia as an exploration and mining investment destination the first-come-first-served principle could be strengthened in the text and in the application of the relevant legislation. This could be done through the following measures:

1. Clarify FCFS in law: abolish rankings and reservations in Article 13 and strictly interpret and consistently apply FCFS
2. Eliminate or limit auctions to exceptional circumstances: relinquishment or termination of a discovered mineral resource
3. Provide regulatory clarity on the requirements for granting of the mining license

A second point where clarification may be useful is on the possibility of overlapping licenses. In order to reduce the uncertainty regarding the scope of rights and the possibility of conflicts, we recommend the legislative framework gives license holders an exclusive right to all minerals in the license area:
4. The Mining Proclamation could be changed to state that a license for a specific area gives the right to exploit all the minerals found therein. There are several examples of text from other jurisdictions provided in section 3.2.3.

A third issue concerns the relative use of legislation and agreements in the regulation of mining licenses. In the long-term, it will be beneficial to move smoothly towards the use of legislation in place of agreements but during that transition it makes sense to:

5. Maintain hybrid system with a view to eventually phase out agreements and move to a pure license system; limit contract coverage as much as possible and refer to legislation instead
6. Continue including a stability clause in agreements but limit its duration
7. Limit what is negotiable in the MOP and Model Agreements and include Model Agreement as an Annex to the MOP or its Regulations
8. Continue to develop regulations and directives in technical and OHSE areas

For existing licenses, it is essential to ensure that such licenses are used efficiently so that promising areas are not monopolized indefinitely without substantial progress. The following are recommended changes that can facilitate this:

9. Relinquishments should be increased, escalating fees introduced or some combination of the two measures be applied
10. Mineral exploration regulations to provide clear, transparent, thorough processes for exploration obligations
11. Clarify the power to audit and institute a process of auditing exploration licenses.

In order to enhance simplicity in legislation, there is significant scope for streamlining regulation and thus we recommend the following:

12. The GoE should consider abolishing or clarifying the following licenses – retention license, special small-scale license and mineral specific license. The introduction in the draft regulation of a limit to the area covered by a reconnaissance license should be reconsidered.

Additionally, we believe that GoE should:

13. Consider allowing the transferability of ASM and SSM licenses

12.2 Fiscal Policy

The current minerals fiscal regime, set out in the Minerals Income Tax Proclamation, is generally appropriate for the draft mineral policy. We acknowledge the ongoing work towards a harmonized income tax law and recommend the following:

14. Separate minerals and petroleum in the omnibus draft ITP.
15. Ensure that the minerals chapter of the ITP build on the current MITP in order to avoid critical regulations being left out.
16. Ensure that the ITP retains the deductibility of royalties and accelerated depreciation, define development costs more stringently and avoid the introduction of ring fencing.

In line with GoE’s intention to attract foreign investors, we believe that the current mandatory 5% ‘free’ equity in LSM agreement should be changed:

17. Do not embed a mandatory state equity into the Minerals Policy or legal framework. If it is necessary to retain state equity for reasons of policy coherence, convert it into an option with a maximum for carried equity of 5 per cent.

In addition to the fiscal regime, a key issue facing investors is the administration of that regime. This has a big impact on the ease of conducting business in the country and, in the case of slow VAT reimbursements, have a big impact on the cash flow of projects. Thus, we recommend that the GoE:

18. Undertake an analysis of where the bottlenecks are in VAT reimbursement and amend regulations if this analysis indicates there is a legislation or regulatory problem.

A further issue affecting the ease of doing business in the country and impacting on the global operations and finances of mining companies is the presence or absence of foreign exchange regulations. Ethiopia’s current system deter
investors, partially due to the regulations on the use of foreign currency and partially due to the lack of sophistication in the banking system. We recommend:

19. Continue the present policy of adjusting conditions to the needs of investors while pursuing foreign exchange deregulation as a longer term objective

We recognize Ethiopia’s ambition to be EITI compliant and in that light, recommend the following:

20. To further bring EEITI into practice, consider embedding EEITI into law, as its own Proclamation, regulation or directive. Introduce EITI reference into model agreement.

12.3 Employment, local content, downstream processing and infrastructure

We understand the importance of maximizing employment and other indirect economic benefits from the mining sector, and have considered their inclusions in both the draft regulations and model agreement. In order to maximize the benefits from employment, our recommendations include:

21. Consider an initial training and employment plan, then multi-year training and annual follow up plans and progress reports

22. Include a prohibition on foreign unskilled workers

23. Include consultation regarding training and employment in the CDA

We commend the GoE for not including excessive requirements in legislation and regulation for backward linkages and local content. Some options for changes in legislation and agreements are set out below:

24. Give current preference language in the MOP and model large-scale mining agreement more “teeth”

25. Institute Local Content Plans and Progress Reports

26. Undertake market analysis and consider reducing or eliminating duty free imports in the model agreement

For downstream processing and infrastructure, the significant focus on them in the GTP and draft mineral policy is not matched by their consideration in legislation. This is not a problem as they are difficult areas to legislate; thus, we provide the following recommendations:

27. Stay the course

28. Prepare to negotiate downstream and infrastructure provisions in the MDA and other agreements.

12.4 Geo-data

The importance of this issue means it is covered in depth in the Policy Options Report, and not in this report as it is more an issue of policy and practice than legal rights. However, we recommend that:

29. Future regulations and directives (if not the MOP itself) and agreements should clearly specify that data and samples are to be delivered directly to the GSE.

30. Draft standard provision for delivery of geo-data to GSE and MoMPNG

31. Establish procedures to ensure that holders of an exploration and exploitation license deliver geo-data as required in license conditions

12.5 Investment Promotion

For non-geological factors influencing investment decisions, there are several improvements that could be made to the legal framework which could have a substantial impact on Ethiopia’s attractiveness to foreign investors.

In order to increase efficiency and transparency, we recommend:
32. Provide not just minerals legislation, but all relevant legislation (OSHE, Environment, Land, etc) on the MoMPNG website

In order to enhance the ability of investors to comprehend the MOP:

33. Provide a restated and amended and annotated MOP, ideally with cross-references to other sector legislation, regulations, etc.

In order to reduce uncertainty:

34. Limit policies, laws, and regulations that are in draft form for long periods of time

12.6 Environmental Management

In anticipation of large-scale mining projects developing in the near future, the GoE should:

35. Develop mine-specific environmental management directives and guidelines to be issued by MOM and jointly enforced by MOM, MOLSA and MEF in the near term

High quality EIAs require mine-specific EIA guidelines, meaning that:

36. As part of the mine-specific environmental management regulations and directives, update and complete mine-specific EIA requirements and add “social” into it for ESIs

The importance of resettlement to those communities affected means that the GoE should:

37. Adopt Resettle Action Plans (RAPs) as part of the “full suite” of mine-specific body of directives and guidelines—either as a separate directive or part of ESIA and ESMP directives

38. Make the Mine Closure requirements a legal requirement in the “full suite” of mine-specific directives

In order to avoid any potential disputes over the rights of the Ministry of Mines to conduct environmental audits, the GoE should:

39. Ensure there is a clear right to conduct environmental audits in the MOP

12.7 Social Issues

The Mining Proclamation 2010 (Article 60/3) specifies the requirement for both exploration and mining license holders to contribute financially to a community development plan. The Ministry could use this provision in the MOP to:

40. Require Community Development Agreements under Article 60/3 of the MOP and abolish the Community Development Fund

Given that South Africa’s apartheid era model is not appropriate for modern Ethiopia, we recommend that the GoE should:

41. Forego using the South African model of Social and Labour Plans and use laws/ regulations/guidelines and CDAs and mineral agreements

In preparation for a potentially large increase in mining sector activity over coming years, we recommend that the GoE should:

42. Design and implement mine specific OHSE regulations and guidelines

12.8 Artisanal and Small Scale Mining

Overall, we believe that this sector is currently performing well and has a legislative framework which is appropriate. We believe that due to the major challenges in ASM-licensed workers moving to longer-term mining licenses, the GoE should do the following:
43. Evaluate, together with NBE and regional bureaus of experience, the extent to which illegal mining and smuggling are increasing. Possible indicators include government purchases of gold as well as number of Special Small Scale Mining Licenses and Artisanal Mining Licenses issues.

44. Depending on the outcome of the evaluation, consider the reintroduction of renewal of artisanal mining licenses due to the desire to avoid conflict between different types of licenses, we recommend that GoE should:

45. Eliminate the priority for LSM before ASM and/or SSM, including Special SSM, rights. Allow these rights to be transferred to an LSM licensee.

A further reform we recommend so as to reduce the incentives for Jewellers to illegally purchase Gold outside Addis Ababa is that:

46. Jewellers should be allowed to buy directly from Gold Purchasing Centres (GPCs) in the regions.

Due to ASM and SSM’s greater relevance than LSM for Ethiopia’s economy, GoE should:

47. Include ASM and SSM revenues in EITI regulations or guidelines.

Additionally, in light of the unique aspect of ASM and SSM revenues in that they remain in the regions, the GoE should:

48. Consider whether some portion of ASM and SSM revenues should go to the Federal Government.

12.9 Institutional Aspects

Due to the vital importance of ensuring that even the best designed policies and legislative framework are effectively implemented by an appropriate institutional framework, we advise that the GoE should:

49. Use the Minerals Operations Advisory Council to clarify institutional mandates and work with a variety of stakeholders.

50. Create an inter-ministerial and/or inter-governmental advisory committee or MOAC sub-committee.
Draft Implementation Plan

Ethiopia Mining Sector Development

#7175163
1. Background

The objectives for the Ethiopia Mining Sector Development project as presented in the Policy Options and Legislative Options reports can be summarized as follows:

- To promote Ethiopia as an attractive destination for foreign mining investment, in particular through the development of legislation and regulations aimed at eliminating uncertainties, reducing discretion and streamlining regulatory detail;
- To integrate the mining industry into the fabric of the economy; including by building linkages, expanding employment, exploiting opportunities for supplying local industry with raw materials, improving infrastructure and developing domestic uses of mineral products and downstream processing;
- To protect the environment and communities as well as investigating ways of using mining as a catalyst for community development, particularly through a more systematic use of Mineral Development Agreements and Community Development Agreements and by providing mining related specificity to EIA/EMP processes;
- To improve stakeholder engagement through provision of formalised mechanisms; and
- To improve the productivity as well as the social and environmental sustainability of artisanal and small scale mining.

In the following, it is assumed that the options presented in the Policy Options and Legislative Options reports are accepted, where relevant with modifications resulting from feedback received in the context of the November mission. It is understood that further modifications may be made as a result of additional feedback.

The purpose of the present note is to provide suggestions and ideas for the implementation of the various recommendations, particularly as regards the order in which they can be addressed, the time likely to be needed in order to deal with them, the consultations that will make implementation feasible and more likely to succeed, and the need for external assistance. The annex summarizes the potential needs for external technical assistance.

Since it is not possible at this stage to forecast the time necessary to implement suggestions with any accuracy, actions are categorized under two time frames: those that can be taken within a year and those that will take up to two years.

A number of changes to the regulatory framework can be undertaken at very short notice. They do not require lengthy consultations but can be based on deliberations within MoMPNG and discussions with the regional bureaus. While in some cases, changes to proclamations would be necessary, they should be possible to implement within a year.

Some of the other actions can only be taken once detailed consultations and/or further studies have been carried out. In all cases, however, it should be possible to implement these actions within two years. Obviously, work on many of the areas described will continue beyond this time horizon, but it is not meaningful at this stage to extend the plan further into the future. In the following, actions within the different areas are discussed in the same order as in the Policy Options and Legislative Options reports.
2. Exploration and mining rights

The system for granting exploration and mining rights is central to both the integrity of mineral sector governance and attractiveness to investors. Several suggestions to improve the credibility and integrity of the system have been made in the Policy and Legislative Options Reports.

Actions to be taken within one year

Recommendations concerning exploration and mining rights that can be implemented within one year include actions intended to give additional weight to the first-come-first-served (FCFS) principle, to promote more efficient exploration and to simplify the application of the legislation.

A strengthened application of the first-come-first-served principle would reduce investor uncertainty. This would be done through the following actions:

› Clarify the FCFS system in law by introducing a strict rule that the first application received for an area will be considered against clear regulatory criteria and consistently apply this rule.
› Modify article 13.4 about competitive bidding to limit it to exceptional circumstances: relinquishment or termination of a discovered mineral resource.
› Abolish the ranking of applications and introduce a rule that clarifies that a license cannot be granted over an area that is already covered by any kind of license.
› In order to facilitate movement towards a higher productivity mining sector, the transferability of all types of licenses should be instituted and/or confirmed.
› Provide regulatory clarity on the requirements for granting a mining license – The MoMPNG could set out in directives what it will consider as appropriate and acceptable documentation needed to receive the mining license.
› Mineral exploration regulations to provide clear and transparent descriptions of the obligations of exploration license holders.

In order to provide more incentive for holders of exploration licenses to complete their work expeditiously, thereby freeing up areas for other explorers to investigate and improving the overall efficiency of exploration and discouraging speculative holding of exploration licenses, regulations should be changed:

› Relinquishments of exploration licenses should be increased, escalating fees introduced or some combination of the two measures be applied.

Finally, some simple changes are useful in order to simplify regulations and reduce the administrative burden on the MoMPNG and regional bureaus. The present regulations should be reviewed with a view to identifying any regulations that are not absolutely necessary for the protection of other interests or for the efficient management of mineral resources:

› In order to reduce the risk of overlapping licenses and the possibility of conflicts, the Mining Proclamation should be changed to state that a license for a specific area gives the right to exploit all the minerals found therein.
› The possibility of replacing the retention license with an optional and limited extension of the exploration license should be considered.
› The need for the certificate of discovery should be reviewed.
› The introduction in the present draft regulation of a limit to the area covered by a reconnaissance license should be reconsidered.

All of these regulatory changes should be preceded by consultations with regional bureaus in order to ensure that the regulations are understood and applied in a consistent manner. None of them requires any particular capacity building.
measures. External assistance in this area should however be sought in order to enable the MoMPNG to draw on experiences in other countries concerning detailed criteria for licenses and for models of legal language. Moreover, external legal assistance would ensure that clear and consistent English versions of the relevant regulations can be made available to investors in a form that conforms to standard legal language usage.

Actions to be taken within two years

A number of actions will require more extended consultations, a more thorough review of options or some capacity building, taking up to two years. Some of them are intended to make the application of the mining regulatory system more efficient and transparent:

- Clarify the power to audit and institute a process of auditing exploration and mining licenses.
- Strengthen the mining cadastre system for registering the exact time of applications. In principle, this should already be the procedure, but various practical problems (lack of Internet connections and trained staff at regional bureaus) have stood in the way of the implementation. It is understood that the SUMM programme for capacity building that is currently planned with ECCO will remediate the problems, inter alia, by adding to the training already undertaken, and make accurate dating of applications possible.
- Design system for reporting of mineral production

Consultations with other ministries, particularly MoLSA, MEF and MoFED, will be necessary in order to draft requirements for certifying auditors as well as necessary regulations for the introduction of a stronger audit system. Experience from other countries, provided in the context of a technical assistance programme, would be useful in this context. Strengthening the cadastre system will require training of staff in MoMPNG and regional bureaus and possibly some design changes in the cadastre system itself. External assistance is already planned in this area. Technical assistance could also be drawn upon to design a system for reporting mineral production, although this task may be undertaken in the context of meeting Ethiopia's obligations under the EITI and financed in this connection.

The reports prepared so far under the project recommend a move towards the use of legislation in place of agreements. However, during a transition phase, which is likely to take several years, a hybrid system could be in place with a more systematic use of Mining Development Agreements to help protect vital interests and provide clarity to investors. Necessary steps include:

- Prepare a new Model Agreement
- Design a new stability clause

It will be necessary to carry out wide ranging consultations with mining companies and other parties, particularly the regional bureaus, who are reported to also conclude agreements with mining license holders, on the subjects to be covered by Mining Development Agreements. These include training, employment, local content and infrastructure. On most of these subjects, technical assistance in the form of studies describing practices in other countries could be of considerable use. The stability clause included in existing agreements reproduces the legal texts verbatim and has the same duration as the mining license. It would be preferable to decide exactly what needs to be covered by a stability clause – most countries prefer to limit the clause to tax conditions – and to do so through a reference to the text rather than by quoting it. The duration of the stability clause could also be shortened. Again, studies on good practices in other countries could be useful in this context.
3. Fiscal policy

The reports have few suggestions on the existing fiscal regime for mining in Ethiopia. However, the draft Income Tax Proclamation (ITP) prepared under IFC auspices attracts a number of comments.

Actions to be taken within one year

The most important actions in the short term have to do with the revision of the draft ITP. This revision should take as its starting point the existing Mining Income Tax Proclamation in order to ensure that no essential aspects are inadvertently left out. The main points of criticism raised with regard to the draft ITP include:

- Separate minerals and petroleum in the omnibus draft ITP.
- Ensure that the minerals chapter of the ITP build on the current MITP in order to avoid critical regulations being left out.
- Ensure that the ITP
  a. Retains the deductibility of royalties and accelerated depreciation;
  b. Defines development costs more stringently;
  c. Does not offer easy ways to avoid capital gains tax on transfers of mining titles; and
  d. Avoids the introduction of ring fencing.

The process of making revisions to the draft ITP is led by MoFED but will require inputs from MoMPNG. It is likely that MoMPNG will want to solicit the views of regional bureaus and mining companies. External assistance is already assured through the IFC, but since this assistance is of a more general nature and does not focus on the parts of the legislation that are specific to mining, it could be useful to commission studies of good taxation practices in other mining jurisdictions, particularly as regards the four sub-points mentioned above.

Another action that can be taken in the short term to make the fiscal regime for mining more transparent and effective is:

- Identify bottlenecks in VAT reimbursement and, if feasible in this time frame, eliminate them

These actions should be taken following consultations with MoFED. In this context, it could also be useful to review more broadly how ERCA responds to investors. Some investors appear to have experienced minor but significant problems, particularly long delays, with the application of regulations.

Actions to be taken within two years

While the current fiscal regime for mining in Ethiopia lacks features that are clear deterrents to exploration or investment, the attractiveness of the regime can be enhanced relatively simply and at a low cost by making some adjustments to the present system. Since these adjustments are potentially controversial and/or may have to be undertaken as part of a more wide ranging reform undertaking, they are likely to require more than one year and their full implementation may not be possible during the two year period addressed in this note:

- Consider removing the limitations for foreign investors and moving towards adopting the principle of free foreign exchange into the Mineral Policy, the MOP and the model large-scale mining agreement.
- Define the strategic objectives of free government equity in mining companies and consider if these objectives are achieved more effectively by other means, possibly leading to an abolition or modification of the present 5% requirement.

In order to provide a basis for these decisions, consultations need to be carried out with the NBE, MoFED, regional bureaus and mining companies. A review of current international practice with respect to government equity holding in
mining operations could be useful in order to provide a perspective against which to define the objectives of state equity in the case of Ethiopia.
4. Employment, local content, downstream processing and infrastructure

The Ethiopian economy is in the midst of a process of rapid structural change. The mining sector can assist with this process but growth within the sector needs to be monitored carefully and specific actions taken in order to ensure that it makes a positive contribution to the economy and does not cause bottlenecks that may constrain growth. Unlike many other countries, Ethiopia has avoided introducing constraining regulations that deter mining investment. It is important to retain this policy stance, particularly if investor interest were to increase substantially, and to work closely with the industry in order to anticipate problems and devise solutions well in advance.

Actions to be taken within one year

› Design and implement a system for exchange of information on training and recruitment plans between different levels of government and the mining industry.
› Include a prohibition on foreign unskilled workers in the MOP.
› Include consultation regarding training and employment in the CDA (see section 8 in the following).

The actions should be taken based on consultations with regional bureaus and mining companies. Experiences from other countries should be drawn upon when designing systems for information exchange and provisions for training and employment in CDAs.

Actions to be taken within two years

For the longer term, the following measures would help to reinforce and maximise the employment benefits of mining projects:

› Establishment of vocational and technical training facilities and programmes for the mining sector (an ECCO program for strengthening geo-science education at tertiary level is already under-way)
› Prepare a skills inventory in cooperation between mining companies and the federal government, in order to identify gaps and to serve as a register of local companies that would be suitable and willing to participate in supplier development programmes.
› Define processes for the integration of the business strategies and CSR activities of mining companies into rural development strategies of regions.
› Define scope and content of training and employment plans in Model Agreement(s), including arrangements for monitoring and progress reports.
› Define scope and content of local content plans in Model Agreement(s), including arrangements for monitoring and progress reports.
› Define provisions in connection with the establishment, maintenance and operation of infrastructure, including the possibilities for multi-user arrangements, to go into Mining Development Agreements.
› Design a plan for building capacity in regions to plan for local development.

All these actions have to be undertaken in close cooperation between the MoMPNG, regional bureaus and the mining industry. Training will be needed, particularly of regional bureau staff, and should be based on an assessment of needs. External assistance will be needed for most elements outlined above; particularly those that deal with capacity building, development planning and local content (see Annex for details).
Much of the positive contribution to growth from the mining sector comes from the establishment of linkages with the rest of the economy, either backward, to industries supplying the mining industry (local content), or forward, to industries using mineral products (downstream processing). In the case of Ethiopia, the linkages are still weak but prospects are good, since the large potential size of the domestic economy and the fact that the country is land locked provide the domestic industry with a competitive advantage. The situation can be further improved through appropriate supporting policies. Any proposed support measures should however be based on thorough cost-benefit analyses covering all economic actors. Measures include:

- Undertaking market analyses for mineral products and support research on new or improved beneficiation techniques and new applications for locally produced mineral products.

- Consider reducing or eliminating duty free imports in the Model Agreement in order to strengthen the relative competitiveness of domestic suppliers.

These actions should be preceded by studies on local markets and local supply capabilities, possibly as part of external assistance.
5. Geo data

Easy availability of geo data is an important way of attracting exploration interest. For this reason, geo data should be digitized and stored in a secure database. The website of the MoMPNG and/or GSE is the first point of entry for many investors and should have direct access to this database. In order to avoid creating a too cumbersome and massive system, the entry point could be a database of meta-data with facilities to forward larger amount of data. The creation of a database that can easily be scaled up is a long term and costly undertaking. Nevertheless, certain actions can be taken already in the short term:

Actions to be taken within one year

- Draft standard provision for delivery of geo-data to GSE and MoMPNG
- Establish procedures to ensure that holders of an exploration and exploitation license deliver geo-data as required in license conditions

Both these actions can be taken directly by the MoM and the GSE without any external assistance.

Actions to be taken within two years

Investment in the acquisition of geo data is a high priority but requires considerable financial resources. To collect airborne geophysical data, ground geophysical data and to carry out larger geochemical campaigns is very expensive and support from donors should be sought. The Canadian SUMMM project will start cost benefit analysis of geochemical labs at GSE and this will provide a starting point. Meanwhile:

- The MoMPNG and the GSE should work together to prepare a plan establishing priorities for the acquisition of geo data, including strategies for identifying sources of the necessary funds.

The preparation of the plan could usefully draw on experiences from other countries. Large airborne geophysical measurement programmes have been carried out in several countries, with mixed results, illustrating the importance of getting the priorities and sequencing right.
6. Investment promotion

Well prepared and executed investment promotion programmes can make a significant difference in attracting investment, particularly for countries such as Ethiopia with a small mining sector and a modest track record in attracting mining investment. Ethiopia's current low ranking on indexes measuring investment attractiveness probably at least partly reflects a lack of knowledge among potential investors about Ethiopian conditions. Accordingly, efforts at investment promotion should have as one of the initial objectives to raise the country's visibility to the international investment community.

Actions to be taken within one year

› Develop an investment promotion strategy for the Ethiopian mineral sector in cooperation with the Investment Promotion Agency. This may include publishing in international trade journals, generating promotional material for wider circulation, make geological data available on the website of GSE, have an active and visible presence at international mineral sector conferences and events, direct contact with targeted investors and production of monthly newsletters.
› Provide not just minerals legislation, but all relevant legislation (OSHE, Environment, Land, etc) on the MOM website.
› Provide updated information about present mining exploitation and expected new mines to be opened in 2-3 years

External assistance identifying relevant experiences with formulation of investment promotion strategies from other countries will prove useful at this stage.

Actions to be taken within two years

Over the longer term, it is important to provide high quality information to potential investors. This requires more detailed work aimed at improving the accessibility and ease of understanding of the mining legislation:
› In order to reduce uncertainty about the content of legislation: Limit the period during which policies, laws, and regulations exist in draft form to as short a time as possible, while ensuring that all interested parties have adequate opportunity to comment.
› Provide a restated and amended and annotated MOP, ideally with cross-references to other sector legislation and to regulations and directives, to be made available on the MoMPNG website.

External assistance in the form of external legal counsel is likely to prove highly useful in the latter endeavour.
7. Environment

To ensure that a clear governance framework for the environment is set up before additional large scale mining projects are developed in Ethiopia, it is recommended to create a consistent legal framework and to clarify the institutional arrangements. The Environmental Policy (1997) is adequate but should be updated and used to inform the legal framework regarding environmental management in Ethiopia. A proclamation (and regulations) would be useful to provide an overarching environmental management direction for the country that goes beyond the scope of the current EIA Proclamation. Most of the needed actions will require more than one year to be put into effect, but preparations will need to begin early in order to ensure that a solid governance framework is in place if and when there is a substantial increase in exploration interest.

Actions to be taken within one year

The regulatory framework should require that companies update their Environmental and Social Management Plans regularly and that these updates should be based on environmental and social audits. To this end, it is necessary to:

› Ensure there is a clear right to conduct environmental audits in the MOP, if necessary by introducing an explicit right.

This action can be initiated directly by the MoMPNG and does not require any external assistance.

In the short term (before EIA guidelines for the mining sector are finalised), to provide clarity about regulations and the obligations of mine operators as the need arises:

› Mine-specific environmental management directives and guidelines should be developed and issued by MoM and jointly enforced by MoMPNG, MoLSA and MEF.

Actions to be taken within two years

As already mentioned, a proclamation would be useful to provide an overarching environmental management direction for the country. Accordingly:

› The need for an environment proclamation covering all environmental management issues should be considered and, if deemed necessary, such a proclamation should be prepared.

Since the MEF would be responsible for the preparation of such a proclamation (in cooperation with other ministries concerned, including MoMPNG) this issue is not addressed further here.

The EIA is the most important tool to address mining related impacts on environment and communities. High quality EIAs require mine-specific EIA guidelines, meaning that:

› Update and complete mine-specific EIA requirements ensuring that social impacts and mitigation strategies are taken into account with equal weighting to that of environment

› Define the ESIA guidelines for mining according to the different sizes, types of mining and the capabilities of miners operating under various categories of licenses.

The responsibility for the above two tasks will have to be defined based on what is decided concerning the application of environmental regulations. At present, the distribution of responsibilities between the federal and regional levels is not completely clear and should be expressed more precisely in legislation. Standards for application to large scale mines have not yet been developed in Ethiopia except what is included in the draft EI Guideline 2003, which uses Canadian standards (British Columbia). The EIA Proclamation Guideline refers to South African, Finnish, American and other standards. The IFC Social and Environmental Performance Standard and the World Bank Guideline for Environment, Safety and Health for the mining sector are considered to be the international benchmarks. These provide monitoring
standards for air, water, soil, sound, vibration, community engagement, public participation, reporting, etc. and can be taken as a starting point to:

- Develop national environmental standards

It is recommended that workshops or other forms of multi-stakeholder processes should be organised to determine these standards. These processes should include the ministry in charge of mining, MEF, MoLSA, other relevant ministries, regional administrations, the mining industry, and civil society. External assistance is likely to be useful to facilitate the workshop, ensure that objectives and outcomes are properly identified and that there is a clear understanding of international good practices and standards.

Large-scale license holders should be obliged to follow an internationally accepted standard on involuntary resettlement of communities such as the World Bank Policy on Involuntary Resettlement and the Resettlement Action Plan. To this end, the MoMPNG should:

- Require implementation of an internationally acceptable Resettlement Standard, to be included in the draft Mineral Policy, amendments of the mining proclamation and environmental legislation
- Develop guidelines for Resettlement Action Plans according to the size, type of mining, impacts on communities, etc.

Again, the MoMPNG must undertake consultations with all involved parties, particularly the socially oriented ministries, local governments, mining companies and civil society. This will ensure that a range of affected stakeholders are educated about resettlement challenges and will pave the way toward implementation of this standard. The development of the guidelines will also have to take into account work that may be undertaken in parallel on Community Development Agreements (CDAs, see section 8 in the following). External assistance will be useful to draft guidelines for Resettlement Action Plans.

Many countries require large scale mines to provide a mine closure plan at the mining license application stage. This avoids improvisation that may prove costly both in environmental and financial terms. Regulations for the calculation of rehabilitation costs should be clarified and a formula for the determination of costs provided:

- Develop guidelines for Mine Closure Plans, including a formula for determination of the amount of mine reclamation funds

There is considerable international experience on these issues, including on different forms of providing financial assurance for rehabilitation costs, that can be drawn upon through external assistance.

In the area of environmental management and regulation, there is need for a substantial capacity building effort, provided through external assistance, including:

- Provide environmental and social monitoring training to the Environmental and Community Development Directorate of MOM to ensure EIA/EMP terms and conditions are met
- Train regional staff in environmental issues, particularly environmental monitoring
- Development of improved monitoring mechanisms for the regions' environmental work
- Ensure that there are sufficient numbers of qualified staff at both national and regional level to fulfill the environmental monitoring mandate

Some institutional changes are also needed in order to ensure the smooth application of environmental regulations, as is some investment in equipment:

- Provide the Environmental and Community Development Directorate of MOM (currently responsible for monitoring EIAs) as well as relevant regionally based staff with adequate equipment and vehicles so that site inspections can occur and monitoring can be undertaken of soil, air, water, sound, vibration, flora and fauna
- Establish agreements with relevant ministries for joint inspection teams
- Distinguish between regular environmental inspection and environmental and social audits – establish a calendar annually for each function

Capacity building elements of the above are likely to require external assistance.
8. Social issues

In the present context, social issues include community development, stakeholder engagement and occupational health and safety (OHS) issues.

Actions to be taken within one year

As was the case with environmental management, there is a need to strengthen the provisions of the present regulatory framework. A starting point could be to:

› Develop a National Corporate Social Responsibility Policy

The policy would include guidance on all points of interaction between the mining industry and society, including communities, government, employees, civil society, supply chain actors, academics, women and vulnerable populations, and other relevant stakeholders. Issues that would be addressed would focus on mining industry obligations to communities (including women and vulnerable populations) to employees, and to local and other regulatory entities involved in social development. The policy, which may be common to mining and oil extraction, or similar for the two sectors, would provide guidance on types and processes of stakeholder engagement, clarity around roles and responsibilities of all parties involved in CSR, funding commitments required, and reporting and monitoring mechanisms, including grievance procedures. It would be defined through a broad base of extensive consultations that would take place nationally and in the regions. It would involve all interested parties, including MEF, MoLSA, other relevant national ministries, regional bureaus and local government structures; small, medium and large scale mining companies, exploration companies, and local mining sector suppliers; community leaders, academics, and traditional leaders; mineworkers and associations; youth and women’s groups; and civil society. It would reference the Ethiopian national growth and development objectives as well as a range of international standards including ISO 26,000, the IFC Performance Standards on Social and Environmental Sustainability, the ICMM Sustainability Framework, the UN Sustainable Development Goals, the UN MDGs, and others. External assistance on developing a National Corporate Social Responsibility Policy would be very helpful.

To address issues related to community development contributions from all levels of the mining sector, a formal framework is very helpful. Such a framework could be the Community Development Agreement (CDA) mechanism endorsed by the World Bank and used in many developing countries. This implies:

› Require a Community-Mining Company Development Agreement (under Article 60/3 of the MOP) as part of a small scale or large scale Mineral License.

› Phase out the Community Development Fund, since funding would in the future follow the CDAs. Existing funds could be used, for instance, to finance capacity building for the parties involved in CDAs, to supplement funds made available to communities in the context of CDAs or to meet development needs in non-mining communities.

› Provide guidelines at the exploration stage for a modest CSR programme but ensure that international standards are used so that companies are not discouraged from investment in Ethiopia due to cumbersome or costly community investment obligations.

40 This corporate social responsibility policy could be integrated with such a policy being developed for the onshore oil sector.
The Community Development Agreement model is supported by the World Bank and templates are available to insert into the legislative framework. New legal texts would have to be drafted in order to clarify the obligations surrounding the CDAs. Training on CDAs is a very important component of this implementation plan. This training should be part of an outreach communications and capacity building effort, and should be extended to national and local governments, industry, academia, community leaders and civil society, including non-governmental stakeholders in the regions. External assistance should be sought both for the drafting of legal texts and for training.

Phasing out Community Development Funds in favour of Community Development Agreements may not be a politically simple process. While communities may need additional capacity to enable them to negotiate a CDA (along with support from local government and civil society if available), the governance leadership of these local structures is well aware of its own development priorities. The projects for mining company assistance should be coordinated with the local government development agenda and with the responsible national government bodies. It is important to empower communities through the process of negotiation and discussion with the mining company. This is just as important as the substantive outcome of that negotiation. While the most direct path to implementing CDAs would be to simply replace CDFs with CDAs going forward, there may be a need to come to a politically acceptable solution that maintains some funding to be distributed in a similar manner to CDFs in the near term.

As noted, CDAs require cooperation between government, mining companies and civil society or, to put it differently, stakeholder engagement. It is important for the MoMPNG to accord attention to this aspect of its interaction with society, not least because insufficient engagement with stakeholders, particularly those outside the government structure, may place at risk the viability of mining projects. The 2013 EITI Standard rightly emphasizes stakeholder engagement as a vital ingredient of extractive sector governance. This means:

- Build understanding and awareness of the importance of stakeholder engagement, especially multi-stakeholder processes.
- Revise the mineral policy and legislative framework to address stakeholder engagement more fully.

The Mining Proclamation/Regulations should be revised so as to require exploration and mining companies to undertake consultation at the earliest stages of interaction with communities. Different types of consultation that should be required should be clearly set out for the various stages of the mining lifecycle. There must be clarity around what “consultation” means and the underlying principle must be a true dialogue and engagement, not a one-way sharing of information from any one party (particularly the mining company). Training and outreach programmes, probably provided as part of an external assistance programme, to address these issues in the Regions could assist in raising the level of awareness and understanding about how to make the most of stakeholder engagement.

An important example of stakeholder engagement is the public participation in the ESIA/ESMP process. While there is provision for public participation at the EIA/ESMP stage of mining license approval, this process could be more defined and prescriptive. Importantly, communities and civil society, in particular, require access in a usable format to technical information on a mining project. As noted above, information sharing should be required throughout the lifecycle of the mine, and as the ESMP is updated (and linked to environmental and social audits):

- Improve the public participation process required in an EIA/ESMP.

Necessary changes to legal texts would be made in the context of the updating of mine-specific ESIA requirements mentioned in section 7 in the foregoing, following consultations with civil society and regional bureaus. It is important to include a legal provision related to “access to information”. Without this, communities and civil society are often “consulted” in an uninformed manner and cannot engage effectively with the project proponent.

The engagement of civil society can add needed capacity and provide a partnership approach to effective CSR. As part of the legal requirement for community development agreements, the role of civil society in helping to negotiate and implement these agreements should be included in the legislative framework:

- Support involvement of civil society in community development agreements (CDAs)

In view of the limited Ethiopian experience of CDAs and how they can usefully involve civil society, external assistance in this area would probably be very useful.

The mining sector carries specific exposure to risk in terms of worker health and safety. The MoLSA intends to develop a Directive with specific guidance to the mining sector. Reference to legislative frameworks in countries with a long history
of mining can help frame mining-specific occupational health and safety requirements. In this connection, it is important to define more clearly the distribution of responsibilities between the MoLSA and the MoMPNG:

- Clarify institutional arrangements for regulation and oversight of occupational health and safety requirements specific to the mining sector. Two potential options are:
  - a) Option 1: Recognise the role of the Ministry of Labour and Social Affairs in terms of its mandate to enforce national legislation on health and safety and remove the suggestion of Ministry of Mines taking on this responsibility from the Draft Mineral Policy and Draft Regulation.
  - b) Option 2: Provide for a shared responsibility for occupational health and safety with the Ministry of Labour and Social Affairs, the Ministry of Health and the Regional Mining Bureaus

Currently, there are no provisions for the special health and safety requirements for either underground mining or ASM. Neither the Draft Mineral Policy nor the Draft Regulation makes the distinction between types of mining. Experience in South Africa and elsewhere where there are deep level underground mines has shown that specific health and safety issues are present in this type of mining. For ASM, there are problems with construction of mines using rudimentary methods and materials, leading to wall and tunnel collapse, and associated fatalities:

- Provide occupational health and safety guidelines specifically for underground mining and for Artisanal and Small Scale Mining

The preparation of these guidelines should draw on experiences elsewhere and could be undertaken in the context of an external assistance programme.

The Labour Proclamation prohibits young workers from working in underground mining but is silent on the employment of these workers from other types of mining:

- Within the cultural context of Ethiopia, decide if young workers (between 14 and 17) should be allowed to participate in any form of mining.
9. Artisanal and small-scale mining

Compared to other African countries, Ethiopia has a well-developed and well-organized system for regulation of artisanal and small-scale mining (ASM) and commercialization of its products. The system is, however, under-resourced and needs strengthening, not least in order to avoid potential future conflicts with large-scale mining. Both some regulatory changes and substantial training and capacity building efforts are necessary if ASM is to continue making the important contribution to Ethiopia’s economy that it has achieved so far.

Actions to be taken within one year

Because of the relatively large importance of ASM to Ethiopia’s economy at present, it is crucial to achieve a better understanding of ASM revenue flows. This entails:

- Analyse revenue flows from AM and SSM based on data generated through the EITI reporting system.
- This work consists of an analysis of the EITI reconciliation report and underlying information, as well as consultations involving MoM, NBE and regional bureaus.
- The incentives for jewellers to illegally purchase gold outside Addis Ababa should be reduced and this can be done easily:
  - Jewellers should be allowed to buy directly from Gold Purchasing Centres (GPCs) in the regions.
- Limited or no access to credit constitutes one of the main obstacles to raising productivity of artisanal miners. A possible solution might be to:
  - Review current regulations for extending credit to ASM cooperatives through State-owned banking system with a view to allow loans to be made against collateral in the form of future sales revenue.
- External assistance may be needed in order both to identify how such loans would fit into current regulations and how to draft any necessary complementary regulations.

Actions to be taken within two years

The government clearly has as one of its main objectives for artisanal miners to move to more mechanized forms of mining with higher productivity. This will require access to financial resources and to skills, equipment, technology and markets, as well as training in geology and mining technology, in small business management and training in environment, health and safety. Accordingly, an ambitious programme of capacity building and training will be necessary:

- Develop programme for technical assistance to artisanal miners and their cooperatives, including to help improve ASM working conditions and safety,
- Develop programmes for financial assistance to ASM operators.

The programmes should be preceded by a needs assessment carried out together with regional administrations and a definition of technical and financial requirements. It is important to note that the GSE will need to play a role in the geological and mineralogical support to the ASM operators. External assistance may be useful to provide training to regional bureau trainers.

Since 2014, it is no longer possible for artisanal mining licenses to be renewed beyond the initial two year period. If the training and capacity building programme just outlined is indeed undertaken with sufficient resources, the government’s ambition to move artisanal miners into a more productive mode of production may succeed. However, in the absence of a major effort to train and support miners, there is a risk that they will be forced into illegality, with all the attendant consequences, including reduced incomes, lack of means to promote good environmental management and labour practices, and loss of export revenue. Accordingly, the MoMPNG should:
Evaluate, together with NBE and regional bureaus of experience, the extent to which illegal mining and smuggling are increasing. Possible indicators include government purchases of gold as well as number of Special Small Scale Mining Licenses and Artisanal Mining Licenses issued.

Depending on the outcome of the evaluation, consider the reintroduction of renewal of artisanal mining licenses.

Opal mining is an important segment of ASM that has been struggling to reach its full potential. Actions that can be taken to improve the situation include:

- GSE should make mapping of the very distinct geological layer containing opals a priority to assist with the planning of new mining sites.
- The MoMPNG should assist with the further improvement in the cutting and polishing capabilities among AM operators, building on the resources of the new Gemology Institute and the positive experience from the Amhara, while taking into account the potential for employment of women in cutting and polishing opals.
10. Institutional aspects

A number of clarifications of institutional mandates and other institutional changes could be undertaken in order to facilitate the implementation of the recommended actions and to promote coherence and consistency in the application of mining related policies and regulations. All of these should be carried out in the short term since they will support the other actions recommended.

Actions to be taken within one year

Given capacity constraints throughout the federal and state institutions, it would be advantageous for the MoMPNG to partner with other Ministries (such as the MEF and MoLSA) to regulate and monitor impacts of mining on the environment, communities and the workplace populations. The Minerals Operations Advisory Council (MOAC) could be used to clarify institutional matters:

- Operationalize the Mining Operations Advisory Council (MOAC)
- Clarify institutional mandates

One of the key impediments identified in encouraging other government ministries to become part of responsible mineral development in Ethiopia is the lack of experience and technical understanding of the mining sector. Training in this regard should be provided, but if formal mechanisms are established where these other Ministries can engage with the MoM on areas relevant to these mandates, gradually the awareness of the regulatory and impact areas of mining will build:

- Create inter-ministerial coordinating mechanism, possibly as sub-committee of MOAC

Better coordination and cooperation is needed to ensure coherence between decisions at the two levels of government authority. Capacity constraints at both levels need to be addressed:

- Improve communication and coordination between the MoMPNG and regional bureaus

The MoM has difficulty in recruiting and retaining professional staff due to the public service wage restrictions. Some countries have created a separate Authority that is financed by a portion of revenues from the mining sector and can offer salaries outside normal civil service wage limitations. The Authority is still answerable to a Minister of the Government, but it has a different status than government ministries that allows it to operate somewhat more independently. While it may be considered a radical solution, this type of organisational structure may assist the government to attract and retain professional staff much more successfully, thus leading to significantly higher technical capacity needed to regulate a growing mining sector. A specific Mine Audit Authority, the competence of which would be limited to mine audits, could be a possible solution if it is decided to reduce the dependence on regular monitoring and inspection and instead rely more on audits:

- Investigate the separating out of certain MoMPNG functions, particularly licensing and inspection, into an Authority or Agency, possibly a specific Mine Audit Authority, to remove public service salary restrictions.

Given that the current organisational structure of the MoM does not allow for competitive (with the private sector) salaries to be paid, the Ministry must develop an effective recruitment and retention strategy to mitigate the effects of the salary limitations.

- Develop a Recruitment and Retention Strategy
- Training and capacity building on human resource development strategies – including recruitment and retention strategies

The above actions need to be preceded by consultations with mining companies, all involved ministries and regional bureaus. External assistance could be useful in the context of an institutional analysis.
11. Possible areas for technical assistance

**Exploration and mining rights**
- Detailed criteria for licenses, models of legal language and general legislative drafting
- System for certifying auditors and regulations for the introduction of a stronger audit system
- Training of staff in MoM and regional bureaus on cadastre system
- Design changes in the cadastre system along with regulatory changes required to provide increased access to geo-data
- Design a system for reporting mineral production (possibly part of EITI effort)
- Scope and content of Mineral Development Agreements
- Use of fiscal stability clauses

**Fiscal policy**
- Review of mining taxation practices in other mining jurisdictions
- Review of current international practice with respect to government equity holding in mining operations

**Employment, local content, downstream processing and infrastructure**
- Design of systems for information exchange and provisions for training and employment in CDAs
- Skills inventory, in order to identify gaps and to serve as a register of local companies that would be suitable and willing to participate in supplier development programmes.
- Integration of the business strategies and CSR activities of mining companies into rural development strategies of regions.
- Scope and content of training and employment plans in Model Agreement, including arrangements for monitoring and progress reports.
- Scope and content of local content plans in Model Agreement, including arrangements for monitoring and progress reports.
- Provisions for the establishment, maintenance and operation of infrastructure, including the possibilities for multi-user arrangements.
- Design a plan for building capacity in regions to plan for local development
- Studies on local markets for minerals and local supply capabilities

**Geo data**
- Plan establishing priorities for the acquisition of geo data

**Investment promotion**
- Formulation of investment promotion strategies
Provide a restated and amended and annotated MOP

**Environment**
- International good practices and standards on:
  - environmental management directives and guidelines
  - mine-specific EIA guidelines
  - national environmental standards
- Draft guidelines for Resettlement Plans
- Develop guidelines for Mine Closure Plans, including a formula for determination of the amount of mine reclamation funds
- Environmental and social monitoring training to the Environmental and Community Development Directorate of MoMPNG to ensure EIA/EMP terms and conditions are met
- Train regional staff in environmental issues, particularly environmental monitoring
- Develop better monitoring tools for the regions’ environmental work

**Social issues**
- Development of a National Corporate Social Responsibility Policy
- Legal texts on Community Development Agreements (CDAs)
- Training on CDAs
- Training and outreach programmes for stakeholder engagement
- Support to involvement of civil society in CDAs
- Occupational health and safety guidelines specifically for underground mining and for Artisanal and Small Scale Mining

**ASM**
- Possibilities of providing credit to ASM cooperatives against collateral in the form of future sales revenue
- Training of regional bureau trainers for ASM

**Institutional aspects**
- Institutional analysis
- Training, retention and recruitment planning and general skill building in Human Resources
## Annex A: Mine Closure Plan Checklist

Please cross reference page numbers from the Mine Closure Plan where appropriate, and provide comments or reasons for No (N) or Not Applicable (NA) answers. For Mine Closure Plan revisions please indicate where updates have been made to the previous revision and a brief summary of the change.

<table>
<thead>
<tr>
<th>Q No</th>
<th>Mine Closure Plan (MCP) checklist</th>
<th>Y/N/NA</th>
<th>Page No.</th>
<th>Comments</th>
<th>Changes from previous version (Y/N)</th>
<th>Page No.</th>
<th>Summary</th>
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<tbody>
<tr>
<td>1</td>
<td>Has the Checklist been endorsed by a senior representative within the tenement holder/operating company? (See bottom of checklist.)</td>
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<td>2</td>
<td>Are you aware that from 2015 all MCPs will be made publicly available?</td>
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<td>Is there any information in this MCP that should not be publicly available?</td>
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<td>If “Yes” to Q3, has confidential information been submitted in a separate document/section?</td>
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| 5    | Does the MCP cover page include:  
   - Project Title  
   - Company Name  
   - Contact Details (including telephone numbers and email addresses)  
   - Document ID and version number  
   - Date of submission (needs to match the date of this checklist) |        |          |          |                                     |          | E.g. company name change |
| 6    | State why the MCP is submitted (e.g. as part of a Mining Proposal, a reviewed MCP or to fulfil other legal requirements) |        |          |          |                                     |          | E.g. As part of Mining Proposal |
| 7    | Does the project summary include:  
   - Land ownership details (include any land management agency responsible for the land / reserve and the purpose for which the land / reserve [including surrounding land] is being managed)  
   - Location of the project;  
   - Comprehensive site plan(s);  
   - Background information on the history and status of the project. |        |          |          |                                     |          |         |
| 8    | Does the MCP include a consolidated summary or register of closure obligations and commitments? |        |          |          |                                     |          |         |
| 9    | Have all stakeholders involved in closure been identified? | N |          |          |                                     |          |         |
| 10   | Does the MCP include a summary or register of | Y | 60 |          |                                     |          | E.g. new stakeholders |

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<td>11</td>
<td>historic stakeholder engagement with details on who has been consulted and the outcomes?</td>
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<td>identified and stakeholder engagement register updated</td>
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<td>12</td>
<td>Does the MCP include agreed post-mining land use(s), closure objectives and conceptual landform design diagram?</td>
<td>Y</td>
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<td>E.g. stakeholder strategy included</td>
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<td>13</td>
<td>Does the MCP identify all potential (or pre-existing) environmental legacies, which may restrict the post mining land use (including contaminated sites)?</td>
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<td>E.g. Updated closure objectives</td>
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<td>14</td>
<td>Has any soil or groundwater contamination that occurred, or is suspected to have occurred, during the operation of the mine, been reported to DER as required under the Contaminated Sites Act 2003?</td>
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<td>15</td>
<td>Does the MCP include an appropriate set of specific completion criteria and closure performance indicators?</td>
<td>Y</td>
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<td>E.g. Completion criteria further developed</td>
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<td>16</td>
<td>Does the MCP include baseline data (including pre-mining studies and environmental data)??</td>
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<td>Has materials characterisation been carried out consistent with applicable standards and guidelines (e.g. GARD Guide)?</td>
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<td>Does the MCP identify applicable closure learnings from benchmarking against other comparable mine sites?</td>
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<td>19</td>
<td>Does the MCP identify all key issues impacting mine closure objectives and outcomes (including potential contamination impacts)?</td>
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<td>20</td>
<td>Does the MCP include information relevant to mine closure for each domain or feature?</td>
<td>Y</td>
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<td>E.g. Updated as a new Mining Proposal for the operation was approved</td>
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<td>21</td>
<td>Does the MCP include a gap analysis/risk assessment to determine if further information is required in relation to closure of each domain or feature?</td>
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<td>Does the MCP include the process, methodology, and has the rationale been provided to justify identification and management of the issues?</td>
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<td>23</td>
<td>Does the MCP include a summary of closure implementation strategies and activities for the proposed operations or for the whole site?</td>
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<td>24</td>
<td>Does the MCP include a closure work program for each domain or feature?</td>
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<td>25</td>
<td>Does the MCP contain site layout plans to clearly show each type of disturbance as defined in Schedule 1 of the MRF Regulations?</td>
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<td>Does the MCP contain a schedule of research and trial activities?</td>
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<td>Does the MCP contain a schedule of progressive rehabilitation activities?</td>
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<td>Does the MCP include details of how unexpected closure and care and maintenance will be handled?</td>
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<td>Does the MCP contain a schedule of decommissioning activities?</td>
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<td>Does the MCP contain a schedule of closure performance monitoring and maintenance activities?</td>
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<td><strong>Closure Monitoring and Maintenance</strong></td>
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<td>31</td>
<td>Does the MCP contain a framework, including methodology, quality control and remedial strategy for closure performance monitoring including post-closure monitoring and maintenance?</td>
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<td><strong>Financial Provisioning for Closure</strong></td>
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<td>32</td>
<td>Does the MCP include costing methodology, assumptions and financial provision to resource closure implementation and monitoring?</td>
<td>Y</td>
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<td>E.g. Costings updated to reflect current market values</td>
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<td>33</td>
<td>Does the MCP include a process for regular review of the financial provision?</td>
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<td>Does the MCP contain a description of management strategies including systems and processes for the retention of mine records?</td>
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**Corporate Endorsement:**

I hereby certify that to the best of my knowledge, the information within this Mine Closure Plan and checklist is true and correct and addresses all the requirements of the Guidelines for the Preparation of a Mine Closure Plan approved by the Director General of the Department of Mines and Petroleum.

Name: ________________________ Signed: ________________________

Position: ______________________ Date: ________________________

(NB: The corporate endorsement must be given by tenement holder(s) or a senior representative authorised by the tenement holder(s), such as a Registered Manager or Company Director)
Annex B: List of Institutions Met

- Tolosa Shagi, Honourable Minister of Mines, Petroleum and Natural Gas
- Almaz Belayneh, Special Advisor to Minister of Mines, Petroleum and Natural Gas
- Directorate of Planning
- Directorate of Human Resources
- Directorate of Market Development, Value Chain and Forecasting
- Artisanal Mining Production, Coordinating and Support Directorate
- Legal Directorate
- Licensing Directorate
- Environment and Community Development Directorate
- Gender Directorate
- Geological Survey of Ethiopia
- International Financial Corporation
- Extractive Industries Transparency Initiative Secretariat
- PACT
- Canada International Development Agency’s Ethiopia Canada Cooperation Office (ECCO)
- Ministry of Finance and Economic Development
- Ethiopia Investment Commission
- National Bank of Ethiopia
- Midroc Gold
- Ministry of Labor and Social Affairs
- Lapidaries, Jewellers, Exporters
- Regional Mining Bureau. Benishangul-Gumuz
- Kurmuck Woreda
- Keble (administrative unit below woreda)
- Delele Gold Mining Association
- Dene Hode Delele Gold Mining Association
- Regional Gold Purchasing Centre – Commercial Bank of Ethiopia. Assosa Branch.
- Regional Mining Bureau. Benishangul-Gumuz
- Licensed Gold Broker & Jeweller
Annex C: Team Profiles

Olle Östensson – Lead Expert

Olle Östensson has nearly 40 years of experience in the mining sector advising on mining policy, legislation, minerals markets and the administration of mining policy, including economic and environmental management of the mining sector. Until 2009 Olle was a Special Adviser in the International Trade and Commodities Division of the United Nations Conference on Trade and Development (UNCTAD). In this role he led research projects and coordinated major UNCTAD policy reports. He has worked on commodity market analysis, including on iron ore, where he has for the past thirteen years been responsible for UNCTAD’s annual report on the world iron ore market. Prior to this he was the Chief of the Minerals, Metals and Energy Section - UNCTAD, Geneva, and was responsible for economic analysis of mineral and energy markets and for technical cooperation work. He was also a member of the International Study Group on African Mining Regimes of the African Union and the United Nations Economic Commission for Africa. This group prepared the analysis underlying the African Mining Vision, experience particularly relevant to this assignment.

Since becoming a consultant in 2009 he has worked on several projects advising governments, international organizations and industry on mineral sector policies, including in Burkina Faso, Democratic Republic of Congo, Kazakhstan, Lao PDR, Nigeria, Zambia and Zimbabwe. He was the mineral economist on a report establishing economic ‘vision’ for Congo’s mining sector. For this, he conducted an assessment of Government policies with respect to agreements with large scale mining companies, economic impacts at national and regional level, small scale mining, taxation, trade and downstream processing. In Indonesia, he was Project Leader and Economist on a project providing advice to provincial Government on how to manage socio-economic impacts of planned mining projects. He also conducted an assessment of existing administrative procedures, analysis of local economy and the organization of capacity building workshops. In Zambia, he was the Mining Economist and co-author on two reports, including a report on best practice in mining countries to broaden wealth and job creation and a report with recommendations for ILO’s technical assistance to Zambia. This required the conducting of workshops and presentations with Zambian stakeholders.

Lois Hooge – Mining Policy Expert

Lois Hooge has provided mining-related policy advice and project support to non-governmental organisations, governments and the mining industry since moving to Johannesburg in 1996. Prior to 1996, Lois was a senior policy advisor to the Minister and Deputy Minister of Energy, Mines and Resources, Ottawa, Canada. Seconded to the Mining Association of Canada, she headed the ground-breaking multi-stakeholder policy process, the Whitehorse Mining Initiative that formed the basis of Canada’s first sustainable development mineral policy.

Lois is a minerals governance expert specialising in Corporate Social Responsibility, Community Development Agreements, Strategic Social and Environmental Assessments of the Extractives Sector, Political Economy Studies, Risk Assessments and Minerals Governance Assessments; and in a range of other minerals governance issues such as Minerals Institutional and Legislative reform, EITI, and social/labour management plans; mining and minerals policy; small scale mining strategies and capacity building; stakeholder engagement; and strategic planning.

She has enjoyed recognition in the mining community with a number of publications and presentations, including the publication of Mining’s Impact on Community Development in South Africa, which was well-received at the UN Workshop on Growth and Diversification in Mineral Economies in Cape Town. Lois was invited to sit on the Africa based World Economic Forum Mining and Minerals Roundtable. She was also invited to take the lead on Corporate Social Responsibility on the UN Economic Commission on the Africa International Study Group on African Mining Regimes. This report that went to the African Union and forms the basis of the Africa Mining Vision, making this experience particularly relevant to this assignment.

Lois was a part time Senior Policy Advisor for Africa, Natural Resources Canada (Canada’s mining department) based in South Africa for more than 10 years. She provided the lead on CSR in Africa issues for the department. Lois worked as a consultant to Placer Dome Gold for many years, both for head office in Vancouver and for PD’s South African based company; to Anglo Platinum’s Social Responsibility Division and Barrick Gold, also based in South Africa; and to
International Barytex Resources located in the DRC. She provided CSR and strategic planning, corporate positioning and communications advice to both Canadian and South African company operations.

Susan Maples – Legal Expert

Susan Maples is an extractive industries legal specialist, working in over 30 countries to deliver technical assistance to Governments, lectures, research missions, and capacity building to civil society, parliamentarians, and civil servants. Susan has worked at the intersection of responsible resource investment and sustainable development, with a special expertise in oil, gas and mining laws and contracts. Susan was a co-author of a seminal piece on contract transparency in resource governance, *Contracts Confidential: Ending Secret Deals in the Extractive Industries*. She regularly negotiates contracts and provides assistance in implementing and monitoring terms, including improving revenue capture, tracking petroleum accounting, enforcing work obligations, and generally ensuring the Government is getting the value promised in these contracts. Susan is the legal expert on many project teams, such as in Afghanistan for mining and petroleum legal and fiscal reform and for the Mining Governance Assessment (MGA) project, a World Bank Group project being led by ASI.

Susan has deep and unique experience in technical assistance and government advisory work. In addition to technical advisory work in the traditional mode of consulting work for Governments, Susan was embedded in the Office of the Legal Advisor to the President of Liberia, Ellen Johnson-Sirleaf, living and working directly in the Government of Liberia (not as an external adviser or consultant) for over a year. Susan represented the Office of the Legal Adviser to the President on various government committees dealing with natural resources and participated in the technical committee of experts that supported the cabinet, including, for example, the Inter-Ministerial Committee on Contracts and Concessions; the Hydrocarbons Policy Committee; the Minerals Law Committee. As a country with recent oil discoveries, Liberia had a number of regulatory, legal, institutional and financial challenges to consider. Susan participated directly in determining the way forward and crafting a new policy and legal framework with which to implement these new institutions. At the same time, the minerals law of Liberia was also recognized as requiring reform, to update and harmonize the law with more modern regulations, model MDA, and revised income tax law (with mining specific amendments) that came after mining law itself.

Susan also acts as a commercial and economics advisor, with experience using the IMF FARI model and other cash flow models to evaluate mineral and petroleum commercial potential. Susan has drafted the commercial provisions of contracts and assisted in drafting income tax revisions specific to minerals and petroleum. Susan’s project work as a legal and commercial expert includes drafting and assisting in the development of laws, regulations, and model contracts as well as policy development in a number of countries, among them: Liberia (petroleum and minerals), Afghanistan (petroleum and minerals), Mozambique (minerals), DRC (minerals), Ghana (petroleum), Uganda (petroleum) and Timor-Leste (petroleum).

John Tychsen – Artisanal Mining Expert

John Tychsen is a trained environmentalist and geologist. He has many years’ experience working with different geo-environmental projects worldwide in the mining sector, petroleum sector, water sector and environment sector. He has more than 25 years of experience as project manager and supervision of projectS from management positions in Ministry of the Environment in Denmark, UNEP (Kenya), GEF (USA) and Danida (Mining and Environment in Bolivia) as well as GEUS

He has 25 years’ experience as project and programme manager in Ghana, Senegal, Burkina Faso, Mali, Kenya, Tanzania, Uganda, Sudan, Mozambique, Malawi, Zambia, Namibia, Nigeria, Sudan, Burundi, South Africa, Algeria, Madagascar, Bolivia, Honduras, Dominican Republic, Colombia, Vietnam, Thailand, Malaysia, Indonesia, Philippines, Yemen, Iran, Poland, Bulgaria, Estonia, Lithuania, Norway, Sweden with a focus on Institutional capacity building, natural resources management, training of professionals, training of ASM, procurement and project evaluation.

He has for more than 15 years been responsible for international projects at GEUS and personally managed project at “National Geological Survey” and “Mineral Management Authorities” in countries like Ghana, Tanzania, Kenya, Namibia, Nigeria, Ethiopia, Sudan, Zambia, Yemen and Bolivia. He has working experience from a number of policy, legal and institutional projects in Nigeria, Ethiopia, Tanzania, Kenya, Uganda, Ghana, Yemen, Bolivia and Zambia. Further he has been involved in analysis of the flow of revenue from the mining sector through government agencies into government
accounts mainly in relation to the EITI reporting in a number of countries. He is a member of the Danish delegation to EITI.

Yohannes Tsehai – Local Legal Expert

Yohannes Tsehai is a Harvard educated lawyer with experience consulting in the private and public sector projects in Ethiopia. Experience includes serving as a consultant for the Government of Ethiopia’s Economic Policy Analysis Unit (EPAU), which assists the Prime Minister and senior policy makers in formulating economic policies. Previously, he served as the Senior Adviser for the Pan African Chamber of Commerce and Industry (PACCI), an association of 35 national Chambers of Commerce, business associations, and private companies engaged in commercial activities in Africa. He also served as the CDC Project Manager and Team Leader for a revenue potential study for the Ethiopian Revenue and Customs Authority. This tax gap analysis was the first comprehensive national assessment of the gap between the taxes the Ethiopian government is collecting versus what it could be collecting under existing laws and regulations. Previously, he’d also been Chief of Staff/Legislative Director for Congresswoman Sheila Jackson Lee in the US House of Representatives.

Dr Berihu Assefa – National Economist

Berihu Assefa is a Senior Associate Researcher at the Ethiopian Development Research Institute (EDRI). Currently he is the director of the Trade, Trade Logistics and Markets Program at the Economic Policy Analysis Unit of EDRI. He received his Masters and PhD Degrees in International Development Studies and Development Economics from the National Graduate Institute for Policy Studies (GRIPS), Tokyo in 2009 and 2013 respectively. As a Development Microeconomist, Berihu’s research features the application of microeconomics and micro-econometrics to the policy analyses of economic development problems in Ethiopia.

Berihu has worked as a Research Assistant with senior economists at the National Graduate Institute for Policy Studies (GRIPS) in Tokyo. He has also worked as a Lead Researcher for a UNIDO project in Mekelle, Ethiopia, in which his main task was designing program impact evaluation. Berihu Assefa is a member of the Technical Steering Committee for PEPE (DFID’s private sector development program in Ethiopia). His research undertakings mainly include industrial development: learning technology and better management skills from abroad, Micro and Small-scale Enterprises development, the implications of East Asian development for Africa, and trade policy analysis.

Steve Macey – Project Manager

Stephen Macey is an Economist with experience in tax and extractive industries. At HMRC, he analysed tax policy for the UK Treasury including the fiscal regime for North Sea Oil and Gas. Awarded a Fellowship by the Overseas Development Institute, he spent two years in Sierra Leone working for Revenue and Tax Policy unit of their Ministry of Finance and Economic Development. Whilst in Sierra Leone, he chaired the Extractive Industries Revenue Taskforce, a multi-stakeholder body working on revenue reconciliation in the mining sector. He also initiated and led the Mining Revenue Forecasting Taskforce which applied an IMF mining revenue model to forecast revenues from the emerging mining sector.

Following his ODI Fellowship, he completed two related consulting assignments, firstly with the Natural Resources Charter, where he conducted an evaluation of mineral sector governance in Sierra Leone, and then with the Revenue Development Foundation in Sierra Leone. As a Consultant at Crown Agents, he prepared, facilitated and presented at a workshop on ‘Maximizing revenue from extractive industries’ held in Liberia in 2013. For a customs project in Albania, he analysed revenue performance from customs in recent years relative to neighbouring states. He also analysed the revenue impact for COMESA states, including Ethiopia, from the introduction of the common external tariff as well as contributed to a mineral export procedures simplification project in Mongolia for the World Bank. In October 2014, he visited Ethiopia to present on revenue management in the Ethiopia Extractive Industries Forum.
Anne-Claire Howard – Project Director

Anne-Claire Howard is an extractive industries senior professional with over 10 years’ experience in upstream oil, gas & mining. She is currently a senior project manager in the Extractive Industries Governance team at Adam Smith International. In her current role she is leading the World Bank’s Mining Governance Assessment which will be piloted in 2015 in 8 African countries: Zambia, Mozambique, DRC, Guinea, Ghana, Botswana, Burkina Faso and Tanzania as well as the World Bank’s Madagascar Reform of the Hydrocarbons and Mining Sectors. She led on DFID’s needs assessment of the extractive sector in Somalia as both project manager and oil & gas expert. This work led to a highly-influential analytical report, focusing on the political economy and technical challenges of the country’s extractive potential.

Her technical experience includes sustainable development of the oil and gas sector as well as assessing non-technical risk for major upstream projects. She supported the development of Shell’s activities in Africa, participating in contract negotiations, field unitisation and LNG offtake sales. Anne-Claire additionally has expertise in designing and implementing local content programmes in the oil and gas as well as the mining sector in West and East Africa. Throughout her career, Anne-Claire has always worked in extractive industries: she worked for Royal Dutch Shell as a Business advisor, for the IFC and the World Bank but also for a large international NGO. In all those capacities she has worked with and for all of the key stakeholders in the extractive value chain including providing essential advisory services to developing (and developed) Governments. This has provided her with an excellent understanding of the extractive value chain, not just through a theoretical or one-sided understanding but through the lens of an investor and decision maker.

Part of her roles has always included developing stakeholder engagement strategies at a local and national level. She has worked with the private sector to help them devise engagement strategies allowing smooth operations at the exploration and production stage; she has supported mining firms in identifying local partners to fulfil their local content requirements. Beyond this, she has had to work with extractives data (EITI data, production data, technical data, contracts data and others) and make it relevant for different stakeholders be it in her commercial role developing economic models and contracts at Shell or in her current role managing the Mining Governance Assessment on behalf of the World Bank. More recently she has supported EITI validation exercises in a number of countries including Sierra Leone. In all of her roles Anne-Claire has had to build relationships of trust with senior stakeholders in government (President of Somalia, Ministers of Mining and/or petroleum in over 10 countries), in the extractive industry (VPs and Board members in both mining and petroleum firms, commercial directors and heads of business units), in donor agencies and international financial institutions but also in civil society organisations (EITI Deputy Head, World Bank Director for Extractives, Publish what You Pay, Extractives Director for Cordaid).
Annex D: Introduction to our consortium

Adam Smith International

1. Overview of the Firm

Adam Smith International is a leading independent management consultancy firm that provides economic growth, government reform and social development advice to a range of clients in the public, private and civil society sectors. We were founded in 1992 in response to the growing need by development agencies and developing and emerging nations for practical advice on economic and government reform. Our mission is to apply professional and consulting skills towards improving the quality of life for the citizens of countries facing the need for economic, political and social change.

The company’s economic growth capability is focused on the extractive industries, infrastructure reform and private sector development. Our approach to identifying the systemic causes of stagnation is built around strong analysis and capability, combined with the ability to deliver remedial measures.

In the sphere of government reform, we work with administrations seeking to change their own practices and organisation so that they operate more openly, more efficiently and more effectively, to the benefit of all citizens. Good government favours all portions of society — but especially the poorest.

2. Extractive Industries Expertise

We are the world-leading advisory firm in designing and implementing successful extractive industries governance reform. Having worked on extractive industries governance and natural resource management for many years we understand like no other the conditions necessary for effective and transparent governance of the extractive industries.

We have implemented a large range of interventions aimed at guiding and supporting governments in drafting comprehensive policies that provides strategic direction and clarity on key sector issues in the mining sector. We have done this for many governments including recently federated nations and post-conflict and fragile states (like South Sudan and Afghanistan). We are engaged in institutional reform projects in Sierra Leone, Papua New Guinea and Afghanistan and we are working on revenue issues in Sierra Leone, Afghanistan, Liberia, Zimbabwe and Ghana amongst others. Countries in which we have in the past or are currently assessing extractive sector institutional capacity and implementing institutional reform programmes include South Sudan, Sierra Leone, Afghanistan, Cameroon, Papua New Guinea and Mongolia.

Figure 27 - Our Extractives Experience
ASI is one of the few organisations with successful experience of advising on governance of the entire extractive sector value chain

ASI has designed, structured, implemented and managed extractive governance projects around the globe. From advising the government of Kenya on mining policy to Mineral Sector Scoping Studies in the Great Lakes Region, to supporting EITI implementation in Mongolia and designing and building a brand new National Minerals Agency in Sierra Leone, we have unparalleled experience serving the entire extractive sector value chain. We are highly aware of the sensitivities and challenges that come with these assignments and are extremely well positioned to plan, mitigate and address these.

Our global expertise in the mining sector covers:

› Strategy, Policy & Legislation
› Institutional Strengthening
› Revenue Management
› Communications & Communities
› Transparency & Accountability
› Environmental Sustainability
› Economic Impact

We provide the best available expertise, both international and local

We work with an extensive network of exceptionally well qualified associates and have significant in-house expertise in the design, delivery and monitoring of technical assistance interventions in the extractive industries and mining sector reform projects in particular. Our experts bring many years’ experience from similar projects around the world and can bring to bear the comparative experience to the benefit of the Ethiopian government.

Vast experience of working in countries where the development of the extractive sector creates sensitive social and environmental challenges

Underpinning our approach to extractive sector governance and reform programmes is an acute sensitivity to and awareness of the related social and environmental tensions and challenges inherent in the sector. Our projects are undertaken with relentless consideration of both direct and indirect related social and environmental issues. ASI’s experience in this field ranges from our support to the Ministry of Petroleum in Kenya, drafting the country’s Oil and Gas Policy and model contracts to our work in Afghanistan, through our programme of Support to the Ministry of Mines, Petroleum and Natural Gas.

Experience in Ethiopia

Adam Smith International has been operating in Ethiopia for 10 years, having led the design of a safety and access to justice programme. In addition to our Revenue Potential Study, which involved ‘a detailed review of all revenue laws that exist at the federal and local level in Ethiopia’, we also wrote the business case for DFID’s large programme on Tax, Audit and Transparency, giving us a developed understanding of fiscal issues in Ethiopia. We also conducted a work on ‘Improving the accessibility and quality of justice for women and girls in Somali Ethiopia’.

Geological Survey of Denmark and Greenland (GEUS)

The Geological Survey of Denmark and Greenland (GEUS) is an independent research, consultancy and advisory institution in the Ministry of Climate and Energy. The Survey has a staff of 300 of which 175 hold a Ph.D. or M.Sc. degree.

The Survey has national responsibility for field operations, mapping, data compilation, data storage and research. GEUS also monitors and acts in advisory capacity within water, petroleum and mineral resources as well as coastal zone management. The institution was established in 1888 and has since conducted a large number of projects nationally and internationally. A considerable part of the project portfolio contains consultancies for the private sector.
During the last two decades, GEUS has carried out development projects worldwide with focus on institutional capacity building, training and technical assistance to government agencies. The projects are funded by donors such as the World Bank Group, EU, UN and Danida. In the mineral sector GEUS has assisted the geological survey of Ghana, Tanzania, Uganda, Zambia, Laos GDR, Vietnam and Yemen with institutional capacity building, data handling, development of laboratories as well as promotion and training in how to attract investments from the private sector.

GEUS has carried out several projects in Ethiopia in recent years. This includes an IFC project focusing on investment promotion in the mining sector as well as two training assignment focused on artisanal and small scale mining.

**Ethiopia Development Research Institute**

The Ethiopian Development Research Institute is a research think-tank engaged in economic research and policy analysis, bridging research and policy, knowledge dissemination and exchange, and consultancy. The institute was established in August 1999 by the Government of Ethiopia with the following goals and objectives in mind:

- Conduct high quality and objective economic research and policy analysis
- Disseminate research outputs and results
- Build professional competence and capacity of Ethiopian research and beneficiary institutions in economic policy analysis and research
- Respond to research and policy needs of the government and the economy from short to medium and long-term perspectives
- Serve as an effective platform for knowledge dissemination, exchange and dialogue

Since its establishment the institute has been conducting various researches and policy analysis on its own capacity and/or in collaboration with other international research and policy institutes. Amongst the many papers published by EDRI is ‘Implications of Oil Price Shocks and Subsidizing Oil Prices to the Ethiopian Economy: A CGE Analysis’. Recently, in collaboration with New Climate Economy, they have produced a report ‘Urbanization in Ethiopia: Implications for Green Growth and Transformation’.

**EDRI has been providing support to the Government of Ethiopia in its Growth and Transformation Plan (GTP)**

We believe that this experience makes EDRI well equipped to help the consortium to ensure that the advice provided to the Government of Ethiopia on how to manage its extractive industries is in line with broader national priorities.

EDRI’s technical advisory committee contains several Government Ministers and is chaired by Mr Mekonnen Manyazewal, Minister of Industry. The EDRI’s Executive Director is Mr. Newai Gebre-ab, Chief Economic Advisor to the Prime Minister. The full list of EDRI’s technical advisory committee is below:

- Mr. Newai Gebre-ab, Executive Director of EDRI and Chief Economic Advisory to the Prime Minister, Ex-office Member
- Chair, H.E. Mr. Mekonnen Manyazewal, Minister of Industry
- Vice Chair, Mrs. Samia Zekaria, Director General Central Statistical Agency
- H.E. Mr. Mekuria Haile, Minister of Urban Development and Construction
- H.E. Dr. Abraham Tekeste, State Minister of Finance and Economic Development
- H.E. Mr. Tadesse Haile, State Minister of Industry
- H.E. Mr. Wondiyirad Mandefro, State Minister of Agriculture
- Dr. Wolday Amha, Executive Director Association of Ethiopian Micro-finance Institutions
- Mr. Gebre-eyesus Guntie, Economic Research and Monetary Policy Directorate Director, National Bank of Ethiopia
- Dr Solomon Assefa, Director General, Ethiopian Institute of Agricultural Research

This advisory committee means they are highly connected within the Government of Ethiopia, an asset which will help the project both through ensuring the consortium has a **clear understanding of the high-level objectives** of the Government and also through ensuring the project team can readily access relevant documents and officials.
EDRI also has substantial experience of managing and conducting policy-related workshops

They have recently conducted workshops on “Adaptation to Increase Resilience to Climate Change in Ethiopian Agriculture” and “Urbanization in Ethiopia: Implications for Green Growth and Transformation”. For this reason, we have agreed that they will be responsible for the organisation of the workshops in-country, which are a vital component in the success of the project.

EDRI are highly experienced in collaborating with international actors.

Some examples of this include:

- The Korean Energy Economics Institute (KEEI). This is a research institute working on the economics of energy. EDRI partnered with them on research related to the development and use of the energy sector in Ethiopia.

- The Global Green Growth Institute of Korea (GGGI). This is an institute working on climate change and strategies for green economy development. EDRI and GGGI closely work together on Ethiopia’s CRGE in collaboration with the Ethiopian Environmental Protection Authority (EPA).

- The United Nations Development Programme (UNDP). The UNDP provides funds for data system creation, macro-economic research and modelling and capacity building. The support includes capacity enhancement at the Central Statistics Agency (CSA), Ministry of Industry (MoI), Ministry of Trade (MoT), and Ministry of Finance and Economic Development (MoFED) in macro-economic policy analysis and data system creation.
Annex E: Terms of Reference

A. Background

Ethiopia is a large and diverse country, with a total population of 91.7 million (2012), having a federal, democratic government system, established in the early 1990s, with nine autonomous states ('regions') and two chartered cities. The country follows a ‘developmental state’ model, with a strong role for the Government of Ethiopia ('GoE') in many aspects of the economy.

Ethiopia has averaged a 10.7% economic growth rate over the last ten years, more than double the annual average of countries in Sub-Saharan Africa, which was around 5.2%. However, despite this period of high growth, the country’s per capita income of US$370 is substantially lower than the regional average of US$1,257 and among the ten lowest worldwide. GoE is currently implementing its Growth and Transformation Plan (GTP; 2010/11-2014/15), which is a national five-year plan created by the Ethiopian Government to improve the country's economy. It sets a long-term goal of becoming a middle-income country by 2023, with growth rates of at least 11.2% per annum during the plan period.

Ethiopia's mining sector is responsible for 1.1% of GDP and up to 10% of foreign exchange earnings. There are some 15-20 international mining exploration companies currently active in Ethiopia; an Ethiopian company, Midroc Gold Mine Plc., runs the only larger (gold) mine in the country. There are also a number of domestic companies mining industrial minerals, mainly cement raw materials, on a smaller scale. Exploration in mining has resulted in significant discoveries, for example in the Tulu-Kapi gold project, and Allana Potash project, both of which will proceed to the stage of mineral exploitation in the very near future. The Artisanal Mining Sector ('ASM') is also a major source of employment in Ethiopia and shows great scope for development.

The Strategic Mining Sector Assessment ('SMA') study conducted by the World Bank and other development partners concluded that the mineral sector can contribute a probable U.S.D 322 million in revenues and create around 4300 jobs; a number that may possibly extend up to U.S.D 480 million, and around 8000 jobs respectively by the year 2024.

The mining sector has been given due importance in the five-year Growth and Transformation Plan ('GTP'); with an ambitious target for the sector to contribute to 10% of the GDP and an increase in foreign currency earnings of 10-fold by 2025. The Ministry of Mines, Petroleum and Natural Gas ('MoM') has also established a sector-specific 5-year plan in response to the GTP.

However, the SMA has identified certain challenges. The sector will benefit from strategies and policies to implement the broader vision for the sector. It is also currently governed by proclamations and regulations that will benefit from a revision to align them to global good practices. The following key challenges have so far been identified:

- There is no official mineral policy as yet- A draft Mineral Policy has been under review since 2012. The governing law for the sector is the Mining Operations Proclamation No. 678/2010 (“Mining Proclamation”), which will benefit from a revision to remove inconsistencies and lacunae (including with regard to licensing), and to ensure that it takes a comprehensive sustainable development oriented view of the mining sector, while at the same time enabling the high sector growth that is sought by the GTP.

- The Model Mining Agreement ('MMA') and Mining Operation Regulation (No 182/1994) which correspond to an old proclamation (Mining Proclamation No 52/1993), and not the new Mining Proclamation, will need to be modified.

- Separate income tax codes exist for mining, and petroleum respectively, these will benefit from being consolidated and aligned with Ethiopia’s main income tax code.

B. Objective

As part of a wider package of support provided by the Bank (in coordination with other development partners) to develop the Extractive Industries (Oil, gas and mining) sector of Ethiopia, the main objective of the work to be undertaken, in line
with this Terms of Reference, is to provide guidance and build capacity in the Ministry of Mines (MoM), as it undertakes the wider update of its policy, legal, and regulatory regime of the mining sector.

The expected higher level outcome is that GoE updates its mining sector policy, legal, and regulatory framework in line with international good practices.

C. Scope of Work

Under the present Terms of Reference, the World Bank invites a consulting firm (the “Consultant”) to field a multidisciplinary team to fulfil the scope of work described below.

I. Phase I: Analytical and Planning Phase:

As a part of the analytical preparation phase, the consultant shall perform the following activities:

- The Consultant will familiarize itself with the SMA study, Ethiopia’s existing policy, legal and regulatory framework, and contractual terms governing the mining sector5, and with the taxation codes applicable to the mining and petroleum sector.

- The Consultant will learn from GoE its views and policy objectives regarding the development of the mining sector, along with their view on the role of the sector in the Growth and Transformation Plan.

- The consultant will assess the key capacity needs of the GoE regarding the effective development and implementation of laws and regulations according to international good practice.

- There is ongoing dialogue between the World Bank Group (Trade and Competitiveness GP) and Ministry of Finance and Economic Development (MoFED), wherein a review of the current taxation framework is being conducted. Subject to MoFED acceptance, one of the likely recommendations is that the income tax codes for Mining, Oil and Gas be harmonized with the general income tax code. In such a case, the Consultant will work with the Bank team to recommend approaches to undertake such harmonization and to review/comment on proposed revisions prepared by the MoFED to the Mining Income Tax and Petroleum Income Tax components of the Income Tax code to ensure consistency with applicable international best practices. This will also require the Consultant to coordinate with other consultants who are working on the general Income Tax code.

- Alternatively, should MoFED and Ministry of Mines (MoM) request advice on revising the Petroleum and Mining income tax proclamations separately, the Consultant shall work with the Bank team to provide the MoFED and MoM guidance on how to undertake such revisions based on applicable international best practices.

- **Initiation Workshop:** The Consultant will organize an Initiation Workshop with Ministry of Mines (MoM), MoFED and other GoE counterparts as required. The Consultant shall present the details of the above activities in the workshop, and also present the initial findings, in order to help GoE identify the key decisions to be made and the issues that need to be addressed as GoE creates a policy for the mining sector, and updates the legislative and regulatory framework for the sector. The workshop will also discuss the key capacity requirements for effective development and implementation of the reforms.

- **Output:** Based on the above activities, the Consultant shall produce an ‘**Initiation Report**’ that shall be submitted to the MoM and/or MoFED for their consideration. The said report will provide options for (i) the identified suggested next steps for reform of the existing policy, legal and regulatory framework for the mining sector, and the taxation framework for the petroleum and mining sectors (as mentioned above); (ii) any possible bottlenecks/impediments to these reforms and options to address them; (iii) capacity building needs on the short and medium term. The report will also describe the agenda, activities and decisions arrived at the Initiation Workshop.

II. Phase II: Advice on Mining Policy:

- Based on the results of Phase I, the Consultant will advise GoE on the development of a policy for the mining sector. The Consultant will aim to align the advice with the African Minerals Development Center’s (AMDC) African Mining Vision to the extent possible.
Output: The Consultant shall submit a report to MoM, GoE (“Policy Options Report”) that provides options for the development of their mining policy.

III. Phase III: Advise on Legislation and Regulations:

- On the basis of the results of Phase I and subsequent exchanges of views with GoE counterparts and taking into account international and regional good practices, the Consultant will provide guidance for GoE to consider as it undertakes a revision of the Mining Proclamation and corresponding Regulations and the petroleum and mining income tax proclamations. The recommendations shall be consolidated in a “Legislative Options Report” (Output).

- In addition to issues raised in Phase I and II, in reviewing the laws governing the operation of the sector, it is expected that the Consultant will take into account the following aspects:
  - Compensation for property in areas where exploration/mining is being undertaken;
  - Revenue sharing between GoE, contractor, and local communities during production and sale of minerals;
  - Corporate social responsibility and value addition to local communities;
  - Incorporation of Environmental Conservation and Protection aspects, and incorporating modalities for scientific mine closure;
  - Special provisions to foster the Artisanal Mining Sector;
  - Guidelines and enforcement of local content and employment of Ethiopian citizens;
  - Simplification and consolidation of income tax provisions between the petroleum, mining and other sectors; and
  - Enhancement of transparency (including taking into account GoE’s subscription to EITI) and simplicity of contract negotiations.

The Consultant will also identify further areas, such as inclusion of standard health, safety, and environmental (HSE) clauses in the proposed mining proclamation and/or associated regulations. The guidance to be provided should reflect the current status as well as anticipated developments of the mining sector in Ethiopia.

IV Phase IV: Stakeholder Consultation Workshops:

- Prior to finalization, the Policy Options Report as well as the Legislative Options Report shall each be presented in consultation workshops to an audience of stakeholders identified in close consultation with the GoE. Any feedback provided will be considered by the consultant in discussion with MoM/GoE, and required changes shall be made prior to finalization of the said reports and their submission to MoM. The workshops shall be organized by the consultant.

- Output: The consultant shall document the proceedings of such workshops in the Policy Options Report and/or Legislative Options Report as the case may be.

V. Capacity Building:

- The Consultant shall identify, in discussion with the MoM/Task Force, an action plan for implementing the changes proposed in the Policy Options Report and the Legislative Options Report. Based on its findings during the scoping phase, the consultant will develop, in close coordination with the GoE, a capacity building plan for the Ministry of Mines, GoE (to allow for effective implementation of the action plan).

VI. Close-Out Meeting:

- The finalized Policy Options Report and Legislative Options Report will be presented in a close-out meeting. The parties to the close-out meeting will agree on the finalized deliverables, which will then be submitted to GoE.

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The Consultant is expected to pay special attention to provisions pertaining to environmental and social impacts, including local content provisions, and provide advice based on internationally recognized safeguards as needed.

D. Deliverables:
The final deliverables expected from the Consultant are the Initiation Report, Policy Options Report, and Legislative Options Report as mentioned above.

As part of the work, the Consultant will also need to supply copies of the agenda, power point slides, training and capacity building materials and any other relevant documentation for the workshops and meetings.

E. Timing/Milestones, Location, and Organization of Work
All work under this contract needs to be finalized by December 31st, 2015. The estimated timing for the main milestones is outlined below, calculated from the date of contract signing by the consultant.

- **Initiation Report** will be submitted to GoE within 50 days
- **Draft Policy Options Report** will be submitted to GoE within 80 days
- **Final Policy Options Report** (finalized after a Stakeholder Consultation Workshop) will be submitted to GoE within 100 days
- **Draft Legislative Options Report** will be submitted to GoE within 140 days
- **Final Legislative Options Report** (finalized after Stakeholder Consultation Workshop) will be submitted to GoE within 170 days
- **Closeout Meeting** will be held within 190 days

In order to work on (and provide guidance on) the above-mentioned issues, the consultant shall liaise, and work in close coordination with a ‘Task Force’ embedded in the Ministry of Mines, GoE, which has been established for this purpose. Details of the Task Force shall be communicated to the Consultant once the assignment commences.

Meetings with GoE will take place in Addis Ababa, Ethiopia unless specified otherwise. The Consultant’s contract will be managed by the World Bank team. Validation of the final deliverables will be facilitated by the World Bank team in consultation with the GoE Task Force. The GoE Task Force will ensure that the relevant representatives of various Ministries participate in the workshops and meetings with the Consultant. The GoE Task Force will ensure that the Consultant receives information required to conduct the work, e.g., relevant laws, regulations, and policies, current plans for the development of the petroleum sector in Ethiopia, etc. The Consultant will be responsible for obtaining any other relevant information (e.g., information on the petroleum sector in neighbouring countries, etc.).