The National Policy on Mineral Resources and Mining

Whilst seeking to encourage investment by mining companies, there is also a need to ensure that mining operations are conducted in a socially and environmentally responsible manner. The Government, through its environmental policies and regulation, seeks to ensure that environmental impacts are minimised and that the interests of local communities are taken into account where mining takes place. The intention is therefore to ensure that South Sudan secures the full economic and social benefits that mining development promises.

The initiatives contained in this Policy are directed not only at large-scale mining but also at small-scale mining operations, which offer opportunities to support rural livelihoods and local entrepreneurship. In this respect, the Government recognises that small-scale miners require assistance in their efforts to operate in an economically and environmentally sustainable manner.

Moreover, the Government has a duty to discharge its regulatory responsibilities in an effective, even-handed and coordinated way. The Government is therefore establishing appropriate and consolidated legal and administrative arrangements under new mining legislation . It is also developing the requisite institutional capacity to administer the new mining legislation.

Principles of Mining Sector Policy

The guiding principles of the National Mining Policy are:

1. To ensure that South Sudan's mineral endowment is managed on a sustainable economic, social and environmental basis and that there is an equitable sharing of the financial and developmental benefits of mining between investors and all South Sudanese stakeholders.

2. To encourage local and foreign private sector participation in the exploration for, and commercial extraction of, mineral resources, consistent with the Government's commitment to a free-market enterprise economy. . The Government recognises that private sector investors need to be able to operate profitably, be internationally competitive and satisfy their shareholders' and employees' expectations. To this end, the Government will establish and maintain:

   - A conducive macro-economic environment for mining investment;
   - A stable regulatory environment that provides for the transparent and even handed treatment of investors;
   - Access by investors to, and security of tenure over, areas of mineral potentials; and
   - A stable, competitive and fair fiscal regime.

3. To achieve a socially acceptable balance between mining and the physical and human environment and, to ensure that internationally accepted standards of health, mining safety and environmental protection are observed by all participants in the mining sector.

4. To encourage and facilitate orderly and sustainable development of small-scale mining. There is considerable potential for small-scale minerals extraction in South Sudan and the Government recognises that small-scale mining can provide additional or alternative livelihoods in rural areas and can help to foster the development of South Sudanese mining skills, entrepreneurship and capital.

5. To empower South Sudanese to become professional miners, mine managers and owners by maximising opportunities for minerals-related education, training and career development.

6. To require respect for employee, gender and human rights in mining. The Government wishes also to remove obstacles to participation in the mining sector on the basis of gender or marital status.

7. To encourage mining companies to develop a participatory and collaborative approach to mine planning and development, taking into account the needs of local communities, thereby fulfilling their roles as socially responsible corporate citizens.

8. To develop streamlined and effective institutional arrangements for the mining sector, together with adequate capacity to promote, authorise, monitor and regulate mineral operations.

9. To apply modern principles of transparency and accountability to the administration of mining regulation and, to facilitate community participation in such processes. In this respect, the Government recognises that there is a need for dissemination of information to the public on all aspects of mining as a basis for informed participation.

10. To endow South Sudanese mining authorities with the capacity to gather, analyse and disseminate geo-data necessary for the promotion of minerals sector investment.

11. To act in harmony with regional and international partners and, to this end, to endorse and implement principles that are established in regional and international conventions and other instruments and undertakings that are relevant to mining and to which Government of the Republic of South Sudan is a party or signatory.

Regulation of the Mining Sector

Mineral resources belong to the South Sudanese people in common and their stewardship is entrusted to the Government within the framework of the Interim Constitution of South Sudan. Under this framework, the National Assembly may make specific laws regulating rights and interests in minerals.

The Government will develop new mining legislation. Under the new mining legislation, rights and interests in minerals of all kinds, including commonly found minerals, will be regulated.

The Minister responsible for mining matters will have responsibility for the overall management of South Sudanese mineral resources and policy-making. However, the day-to-day administration of the mining legislation, including the grant of mineral rights and regulation of prospecting and mining operations, will be the responsibility of the Directorate of Mineral Development, assisted by public officers authorised to perform specific duties and functions under the new mining legislation.

In this scheme the Minister will appoint a suitably qualified public servant to be Director General of Mineral Development. In fulfilling the statutory powers of the office, the Director General will be required to follow the advice given by a Minerals Advisory Board provided for in the new legislation.

The Minister will appoint the Board in accordance with legislative requirements to assure that it is composed of senior officials of Government Departments and agencies with the greatest interest in the regulation of the mining sector. The Board will be empowered also to co-opt, for the purposes of its deliberations, representatives of parties affected by mining, such as associations of mining interests, non-governmental bodies and local community representatives.

For the purpose of securing large-scale investments in mining, the mining legislation will permit the Minister, with the Board's agreement, to enter into contractual arrangements binding on the State, with mineral right holders in certain specified circumstances. Such mineral agreements will be on terms not inconsistent with the legislation itself and in respect only of specific subject areas set out in the legislation.

All powers under the mining legislation will be exercised under these arrangements. Their effective implementation requires the strengthening of the capacity of the agencies responsible for regulation of mining. The Government is supporting this through appropriate budgetary resources and staffing reviews. This will incorporate provision for the establishment of offices in. the major mining regions to enable the efficient administration of mining matters at local level. The organisational structure being established is set out in Annex I.

Minerals Licensing

The main regulatory tool for the management of national mineral resources is a system of licensing persons and companies to carry out minerals prospecting and mining operations in return for the performance of explicit and enforceable obligations. The objective of a licensing system is to allocate mineral rights to those best able to generate improved knowledge about the mineral endowment in general, to delineate mineralisation of commercial value and, to carry out commercial production and supply of minerals in an efficient and responsible manner.

This objective can be best achieved through the establishment of a standardised licensing system, with the principal legal and administrative arrangements enshrined in the mining legislation. Standardisation enables mineral operations to be conducted on a level playing field and investment decisions to be based on factors that can be predicted and planned for. It also enhances the capacity of the mining authorities to administer the system efficiently and transparently. This, in turn, forms the basis for accountability to the National Assembly and the people.

The new mining legislation will therefore contain the following arrangements for minerals licensing:

1. The minerals licensing system will apply to all classes of minerals (including common minerals such as sand, salt and quarry stone).

2. The legislation will provide for a range of fixed term (and renewable) mineral rights suited to the various phases of mineral operations, from reconnaissance of potential mineral-bearing areas through to mineral extraction and treatment. Limitations will be imposed on the surface area granted under mineral rights, in accordance with the type of mineral operation and ability of the holder to work the area effectively.

3. Small-scale operations are to be distinguished from other operations in order to reserve rights to conduct such operations to South Sudanese and, to assist the Government in targeting programmes of support for the development of small-scale mining to those possessing rights to conduct such operations.

4. The system of rights will be sufficiently flexible to enable recovery of minerals by reclaiming mine dumps and tailings to take place.

5. Mineral rights will be open to any bone fide candidate, subject to the reservation of permits for small-scale operations to South Sudanese.

6. The new mining legislation will set out timely, effective and transparent procedures for the assessment and approval of applications and, set out the conditions that must be met in order for mineral rights to be granted to an applicant, including:

   6.1. the required form and content of applications;

   6.2. procedures for lodging applications with the Commissioner of Mines;

   6.3. the registration of applications in a Register of Mineral Rights, which shall be maintained by the Commissioner of Mines and be accessible through a central office and regional offices;

   6.4. duties to be carried out by the Commissioner of Mines within a specified time upon receiving applications, including conduct of an evaluation of the application, notifications to other government agencies and maintaining active liaison between mining companies, regulatory agencies and local communities; and

   6.5. powers that would enable the Minister to invite applications by tender for licences from mining companies in relation to an identified mineral deposit or existing mine.

7. The new mining legislation will also establish terms and conditions that guarantee security of tenure of mineral right holders, in particular the right to proceed from prospecting to mine development once the commercial feasibility of mining has been established, in return for specific and enforceable commitments from mineral right holders, including the following obligations:

   7.1. to carry out prospecting operations in accordance with an approved work programme;

   7.2. to progressively relinquish portions of the area held for prospecting as prospecting advances;

7.3. to move efficaciously towards determination of the commercial feasibility of mining following the discovery of minerals,;

7.4. to support an application for a mining licence with a comprehensive mining development proposals (including mine feasibility and engineering studies, a financing plan, marketing plan, environmental impact assessment and such other studies and proposals as are required under applicable legislation and obligations into which the applicant has entered under a mineral agreement) to demonstrate that the operations will ensure the efficient, beneficial and timely use of mineral resources;

7.5. to conduct mining and related operations in accordance with the approved mining development programme; and

7.6. to provide satisfactory undertakings to guarantee or secure performance of the mineral right holder's obligations at the prospecting and mining stages.

8. The new mining legislation will provide an option for a mineral rights holder to apply to retain rights over a mineral discovery, notwithstanding that commercial development is not then feasible, and for such rights to be held for prescribed periods under prescribed conditions where the mineral right holder demonstrates to the satisfaction of the Commissioner that such retention would enable commercial development of the mineral deposit within an acceptable timeframe.

9. Given the wide range of minerals found in the Republic of South Sudan and the numerous methods that can be employed to exploit them, the new mining legislation will make provision for issuing detailed regulations suited to different methods and classes of mineral operations, such as quarrying, alluvial workings, dredging and sand winning from river banks and other deposits. This is necessary to ensure that mining operators employ techniques that are efficient, safe and environmentally sound.

10. The new mining legislation will provide other assurances which are required by the holder of mineral rights in order to facilitate the financing and implementation of mineral operations, including:

10.1. transferability of mineral rights, subject to prior approval of the Commissioner of Mines and other safeguards to protect the interests of the Government the Republic of South Sudan

10.2. access to land for prospecting and mining operations, subject to payment of compensation and other safeguards to protect the interests of surface right holders; and

10.3. the right to market production freely, subject to fair market valuation of the mine product and appropriate audit and monitoring provisions.

11. The new mining legislation will provide for a minerals agreement to be entered into with a mineral right holder containing specific undertakings by the respective parties, not inconsistent with the mining legislation and other applicable laws, where the parties agree that this would help to facilitate the conduct and financing of mineral operations.

Dealing in Minerals

The various provisions of the repealed legislation governing dealings in minerals are to be replaced by provisions within the new mining legislation that will consolidate relevant licensing arrangements. A new permit to engage in the buying of minerals from licensed miners for later re-sale is to be added to bring gemstone and precious metals brokers into the regulatory scheme. The legislation will also regulate and provide fo the monitoring of imports and exports of minerals.

Environmental Regulation of Mining

The environmental and social standards under which economic activities should be conducted in South Sudan and the methods by which the Government seeks to enforce them is already part of the national policy and regulatory framework established under environmental laws (the Environmental Management Authority).

(Environment Act) administered by the National Environmental Management Authority (NEMA)) and health and safety legislation. The Government's objective is to achieve a socially acceptable balance, within this framework, between mining and the physical and human environment and to ensure that internationally accepted standards of health, mining safety and environmental protection are observed by all participants in the mining sector.

The new mining legislation is being harmonised with existing environmental legislation. In particular, mining companies will be required to comply with the requirements of the Environment Act and other applicable environmental legislation and, mineral rights may not be granted to an applicant unless the applicant has obtained an Environmental Impact Assessment (EJA) Licence, where this is required under the Environment Act.

Procedures for the assessment of applications and inter-agency consultation are being streamlined and synchronised by establishing arrangements under which NEMA and the Director General of Mineral Development consult during the evaluation of applications for mineral rights. NEMA will be represented on 'the Minerals Advisory Board, so that advice is available on environmental matters concerning the grant of mineral rights and the Director General of Mineral Development will have a responsibility to maintain active liaison between mining companies, regulatory agencies and local communities during all stages of minerals licensing.

The Director General of Mineral Development is also developing standards and guidelines for environmental compliance by mining companies, in consultation with NEMA and other relevant agencies. This includes standards of environmental performance for different types of mineral operations, particularly with regard to areas of ecological sensitivity and guidelines for mining companies on compliance with EIA and other environmental permitting requirements, including conformity with internationally accepted standards on matters such as resettlement, pollution and tailings disposal, and on monitoring arrangements.

The new mining legislation will establish a clear legal framework, procedures and liabilities to address mine rehabilitation and closure by defining the obligations of the holder of mineral rights concerning rehabilitation measures and mine closure obligations. Mining companies will be required to provide a suitable upfront guarantee or set aside reserve funds to meet their rehabilitation and mine closure obligations.

Fiscal Policy for Mining

The Government recognises that in exercising stewardship of the mineral endowment on behalf of the people of South Sudan, it must maximise the fiscal benefits generated by the extraction and rational use of the country's non-renewable resources. To this end, the Government has to strike a balance between generating short-term revenue and, attracting longer-term investment in the mining sector.

Such are the particular risks and economic characteristics of mineral operations that there is a need for special fiscal incentives and arrangements, which must be competitive at an international level, otherwise the Government cannot achieve its goal of sustaining investment in minerals.

The mining sector, for fiscal purposes, includes prospecting and mining operations, including such treatment as is necessary for the extracted minerals to be marketed for sale. Accordingly, operations that involve the purchase or import of minerals for processing and the manufacture of goods are not regarded as mining operations, for fiscal purposes.

These considerations are reflected in the fiscal regime which the Government is establishing for the mining sector under the new mining legislation and in other relevant legislation.

The principal features of the fiscal regime for mining which is being developed are as follows:

1. It is standardised and transparent to enable investors to predict and plan for all fiscal obligations. Standardisation also enhances the ability of mining authorities to administer the regime efficiently and effectively.

2. The standardised fiscal regime will include the following elements:

   2.1 mineral royalty and mineral rent at rates set out in the mining legislation;
   2.2 corporate income tax as set out in the relevant tax legislation; and,

   2.3 equal treatment of mining businesses regarding import duties and sales tax/VAT as provided for in relevant legislation.

3. The fiscal regime is intended to be internationally competitive and designed to balance investor expectations of earning returns commensurate with investment risks with the allocation of a fair fiscal return to Republic of South Sudan. To achieve this goal:

   3.1. mineral royalty rates for different categories of minerals are to be set at internationally competitive levels; and

3.2. rates of corporate income tax on a sliding scale will be introduced into the taxation of mining profits, through suitable tax measures, to provide South Sudanese with a greater share of financial benefits if mining profits reach high levels.

4. The fiscal regime will be designed to minimise the upfront burden of taxes on mineral operations, having regard to the particular risks and long gestation period associated with mineral exploration and mining operations, by:

4.1. developing standardised procedures and criteria for granting exemptions and/or rebates for import duties and sales **tax/VAT** prior to the start of mineral production; and

4.2. by offering an accelerated rate. of depreciation for mine related capital expenditures.

5. The collection of and accountability for fiscal receipts from mining is being improved, by:

5.1. simplifying and standardising the fiscal regime;

5.2. providing safeguards in the royalty provisions of the mining legislation and in applicable tax legislation against tax leakage, through appropriate definitions of mining income, allowable mining expenditures (including thin capitalisation rules) and value of mineral sales, coupled with standardised accounting procedures based on best international practice;

5.3. strengthening company financial reporting obligations;

5.4. developing appropriate capacity for efficient administration of mining taxation; and

5.5. requiring the Minister responsible for Minerals to prepare an annual consolidated public account of mining fiscal receipts of all revenue collecting agencies.

6. The system of licensing and related fees is being rationalised to reduce paperwork and to preserve the value of fees through appropriate indexation.

Maximising the Benefits of Mining for South Sudan

The Government wishes to foster development of a mining industry that will contribute to sustainable economic development, economic empowerment of Kenyans, the alleviation of poverty and, improvements to the standard and quality of life in the Republic of South Sudanese. In this respect, the Government has an important role to play in ensuring that all South Sudanes stakeholders secure the maximum direct and indirect benefits of mining. The Government has the following policies to achieve this goal.

1. In order to maximise the generation of employment in mining, the mining legislation will require mining companies to satisfy the following obligations:

1.1. to provide proposals on employment and training with any application for. mineral rights;

1.2. to give employment preference to qualified South Sudanese from local communities first and the country in general second and to report on employment patterns during the course of operations;

1.3. to provide training under approved training programmes; and –

1.4. to provide an agreed level of annual funding for education in mining related disciplines.

2. In order to maximise the procurement of goods and services from local sources, the mining legislation will require mining companies to implement the following initiatives:

2.1. to give preference to qualifiedSouth sudanes suppliers of local and national goods and services and to report on proàurement sources during the course of operations; and,

2.2. to provide local business development support under an appropriate business development programme.

3. In order to maximise the beneficiation of minerals in the Republic of South Sudan, the Government will periodically review economic and other measures that can be taken to encourage beneficiation. Furthermore, the mining legislation will require a mining company to include in its mining development proposals the case for or, if relevant, against minerals beneficiation and the Commissioner may require reviews of beneficiation options to be updated periodically.

4. In order to maximise the development of infrastructure, mining companiès will be expected to provide all new infrastructure necessary for mine development. However, the Government will consider negotiation of appropriate funding arrangements for infrastructure that has a wider public use.

5. The Government recognises that the benefits generated by mining in the form of fiscal receipts must be put to good use and result in an equitable sharing of benefit, having regard in particular to the needs of local communities most directly affected by mining. In order to achieve this, the Government will apportion 2 per cent of all mining fiscal receipts to projects in the local communities affected by mining. The projects will be funded by transfers from the Treasury to Payam authorities and will be identified in consultation with the relevant community representative bodies.

6. Additional measures are being taken to maximise the benefits, and minimise the negative impacts of mining on local communities, by requiring that:

6.1. training programmes and business development plans developed by mining companies give special emphasis to local beneficiaries;

6.2. mining companies address the provision of social amenities and infrastructure in their mining development proposals;

6.3. mining companies address the provision of support for health programmes in the workplace and local community in their mining development proposals, with particular emphasis on malaria and HIV/AIDS in accordance with national policies;

6.4. mining companies explain their community liaison and consultation arrangements in their mining development proposals;

6.5. local authorities, in conjunction with relevant governmental agencies, establish policies and procedures for full engagement of local representatives and other relevant stakeholders in planning and supervising local community development.

7. To maximise the opportunity for the post-mine economic viability of local communities, mining companies will be required to address post-mine viability issues in their mining development proposals, including measures for post-mine closure that will be implemented prior to closure, in consultation with Government agencies and the local community.

Promotion of Orderly Small-Scale Mining Operations

Small-scale mining operations undertaken by the Republic of South Sudan offer opportunities to support rural livelihoods and develop entrepreneurship but must be assisted in efforts to operate in an economically and environmentally sustainable manner. The Government's policy is to focus on removing the factors that presently prevent much small scale mining activity from taking place in the formal sector, particularly the lack of access to finance and recognised minerals rights and incentives to operate illegally.

1. The Government is developing measures to improve access to finance for small scale miners, including:

1.1. assistance to obtain fair market prices for their minerals by the control of illicit dealings and trading of minerals through appropriate licensing and providing necessary market information and training;

1.2. a range of measures to facilitate access to credit, which may include co operative savings, pooled equipment leasing arrangements and Government- supported concessionary lending schemes; and,

1.3. assistance in obtaining access to finance and business skills training.

2. The minerals licensing system under the new mining legislation will offer specific mineral titles suited to small-scale mining which will be reserved to South Sudanese (see Minerals Licensing) and available under simplified procedures for application and grant by the Director General of Mineral Development.

3. To facilitate access to land for small-scale mining, standardized procedures are being developed for planning small-scale mining operations, including adequate advance notice and community representation in deliberations leading to the designation of areas suitable for small-scale mining operations and the award of mineral rights.

4. To encourage the use of appropriate, affordable and safe technology, the Government is supporting the collation and dissemination of information about mineral resources evaluation,

mine planning and use of appropriate technologies, and providing extension services and technology demonstrations.

5. In seeking to promote the interests of small-scale mining, the Government can provide advice and support to small-scale miners on forming representative associations.

6. The Government will limit the imposition of fiscal levies only to royalty and such general taxation of income (personal or company) as may be applicable. Support will also be offered to assist in tax compliance.

7. To mitigate negative impacts of small scale mining, the Government disseminates information to raise awareness of health, safety and environmental risks, and is developing occupational health and safety guidelines for small scale mining. The Government is investigating the possibility of commissioning and supervising environmental impact assessments in particular areas earmarked for more intensive small-scale operations.