KINGDOM OF LESOTHO

MINISTRY OF MINING

DRAFT GREEN PAPER

ON

THE MINING & MINERALS POLICY

APRIL, 2014

Maseru, LESOTHO
FOREWORD

Government recognizes the growing economic importance of the mining and minerals industry, driven by diamond-mining. The industry is poised to make contributions of upwards of 5% to the GDP in years to come. Government has singled-out investments in diamond-mining and major water projects (the Metolong Dam and the LHDP Phase II) as the major ‘accelerators of growth during the implementation period, 2012/13-2016/17, of the NSDP. During this period, Government estimates that it will need to attract investment of more than M 5 billion in diamond mining in order to achieve targets of increased diamond exports, higher GDP and faster growth in tax revenues. Government is taking measures to create a conducive climate for optimal development of the sector.

The first step Government has taken is to establish a fully-fledged Ministry of Mining. Previously, the mining and minerals sector was administered and regulated by the Department of Mining under the Ministry of Natural Resources. The Ministry of Mining is spearheading a number of initiatives designed to enable the sector play its role in the economy. Developing a mining and minerals policy that provides a strategic direction and strategies for managing the exploitation of the country’s finite mineral resources is an essential pre-requisite. It has, therefore, been accorded the highest priority.

The Mining and Minerals Policy is not only a product of Government. It has been developed following in-depth and inclusive consultation and participation of representatives of mining companies and civil society organizations. Using translated versions of the proposed policy measures, Government has extended the process of informed consultation to local communities in all the 10 districts. The Policy is harmonized with the provisions of the National Strategic Development Plan (NSDP) and the Vision 2020, which provide measures and initiatives for economic growth and the social uplift of the living standards of all the Basotho people. The Policy also harmonizes with the Africa Mining Vision which is a continental roadmap for using the exploitation of mineral resources for socio-economic development.

The Mining and Minerals Policy that Government has developed with support from UNDP and UNECA carefully balances the need to create conditions that attract high flows of mining investment with the requirement to have outcomes generated from mining investments produce sustainable social and economic progress for all the people of Lesotho. The vision for the sector is, therefore, to establish a socially and environmentally responsible mining and minerals industry which yields a competitive and fair return on investment on one hand and which, on the other hand, provides lasting and equitable socio-economic benefits to the country.

Large scale diamond mining and artisanal and small-scale mining are the two sub-sectors covered in the Policy. To promote uniformity of treatment and predictability in diamond-mining lease agreements, Government will restrict or substantially remove what can be negotiated by prescribing, to the extent possible, the terms and conditions governing lease agreements in mining regulations or gazetted/published model lease agreements. Government is also requiring holders of diamond-mining leases to abide by the tenets of full disclosure and provide for inclusive and informed consultation and participation of stakeholders in the
processes of acquiring mineral rights and discharging their licence obligations. The ASM sub-sector is being excluded from diamond mining, however, Government, through decentralized regulation and support, aims to make the sub-sector safe, orderly and environmentally sustainable. This will enable the ASM sub-sector fulfill its potential for alleviating poverty particularly in rural areas.

For large-scale mining leases, the Policy requires the mining code to introduce an exclusive, short-term mining lease. The interim mining lease will enable the protection of the proprietary interests of prospective mine owners during the period of full and informed consultation and participation of stakeholders in the preparation of statutory requirements for socio-economic development plans, EIAs, domestic empowerment plans and any other plans required before processing long-term mining leases.

The policy requires consolidation of institutional arrangements for streamlining the compliance standards in health, safety and environmental management. In particular, the mining code and the EPA will include regulatory procedures detailing the functional relationship between the EPA and the Ministry of Mining covering environmental management in the mining and minerals sector.

To enhance accountability and efficiency of service delivery in the mining and minerals sector, Government, with appropriate safeguards, is introducing provisions for ‘deemed’ approvals. Through this mechanism, Government will be compelled to give approval or issue a licence to an applicant who has complied with the stipulated procedures but Government has failed to give reasons for its failure to act within the period specified in the mining law.

In addition to the policy measures, the Policy defines the roles of key players. The role of Government is two-fold: a) to establish the rules, standards and guidelines on best practices in the mining and minerals sector; b) to monitor, supervise and regulate compliance. Holders of mining leases and permits have the primary role of demonstrating compliance with their licence obligations. Civil society and other third parties play an important ‘watch dog role’ in the interests of the public at large. Government considers correct interpretation of these roles and responsibilities will greatly assist in providing transparency and accountability in mineral sector governance.

Ultimately the success of the Mining and Minerals Policy will rest on how well it repositions the mining and minerals industry for delivering outcomes that equitably and transparently benefit mine investors, the Government and the Basotho people. This will only happen if Government, mine operators and the public at large demonstrate steadfast commitment to the implementation of the legal and regulatory reforms, the institutional changes and governance practices recommended in the Policy.

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Hon Tlali Khasu, MP, Minister of Mining
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<td>African Development Bank</td>
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<td>Responsible Mineral Development Initiative</td>
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<td>SACU</td>
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<td>United Nations Conference on Sustainable development</td>
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<td>USGS</td>
<td>United States Geological Survey</td>
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EXECUTIVE SUMMARY

In 2012, the Government of the Kingdom of Lesotho constituted a fully-fledged Ministry of Mining in recognition of the growing importance of the mining and minerals sector in the national economy. The mining and minerals industry, which is dominated by diamond mining, is expected to contribute upwards of 5% to the country’s GDP in years to come. The Government, through its new Ministry of Mining, has spearheaded the development of a Mining and Minerals Policy, aligned to the Africa Mining Vision, and which operates within the purview of the country’s Vision 2020 and the National Strategic Development Plan, NSDP, 2012/13-2016/17. Within this framework, centred on job creation, the overriding goal is to deliver lasting socio-development gains, from the exploitation of Lesotho’s endowment in mineral resources, mainly diamond mining. Thus, the Mining and Minerals Policy provides a roadmap that will guide the development of mineral resources in Lesotho for the foreseeable future.

Challenges

The challenges and obstacles that are hindering the realization of the country’s socio-economic growth from its mineral resources are numerous. They include:

- Insufficient knowledge of the country’s mineral resources endowment. Geological mapping and mineral exploration are inadequate;
- The principal mining legislation, the 2005 Mining and Minerals Act, though relatively recent, has gaps and is limited in scope. It does not cater for socio-economic development goals. It also does not incorporate present day mineral sector governance standards;
- Failure to articulate the principles governing the mining fiscal and taxation regime in the principal legislation for the sector; ITA and other LRA legislation only supplement the mining law as sources of specific tax obligations of holders of rights in the sector;
- Lack of clarity on the position of Government on the artisanal and small-scale mining, ASM, sub-sector;
- Absence of Government policy positions in areas of importance such as value-addition, domestic empowerment, CSR guidelines and updated safety and occupational health standards;
- Absence strategies for developing industrial clusters and generally economic diversification through infrastructure development and planned connectivity of the mining and minerals sector to other economic sectors such as agriculture, manufacturing, value-adding processing industries and tourism.
The Mining and Minerals Policy articulates the vision for the sector and also elaborates the objectives and strategies for tackling these and other challenges that are hindering the development of a responsible, equitable and sustainable mining and minerals industry in Lesotho.

**Vision**

The vision, which is aligned to the Africa Mining Vision, is rooted in the country’s Vision 2020 and the NSDP. The Basotho people, through their Government, charge present and future governments of the Kingdom of Lesotho with the custodianship of the vision, which is:

“To provide for responsible and globally competitive exploitation of the country’s mineral resources in a manner that results in sustainable economic and social progress for its entire people.”

Principles of transparency, fair play and responsible mining underpin the objectives and strategies for realizing this vision

**Objectives and strategies**

1. **Government shall establish a mining fiscal and taxation regime that:**
   - **Is predictable, uniform and consistent including the elimination of negotiability in diamond mining licence agreements;**
   - **Provides for social consent through full disclosure and transparency;**
   - **Aims for optimal recovery of revenue;**
   - **Is amenable to being administered fairly, simply and efficiently**
   
   Government’s measures will include:
   
   Provision for full disclosure and transparency in all transactions relating to the mining fiscal and taxation regime; optimal recovery of tax revenue through closing of loopholes associated with transfer pricing, carry-forward losses, verification of mining capital equipment eligible for accelerated depreciation, high debt/equity ratios and phasing out of tax incentives; and, developing the necessary skills and expertise for effectively monitoring, auditing and generally evaluating production and financial performance of mining companies

2. **The legal and regulatory framework will provide for:**
   - **Legal authority for the socio-economic development goals of the Policy;**
   - **Transparency and accountability in all decision-making processes in the sector;**
   - **Inclusive and informed public participation and consultation in the governance of the sector**
Efficient public service delivery including anti-hoarding licensing measures
Government will revise and update the mining law by a) adjusting licensing provisions to give legal authority to the measures in the Mining and Minerals Policy relating to: socio-economic development, upholding the highest standards of safety, occupational health and environmental and social sustainability, domestic empowerment, economic agreements, authorization of artisanal and small-scale mining, ASM, activities in all areas other than diamond mining, and, dispute resolution mechanisms based on the Rule of Law; b) providing for inclusive and informed public consultation and participation in all key decisions and developments relating to the permitting and implementation of mining projects; and, c) generally, including measures, such as, the ‘deemed licensing and/or approval’ rule for administrative efficiency, anti-hoarding measures, open and competitive tendering for known mineral deposits while retaining the ‘first come, first to be served’ rule for unknown deposits

3. Government will work towards removing obstacles to increasing levels of value-addition in the mining and minerals industry
Government will: conduct feasibility evaluations of value-addition potential for mining projects in the country; take measures that address the widespread incapacities and shortages of skills and expertise and technology; in conjunction with the financial services make conditions more conducive for financing value-addition projects; raise the levels of investment in power supply and other physical infrastructure

4. Government will introduce policy measures on domestic empowerment and integration that aim to:
- Raise the participation of the Basotho people in the running and ownership of the country’s mining and minerals industry enabling the progressive transfer of operational control of large-scale mines to locals with foreign investors retaining control and ownership of their mine investments
- Enable the Basotho people become the primary vehicle for establishing inter-sector business linkages between mining and other economic sectors (agriculture, manufacturing, tourism and value-adding processing industries)
The mining law and its regulations shall require holders of mineral rights to implement domestic empowerment provisions on training and skills acquisition, procurement preference for locally supplied goods and services meeting the specified standards and optimal use of locally-owned mine sub-contracting companies in the conduct of earth-moving and drilling operations, explosives supply, technical services, equipment maintenance, etc

5. Government’s policy goal for the ASM sub-sector is to work towards transforming it in non-diamond mining areas from its poverty cycle trap caused by its widespread negative and exploitative practices to a value-adding, poverty-reducing economic activity of special significance for rural development
Outside diamond mining areas, Government will take measures to facilitate the mainstreaming of ASM operations through grant of property rights, upholding mining practices that are environmentally sustainable and protect the safety and occupational health of ASM workers; work with the financial services sector in improving the flow of financing needed for the emergence of bankable ASM operations that migrate into formal small-scale mining and large-scale mining.

6. **Government aims to establish inclusive, transparent and informed governance of the mining and minerals sector for enhanced economic value and sustainability of the sector**

   Government will take measures that provide for informed public participation and consultation including accession to all public participation conventions such as the Protocol of Free Informed Consent which is particularly relevant to local communities in mining areas; providing for transparent and accountable processes in mineral title administration; and, limiting the discretionary authority of regulators to grounds specified in the mining law.

7. **Government will enhance opportunities for economic diversification, domestic integration, value-addition and infrastructure development**

   Permitting processes for mining projects will require production of satisfactory plans for economic diversification and value-addition; planning infrastructure development for mining projects will be structured to service the needs of other economic sectors within the catchment area of planned mining projects; inter-Ministerial and inter-agency approaches will be used to foster linkages in planning and implementing mining projects.

8. **Government will provide for the highest standards of environmental and socio-economic sustainability in mine areas through participatory processes that are inclusive, transparent and accountable**

   Government will stipulate the compliance standards and practices for upholding the highest standards of environmental protection, occupational health and safety in the mining and minerals sector; making Environmental and Social Impact Assessments (ESIAs) and Environmental Management Programmes (EMPs) mandatory together with provision of plans for funding and implementation of pre- and post- mine closure rehabilitation;

   Government undertakes to make inclusive and informed consultation and participation of local communities in issues and decisions of material interest to them a requirement of the licensing process and at every stage of the mining cycle;

   Government will, in line with International Labour Organization, ILO, Conventions on decent working conditions and regulations against child labour and human rights abuses, take make measures to prevent human rights abuses in all mining activities, in particular, preventing the use of child labour and discriminatory practices against women.
9. **Government will continue its support for regional integration and co-operation through its membership in the Southern African Customs Union, SACU, the Common Monetary Association, CMA, the Southern African Development Community, SADC and the African Union, AU.**

Government considers that the strategy provides the country with improved economic prospects as such memberships provide access to markets and improved trade links.

**Implementation framework, monitoring and evaluation**

Government recognizes the bottlenecks posed by widespread limitations in human resources competence levels, institutional capacity and financing resources for successful implementation of the Policy. Consequently, Government’s remedial measures include:

- providing training to qualified Basotho people in wide-ranging skills and expertise needed in Government and in mining and mineral sector industries;
- developing capacity for the generation, storage and retrieval of geological data and information;
- creating and strengthening institutional capacity in the mining and minerals sector governance structure by:
  (i) reforming and reconstituting the Mining Board into a body with functional independence;
  (ii) establishing an Inspectorate of Mines for overseeing Mining Regulations governing occupational health and safety and also designating it as the agency in the Ministry of Mining that liaises with the EPA with respect to upholding environmental protection standards in mine areas;
  (iii) providing a modern Mining Cadastre that also acts as a Registry for mineral title administration;
  (iv) At an appropriate level of activity, decentralizing the provision of administration and support services to the ASM sub-sector should be evaluated;
  (v) Establishing an Environmental Protection Fund to secure funding primarily for post-mine closure rehabilitation;

Government will take all steps necessary to secure funding required for policy implementation. To this end, following adoption of the Mining and Minerals Policy, Government will commission the preparation of a comprehensive policy implementation plan incorporating a financing plan clearly showing, on one hand, what resources are available and the extent to which resources can be mobilised while, on the other hand, provides the estimated cost of the planned activities for implementing the policy. Successful mobilization of resources for implementing the policy measures and reforms is a pre-condition to the success of the Policy.
Periodic review and a well-executed monitoring and evaluation programme provide the means of effectively monitoring policy implementation progress. In addition, these monitoring tools provide an early warning system for timely identification and resolution of implementation bottlenecks.

In the Policy, Government has identified the roles of Government, holders of mineral rights (mining companies) and civil society organizations and society at large. In addition to being the vision carrier, Government’s oversight role entails the provision of clearly-stated regulations and standards and ensuring adherence to set standards and compliance with licence obligations by holders of mineral rights. On the other hand the overriding obligation of holders of mineral rights is to comply or show proof of compliance with their licence obligations or set standards. Civil society organizations and the rest of society have an important ‘watchdog’ role that the conduct of Government and holders of mineral rights is transparent and in accordance with the mining policy and the provisions of the established mining law. Government clarity in role definition will contribute to improved interpretation and application of the policy and the law.

Government appreciates the importance of sustained national consensus and political will in support of a Mining and Minerals Policy that is durable and binding. Government has, therefore, taken measures to table the Mining and Minerals Policy before Parliament and plans to include it as one of the agenda items for APRM review. The Mining and Minerals Policy will also be widely publicized.
DRAFT GREEN PAPER

ON

THE MINING & MINERALS POLICY

1 INTRODUCTION

The Mining and Minerals Policy that the Government of the Kingdom of Lesotho has introduced creates a policy framework that will enable the country manage the development of its finite mineral resources for the Basotho people to derive sustainable socio-economic development from the sector. The policy measures and strategies are directed at enabling the exploitation of the diverse endowment in mineral resources to be conducted in a manner that is socially and environmentally responsible, globally competitive and whose economic outcomes are shared among all the stakeholders in a manner that is transparent, fair and accountable.

The Government during the development of the Mining and Minerals Policy has relied heavily on broad and representative participation of stakeholders. Government used the First Multi-stakeholder Workshop comprising representatives from Government, industry, civil society organizations and other interested parties to arrive at key actions and strategies in key areas of the Policy. Stakeholder engagement was maintained throughout the policy development process that included establishing the sector’s situation analysis (local scan), stakeholder workshops (policy analysis and validation) and ultimately its formal adoption.

Government is confident that Lesotho’s Mining and Minerals Policy is stakeholder-driven and captures the aspirations of the people of this country.

1.1 Context and rationale

The Government’s unequivocal adoption of ‘sustainable’ socio-economic development as part of Lesotho’s Vision 2020 and as the central theme of the country’s Mining and Minerals Policy, is not only because it is an integral part of the AMV. It is a goal that is in complete harmony with the initiative that targets sustainable development globally. The global community first highlighted the goal of sustainable development at the Rio Earth Summit in 1992 as articulated in Agenda 21, the outcome document of that Summit; it was strongly reaffirmed at the 2002 World Summit on Sustainable Development; and, most recently, it was
endorsed at the 2012 Rio+20 United Nations Conference on Sustainable development (UNCSD). The 2012 initiative produced measurable ‘Sustainable Development Goals’ to be met by countries politically committed to implementing ‘The Future We Want’ program to sustainable development. The program stresses the need to integrate environment and development for socio-economic sustainability. The on-going World Economic Forum (WEF) Responsible Mineral Development Initiative (RMDI) is a companion initiative that is developing mechanisms for achieving sustainability in the formulation of mineral sector legal and regulatory regimes. Against this background, Lesotho’s Mining and Minerals Policy establishes a policy platform for using the country’s mineral resources for sustainable development.

The economic importance of the mining and minerals industry in Lesotho, dominated by diamond mining, is growing. In 1999, the contribution of the minerals sector to GDP, at 0.1%, was relatively insignificant. In 2011, the sector’s contribution to GDP rose to an estimated 4.5%. In this regard it is important to underscore the fact that the economic contribution of mining investments will not only be judged by their GDP contribution but will, more importantly, be indexed to the contribution of the sector’s outcomes to social progress and human development. Lesotho is categorized as a low human development country. Its Human Development Index (HDI) has improved marginally from 0.422 in 1980 to 0.461 in 2012.

In recognition of the growing economic importance of the minerals industry, the Government of the Kingdom of Lesotho recently re-organized its Ministry of Natural Resources under which the Department of Mining previously operated and created a fully-fledged Ministry of Mining. Following the reorganization and in pursuance of the NSDP priorities, the Government made a decision to develop a Mining and Minerals Policy to provide a strategic direction for the development of the country’s mineral resources.

Due to the absence of a Mining and Minerals Policy, the Government has lacked a guiding instrument for addressing the challenges and inadequacies impeding the effective administration and sustainable development of the sector. These include:

- Limitations and inadequacies of the 2005 Mines and Minerals Act. Designed, primarily, as a licensing Act, it is largely confined to the provision of terms and conditions pertaining to the acquisition, retention and termination of mining and minerals-related rights;
- The principles governing the creation of an equitable and well-balanced mining sector fiscal and taxation regime remain unclear;
- Minerals sector governance standards of transparency, accountability and inclusive public participation are inadequately catered for;
Safety and occupational health for mine workers are inadequately covered in separate legislation, principally, the Mine Safety Act;

Mining-induced socio-economic development is not enabled by the existing legal and regulatory framework

Corporate social responsibility standards and guidelines to be met by mine investors and mine operators are unclear;

The Artisanal and Small-scale Mining, ASM, sub-sector lacks a clear policy direction and strategies.

Through this sector policy the Government proposes to address these challenges and others that have emerged, as articulated in the broad-based and informed stakeholder consultative process. Specifically, stakeholders expressed an overwhelming desire for empowerment of the Basotho people in all aspects of the country’s mining and minerals industry.

1.2 Alignment with the country’s Vision 2020 and the NSDP, 2012/13-2016/17

The Mining and Minerals Policy has been developed within the framework and is bounded by the country’s Vision 2020 and the National Strategic Development Plan (NSDP) for the period 2012/13 to 2016/17. By 2020 the country aims to become “a stable democracy” that is a “united and prosperous nation at peace with itself and its neighbours. It shall have a healthy and well-developed human resource base. Its economy will be strong, its environment well managed and its technology well established.” This vision will largely be realized through the central objective of the NSDP of working “towards an accelerated and sustainable economic and social transformation”.

Within the NSDP, the Government has articulated clear objectives for the minerals sector which aim to: “(i) Develop a consolidated mining policy and review legal frameworks to adhere to best practices; (ii) Facilitate access of mining companies to the electricity grid and improve the main roads that lead to mining areas; (iii) Enhance investment promotion capacity and indigenous participation in the sector; (iv) Promote the development of down-stream industries; and (v) Generate comprehensive information to augment mineral resource wealth intelligence and inform potential investors.”

The Mining and Minerals policy together with an updated legal and regulatory framework which will be developed following the adoption of the sector policy are essential pre-requisites to fulfilling the role envisaged for the minerals sector in the Vision 2020 and the NSDP.
1.3 **Alignment with the developmental imperative of the Africa Mining Vision, AMV**

The Kingdom of Lesotho, aligning itself to the Africa Mining Vision (AMV) framework, has decided to benchmark the country’s Mining and Minerals Policy on the AMV. The decision is completely compatible with the planned contribution that the exploitation of country’s mineral resources is expected to make to the realization of National Vision, 2020, and to the strategic focus of the NSDP.

The contribution of the mineral resources sector as envisaged in Vision 2020 and the NSDP resonate well with the AMV’s pillar of developing the mineral resources of the country for sustainable socio-economic development. Improvement in the living standards of the Basotho people, mainly through sustainable job creation, is both the justification and end-objective of the country’s Mining and Minerals Policy. Overall 50,000 jobs are planned to be created over the plan period of the NSDP. Fundamentally, this is the objective of the Vision 2020, the NSDP and the AMV. To achieve this overall goal, the country aims to:

(i) Pursue high, shared and employment creating economic growth;
(ii) Develop key infrastructure;
(iii) Enhance the skills base, technology adoption and foundation for innovation;
(iv) Improve health, combat HIV and AIDS and reduce vulnerability;
(v) Reverse environmental degradation and adapt to climate change; and
(vi) Promote peace, democratic governance and build effective institutions.”

In addition to addressing sector-specific challenges, the goals and strategies included in the country’s Mining and Minerals Policy are derived from the national objectives stated above. The AMV, through its policy directions, helps in shaping the objectives and strategies in order to derive optimal developmental impacts from the exploitation of mineral resources.

1.4 **Alignment with the aspirations of the Basotho people**

In developing this policy, the Government has been guided by the need to involve stakeholders covering the broadest possible interests in the country’s minerals sector. The views and aspirations of the Basotho people at the grassroots level were heard and authenticated during the information gathering stage of the process. During the discussions of the local scan, stakeholders representing key interests who included representatives from the mining companies, civil society organizations and Government played the key role of identifying the challenges confronting the minerals sector and offered remedial actions needed to address them. Through this all-inclusive consultative process Government has enabled broadly-based representation of the people of Lesotho in all the 10 regions to participate fully in all the stages of developing a durable and home-grown Mining and Minerals Policy, a minerals policy that
Draft Green Paper on the Mining and Minerals Policy for Lesotho

will provide a blue-print for developing the country’s mineral resources now and in the foreseeable future. Whilst the policy document that has been produced may not enjoy complete unanimity, it has met the goal of having the broadest possible consensus behind its formulation.

In a departure from common practice in most African jurisdictions, of treating a sector policy as purely a policy instrument for the Executive branch of Government, the Mining and Minerals Policy of the Kingdom of Lesotho will only take effect after ratification by the country’s Parliament.

The rest of the policy document covers:

- The mining and mineral resources endowment of Lesotho;
- The sector vision, challenges and objectives;
- Policy directions and strategies for thematic areas;
- Implementation framework, monitoring and evaluation;
- Role definition of key players: Government, mining companies, and the public/CSOs;
- Conditions for the successful implementation of the Policy;
- Government plans going forward.

2 THE MINING AND MINERAL RESOURCES ENDOWMENT OF LESOTHO

Whilst Lesotho’s mineral resources endowment is diverse, currently, active mining is dominated by diamonds and clays. The NSDP has identified expansion of diamond mining and development of major water projects as the two key growth accelerators in the economy. It is estimated that, over the plan period, “mining investment of more than M 5 billion will lead to increased diamond exports, higher GDP and faster growth in tax revenues”

Diamonds are found in kimberlites and alluvial gravels. Following the systematic prospecting by J Scott (1955) and De Beers (1959 several kimberlite pipes were demarcated. Although kimberlites occur throughout the country, with an average intrusion of one per 10km², northern Lesotho is probably the most concentrated area of kimberlite intrusion in the world. Such a heavy concentration of kimberlites indicates Lesotho has an enormous potential for diamond mining. Improved access to northern Lesotho that the development of the Lesotho Highland Water Project (LHWP) has made possible has greatly improved prospects for diamond mining in the area. There is also potential for diamond recovery from alluvial gravel in the lowland of the country’s south western region.

In addition to diamond mining, significant deposits of heavy clays, white-firing clays and stoneware clays have been identified. Spurred by the Lesotho National Development
Corporation a growing industry for the manufacture of ceramics, tiles and bricks has emerged. The widespread existence of fine-grained dense basalt and the massive dolerites offer good dimension stones (the so-called “black granite”) for building, cladding, tombstones, etc. The country’s geology also indicates there is potential for coal, uranium, semi-precious stones and other industrial minerals. To date coal investigations have not yielded significant finds, however, the possibility of finding commercially significant coal bed methane (CBM) exists. Favourable rock formations suggest the possibility of uranium deposits but mining channel development is difficult in the complex rock formation. Agate, chert, petrified wood, rock crystal, amethyst, olivine, zircon, and chrome diopside represent the semi-precious stones which sporadically occur in small quantities. They are amenable to commercial exploitation on a small scale.

Over the decade 2000 – 2010, diamond production peaked in 2007 at 454,014 carats to a low of 91,815 in 2009. The sector’s contribution to GDP, from a low of 0.1% in 1999 to 4.5 % in 2011 indicates the growing importance of mining in Lesotho’s economy. In contrast, the contribution of agriculture, the mainstay of the economy, has steadily declined. “It shrunk from 20 percent in 1983 to nearly 14 percent by 1999 and to 7 percent in 2011”

In isolation, the socio-economic impact of mining is limited. It is a capital-intensive industry with limited opportunities for job creation. However, a mining and minerals industry that is fully integrated in the fabric of the national economy can be instrumental in broadly-based job-creation through its facilitation of economic diversification, value-addition, infrastructure development and economic empowerment of the Basotho people.

Power shortages and generally infrastructure deficits are retarding the development and growth of diamond mining and other areas with mining potential. The Mining and Minerals Policy that Government has developed addresses the obstacles that are impeding the growth of responsible mining that results in transparent and equitable socio-economic development.

3 THE SECTOR VISION, CHALLENGES AND OBJECTIVES

3.1 Vision

From the consultation of stakeholders with key interests in the mining and minerals sector and the public at large, Government has concluded that the nation fully supports the vision of mining for broadly-based socio-economic development. Thus, drawing inspiration and in harmony with the continent-wide Africa Mining vision, the Basotho people, through their
Government, charge present and future governments of the Kingdom of Lesotho with the custodianship of the vision, which is:

“To provide for responsible and globally competitive exploitation of the country’s mineral resources in a manner that results in sustainable economic and social progress for its entire people”

The mining and minerals sector vision embodies and is underpinned by principles which guide its goals and objectives. They include:

- The need to recognize permanent sovereignty over and ownership of natural resources (including mineral resources) existing within its boundaries are vested in the Basotho people of the Kingdom of Lesotho
- The need to anchor the Policy on transparency in all aspects of administering and managing the country’s mining and minerals sector – Transparency compels and commits regulators and holders of mineral rights to full disclosure and informed and inclusive consultation of stakeholders in the process of performing their obligations and exercising their rights. Transparency has become a global standard for measuring accountability in the governance and execution of mining and minerals sector projects.
- The need to provide for “equitable” and “optimal exploitation” of the country’s mineral resources endowment. In this respect, a major policy objective in Lesotho’s mining fiscal regime is equitable sharing of the benefits accruing from mining investments. In the Policy ‘optimal exploitation’ engenders and elevates the concept of ‘responsible’ mining to include environmental and socio-economic sustainability of local communities in mining areas which, increasingly, is being referred to as ‘the social licence to mine’. The Policy also requires optimal exploitation to embrace mining targeted at meeting the broader economic objectives of increased local content, economic diversification, value addition and generally facilitation of the growth of integrated development in the country.
- The need to provide a stable and conducive investment climate that encourages local and foreign private sector participation throughout the mining chain processes covering exploration for mineral deposits, mine development, extraction and processing and commercial realization of value from the extracted mineral resources consistent with the dictates of a free-market enterprise economy
- The need to empower the Basotho people progressively assume control of the mining and minerals industry by becoming proficient in all aspects of operating, managing and owning mines and mining-related businesses.
- The need to provide for employee, gender and human rights in mining including the removal of any obstacles to participation in the mining and minerals sector on the basis of gender, marital status, or other forms of discrimination.
The need to adhere to a participatory and inclusive approach in permitting procedures for mineral rights and in processes associated with the implementation, execution and mine closure, as well as taking into account the needs and interests of local communities that are impacted by mining operations.

The need to anchor the mining and minerals sector legal and regulatory framework, in particular, dispute resolution mechanisms, on the Rule of Law

3.2 Challenges

The contribution of the mining and minerals sector to GDP, to the national treasury, to employment and broadly to the economic activities in the country is, currently, well below its potential. Consequently, the overriding challenge is to grow the sector to a degree where it can attain the capacity to effectively contribute to the country’s economic transformation for broadly-based socio-economic development as envisaged in the NSDP and the AMV.

Among the overarching challenges confronting the mining and minerals sector in Lesotho are insufficient human and institutional capacities; scarcity of mine financing capital and infrastructure (road, rail, power, telecommunications) deficits.

Whilst the country has endorsed the goal of exploiting mineral resources in exchange for broadly-based socio-economic development, critical pillars of the legal and regulatory framework will be updated and strengthened by:

- Enhancement of the capacity to conduct geological exploration and generate geological and mining information. Improved accessibility of prospective mine areas through improved infrastructure is greatly needed
- A legal authority to realize the objective of ‘mining for socio-economic development’
- A fair, accountable and transparent mining fiscal and taxation regime
- Mechanisms for enabling participatory processes that are inclusive, accountable and informed in mineral sector administration
- Provision of a clear policy on the ASM sub-sector
- Provision of measures for underpinning responsible mining covering: safety and occupational health, environmental protection including post mine closure rehabilitation; corporate social responsibility (CSR) and socio-economic viability of local communities in mining areas during and after cessation of mining operations (social licence to mine)
- Accessibility of information and participation of the public in mining and minerals sector governance processes
Adequate provision for domestic empowerment and integration of the mining and minerals sector in the national economy

Implementation of sub-regional, regional and international treaties, conventions, etc that are of relevance to the mining and minerals sector and to which Lesotho is a signatory

The artisanal and small scale mining (ASM) sub-sector is especially challenging for Lesotho. Currently, ASM activities are not legally permitted in the country. However, ASM activities involving the mining of diamonds in alluvial gravels and mining for industrial minerals and semi-precious stones have and continue to take place. In order to comply with the Kimberley Process of certification, Government does not allow ASM activities in diamonds. Essentially, Government has no capacity to certify ASM production of diamonds from alluvial gravels. For fear of creating loopholes for illegal exportation of conflict diamonds, the Government has not legalized mining of industrial minerals and semi-precious stones by the ASM sub-sector. The Government has addressed the challenge by adopting a dual approach that legally permits ASM in industrial minerals and semi-precious stones.

In the policy, the objectives address the challenges in each policy area. Indicative strategies for meeting the objectives are also articulated.

### 3.3 Objectives

The policy objectives of the Government for the mining and minerals sector are:

(i) To utilize the benefits and outcomes of mining for raising the economic well-being of the Basotho people;
(ii) To take measures aimed at promoting the competitiveness, transparency and long-term sustainability of the country’s mining and minerals industry;
(iii) To stimulate exploration and mining development;
(iv) To introduce measures for a fair and accountable mining fiscal and taxation regime
(v) To secure transparent and accountable mining and minerals sector governance
(vi) To recognize and reposition the ASM sub-sector as a developmental tool for reduction of poverty particularly in rural areas;
(vii) To minimize or eliminate the adverse social and environmental impacts of mining development;
(viii) To introduce and strengthen domestic empowerment measures so as to give the Basotho people the highest priority in job-creation and training and to ensure procurement preference for goods and services from local sources
(ix) To domesticate regional and international conventions and other instruments and undertakings that are relevant to mining and to which the Kingdom of Lesotho is a party or a signatory.
4 POLICY DIRECTIONS AND STRATEGIES FOR THEMATIC AREAS

4.1 The mining and minerals sector fiscal and taxation regime

Context

An essential component of the multi-faceted contribution of the mining and minerals sector to the national economy is its capacity to raise revenue resources for development. Government, in the NSDP, has identified diamond mining and water projects as target pillars for accelerating economic growth during the NSDP period. Potential leakages of mining tax revenue present a major challenge to optimal revenue recovery in the sector. Transfer pricing both domestically and externally can deprive Government of substantial tax revenues. Domestically, varying rates of CITs, can lead to tax avoidance schemes that enhance incomes from sectors with favourable tax rates and artificially depress incomes from sectors with higher CIT rates. Different CITs for the manufacturing and mining sectors in Lesotho provide a good example. External sourcing of mining requirements presents opportunities for over-invoicing and over-pricing. These are avenues that erode taxable revenue. Excessively high provisions of tax allowances for capital depreciation, generous tax incentives, indefinite carry-forward losses and non ring fencing of mining projects owned by a mining company are some of the potential sources of tax avoidance in the mining and minerals sector. Dividend income from the Government’s shareholding in mining companies, being profit-based, is also similarly affected.

A second major challenge for the Government is the asymmetry in the competence levels in mine taxation matters between the tax expertise possessed by mining companies and those in Government service. This competence gap undermines Government’s ability to monitor/audit and effectively enforce tax compliance.

The need to provide for transparency and full disclosure in the tax dealings between mining companies and the Government has come to the fore in recent years. Through initiatives such as “Global Reporting Standards”, the Extractive Industries Transparency Initiative, EITI, and the “Publish what you Pay Campaign”, the inclusion of full disclosure requirements in mining laws has become the norm.

The policy measures and strategies for the fiscal and taxation regime that Government has outlined in the Mining and Minerals Policy are, in large measure, a response to these challenges.
**Objectives**

In its efforts to realize the full economic potential from the country’s mineral resources, in particular, diamond mining, Government aims to:

| i) | sustain the flow of much-needed mining investment by maintaining a mining fiscal and taxation regime that is predictable, uniform and consistent; |
| ii) | Enhance the scope and effectiveness of revenue recovery from the mining and minerals sector, particularly, diamond mining. |
| iii) | reduce or eliminate negotiability in diamond mining agreements. Future mining leases will contain standard fiscal terms as specified in the mining law or in a model contract published in regulations, |
| iv) | work towards achieving ‘social consent to taxation proposals and changes through full disclosure and transparency |

**Strategies**

The strategies for achieving these objectives include:

- Putting in place measures aimed at limiting and/or arresting leakages of mineral revenue. The measures will include providing for transfer pricing control regulations; introducing procedures for closing loopholes embedded in accelerated capital depreciation, tax deductible interest payments on loans, etc. In similar vein, tax incentives will be phased out within a 5-year period
- standardizing corporate income taxes, CITs, across sectors,
- replacing concessional government equity participation with ‘a standard additional rent tax’,
- working towards limiting the debt to equity ratio to 1.5:1 in order to reduce over-reliance on debt capital whose interest service costs are often tax allowable
- Establishing mechanisms for full disclosure of verifiable production and financial performance data;
- Enhancing transparency of mining transactions, and total accountability of the collection and utilization of mineral revenue;
- Taking measures to develop the capabilities and capacity to monitor, audit and evaluate production and financial performance of mining companies.

In addition, Government will employ computations of marginal effective taxation rates, METRS, for periodic assessment of effective taxation rates in the mining and minerals sector.
CITs are often misleading because taxable incomes upon which calculations of actual CITs are based are often eroded by various tax concessions resulting in reduced mine taxation incomes.

4.2 The Legal and Regulatory Framework

Context

Accommodating the developmental goals of the policy is a primary challenge that needs to be addressed in the legal and regulatory framework. The existing mining and minerals legislation contains no provisions relating to the responsibilities and obligations of Government, mine investors and mine operators, and other key actors, for realizing the developmental goals of the Policy

Limited obligations for disclosure of information and lack of provisions for informed public participation and consultation in the sector’s decision-making processes undermine transparency and accountability

Limited advisory powers of the Mining Board and its lack of structural independence renders it ineffective as an organ for limiting the discretionary authority of the Minister responsible especially that the Act does not specify the permitted grounds for Ministerial action.

Incomplete mining legislation in vital areas such as safety and occupational health, corporate social responsibility, legality of ASM activities, etc compounded by inadequate regulations for implementing the Act lead to uncertainty and unpredictability in the sector

The absence of the ‘use it or lose it’ principle in the obligations for mining and mineral licence holders encourages hoarding and reduces productivity in the sector. Inadequate mine exploration activity retards the growth of the mining and minerals sector

The Act has no provisions relating to the artisanal and small scale mining (ASM) sub-sector

Consents and the associated prolonged procedures for securing them in investment transactions requiring mining title transfers are a hindrance to the flow of mining investment into the sector

The existing legal and regulatory framework is fragmented and mostly out-dated:

**Mine Safety Act of 1981** –the principal legislation for regulation of matters related to safety is not enacted and, therefore, unenforceable
Labour Code of 1992 has provisions for regulation of occupational health and safety in all industries but makes no specific provisions related to mining.

Environment Act of 2008 and Guidelines, apart from lacking provisions on mine closure, is updated. However, lack of skilled personnel as well as environmental monitoring equipment hampers operations for compliance monitoring. Institutionally, the Ministry of Mining, has no environmental monitoring unit.

The Mines and Minerals Act of 2005 is essentially a licensing Act for title acquisition and administration in the mining and minerals sector. Developmental goals such as are envisaged in Lesotho’s Mining and Minerals Policy are not provided for. The Act, however, refers to the Environment Act and includes provisions requiring mining companies to protect the environment in their licence areas.

The Explosives Proclamation of 1959 is outdated and inadequate for meeting the regulation and management of the use of explosives in the minerals industry and elsewhere in the country.

Objectives

The Mining and Minerals Policy will aim to make the mining and minerals sector compliant with its developmental goals. Specifically, the legal and regulatory framework will be revised in order for it to make provision for:

- Legal authority for the socio-economic development goals of the Policy;
- Under the Mining and Minerals Act provide comprehensive regulations which detail requirements for upholding occupational health and safety, for the safety and security in handling mine explosives and, generally, regulations for maintaining high mine operating standards
- Transparency and accountability in all decision-making processes in the sector;
- Inclusive and informed public participation and consultation in the governance of the sector
- Anti-hoarding licensing measures to facilitate the development and sustainable growth of the sector
- An ASM sub-sector that precludes ASM activities in diamond mining but permits and facilitates ASM development and formalization in industrial minerals and semi-precious stones
- The removal of undue restrictions on the transferability of mining and mineral titles to facilitate unimpeded investment flows into the mining and minerals sector
- Updating and consolidation of all statutes in the mining and minerals sector

Strategies

(i) Terms and conditions for diamond-mining rights will be specified in the Mines and Minerals Act with provision for concessional agreements being made with applicants
who satisfy eligibility criteria. Every diamond mining licence will provide for the State to own, as free carry, no less than 20% of the equity invested in a diamond mining company in Lesotho. This is in recognition of the strategic nature of diamond mining to the economy of the Kingdom of Lesotho and enhancing the capability of retaining the Kimberley Process certification for deterring the production of conflict diamonds world-wide. Government, through the Mines and Minerals Act and the regulations made under it, will specify the eligibility criteria for particular terms and conditions in diamond mining licences.

(ii) Embedding certainty, predictability and efficiency through:

a) The introduction of the ‘deemed licensing rule’ to compel timely decision-making; the principle of ‘deemed’ approvals in decision-making will apply to procedures for processing work permits and permissions for getting in skilled personnel;

b) Provision of clarity and completeness of the Mining and Minerals Act and its regulations.

(iii) For proprietary reasons mine investors are not willing to engage in meaningful, broadly-based consultation prior to the grant of exclusive mining rights. Therefore, introducing a conditional mining licence, termed as an interim retention licence, for grant to a successful applicant prior to the grant of a full-term mining licence would be useful. The licence shall be for a limited duration, possibly, one year. The interim licence shall enable the holder to comply with the requirements of producing evidence of full and informed consultation with stakeholders re the socio-economic development plan, EIS, etc.

(iv) Consolidating relevant statutes into the principal Mining and Minerals Act and harmonizing it with other mining-related statutes being administered by other agencies but which impact on the development of the country’s mining and minerals sector. The consolidation and harmonization is to enable the provision of clear, simple and transparent procedures for the grant and administration of rights covering the entire mining chain from exploration to rights for conducting mining operations.

(v) Excluding diamond mining in all its forms from involvement by the ASM sub-sector whilst for industrial minerals and other mineral types, delineating the applicable ASM licensing procedures;

(vi) For the mining and minerals sector as a whole, ensuring transparency and fairness by conferring ownership of mineral rights on the basis of first come, first served basis for unknown mineral deposits. In cases, of known deposits, applying open and competitive tender procedures for allocation of rights;

(vii) Rationalizing the licensing system to ensure exclusivity and transferability of mineral titles;

(viii) Taking anti-hoarding measures based on the basis of the ‘use it or lose it’ principle so as to discourage speculation whilst encouraging active mineral exploration and exploitation;

(ix) Upholding the highest standards of safety, occupational health and environmental protection including post mine closure rehabilitation and the socio-economic sustainability and health of local mining communities; and
(x) Ensuring adherence to the Rule of Law is rigorously observed, in particular, that contractual rights and obligations are protected and also providing for settlement of disputes through the domestic court system and/or international arbitration.

4.3 Value-addition

Context

Government recognizes the enormous economic value that value addition based on raw mineral outputs can generate for the country. Diamond mining, the mainstay of Lesotho’s mining industry has potential to act as a hub for creating backward linkages with industries that manufacture and supply mine inputs such as explosives, drilling bits, mining spare parts and other accessories; it can also provide opportunities for creating forward linkages to beneficiating and processing industries using the raw diamonds or other mineral products mined in the country. Completion of the construction of the Letšeng cutting and polishing centre whose commissioning awaits Government agreement provides a good example. As a further demonstration of its commitment, Government, in 2014/15, will conduct a feasibility study for the establishment of a diamond centre, which will provide facilities for the sale of raw diamonds, cutting and polishing. Apart from value-addition generated by backward and forward linkages, value-adding linkages extend to industries which provide technological, human resources and infrastructure inputs. These are generally referred to as side-stream linkages. Value-addition can also derive from lateral linkages through shared technologies between mining and other business sectors. Earth-moving technologies are common to both mining and construction industries.

The Government, through the Mining and Minerals Policy, will direct the efforts of the mining and minerals industry towards harnessing its value-addition potential. Government, however, realizes the economic potential that value-addition brings through these various linkages is limited by the prevailing domestic environment. Economies of scale may not exist because of the size of the domestic or even the regional market being too small. For instance, in the near term, Government will only target the intermediate value-addition stage of cutting and polishing raw diamonds. Considerations of market size limitations, absence of specialized knowledge, customer-base remoteness and non-availability of supporting physical infrastructure among other factors, prevent investors from establishing the finished product stage of jewellery manufacture.
Objective

Government will work towards removing obstacles to increasing levels of value-addition in the mining and minerals industry

Strategies

The measures the Government proposes to take include:

- Developing a plan for facilitating value-adding industries linked to diamond mining and other raw mining outputs in Lesotho. Government is already committed to conducting a value-addition feasibility study during the 2014/15 financial year;
- Making and implementing plans to cure deficiencies in skills and specialized know-how needed to service the technology-intensive value-adding processing industries;
- Collaborating with the financial services sector in creating sources of much-needed domestic capital;
- Prioritizing the allocation of capital expenditure to power supply and other physical infrastructure projects;
- Encouraging the growth of industrial clusters that have strong linkages with mining companies. Industrial estates such as the Ha Tikoe Industrial Estate provide opportunities for encouraging the establishment of manufacturing companies with upstream supply-chain linkages or downstream processing companies

4.4 Domestic empowerment and integration

Context

The mining and minerals industry in Lesotho is in its early stages of development. This affords the Government a great opportunity to design its development of the industry in a manner that is consistent with the country’s socio-economic plans.

It is a capital intensive industry which, inherently, does not generate large numbers of jobs. It does, however, have enormous capacity for generating secondary industries, stimulating business development in other economic sectors including value-adding processing industries, creating technology transfer opportunities, expanding the country’s base of managerial and technical expertise, etc. Thus domestication of the mining and minerals industry holds the key to achieving durable and diversified economic gains

Objectives
In order to realize lasting economic outcomes from the mining and minerals sector, Government will introduce policy measures which aim to:

- Raise the participation of the Basotho people in the running and ownership of the country’s mining and minerals industry. This will enable the progressive transfer of ‘operational control’ to locals with foreign investors retaining equity control in their mine investments.
- Enable the Basotho people become the primary vehicle for establishing inter-sector business linkages between mining and agriculture and mining and tourism and mining for the value-adding processing industries;

**Strategies**

- The mining law shall require applicants for mining leases to accompany their applications with a Domestic Empowerment Action Plan which shall outline the potential investor’s plans for:
  - i) developing and executing a time-bound exit plan from dependence on foreign personnel. The phase-out plan will provide proposals on training and employment of Basotho nationals earmarked to replace foreign personnel;
  - ii) giving employment preference to qualified Basotho nationals;
  - iii) maximizing the procurement of goods and services from local sources, by giving preference to qualified Basotho suppliers of local and national goods and services;
  - iv) Technology transfer, ownership and operational control of
  - v) Using locally-owned mine sub-contracting companies responsible for earth-moving, drilling operations, supply of explosives and other mining and mineral processing supply-chain inputs, equipment maintenance, technical services, etc.
- The mining law shall require holders of mining leases to submit progress reports periodically on the approved Domestic Empowerment Action Plan during the course of operations.
- Government, pro-actively, facilitating the development of capital sources to enable the Basotho effectively participate in the minerals industry. This will require encouraging the broadening and deepening of financial intermediation instruments domestically and regionally.

4.5 *The Artisanal and Small-scale Mining, ASM, sub-sector*

**Context**

What constitutes artisanal and small-scale mining (ASM) poses a challenge. ASM is interpreted differently in different countries. Even within the same country ASM may take different dimensions for different mineral types. Lesotho is an example of a country where the term ASM may apply to the mining of high value alluvial diamonds and semi-precious stones at one end of the spectrum, while at the other end of the spectrum it may apply to the bulk mining of relatively low value industrial minerals and dimension stones. Because of the bulk
nature of the mining of industrial minerals, capital requirements may, commercially, preclude artisanal mining activities and yet they may be amenable to small-scale mining. Additionally, ASM combines artisanal mining activities and small-scale mining activities which have different definitional characteristics. Thus, defining the ASM sub-sector is complex. Excluding diamond mining, whether alluvial or kimberlitic in origin, ASM in Lesotho will be taken to refer to mining activities which exhibit the following generally accepted characteristics:

- Use low technology or with minimal machinery which, therefore, are suitable for simple techniques and manual labour. The consequent productivity is low
- Like in most other developing countries, ASM activities in Lesotho are generally informal and therefore, illegal.

However, small-scale mining as applied in S.53 of the 2005 Mines and Minerals Act, substantially corresponds to the definition of ASM stated above. The section states, ‘holders of mineral rights shall not – (a) Carry out mining operations beyond a depth of 2 meters; (b) Use explosives; or (c) Use any powered machinery in his mining operations except for the purpose of loading material in or moving material from the area where he carries on the operations.’

Though the ASM sub-sector has acknowledged economic potential, it is a sub-sector that is attended by a large number of incapacities in all areas of mining, which, most notably, include:

- lack of mining skills (related to mining methods and processing, safety, occupational health and environmental protection),
- lack of mining equipment and inaccessibility of mining finance, technology and technical support.

These deficits expose the sub-sector to a large number of downside consequences which include:

- Operating under unsafe and hazardous working environments with poor ventilation, little or no safety equipment.
- For communities located in areas with intense ASM activities, environmental degradation can be aggravated.
- With practically no legal enforcement in most ASM areas, potential for human rights abuses of women and children exists

Notwithstanding the formidable challenges, the potential of the sub-sector as a tool for addressing poverty particularly in remote rural areas is considerable. Well-managed and well-resourced, ASM can contribute to job creation, to increasing disposable income thereby increasing local purchasing power and stimulating economic growth in rural areas. Using the example of gold, for instance, recent estimates suggest higher gold and commodity prices have
raised to at least 25 million the number of artisanal miners world-wide, with 150-170 million people indirectly depending on it for their livelihoods. Notwithstanding the exclusion of alluvial diamond mining, potentially, the ASM sub-sector can positive economic impact, especially in rural areas. Government’s policy goal for the ASM sub-sector is:

Transforming the ASM sub-sector from its poverty cycle trap and widespread negative and exploitative practices to a value-adding, poverty-reducing economic activity with special significance for rural development

**Strategies**

- Empowering ASM operators by stabilizing their operations through the grant of property rights in designated ASM areas;
- Improving business skills and mining and processing techniques and standards through hands-on training and ‘mentoring’
- Decentralizing the administration, training and support services (technical and marketing) delivery to the miners;
- Providing fiscal and tax incentives to the financial services sector to facilitate the flow of financing to the ASM sub-sector
- Facilitating the emergence of bankable ASM operations that migrate into formal small-scale mining and even attain the size of large scale mines;
- Developing mechanisms for synergistic collaboration between large scale mining and ASM
- Facilitating ASM’s adherence to sustainable standards of safety, occupational health and environmental protection
- Taking affirmative action on ASM reform measures contained in a number of relevant reform platforms such as the Harare Guidelines of 1993, the Lagos Plan of Action of 1980, the Yaounde Declaration of 2002 and the Africa Mining Vision of 2009.

### 4.6 Creating transparent and accountable mineral sector governance

**Context**

Government acknowledges stakeholder concerns that:

- The governance and regulatory organs, in particular the Mining Board, are not sufficiently independent nor do they have powers to limit abuse of discretionary powers that the existing Act vests in the Minister responsible for the mining and minerals sector;
Opportunities for transparent and accountable public consultation and participation in the governance processes of the minerals sector are limited;

Excessive discretionary authority is vested in the Minister responsible for the sector, and,

Information disclosure is restricted and subordinated to the protection of proprietary rights of holders of mineral rights

Government’s overriding goal in mineral sector governance is:

*Taking concrete steps that promote inclusive, transparent and informed governance of the minerals sector for enhanced economic value and sustainability of the sector;*

**Strategies**

- Taking steps that provide for open and accountable processes of governance
- Limiting the discretionary framework to specified grounds in the mining law
- Providing access to information at all levels
- Providing for informed public participation and consultation including accession to all public participation international conventions such as the Protocol of Free Informed Consent which is particularly relevant to local communities in mining areas

**4.7 Integration of the mining and minerals sector in the national economy through expansion of linkages**

**Context**

Infrastructure deficits in roads, rail and power, are among the major obstacles that are hampering Lesotho’s capacity for broadly-based socio-economic growth and job creation.

As demonstrated above, the growth of the mining sector, in particular, diamond mining, and its contribution to the national economy in recent years are impressive. However, the resultant job-creation has been undermined by the industry’s weak linkages with the rest of the economy. Generally, the enclave or isolated development of mining and mineral sector projects greatly diminishes the economic value realizable from them.

The Government’s policy direction is aimed at establishing linkages and using the linkages so created for developing economic diversification opportunities, enabling domestic integration, enhancing opportunities for value-adding downstream processing and upstream manufacture of
mining of inputs. An integrated minerals industry is well-positioned to avoid the pitfall of ‘Dutch disease’ side effects on the economy.

The objectives for developing mineral resources include:

**Enhancing opportunities for economic diversification and domestic integration through the development of value-adding horizontal, vertical and side-stream and infrastructure linkages**

**Strategies**

- The licensing requirements for mining projects are linked to plans for economic diversification and domestic integration
- That mining investments infrastructure development is planned to service projects in other economic sectors
- Raising the local content in the supply-chain of mining operations is a major priority of the Government. This is highlighted as a major component of the measures under the policy theme dealing with domestic empowerment
- For optimal economic benefit, inter-sector and, in appropriate circumstances, cross-border approaches are adopted for planning and managing mining investments
- Fostering linkages is interpreted widely to include forging effective communication linkages within Government i.e. within the Ministry of Mining and those between the Ministry of Mining and other Ministries and statutory agencies with roles in the mining and minerals sector
- Private sector development to enhance economic linkages and employment generation

**4.8 Environmental and Social and economic Sustainability**

**Context**

Intrinsically, all mining is attended by diverse adverse social and environmental consequences. Mining may:

- adversely affect the natural environment’s biodiversity and ecosystems as well as causing air and water pollution, etc;
- pose threats to occupational health and safety;
- expose local communities in mine areas to adverse environmental and social consequences
- violate human rights particularly those of women and children
To address these diverse challenges, Government’s overall goal is:

**To provide for socio-economic & environmental sustainability through participatory processes that are inclusive, transparent and accountable**

**Strategies**

(i) Environmental protection
- Taking all steps necessary to ensure the mining and minerals industry of Lesotho upholds the highest standards of environmental protection
- Drawing up comprehensive regulations and compliance monitoring and enforcement procedures for managing environmental responsibilities in the mining and minerals industry;
- Providing for environmental audits to evaluate the performance of existing mines and identify areas for improvement;
- Providing for mine closure obligations and procedures including provision of an Environmental Protection Fund together with its rules for securing funds for mine closure rehabilitation
- Ensuring mine licensing procedures make the provision of Environmental and Social Impact Assessments (ESIAs) and Environmental Management Programmes (EMPs) mandatory

(ii) Occupational health and safety
- Setting-up obligatory standards and the accompanying rules and compliance procedures for upholding the highest standards of occupational health and safety
- Ensuring that Government agencies tasked with monitoring, supervising and enforcing compliance with set standards in occupational health and safety are capacitated with skills, appropriate equipment and institutional support
- Conducting regular training and awareness campaigns of safety and occupational health standards

(iii) Community participation and involvement in mining
- Making inclusive and informed consultation and participation of local communities in issues and decisions of material interest to them a requirement of the licensing process and at every stage of the mining cycle;
- Requiring mining companies to work in strategic partnership with local communities during the planning, priority-setting and execution of CSR (including social sustainability plans contained in ESIAs) and other community development projects. Government will provide guidelines for use by mining companies and local communities when developing CSR plans. The use of community development agreements may be introduced in future for use in preparing socio-economic development plans at the local community level
In consultation with Government and the local community, requiring mining companies to address post-mine closure socio-economic sustainability of local communities in their mining development proposals. Post-mine closure plans are for implementation during and after cessation of mining operations.

(iv) Human rights

The realization of human capital from natural capital in the form of mineral resources is behind the rationale of exploiting mineral resources as a means of uplifting the living standards of the Basotho people. The incidences of human rights abuses in mining are, therefore, a major drawback. Even though, in Lesotho, women, are relatively in a much stronger position in the mining industry and the economy generally than women elsewhere in Africa, they still encounter gender-based traditional barriers and prejudices. Women in Lesotho have benefitted from the human resources gap created by the migration of men to South Africa in search of employment. This has resulted in women having better access to education and employment opportunities. Children, when prematurely exposed to the hazardous and harsh conditions of mining are subjected to aggravated abuse which can seriously harm their health, lead to loss of educational opportunities and seriously compromise their future prospects in life. In consequence, Government’s plan of action on human rights will include:

- Promoting and facilitating employment and participation of women in mining through the removal of obstacles which are impeding their involvement
- Curbing the incidence of child labour in Lesotho’s mining and minerals industry
- Proactively engaging mining communities in programmes for preventing child labour in mining
- Domesticating and enforcing International Labour Organization, ILO, Conventions on decent working conditions and regulations against child labour and human rights abuses;

4.9 Supporting regional integration and co-operation

Context

Regional integration and co-operation offer Lesotho the most viable strategy for sustainable growth. It is one of the smallest countries in Africa with a small population of just over 2 million people and is completely surrounded by its giant neighbor, South Africa. This presents the country with enormous opportunities for economic integration with South Africa’s economy. A good example is the LHWP, one of the few successfully implemented water
management projects in the world. Making use of the comparative advantages of Lesotho and South Africa, the project supplies South Africa with much needed water while Lesotho generates revenues from the export of water and hydropower.

**Objective**

Government will continue to forge strong regional co-operation and integration through the country’s membership of the Southern African Customs Union, SACU, the Common Monetary Association, CMA, the Southern African Development Community, SADC, and the African Union, AU

**Strategies**

- Deepening and expanding Lesotho’s existing trading links that its membership in the Southern African Customs Union, SACU, the Common Monetary Association, CMA, the Southern African Development Community, SADC, the African Union, AU, etc, make possible
- Encouraging regional and sub-regional cooperation in on-going harmonization of policies and legal and regulatory frameworks
- Increasing opportunities for value-addition through improved economies of scale that larger sub-regional and regional markets facilitate (regional value chains / south-south cooperation)

5 IMPLEMENTATION FRAMEWORK, MONITORING AND EVALUATION

Subsequent to the adoption of a Mining and Minerals Policy for Lesotho, it will be necessary to develop a strategic plan for its implementation. Capacity to implement the policy measures and strategies together with the ability to monitor and evaluate progress towards achieving the set goals are essential aspects of the policy. Very often, well-designed policies fail to achieve the desired results because implementation plans either do not exist or they are poorly designed and/or poorly executed. Though a strategic plan for implementing the Policy will be developed at a later stage, indicatively, the essential building blocks of the implementation framework are highlighted below.

Lesotho, like many other countries on the African continent, recognizes that all-encompassing capacity deficits in the entire mining chain covering geological exploration, mining, processing and marketing; scarcities of human resources; inadequate institutional capacities and under-developed and inaccessible financial markets for investment resources present formidable
obstacles towards the realization of the vision of mineral resources for broadly-based socio-economic development. These constraints affect both the Government and the mining companies. Whilst the latter have capacity to retain foreign expertise to meet the shortfalls, Government’s capacity is far more limited. Consequently, capacity-building is a pre-requisite that Government is and will continue to address as a priority pre-condition to the successful implementation of the country’s mining and minerals policy. Government remedial strategies in critical areas of capacity-building needed for mining policy implementation include:

5.1 Human resources development

Strategies

- Developing a holistic training strategy involving other sectors and other institutional players such as universities, specialized training institutions eg accounting and auditing, valuation skills (mining equipment, minerals, gemstones etc).
- Encouraging a collaborative approach directed at establishing effective and accountable networking in building the broad range of capacities and competences needed
- Fostering partnerships between Government and mining companies in providing training to qualified Basotho people in wide-ranging skills and expertise needed in Government and in mining and mineral sector industries

5.2 Institutional capacity

Effective and sustainable implementation of Government policy directions and strategies contained in the new Mining and Minerals Policy requires extensive institutional reform. Policy reforms in mineral sector governance, in mining cadastral services, occupational health and safety, in environmental management, etc, all require the building and strengthening of institutional capacity. Among some of the more significant institutional changes affecting the implementation of measures are in the following policy areas:

Geological data and information management

A well-resourced and empowered Geological Survey Department or Agency is needed to spearhead the generation, storage and retrieval of geological data and information.

Mining fiscal and tax administration
The administration, monitoring and evaluation of compliance with tax obligations together with auditing tasks requires Government to establish a specialized and dedicated Mine Tax Unit vested with the requisite capacity and varied competences.

**Governance**

- Reconstitution of the Mining Board as a statutory Mining Authority that maintains an arms-length relationship with the approval authority, the Minister responsible for the mining and minerals sector
- Establishment of an Inspectorate of Mines that superintends and enforces Mining Regulations governing occupational health and safety. The Inspectorate would absorb the functions of Government representatives attached to mines
- Provision of a modern Mining Cadastre that also acts as a Registry for mineral title administration

**Artisanal and small-scale mining, ASM**

In support of the decentralized administration of the sub-sector, establish district offices for regularization and provision of support services

**Environmental management**

- EPA, Environmental Protection Authority: a dedicated statutory agency responsible for environmental management at national level
- Environmental Monitoring Unit within the Ministry of Mining discharging environmental responsibilities in the mining and minerals sector but functionally accountable to the EPA
- Environmental Protection Fund established to secure funding primarily for post-mine closure rehabilitation

The potential institutional changes suggested above are not exhaustive. They, however, serve to underscore the need to match policy reforms with institutional capacities and competences.

Beyond the establishment of the institutional infrastructure for mining, Government acknowledges the need to provide for effective co-ordination with other Ministries and agencies for effective execution of the mining and minerals sector policy measures and strategies. Labour, health, education, taxation, security, law and order, are among the disciplines and regulatory services that have a governance impact on the sector.
Government has also recognized the asymmetry in knowledge and experience between Government officials responsible for overseeing the mining and minerals sector and mining operatives. It is heavily weighted in favour of operatives in the industry. Government is committed to putting in capacity-building measures towards addressing this imbalance.

5.3 Financing Policy Implementation

Capacity to mobilize financial resources affects policy implementation on two levels. On one level financial resources are needed for implementing the measures and strategies contained in the Policy. This requires a realistic assessment of the resources needed to drive policy implementation. Careful and comprehensive estimates needed to implement the goals and objectives of the sector policy help to quantify the cost of implementation. A financing plan which on one side clearly shows what resources are available and the extent to which resources can be mobilised while the other side provides the estimated cost of the planned activities for implementing the policy is a necessary pre-condition to successful policy implementation.

The second level assesses the capacity of the economy to provide financial services required supply investment funding and other financing throughout the the capital intensive chain of exploring and developing and commissioning mining projects, conducting mining and processing operations and funding the transport and marketing logistics before mineral products are sold and revenue generated.

In addition, Government requires enormous resources to invest in developing the competence and capacities needed to knowledgeably oversee the mining and minerals sector activities. To service these financial needs, it is necessary for the financial services sector to collaborate with the mining and minerals sector in:

- Achieving full property rights of mineral titles in mining investments transaction flows. Reforms with respect to the removal of protracted consent approvals and evaluation and acceptance of mineral properties for collateral purposes are needed;
- Working with tax authorities in creating incentives and regulations which encourage and facilitate investments in highly risky but greatly needed geological exploration and other areas of mining development;
- Taking steps to elevate the bankability of the ASM sub-sector through business mentoring and provision of financing products specially suited for the sub-sector.

5.4 Monitoring and evaluation
Government recognizes the importance of providing the means of monitoring and evaluating implementation progress. Government, therefore, plans to provide for the institutional capacity to assess and evaluate the effectiveness of the implementation of the Mining and Minerals Policy. If effectively done, it will assist in improving strategies for achieving set policy goals and objectives.

Following the adoption of the Policy, Government will alongside an implementation plan develop monitoring and evaluation plans. Using agreed indicators, the plans will not only allow Government to monitor implementation progress but will also enable Government to assess the adequacy of the budget.

Typically, several strategic actions are planned for accomplishing a given objective. The full implementation plan will itemize under each objective, the plan for implementing, monitoring and evaluating all the strategic actions.

An effective and timely monitoring and evaluating plan provides an early warning system that enables early disclosure of bottlenecks and other limitations that may hamper implementation if left unattended.

In view of the role monitoring and evaluation plays in successful policy implementation Government is considering the merits of establishing an Independent National Monitoring and Evaluation Authority (INMEA) as a way of assisting it improve policy implementation capacity.

6 ROLE DEFINITION FOR KEY PLAYERS: THE GOVERNMENT, THE MINING COMPANIES and THE PUBLIC / CSOs

The development, execution and guardianship of Lesotho’s Mining and Minerals Policy rests with the Government, the mining companies, civil society organizations, Parliament and the Basotho people. While civil society organizations, CSOs and the public at large play a critical watchdog role of ensuring that the mining and minerals industry is operated and run and supervised in accordance with agreed policies, laws and regulations, clarity with regard to the interpretation of the roles and responsibilities of key stakeholders, the Government and the mining companies, who execute the plans, is critical. Very briefly, they are outlined below:

Government

As vision carrier, the Government, primarily through its Ministry of Mining but also through other relevant statutory agencies, plays multiple roles covering promotion and facilitation, capacitating and enabling the provision of services in addition to performing regulatory
functions. In essence, Government’s role is to direct and to enable the mining and minerals sector play its part in the national economy, manage resource risks and enhance the linkages between human development and the extractive industries.

Specifically, Government is there to:
- Provide transparent and accountable oversight
- Specify regulations and standards,
- Enforce compliance with set standards and regulations.
- Facilitate public participation in the development of the sector
- Coordinate all ministries and statutory bodies with a role in the sector
- Promote investment in mining sector

**Holders of mining licences** i.e. mining companies’ responsibilities shall be;
- To adhere to the sector policy, mining law and regulations
- To provide proof of compliance with:
  - Government set standards and regulations;
  - All statutory obligations attached to the licences they hold.

The role distinction is important with respect to allocation of responsibility for implementing the policy, laws and regulations in the mining and minerals sector. Provisions in a mining law which impose on the regulatory authority, most often the responsible Minister, the duty of satisfying themselves that compliance standards in respect of a given statutory obligation have been met; that submitted documentation in support of an application is of a satisfactory standard. These are not duties or responsibilities of a Minister or other regulatory authority. It is the mineral rights holder to satisfy and warrant compliance. The Lesotho Government supports the practice in some jurisdictions which provide for independent experts, approved by Government, to provide independent certification of feasibility studies, EIAs, SEAs, etc.

On the other hand, requiring a mineral rights holder to perform an obligation or undertake a feasibility study in accordance with unspecified international best practice is unsatisfactory or making provisions in the law without supporting them with regulations containing clear procedures on their implementation contribute to non-compliance.

In consequence, Government undertakes, to the extent possible, to avoid ambiguity in the policy and legislation of the mining and minerals sector. Through the means of this Policy, Government reaffirms that:

*The role and responsibility of regulatory authorities is to set and protect the rules and the standards for the proper and accountable governance of the minerals sector while the responsibility of the rights holder is to provide proof or evidence of compliance with those set rules, standards and obligations/conditions attached to their licences.*

Parliament, civil society organizations, the media, other oversight institutions such as the Directorate of Corporate and Economic Offences and the public at large
It is important to stress civil society organizations, the media and the public at large play a critical watchdog role of providing independent guardianship of the principle that the sector is being governed with the consent of the people in an environment of full disclosure and inclusive and transparent consultation and participation.

7 CONDITIONS FOR THE SUCCESSFUL IMPLEMENTATION OF THE POLICY

The conduciveness of the macro-economic and socio-political environment affects and may determine the success or failure of the mineral resources-based developmental strategy that is central to the mining policy. Among the critical considerations to factor in are:

- **The macro-economic environment**—The vulnerability of Lesotho’s economy is significantly a result of its heavy dependence on South Africa for its imports and the United States for its textile exports. Macroeconomic stability which is essential to the country’s ability to attract much-needed private mining investment will require Government to greatly enhance its efforts towards implementing prudent fiscal policies and improving public debt management. With rankings of 136 out of 185 countries in the 2013 World Bank *Doing Business Report* (from 143 in 2012), and 137 out of 144 countries in the 2012 *Global Competitiveness Report* Lesotho requires to redouble its efforts aimed attracting private investment at levels needed by the mining and minerals sector and other sectors in the economy.

- **Sustained political will and national consensus**—Social and economic change in Lesotho like in other African countries, are politically-driven; consequently, sustained political will and national consensus are vital for sustainable support of the aspirations, developmental goals and strategies articulated in the country’s Mining and Minerals Policy. Currently, Lesotho is enjoying a precious window of opportunity through the formation of a coalition government which has brought together competing political interests in a government of national unity. The opportunity that this has presented for building a national consensus in support of the Policy is unparalleled. For the long-term, the political will in support of the Policy must be co-shared with the Basotho people, NGOs and other stakeholders who provide a sustainable and consistent watchdog role.

- **Inclusion on the agenda for APRM monitoring**—The adherence of the key players i.e. mine investors and governments to rules of fair play in the minerals sectors of Africa are constantly under the spotlight. In addition to the Extractive Industries Transparency Initiative, EITI, and other non-governmental oversight agencies, the inclusion of Lesotho’s Mining and Minerals Policy on the agenda for APRM monitoring would...
contribute to its adoption as the guiding instrument for achieving mineral resources-based development not only in Lesotho but in other African countries

- **Sharing of mining knowledge and experience with similarly-placed African countries** – The primary value-adding advantage of a shared platform for mineral resources-based development is that it offers opportunities for sharing experiences of successful models and failed reform initiatives. The AU has established the African Minerals Development Centre (AMDC) which is positioned to offer a central repository of experiences and practices in different AU member states. Lesotho can, therefore, arrange bilateral or sub-regional exchange of practical experiences with various initiatives in different African countries; thereby be positioned to avoid pitfalls and build on successful models.

- **Institutional stability and robustness** – Indications from rankings on global competitiveness and corruption perception indices demonstrate clearly that institutional stability and robustness which engender trust and reliability outweigh the advantages of well-conceived policies and laws which are, however, poorly implemented.

### 8 GOVERNMENT PLANS GOING FORWARD

Going forward, the success of the country’s Mining and Minerals Policy is predicated on a number of factors:

- A national awareness campaign is mounted to enable the Basotho fully appreciate Government policy, goals and strategies for managing their finite mineral resources endowment
- Following its adoption, Government takes steps to revise and update the Mines and Minerals Act in order to enable the implementation of the policy reforms and cure the gaps in the existing legal and regulatory framework;
- Preparation of a costed Strategic Plan for implementing the new Mining and Minerals Policy including the Monitoring and Evaluation Plan needs to be undertaken without delay.
- To strengthen its juridical significance and continuity, consideration should be given to adopting the Mining and Minerals Policy through a process involving Parliament

Though stability and predictability are essential to policies periodic reviews are necessary to retain their relevance and accommodate significant changes and developments.