

Government of Sierra Leone



**MANAGEMENT AND FUNCTIONAL REVIEW
OF THE
MINISTRY OF MINERAL RESOURCES**

**Project : Management and Functional Reviews Across the Full Range of
Government of Sierra Leone Ministries**

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GLOSSARY OF ABBREVIATIONS AND ACRONYMS

ACC	-	Anti-Corruption Commission
ACCA	-	Association of Chartered Certified Accountants
AfDB	-	African Development Bank
AM	-	Artisanal Mining
BSL	-	Bank of Sierra Leone
CMP	-	Core Minerals Policy
CIU	-	Central Information Unit
CJM	-	Campaign for Just Mining
CPD	-	Continuous Professional Development
CSO	-	Civil Society Organisation
DFID	-	Department for International Development
DFID DSP	-	DFID Diamond Sector Project
EMT	-	Executive Management Team
ENCISS	-	Enhancing the Interaction and Interface between Civil Society and the State to Improve Poor People's lives project
ES	-	Establishment Secretary
ESO	-	Establishment Secretary's Office
GGD	-	Government Gold and Diamonds Department of the NRA
GOSL	-	Government of Sierra Leone
GRS	-	Governance Reform Secretariat
GSD	-	Geological Surveys Division, MMR
HIPC	-	Heavily Indebted Poor Countries
HR	-	Human Resources
HRD	-	Human Resource Development
HRMD	-	Human Resource Management and Development
HRMO	-	Human Resource Management Office
IDM	-	Illegal Diamond Mining
IFMIS	-	Integrated Financial Management Information System
IMF	-	International Monetary Fund
IMT	-	Inclusive Management Team
IRMT	-	International Records Management Trust
IT	-	Information Technology
JSDP	-	Justice Sector Development programme
LMS	-	Large-scale Mining Sector

MA 1996	- Minerals Act 1996
MAB	- Minerals Advisory Board
MEST	- Ministry of Education, Science and Technology
MDAs	- Ministries, Departments, Agencies
MoF	- Ministry of Finance
MFR	- Management and Functional Reviews
MiD	- Mining Division, MMR
MLGCD	- Ministry of Local Government and Community Development
MM	- Mines Monitors
MMOF	- Mines Monitoring Fund
MMR	- Ministry of Mineral Resources
MTEF	- Medium Term Expenditure Framework
MW	- Mines Wardens
NRA	- National Revenues Authority
NGO	- Non-governmental Organisation
OAG	- Office of the Auditor General
PAI	- Public Administration International
PDA	- Peace Diamonds Alliance
PKF	- Parnell Kerr Forster Accountancy
PRSP	- Poverty Reduction Strategy Paper
PSSAM	- Policy on Small Scale and Artisanal Mining
RBEC	- Regional Bureau for Europe and CIS
RM (RMT)	- Records Management (Records Management Team)
SES	- Senior Executive Service
SL	- Sierra Leone
SLP	- Sierra Leone Police
TA	- Technical Assistance
TDA	- Technical Diploma in Accounting
TOR	- Terms of Reference
UK	- United Kingdom
USAID	- United States Agency for International Development
UMU	- United Mineworkers Union
UNDP	- United Nations Development Programme
UNICEF	- United Nations Children's Fund
WB	- World Bank

EXECUTIVE SUMMARY

1. As part of the Government of Sierra Leone's (GOSL's) programme to promote good governance in the management of public services in order to restore efficiency and improve service delivery to the population, the UK Department for International Development (DFID) are funding reviews across all government ministries over a three-year period 2005 – 2008. These reviews are part of an integrated programme funded by DFID and delivered by Public Administration International (PAI) with its partners the International Records Management Trust (IRMT) and Co-En Consulting. The wider programme includes modernising the Establishment Secretary's Office to create a Human Resource Management Office (HRMO) and a Records Management component supported by PAI partner the International Records Management Trust (IRMT). This report covers the Management and Functional Review (MFR) of the Ministry of Mineral Resources (MMR).
2. During the 10-year rebel war, mining operations came to a standstill and rebel factions seized control of the sector, using diamonds and gold to fund their forces. Currently, the mineral sector is beginning to recover with increasing diamond exports, large scale Kimberlite mining showing its first exports, and the start of large scale (LSM) rutile mining. Bauxite and iron ore mining are likely to recommence shortly. Four to five large-scale mines are predicted to be operating by 2008. The MMR is widely regarded as having the potential to be the greatest contributor to the country's GDP.
3. However the sector continues to be faced with problems, especially relating to artisanal mining (AM). There are abundant deposits of alluvial diamonds, gold, and other precious minerals in the country. The AM sector poses two challenges for the MMR. Firstly, it employs most of the 100,000 estimated jobs in the mining sector, but in the majority of cases only on subsistence wages. AM miners are among the poorest people in the country and there are problems of child labour and livelihood vulnerability in the sector. Secondly, the sector poses a security problem both nationally and internationally. AM takes place in areas that are large, insecure and difficult to control. There is evidence that the illegal diamond trade in SL has contributed to funding international criminal and terrorist activity. Gold smuggling has been less researched, but is a serious problem for the government.
4. The MMR's remit in regulating the mining sector therefore goes beyond maximising tax revenue for the nation to include social development/poverty alleviation and establishing government control, law and order for both national and international security. However, the MMR faces problems at every level of its operation.
5. The MFR team found that the statutory framework based on the Mines and Minerals Act 1996 within which the MMR operates was seriously wanting in a number of key areas including investment, health, safety, environmental and social development issues. There is in addition no link between the law, statutory responsibility, and competency in the Act, so the law cannot define responsibility, and the ministry cannot certify its officers as fit to enforce or apply the law. These problems with the law have given rise to the MMR's practice of adjusting policies and the Mining Code to meet new contexts and requirements. This has resulted in gaps between the law and the regulatory provisions. The Regulations are almost non-existent, and defined in two short (less than 10 pages of A4) documents. In contrast, the

regulations for the mining sector in South Africa are 33000 pages, representing comprehensive, detailed coverage of every operational aspect of the industry.

6. The MFR team recommends a fresh start in creating an effective statutory framework for the mining sector in Sierra Leone. The law needs to consider and balance the conflicting interests of the industry's stakeholders, effectively deal with environmental and human rights protection, and enable better inward investment. Simplification is needed to ensure smooth implementation of procedures. With DFID and World Bank (WB) assistance, the MMR developed a Core Minerals Policy (CMP) in 2004 after consultation with private sector and civil society stakeholders. The CMP 2004 is a well thought-out and comprehensive document that clearly states the MMR's vision and priorities for the mining sector. The MFR recommends that the existing legislation is dispensed with, rather than amended, and that the CMP should be the basis of a new and integrated law that creates a sound statutory framework for the minerals sector and the MMR. This law should be the basis of comprehensive, detailed Regulations, with statutory procedures for amendment.
7. Sierra Leone's post-conflict status has led to a cautious attitude among potential large-scale investors to the mining sector. This has resulted in the unsatisfactory situation of ad hoc individual tax concessions for investors. The MFR recommends that the CMP 2004 provides a basis for establishing a policy framework that can detail guidelines on the appropriate level of tax incentives for investors. Given SL's post conflict status, it will be inevitable that serious investors seek favourable and individual agreements. However, the CMP can provide the basis for a designing general mining investment regime within which such arrangements can be made. The MFR notes the urgent need for the MMR to collaborate with the Ministry of Trade and other MDAs in ensuring that the National Investment Code incorporates the requirements of the mining sector.
8. The implementation of the MMR's functions is presently confused. Support functions are triplicated, with each division having its own accounts, personnel and support unit. Besides being inefficient, this arrangement is unconstitutional. There is no internal audit, a critical failing for a major revenue generating ministry, and no procurement committee. The Administration Division is at present in charge of mines monitoring, which is not a support but a professional function. In practice, monitoring is managed by the Mines Division at field level. During the MFR process, the ministry agreed to integrate all support functions, including accounts and personnel, under the Permanent Secretary (Administration), and to officially place the monitoring function with the Mines Division. Records management (RM) is a key support function, and has wider commercial and legal implications for the MMR that do not apply to other ministries. During the MFR process, the sister RM project visited the ministry, and found that records were in a deplorable state, being chaotic, destroyed by termites and vermin, with no processes for storing, tracking or labelling, and a lack of access. Such a situation damages prospective investor confidence, especially with regard to the security and confidentiality of commercially sensitive information. The MFR recommends collaboration with the RM team to consolidate records under the Administration and prepare interim policies until the RM team make their full report and recommendations.
9. The MFR also analyses the revenue generating functions of the Mines and Geological Surveys Divisions. Licensing should be rethought to assess ways of taxing the value and volume of the artisanal sector, and to improve management including reconsideration of

functions that could be devolved to elected local councils, and redefining license categories. Areas needing special attention are artisanal gold mining and exploration/prospecting.

10. The Laboratory and Drilling Units of GSD are recommended to be privatised, with the core cartographic function given an operational framework that will allow legitimate private sector contracting while keeping the section within public ownership and control. A large amount of donor-funded technical assistance (TA) will be required to design, plan and manage these changes in both professional divisions.
11. There is an existing gap between the functions of the MMR defined in the CMP and what the ministry currently does. The CMP is a new policy that provides a blueprint for the future role of the MMR, but up until now the processes of setting policy and carrying out resultant functions has been reactive and ad hoc. During the course of the MFR, the ministry set up a Change Management Team consisting of top-level staff, and it is recommended that this continue as the MMR's policy planning unit. The MFR identifies new functions for the MMR to meet the requirements of the CMP.
12. The staffing situation within the MMR threatens both the ministry's institutional survival, and the ability of the government to regulate the sector. This is of critical importance to Sierra Leone given the poverty and security dimensions of mining. Almost all the qualified senior tier will be retired within the next five years, and a significant number of middle-level staff will also retire. There are no mining engineers or mineralogists being produced by the universities (who do not run the requisite courses) and only three to four geologists produced per annum. The MFR makes medium term recommendations to address this situation, but in the short term massive donor TA including salary support and long-term contracted senior staff will be essential to keep the MMR going. Design of this TA should be in partnership with the MMR. The MFR also makes recommendations to improve lower level staffing, including bringing Mines Monitoring Officers into the public service. A number of recommendations are made on collaboration with the sister Human Resource Management project on manpower planning, and training/continuing professional development.
13. Implementation of the CMP 2004 strategic objectives requires that the MMR not only has the human capacity to carry out required functions, but that it has the necessary equipment and resources as well. The ministry lacks equipment and material resources. It will be necessary for there to be a significant investment in upgrading all units of the GSD to be viable for privatisation and to be able to deliver the quality and range of services expected and required by serious investors in mining and exploration. A mining cadastre system is currently being introduced in the MMR, with the pilot stage being tested in Kono District. This requires a heavy introduction of networked IT. The MFR recommends an analysis of peripheral equipment, resource and capacity requirements for the Cadastre, and donor support in meeting these. Within the Mines Division, there is an immediate requirement for logistical support to the inspectorate. The priority is to supply motorbikes, and the MFR team recommend that an allocation from the Essential Equipment Fund (GRS/DFID) is used for this purpose.
14. The MMR is geographically split in its Headquarters location, with Mines and Administration Divisions being located in Youyi Buildings, Brookfields, and the GSD in New England. Given that privatisation is a medium term objective and that it is impossible to relocate GSD, the MMR plans to relocate Administration/Mines to New England, and will

prepare architectural drawings for a new building within three months of the end of the review process.

15. The MMR is making efforts in improving communications with its stakeholders by setting up a Public Information Unit. These stakeholders have diverse and sometimes divergent interests in the minerals sector, and comprise a wide spectrum of organisations from the public, private, and third sectors. Managing communications with them is difficult because of their diversity, different agendas and interests relating to the mining sector. These difficulties are compounded and exacerbated for the MMR by its lack of resources and manpower. While communication with the private sector is generally good, with the general public relations are much worse. Civil society is partly to blame, with poor substantive knowledge and analysis of issues, but the MMR has been guilty of poor communication and reluctance to address civil society's concerns.
16. Implementing the objectives of the CMP 2004 will require, on occasion, driving difficult changes. The MFR recommends that the planned Information Unit be upgraded to become a Public Relations Unit (PRU), with the functions of managing public relations, and creating public and stakeholder awareness and understanding of ministry policies. As such, the PRU will be a key change management tool for the MMR.
17. The MFR makes a number of recommendations on wider issues. A change in the composition of the Minerals Advisory Board is recommended, to give a broad enough base of expertise covering the issues dealt with in the CMP, and to meet the existing requirement of advising on investment to the mining sector. Regeneration of the Chamber of Mines and the creation of a Mining Institute are recommended as platforms for communication with the government and for building professional standards in the mining industry respectively. It is also recommended to carry out a Sustainable Livelihoods Analysis with a donor partner of the AM sector. Having a clear and comprehensive picture of the AM sector from a livelihoods perspective as opposed to an economic or technical one (the MMR's natural focus) will provide a sound basis for the ministry and the government to design truly effective policies for reducing poverty and vulnerability among mine workers. Such a picture could inform decisions on decentralisation of functions, targeting of support and MMR services, and protecting children's rights, for example. It may also reveal factors contributing to violence and instability through a consideration of institutional and vulnerability contexts. Other recommendations deal with addressing the lack of qualified graduates in mining disciplines in the medium term through working with the Ministry of Education, Science and Technology, the universities, regional and international institutions, and donor partners.

LIST OF RECOMMENDATIONS

Recommendations on statutory, strategic policy/management, and wider context issues

1. **We recommend** that the existing legislation is dispensed with, rather than amended. The Core Mineral Policy should be the basis of a new and integrated law that creates a sound statutory framework for the minerals sector and the MMR. **The MMR should direct the Law Reform Commission on this.** The resulting Act should be concise, and concentrate on defining authority, responsibility and competency. (8.13)

2. **We recommend** that the resultant legislation form the basis of regulations for the mining sector. These should be comprehensive, detailed, and should become part of the Act (as is the case in many countries). **Making amendments to the regulations should be allowed, but only after the proposed amendments have gone through a consultation process and been finally approved by Parliament.** (8.14)
3. **We recommend** that the MMR obtain several copies of the South African Mining Regulations as guides for forming their own regulations. They are published by Butterworths, ISBN 0409028983, at £103 per copy. (8.10)
4. **We further recommend** that the MMR seek external technical assistance to assist them in drawing up these regulations. (8.15)
5. **We recommend** that external technical assistance is sought to assess fiscal incentives with appropriate controls to attract investors into the mining sector. (8.23)
6. **We recommend** that **immediate communication and dialogue** is established with the Ministry of Trade and Industry, the NRA, and any other key stakeholders in order to ensure that the requirements of mining investors and the objectives of the CMP are built in to the general national guidelines attracting external investment. (8.26)
7. **We recommend** that the CMT is continued after the MFR in order to implement recommendations made in the review and also to begin to implement other policy issues arising from, for example, the CMP. (8.34)
8. **We recommend** that the MMR together with a donor partner carry out a thorough national Sustainable Livelihoods Analysis (SLA) of the artisanal mining sector for both diamonds and gold. The SLA should be undertaken by a multidisciplinary team, including technical expertise in the mining and marketing sectors, and should be in partnership with MMR staff. The end product will be a key policy tool for the MMR in addressing poverty and insecurity in the sector, and in targeting ministry services effectively. (8.213)
9. **We recommend** that government representation on the MAB be reviewed and greater representation given to other stakeholders, including professionals from the private sector, the Union of Mine Workers, and civil society. (8.217)
10. **We further recommend** that the MAB should be free to choose its own Chairman (rather than this position being mandated by the Act). This will strengthen the Board, and thus improve its advisory function. (8.218)
11. **We recommend** that immediate communication is established with the MEST to ensure that the next round of overseas scholarships includes a large quota of mineralogists and mining engineers. Sponsored students would need to be bonded to the MMR for a period on graduation. (8.222)

12. **We recommend** that that the Chamber of Mines, investors and companies whose needs are likely to grow (such as Sierra Rutile) should be consulted to try and establish the numbers of graduates required for each discipline over the next few years. (8.223)
13. **We further recommend** that companies should provide summer vacation jobs for graduates. (8.224)
14. **We recommend** that designing and implementing awareness raising strategies for careers in mining should be done as a priority, and should be one of the first tasks given to the PRU. (8.226)
15. **We recommend** that part of the package of tax and other benefits to mining investors should include conditions relating to sponsoring nationals in these key areas. (8.228)
16. **We recommend** that the MMR start discussions with Fourah Bay College to introduce the needed courses, and facilitate wider discussions with Tarkwa and suitable UK tertiary institutions. (8.230)
17. **We recommend** that the MMR establish contact with international institutions, and develop a plan and timescale for the creation of a Sierra Leonean Institute of Mining. (8.232)
18. **We recommend** that the MMR should start dialogue with the mining community to regenerate the Chamber of Mines.(8.234)

Recommendations on functions and structures associated with functions

19. **We recommend** that the MMR collaborate with the NRA, other relevant MDAs, and key donors to examine possible strategies for regulating taxation responsibilities of businesses engaged in mining, dealing, supporting, and exporting precious minerals from the AM sector (8.39)
20. **We recommend** that the MMR reconsider what functions could be devolved or deconcentrated in conjunction with the relevant local councils. (8.44)
21. **We recommend** that that registration and licensing of AM miners, supporters, dealers and their agents are devolved to District and Town Councils. (8.44)
22. **We recommend** that the MMR considers how best to develop a mechanism which enables the division to charge the private sector for cartographic services at prevailing market rates as a legitimate means of cost recovery. (8.49)
23. **We recommend** that technical assistance is sought by the MMR to design and implement such a mechanism, including addressing wider statutory issues. (8.50)
24. **We do not recommend** that the Cartographic function of the GSD is privatised, because minerals are the property of the state, and the GOSL must maintain state control over granting of prospecting, exploration and mining rights. (8.51)

25. **We recommend** that the laboratory services of the GSD are privatised. (8.55)
26. **We also recommend** that the Drilling Unit is privatised. (8.55)
27. **We further recommend that** these units be upgraded in terms of equipment and staff training, and prepared for privatisation. For example there will need to be private sector accounting systems, marketing and business management capacity as well as up-to-date technical equipment, and trained personnel. (8.56)
28. **We recommend** that the MMR seek technical assistance to plan and implement this privatisation, including capacity building and timescale of the privatisation, and issues of employee protection on transfer to the private sector. (8.58)
29. **We recommend that** the gold assaying function is immediately passed from the MMR to the GDD. (8.60)
30. **We recommend** that the MMR in conjunction with the DFID DSP and other technical assistance as required redefine ASM licenses to include other precious minerals in order to legitimise their extraction, gain more revenue, and better regulate the sector. This recommendation will affect data storage and information within the Cadastre system. (8.66)
31. **We recommend** that the MMR in conjunction with the DFID DSP and other technical assistance as required rationalise the dealer/exporter license system to create a simpler, more transparent system. (8.69)
32. **We recommend** that the requirement to register supporters is included in the new law drafted from the CMP. (8.71)
33. **We recommend** that a proactive approach to registering AM supporters is adopted by all field offices, and that the MMR issue guidelines to field offices on gaining supporter registration. (8.73)
34. **We recommend** that the MMR allocate resources to monitor and regulate gold mining and the gold marketing chain more effectively. (8.76)
35. **We recommend** that the MMR take a firmer line in ensuring that companies, including new investors in the sector, meet and comply with the ministry's requirements on health, safety, social development, and environmental impact. (8.81)
36. **We recommend** that this firm standpoint is expressed more clearly and unequivocally in the CMP Objective 3. (8.82)
37. **We recommend that all information relating to Exploration and Prospecting Licenses is integrated, and kept on a unified computer database.** This will include accurate records of license areas through the Cadastre system, detailed company information including investors and shareholders, and continually updated information on renewal and expiry deadlines. (8.85)

38. **We recommend** that where companies fail to renew before 90 days of the expiry of their licenses, the said licenses should be forfeit and the company pays the requisite penalty. (8.86)
39. **We recommend** that developing these mechanisms (to supervise subsidiary bodies) should be in the TORs of the technical assistance engaged in preparing the units for privatisation. (8.88)
40. **We recommend** that mines monitoring, inspection, and licensing become officially the remit of the Mines Division. (8.125)
41. **We recommend** a proposed structure for the MMR at central level in Appendix E (8.133)
42. **We recommend** a structure for the field offices in Appendix E, headed by an Assistant Director, with Geologist and Mines Engineer reporting to the Director. (8.136)
43. **We do not recommend at this stage specific administrative units** to carry out new functions required by CMP. This restructuring should wait until the full report of the records management project, for the technical assistance recommended in Staffing below, and for the physical integration of the ministry at New England recommended in Accommodation below. (8.134)

Support functions and records management recommendation

44. **We recommend** that the decision to integrate all support functions into the Administration is implemented immediately as a priority. (8.92)
45. **We recommend** that in consultation with the RM team, the Administration prepare interim procedures and guidelines, consolidate all records of the Mines and Administration Divisions, and the personnel and financial records of the GSD within the central registry. Technical reports from GSD will continue to be lodged at the New England site for the time being. (8.98)
46. **We recommend** that the MMR is sufficiently resourced in terms of IT equipment, and that the three divisions of the ministry are connected by a Local Area Network to facilitate functioning of the Cadastre system. (8.100)
47. **We recommend** that the Administration adopt a contracting-out policy for IT support, and that clear guidelines are developed and complied with to ensure acceptable payment schedules. (8.102)
48. **We recommend** that the Senior Accountant already posted to the MMR should report to the PS, and be assigned the responsibility of consolidating the accounts as one in the MMR. This action does not change the structure of the budget, which should remain the same. (8.104)

49. **We recommend** that the ministry has one budget committee. The MMR needs to inform and discuss the integration of financial management with the MF's Budget Bureau in order to unify the chart of accounts for the ministry. (8.106)
50. **We recommend** that the MMR produce clear policy and guidelines on the use and administration of the MMF. (8.111)
51. **We recommend** that the Procurement Committee is established, and that members and support staff familiarise themselves with procedures and processes outlined in the Procurement Act 2004. (8.114)
52. **We recommend** that the MMR forms an Internal Audit department as an immediate priority. The MMR should request assistance from the Office of the Auditor General (OAG) and from the DFID support project to the OAG for this and auditors should have an adequate level of qualification and expertise. (8.109)

Staffing and HRM recommendations

53. **We recommend** that once integration of support has happened, the Administration work with the HRMO project to develop effective HRMD strategies and processes. (8.116)
54. **We recommend** that a senior executive heads the ministry, unifying professional and administrative functions in one post of Director General. The professional and administrative directors report directly to the Director General. (8.121)
55. **We recommend** a large input of technical assistance (TA) to the MMR in terms of filling the senior professional posts when existing public servants retire. This TA should be for a minimum of three years for each post. The MMR, together with the supporting donor(s) should draw up Terms of Reference for the senior posts, including the new Chief Executive Officer position of Director General. (8.141)
56. **We recommend** that the MMR together with the HRM project prepare a manpower plan for staff recruitment. (8.147)
57. **We recommend** that the MMR, HRM project and the donors identify which posts need salary support, and design the support package taking into account predicted levels of future public service salaries in the context of the wider reform going on. (8.148)
58. **We recommend** that the Administration works with the HRM project to redefine its personnel function and set up a Human Resources Management and Development Unit (HRMDU). This should be the locus for the human resource planning outlined in the preceding recommendations.(8.150)
59. **We recommend** that Schemes of Service of all professional staff are rewritten with the assistance of the HRM project, with a view to assessing the correctness of grading. (8.153)
60. **We recommend** that MMOs be institutionalised in the Inspectorate Unit under the Mines Division, with schemes of service and adequate recruitment criteria. (8.158)

61. **We recommend** that the HRMDU together with the HRM project and the field offices carry out an assessment of the number of MMOs and MWs required and recruit accordingly. **This should not happen before** the MMOs are institutionalised into the Mines Division. (8.161)
62. To clean its personnel base, the MMR should apply a general rule to retire all staff over the age of 60. **We so recommend.** (8.162)
63. We also observed that NASSIT forms are still being held in the MMR, and it would be in the ministry's own interest to forward them to NASSIT. **We so recommend.** (8.163)
64. **We recommend** that the Administration's HRMDU together with the HRM project assess training needs in the divisions, plan immediate and short term training programmes, and develop medium and longer term programmes of CPD. Due note should be taken of the proposed privatisation of laboratory and drilling units in the GSD. (8.167)
65. **We recommend** that training programmes for units to be privatised should be undertaken after the recommended TA has assessed their capacity needs when privatised – this might include business and marketing related training for example, as well as updating technical skills. (8.168)
66. **We recommend** that the Administration in conjunction with the UNDP trainers assess areas where there may need to be peripheral training to support the functioning of the Cadastre system. (8.170)
67. **We further recommend** that once these areas are identified, the MMR request UNDP or another donor's assistance in supplying the necessary training to staff. (8.170)
68. **We recommend** that once the law and regulations are written, MMOs are trained abroad, on certified courses that meet the GOSL's competency requirements as defined in the new law and until such time as training can be delivered in country (8.174)

Recommendations on equipment and accommodation

69. **We recommend** that the MMR seek private partnerships to invest in the upgrading of laboratory and drilling units. (8.178)
70. **We recommend** TA to design an operational framework for public- private partnerships with the laboratories that will ensure fair and equal access to services for all companies in the mining sector. If the operational framework is not well-designed, it would be possible for the private sector partner to establish a monopoly, with adverse effects on inward investment. (8.179)
71. **We recommend** that the MMR request the donors supporting the implementation of the Cadastre to assess the peripheral equipment requirements of the MMR. **We suggest** that the donors then agree a support package to meet these requirements. (8.182)

72. **We recommend** that following the assessment of the manpower requirement for MMOs and MWs, an allocation from the GRS Essential Equipment Fund is used to purchase an appropriate number of motorbikes for their official use (8.184).
73. **We recommend** that the MMR commission the Government Architect to submit drawings to Cabinet for approval by the end of November 2005. (8.187)
74. At Field Office level, **we recommend** that the accommodation in Kenema needs to be refurbished. While the Bo Office is too small, it is managing, and there are other priorities for the ministry to address before considering enlarging this office. (8.188)
75. **We recommend** that enlarging the Bo Office is considered as a medium term priority. (8.188)

Recommendations on communication with stakeholders

76. **We recommend** that the MMR reintroduce monthly stakeholder meetings including the Union Mineworkers and the CJM. (8.201)
77. **We recommend** that the MMR also include a representative from the ENCISS programme in these meetings. This person can help facilitate better communication by civil society organisations with the MMR. (8.202)
78. **We recommend** that the information unit be renamed a Public Relations Unit, with the functions of managing public relations, and creating public and stakeholder awareness and understanding of ministry policies. (8.207)

.0 ANALYSIS AND RECOMMENDATIONS

8.01 STATUTORY FRAMEWORK

- 8.02 **General legal and regulatory framework:** There are problems with the existing statutory framework for the mining sector. The number of disparate Acts that apply to the mining sector make it difficult for the investor or the public to fully understand the requirements of the mining industry. This ambiguity makes room for varied interpretations of the requirements, making regulation of the industry problematic.
- 8.03 The effects of this chaotic situation were observed in the charging of fees for mining exploration, which differs depending on the discretion at the time the licences were issued. The provisions of the Act are not transparent, and it does not provide a level playing field for all in the Mining industry.
- 8.04 The MMR's practice of adjusting the Mining Code and ASM Policy to meet new contexts and requirements has resulted in gaps between the law and these regulatory provisions.
- 8.05 For example, in the Mining Code 2004 there is a new category of Regional Exploration License that has been introduced which has no foundation in the Act.

- 8.06 In the recently updated and amended Policy of Small Scale and Artisanal Mining (PSSAM) 2005, the GOSL states a requirement and a fee to register financial supporters of artisanal mines. However, as this is not in the law, it is discretionary and cannot be enforced.
- 8.07 The Minerals Act 1996 is itself an amended Decree of 1994, and in many areas is outdated. Some of these are:
- Lack of provisions in the law for underground mining, about to be undertaken on a large scale by Koidu Holdings S.A., and already being undertaken on a small scale (50m tunnel) by Cluff Gold (with two other firms, Mano River and Winston) at Baomahun.
 - The Act is unclear on the issue of making agreements with investors.
 - Environmental, social development, and health and safety issues are poorly covered or not covered at all.
- 8.08 One of the most critical failings of the Act is that there is no link between the law, statutory responsibility, and competency. The Act does not make any definitions of competence in relation to technical, health and safety, or environmental issues. This means that the law cannot define who is statutorily responsible for these matters (many of which entail danger to life or limb) in private or public sector organisations. For the government, there is an additional implication in terms of the fitness of its officers to implement the law (see Training below).
- 8.09 While the law is lacking, the official Regulations are virtually non-existent. The Mining Code 2004 and the PSSAM 2005 are not technically regulations (being respectively a code and a policy), and each one is less than 10 pages of A4. In contrast, the regulations for the mining sector in South Africa are 33000 pages, representing comprehensive, detailed coverage of every operational aspect of the industry.
- 8.10 **We recommend** that the MMR obtain several copies of these reports as guides for forming their own regulations. They are published by Butterworths, ISBN 0409028983, at £103 per copy.
- 8.11 The opinion of the MFR team is that there needs to be a fresh start in creating an effective statutory framework for the mining sector in Sierra Leone. The law needs to consider and balance the conflicting interests of the industry's stakeholders, effectively deal with environmental and human rights protection, and enable better inward investment. Simplification is needed to ensure smooth implementation of procedures.
- 8.12 Last year, the MMR developed a Core Mineral Policy (CMP), which has been approved by government and gazetted. The CMP 2004 is a well thought-out and comprehensive document that clearly states the MMR's vision and priorities for the mining sector. The MMR has set an example to other government MDAs in its consultative approach, and in gaining input to the policy from the private sector and civil society as well as government and donors.
- 8.13 **We recommend** that the existing legislation is dispensed with, rather than amended. The Core Mineral Policy should be the basis of a new and integrated law that creates a sound statutory framework for the minerals sector and the MMR. **The MMR should direct the**

Law Reform Commission on this. The resulting Act should be concise, and concentrate on defining authority, responsibility and competency.

- 8.14 **We recommend** that the resultant legislation form the basis of regulations for the mining sector. These should be comprehensive, detailed, and should become part of the Act (as is the case in many countries). **Making amendments to the regulations should be allowed, but only after the proposed amendments have gone through a consultation process and been finally approved by Parliament.**
- 8.15 **We further recommend** that the MMR seek external technical assistance to assist them in drawing up these regulations.
- 8.16 **Fiscal regime and attracting investment:** The CMP sets as the GOSL's first objective stimulating investment in the mineral sector by promoting private sector participation. This is to be achieved through establishing an enabling environment for investors with adequate geo-information, regulations, satisfactory institutional capacity to process investments, and attractive fiscal conditions. This requires an investor-friendly legal and institutional framework, including a progressive and predictable tax regime with well defined parameters.
- 8.17 Attracting LSM investment is critical both to the country's economic and security needs, for the reasons mentioned earlier in sections 6.04 to 6.08.
- 8.18 The most recent IMOF Poverty Reduction and Growth Facility Review of SL (IMOF Country Report 04/49) in 2004 found that SL has a solid fiscal regime, based around the existing Minerals Act 1996 (which sets extraction royalties) and the Income Tax Act 2000.
- 8.19 However, probably due to the fact that SL is viewed as a fragile state, having only just emerged from the 10-year rebel war, in practice individual tax concessions have been sought by LSM investors. The IMOF is critical of this approach, because it is ad hoc, and without a guiding framework for medium term revenue mobilisation objectives or desirable development and social expenditures.
- 8.20 For example, it is estimated that cumulative revenue losses from tax concessions to Sierra Rutile will be \$98 million over the period 2004 – 2016 (IMOF). In return, the GOSL will acquire an equity stake in the project that accumulates over time and is projected to reach 30 per cent when proven reserves are exhausted. To what extent this equity stake provides adequate compensation for forgone revenues has not been analysed by GOSL.
- 8.21 The CMP provides the foundation for establishing a policy framework that can detail guidelines on the appropriate level of tax incentives for investors. Given SL's post conflict status, and the threats to consolidating the peace posed by youth unemployment and corruption (sources - ONS, Koidu Holdings, PDA), it will be inevitable that serious investors seek favourable and individual agreements. However, the MMR should ensure that such arrangements are kept within the general regime based on the CMP.
- 8.22 Provision for special agreements should include fiscal stability provisions, cross-references between the minerals legislation and the general investment legislation, clear guidelines on making special agreements, and strong transparency clauses.

- 8.23 **We recommend** that external technical assistance is sought to assess fiscal incentives with appropriate controls to attract investors into the mining sector.
- 8.24 A major problem encountered by the largest LSM investor to SL, Koidu Holdings S.A. is the different interpretation of the existing fiscal regime by the MMR, Customs and Excise, and Immigration. Each MDA interprets the fiscal regime in line with its own objectives. This leads to conflict, in turn resulting in operational delay and significant production losses for the company. There needs to be a coherent, unified fiscal regime and investment code to attract other large investors to Sierra Leone's mining sector.
- 8.25 A national Investment Code has been drafted with World Bank Technical Assistance, which sets out the GOSL's aims and objectives for stimulating inward investment in very general terms. The Ministry of Trade and Industry is currently preparing sector-specific 'Incentive Schemes' which set out in more detail fiscal incentives for investors, including one for the Mining sector.
- 8.26 **We recommend** that **immediate communication and dialogue is** established with the Ministry of Trade and Industry, the NRA, and any other key stakeholders in order to ensure that the requirements of mining investors and the objectives of the CMP are built in to the general national guidelines attracting external investment.

In view of this change management function **we recommend** that the PRU report directly to the Director General as shown in the proposed organogram for the MMR in Appendix