REPORT OF THE PUBLIC ACCOUNTS COMMITTEE

ON

GOVERNMENT COMPENSATION PAYMENT

TO

DURA CEMENT LIMITED

IN THE FY 2009/2010

SEPTEMBER 2012
ACRONYMS

AG      Attorney General
SG      Solicitor General
DCL     Dura Cement Ltd
PS/ST   Permanent Secretary/Secretary to Treasury
NEC     National Enterprises Corporation
HCL     Hima Cement Ltd
UPDF    Uganda Peoples Defence Forces
MD      Managing Director
KPMG    KPMG Uganda is a member firm of the KPMG network of Independent member firms affiliated with KMG International Cooperative ("KPMG International"), a Swiss entity
KAA     Kampala Associated Advocates
URA     Uganda Revenue Authority
Introduction

1 Rule 148(2) of the Rules of Procedure provides that the Public Accounts Committee shall be assigned the examination of the audited accounts showing the appropriation of sums granted by Parliament to meet public expenditure of the Central Government and the Judiciary. The Auditor General audits the accounts of Government and submits a report of his findings to Parliament.

2 In the report of the Auditor General to Parliament for the year ended 30 June 2010, it was reported that: “Government is incurring a lot in compensation to companies and individuals for loss of business arising from cancellation of contracts they entered into with Government. It was also noted that in a number of cases, trade taxes have not been assessed or collected.”

3 The report highlighted examples of some of the compensation claims brought against Government and approved as follows:

i. The Haba Group of Companies was paid UGX 142.6 billion on account of its management contracts and sub-lease for markets in the city having been cancelled by Government. HABA’s subsidiary companies are:
a. Sheila Investments Ltd, which was awarded UGX. 70,589,528,007 for loss of management contract and sub-lease over Nakasero Market
b. Victoria International Trading Co Ltd, which was awarded UGX. 2,801,585,133 for loss of its management contract over Owino Market;
c. First Merchant Trading Co Ltd, which was awarded UGX. 5,652,231,004 for loss of sub-lease over Shauriyako Market; and
d. Yudaya Investments Ltd, which was awarded UGX. 63,654,752,244 for loss of its sub-lease over the Constitutional Square.

ii. Rhino Investments Ltd was paid UGX. 14,965,569,313 on account of its lease over Kisekka Market having been cancelled by Government;

iii. Dura Cement Ltd was paid US $16.4 million on account of its Mining Lease over Dura Limestone in Kamwenge having been cancelled;

iv. Basil Engineering Ltd was paid €13 million (UGX. 36.4 billion) on account of its contract to construct Jinja-Bugiri Road having been frustrated by Government;

v. Beachside Development Services Ltd was awarded by Court a payment of US $1.9 million on account of its contract with the National Forestry Authority (NFA) to build
eco-tourism lodge in Kyewaga Forest Reserve having been frustrated by the NFA;

vi. Xpectrade Ltd was awarded and paid US $1.4 million and ZAR 2 million on account of its contract to construct Namanve Industrial Park having been frustrated by Government.

4 On 15 February 2012, the Committee presented to the House its findings and recommendations on the compensations that were extended to the HABA Group of Companies and Rhino Investments Ltd.

5 The Committee is now pleased to present its report to the House on its findings and recommendations on the compensation that Government made to M/s Dura Cement Ltd.

Terms of Reference
6 The Committee was guided by the following terms of reference:

i. Establish whether the contract in question was entered into or executed according to the law;

ii. Establish whether the cancellation of the contract was done through proper procedures and in public interest;
iii. Establish whether the compensation claims lodged by DCL was evaluated competently, transparently and rationally to arrive at appropriate and justified compensation payment;
iv. Establish whether all taxes associated with the transaction between Government and DCL were remitted to the Uganda Revenue Authority;
v. Establish whether any public officials at the level of contract award, management, cancellation and compensation subverted the public interest;
vi. Propose recommendations to the House on the next course of action.

Methodology
7 In order to obtain the relevant information and evidence, the Committee adopted a multi-pronged approach, which entailed:

i. Interviewing officials in Ministries and Government Departments who were involved in handling the matter with DCL;
ii. Interviewing the Solicitor General and the Attorney General in light of their roles as provided for under Article 119(5) of the Constitution;
iii. Interviewing the Directors and representatives of the claimant;
iv. Interviewing the Permanent Secretary/Secretary to the Treasury;
v. Interacting with the President;
vi. Perusing various documents and correspondences; and,
vii. Perusing court judgements on the case.

The list of the names of the witnesses is attached as Appendix No.1.
DETAILED FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

Introduction
8 In the FY 2009/2010, Government of Uganda paid Dura Cement Ltd US $16.4 million on the account of its mining lease to establish a 3rd cement factory in Kamwenge having been cancelled by the Government. The question is: "How did this compensation come about; who caused this financial loss"?

Background
9 On 7th March 1990, the National Enterprises Corporation (NEC), the commercial arm of the Uganda Peoples Defense Forces (UPDF), obtained from the Geological Survey and Mines Department, Ministry of Energy and Mineral Development, a 21-year mining lease ML 3946 on property LRV 2504, Folio 4, plots 4, 5 and 6 Burahya, Block 162, measuring 278.5 hectares. The certificate of title to the above land was issued to NEC retrospectively on the 9th August 1996 for a term of 21 years beginning from the date of 7th March 1990.

10 NEC subsequently, on 10th June 1997, sub-leased the remaining term of its mining lease of 14 years, to M/s Lafarge/Hima Cement 1994 Ltd (HCL). The sublease agreement between NEC and M/s Lafarge/HCL was signed by Col. Fred Mwesigye as the Managing Director and witnessed by Lt. JM
Bangirana the Corporation Secretary on behalf of NEC. M/s Lafarge /HCL were required under the terms of the sub-lease to mobilize resources, make detailed surveys and develop infrastructure at Dura within one year from 10th June 1997.

11 By 2005, 8 years later, Lafarge/HCL had failed to fulfill its obligations and had not exploited the limestone and stone deposits at Dura. Lafarge/HCL were notified by NEC in March 2002, of their breach and specifically asked to submit monthly returns and pay royalties and rent under the Articles of the Lease Deed.

12 HCL continued to ignore complying with the provisions of the Mining Act and instructions issued by the Commissioner of Geological Surveys and Mines. Another letter was written to HCL by the Commissioner in February 2003, in which HCL was duly notified of its being in fundamental breach because of non-compliance with the covenants under the sub-lease.

13 Owing to the above failure by HCL to remedy the default as required by law, NEC sought the legal opinion of the Solicitor General on how to disengage from the HCL relationship. The Solicitor General advised that there was breach of several covenants which entitled NEC to terminate the sub-lease and re-enter the land. Basing on the Solicitor General's advice, on
22nd June 2006, NEC issued 90 days’ notice of termination of the sub-lease to HCL on the basis of breach of several covenants. HCL resisted the proposed termination. The relationship between NEC and the Lafarge/HCL Group was legally terminated by Col. Fred Mwesigye on 9th August 2006.

14 Meanwhile, in January 2005, Col. Fred Mwesigye had invited Mr. Rajesh Kumar Rawal of M/s Motorsense Ltd, Nairobi to co-invest with NEC by putting up a cement factory at Dura. Mr. Rajesh Kumar Rawal submitted a detailed business proposal in July 2006 in response to the invitation to co-invest at Dura. Government officials, including the Minister of Defence, the Minister of Energy and Mineral Development, the Minister of Tourism, Trade and Industry, the Commissioner of Geological Survey and Mines and officials from NEC assessed and approved the viability of the proposal.

15 Mr. Rajesh Rawal Kumar later on 25th October 2006 incorporated a company called Dura Cement Ltd (DCL) with two offshore companies as shareholders namely Beaver Enterprises SA of Panama; and Sweetline SA of the British Virgin Islands. On 9th August 2006, DCL’s business proposal was officially accepted by Government. Brig Noble Mayombo (RIP), the then Permanent Secretary of the Ministry of Defence communicated the acceptance to DCL.
16 Meanwhile, NEC requested for the enlargement of the mining area and on 22nd December 2006, NEC was issued a certificate of title LRV 3668 Folio 18 for plots 3, 4, 5 and 6 measuring 473.5 hectares. On 19th January 2007, the Commissioner for Geological Survey and Mines effected the transfer of the Mining Lease from NEC to Dura Cement Ltd. On 2nd February 2007, the Commissioner informed DCL that the mining lease formerly held by NEC which was left with 4 years to expire was extended in favour of DCL for an extra 15 years with effect from 7th March 2007.

**Observations**

17 PAC noted that the procedure by which NEC transferred the initial sub-lease to Lafarge/HCL for 14 years was not transparent. The sub-lease was not tendered under the Central Tender Board to ensure competition and value for money. This is where the problem began, leading to the transfer of the lease to DCL and the subsequent termination and compensation to DCL.

18 PAC noted that the procedure by which Mr. Rajesh Rawal Kumar was invited to submit a business proposal was also not transparent. The criteria used to evaluate the proposal was not clear. It is difficult to establish that the DCL proposal would have been the best evaluated proposal after the debacle with
Lafarge/HCL group. Competitive bids were not solicited to determine the best investment proposal. The company, Dura Cement Limited (DCL) with off-shore shareholders in British Virgin Islands and Panama was expressly incorporated for this undertaking after the promoters had been invited by NEC. DCL offered no consideration for acquiring the lease. NEC transferred its mining concession and land measuring 473.5 hectares to DCL free of charge.

19 PAC noted that it was the same Kumar's company which had bought Hima Cement Factory when it was privatized by Government, and later sold it in 1997 to Lafarge/Hima Cement 1994 Ltd. Mr. Kumar had been introduced to H.E. the President by officials from NEC, led by the then MD of NEC, Col. Rtd. Fred Mwesigye, and officials from the Ministry of Defence. This tantamounts to influence peddling. It is apparent that there was no due diligence prior to inviting and engaging Mr. Kumar to establish a 3rd cement factory at Dura.

Cancellation of the Dura Cement Ltd Lease

20 On 5th April 2007, a few months after DCL had acquired the sub-lease, H.E. the President wrote to Mr. Bruno Lafont, President of Lafarge SA, and owners of Hima Cement Industry 1994 Ltd, responding to the letter by Lafarge expressing interest to expand investment in cement production at the Dura site. In
the letter, the President informed Lafarge that he had "directed the Minister of Energy and Minerals, and other relevant Ministries to expeditiously make arrangements to hand over" the Dura site to Lafarge. The President's letter was copied to Baroness Linda Chalker of Unilever International.

21 Subsequently, on 10th April 2007, the President wrote to Hon. Daudi Migereko, then Minister for Energy and Mineral Development, informing him that "M/s Lafarge is an internationally reknowned company, credible in terms of technical competence and financial worthiness". The President directed that the Dura site be given to Lafarge. In the same letter, the President directed the Attorney General to propose how best the agreement with DCL could be terminated.

22 On the same day the President wrote the above letter, the then Solicitor General, Mr. Lucien Tbaruha, gave a legal opinion advising that cancellation of the contract would have negative economic and financial consequences for Uganda. He observed that not only would DCL claim specific and general damages, but it would also be entitled to compensation for loss of projected business for 19 years, which would be around US $1,162,800,000.
23. The Solicitor General (SG) recommended that Government should effectively prepare to negotiate with DCL on the actual amount of compensation payable. The SG also advised that Government should negotiate an agreement with Lafarge/HCL with detailed legally enforceable development conditions for the establishment of a 3rd cement factory at Dura, and also incorporate the principle of burden sharing with respect to compensation that will inevitably arise from takeover of the Dura site by Lafarge/HCL.

Observation

24. PAC noted that the recommendations and advice given by the Solicitor General (SG) were not heeded by Government. The President differed from the recommendation of the Commissioner of Geological Surveys and Mines as to the quantity of lime deposits that would sustain a 3rd factory at Dura; H.E. also waived the proposal by the SG for HCL to co-share the burden of compensation for the cancellation of the lease to DCL.

25. PAC observed that HCL obtained the lease for the Dura site without an application as required by law. Despite paying compensation to DCL for the cancellation of their lease, Government offered HCL the land lease free of charge.
26 H.E. the President informed PAC that he took the decision to cancel the contract of DCL in favour of Lafarge because of economic and strategic reasons. H.E. indicated that the limestone deposits at Dura had been exaggerated, that the available deposits could not sustain a factory, and that Lafarge had threatened to close the Hima Cement Factory if they had been refused to take over the Dura site to supplement the deposits at Hima.

27 Consequently, on 7th May 2007, H.E. the President wrote to Rajesh Kumar Rawal, as Managing Director of DCL, informing him that Government had received an alternative investment proposal from Lafarge to exploit Dura limestone deposits, which project was in the best interest of the country. H.E. also informed Mr. Rawal that Government would terminate his contract on mutually agreed terms and that Government would not hesitate to recommend DCL to develop any other site they may wish to invest in as long as there were no encumbrances on the site so chosen.

28 Subsequently, on 12th June 2007, the Commissioner for Geological Surveys and Mines, Mr. Joshua Tuhumwire, invited Mr. Rajesh Rawal as Director of DCL to discuss the cancellation of their lease. Mr. Rawal objected to these overtures and wrote to the Minister of Energy and Mineral Development on 22nd
June 2007 demanding that either Government restores their mining rights or compensates DCL for the cancellation of the rights.

29 On 26th July 2007, Hon Migereko formally wrote on the instructions of the President cancelling the lease to DCL. DCL were not willing to discuss the termination and immediately filed a case in Court. Thereafter the matter was referred to the Attorney General for an out of Court settlement. The Attorney General handled the matter of compensation together with the Ministry of Finance without further engaging the Ministry of Energy and Mineral Development.

**Observations**

30 The Committee observed that the then Minister of Energy and Mineral Development pursued the directive of the President to negotiate with DCL the cancellation of their lease on mutually agreed terms, i.e.

- by proposing to provide DCL an alternative site for development;
- by considering that DCL had obtained the lease at no cost; and
- by bringing to the attention of Mr. Rawal that DCL had not made any investment at site.
31 The Committee observed that H.E. the President’s intervention handed back the mining lease to a company which had failed to exploit the lease for eight years, moreover at no consideration to the Uganda Government.

Handling of Compensation Claim submitted by Dura Cement Limited.


33 The Acting Solicitor General requested the Auditor General to evaluate the claim and advise. The Auditor General engaged KPMG on behalf of the Ministry of Justice at the cost of US $250,000. KPMG assessed, based on the information availed, that the DCL claim could not be substantiated and therefore no compensation was payable under the different items claimed. KPMG indicated that DCL could only be reimbursed expenses incurred if the expenses could be substantiated and verified. In the event that no such documentation was available, KPMG recommended a nil sum
as quantification of the claim submitted by DCL. The table below gives a summary of the DCL claim and the recommendations of KPMG based on evidence submitted by DCL:

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<tr>
<th>No</th>
<th>DCL Claim by Item</th>
<th>Amount Claimed</th>
<th>KPMG Computation of Loss</th>
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<tbody>
<tr>
<td>1</td>
<td>Expenses incurred by M/s R &amp; S Rawal in Nov. 2005 and from May 2006 to June 2007</td>
<td>179,588</td>
<td>0</td>
</tr>
<tr>
<td>2</td>
<td>Expenses of back-up offices, M/s Kiram M. Patel, R Kamadar and C.D. Mehta</td>
<td>170,413</td>
<td>0</td>
</tr>
<tr>
<td>3</td>
<td>Expenses from July 2007 comprising professional and legal fees</td>
<td>150,000</td>
<td>0</td>
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<td>4</td>
<td>Contingent Liability</td>
<td>10,522,500</td>
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<td>5</td>
<td>Computed &quot;Loss of profits&quot;</td>
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<td>6</td>
<td>Cement plant only</td>
<td>71,700,488</td>
<td>0</td>
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<tr>
<td>7</td>
<td>Dimension Stone Project</td>
<td>20,833,112</td>
<td>0</td>
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<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>103,406,100</strong></td>
<td><strong>0</strong></td>
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</table>

*Source: KPMG Report, 1st September 2008*
However KPMG also indicated that, based on the DCL Business Plan that had been submitted under the investment proposal, assuming that all the capital investments, the production quantities, the operating expenses and sales revenues in the proposal were realized, the anticipated net profits attributable to DCL shareholders over the 19-year term of the lease would have amounted to US $14,566,890.

Observations

PAC observed that the report from KPMG dated 1st September 2008 was a draft report with the express disclaimer that it should be used only by Mr. Billy Kainamura, the then Acting Solicitor General. No subsequent or final report was availed or demanded by Mr. Kainamura from KPMG. The Committee found it inexplicable that the sum of $14.5 million purported to have been recommended by KPMG in the draft report to Mr. Billy Kainamura came to the knowledge of Mr. Elly Karuhanga who used it to brief the President.

The Committee observed that by the time the DCL contract was cancelled the latter had not made any investments whatsoever under its Business Plan.

There was no specific recommendation by KPMG that the DCL claim had been assessed at US $14.5 million as
subsequently claimed by the Acting Solicitor General as fair computation for loss of net profits over the term of the lease (19 years).

38 The Government negotiating team had proposed an offer of US $450,000 to be made to DCL in lieu of set up and legal costs incurred, as a start-up position for potential negotiation. This position was negated by the assessment of US $14.5 million ostensibly recommended by KPMG.

39 PAC interacted with H.E. the President who informed the Committee that he had been briefed of the KPMG valuation of US $14.5 million by Mr. Elly Karuhanga of Kampala Associated Advocates (KAA), who were the lawyers representing DCL in pursuing their claim. PAC noted that there was no evidence of the Acting Solicitor General having formally communicated to KAA the assessment by KPMG.

Finalization of the Claim

40 On 28th January 2009, H.E. the President wrote to the Attorney General and suggested that the sum of US $14.5 million assessed by KPMG should be paid to DCL as negotiated compensation for loss of their mining rights, and directed that the negotiations should be finalized within 30 days. Based on the recommendation from H.E the President, the negotiation
team abandoned their initial offer of US $450,000. In any case, DCL, represented by KAA, had been copied the letter from the President. However, the negotiation team opted to apply the principle of acceleration supported by legal precedents to discount the US $14.5 million over the 19 years into a single lump sum payment of US $6.5 million. The negotiation team forwarded this recommendation to the Attorney General on 16th July 2009.

41 The Attorney General then, Hon. Dr. Khiddu Makubuya, in a loose minute to the Ag. Solicitor General dated 23rd October 2009 rejected the proposal to discount the award. He based his decision on the following arguments:

- The President’s offer of US $14.5 million which had been communicated to DCL through their lawyers, Kampala Associated Advocates;
- The fact that DCL had not breached the mining lease; that they were prepared to carry out the project and it was Government that had reneged on its commitment;
- The reasoning of discounting pre-dates the intervention of KPMG and would cast doubt on the efficacy and professionalism of the latter;
- The consideration on lump sum payments are “technically subsumed under the principle of acceleration, the claimants are being compensated for thwarted
expectations, this is an investment project to which the principle of acceleration is not easily applicable; it is bad enough to cancel an investment project out of no fault of the investor, and the continued delay in sorting out this matter does not augur well for Uganda as an investment destination”.

42 The Attorney General advised the Ag. Solicitor General to negotiate on these terms. The Committee observes that the former Attorney General, Hon. Khiddu Makubuya;

I. Ignored the recommendations of a technical negotiation committee that he had instituted.

II. Seemed to be arguing the case for the claimant and not for Government as he would be expected to as the chief legal advisor under the Constitution. The Attorney General’s position was not based on any investments made or commitments incurred by the claimant, but was based solely on the claim submitted of US $103.4 million. The burden of proof would have fallen on the claimant in Court, to determine what would have been adequate compensation based on the principle of restitution.
43. On 30th October 2009, DCL and the Attorney General entered into a Consent Judgment where the Attorney General (Government) would:

I. Pay US $14 million to the plaintiff as special damages for the cancellation of the plaintiff’s Mining Lease;

II. Pay US $2 million to the plaintiff as general damages for the cancellation of the said Mining Lease;

III. Pay legal costs at 2.5% of the total sum payable in (1) and (2) above;

IV. Pay the above sums in one lump-sum;

V. Pay interest on (1), (2), and (3) above, at 8% from the date of the consent judgment till payment in full.

44. On 23rd April 2010, the Ministry of Finance further negotiated with DCL on the modalities of payment of the compensation. The Ministry of Finance proposed that Government would pay US $16.4 million in four equal installments of US $4.1 million, and that no interest would be paid on the outstanding amounts. DCL accepted the new terms.

45. When PAC met H.E the President on 21st December 2011, H.E. expressed surprise at the amount Government compensated DCL. H.E. indicated that DCL had not made any
investments at the time of its contract being cancelled, which view the Committee agreed with. H.E. intimated that US $500,000 would have been sufficient given that DCL had been awarded the lease at no fee.

Observations

46 The Committee (PAC) made the following observations:

I. The consent judgment was drawn to the effect that it lumped all compensations under Damages which are not taxable. This was not in line with the claim that had been submitted.

II. The award of $14 million as Special Damages was not specifically claimed. The Committee did not receive any evidence that this claim was proved as required by law.

III. The Committee observed that the first draft of the consent judgment provided for award of US $14 million as compensation for cancellation of the mining lease. This would have been taxable under the Income Tax Act. However, the final Consent Judgment changed this award to Special Damages which are not taxable. The Committee notes that this change was deliberately made to avoid payment of taxes.

IV. The Ministry of Finance was able to further negotiate the terms of the compensation over 4 installments. This
is an indication that the Consent Judgment entered into between the parties was not well negotiated on the part of Government, since the plaintiff was able to concede further ground outside the Consent Judgment.

V. Since the Dura mining lease and land had been handed back to the Lafarge Group for no consideration either, and after their initial breach and cancellation, the former Solicitor General, Mr. Lucien Tbaruhu, had advised that the Lafarge Group co-share the burden of any compensation. This was not done and the whole burden fell on the Government of Uganda.

VI. The President, in offering the site to the Lafarge group in April 2007, had indicated the following performance benchmarks to be met by the group:

- The HCL expansion must start immediately and a specific period be given within which HCL must commence production at the Dura site
- Lafarge Group/HCL must assure Government that the price of cement would come down as soon as they increase production due to the increase in supply in the market; or if the price is to remain high, it should be on account of ascertainable facts and not on account of monopolistic pricing;
• Lafarge Group/HCL must assure Government that they would undertake to make use of residual 4.1 million metric tons of Dimension Stone for commercial purposes instead of disposing it off as waste.

VII The offer of US $14.5 million was recommended by the President in his letter of 28th January 2009 to the Attorney General, based on the brief by Mr. Elly Karuhanga of KAA, purportedly based on the KPMG report to which he was not privy. It is therefore surprising that the President did not know the amount that DCL had been offered for settlement by the time PAC met him in December 2011.

47 PAC further observed that handing over the Dura site to Lafarge in effect secured the limestone deposits in the area to the Group who now enjoy near monopoly in cement production in the country. It is noted that the price of cement has continued to spiral, with the attendant increase in the cost of construction and inflation in general.

Tax Assessment on Dura Compensation Payment
48 On 20th December 2010, URA appointed Kampala Associated Advocates (KAA) as its agent to collect UGX. 3,214,569,600 being taxes due and payable by DCL. Indeed, on
22nd December 2010, the firm after instruction by DCL paid UGX. 3,214,569,600 to URA account.

49 However, on 16th February 2011, KAA on instruction by DCL lodged an objection to URA disputing its assessment. The advocates argued that DCL was awarded damages by Government of Uganda, which damages could not be taxed by URA, as they are not taxable under the Income Tax Act. URA considered the grounds raised in the objection and allowed the objection in its entirety, and consequently, its assessment No. 31/6855 dated 22nd October 2011 was vacated. This position was communicated to DCL by the Commissioner Domestic Taxes, Mr. Moses M. Kajubi, in his letter to KAA dated 30th March 2011.

RECOMMENDATIONS

50 Based on the findings and observations made, the Committee recommends that:

i) The then Managing Director of National Enterprises Corporation (NEC), Col (Rtd.) Fred Mwesigye, be held responsible for causing financial loss to Government by the irregular transfer of the mining sub-lease from NEC to Lafarge without tendering. After cancelling the sub-lease for failure by Lafarge to comply with the terms of the sub-lease, NEC
subsequently invited and transferred the mining lease to Dura Cement Limited (DCL) without tendering and at no fee.

ii) NEC, including but not limited to the then Managing Director, Col. Fred Mwesigye, be held liable for failure to carry out due diligence, resulting into dealings with a one Kumar Rajesh Rawal who turned out to be a mere middleman and fraudster, as he was neither a Director nor shareholder of DCL as per documents obtained from the Companies' Registry.

iii) The then Managing Director of NEC, Col. Fred Mwesigye, be held responsible for introducing Mr. Kumar Rajesh Rawal to the President with a view of securing transfer of the mining lease from NEC to DCL.

iv) The President respects technical advice given by Government departments rather than relying on briefs and information from un-official sources. The President should desist from gifting critical national resources to so-called investors free of charge and without following due process.

v) The Registrar of Companies be investigated with a view to establishing how DCL was incorporated with off-shore shareholders without availing particulars of local Directors and establishing place of business in Uganda.
vi) The former Acting Solicitor General, now Justice Billy Kainamura, be held responsible for leaking the draft KPMG Report to Mr. Elly Karuhanga of Kampala Associated Advocates (KAA), who used it to mislead the President as to the amount recommended by KPMG to compensate DCL.

vii) The former Acting Solicitor General, now Justice Billy Kainamura, be held liable for causing financial loss to Government by abandoning the original offer from the negotiation team to DCL ($450,000) as compensation and entertaining the new offer in the letter from the President ($14.5 million), which letter made reference to the KPMG Report that had indeed recommended a nil sum.

viii) The former Acting Solicitor General, now Justice Billy Kainamura, be held liable for causing financial loss to Government by committing the sum of $250,000 to engage KPMG and later on abandoning the recommendations in the KPMG report and failing to obtain a final report. The Committee recommends that he should be made to refund the money lost.

ix) Mr. Elly Karuhanga be held liable for influence peddling and professional misconduct as a lawyer of DCL who had sued Government for compensation. Mr. Karuhanga’s conduct
and interest should be investigated by the other organs of Government and relevant professional bodies.

x) The former Attorney General, Hon. Khiddu Makubuya, be held responsible for causing financial loss to Government by refusing to discount the offer of $14.5 million over 19 years to a single lump sum payment of $6.5 million.

xi) The URA Commissioner, Domestic Taxes, Mr. Moses M. Kajubi, be investigated for waiving tax on the compensation which was deemed to have arisen from loss of business profits over 19 years.

xii) Kampala Associated Advocates (KAA) be investigated for influence peddling and professional misconduct for making false representation in the Consent Judgement specifically to evade payment of taxes.

xiii) The investigative arms of Government step in to lift the veil of incorporation of DCL to establish its true owners and to identify the beneficiaries of the payment of $14.5 million to Kampala Associated Advocates.
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<th>NAME</th>
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<td>Kassiano E. Wadri – CP</td>
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<td>Kaabule Everlyn Naome</td>
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<td>Kibojiana Margaret N.</td>
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<td>Kwizerwa Eddie Wa Gahungu</td>
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<td>18</td>
<td>Kyooma Xavier Akampurira</td>
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<td>19</td>
<td>Mpabwa Sarah Patience (Lt. Col.)</td>
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<td>20</td>
<td>Mugabi Muzalee Martin</td>
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<td>Musinguzi Yoqna</td>
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<td>Mwiru Paul</td>
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<td>Wamanga Wamai Jack</td>
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<tr>
<td>29</td>
<td>Yaguma Wilberforce</td>
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</tr>
</tbody>
</table>

August 20
APPENDIX 1

LIST OF NAMES OF THE WITNESSES

1. Hon. Migereko Daudi – Minister of Lands, Housing and Urban Development
2. Mr. F. A Kabagambe – Kaliisa - PS, Ministry of Energy & Mineral Development
3. Mr. Joshua T. Tuhumwire – Retired Commissioner
4. Mr. John Odida – Acting Commissioner
5. Mr. Kazibwe M. S. – Ministry of Energy and Mineral Development
6. Mr. Chris Rudigizah – Ministry of Energy and Mineral Development
7. Mr. Ssegawa Ronald - Under Secretary, Ministry of Energy and Mineral Development
8. Mr. Joseph Okedi – Ag. PIM – Ministry of Energy and Mineral Development
10. His Lordship Judge B. Kainamura - Former Ag. Solicitor General
11. Mr. Chris Kassami, Permanent Secretary/Secretary to Treasury, Ministry of Finance, Planning and Economic Development
14. Ms. R. G. Rwakoojo – Ag. DCL – MOJCA
15. Mr. C. Gashirabake – Ag. DLAS – MOJCA
16. Mr. Francis Atoke – Administrator General – MOJ&CA
17. Mr. J. B. Timanywa – Principal Accountant – MOJ&CA
18. Ms. Hope Byaruhanga – Principal Personnel Officer – MOJ&CA
19. Mr. Owen Busingye – Assistant Secretary – MOJ&CA
20. Mr. Magezi Alfred – Senior Procurement Officer – MOJ&CA
21. Ms. Margaret Apiny – Ag. Secretary, Law Council
22. Ms. Elizabeth Nakkungu – Commissioner, Legal Advisory Services
23. Directors of Hima Cement Limited
24. Hon. Fred K. Mwesigye – Former Managing Director, NEC
25. Mr. Peter Kabatsi – Managing Partner, Kampala Associated Advocates
26. Mr. Joseph Matsiko – Senior Partner, KAA
27. Mr. David Mpanga – Senior Partner, KAA
28. Mr. Oscar Kambona – Senior Partner, KAA
29. Mr. Elly Karuhanga – Senior Partner, KAA
30. Ms. Rosettie Byengoma – P/S – Ministry of Defence
31. Ms. Edith Buturo – Under Secretary, Ministry of Defence
33. Mr. Mukombozi Daniel – Ministry of Defence
34. Lt. Col. Tengo Lubogo – Ministry of Defence
35. Mr. Mukombozi Daniel – Ministry of Defence
36. H.E. The President, Republic of Uganda
LEASEHOLD REGISTER
Volume 2504  Folio 4

UGANDA
REGISTRATION OF TITLES ACT

CERTIFICATE OF TITLE

DESCRIPTION OF LAND

The Leasehold land edged red on the plan attached hereto and situate and known as follows:

LOT

Street Number: 4, 5 AND 6
Road Name: BLOCK 162 EKINDOYA COUNTY
Township/Municipality/City:
District: KABALE

Area: APPX. 278.5 HECTARES

TERM from 7TH MARCH, 1996 for 21---------------years and -------- months
at the rent and subject to the covenants and conditions contained or implied in Lease.

Number bound up herewith and to the incumbrances (if any) entered in the Incumbrance Register.

Easements

PROPRIETORSHIP

<table>
<thead>
<tr>
<th>No.</th>
<th>Name and Address of Proprietor</th>
<th>Signature of Registrar</th>
</tr>
</thead>
<tbody>
<tr>
<td>2606</td>
<td>NATIONAL ENTERPRISE CORPORATION OF P.O BOX 3145, KAMPALA.</td>
<td>[Signature]</td>
</tr>
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</table>

DATE OF ISSUE: 9TH AUGUST, 1996.
<table>
<thead>
<tr>
<th>Date and Line No.</th>
<th>Name and Address of Proprietor</th>
<th>Price or Value</th>
<th>Initials of Registrar</th>
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</tbody>
</table>
THE PARTNER paid on the ___________ day of ___________ [Month] [Year] to the Honourable Minister of Water and Mineral Development (representing the Uganda Government) herein after called "the lessor" (which expression shall be taken to include his successors), of the one part and NATIONAL TITHE BOARD CORPORATION, a parastatal company of the National Resistance Army whose postal address is P.O. Box 3185, Kampala, Uganda, hereinafter called "the lessee" (which expression shall be taken to include its successors and assigns) of the other part.

"THAT" as follows:—

1. In consideration of the payments hereinafter reserved and of the performance by the lessee of the duties imposed upon mining lessees generally by the Mining Act, and subject to the provisions of the said Act, the lessee hereby grants unto the lessee the mineral contained in SECTION 1.3 hereto together with in respect of such minerals and ores the rights conferred upon lessee generally by the Mining Act. to work and to hold the premises hereby described and granted unto the lessee, for the term of TWENTY-FIVE years from the date of this agreement, without payment and paying therefore to the Commissioner, Geological Survey and Mines Department, during the said term annually in advance and without demand an annual rent of shillings seven hundred (sh. 700/=) per acre or part thereof and YIELDING and PAyielding in lieu of the royalties payable under the provisions of the Mining Act either a royalty of shillings four
hundred (sh. 100/=) for every ton of lime produced from the said area or a royalty of shillings one hundred (sh. 100/=) for every ton of limestone quarried from the area but not burnt. Such royalty to be paid to the Commissioner, Geological Survey and Mines before any mineral is sold.

2. AND THE LESSOR also hereby covenants that he will observe all the provisions of the Mining Act and on determination of this lease the lessor will within three months comply with the provisions of section 25 of the Mining Act, as though such provisions were applicable to this lease. The lessee further covenants to comply with any reasonable instructions relating to the economic exploitation and development of the minerals comprised in this lease which the Inspector of Mines may from time to time give provided that if the Lessee is of the opinion that any or all of the instructions given by the said Inspector of Mines is or are unreasonable, the Lessee shall be at liberty to refer the matter to the Commissioner whose decision whether or not all or any of the said instructions are reasonable and related to the economic exploitation of the minerals shall be final and binding on the lessee who shall thereupon comply therewith.

3. IT IS HEREBY expressly agreed and declared:

a) that if any part of the rents and royalties hereby reserved shall be unpaid for sixty days after becoming payable (whether formally demanded or not) or if the lessee shall at any time during the term hereby granted cease to work the leased premises for a period of six successive months (such cessation not being due to accident, labour dispute or any unavoidable occurrence) or if the lease while the desired premises or
any part thereof remain vested in it, shall go into liquidation
whether voluntary (save for the purpose of amalgamation or reconstruction)
or compulsory in the case of an assign of the lessee not being a
compensation shall become bankrupt or make any assignment for the benefit
of or enter into any arrangement for composition with his creditors or
if any covenant on the lessee's part herein contained shall not be
performed or observed thereby and in any of the said cases it shall be lawful
for the lessor at any time thereafter to re-enter upon the said
premises or any part of them in the name of the whole and thereupon this
devise shall absolutely determine but without prejudice to any right
of action of the lessor in respect of any breach of lessee's covenants
herein contained.

b) that in the event of an amendment to the provisions of the Mining
Act, for payment of royalty, rent and other charges on minerals, the
Commissioner shall have the option either to demand such payment as
fixed in this indenture or as provided for in such amendment.

c) that the expression "Mining Act" shall throughout this indenture be
defined to mean and include the Mining Act (cap. 240, 1964 Revision) any
Act enacting the same or substituted therefore, and all regulations now
in force or which come into force under any of the said Acts during
the continuance of this demise.

IN WITNESS whereof the Honourable Minister here affixed hereto and the
lessee has caused his common seal to be affixed hereto the day and
year first before written.
SIGNED by the Minister of Water and Mineral Development, in the presence of

[Signature]

Minister of Water & Mineral Dev.
P.O. Box 7256 Kampala

Permanent Secretary
Ministry of Water & Mineral Dev.

[Signature]

General Manager

[Signature]

SCHEDULE A

ALL THAT Piece or parcel of land in the District of Kabarole lying approximately one half kilometer to the right of the Kampala-Pozno railway line and approximately one kilometer to the south part of Tana Railway station, comprising 4.5 acres or thereabouts on the same in more particularly delineated on the plan No. 1750 and on the attached map.

SCHEDULE B

[Signature]

[Stamp]
An application for a Mining Lease by
NECLIME DURAM LTD

SHEET: 66/4
SCALE: 1:50,000
Area: 4.5 Sq. Km.

Sign: [Signature]
THE REPUBLIC OF UGANDA

REGISTRATION OF TITLES ACT (CAP. 205)

SUB-LEASE AGREEMENT

BETWEEN

NATIONAL ENTERPRISES CORPORATION

AND

HIMA CEMENT (1994) LTD

PREPARED BY:

M/S TUMUSIME, KABEGA & CO. ADVOCATES
KIZIBO HOUSE, GROUND FLOOR
PLOT 1, LUMUMBA AVE.
P.O. BOX 21382
KAMPALA
THE REPUBLIC OF UGANDA

REGISTRATION OF TITLES ACT (CAP. 205)

BLOCK: 162
PLOTS: 4, 5 & 6
BURAHYA COUNTY
KABAROLE DISTRICT

SUB-LEASE AGREEMENT

This SUB-LEASE AGREEMENT is made this 10th day of June, 1997;

BEWEEN

NATIONAL ENTERPRISE CORPORATION a Statutory Body set up by an Act of Parliament in Uganda of P.O. Box 3145, Kampala (hereinafter referred to as "the Sub-Lessor") which expression shall where the context so admits include his successors in title and assigns of the one part;

AND

HIMA CEMENT (1994) LTD of P.O. Box 7230, Kampala (hereinafter referred to as "the Sub-Lessee") which expression shall where the context so admits include its successors in title, and assigns of the other part.

WHEREAS:

1. The Sub-Lessor is the Lessee and the registered proprietor of the land described as Block:162, Plots: 4, 5 & 6 Burahya County, Kabarole District on which is comprised Limestone Quarries A, B & C all hereinafter called "NEC Dura" for the term of twenty-one (21) years' lease starting from the 7th day of March, 1990 and registered under Instrument No. ML 3946;

2. The Sub-Lessor is desirous of sub-lease the said Neclime Dura to the Sub-Lessee for the remainder of his lease;

3. The Sub-Lessee has agreed and accepted to take a Sub-lease of the said Neclime Dura from the Sub-Lessor for the remainder of the Sub-Lessor's Lease;
4. The Sub-Lessee is satisfied with the quality of the limestone deposit in the said Neclime Dura after carrying our independent survey.

NOW, IT IS HEREBY AGREED as follows:-

1. In consideration of a deposit for the first ten (10) years of this Sub-Lease in the sum of Shs.120,000,000= (One hundred and twenty million) to be paid to the Sub-Lessor the said National Enterprise Corporation on the signing of this Agreement, and for the remaining period of three (3) years the sum of Shs.36,000,000= (Thirty six million) to be paid immediately on the expiry of the initial ten (10) years of this Sub-Lease by the Sub-Lessee, and rent hereinafter reserved and of the covenants and conditions hereinafter contained the Sub-Lessor DO HEREBY SUB-LEASES to the Sub-Lessee the said Neclime Dura above described and more particularly known as Quarry A, B & C located at Block:162, Plots: 4, 5 & 6, Burahya County, Kabarole District TO HOLD the same unto the Sub-Lessee for the term of thirteen (13) years from the first day of January, 1997.

2. THE SUB-LESSEE HEREBY COVENANTS WITH THE SUB-LESSOR as follows:-

(a) That the first year from the date of signing this Agreement shall be a period for mobilisation of resources, making a detailed survey and development of the infrastructure whereof no payment shall be made to the Sub-Lessor provided there will be no mining during the period of one year.

(b) To pay the Sub-Lessor Ug.Sh.5000 per tonne of limestone extracted (net of moisture) from the quarries starting with the second year from the date of taking this Sub-Lease.

(c) To allow the Sub-Lessor appoint its nominee to monitor and verify the tonnage of limestone extracted by the Sub-Lessee.
(d) To pay to the Government of Uganda as represented by the Department of Geological Survey and Mines Department, Ministry of Energy and Natural Resources in advance and without demand an annual rent of Shs. 700/= per acre, per year for NEC Dura.

(e) To pay to the Government of Uganda as represented by the Department of Geological Survey and Mines, Ministry of Energy and Natural Resources through the Sub-Lessor all royalties due per tonne of limestone quarried but not burnt.

(f) To comply with all the obligations imposed upon the Sub-Lessor by the Mining Lease Agreement ML 3946, the Mining Act and all Regulations subordinate thereto.

(g) To undertake all responsibility and liability for any undue degradation of the environment arising out of the Sub-Lessee's activities on NEC Dura.

(h) To pay for all Royalties, Ground rent, Water, Electricity and Telephone Bills (if any) in respect of the land.

(i) Execute any such works to be executed in accordance with any law applicable thereto and with the bye-law and regulations of any authority aforesaid and to pay all fees and charges properly payable to such authority in relation to the said works to comply in all respects with the bye-laws and regulations of the local authorities as may now or hereafter be in force.

(j) To develop on the land the necessary infrastructure including roads, houses, water facilities, electricity, offices and any such other infrastructure as may be necessary or incidental to the proper use of the said Neclime Dura.
(k) To invest the necessary funds in quarry equipment and diversify the procedure of extracting the lime to maximise utilisation of resources.

(l) Not to sub-lease, transfer or part with possession of the sub-leased Neclme Dura without the prior written consent of the Sub-Lessor.

(m) In case the Sub-Lessee after the second year of operation does not mine, then in such a case he shall be liable to pay to the Sub-Lessor for up to a maximum of fifty thousand (50,000) tons of limestone.

3. THE SUB-LESSOR HEREBY COVENANTS WITH THE SUB-LEESSE as follows:

(a) That the Sub-Lessee shall be allowed a grace period of one (1) year from the date of signing this Agreement for purposes of mobilisation, carrying out a detailed survey and development of the infrastructure, in which case the Sub-Lessee shall not be liable to pay the Shs.2,000= per tonne of limestone extracted from the quarries provided the Sub-Lessee does not mine during the period of one (1) year.

(b) That the Sub-Lessee shall peaceably hold and enjoy the sub-leased Neclme Dura during the said term without any interruption by the Sub-Lessor or any person rightfully claiming under or in trust for the Sub-Lessor. AND FOR AVOIDANCE OF DOUBT, all claims that accrued before the signing of this Agreement shall be met by the Sub-Lessor.

(c) Subject to Clause 2 hereof to pay all rates, royalties, charges for conservancy, taxes, head rents and outgoings whatsoever which now are or hereafter may become payable in respect of the demised Neclme Dura or any part thereof and containing the like covenants and provisions as are herein contained.
(d) That the annual rent herein payable shall not be renewable/increased during the term of Sub-lease.

(e) On the written request of the Sub-Lessee made at least six (6) months before the expiration of the term hereby created, the Sub-Lessee shall, grant to the Sub-Lessee a further term of Sub-Lease on the terms and conditions to be agreed upon by both parties hereto.

(f) To allow the Sub-Lessee to make any alterations or additions to any of the buildings and/or to allow him to demolish any roof or any of the walls or floors of any building without the prior written consent of the Sub-Lessor PROVIDED, the Sub-Lessee shall have obtained approved plans from the necessary authority.

(g) To allow the Sub-Lessee to put up any building or structure as may be necessary for the better carrying out of his work.

PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED as follows:-

(a) This Sub-Lease shall be determined by the Sub-Lessee upon giving the Sub-Lessor six (6) months' notice of his intention to do so.

(b) Any notice under this Agreement shall be in writing. Notice to the Sub-Lessor shall be sufficiently served if addressed to it and posted to its last known address.

(c) The Sub-Lessee shall bear all the costs, charges, taxes and expenses for the registration of this Lease and all legal costs for preparing the same.
5. **IT IS MUTUALLY AGREED BETWEEN THE PARTIES follows:**

(a) In any of the following cases namely;

(i) if the rent or other payment hereunder or any part thereof shall be in arrears for a period of not less than ninety (90) days next after any of the days thereon the same ought to be paid as aforesaid whether the same shall have been legally demanded or not;

(ii) if there shall be any breach, non-performance or non-observance by the Sub-Lessee of any of the covenants hereinbefore contained and on its part to be performed and observed;

(iii) if the Sub-Lessee shall enter upon liquidation whether compulsory, or voluntary (other than for the purpose of: re-construction or amalgamation); or

(iv) if the Sub-Lessee shall enter into any arrangements or composition for the benefit of the Sub-Lessee's Creditors or shall suffer any distress or execution to be levied on the Sub-Lessee's goods.

It shall be lawful for the Sub-Lessor at any time thereafter to re-enter into and upon the property or any part thereof in the name of the whole and thereupon the term hereby created shall absolutely determine and the Sub-Lessor shall be entitled to have against and repossess and enjoy the property as his former estate, and anything of the contrary herein contained in anywise notwithstanding but without prejudice to any right of action or remedy of the Sub-Lessor in respect of an antecedent breach of the covenants by the Sub-Lessee hereinbefore contained and for avoidance of doubt, the Sub-Lessee's rights or interest in the property shall forthwith cease but shall be without prejudice to the Sub-Lessors' entitlement to rent unpaid and
PROVIDED that the right to re-enter shall only be exercised if the Sub-Lessor has first served a formal notice on the Sub-Lessee and the Sub-Lessee has failed to remedy the default with ninety (90) days of the date of service of such notice.

WHEREFORE the parties hereto have hereunto affixed their Common Seals and/or signatures in the presence of their respective Witnesses the day, month and years first above-written.

THE COMMON SEAL of
NATIONAL ENTERPRISE CORP.
was affixed hereto by its
authorised official;

MANAGING DIRECTOR

In the presence of:

COMPANY SECRETARY

THE COMMON SEAL of
HIMA CEMENT (1994) LTD
was affixed hereto by its
authorised official;

EXECUTIVE DIRECTOR

In the presence of:

SECRETARY Executive Director

THIS SUB-LEASE HAS BEEN SIGNED IN THREE COPIES ALL COPIES BEING EQUALLY AUTHENTIC.

DRAWN BY:–
The Corporation Secretary
National Enterprise Corporation

SANDALA
March 4th 2002

The Managing Director
Hima Cement Ltd.
P. O. Box 7230
KAMPALA

Dear Sir,

RE: BREACH OF THE PROVISIONS OF THE SUB-LEASE AGREEMENT

The agreement you entered into with ourselves on 10th June 1997 refers. In Article 3 of
the Lease Deed and clause 2, parts (d), (e) and (f) and clause 3 (h) of the said agreement,
enjoined you to provide monthly returns as required under regulation 62 of the mining
regulations and payment of rent and royalties under regulations 3 and 4.

As per the letter ref. ML 3946 dated 14 January, 2002 from the Acting Commissioner,
Geological Survey and Mines Department, you last submitted returns for the period
January to November, 1998 and have defaulted in payment of surface rent for 1999 to
date to the tune of Ug. Shs. 13,500,000.

This is, therefore, to remind you of the breach of the provisions of the Agreement and to
urge you to comply by:-

- Submitting monthly returns to the Geological Department copied to ourselves,

- Payment of royalties and rent to the same department and furnishing us with
  the information.

Your expeditious compliance with the above stipulations will be highly anticipated.

Yours faithfully,

Lt. J. M. Bangirana
CORPORATION SECRETARY
cc. Chairman – Board of Directors

cc. Acting Commissioner, Geological Survey and Mines Dept.


cc. Managing Director, NBC.
FULFILMENT OF WORKING OBLIGATIONS ON ML 3946:

Your attention is drawn to the provisions of Clause 2, parts (a), (d) and (f) of the Sub-lease Agreement for ML 3946 and Article 2 of the Lease Deed, and in particular the:

- Need to comply with all the obligations imposed on a leaseholder.
- Payment of due annual rent in advance and without demand.
- Development of infrastructure incidental to the successful exploitation of the limestone on the sub-lease during the first year.
- Submission of mining returns on monthly basis, as also demanded under Regulation 62 of the Mining Regulations.

It is noted that your company has failed to observe the requirements conditional to holding a lease or for subleasing, in that:

1. There is no evidence that you are employing a minimum of 5 labourers per 20 Acres or labour saving apparatus of equivalent horsepower on the lease as required under Part 5 of the Second Schedule to the Mining Regulations.

2. You are not working the lease to the satisfaction of the Commissioner as required under Section 25(1), nor have you applied for and secured suspension of working obligations earlier indicated as required under Section 25(2) and as advised by self during a visit at your factory on 29/08/2002.

3. No evidence has been forthcoming that your company has put in place the necessary infrastructure required to exploit successfully the limestone deposit under the lease at Dura.

4. In spite of both written and verbal reminders to submit monthly mining returns, the last ones were those submitted in January 2000 for the period January to December of 1999. Even then, they were all NIL returns and no reasons were indicated for failure to produce limestone as is required under the law.
5. You last paid for surface rent up to 6th of March 2002 only after it was demanded under ours ML 3946 of 14/01/2002. You have since not paid subsequent rent for the period 07/03/2002 to 06/03/2003.

As you are aware, National Enterprises Corporation (NEC), the Lessor, under theirs referenced NEC/MD/6N of 04/03/2002 wrote and urged you to comply with the terms of the Sub-lease Agreement. Similarly, this office has called upon you to respect the mining law, though with little success to date.

Please, note that under Clause 5, part a(ii) of the Sub-lease Agreement and under Article 3(a) of the Lease Deed, it is lawful for the Lessor at any time to re-enter the lease area and repossess it.

Therefore, this is to ask you to give reasons as to why the sub-lease should not be determined. You should respond to the issues raised herein urgently in writing, in any case not later than 21 days of the date of this letter, as a copy of it is faxed to you.

Joshua T. Tuhumwire
Ag. COMMISSIONER

CC: Managing Director,
National Enterprises Corporation,
P. O. Box 25420
KAMPALA.
Fax: (041) 233469

CC: Inspector of Mines,
P. O. Box 32,
MBARARA.
Ref: NEC/MO/5N

The Managing Director
Hima Cement Ltd
P.O. Box 7230
KAMPALA

June 22, 2006

Dear Sir,

RE: INTENT TO TERMINATE A SUB-LEASE CONTRACT

Reference is made to a sublease contract signed between your company and ourselves regarding NEC Lime Dura on June 10, 1997.

While we take cognizance of the contract Terms and conditions, we are obliged by the Ministry of Defence, who is our line Ministry to serve you with a notice of ninety (90) days from the date of this letter terminating the said contract.

The Ministry of Defence wishes to utilize NEC Lime Dura for purposes of security needs.

We regret any inconveniences caused and hope to reach an amicable settlement of this matter.

Yours faithfully,

Col (Rtd) Fred Mugerwa
MANAGING DIRECTOR

C.C. The Hon. Minister for Defence
The Permanent Secretary, Ministry of Water, Lands and Environment
The Secretary Uganda Land Commission
The Chief of Defence Forces
Ref: NEC/MD/6N

August 9, 2006

The Managing Director
Hima Cement Ltd
P.O. Box 7230
KAMPALA

Dear Sir,

RE: TERMINATION OF SUB-LEASE AGREEMENT

REFERENCES:

A. Letter Ref: NEC/MD/6N dated June 22, 2006

B. Letter Ref: ML 3964 dated 5th February 2003 from Commissioner, Department of Geological Survey and Mines.


1. All the above correspondences are in respect of the Sub-lease Agreement signed between NEC and Hima Cement Ltd on 10th June 1997.

2. Ref: B and C drew your attention to Clause 2 of the Sub-lease Agreement which laid down your obligations and required you to fulfill those obligations. They further required you to give reasons why the sub-lease should not be terminated.
3. Despite those correspondences, you did not give sufficient reasons why the sub-lease would not be terminated, neither did you go ahead to fulfill your obligations under the sub-lease.

4. It is clear that for the last 9 years of the sub-lease, you have not carried out any developments on the said land in breach of the several covenants in the Sub-Lease Agreement.

5. It was for that reason among others, that I served you with notice to terminate the sub-lease within 90 days from June 22, 2006 the date of that letter (Ref A).

6. This is therefore to re-affirm to you the position stated in my Notice of 22nd June 2006 and inform you that the sub-lease shall terminate on September 22nd 2006 and NEC shall re-enter the property.

7. Expect no further Notice from us.

Yours faithfully,

[Signature]

Col. (Rtd) Fred Mwesigye
MANAGING DIRECTOR

C.c  Permanent Secretary – MOD

"  The Permanent Secretary
  Ministry of Energy & Mineral Development

v  The Commissioner
  Department of Geological Survey and Mines
  Entebbe
Ref: NEC/MD/9N

MOTORSENSE LIMITED
Motsen House, 264 Water Road
Wembley, Middx. HA0 THX, U.K
Tel: 020 8991 0804
Fax: 020 8991 5247
Email: motsen@aol.com
Website: www.motorsense.co.uk

C/o. Rajesh Kumar
P.O. Box 1312
Nairobi, Kenya

RE: ESTABLISHMENT OF A CEMENT FACTORY AT DURA

NEC has a mining lease 3946 for the dura limestone deposits. We are now looking for an investor who has a proven experience in the cement industry to put up a cement plant at Dura. This is in line with the government’s strategic policy to enhance growth and development especially, in the construction of dams, houses, commercial buildings, roads and other related infrastructure.

You may be aware that at present Uganda is a net importer of cement and the price of cement in Uganda is above US$ 10 per bag which is on a higher side. The demand for cement in Uganda is envisaged to increase by over 20% per annum. Uganda thus requires a third cement plant. A copy of the letter dated 20th February 2003 from the Commissioner, Geological Survey & Mines Department/Ministry of Energy & Mineral Development - government of Uganda is enclosed as a supportive document of the government’s priority to look for an investor to establish a cement plant at Dura.

I am aware that your group had made a single largest investment in the cement industry in Uganda in 1994 and had rehabilitated, revamped and expanded the dilapidated cement factory. Due to your experience and achievements in the cement industry in Uganda, NEC is inviting your group to come and co-invest with NEC in Uganda by putting up a cement factory at
Dura. The government shall give your group all the assistance and gui-
that you may require.

I am also inviting you to consider co-investment in the establishment of:

i) A steel Rolling Mill.
ii) Low Cost Housing.

The Security Forces have a lot of scrap that can sustain the factory. If
Steel Rolling Mill project is implemented plus the cement factory, these t
projects will go a long way to implement the government policy
establishing Low Cost Housing for the Forces and the Public.

I look forward to your earliest response over the mater.

Yours faithfully,

[Signature]

Col. (Rtd.) Fred M. [Name]

MANAGING DIRECTOR.
The Republic of Uganda

9 August 2006

Mr. Rajesh Kumar Rawal
Director,
Dura Cement Ltd
P.O. Box 35007,
Kampala,
UGANDA.

Establishment of a Cement Plant at Dura, Western Uganda

1. This is in reference to your meeting with H.E. The President, Yoweri Museveni held on 5th August 2006 and the various meetings held with the Ministers of Defence, Industry, Investments, Energy and Mineral Development as well as with officials from the National Enterprises Corporation (NEC) in respect of the above subject.

2. Further reference is made to the letter ref. GSM/186/456/01 dated 30th June 2006 of the Permanent Secretary - Ministry of Energy and Mineral Development in respect of the above subject.

3. National Enterprises Corporation (NEC), a Corporation under the Ministry of Defence is the Registered Proprietor of the land comprised in LRV 2504, FOLIO 4, BURAHYA BLOCK 182, Plots 4, 5 and 6 and holder of a Lease granted by the Ministry of Energy and Mineral development.

4. Your proposal to set up a third cement factory in Uganda has been accepted and your Group can put up a Cement Factory at DURA in Western Uganda.

5. In collaboration with the Ministry of Energy and Mineral Development, your company will be granted a Mining Lease of all the Limestone Quarries, Gypsum, Volcanic Ash, Clay, Iron Ore Quarries and other Raw material sites in DURA for a period of 21 years, subject to extension. In accordance with the investment law and subject to the review that H.E. The President is willing to grant, your company has been granted Tax Holiday for a period of 10 years from the day the company commences production.
Subject to existing laws, your company will be granted exemptions from: Import Duty, Withholding Tax, VAT exemptions etc, on the Plant/Machinery/Equipment/Vehicles/Inputs/Raw Materials/Electricity/Furnace Oil.

8. Your company assets, staff, railway line, roads and nearby areas will be provided 24 hours with security by the Government.

9. Your Company can take over DURA from 23rd September, 2006 for the period of the Lease.

10. The Government of Uganda will facilitate the company to be issued with Investment Licences, Permits, Leases, Permissions and Approvals from all the concerned Government Departments.

11. The Government of Uganda will offer protection to the company against unfair competition and dumping.

12. Uganda requires between 10-15 million tons of cement in the next 10 years to complete its Mega Projects such as Dams, Roads, Buildings, Infrastructure etc. in both the public and private sectors. The country thus requires a third Cement Plant.

13. The Uganda government will render all necessary assistance and guidance to the Group in order that the project will be in the take-off stage as soon as possible and be completed within the scheduled time of 18-24 months once the Plant/Machinery, Equipment, Inputs etc. are at the Site.

Much obliged.

Noble Mayombo psc (U)
Brigadier
PERMANENT SECRETARY

Cc. The Permanent Secretary
Ministry of Energy and Mineral Development.
Cc. The Managing Director
National Enterprises Corporation
CERTIFICATE OF TITLE

DESCRIPTION OF LAND

old land edged red on the plan attached hereto and situate and known

Number: 3, 4, 5 & 6

Land: BURANYA BLOCK 182

Municipality: KABALE

Area: APPROX. 473.5 NECTARES

7TH MARCH 1990 for 21-years and months

subject to the covenants and conditions contained or implied in Lease

bound up herewith and to the incumbrances (if any) entered in

cs Register.

PROPRIETORSHIP

<table>
<thead>
<tr>
<th>Name and Address of Proprietor</th>
<th>Signature of Registrar</th>
</tr>
</thead>
<tbody>
<tr>
<td>NATIONAL ENTERPRISE CORPORATION OF P.O. BOX 35007, KAMPALA</td>
<td>Principal Register of Titles</td>
</tr>
<tr>
<td>JRA CEMENT LIMITED OF P.O. BOX 35007, KAMPALA</td>
<td>Principal Register of Titles</td>
</tr>
</tbody>
</table>

20TH DECEMBER 2000
THE MINING ACT.

THE MINING REGULATIONS.

MINING LEASE.

UGANDA REVENUE AUTHORITY, DOMESTIC TAXES DEPT.

No. ML 3946

20/76A

THIS MINING LEASE made the 31st day of MARCH 1990 BETWEEN

the Commissioner (representing the Ugandan Government, hereinafter called the Lessor (which expression shall be taken to include his/her successors), of the one part and

NATIONAL ENTERPRISE CORPORATION P. O. BOX 3145, KAMPALA.
(here insert name, address and other relevant particulars) hereinafter called the Lessee (which expression shall be taken to include his/her successor) of the other part.

WITNESSETH as follows –

In consideration of the payments hereinafter reserved and of the performance by the lessee of the duties imposed upon mining lessees generally by the Mining Act, and subject to the provisions of the said Act, the Lessor hereby demises and grants unto the Lessee the minerals mentioned in Schedule A hereto in the area mentioned and described in Schedule B hereto and approximately delineated on the map attached hereto together with in respect of such minerals and area the rights conferred upon mining lessees generally by the Mining Act. To have and to hold the premises hereby demised and granted unto the lessee, for the term of TWENTY ONE years from the date of these presents, Yielding and Paying therefor to the Commissioner during the said term annually in advance and without demand an annual mineral rent as specified in the Third Schedule to the Regulations. And Yielding and Paying all royalties payable under the provisions of the Mining Act, and the Lessee hereby covenants with the Lessor to comply with the provisions of the Mining Act. AND the lessee also covenants that on execution of this lease the lessee will within ninety (90) days comply with the provisions of section 50 of the Mining Act, as though such provisions were applicable to this lease. AND the lessee hereby further covenants to:

(i) pay annual mineral rent at each anniversary without demand as provided under section 106 of the Act;

(ii) observe environmental restoration plan as required under section 144 of the Act.
In accordance with provisions to regulation 48(1) and 62(g) of the Mining Regulations, 2004 and provision to Section 93(I) of the Mining Act, 2003, this Mining Lease is hereby transferred from H/S National Enterprise Corporation to H/S Dura Cement Limited with effect from 19th January, 2007. Registration fees paid vide DKG 2950365 of 19th January, 2007.

In accordance with Section 47 of the Mining Act and reg. 46 of the Mining Regulation, 2004, this Mining Lease ML 3946 has been renewed for a period of fifteen years beginning from 7th March 2011. Renewal fees paid vide DKG 2954042 of 2nd February, 2007.
2nd February, 2007

The Director,
Dura Cement Limited,
P. O. Box 35007,
KAMPALA.

RENEWAL OF MINING LEASE ML 3946

This is in reference to your letter of 25th January 2007 and the attached Form X in respect of the above subject.

ML 3946 has been renewed for fifteen (15) years beginning from 7th March 2011 as you requested.

This renewal was done in consideration of concerns raised by your financiers about the duration of four (4) years remaining being a short time to take a decision to invest a lot of money.

Therefore, this renewal now gives a duration of nineteen (19) years from 7th March, 2007 which is adequate time to invest.

[Signature]

Wandera

COMMISSIONER

Permanent Secretary,
Ministry of Energy & Mineral Development,
KAMPALA.

Inspector of Mines,
P. O. Box 32,
MBARARA
5th April, 2007

Mr. Bruno Lafont
President
LAFARGE SA
61 rue des Belles Ferilles B.P 40 75782
Paris Cedex 16 France

INTEREST TO EXPAND YOUR INVESTMENT OF CEMENT PRODUCTION TO DURA SITE

I refer to your letter of Interest to expand M/S Lafarge's Investment of cement production at Hima to Dura site, dated 22nd January, 2007.

It was with great pleasure that I received this interest from your esteemed organization, which is internationally reknown and credible in the production of cement. It is indeed a vote of confidence in the country's investment conditions.

I have, therefore, directed the Minister of Energy and Minerals, and other relevant Ministries to expeditiously make arrangements to hand over the site to your organization.
You are, however expected to meet the following performance benchmark among others:

- You will have to adhere to the mutually agreed timetable clearly stipulating when you are expected to have commenced the production of cement.

This is to guarantee, that the Lafarge Group are genuinely interested in expansion but not strategically attempting to frustrate other possible competitors.

Please do not hesitate to consult me when you find it necessary. Looking forward to further strengthening our partnership and friendship in development.

Yoweri K. Museveni
President of the Republic of Uganda

Copy to: Baroness Linda Chalker
Unilever International

Rt. Hon. Prime Minister

Hon. Daudi Migereko
Minister of Energy and Minerals
Kampala
10 April 2007

Hon. Daudi Migereko
Minister of Energy and Mineral Development
KAMPALA

REPORT ON LIMESTONE DEPOSITS AND INVESTMENT AT DURA

I have read the report on the study of the quantity of limestone deposits and the investment potential of mining at Dura site.

I am of the considered opinion that the following critical factors should be taken into account to enable us be strategic in our due diligence on the matter:

(1) The 13 years investment period for optimum production at Hima, using both Hima and Dura deposits, is too short to maximize returns on investment for multinationals like Lafarge;

(2) M/S Lafarge/Hima Cement is an internationally reknowned company. It is credible in terms of technical competence and financial worthiness. For strategic reasons, it is important to have it as a friend and partner in development;

(3) Unlike in agriculture, phosphates and our high quality iron ore deposits, we do not have comparative advantage with regard to limestone deposits in the East African Region. Kenya has the largest Limestone deposits and Lafarge Group may decide to move to Kenya or any other country. I see no good reason why we should not keep this investment.

I, therefore, strongly recommend that the Dura site be given to M/S Lafarge (Hima Cement) for the production of Cement.
M/S Lafarge (Hima Cement) must, however, meet the following performance benchmarks among others:

1. Their expansion must start immediately and a specific period be given to them within which they must have commenced production;

2. They must assure Government that the price of Cement will come down as soon as they commence production due to the increase in supply of cement to the market; or if the price is to remain high, it should be on account of ascertainable facts, not on account of monopolistic prices;

3. They must also assure Government that they will undertake to make use of the residual Dimension Stone (4.1 million metric tones) for commercial purposes instead of disposing the same as waste.

As for the Rawal Group, let the Attorney General study the agreements Government signed with them and propose how best they can be terminated.

It should, however, be taken into account that Government had offered the Dura Site free of charge to MS/Rawal as a gesture of goodwill.

Yoweri K. Museveni
PRESIDENT

cc: Rt. Hon. Prime Minister
cc: Hon. Minister of Justice and Constitutional Affairs
cc: Attorney General
cc: Hon. Minister of Finance, Planning & Economic Development
cc: Hon. Minister of Defence
cc: Hon. Minister of State for Investment
cc: Executive Director – Uganda Investment Authority
10th April 2007

The Permanent Secretary
Ministry of Energy & Mineral Development
Kampala

The Permanent Secretary/
Secretary to the Treasury
Ministry of Finance, Planning &
Economic Development
Kampala

The Permanent Secretary
Ministry of Defence
Bombo

REPORT ON THE PROPOSED CANCELLATION/TERMINATION
OF THE MINING LEASE CONCESSION TO DURA CEメント
LIMITED (DCL) AT DURA KAMWENGE DISTRICT IN FAVOUR
OF HIMCEMENT (1994) LTD (HCL)

I refer to the above subject.

I enclose a copy of the draft report which will be the main
document to be discussed in our meeting scheduled for
12th April 2007 at 11.00 a.m in the Ministry of Energy and
Mineral Development Boardroom.
Please acknowledge receipt.

L. Tbaruha
SOLICITOR GENERAL

c.c. Hon. Attorney General/
Minister of Justice &
Constitutional Affairs

c.c. Hon. Deputy Attorney General/
Minister of State for Justice &
Constitutional Affairs

c.c. Deputy Secretary to the Treasury
REPORT ON THE PROPOSED CANCELLATION/TERMINATION OF THE MINING LEASE CONCESSION TO DURA CEMENT LIMITED (DCL) AT DURA KAMWENGE DISTRICT IN FAVOUR OF HIMA CEMENT (1994) LTD (HCL)

1.0 Development of Limestone Resources at Dura, Kamwenge District.

1.1. Limestone deposits at Dura are estimated to be 17 million tons out of which 9-10 million tons can, by DCL's proposed investment of US-$50,000,000 and on the basis of prevailing technology, be used to set up a factory there to manufacture a minimum of 270,000 tons of cement p.a for 23 years. Blending with other pozzolanic materials is anticipated to extend production to 30 years.

1.2 The said limestone deposits, being in a rural area, have a potential if developed, to make a significant contribution towards the eradication of rural poverty, which is one of the priority programmes of Government, in that the provision of additional direct and indirect employment in the area will generate incomes for the population there.
1.3 Currently the total demand for cement is over 1.5 million tons. The two factories are producing a combined total of less than 600,000 tons.

The country does not manufacture sufficient cement to support the construction industry; hence large amounts of cement are imported into the country from Kenya.

Last year alone the country imported 459,267 tons of clinker worth US $ 29,745,066 and 396,397 tons of cement worth US $ 38,943,637.

The development of the energy sector which is critical for economic and social development of the country requires the construction of hydro-electric dams on the already identified suitable sites.

It is imperative therefore that limestone deposits at Dura should be utilized to manufacture enough cement not only for the construction industry in general but also for the construction of dams for electricity generation.
2.0 Processing and Granting of Mining Lease Concession To DCL

2.1 On 7th March, 1990 National Enterprise Corporation (NEC) of the Ministry of Defence obtained a 21 year mining lease from the Ministry of Energy and Mineral Development in respect of the land containing the aforementioned large deposits of limestone at Dura.

2.2 On 10th June, 1997 NEC sub-leased the remainder of the lease, namely, fourteen (14) years to HCL. The latter, however, failed to develop the land by, among other things, exploiting the limestone deposits in accordance with the covenants in the Sub-lease.

2.3 In January 2005 NEC invited Mr. Rajesh Kumar Rawal of M/S Motorsense Ltd of Nairobi to co-invest with NEC by putting up a cement factory at Dura.

2.4 On 22nd June, 2006 NEC issued a 90 days notice of termination of the Sub-lease to HCL on the basis of breach of several covenants in the Sub-lease. HCL resisted the proposed termination.
In July 2006 NEC sought legal advice from the Solicitor General on the termination of the Sub-lease.

The Solicitor General advised that in view of the fact that for 9 years HCL had not carried out any developments as provided for in the covenants in the Sub-lease there was breach of the said several covenants which entitled NEC to terminate the same and to re-enter the land.

Subsequently HCL's actions including court action to resist termination and re-entry were not successful.

On 9th August, 2006 the Permanent Secretary, Ministry of Defence wrote to Mr. Rajesh Kumar Rawal of DCL informing him that following the meeting with H.E the President on 3rd August, 2006 and various meetings held with the Ministers of Defence, Industry, Investments, Energy and Mineral Development and with officials of NEC, his proposal to set up a third cement factory at DURA in Western Uganda had been accepted.
The letter further stated, among other things, that in collaboration with the Ministry of Energy and Mineral Development, DCL will be granted a mining lease of 21 years subject to extension, and DCL can take over Dura from 23rd September 2006 for the period of the lease. Furthermore DCL will be granted tax holiday for 10 years from commencement of production, and will be issued with investment licence, permits, leases, permissions and approvals from all concerned Government Departments. Finally the letter stated that Government will render all necessary assistance to ensure that the project will be completed within the scheduled time of 18-24 months.

2.7 In the letter of 22nd August, 2006 to the Minister of Defence, the Minister of Energy and Mineral Development indicated that he had received instructions from the President to issue a Mining Lease to Mr. Rawal to mine limestone deposits at Dura and set up a cement factory there.
He informed the Minister of Defence, among other things, that NEC should relinquish its mining lease to enable his Ministry to issue a new mining lease to Mr. Rawal as directed by the President.

2.8 On 19th January 2007 NEC transferred its 21 year mining lease to DCL with effect from 7th March, 1990. However, the financiers of DCL had concerns that the duration of four (4) years remaining for the lease to expire is a short time and consequently they would not be in a position to take a decision to invest a lot of money in the venture.

2.9 In the letter of 2nd February, 2007 the Commissioner for Geological Survey and Mines informed DCL that the Mining lease had been renewed for fifteen (15) years with effect from 7th March, 2011. The said renewal gave the “duration of nineteen (19) years from 7th March, 2007 which is adequate time to invest”. This therefore means that the Mining lease will expire on 7th March 2026.
3.0 Investor Confidence in Uganda As A Foreign Investment Destination

3.1 One of the great achievements of the NRM Administration since 1986 has been the establishment of a policy of economic liberalisation and the Government's unquestionable commitment to the rule of law and in particular the recognition and legal protection of private property rights.

3.2 The return to the previous owners of Asian properties which were expropriated in the 1970s is a manifestation of the NRM Administration's policy of the legal protection of private property rights. Consequently the cancellation/termination of DCL's mining rights in Dura limestone deposits might create the wrong impression that Government is abandoning the said policy of legal protection of private property rights.

3.3 Currently, besides substantial investments from Ugandan nationals of Indian origin, India tops the list of foreign investments in the country.
3.4 The aforementioned considerations should be taken into account before a decision to cancel/terminate DCL's mining rights is effected.

4.0 Lack of Legal Basis to Support the Proposed Cancellation/Termination of DCL's Mining Lease Concession

4.1 Section 90 of the Mining Act, 2003, provides five grounds on the basis of which the Commissioner for Geological Survey & Mines may cancel a mineral right of any holder thereof.

DCL has not breached any of the five grounds in the said Section 90 of the Act or any of the covenants in the mining lease or indeed any of the development conditions in the Project Proposal/ Business Plan and therefore there is no basis in law to warrant cancellation of DCL's mining lease concession.

4.2 In the absence of the legal basis to support cancellation of the said mining lease concession, DCL has a legal right to apply to court for a declaration that it is the holder of the mining rights in Dura
limestone deposits and for an order that under those mining rights it is entitled in law to retain legal and physical possession of the said limestone resources and to utilize same to set up a cement factory at Dura.

4.3 In the circumstances, therefore, before Government effects cancellation of DCL's mining lease concession, it is imperative that a negotiated pull out of DCL is sought to avoid court action.

5.0 Legal Consequences of the Proposed Cancellation/Termination of DCL's Mining Lease Concession

5.1 As indicated in para 2.6 to 2.8 above Government accepted DCL's detailed Project Proposal/offer of July 2006 to set up a 3rd cement Factory. The said acceptance included, among other things, the grant of a 21 year mining Lease subject to extension over the limestone deposits at Dura.
5.2 In the circumstances the Cancellation/Termination of the mining lease concession would be a breach of contract for the construction of the 3rd cement factory at Dura.

Assuming that court action indicated in para 4.2 to 4.3 above is avoided by a successful negotiated pull out of DCL, the said breach of contract will subject Government to payment of compensation/damages to DCL.

5.3 The general principle of law in the event of breach contract is *restitutio in integrum*. In other words the innocent party to the contract (DCL) must be put into a position it would have been in had the contract been performed.

5.4 In the circumstances assuming that DCL decides to forfeit its legal right to seek a declaration in court that it is the holder of the mining rights in Dura limestone deposits and an order that it is entitled to utilize the same to set up a cement plant, DCL must, in financial terms, be put in a position it would have been in had the mining lease concession been fully
executed by the construction and commissioning of the cement factory at Dura.

5.5. Legally, the measure of compensation recoverable by DCL is determined on the basis of the following principles.

First of all, DCL must recover in full all expenses incurred in the pursuit of obtaining the mining lease concession such as the cost of the feasibility study and Business Plan, registration fees including stamp duty, travel and associated expenses to mobilise financing of the project.

Secondly DCL must recover the costs of all the legally binding financial commitments for the construction of the cement factory.

Thirdly, DCL must recover the expected benefits that would have flowed from the successful completion of the construction and commissioning of the cement factory at Dura. In particular DCL is entitled to recover loss of projected income from the sales of cement produced at the factory which sales include expected
profits for the duration of the mining lease concession, that is, 19 years.

6.0 Financial Consequences of the Proposed Cancellation/Termination of DCL's Mining Lease Concession

6.1 Cancellation/Termination of DCL's Mining Lease Concession will lead to financial consequences in two respects.

First of all, public funds will have to be used to pay compensation to DCL for all financial costs incurred in the pursuit of the implementation of the project and for the loss of projected income from the lost investment. The legal analysis in para 5 above sets out the general principles of law applicable to the determination of the amount of compensation payable to DCL from public funds.

Secondly, the national economy will be denied substantial financial benefits that would have accrued from the business operations of the 3rd cement factory in the country.
6.2 Compensation payments to DCL

(a) Information in the documents provided by the Ministry of Energy and Mineral Development and National Enterprise Corporation has been used as a basis for the preparation of this report.

The said documents lack information relating to the financial costs incurred by DCL in the pursuit of execution of the project such as payment for land, registration fees and stamp duty for the mining lease, travel and associated expenses to mobilise financing for the project, costs of the feasibility studies, costs of the financing commitments etc.

In order to be able to determine the amount of compensation payable under this category, the Government should request DCL to submit evidence of various expenses related to the implementation of the project.

(b) The biggest component of compensation payable to DCL undoubtedly relates to the loss of projected income from the sales of cement
that would have been produced at the factory for the entire duration of the mining lease concession.

The current price for cement is US $200 per ton. However, the Project Proposal indicates the price of US $170 per ton.

During the first phase of commercial production, DCL planned production at 270,000 tons p.a. in the second phase, 360,000 tons p.a. and 450,000 tons p.a. before the tenth year of production.

In the circumstances, taking as the average 360,000 tons p.a., DCL's projected income for the entire duration of the mining lease concession would be as follows:

\[
\begin{align*}
360,000 \text{ tons p.a.} & \times \text{US $170 per ton} \\
= & \quad \text{US $61,200,000 p.a.} \\
= & \quad \text{US $61,200,000 \times 19 years} \\
= & \quad \text{US $1,162,800,000}
\end{align*}
\]
Therefore the amount of compensation payable as loss of projected income from the sales of cement produced during the entire duration of the mining lease concession, that is 19 years is US $ 1,162,800,000.

Out of the said US $ 1,162,800,000 there should be deductions of operational expenses for the entire 19 year period.

6.3 Loss of Financial benefits to the National Economy

Although the loss of financial benefits to the country is not recoverable, it is important to mention the same here.

The national economy will benefit from the establishment of the 3rd cement factory at Dura in several aspects.

The project will optimize the use of the country's limestone deposits by producing cement more cheaply than at each of the other two(2) cement factories, will contribute to import substitution.
initiative, generate foreign exchange earnings, earn more revenue for the national treasury, increase domestic earnings and contribute to the eradication of rural poverty efforts through providing direct and indirect employment opportunities.

In financial terms the cancellation/termination of DCL's mining lease concession will lead to the loss of the following financial benefits to the national economy as indicted below.

As an example the production of 360,000 tons p.a. at US $ 170 per ton will be used to illustrate the financial benefits that would have been derived from DCL's investment.

(i) Reduction of the price of cement

The proposed cement factory at Dura will use modern technology to improve on the quality of cement and reduce its production costs resulting into the reduced sale price of US $ 170 per ton as opposed to the current US $ 200 per tōn. This will be of benefit to the consumer.
Currently sales of cement of 360,000 tons p.a. at US $ 200 per ton would generate US $ 72,000,000 p.a which in the duration of 19 years would be US $ 1,368,000,000.

In contrast with the 3rd cement factory in operation sales of 360,000 tons p.a. at US $ 170 per ton would generate US $ 61,200,000 p.a which in the duration of 19 years would be US $ 1,162,000,000.

Clearly with the 3rd cement factory in operation, sales of 360,000 tons p.a. during the 19 year period will make cement cheaper by US $ 305,200,000 thereby making cement accessible to more consumers in the construction industry.

(iii) Import Substitution

The production of 360,000 tons p.a. at US $ 170 per ton will generate a turn over of US $ 61,200,000 p.a and US $ 1,162,000,000 during the 19 year period for the national economy.
(iii) Provision of Employment

The said production of 360,000 tons p.a will generate employment and therefore increase domestic earnings.

The project will create 700 jobs directly and 1000 jobs indirectly.

DCL will employ 700 Ugandans at an average salary of US $1500 per emplo. This will result in an annual total wage bill of US $1,050,000.

(iv) Savings of Foreign Exchange

The said production of 360,000 tons p.a. during the 19 year period will make Uganda less dependent on imported cement from Kenya and therefore save foreign exchange that would otherwise have been required to finance the said imports.
Para 1.3 above indicates that last year alone US $ 29,745,066 and US $ 38,943,637 were used to import clinker and cement respectively.

(v) Generation of Foreign Exchange.

The said production of 360,000 tons p.a will enable exports of cement to eastern DRC and Southern Sudan for the construction industry in view of the absence of cement plants there. The export of cement will enable the country to earn foreign exchange.

(vi) Payment of taxes

The said production will enable Government to earn more revenue for the national treasury in form of VAT, excise duty and PAYE.

7.0 HCL’s Lack of Interest to Invest in Dura Limestone Deposits

7.1 As indicated in para 2.2 to 2.5 above, HCL acquired mining rights in Dura Limestone deposits for 14 years. However for 9 years HCL did absolutely nothing to exploit those deposits.
7.2 HCL's continued interest in the acquisition of the mining rights in Dura limestone deposits is motivated purely by self-interest.

Last year HCL's efforts to resist termination of sublease over the said deposits was due to the fact that first of all it is opposed to another competitor, namely, DCL coming on the market. Secondly HCL is a subsidiary of Bamburi Cement Ltd of Kenya whose cement has been imported in Uganda in large quantities. The establishment of a 3rd cement factory would adversely affect imports of Bamburi cement from Kenya.

8.0 Recommendations

8.1 The following recommendations should be addressed by Government before a decision to cancel/terminate DCL's mining lease concession in favour of HCL is made

(i) DCL has complied with the provisions of the Mining Act, the Covenants in the mining lease
and the development conditions in the Project Proposal/Business Plan.

The progress made on the project to set up the country's 3rd cement plant within 24 months from the grant of the mining lease is on schedule. Therefore DCL can successfully obtain court redress against cancellation/termination of the concession. In the circumstances it is recommended that Government should pursue a negotiated pull out of DCL.

(ii) Cancellation/Termination of the concession would be a breach of contract. The amount of compensation to DCL for the loss of its mining rights for 19 years would be about US 1 billion less operational expenses for the entire period of 19 years.

It is recommended that Government should effectively prepare for the negotiations with DCL on the actual amount of compensation payable.
(iii) Government should negotiate an Agreement with HCL with detailed legally enforceable development conditions for the establishment of a 3rd cement factory at Dura within a specified period. The said Agreement may, among others, include incorporation of the principle of burden sharing with respect to the compensation payable in (ii) above.
7th May, 2007

Mr. Rawal Rajesh
Managing Director
Dura Cement Limited
P.O. Box 35007
Kampala

P.S.

Please have this instruction effected. Also have a meeting with Mr. Rawal to discuss alternative investment options as soon as possible. Let us advice the steps we have taken. 

INTEREST TO EXPAND YOUR INVESTMENT OF CEMENT PRODUCTION TO DURA SITE

The Government of Uganda has received an alternative investment proposal from M/S Lafarge for the development of Dura Site which was awarded to your Company.

I am convinced that the new proposal is in the best interest of our country, because of its comprehensiveness and sustainability. The Government trusts that M/S Lafarge has the financial and technical competence to meet the performance benchmarks expected of the investment at Dura Site.

I have, therefore, instructed the Minister of Energy and Minerals to give Dura Site to M/S Lafarge, and to terminate the agreement made with you on mutually agreed terms.

The mutual understanding in terminating the agreement, should take into account the fact that the site was earlier given to you without prior financial obligation on your part, and that I will not hesitate to recommend your Company to develop any other site you may wish.
to invest in as long as there are no encumbrances on the site so chosen.

I take this opportunity to thank you for the expressed interest and commitment to be our partner in development.

Yoweri K. Museveni  
President of the Republic of Uganda

Copy to:  Rt. Hon. Prime Minister  
Minister of Justice and Constitutional/ Attorney General  
Minister of Energy and Minerals  
Minister of Defence
June 12, 2007

Mr. Rajesh Rawal
Director
Dura Cement Limited
P.O Box 35007
KAMPALA

RE: CANCELLATION OF THE DURA CEMENT LIMITED MINING LEASE NO. ML 3946

I am directed to have the above lease cancelled with immediate effect. In that regard you are requested to call on this office to discuss this matter and alternative investment opportunities for cement manufacture.

Following our meeting, I will appraise the Minister on the outcome of our discussions and the proposed way forward. I take this opportunity to express Government’s gratitude to you and your company for the interest taken in investing in Uganda’s Mineral Industry.

Joshua T. Tuhumwire
COMMISSIONER

C.C. The Minister of Energy and Mineral Development
The Minister of State for Mineral Development
The Permanent Secretary, Ministry of Energy and Mineral Development.
Friday, June 22, 2007

Hon. Daudi Migereko (M.P),
Minister of Energy and Mineral Development,
Amber House, Plot No. 29/33,
P.O. Box 7270,
Kampala - Uganda.

Honourable Minister,

RE: REPORT ON OUR MEETINGS

Further to our meetings of Monday, 18th June 2007 with the Commissioner, Geological Survey & Mines at his office at Entebbe and another meeting on Tuesday, 19th June 2007 with you, Hon. Ministers of State, your Permanent Secretary and the Assistant Commissioner – we wish to reiterate the following matters we discussed:

1. We thank you all the six Senior Officials of the Ministry of Energy and Mineral Development for the meeting and the reassurances of the government’s earnestness to resolve the matter as soon as possible.

2. We had officially hand-delivered our group’s letter dated 18th June 2007 which was in reply to the Commissioner’s letter dated 12th June 2007 regarding the cancellation of our legal Mining Lease ML 3946.

3. Our Chairman and the board of Directors would wish to reiterate the following:

(a). You are requested, in accordance with section 118 of the Mining Act 2003 for an administrative review of the decision to cancel our Mining Lease ML 3946 in our favour.
In 2003, the government was looking for the investors who can establish a cement plant at Dura. In 2005, our group was invited to establish the cement plant at Dura. Between May and August 2006, we had several meetings with the concerned senior government officials including 3 meetings with His Excellency, the President / government of Uganda. All the concerned government officials and His Excellency thanked our group for accepting the government's request to establish the third cement plant in Uganda at Dura – Kamwenge district.

In July 2006, the government of Uganda approved our business plan and issued a 13 points letter which is binding to both the parties. The government handed over Dura to our group in September 2006. Our company had sent regular progress reports to the government and conducted over 117 meetings with the concerned departments of the government to discuss the progress on our project. The government of Uganda, vide its letter of 22nd March 2007 commended our group for its excellent progress in our Dura Project.

You will appreciate that our respective teams based in Uganda, UK, India, Canada and Kenya etc have worked very hard, round the clock, for the past one year and we are now on course to complete our project as scheduled.

Our project will also enhance the poverty eradication in the rural areas of Uganda, especially in the Kamwenge District.

Nothing is for free since our total investment in our Dura Cement Project will exceed U.S.$60 Million - for which the government of Uganda accepted the letters of comfort totaling U.S.$ 75 Million from our bankers.

Nothing is for free since the government of Uganda would earn the substantial revenue in the form of royalties, various taxes, duties, VAT, power tariffs, railway tariffs, other statutory fees etc. For example, the royalties from the 10 million tons of limestone at Dura will fetch a revenue of over Ug.Sh. 30 Billion The government will also save millions of dollars in the import substitution and in fact earn millions of dollars in foreign exchange through the exports of our cement to the neighbouring countries. NEC, would earn Ug.Sh. 4.625 Billion – 5.550 Billion for 25 – 30 years at the rate of Ug.Sh. 185,000,000 per annum. Our project at Dura will create
a multiplier effect in the whole economy of Uganda. It will also curb the monopolistic tendencies in the market and in fact reduce prices of cement through fair competition and cost effective optimization of the resources. Our group/partners have been in the cement production since 1939.

Our total turnover in the project will be over U.S.$ 1.2 Billion, out of which, for the cement plant the loss of profit i.e. net cash flows accruing to the shareholders (profitability) over a period of 19 years would exceed over U.S.$358 Million - which can increase to U.S.$500 Million after expansion. Even the net present value of such net inflow discounted at 10% would amount to U.S.$71.7 Million. Thus the total amount we stand to loose in the net present value terms would amount to over U.S.$82.5 Million. This amount excludes the loss of profits relating to Dimension Stone Project whose additional net cash flow would be U.S.$88 Million over the entire project period and the net present value of such net inflows would be over U.S.$20.67 Million. Thus the total amount we stand to lose in the profitability will be U.S.$588 Million (U.S.$358 + 500 Million in Cement and U.S.$88 Million in Dimension Stone) whose net present value terms covering both the Cement Project and Dimension Stone Project at our Dura mining lease area would be well over U.S.$103 Million. The said losses does not include our group’s losses of opportunities in the other prospective/alternative lucrative projects in S.Sudan, India, Kenya and in other countries which our group forfeited in favour of Uganda. Further more, to-date, our group has incurred over U.S.$ 500,000 in expenses as well as entered into financial contractual commitments of over U.S.$10 Million, with equipment manufactures through our co-promoters and financiers totaling to over U.S.$10.583 Million. We have forwarded the copies of the said contracts to the government along with our dossier of over 400 documents. You will appreciate that no investor will forfeit such a viable project.

Our group wishes to resolve the matter very amicably through discussions and dialogue with the government within the next two to three weeks and if possible, without any litigation.

(b) Our group appreciates the government’s offer to look for alternative sites for our cement project in Uganda. Our group of Geologists from India and Uganda, after various studies they had carried out in the past 9 months, have confirmed that there are no other sites which has limestone deposits and with the availability of gypsum, volcanic
ash/pozzolana and other raw materials which can sustain the factory for 20 – 30 years - except at Dura, which is legally leased to our company till 2026. Our investment of over U.S.$ 60 million was only and specifically for our Dura Project which is viable as per our group’s various feasibility studies.

(c) In a nutshell, our group requests the government to fully resolve the matter by:
   (i) Either reinstating our legally granted Mining Lease
   (ii) or paying the full compensation which our group is legally entitled as per the laws of Uganda and the international laws.

You will agree with us that these are the only two alternatives left for the government to resolve the matter amicably and the government has to choose any one of the two.

(d) We will request you to also refer to all our previous letters and letters dated 25th April, 3rd May, 11th June, 18th June, 2007 and our dossier of over 400 documents which were sent to you and the concerned departments of the government.

(e) Our group, as communicated to the government in our previous correspondence, once again, accords its invitation to His Excellency, the President and the concerned government officials to visit our group’s cement factories, sugar mills/sugarcane plantations, ethanol plants, power co-generation plants and other enterprises in India.

(f) Our group will continue to encourage and attract world class investors to invest in Uganda, especially, the 24 world class investors that our group had contacted on request of the government of Uganda.

As discussed during our meeting, on our group’s invitation and encouragement, a group of investors will visit Uganda in early August 2007 and hold discussions with you and other concerned officials of your Ministry. They are interested to
invest in Mining, Power generation, Oil exploration and other related areas. We will accompany them.

You / the government are kindly requested to use our following contact numbers/address:

Dura Cement Limited
P.O. Box 35007,
Kampala, Uganda

Roaming Mobile Tel: +254 - 733 - 620208
+254 - 733 - 869365

Fax: 005-20-4442234

Email: duracement@gmail.com

Please send all letters via our above Fax Number before posting them and in case of any communication kindly communicate with us on our above roaming mobile telephone numbers.

It must be noted that it is now exactly 66 days since the government, on the 18th April 2007, first verbally intimated to us that we should halt our project. We had even requested the government, vide our letters of 19th April, 3rd May, 11th June 2007 etc. for written legal clarification on the matter, since our legal attorneys have confirmed to us that our company has not breached a single law / regulation of the country pertaining to our project. Please kindly refer to the 13 points letter dated 9th August 2006 which the government issued to our company and which is binding to both the parties, Sections 49 and 80 of the Mining Act, 2003, Article 26 of the Constitution of Uganda and other related Acts / Regulations. In the said letters, we also gave the legal facts on our Dura Cement Project.

We hope the government will resolve the matter in the next two to three weeks.

We look forward to your earliest response and acknowledgement of this letter.
Yours sincerely,

Rajesh & Shilpa Rawal
For and on Behalf of The Chairman/Board of Directors
Dura Cement Limited


c.c. The Permanent Secretary, Ministry of Energy and Mineral Development.


c.c. Group Business Attorneys/Legal Consultants (UK/India).
26th July 2007

Mr. Rajesh Rawal
Managing Director
Dura Cement Ltd
P.O. Box 35007
KAMPALA

RE: CANCELLATION OF DURA CEMENT LTD’S MINING LEASE NO.3945 AT DURA, KAMWENGE DISTRICT

This is a follow up of my letter to you dated 5th July, 2007 on the same subject.

We have studied your letter which details the background and benefits of the project as well as the efforts so far undertaken to advance the project. We highly appreciate the initiatives.

However, as you are indeed aware there is already an existing Cement Plant in the region where the benefits would be enhanced by using the limestone at Dura to supplement the dwindling poor quality limestone at Hima. The blending of the limestone at Hima and Dura has been found to optimise the use of those resources as opposed to a stand alone usage.

Since your project is just at the early stage of development, we are of the opinion that the benefits, foregone by your not establishing the plant at this stage would be less than those for an early closure of an already existing one.

This letter therefore is to confirm the Commissioner's decision of cancelling your Mining Lease at Dura.

Yours,

Daudi Migerere (M.P.)
MINISTER OF ENERGY AND MINERAL DEVELOPMENT

C.C.: The Hon. Minister, Ministry of Justice, Constitutional Affairs and Attorney General
The Hon. Minister, Ministry of Finance, Planning and Economic Development
The Minister of State for Mineral Development
The Minister of State for Energy
The Principal Private Secretary to H.E. the President
The Permanent Secretary, Ministry of Energy and Mineral Development
The Commissioner, Geological Survey and Mines
28th January, 2009

The Attorney General
Ministry of Justice and Constitutional Affairs
KAMPALA

RE: DURA CEMENT LIMITED VS. ATTORNEY GENERAL

Reference is made to my letter dated 7th May 2007, directing the Minister of Energy and Mineral Development to terminate the Agreement and Mining Lease made with Dura Cement Ltd on mutually agreed compensation terms.

This was because I was convinced that the proposal by M/s Lafarge/Hima Cement to exploit the limestone at Dura Cement was in the best interest of our country. However, Dura's Mining Lease was cancelled and another one given to Lafarge/Hima Cement before the issue of compensation of Dura Cement was resolved. This was contrary to my directive and has resulted in a suit where Dura Cement claim compensation of United States Dollars 103 million for the loss of the mining rights for 19 years.

I have been briefed that KPMG Auditors have indicated that a sum of United States Dollars 14.5 million is reasonable as a return attributable to shareholders in projects of this nature, for 19 years. Instead of risking litigation that could cost Government United States Dollars 103 million, the figure of United States Dollars 14.5 million should be offered to Dura Cement as negotiated compensation for the loss of Mining rights for the 19 years, and other damages and legal costs negotiated within legally acceptable ranges.
The non-resolution of this matter has acted as a deterrent to Indian investors who are associated to the proprietors of Dura Cement Ltd, and is exposing Government to possible payment of interest on compensation. In view of these two factors, I direct that the negotiation process be finalized within 30 days.

Yoweri K. Museveni
PRESIDENT

c.c: PS/ Secretary to the Treasury
Ministry of Finance, Planning & Economic Development

c.c: The Dura Cement Limited
URGENT

LOOSE MINUTE

The Attorney General.

The Ag. Solicitor General.

Re: HCCS NO. 67 OF 2008

The Ag. DCL forwarded for your guidance on par 3.2 regarding the principal sum and for your approval of the negotiated position on general damages at 2 million (Two Million US$), costs at 25% of the net amount payable, interest at 5%.

CONCLUSION OF NEGOTIATION ON DURA

The above refers.

This office in conjunction with the Ministry of Finance have conducted and closed out negotiations aimed at concluding this suit in line with the directive of his Excellency the President.

These negotiations involved mitigating the potential sums of money Government will pay in a bid to bring this matter to a close. The heads under which these negotiations were conducted were the principle sum payable, general damages, costs and interest.

1.0 The Initial Parties Positions.

1.2 At the start of these negotiations, the Plaintiff’s/Advocates stated that they accepted the offer of the President of USD 14.5 million, they further stated that they would demand USD 7 million as general damages, 10% of any payment as legal costs and 18% as interest from the date of cancellation of the mining lease.

1.3 The initial position of Government was that the figure of USD 14.5 million would have to be discounted, that the plaintiff should drop the item on general damages and that costs and interest would have to be determined in line with the Advocates Remuneration Rules and recently decided legal precedent on costs and interest.

URGENT
1.4 The plaintiff later changed their negotiation stands maintaining the principle sum at USD14.5 million, general damages at USD 4 million, legal costs at 5% and Interest at 8%.

1.5 In further reply to this Government stated that the figure of USD 14.5 million would still have to be discounted, on general damages a proposal of USD 500,000 was made, on costs 2% was proposed and the figure on interest at 8% stood as accepted. These negotiations were concluded on the 10th July, 2009.

2.0 The Final Negotiated Position subject to Endorsement.

2.1 The parties in closing on Negotiation came up with the following positions.

2.2 That the Plaintiff would accept a discounted figure on the principle sum of USD 14 million, that General damages would be accepted at USD 2 million, costs at 2.5% of net amount payable, interest at 8% from the date of signing a Consent Order/Judgment until payment in full. It was further agreed that this payment would be made as a single lump sum payment.

The only outstanding matter was whether the figure of USD 14 Million would be discounted further.

3.0 The Issue of Discounting.

Sometime in December of 2008, the Ag. Solicitor General, the Ag. Director DCL and the undersigned met the Secretary to the Treasury and other officials of the Ministry of Finance. The purpose of this meeting was to analyze the financial implications of the Audit report furnished by KPMG as regards the claim by the Plaintiff/Dura Cement Ltd.

The Ministry of Finance notified us that they would pay any sum out of the USD 14.5 Million after it had been discounted. The reason for a discounting was that this sum of money would be paid in one lump sum and further that this a sum of money which would have been recouped as
dividend by the Plaintiff over variable a 19 year period. In return for making a single lump sum payment this figure would be discounted.

The final principle sum figure when worked out by the Ministry of Finance at the time stood at USD 6.5 Million. This discounting was done before the letter advising on a settlement by the President.

This figure of USD 6.5 Million is now contrasted against the figure of USD 14 Million which has been accepted by Kampala Associated Advocates (KAA) as the final figure on any settlement by their client, Dura Cement limited.

3: The question therefore is what figure stands as the payment of the principle sum. The issue as to whether the principle sum of USD 14 million accepted by (KAA) would be discounted further in line with the position of the Ministry of Finance is therefore subject to question and decision.

This is therefore to seek your decision and guidance as regards the final figure payable as the principle sum in light of the discounting proposed by the Ministry of Finance, the acceptance by KAA on the principle sum and the directive of the offer made by the president in his correspondence to this office.

L. Henry
Senior State Attorney.
INTERNAL MEMO

Ref: MI/AG/39
Date: 23 October 2009
To: Ag. SG – MOJCA
From: AG-MOJCA
Subject: HCCS NO. 67 OF 2008 DURA CEMENT LTD = V = ATTORNEY GENERAL: THE PRINCIPAL SUM PAYABLE

1. I acknowledge, WITH THANKS the receipt of the Loose Minute dated 16.07.09 and signed by Henry Okuka, Esq. (SSA) on the above subject. I note that this Internal Memo is the culmination of the work of the Committee on Compensation and Court Awards.

2. I agree with the rest of the proposals, that is, general damages at US $2 Million, costs at 2.5% of net amount payable, interest at 8% from the date of signing the Consent Judgment until payment in full, a single lump sum payment should be made.). The Loose Minute seeks guidance on the principal sum payable. MFPED had recommended the figure of US $6.5 Million. The Loose Minute indicates that this figure was arrived at before H.E. The President advised on the figure of US $14.5 Million. Negotiations brought the figure down to US $14.00 Million.

MOJCA had sought the assistance of independent valuers KPMG. H.E. The President also seems to have arrived at the fire of US $14.5 Million on the basis of the report of the independent valuers KPMG. Does the MFPED figure of US $ 6.5 Million still hold after the KPMG report and the letter of H.E. The President?

MR Okuka

The contents of this Internal Memo of the Hon. Abba regarding payment of the claimant's company after The County Court of the case heard two days matter to its logical conclusion for the benefit of the minors advised hereby.

Chief Registrar of Court 29/10/09
3. The principal claim originally stated by Dura Cement Ltd. in its plaint dated 10 March 2008 is US $103,406,100.00.

The records show that the investor was prepared to carry out the project. He had taken some steps in that direction. He did not engage in any prevarication or foot-dragging. It was a business deal. Government issued a mining licence, etc. to the investor. It is government that reneged on its commitment. This line of reasoning could be pursued in some detail. Argued persuasively before a court duly oriented to the rule of law, Government might be adjudged to pay a principal sum as near US $103,406,100.00 as possible. US $14.00 Million is certainly not soft landing. But it is reasonable landing for the Government.

4. I note from the said Internal Memo that the PS/ST proposes that the claimant be paid US $6.5 Million by way of principal sum rather than US $14.5 Million which was certified by the External Auditors, KPMG.

The apparent reason is that the principal sum should be discounted because it is going to be paid as one lump sum. The money will not be slowly recouped as dividend. I note significantly that “This discounting was done before the letter advising on a settlement by the President.” There are reasons why discounting would be difficult to defend.

(a) This reasoning on discounting pre-dates the intervention of KPMG. To that extent it is reasoning per incuriam.

(b) You will recall that MOJCA had wanted the Auditor General to do the evaluation. The Auditor General declined and advised on external auditors, hence KPMG. Are we now casting doubt on the efficacy and professionalism of KPMG?

(c) The considerations on lump sum payments are technically subsumed under the principle of acceleration.
This principle is often considered in computing damages as a remedy in contract or tort. I have analysed the text in P.S. Atiyah, *An Introduction to the Law of Contract*, 5th edition, (Clarendon Press, Oxford) pp. 444-469 with particular reference to acceleration. I have also used Vol 2 *Halsbury's Laws of England*, 4th edition (Butterworths, London, 1975) under the title “Damages.” The claimant here is being compensated for loss arising from thwarted expectations. This is an investment project to which the principle of acceleration is not easily applicable. There are certain heads of damages which Government has avoided by reaching an amicable settlement. It is bad enough to cancel an investment project out of no fault of the investor.

Indeed a lump sum is appropriate so that the investor may mitigate his losses and abandon claiming under certain heads of damages.

5. For the foregoing reasons, my decision and guidance is that the principal sum to be paid to the claimant be US $14.00 Million. This sum should not be discounted further.

The continued delay in sorting out this matter does not augur well for Uganda as an investment destination.

You Have Been Advised.

[Holographic Signature]

Hon. (Dr) E. Khiddu Makubuya, M.P.
ATTORNEY GENERAL/MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS

C.C. Hon. Fredrick Ru hindi, M.P.
DAG-MOS-MOICA
THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

CIVIL SUIT NO. 67 OF 2008

DURA CEMENT LIMITED ................................... PLAINTIFF

VERSUS

ATTORNEY GENERAL ................................... DEFENDANT

CONSENT JUDGEMENT

By consent of both parties, Judgement is hereby entered in favour of the Plaintiff in the following terms,

(a) The Defendant shall pay to the Plaintiff, US$14,000,000 (Fourteen Million United States Dollars only) as special damages for the cancellation of the Plaintiff’s Mining Lease.

(b) The Defendant shall pay US$2,000,000 (Two Million United States Dollars only) to the Plaintiff as general damages for the cancellation of the said Mining Lease.

(c) The Defendant shall pay legal costs at 2.5% (Two point Five percent) of the total sum payable under (a) and (b) above.

(d) The Defendant shall pay the above sums in one lumpsum.

(e) The Defendant shall pay interest on (a), (b), and (c) at 8% from the date of this Consent Judgement till payment in full.

(f) This consent Judgement is in full and final settlement of all the Plaintiff’s claims in the suit.

Dated at Kampala this ............... day of ............... 2009.
COUNSEL FOR THE PLAINTIFF

COUNSEL FOR THE DEFENDANT

GIVEN under my hand and seal of this Court, this 20th day of October, 2009.

REGISTRAR

Drawn & Filed by

Attorney General’s Chambers
Plot 1, Parliament Avenue
P. O. Box 7183
Kampala.

And

Kampala Associated Advocates
Plot 1, Flikington Road
5th Floor Worker’s House
P. O. Box 9566
KAMPALA.
THIRD PARTY AGENCY NOTICE
(Section 106 of the Income Tax Act, CAP 340)

Our Ref: 1000344779
Date: 20th December, 2010
To: Kampala Associated Advocates

RE: APPOINTMENT AS COLLECTION AGENT FOR DURA CEMENT LTD

In exercise of the powers conferred upon me by Section 106 of the Income Tax Act CAP 340, I require you to pay to Uganda Revenue Authority the sum of Shs.3,214,569,600=(Uganda Shillings three billion two hundred fourteen million five hundred sixty nine thousand six hundred only) being tax due and payable by Dura Cement Ltd from any monies which may, at any time from the date of service of this notice be held by you for, or due by you to the said person, including but not limited to pension, salary, wages or any other remuneration.

Payment Instructions:
- Period: Payment should be effected ON THE DATE OF RECEIPT of this notice
- Payee: UGANDA REVENUE AUTHORITY
- Amount: Shs.3,214,569,600=(Uganda Shillings three billion two hundred fourteen million five hundred sixty nine thousand six hundred only)
- Form of payment: Bank Draft/Transfer to Uganda Revenue Authority Account
- On behalf of: Dura Cement Ltd
- Precedence: Before paying any other party including the account holder.

Note the following:

a) You should, on the date of receipt of this notice, immediately remit Shs.3,214,569,600= or any amounts currently held on the account and the balance, if any, should be remitted within 30 days from the date of issue of this notice.

b) Where you are unable to comply fully with this notice by reason of unavailability of monies owing to or held for the taxpayer, you are required to notify the Commissioner in writing and attach a Bank statement or proof of unavailability of monies held for or owed to the taxpayer, for the period the agency notice is in force.

c) Should you fail to comply with the requirements of this notice, provisions of section 136 of the Income Tax Act 1997 will be evoked; thereby transferring the liability automatically to yourself as though the tax were due from you.

d) Where you comply with this notice and have effected payment of the FULL amount as required, this Agency Notice is automatically lifted.

Please quote the above reference on all correspondence with URA on this matter.

Babasaani Muheebwa
Ag. COMMISSIONER, DOMESTIC TAXES DEPARTMENT
Dura cement
Copy to Manager, URA Kampala Central

Section 106 of the Income Tax Act CAP 340 is reproduced overleaf.
Uganda Revenue Authority
Kampala Central
Plot 2, Hakaita Road, Grace Towers, 6TH FLOOR
Grace Towers Complex, Naija Park, KAMPALA

Payment Registration Slip
2/12/2010

DURA CEMENT LIMITED
KAMPALA CENTRAL, KAMPALA CITY COUNCIL, KAMPALA, KAMPALA

Taxpayer TIN
1000344779

Payment Registration Number
1110000124000

Payment Registration Details

| Tax Head: Income Tax | Amount (in UGX): 3,214,589,600 |

Bank Name: DFCU Bank

<table>
<thead>
<tr>
<th>Bank</th>
<th>Cheque No</th>
<th>Amount (UGX)</th>
</tr>
</thead>
<tbody>
<tr>
<td>DFCU</td>
<td>2412</td>
<td>3,214,589,600</td>
</tr>
</tbody>
</table>

Amount in words: Three hundred and twenty-one million five hundred eighty-nine thousand six hundred sixty-nine

BANK STAMP AND ENDORESEMENT

Signature: [Signature]
Printed Name of Signatory: Irene Muyodi
Search Code: E5XXDMMV4B81V

This Payment Registration Slip can be obtained from the URA web portal for your future tax payments. This payment registration slip remains valid up to 30/01/2011. After expiry of payment registration you will not be able to use the slip for effecting your payment at bank. You will be required to re-register your payment again. If this payment registration slip is lost or defaced, you may reprint a copy from your email box or register another payment on the web portal.

After payment to the bank, you can check status either at nearest tax office or URA web portal on ura.go.ug. You are advised to use search code provided on this Payment Registration Slip to track the status.
APPLICATION FOR FUNDS TRANSFER, SWIFT FORMAT MT. 103

THE MANAGER
DFCU BANK

PLEASE EFFECT A SWIFT TRANSFER ON MY ACCOUNT WITH THE FOLLOWING DETAILS

CUSTOMER INSTRUCTIONS (PLEASE WRITE IN BLOCK LETTERS)

2.0 FUNDS TRANSFER

32A. ACCOUNT NUMBER

50. NAME AND ADDRESS OF APPLICANT

KAMPALA ASYNTERM ASSOCIATES

56A: CORRESPONDENT BANK DETAILS

57D: BENEFICIARY'S BANK/NAME/ADDRESS/SWIFT/SORT CODE (ABA OR FEDWIRE AND A/C NO)

59: BENEFICIARY'S ACCOUNT NUMBER

61: BENEFICIARY'S NAME AND ADDRESS

Uganda Revenue Authority

70: DETAILS OF PAYMENT

DUTA INCOME TAX

71: OVERSEAS CHARGES

APPLICANT'S ACCOUNT

72: SENDER TO RECEIVE INFORMATION

DUTA INCOME TAX

I REQUEST YOU TO MAKE THE ABOVE SWIFT TRANSFER AT MY RISK AND ON THE DISTINCT UNDERSTANDING THAT NO LIABILITY WHATSOEVER IS TO BE ATTACHED TO THE BANK FOR ANY LOSS, INJURY, DAMAGE ARISING FROM DELAY OF TRANSMISSION, DELIVERY OF THE ABOVE SWIFT MESSAGE OR ANY MISTAKE, OMISSION OR ERROR IN TRANSMISSION OR DELIVERY THEREOF. PLEASE ATTACH A BANK CHEQUE WRITTEN IN FAVOUR OF DFCU BANK.

SIGN BOTH THE CHEQUE AND THIS APPLICATION FORM IN ACCORDANCE WITH MANDATE HELD BY THE BANK.

APPLICANT ACCOUNT NO.

AUTHORISED SIGNATURE

SIGNATURE(S) OF THE APPLICANT

CUSTOMER TELEPHONE NO

FOR EXAMINE ONLY

CHECKED BY:

APPROVED BY:

Date: 22 Dec 2010

Signed:

Office of Commissioner, Revenue Authority

Received
Date: 16th February 2011

The Commissioner General,
Uganda Revenue Authority,
Kampala.

Attn: Commissioner Domestic Taxes,

RE: OBJECTION TO ASSESSMENT AGAINST DURA CEMENT LIMITED

Reference is made to the above matter and the various communications have exchanged.

We have consulted with our client and have instructions to respond as follows:

On the 7th December 2010, we wrote to you clarifying that under S. 61 of the Income Tax Act for compensation to be taxable, the compensation payment must be of a character which is taxable. The character of the components constituting compensation must be taxable under the Income Tax Act.

It should be noted that the compensation in this case was a result of an out of court settlement that led to a Consent Judgement. The Consent Judgement had the following components:

(i) $14,000,000 as special damages
(ii) $2,000,000 general damages
(iii) Legal costs at 2.5% of the above sums, and
(iv) Interest at 8% from the date of judgement till full payment.

In the negotiations that resulted in the Consent Judgement, it was made clear that Dura Cement Ltd would forego and drop all claims for lost earnings and profit as well as goodwill, and would only be compensated by way of special damages to cover expenses. By letter dated 17th July 2009, Dura Cement accepted this position and a Consent Judgement was drafted and sent to the Attorney General. By signing the Consent Judgement, the Attorney General signified acceptance of the agreed negotiated position which meant that no compensation for lost earnings/profit would be payable but only general damages and compensation for costs and expenses. The judgement indeed
specifies that special damages were agreed at US$ 14,000,000 and general damages at $ 2,000,000. Copy of the said letter and the Consent Judgement are attached.

By their very nature, special damages are supposed to compensate for costs and expenses incurred. In this case, it was made clear that these costs and expenses would be compensated for at $ 14,000,000 as special damages. These are not taxable. We also reiterate that general damages are also not taxable:

In addition and without prejudice to the above, damages arising/paid as a result of out-of-court/negotiated settlements arising from cancellation of agreements are at law, not liable to income tax. As agreed damages, they can not be considered to be profits or gains of any particular year. These damages are the price the Government agreed to pay for the cancellation of Dura’s mining lease.

We are fortified in this view by the case of Du Cros v. Ryall (H.M. Inspector of Taxes) Case No.962 High Court of Justice (King’s Bench Division), copy attached. This legal authority is on all fours with the present case. At Page 451, the similarity between that case and the present one comes out very clearly. The highlighted excerpts are reproduced here for emphasis.

"..... That action was ultimately settled, and it is necessary to see exactly how it was settled."

".....The terms are contained in Document “G” attached to the Stated Case, and what it says with reference to this action is this: The action of Mr. George du Cros to be settled on terms that he receives the sum of £57,250 as agreed damages, ....."

"..... The agreement was cancelled and there was a sum of damages agreed on, a sum of £57,250 agreed damages. I do not see that either the Commissioners or anybody else is entitled to say that that is anything else than what it says it is, namely, damages payable in respect of the repudiation of the agreement by the defendants and as the price of the cancellation of the agreement which was then agreed upon, and so far as I can see there is nothing which entitles one to go beyond that. It is simply, as I think, though an agreed sum, damages for the breach of contract of employment, a present contract of employment and contract containing a future possibility of employment in an even more exalted capacity."
At page 453, the Court stated:

"...a sum paid by way of the deprivation of an opportunity of earning profits was held to be part of the profits and gains..............these damages for the wrongful repudiation of the contract cannot be regarded as profits and gains. I do not see that they can be considered as being the profits and gains of any particular year. I think that the damages are just a capital sum arrived at – I do not in the least know how, and there seem to be no materials for deciding it—arrived at no doubt as a compromise as these things always are, but simply a capital sum which it was agreed should be paid to Mr. Du Cros in respect of the cancellation of the agreement. That is all, and I arrive at the conclusion that it is a capital sum and, therefore, is not assessable to Income Tax."

"......I think that the damages must be regarded as a whole, and so regarding them I arrive at the conclusion as to the whole, which the Commissioners arrived at with regard to the major part, and I think that the whole must be regarded as a capital sum and not assessable to income tax......"

It is aptly clear from the above authority, that damages agreed upon as a result of breach or cancellation of an agreement or contract are not taxable. Indeed, it is the very first time we have seen URA attempt to tax damages awarded by Court.

In view of the above, Dura Cement is not liable in law to pay income/corporation tax on the general or the special damages. We therefore request you to refund to us for transmission to our client, the shs. 3.2 Billion already paid as clearly, not corporation/income tax is payable.

Yours faithfully,

Kampala Associated Advocates

c.c. The Permanent Secretary/Secretary to the Treasury
Ministry of Finance, Planning & Economic Development.

cc. The Solicitor General,
Ministry of Justice & Constitutional Affairs.

cc. Client.
Our Ref: URA/DTD/COM/29/1

M/s Kampala Associated Advocates,
5th Floor Workers House,
Plot 1, Pilkington Road,
P. O. Box 9566,
Kampala Uganda

March 30, 2011

Dear Sir/Madam,

RE: DURA CEMENT LIMITED: OBJECTION DECISION

Reference is made to your letter dated 21st March 2011, which contained a further appeal against our objection decision dated 7th March 2011 on behalf of your above named client.

We have reviewed and reconsidered our position and the grounds of your objection and wish to advise that your objection has been allowed in its entirety. Consequently our assessment No. 31/6855 dated 22/10/2011 against your client shall be vacated.

Yours faithfully

Moses M. Kajubi
COMMISSIONER DOMESTIC TAXES.

Cc: The Permanent Secretary/Secretary to Treasury,
Ministry of Finance, Planning and Economic Development,
Kampala.

Cc: The Solicitor General,
Ministry of Justice and Constitutional Affairs,
Kampala.

Cc: The Commissioner General,
Uganda Revenue Authority.

Cc: The Manager,
Kampala Central, Uganda Revenue Authority.

Cc: Dura Cement Limited.