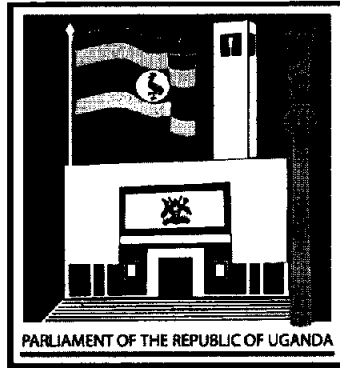


PARLIAMENT OF UGANDA



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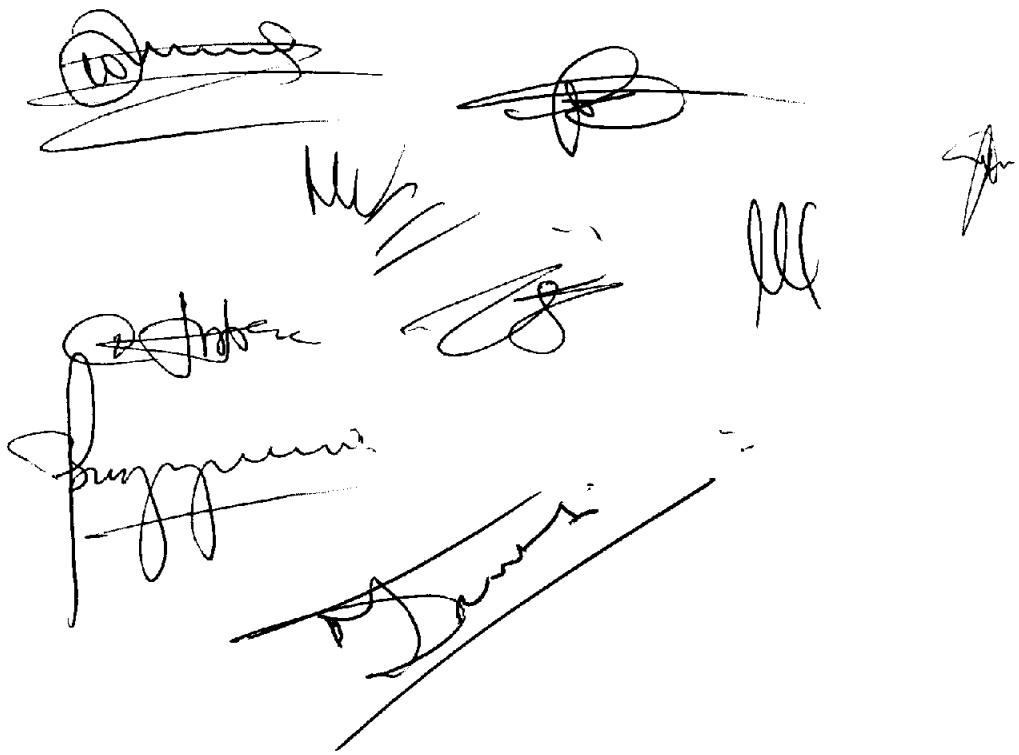
REPORT OF THE PUBLIC ACCOUNTS COMMITTEE ON THE VALUE FOR MONEY AUDIT ON THE REGULATION, MONITORING AND PROMOTION OF THE MINING SECTOR BY THE MINISTRY OF ENERGY AND MINERALS, DECEMBER, 2015

Office of the Clerk to Parliament

JUNE 2018

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ABBREVIATIONS AND ACRONYMS

CAO	Chief Administrative Officer
DEO	District Environment Officer
DGSM	Directorate of Geological Survey and Mines
EL	Exploration License
EMP	Environment Management Plan
LL	Location License
MEM	Ministry of Energy and Mineral Development
ML	Mining License
MR	Mineral Right
NEMA	National Environment Management Authority
OHS	Occupational Health and Safety
PL	Prospecting License
RL	Retention License
URA	Uganda Revenue Authority

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1.0 INTRODUCTION

Rt. Hon. Speaker and Hon. Members,

The Public Accounts Committee considered the Value for Money Audit on the Regulation, Monitoring and Promotion of the Mining Sector as mandated by Rule 162 (2) of the Rules of Procedure and Article 90 of the Constitution of the Republic of Uganda.

Article 163(4) of the Constitution requires the Auditor General to submit to Parliament annually a report of the accounts audited by him or her for the financial year immediately preceding.

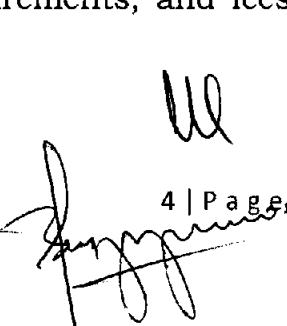
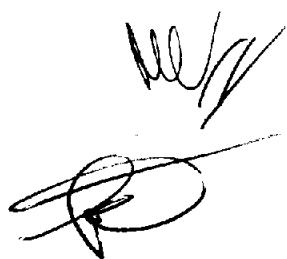
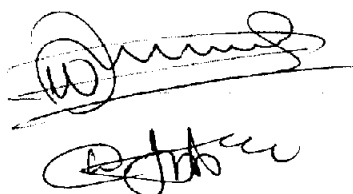
The mining industry plays a central role in the socio-economic development of any country by providing raw materials for local industries, employment and export earnings. The Government of Uganda established the Directorate of Geological Survey and Mines (DGSM) under the Ministry of Energy and Mineral Development as the lead government agency technically responsible for the administration and management of the mineral sector.

The Office of the Auditor General undertook a value for money audit to assess the extent to which government is regulating, monitoring and promoting the mining sector through the Directorate of Geological Survey and Mines (DGSM).

The overall audit objective was to assess the extent to which government is regulating, monitoring and promoting the mining sector.

The specific audit questions were:

- To assess the adequacy of the regulatory framework of the mining sector.
- To assess whether licensing is in line with the set requirements; and fees timely paid and followed up.



- To establish whether DGSM provides advisory services to artisan and small-scale miners.
- To ascertain whether the inspection and monitoring of the mining industry has been effective in tracking mining operations.
- To assess whether DGSM provides effective and reliable laboratory services in the mineral sector for institutional and public use.
- To establish whether a national geoscience database is maintained.

2.0 METHODOLOGY

2.1 Meetings

The Committee held meetings with the Accounting Officer and staff of the Ministry of Energy.

2.2 Document Review

The Committee studied and made reference to the following documents;

- (i) The Value for Money Audit Report on the Mining Sector
- (ii) The Mining Act 2003
- (iii) The Public Finance Management Act 2015
- (iv) Additional documentation on the queries raised from each of the above sectors

3.0 FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

The following findings, observations and recommendations were made:

3.1 REGULATION OF COMMERCIALIZED BUILDING MATERIALS

CRITERIA

Article 244 (3) of the Constitution, provides that minerals do not include clay, murram, sand or any stone commonly used for building or similar purposes. The Mining Act 2003 defines building material as rock, clay, gravel, laterite, murram, sand, sandstone and slate, mined by a person from land owned or lawfully occupied by him or her for his or her own domestic use in Uganda for building, or mined by a person for his or her own use for road-making.

The same Act defines industrial minerals to include barite, rock, clay, dolomite, feldspar, granite, gravel, gypsum, laterite, limestone, mica, magnesite, marble, phosphate rock, sand, sandstone, slate and talc, which is commercially mined by a person for use in Uganda or industrially processed into finished or semi-finished products.

FINDINGS

The DGSM did not regulate the mining of sand, clay, murram and stone quarrying contrary to the definition of industrial minerals as spelt out in the Mining Act and as a result could not levy royalties on these activities. The National Environment and Management Authority (NEMA) and the National Forestry Authority (NFA) only issued extraction permits to operate in wetlands and forest reserves, respectively, without levying royalties. The sampled districts of Tororo, Kasese, Bushenyi and Sheema also indicated that they were not collecting any fees from such activities, either.

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CAUSE

Failure to levy royalty on these commercialized building materials was due to DGSM's interpretation of the exclusion of building materials in the Mining Act without making an assessment as to whether they were mined by the individual for their respective domestic use or used for commercial purposes.

EFFECT

By failing to regulate the extraction of commercialized building materials, extraction permits are issued without conducting due diligence on the level of technology to be used and corresponding royalties lost by government. Commercialized industrial building materials remained inappropriately regulated leading to loss of government revenue and siltation of the lakes as a result of sand mining.

The Minister in charge of minerals informed the committee that it is true that there has been laxity in the area of mining, however the existing law requires the Ministry to carry out consultations with the stakeholders.

In 2005, there was an amendment to the Constitution to allow the Ministry to regulate the minerals that had not been included in the law. There is a draft policy formulated by an inter-ministerial committee in place addressing all the minerals and that it was before Cabinet for approval and was expected to be ready by end of June 2018. By the time of writing this report the amendment had not reached Parliament.

The Minister of State in charge of Minerals, Hon. Peter Lokeris informed the committee that it had not licensed any company to carry out sand mining. NEMA gave the licenses without consultation with the Ministry.

The Minister also informed the committee that a request has been made to government to establish a mining police for enforcement of the law.

He noted that the mining sector had been underfunded and under prioritized.

He further noted that the Ministry is supposed to regulate the extraction of building materials and there must be a regulatory framework for this purpose.

Observations

1. The committee cited laxity in regulation by the ministry and recognized that the level of destruction in sand mining is extreme and will affect the ecosystem around Lake Victoria.
2. Article 244, clause 6 of the Constitution empowers the Ministry to regulate mining. Given the level of exploitation and income derived from the trade of up to UGX 270 million for an acre of sand in Lwera, the committee cited negligence by the Ministry and abdication of its responsibility to regulate the level of mining leading to loss of revenue.
3. In accordance with the mining law, the extraction permits issued by NEMA should have been done with consultation of the lead agency, which is the Ministry of Energy. The permits are supposed to be issued after acquisition of a license from the Ministry.
4. The Ministry is not aware of the level of mining activity pertaining in the country.

It is estimated that billions of Uganda shillings have been lost due to lack of clarity between MoEMD, NEMA and the Local Governments as to who should levy what and how much.

Recommendations

The DGSM should with immediate effect consider regulating and levying mineral fees from commercialized building materials.

3.2 FORMALISATION AND REGULARISATION OF ARTISAN AND SMALL SCALE MINING (ASM) ACTIVITIES

CRITERIA

The Mining Act and Regulations are meant to operationalize the Policy. Accordingly, objective (iii) under paragraph 2.2 of the Mineral policy aimed at regularizing and improving artisanal and small scale mining. This was to be attained by providing information on available production and marketing facilities, carrying out awareness campaigns targeting the artisanal and small-scale miners and regularize and formalize their operations. In addition, the DGSM was to ensure health and safety standards for all mining operations in coordination with MoGLSD – Occupational Safety and Health (OSH) department.

FINDINGS

Formalizing and regularizing the mining operations of artisanal activities was never implemented.

The Assistant Commissioner Mines division revealed that the department uses the sections in the Occupational Safety and Health Act, which are general and not tailored to the mining industry.

Whereas the NDPs (2010/11- 2014/15 & 2015/16-2019/20) emphasize value addition as an area of focus and a key driver for economic development, the prevailing Mining Act and Regulations did not provide for value addition of the raw minerals.

EFFECT

The inadequacy of the prevailing mining regulatory framework creates challenges in regulating the mining sector thus hindering realization of the sector's intended objectives.

In the absence of up-to-date regulations, some activities may continue to be unregulated and any guidance developed so as to improve regulation in the mining sector may not be enforceable since it may not be rooted in the law.

The DGSM has not been effective in administering the mining industry as issues of ASM, commercialized building materials, environmental, health and safety standards remain inadequately addressed.

“The Minister responded that the law is limited in some areas for artisanal mining. The Ministry had issued over 46 licenses and there were over 20 associations that had been formed.

The regulations of 2004 remain silent on how the Ministry was supposed to regulate artisanal mining.”

Recommendation

The Minister of Energy and Mineral Development should ensure that the review process of the mineral regulatory framework is fast-tracked so as to enhance the administration of the mineral sector for improved mineral exploitation and development.

3.3 LICENSING OF MINERAL RIGHTS

CONFORMITY TO SET APPLICATION REQUIREMENTS & WORKING OBLIGATIONS

CRITERIA

Section 41, Section 108 and Section 110 of the Mining Act, 2003, provide that an application for a mining lease should indicate and provide specific information (set requirements), which includes:

- Financial & technical resources
- Feasibility study

- Statement of mineral deposits in area covered
- Statement of proposed development & mining operations
- Report on goods & services required for mining operations
- Statement of employment & training of Ugandan citizens
- Business plan
- Environment Impact Assessment
- Annual Environment Audits
- Environment Restoration Plan
- Audited annual accounts

Section 90(1) (b) of the Mining Act provides that the Commissioner may cancel or suspend a mineral right if the holder contravenes any provision of the Act, the Regulations or the conditions of the mineral right or the provisions of any other written law relating to mines and minerals.

FINDING

None of the companies conformed to all the 11 set requirements

None of the companies submitted annual environmental audits and audited accounts to DGSM and there was no evidence to show that DGSM followed up with the applicants after issuing the licenses.

35 of the 36 mining license (ML) holders submitted a statement of employment and training of Ugandan citizens. 20 of the 36 ML holders included business plans, financial and technical resources and feasibility studies upon submission of their mining lease applications.

Analysis of conformity to application requirements with information on status of mining leases availed by the Mines Department showed that 11 out

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of 36 mining licenses had their status of operations as either abandoned or inactive. Four (4) of these companies had abandoned operations while the seven (7) were indicated as inactive. There was no evidence of the Commissioner either engaging the concerned parties to furnish him with explanations to that effect, suspend or cancel their licenses.

CAUSE

This was due to laxity by the DGSM to ensure that issuance of the mining rights licenses was conducted as per laid down provisions of the Mining Act and follow-up of the license holders was done to comply with laid down terms and conditions of the secured licenses.

EFFECT

This led to firms that may not have been competent enough to undertake mining operations acquiring mineral rights.

The Accounting Officer responded that in spite of efforts to revitalize the mining sector in Uganda, the licensees in the mining business have not been able to get support from banks here in Uganda because the mining industry has just begun to pick up after acquisition of new geological data.

This gap of lack of financial support has a negative implication on the licensing process and mining operations, inhibiting the ability of the mining sector from developing as any other sector in the country. However, the ministry will improve by sensitizing the banks on mining business to enable licensees to get access to financing of their mining investment projects. In addition, the Ministry will take extra care in screening mining applications and plans.

The committee observed that the following officers did not satisfactorily fulfil their responsibilities in the above regard: Commissioner Edwards Katto and Commissioner Odida John who headed DGSM; Ms. Agnes Alaba was in

charge of geo-data and assessing whether the area is free or not, then Mr. Chris Rudigiza – Ag. Asst. Commissioner licensing would check for other legal requirements, while Mr. Zachary Baguma – Ag. Director Geology was charged with checking the adequacy of the work program.

Observations

1. Licenses were issued to companies without Environmental Impact Assessments.
2. From a review of the 36 mining lease administrative files, it was noted that some of the documents and information required on application were not included in the files and this could imply that due diligence was not adequately carried out before issuing of licenses to these mining lease holders. The committee notes that despite the fact that these companies did not comply with the aforementioned set requirements, DGSM went ahead to issue them mining licenses.
3. The committee was not satisfied with the response of the Ministry of Energy and Mineral Development. Notably, it is not the responsibility of the Ministry to ascertain the source of funds for miners.

Recommendations

The Committee recommends that the DGSM should be more vigilant during verification of applications and ensure that checks and balances are instituted to improve due diligence processes so that licenses are issued to competent and economically sound applicants.

It is also recommended that close monitoring of licensees operations should be done and prompt action taken against mining rights holders who contravene the terms and conditions of the secured licenses.



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3.4 LEVY AND COLLECTION OF FEES

CRITERIA

Under Section 98(1) and Section 103 of the Mining Act, royalties shall be paid on all minerals obtained or mined in the course of prospecting, exploration, mining or in the process of improving the grade or quality of mineral ores. Royalties shall be due within 30 days from the date of assessment. Any unpaid royalty shall attract an interest of 2% p.a. above the commercial bank lending rate. Section 90(1) (a) of the Mining Act states that; the Commissioner may suspend or cancel a mineral right if the holder of such mineral right fails to make any of the payments required on the due date.

CONDITION

Through review of Mining Lease return files and Non Tax Revenue (NTR) records, the following were observed;

Payment of fees:

It was observed that Non-Tax Revenue (NTR) outstanding as at 30th September 2015 totaled to UGX 4.4 billion and this amount related to the period July 2011 to September 2015. The highest debtors (68.2%) relate to unpaid royalties as shown in Table 1 below.

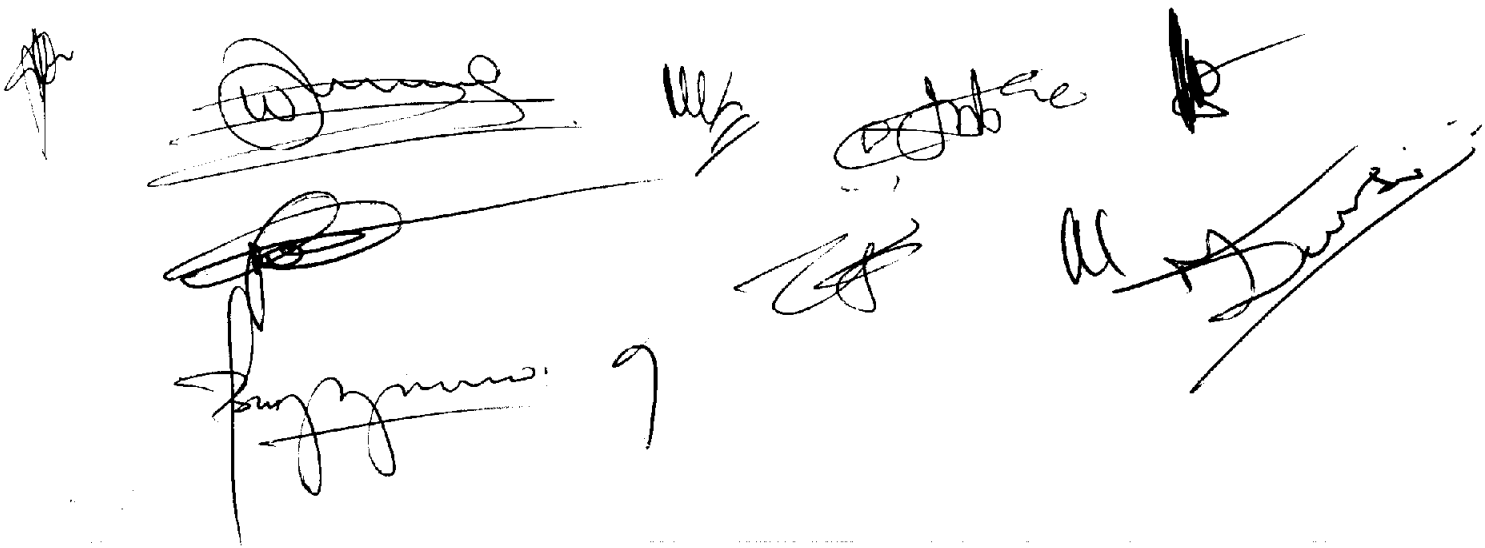
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Table 1: Aging of uncollected NTR over the period (2011 - 2015)

Year License type	2011	2012	2013	2014	2015	TOTAL	%age of NTR uncol lecte d per licen se
	Figures in millions						
Royalties	428.7	657.7	829.5	100	986.4	3002.3	68.20%
license fees	67	110.3	364	390.1	66.1	997.5	22.70%
Renewals	0	0	2.2	2	1.6	5.8	0.10%
Preparation	0.1	38.9	28.1	41.9	25.7	134.7	3.1%
Mineral rent	18.4	43	6.7	61.5	132.3	261.9	5.90%
TOTAL	514.2	849.9	1230.5	595.5	1212.1	4,402.2	
%age of uncollected NTR per yr.	11.70%	19.30%	28%	13.50%	27.50%		100%

Source: OAG analysis of NTR records

CAUSE

This was due to lack of prioritization and commitment by DGSM to follow-up with licensed mining operations.

EFFECT

By failing to collect all the mineral fees that fell due and imposing the 2% penalty on the outstanding royalties, there is a risk that this money may never be recovered yet this revenue could have been used to further develop and promote the minerals sector.

Submission of returns

CRITERIA

For every mining lease granted, a file known as a returns file was maintained which contains operation performance reports and monthly returns of

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mineral quantities extracted upon which computation of mineral royalties is based. This file thus helps to track the operations and payment of royalties of the leaseholders.

CONDITION

Out of 36 mining leases, 13 did not have corresponding return files maintained by the registry division as shown in Table 2 below.

Table 2: Mining Leases with no returns

S/N.	License no	Date License was Issued	Licensee
1.	ML 0112	6/4/06	V.E.K Global Mining Ltd
2.	ML 0594	13/06/2011	Kigezi Steel Company Ltd
3.	ML 1466	15/4/2015	Euro Minerals
4.	ML 3070	13/11/1994	Luhizha Mines Ltd
1.	ML 1209	14/03/2014	Sino Minerals Investments Co. Ltd
2.	ML 1047		First Mining
3.	ML 0886		Shaft Sinkers U Ltd
4.	ML 1413	18/12/2014	B.N.T Mining
5.	MI 1381	29/10/2014	Sun & Sand Mines And Minerals
6.	ML 1297	14/03/2014	Sino Minerals Investments Co. Ltd
7.	ML 1230	17/01/2014	Moroto Cement Industries
8.	ML 1117	19/04/2013	Building Majesties Ltd
9.	ML 0842	16/09/2011	Berkeley Reef Ltd

Source: OAG analysis of return files for companies with mining leases.

It was noted that there was no follow up correspondence between the department and the affected companies to remind them of their obligation to comply with the Act. It was further noted that the current regulatory framework did not provide for penalties for non-submission of returns which could cause negligence in submitting returns by the license holders.

CAUSE

This was a result of DGSM's licensing, inspection and monitoring division's laxity in making follow-up with the affected lease holders.

EFFECT

Without return files, coupled with the inadequate inspection and monitoring, the DGSM cannot easily track the operational status of such companies which directly affects the royalties that would accrue to government.

The Accounting Officer stated that "DGSM takes note of this observation. The DGSM especially recognizes the gap within the revenue assessment and the collection system caused largely by assessed Bank Payment Advice Forms (BPAFs) and unpaid BPAFs. He stated that this issue was being addressed by both the DGSM and URA. He said that the Ministry had met some challenges in the levying and collection of royalties which arise from the weaknesses in existing legal, fiscal and regulatory framework.

In the proposed amendment of the legal, fiscal and regulatory regimes the gaps would be filled. In addition, the Ministry would establish a desk in Uganda Revenue Authority and use electronic system for quick reconciliation of mineral revenue. Previously, the Ministry had been using a Manual based system."

The Accounting Officer responded that the Ministry had continued to lobby the Ministry of Finance, Planning and Economic Development and the Parliament of Uganda to make available adequate budget allocations for

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monitoring and inspections of mining and exploration operations to effectively manage enforcement of working obligations by licensees. However, the DGSM has made some efforts to follow-up and ensure compliance with limited resources.

On assessment of UGX 33 billion and only collecting UGX 28 billion, she noted that there was some duplication in the figures as assessed by URA and disputed the figure provided by the auditors of UGX 4.4 billion. The A/O informed the committee that the total assessments were greater than the actual collections.

She farther stressed that the inspection unit was understaffed thus the Ministry relied heavily on the companies to submit their returns.

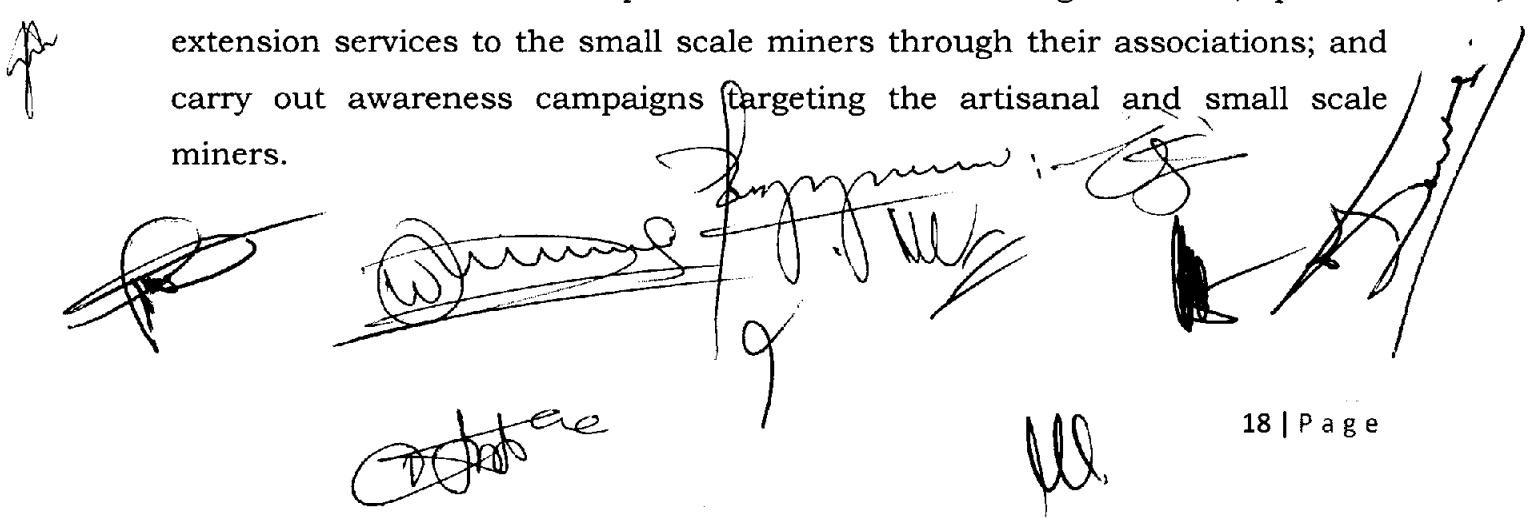
Observations

It should be noted that the position provided by the Auditor General was correct in that whereas the Ministry had considered one FY 2014/15, Auditor General considered four financial years up to and including FY 2014/15.

3.5 ADVISORY SERVICES

CRITERIA

One of the objectives of the mineral policy is to regularize and improve artisanal and Small Scale mining through the following strategies: apply light handed regulation in small scale mining by exercising leniency; provide information on available production and marketing facilities; provide extension services to the small scale miners through their associations; and carry out awareness campaigns targeting the artisanal and small scale miners.

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FINDINGS

Through field inspections of sampled districts with high concentrations of Artisan and Small scale miners of Mubende, Moroto, Buhweju, Namayingo, Busia and Kabale, audit established that artisan and small scale miners use rudimentary and labour-intensive mining methods such as heating up iron ore using firewood.

In Busia and Namayingo Districts, miners were found using mercury and cyanide in the gold mining process to recover fine gold from the crushed rock tailings. However it was noted that although Uganda signed the Minamata Convention on Mercury in 2013 to protect human health and the environment from emissions and releases of mercury and mercury compounds, the country has not yet domesticated the convention and has no legislation in place specifically regulating mercury or cyanide, which are potentially hazardous to human health and the environment.

There were no interventions by DGSM to encourage ASM to have their associations granted Location Licenses to ease tracking of their operations and no activity reports were availed to audit.

CAUSE

This was caused by failure by the DGSM to sensitize and train this category of miners, inadequate awareness; and lack of enforcement measures to ensure that ASM implement the regulations, actions and practices recommended during awareness workshops.

EFFECT

Environmental and land degradation due to indiscriminate excavation; and loss of revenue due to non-declaration of minerals excavated have increased. The abandoned pits posed a risk of injury to especially children and animals.

Pollution from the use of mercury and cyanide plus the haphazard release of tailings or residue into water bodies.

The A/O responded that the Ministry had met challenges in dealing with the Artisanal and Small Scale Mining operators (ASM) issues. The ASM are a mixed group in two categories; nationals and foreigners operating in illegal mining, for example, in Mubende, Namayingo and Karamoja region in what the activity is termed as 'gold rush'. During inter-ministerial consultations, this was recognized as a national challenge arising from migrations of foreign nationals and the mixing with the local population. The matter requires a full scale study to enable:

(i) Enforcement of the law.

(ii) Sensitization of local governments and communities in the mining districts.

The implementation of (i) and (ii) above require additional resources.

In addition, the DGSM has been conducting comprehensive sensitization and awareness campaigns in mining areas targeting, minerals rights holders, ASM and Local Governments.

The MEMD has also continued to engage in inter-agency efforts to curb illegal mining and processing, smuggling, insecurity in ASM areas and to render extension services.

3.6 INSPECTION AND MONITORING OF MINING OPERATIONS

CRITERIA

Section 64 of the Mining Act, 2003 empowers the Commissioner/Director Geological Survey and Mines to inspect all operations under mineral rights. The Mines department – inspection and monitoring division – through its regional mining inspectors is required to conduct inspections, prepare and

submit monthly reports (thus 12 reports per year) to the Assistant Commissioner Inspection and Monitoring. This is supplemented by a monitoring team convened from the DGSM headquarters on a quarterly basis to give a total of 16 reports per annum.

FINDINGS

UGX 500 million was released for this activity, over the period covered by the audit as shown in Table 3 below:

Table 3: Releases vis-à-vis number of inspections by DGSM

FINANCIAL YEAR	BUDGET UGX	RELEASES UGX	NUMBER OF INSPECTIONS CONDUCTED
2010/11	30,000,000	11,083,333	1
2011/12	30,000,000	14,451,000	0
2012/13	128,960,000	55,492,000	7
2013/14	207,000,000	126,073,000	7
2014/15	321,000,000	293,300,662	8
Total	716,960,000	500,399,995	23

Source: OAG analysis of Inspection records

Only 23 (8%) inspections were conducted as per reports availed to the team. Further analysis of the availed reports revealed that the inspection coverage was 35 out of 818 licences representing 4% of the total licences issued.

DGSM did not prepare inspection and monitoring work plans but instead relied on the forecasts laid in the Ministerial Policy Statements. There were

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