REGULATION, MONITORING AND PROMOTION OF THE MINING SECTOR BY MINISTRY OF ENERGY AND MINERAL DEVELOPMENT

A REPORT BY THE AUDITOR GENERAL

DECEMBER, 2015
REGULATION, MONITORING AND PROMOTION OF THE MINING SECTOR BY MEMD | A REPORT BY THE AUDITOR GENERAL
31st December 2015

The Rt. Hon. Speaker of Parliament
Parliament of Uganda
Kampala

REPORT OF THE AUDITOR GENERAL ON THE REGULATION,
MONITORING AND PROMOTION OF THE MINING SECTOR BY
MINISTRY OF ENERGY AND MINERAL DEVELOPMENT (MEMD)


My office intends to carry out a follow – up at an appropriate time regarding actions taken in relation to the recommendations in this report.

I would like to thank my staff who undertook this audit and the staff of Ministry of Energy and Mineral Development for the assistance offered to my staff during the period of the audit.

John F. S. Muwanga
AUDITOR GENERAL
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# ABBREVIATIONS AND ACRONYMS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>CAO</td>
<td>Chief Administrative Officer</td>
</tr>
<tr>
<td>DEO</td>
<td>District Environment Officer</td>
</tr>
<tr>
<td>DGSM</td>
<td>Directorate of Geological Survey and Mines</td>
</tr>
<tr>
<td>EL</td>
<td>Exploration License</td>
</tr>
<tr>
<td>EMP</td>
<td>Environment Management Plan</td>
</tr>
<tr>
<td>LL</td>
<td>Location License</td>
</tr>
<tr>
<td>MEM</td>
<td>Ministry of Energy and Mineral Development</td>
</tr>
<tr>
<td>ML</td>
<td>Mining License</td>
</tr>
<tr>
<td>MR</td>
<td>Mineral Right</td>
</tr>
<tr>
<td>NEMA</td>
<td>National Environment Management Authority</td>
</tr>
<tr>
<td>OHS</td>
<td>Occupational Health and Safety</td>
</tr>
<tr>
<td>PL</td>
<td>Prospecting License</td>
</tr>
<tr>
<td>RL</td>
<td>Retention License</td>
</tr>
<tr>
<td>URA</td>
<td>Uganda Revenue Authority</td>
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</table>
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\(^1\). 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\(^2\).

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 DGSM.

**KEY FINDINGS**

a. **Regulation of commercialised building materials**

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 Shema also indicated that they were not collecting any fees from such activities, either.

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

b. **Formalisation and regularisation of Artisan and Small scale Mining (ASM) Activities**

Whereas the mineral policy provided for formalizing and regularizing mining operations of Artisan and Small scale Miners (ASM) activities, the DGSM did not implement and enforce it. In addition, the Directorate was to ensure health and safety standards for all mining operations in coordination with Ministry of Gender, Labour and Social Development (MoGLSD) – Occupational Safety and Health (OSH) department. However, there was no evidence of coordination taking place between the two ministries in this regard.

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

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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.

c. **Conformity to set application requirements & working obligations**

Much as the Mining Act, 2003 laid down requirements to be met by all applicants of mining licenses, fulfilment of which would form a basis for granting a mining lease; none of the 36 mining companies issued with mining leases fully complied with this requirement. Eleven (11) of these companies had abandoned operations with no evidence of the Commissioner either engaging the concerned parties to furnish him with explanations to that effect, suspend or cancel their licenses as per the provisions of the prevailing regulatory framework.

Failure by the licensing department to enforce compliance with the set requirements led to issuance of mining rights to firms that could have lacked capacity to undertake mining operations. Accordingly, the issuance of mining rights in the sector has not been effective in promoting mineral development. The Directorate’s mission to establish, promote the development, strategically manage and safeguard the rational and sustainable utilization of mineral resources for economic and social development cannot be achieved.

d. **Payment of fees**

It was observed that Non-Tax Revenue (NTR) outstanding as at 30th September 2015 totaled to UGX 4.4 billion for the period July 2011 to September 2015. Although the Mining Act, 2003, provided for a penalty of 2% over and above the prevailing commercial banking rate to be charged on unpaid royalties and the Commissioner was to prohibit any mineral right holders with unpaid royalties from disposing of minerals exploited from the sites for which they have a license, there was no evidence for enforcement of these provisions.

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.

e. **Advisory Services**

Field inspections of sampled districts with high concentrations of Artisan and Small scale miners of Mubende, Moroto, Buhweju, Namayingo, Busia and Kabale, it was established that artisan and small scale miners use rudimentary and labour intensive mining methods like heating up iron ore using firewood. There were no occupational health and safety measures undertaken by these ASM. Miners were found using mercury and cyanide to recover fine gold from the crashed rock with no safety gear such as helmets and gloves.

Although Uganda signed the Minamata Convention on Mercury in 2013 to curb use of mercury in mining operations, Uganda had not operationalised its provisions.

The ASM operations remain unregulated thereby distorting established recoverable mineral target endowments as their technologies do not fully recover mineral extracts, loss of mineral revenue and posing environment risk.
f. Inspection and monitoring of mining operations

It was observed that much as the mines department of DGSM planned to make thirty-six (36) inspections that is twelve (12) per year and three (3) for every quarter, conducted inspections remained low as per inspection and monitoring reports availed to audit.

By not conducting adequate inspection and monitoring, the DGSM could not track the performance of all the mineral licences issued and enforce compliance of mining regulatory framework.

RECOMMENDATIONS

i. The DGSM should consider regulating and levying mineral fees from commercialized building materials.

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

iii. The DGSM should be more vigilant during verification of applications and checks and balances instituted to improve the due diligence process so that licences are issued to competent and economically sound applicants if the mining sector is to develop. Close monitoring and supervision of the licensee operations should be done and prompt action taken against mineral right holders who contravene the terms and conditions of the secured licences.

iv. The DGSM should liaise with the other agencies like Uganda Revenue Authority and devise a mechanism for enforcing the penalty and following up the defaulters for recovery.

v. The DGSM should consider implementing and enforcing the ASM, encourage them to form associations, enhance awareness, sensitization and enforce adoption of acceptable mining practices.

vi. The DGSM should consider enhancing
inspection and monitoring activities by streamlining their planning and budgeting, indicating sites to visit per region, setting KPIs with regional inspectors and ensuring adherence.

vii. The MEMD through its DGSM should expedite the process of formulating the laboratory policy, adequately equip the mineral laboratory and pursue its ISO certification.

viii. The DGSM should address the shortfalls within the cadaster so as to provide an adequate infrastructure that can be used by potential investors in the sector.

OVERALL CONCLUSION

Government of Uganda put in place the Mining Policy in 2001 and subsequently the enabling legislation in 2003 to guide the DGSM under the MEMD in overseeing the mineral sector. However regulating, monitoring and promoting the sector has not been effective as commercialized building materials and artisan and small scale mining operations producing over 90% of the national mineral output and employing about 200,000 Ugandans remain informal and unregulated. Whereas the number of issued mining licencees increased from 157 in 2002 to 818 (192%) in 2015, the inspection and monitoring coverage geared towards enforcing compliance with the prescribed conditions and the regulatory framework remained low at only 4%. This has led to many non-compliant licences not being followed up resulting in loss of revenue to Government.

As Government embarks on the process of the review of the legal framework, it is important that the existing gaps in the regulatory and operational framework are addressed.
CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND
The mining industry plays a central role in the socio-economic development of any country. It provides raw materials for local industries, employment and export earnings\(^3\). Uganda’s mineral potential is very high given the existence of a variety of geological formations, many of which have yielded exploitable mineral deposits of both metallic (e.g. copper, gold, diamond) and non-metallic (e.g. clay, sand, slates, rock salt, limestone, asbestos and phosphates) across the country. The Directorate of Geological Survey and Mines (DGSM) under the Ministry of Energy and Mineral Development is the lead government agency technically responsible for the administration and management of the mineral sector\(^4\).

1.2 MOTIVATION
The Government commissioned a study in 1999 to review the mining sector performance with a view of revamping the industry. This study identified several constraints namely lack of: a mineral policy, modern internationally competitive law and regulation to steer the industry, and adequate geo-information to attract significant mining investment. In light of the above, a Mineral Policy was established in 2001 with the aim of stimulating the sector’s development, promoting private sector participation, adding value to mineral ores and increasing mineral trade\(^5\). This was followed by the enactment of the Mining Act and Mining Regulations in 2003 and 2004 respectively.

The Government with the help of the World Bank, African Development Bank and Nordic Development Fund committed funds amounting to USD 48.3 million\(^6\) under the Sustainable Management of Mineral Resources Project (SMMRP). The overall objective of the project was to assist the Government of Uganda in implementing its mineral sector strategy to i.e. accelerate sustainable development; reduce poverty and to promote socially and environmentally sound development of the minerals sector based on private investment\(^7\).

In addition, the Government embarked on implementing a Comprehensive Mineral Sector Reform Program (CMSRP) in 2005 with a primary goal of harmonising the legal, policy and institutional framework within the sector and enhancing its contribution to GDP, foreign exchange and employment. This resulted in increased number of investors licensed in the sector from 91 in 2003 to 517 in 2008 and an increase in production volumes and exports\(^8\).

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3 Mineral Policy of Uganda, Page 2 2000
4 Page 10, Mineral Policy of Uganda 2000
5 Address by Hon. Minister Hillary Onek, then Minister for Energy and Mineral Development, 4\(^{th}\) May, 2010
7 Chapter 2 SMMRP PROJECT implementation manual pg 2
8 Section 285, National Development Plan 2010/11-2014/15; Page 107
Furthermore, new discoveries of over 256 million tonnes of iron ore reserves were reported in southern Uganda at Muko, Buhara, Nyamiraga and Kisoro; over 300 million tonnes of marble/limestone projected in Karamoja and 80 targets of uranium of which 10 were demarcated for detailed exploration to establish the reserves in the districts of Arua, Kitgum, Kabalore, Hoima and Ntungamo. Deposits of nickel, cobalt, copper and platinum were confirmed in different parts of the country and rare earth elements stretching 2kms long and 250 metres wide were also reported around Karuma. Also, economically viable deposits of 230 million tonnes of phosphates at Sukulu in Tororo have been proven. However, despite the above government interventions, massive mineral endowments remain unexploited and the sector’s contribution to Gross Domestic Product (GDP) was reported at 0.3%.

Mining has become a principal livelihood for many Ugandans living as artisan and small scale miners using manual and labour intensive methods. This informal sector produces over 90% of national production and employs almost 200,000 Ugandans. Whereas the mineral policy had provided for formalising and regularising their operations, its implementation and enforcement did not take effect thereby rendering them illegal due to lack of mining licences. Illegal gold mining in Kamalenge area in Kitumbi Sub County, Mubende district of 282.9 sq km and the Namayingo district gold rush on Nakudi village, Banda sub-county were reported in the media, where an estimated 70,000 and 20,000 people respectively were extracting gold illegally and trading it on the black market leading to loss of government revenue.

The purpose of this audit was to assess the extent to which government is regulating, monitoring and promoting the mining sector, identify the performance gaps, possible causes and suggest recommendations to improve its performance.

1.3. DESCRIPTION OF THE AUDIT AREA

1.3.1 General Description
The Directorate of Geological Survey and Mines (DGSM), which prior to 2015 was a department, is the lead government agency operating under the Ministry of Energy and Mineral Development (MEMD) which is technically responsible for the administration and management of the mineral sector. The purpose of this directorate is to promote and ensure rational and sustainable development and utilization of mineral resources for socio-economic enhancement of the people of Uganda. The directorate has three departments namely; Geological Survey, Mines and Geothermal. The department of geological surveys and mines conducts airborne geophysical and geological surveys to acquire basic geo-scientific data and generate maps of anticipated prospective areas; manage and make them available to the mining department and the private sector. The major function of the mines department is to administer licensing of mineral rights guided by the Mining

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10 NDP section 286 ,pg,109
12 The Daily Monitor 25/3/2015 “Government stuck with illegal miners
13 New vision May 29th 2013 - Uganda losing millions in illegal gold mining

14 The Daily Monitor 25/3/2015 “Government stuck with illegal miners
Act and Mining Regulations and also provide advice to mineral right holders and monitor mining operations through regular inspections. While DGSM only does preliminary surveys to track mineral traces across the country, detailed surveys and actual mining activities are undertaken by the private investors in the sector under the supervision and monitoring of the mines department. The department of mines is required to coordinate with the National Environment Management Authority (NEMA) in assessing and approving Environment Impact Assessments (EIAs) submitted by the mining license applicants before issuance of the mining lease. It is also required to cooperate with the department of Occupational Safety and Health (OSH) of the Ministry of Gender, Labour and Social Development in assessing safety and health measures proposed by the mining lease applicant against labour standards set for the mining sector.

The department of Geothermal resources is charged with formulating legal framework on geothermal exploration and development, carry out geothermal surveys and promotional activities, license, inspect and evaluate geothermal license holders.

1.3.2 Mandate
The Directorate of Geological Survey and Mines (DGSM) is mandated by the Mineral Policy 2001, the Mining Act 2003 and the Mining Regulations 2004 to:

Promote and ensure rational development and utilisation in a safe and sustainable environment of mineral resources for the socio-economic enhancement of the people of Uganda.

1.3.3 Vision and Mission of the mineral sector Vision:
Uganda’s vision for the mineral sector is “To attract investment, build capacity for acquisition and utilisation of Geo-data and increase mineral production for Economic and Social Development of Uganda”

Mission of DGSM:
The mission of the DGSM is to establish, promote the development of, strategically manage and safeguard the rational and sustainable utilisation of mineral resources for economic and social development. To collect, process, analyse, archive and disseminate geoscience data; monitor mining operators and enforce regulations in the mineral sector as well as develop and maintain professionals capable of generating and utilising geo-science data.

1.3.4 Objectives of the Directorate of Geological Survey and Mines
The objectives of the Directorate of Geological Survey and Mines are:

a) To systematically collect, interpret, preserve and disseminate geological information that is required to maintain the national geo-science database.

b) To maintain a body of expertise that can use this data to advise Government, the private sector and the general public.

c) To carry out geological investigations and promotional activities to attract investment in exploration and development of mineral resources.

d) To carry out engineering geology investigation, monitor earthquakes and other related natural disasters such as landslides and volcanic effects and advice the public on remedies.

15 Page 5 of the Mineral Policy, 2000
e) To provide reliable and effective laboratory services in the mineral sector for institutional and public use.

f) To administer the Mining Act and Regulations, and provide advisory services to miners on mining methods and environment protection.

1.3.5 Organizational structure
The Ministry of Energy and Mineral Development under the leadership of the Permanent Secretary offers policy direction to the Directorate. The Directorate of Geological Survey and Mines is comprised of three main departments namely; the Geological and Survey, Mines and Geothermal Resources departments. These are headed by Commissioners who report to the Director of the DGSM. The directorate coordinates with the National Environment Management Authority (NEMA), MoGLSD and the District Local Governments in implementing its mandate. Refer to Appendix (i).

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

The specific objectives of the audit were:

i. To assess the adequacy of the regulatory framework of the mining sector.

ii. To assess whether licensing is in line with the set requirements; and fees timely paid and followed up.

iii. To establish whether DGSM provides advisory services to artisan and small scale miners.

iv. To ascertain whether the inspection and monitoring of the mining industry has been effective in tracking mining operations.

v. To assess whether DGSM provides effective and reliable laboratory services in the mineral sector for institutional and public use.

vi. To establish whether a national geoscience database is maintained.

1.5 AUDIT SCOPE
CHAPTER TWO

AUDIT METHODOLOGY

The audit was conducted in accordance with the International Organization of Supreme Audit Institutions Auditing Standards and the Office of the Auditor General (OAG) VFM audit manual. The standards require that the audit is planned in a manner which ensures that an audit of high quality is carried out in an economic, efficient and timely manner.

2.1 SAMPLING

Samples included: exploration, location, mineral dealer licences and mining leases, and artisan and small scale miners across the country to execute the audit. Thirty six (36) mining leases, seven (7) exploration license sites, five (5) location licences, (5) mineral dealer licences and five (5) artisan sites, were selected. All the issued thirty-six mining leases were covered, artisan sites were randomly selected while for location and exploration sites, a mix of companies that had paid annual rents and those that defaulted as per DGSM account records were chosen. The prospecting and retention license sites were not visited as prospecting activities had no defined location of operation while operations for the latter were on halt over the audit scope period.

2.2 DATA COLLECTION METHODS

Document review, interviews, and physical inspections were used to obtain necessary information for the audit as follows:

(i) To assess the adequacy of the regulatory framework of the mining sector

The Mineral Policy 2001, Mining Act 2003, Mining Regulations 2004 and the draft green paper were reviewed to establish the comprehensiveness of the current regulatory framework; its shortcomings and how these affect operations of the sector. Corroborative information was gathered through interviews with the Director, Acting Assistant Commissioners and regional mining inspectors of DGSM to obtain their evaluation of the adequacy of the prevailing framework, challenges faced and measures (if any) put in place to address them. Inspection and monitoring reports prepared by the directorate over the period of audit were also reviewed.

(ii) To assess whether licensing is in line with set requirements, fees paid/followed-up

This was assessed by:

• Reviewing the Mining Act and Regulations to understand the provisions of the law.
Administration files were reviewed to understand the terms of operations for the licences and to evaluate the extent to which the licensing division under the mines department complied with laid procedures. Return files were also reviewed to assess the extent to which mining lease holders met their obligation of remitting returns to DGSM on a monthly basis as provided for in the Act and Regulations.

- Ascertain whether all laid requirements needed to apply for a mining right as spelt out in the Mining Act and issued based on adherence.
- Establishing measures in place to address applications that do not contain all the requirements.
- Enquiring for cases where licences were issued despite non-availability of all application requirements causes of such instances.
- Establishing whether mineral fees were levied, Payment Reference Numbers (PRNs) issued to effect payments and follow-ups made for delayed payments. For outstanding mineral fees, enquiries were made as to whether the provisions of the Mining Act were enforced or not. Commissioner Domestic and Customs Taxes in the Uganda Revenue Authority (URA) were interviewed to ascertain their role in collecting mineral fees.
- Establishing through interviews with licensing division personnel and review of monitoring reports whether all mining rights holders execute mineral operations as per their respective submitted mineral site development plans. In case of non-compliance, whether explanations are submitted to the Director DGSM as provided for by the prevailing regulatory framework and followed up during site inspections.
- Ascertaining whether the regional inspectors collect data pertaining to quantities extracted by mining lease holders within their areas of jurisdiction, make assessments after reconciling the submitted returns from mining lease holders.

(iii) Establishing whether DGSM provides advisory services to Artisanal and Small Scale Miners (ASM)

- Interviews were conducted with the Ag Assistant Commissioner mines to determine services that were given by DGSM to regularise and improve artisanal and small scale mining.
- Documents relating to provision of extension services, awareness campaigns to the artisan and small scale miners associations were reviewed to assess the geographical coverage, extent to which these services were provided and progress made in formalising and regularising artisanal and small scale mining.
- Interviews were held with leaders of the sampled artisan mining association sites during inspections to corroborate information provided through the interviews and document review. Actual working conditions of the artisan and small scale miners and the state of their sites were also attained.

(iv) Ascertaining whether inspection and monitoring of the mining industry has been effective in tracking mining operations

- Work plans, budgets, releases and expenditures for DGSM were reviewed to ascertain whether inspection and monitoring activities were budgeted and planned for, funds
released, activities executed as envisioned.

- Inspection and monitoring reports were reviewed to ascertain their scope of coverage, frequency of execution, issues raised, recommendations and follow-ups made to track performance of various mining sites reported on.

- Established whether regional officers were involved in developing the inspection and monitoring work plans clearly indicating mining sites to inspect with stated timelines and Key Performance Indicators (KPIs) agreed upon with the Principal inspector of mines.

- Interviews were held with the Ag. Commissioner mines, Principal inspector of mines and regional inspectors of mines to established actions taken by DGSM on mining right holders not complying with the mining regulatory framework. Physical inspections were conducted to interview managers of sampled mining sites, establish the number of the inspection and monitoring visits made by DGSM, and observe the working conditions of workers in those sites and their status as corroborative evidence of information collected through interviews and document reviews. Audit noted that for LSM, issues of OSH were being adhered to.

[v] Ascertaining whether DGSM provides effective and reliable laboratory services in the mineral sector for institutional and public use

- Interviews were held with the Director and the Ag Assistant Commissioner laboratory to assess the performance of the DGSM laboratory and its reliability in carrying out mineral tests and analysis. Enquiries were made as to whether the established laboratory was able to carry out all the necessary mineral tests and where gaps were noted, established measures taken (if any) to address gaps in testing and analysis.

- Reviewed the laboratory equipment inventory register and physical inspection of selected equipment to verify their existence and status of functionality of such equipment.

[vi] To establish whether a national geoscience database is maintained

- Established whether geological, geochemical and geophysical surveys were conducted and information processed, analysed and used to update and maintain the national geoscience database. Enquiries were made through interviews on how often geo database is updated.

- Ascertained whether dissemination of the geological data was done to the potential users and reviewed the dissemination channels such as publications and the DGSM website and how accessible this information was to the intended users.

- Established whether a body of expertise was in existence and to what extent it was using the geological data to advise the government, the private sector and the general public.

Details of specific documents reviewed and persons interviewed are shown in Appendix (ii) and (iii).
3.1 ROLES AND RESPONSIBILITIES OF KEY PLAYERS

Ministry of Energy and Mineral Development (MEMD)
The Ministry of Energy and Mineral Development (MEMD) is charged with the overall responsibility for the Mineral Sector. The Minister is responsible for the policy direction and accountable for the sector’s performance.\[16\]

Directorate of Geological Survey and Mines (DGSM)
The DGSM is the technical arm of MEMD and directly responsible for the implementation of the mineral policy. DGSM is responsible for administering, supervising, regulating, monitoring, enforcing, training, providing extension services and promoting mineral activities.

National Environmental Management Authority (NEMA)
This is responsible for reviewing and approving environmental impact assessments, advising the director DGSM on environmental issues, issuing wetland resource use permits and monitoring mining activities to assess their impact on the environment.

Occupational Safety and Health (OSH) department of the Ministry of Gender, Labour and Social Development
Provide guidelines to the DGSM regarding appropriate Health and Safety measures to be enforced within the industry. The Occupational Safety and Health (OSH) department:
• Evaluates and controls the physical, chemical, physiological, social and technical factors that affect a person at work places and the working environment.
• Inspects all work places to ascertain good working conditions and safeguards against occupational injuries, accidents and diseases.
• Performs risk assessment, hazard identification and analysis to control their occurrences/reoccurrences.

Mineral Rights Holders (MRH)
These are obliged to pay mineral levies, namely: license prescribed fees, royalties, mineral rent fees and taxes provide employment opportunities to nationals and promotion of the Ugandan minerals sector on the international market. These MRH form an umbrella called the Uganda Chamber of Mines and Petroleum which lobbies Government for improved services to the sector.

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16 Mineral Policy of Uganda; pg22-23
3.2. PROCESS DESCRIPTION

Data capture, processing, analysis and dissemination
The department of Geological Survey under the DGSM is charged with collecting, organizing, processing, and analysing basic geological data by conducting airborne and geo-physical surveys, picking samples for testing in the laboratory and confirming mineral existence. Generated information is archived in a central geo-database managed by the Ag Assistant Commissioner Geo-data. Geological maps are generated basing on the confirmatory tests performed on the geological data obtained. Preliminary information giving mineral traces such as geo-logical maps and basic geo-logical information is disseminated through publications and uploading it on the DGSM website while the geophysical information and geo-logical explanatory notes are accessed upon payment of a prescribed fee by interested potential investors.

Licensing
The licensing division under the department of mines headed by the Ag Assistant Commissioner, Mines receives applications from potential investors, reviews them and issues licences applied for by respective applicants. These include: Prospective License (PL), Exploration License (EL), Mining License (ML), Retention License (RL), Location License (LL), Mineral Dealers License (MDL) or Mineral Export License (MEL).

Licensing of mineral rights follows defined procedures. The process involves filling forms which are available at the DGSM office in Entebbe and or can also be downloaded from the website of the Directorate of Geological Survey and Mines. The forms other than for Prospecting License (PL) are filled by the applicant, endorsed by the Chief Administrative Officer (CAO) of the respective districts where the applied site[s] lies. The Chief Administrative Officer certifies each copy of the application and includes the date and time at which the application has been received; appends his or her signature and an official stamp to the application; and endorses each page of the application and any accompanying documents.

These are then submitted by the applicant to the licensing division of the mines department to assess if the application conforms to the set requirements. Once it conforms, a Payment Registration Number (PRN) form including the amounts to be paid is issued to the applicant to effect payment to Uganda Revenue Authority (URA). On getting a URA receipt, it’s taken to the cashier of the MEMD at Amber House for issuance of a general receipt applicant. This is then submitted to the Commissioner for grant of the license. The licences issued are as follows:
Table 1: Category of Licences issued by DGSM

<table>
<thead>
<tr>
<th>Type of licence</th>
<th>Purpose</th>
<th>Period (years)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exploration (EL)</td>
<td>To explore for minerals in an area not more than 500 sq.km</td>
<td>3</td>
<td>Renewable for 2 terms of 2 years each, with 50% area dropped on each renewal.</td>
</tr>
<tr>
<td>Mining Lease (ML)</td>
<td>For mining operations</td>
<td>21</td>
<td>Renewable for 15 years</td>
</tr>
<tr>
<td>Location (LL)</td>
<td>For mining operations of a smaller investment where expenditure to achieve production will not exceed 500 currency points</td>
<td>2</td>
<td>Granted to citizens of Uganda or in case of corporate, citizen of Uganda holds &gt;50% of ownership</td>
</tr>
</tbody>
</table>

Source: DGSM flyer 2012

All persons dealing in minerals are issued with annual Mineral Dealers’ Licences (MDLs) which do not cover exportation permits. For a mineral dealer to export any mineral, an application for an export license is sought for every consignment.

**Inspection and Monitoring**

The mines department – inspection and monitoring division – through its regional mining inspectors is required to conduct inspections, prepare and submit monthly reports to the Director of the DGSM through the Principal inspector of mines. This is supplemented by a monitoring team convened from the DGSM headquarters on a quarterly basis. All these are aimed at generating information on quantities extracted by each mining lease, tracking progress of activities under the various licences and assessing actual status for all mining right sites. The data obtained through the inspection and monitoring activities would aid comparison with data submitted by the respective mining leases. Through its inspection and monitoring activities, the mining department is required to encourage artisan and small scale miners (ASM) to form associations through holding sensitization workshops in order to improve their production and marketing capacities. The formed associations would be encouraged to apply for location licences to easy regulating of their operations by the Directorate of GSM.
FINDINGS

The Government of Uganda has endeavoured to establish interventions in the mining industry since 1999 and significant amounts committed to the sector. However, most of the country’s mineral endowments remain unexploited and the sector’s contribution to GDP remains low at 0.3%. Whereas issuance of licences adhered to most of the laid down procedures as per the Mining Act and Regulations, audit noted several factors responsible for the underperformance of the sector as detailed here under.

4.1. ADEQUACY OF THE MINING REGULATORY FRAMEWORK

4.1.1. Regulation of commercialised building materials

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.

Interviews with the Director, GSM, revealed that the DGSM did not administer the mining of sand; murram; clay and stone quarrying used for commercial purposes but were regulated by NEMA, NFA and the district local governments. Audit interaction with National Environment and Management Authority (NEMA) and the National Forestry Authority (NFA) revealed that these only issue extraction permits to operate in wetlands and forest reserves, respectively, but did not levy royalties. The sampled districts of Tororo, Kasese, Bushenyi and Shema also indicated that they were not collecting any fees from such activities either.

Accordingly, NEMA issues extraction permits for sand and clay in wetlands in accordance with Section 12 and 23(2) of the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, 2000 and monitors conformity with the EIAs.

Review of Section 23(2) of the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, 2000 revealed that the Executive Director was expected to grant a permit after consultations with the lead agency. However, through interviews, it was noted that there were no consultations

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17 Section 12 (4) The Executive Director may issue a permit in Form B specified in the First Schedule permitting the use of wetland resources. Section 23 (1) A person who intends to carry out any of the following activities shall make an application to the executive Director in Form A set out in the First Schedule to these Regulations;

18 Section 23 (2) The Executive Director may, after considering the application submitted under sub-regulation (1) and after consultations with the lead agency, grant a permit in “Form B” set out in the First Schedule to these Regulations on such conditions as he or she
between NEMA and DGSM concerning the mining of sand, clay, murrum and stone quarrying. Through the interviews conducted with the Director, DGSM, audit established that the DGSM did not regulate the mining of sand, clay, murrum 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.

Failure to levy royalty on these commercialised 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.

By failing to regulate the extraction of commercialised building materials, extraction permits are issued without conducting due diligence on the level of technology to be used and corresponding royalties lost by government.

**Management response**

The Ministry agrees with the audit observation; but in consideration of the bigger picture in the sector; the information that was used at that time was old. After acquisition of new data, more discoveries and new findings revealed more information on minerals and earth materials. In addition, the limitation has been the legal drafting of the law which did not expound the definition of commercialized building materials, referred to in the law as “Industrial Minerals” in the main body. This limitation will now be addressed in the proposed amendment of the law and shall ensure regulation and levying of mineral fees from commercialized building materials. The proposed amendment will also seek to enhance and promote public sector interventions, such as, the licensing and regulation of the commercial exploitation of clay, murrum, sand or any other stone, to increase revenue generation and to ensure that health safety and environmental concerns are adequately addressed.

**Conclusion**

Commercialised industrial building materials remained inappropriately regulated, leading to loss of government revenue and uncontrolled siltation of the lakes for sand mining.

**Recommendation**

The DGSM should consider regulating and levying mineral fees from commercialised building materials.

**4.1.2. Formalisation and regularisation of Artisan and Small scale Mining (ASM) Activities**

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.

Through the review of the Mining Act, 2003 and Mining Regulations 2004, audit noted that...
whereas the mineral policy provided for formalizing and regularizing the mining operations of artisanal activities, it was never implemented and enforced. In addition, the DGSM was to ensure health and safety standards for all mining operations were to be addressed in coordination with MoGLSD – OSH department. However, there were no correspondences availed to audit to this effect. Interviews with 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) emphasises 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. Through interviews and review of documents, it was noted that the process to review the Minerals policy commenced in October 2013 and a green paper¹⁹ was drafted in 2015 a period of almost 2 (two) years. At the time of audit (December 2015), this document (green paper) was still with the stakeholders for consultation and debate before general consensus; it is only after this process that the official policy document- a white paper will be prepared which will then be distributed for final comments, before being sent to Parliament for debate and approval. It is only after the white paper has been approved that the Act and Regulations can be updated.

Through interviews with the Acting Director, it was noted that the delay was due to the challenge of raising quorum among the various stakeholders involved so as to expedite the review process. 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.

Management response
The Artisanal and Small Scale Mining operators’ (ASM) issues need to be addressed as a security issue and a sensitization challenge. As a security issue, enforcement is required. As a sensitization issue, a national strategy on mining livelihood diversification and ASM formalization is required. The two interventions will enable the gazetting of mineral trade markets in various regions of Uganda. Once implemented, the strategy will enable the regulation of mineral trade and enhance the collection of revenue easily from mineral traders. However, additional resources will be required to support markets establishment, their management and sensitization of local governments, miners and mineral business operators.

Conclusion
The inadequacy of the prevailing mining regulatory framework creates challenges in regulating the mining sector, thus hindering the realisation of the sector’s intended objectives. 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.

Recommendation
The Directorate should ensure that the review process of the mineral

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¹⁹ Green paper- First-draft document on a specific policy area circulated among interested parties who are invited to join in a process of consultation and debate. The objective of a green paper is to arrive at a general consensus before drafting the official policy document, the white paper
regulatory framework is fast-tracked so as to enhance the administration of the mineral sector for improved mineral exploitation and development.

4.2. LICENSING OF MINERAL RIGHTS

4.2.1 Conformity to set application requirements & working obligations

Section 41, Section 108 and Section 110 of the Mining Act, 2003, provides 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 & service required for mining operations
- Statement of employment & training of Uganda citizens
- Business plan
- Environment Impact Assessment
- Annual Environment Audits
- Environment Restoration Plan
- Audited annual accounts

On receipt of an application form for a license, the licensing division should review the application form to verify its conformity with the set requirements.

In addition, Section 50 (2)(c) of the Mining Act, 2003 requires a holder of a mining lease to submit an audited annual financial report to the Commissioner DGSM within ninety (90) days. Furthermore, 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.

From a review of the thirty-six (36) mining lease administrative files it was noted that some 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 licences to these mining lease holders. The results of the analysis are as shown in Figure 1. It was noted that despite these companies not complying with the set requirements, DGSM went ahead to issue them with mining licences.
Figure 1 Conformity of the 36 mining leases to application requirements

Source: Analysis of mining leases applications and application supporting documentation

Further analysis showed that one of the companies did not conform to any of the set requirements. In addition, none of the companies conformed to all the 11 set requirements. As shown in Figure 1, 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 licences. 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 application of their mining lease applications.

Through comparison of the analysis on conformity to application requirements with information on status of mining leases availed by the Mines Department, audit noted that 36% (11) of the mining licences 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 licences. Through interviews with the Acting Assistant Commissioner Monitoring and Inspection, it was noted that DGSM was in the process of terminating the licences; however, documentary evidence to corroborate this was not availed.

This was due to laxity by the DGSM to ensure that issuance of the mining rights licences 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 licences.
Failure by the licensing department to enforce compliance with the set requirements led to firms that may not have been competent enough to undertake mining operations acquiring mineral rights.

**Management response**

In efforts to revitalize the mining sector in Uganda, the licencees 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 to enable 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 licences to get access to financing of their mining investment projects. In addition, the Ministry will take extra care in screening mining applications and plans.

**Conclusion**

The issuance of mining rights in the sector has not been effective in promoting mineral development. The Directorate’s mission to establish, promote the development, strategically manage and safeguard the rational and sustainable utilization of mineral resources for economic and social development cannot be achieved.

**Recommendations**

- The DGSM should be more vigilant during verification of applications and checks and balances instituted to improve the due diligence process so that licences are issued to competent and economically sound applicants if the mining sector is to develop.
- Close monitoring and supervision of the licensee operations should be done and prompt action taken against mineral right holders who contravene the terms and conditions of the secured licences.

**4.2.2 Levy and collection of fees**

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% pa above the commercial bank lending rate. Furthermore, Section 104 of the Act provides that where a mineral rights holder fails to pay the royalties due, the Commissioner shall prohibit the holder from disposal of minerals from the area concerned or other area where the mineral rights holder has a license until outstanding royalties have been paid or an arrangement for settling the amounts due has been agreed upon by the two parties. 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. Section 70 of the Mining Regulations, 2004 requires all mineral rights holders, except prospecting licences, to pay mineral rents upon grant of a license and thereafter on every anniversary.
Section 69 of the Mining Regulations, 2004 provides that preparation fees for an exploration, location and mining license shall be 30, 20 and 100 currency points which is equivalent to Shs 20,000. The fees are payable on application for a license.

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 as shown in Table 2 below.

<table>
<thead>
<tr>
<th>Year</th>
<th>License type</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>TOTAL</th>
<th>% of NTR uncollected per license</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Royalties</td>
<td>428.7</td>
<td>657.7</td>
<td>829.5</td>
<td>100</td>
<td>986.4</td>
<td>3002.3</td>
<td>68.20%</td>
</tr>
<tr>
<td></td>
<td>license fees</td>
<td>67</td>
<td>110.3</td>
<td>364</td>
<td>390.1</td>
<td>66.1</td>
<td>997.5</td>
<td>22.70%</td>
</tr>
<tr>
<td></td>
<td>Renewals</td>
<td>0</td>
<td>0</td>
<td>2.2</td>
<td>2</td>
<td>1.6</td>
<td>5.8</td>
<td>0.10%</td>
</tr>
<tr>
<td></td>
<td>Preparation</td>
<td>0.1</td>
<td>38.9</td>
<td>28.1</td>
<td>41.9</td>
<td>25.7</td>
<td>134.7</td>
<td>3.1%</td>
</tr>
<tr>
<td></td>
<td>Mineral rent</td>
<td>18.4</td>
<td>43</td>
<td>6.7</td>
<td>61.5</td>
<td>132.3</td>
<td>261.9</td>
<td>5.90%</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>514.2</td>
<td>849.9</td>
<td>1230.5</td>
<td>595.5</td>
<td>1212.1</td>
<td>4,402.2</td>
<td>100%</td>
</tr>
</tbody>
</table>

From the analysis of the aging of the NTR debtors, 28% of these debtors relate to the year 2013 while 27.5% relate to the year 2015. The highest debtors (68.2%) relate to unpaid royalties. Although the Mining Act, 2003 provided for a penalty to be charged on unpaid royalties, and also for the Commissioner to prohibit any mineral right holders with unpaid royalties from disposal of minerals exploited from the sites for which they have a license, there was no evidence to show that penalties had been charged or that the Commissioner had taken necessary steps including follow ups to recover the unpaid NTR.

This was due to lack of prioritization and commitment by DGSM to follow-up with licensed mining operations despite the licensing and inspection division’s commendable staffing proportion of 83% and 93% of actual funding to the total budgets over the audit period.

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.

**Management response**
The 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 Advise Forms and unpaid BPAFs. This issue is currently and concurrently being addressed by the DGSM and URA. The Ministry has met some challenges in the levying and collection of royalties which arise from the weakness in existing legal, fiscal and regulatory framework. In the proposed amendment of the legal, fiscal and regulatory regimes the gaps will be filled. In addition, the Ministry will establish a desk in Uganda Revenue Authority and use electronic system for quick reconciliation of mineral revenue. Previously, the Ministry has been using Manual based system.

**Recommendation**
The DGSM should liaise with the other agencies, namely: Uganda Revenue Authority, to devise a mechanism for enforcing the penalty and following up the defaulters for recovery.

- **Submission of returns**
  Through interview with the DGSM staff, it was noted that for every mining lease granted, a file known as a returns file was maintained which contains operation performance reports and monthly returns of mineral quantities extracted upon which computation of mineral royalties is based. This file thus helped to track the operations and payment of royalties of the leaseholders.
  However, through document review, it was noted that out of 36 mining leases, 13 did not have corresponding return files maintained by the registry division. This was further confirmed in writing by registry staff. Audit was not able to track or confirm filing and submission of returns by these companies listed in Table 3. On further inquiry, 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 slackness in submitting returns by the license holders.
  Without return files, coupled with the inadequate inspection and monitoring, the DGSM cannot easily track the operational status of such companies. In case of abandoned sites, the department GSMs remains uninformed of the justification to that effect which directly affects the royalties that would accrue to government if such MLs were operational.

<table>
<thead>
<tr>
<th>S/N.</th>
<th>License no</th>
<th>Date License was Issued</th>
<th>Licensee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>ML 0112</td>
<td>6/4/06</td>
<td>V.E.K Global Mining Ltd</td>
</tr>
<tr>
<td>2.</td>
<td>ML 0594</td>
<td>13/06/2011</td>
<td>Kigezi Steel Company Ltd</td>
</tr>
</tbody>
</table>
Non maintenance of return files for thirteen (13) mining leases was a result of DGSM’s licensing, inspection and monitoring division’s laxity in making follow-up with the affected lease holders.

Management response
The DGSM takes note of this observation. The MEMD has continued to lobby the Ministry of Finance, Planning and Economic Development and the Parliament of Uganda to make available adequate budget allocations for monitoring and inspections of mining and exploration operations to effectively manage enforcement of working obligations by licences. However, the DGSM has made some efforts to follow-up and ensure compliance with limited resources. The DGSM has proposed provisions in the amendment of the Act to institute commensurate and progressive fiscal and administrative fines and penalties for non-compliance.

Recommendation
The DGSM should ensure that all mineral rights holders are followed up and comply with the laid obligations as per issued licences. The DGSM should expedite the process of amending the regulatory framework to include penalties for non-filing of returns.

4.3 ADVISORY SERVICES
One of the objectives of the mineral policy is to regularise and improve artisanal and small scale mining. In order to do this, government, through MEMD was to use 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. Additionally, the Sustainable Management of Mineral Resources Project (SMMRP) which spanned from 2004/2005 to

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20 Policy objective iii of the Mineral Policy, 2000 page 17
21 Pg 19 of the Mineral Policy, 2000
2011/2012\textsuperscript{22} aimed at regularising artisan and small scale miners (ASM) by strengthening institutional capacity to support formalization and improving performance of ASM throughout the country through sensitisation, trainings and formation of associations.\textsuperscript{23} Under the Project a Small Scale Mining Handbook was developed as a guide for improving the performance of artisanal and small scale mining in Uganda.

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 as shown in Picture 1. In addition, there were no occupational health and safety measures undertaken by these ASM. In Busia and Namayingo Districts, miners were found using mercury and cyanide in the gold mining process to recover fine gold from the crashed 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 operationalised the document and has no legislation in place specifically regulating mercury or cyanide, which are potentially hazardous to human health and the environment\textsuperscript{24}. In addition, through the audit field inspections, abandoned pits were noted and it was also observed that most of these small scale miners lacked safety gear such as helmets and gloves.

Review of the financial records of the MEMD relating to the DGSM revealed that UGX 719 million had been released for awareness, sensitisation and training of all mining operations including artisan and small scale miners on health and safety measures over the period 2010/11 to 2014/15 as shown in Table 4 below.

\begin{center}
\textbf{Table 4: Extracts of budgeted and actual release for awareness, sensitization and training on health and safety.}
\end{center}

\begin{tabular}{|c|c|c|}
\hline
\textbf{Financial Years} & \textbf{Awareness, sensitization and training on Health and Safety} & \\
 & \textbf{Budget (UGX)} & \textbf{Releases (UGX)} \\
\hline
2010/2011 & 102,550,000 & 65,212,578 \\
2011/2012 & 166,904,000 & 112,518,000 \\
2012/2013 & 130,000,000 & 61,300,000 \\
2013/2014 & 298,000,000 & 191,264,000 \\
2014/2015 & 298,000,000 & 288,949,342 \\
\hline
\textbf{TOTALS} & \textbf{995,454,000} & \textbf{719,243,920} \\
\hline
\end{tabular}


\textsuperscript{22} Supporting the Advancement of Artisanal and Small Scale Mining (ASM) in Uganda, Joshua Tuhumwire, Commissioner DGSM

\textsuperscript{23} UNITED NATIONS ENVIRONMENT PROGRAMME Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda; Uganda Case Study June 2012.

However, field inspections revealed that the intervention had no impact on the way ASM conduct their mining activities as they were found operating with no health and safety gear and no evidence of follow up conducted by DGSM availed to audit. There were no interventions by DGSM to encourage ASM to have their associations granted Location Licences to ease tracking of their operations and no activity reports were availed to audit.

**Picture 1: Status of sampled artisan mining sites**

| Rudimentary technics: Artisanal with no personal protective gear at an iron ore mine using fire to crack rocks with iron ore |
| Left-right: Open pits dug and left open by artisanal miners in Namayingo district and Kitumbi site in Mubende district. These pose a danger to human safety and environmental degradation. |
Audit attributed ASM sites operational status to failure by the DGSM to sensitise 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.

As a result of largely informal artisanal and small scale mining activities, concerns on environmental and land degradation due to indiscriminate excavation; and loss of revenue due to non-declaration of minerals excavated have increased. Audit noted that the abandoned pits posed a risk of injury to especially children and animals. According to UNEP, fatalities and serious injuries due to collapse of pit walls or underground tunnels commonly occur with between one and five deaths known to occur annually and many more are likely to go unreported. Furthermore, pollution from the use of mercury and cyanide plus the haphazard release of tailings or residue into water bodies leads to pollution of water bodies which in the long run is hazardous to flora and fauna.

**Management response**

The Ministry has met challenges in dealing with the Artisanal and Small Scale Mining operators (ASM) issues. The ASM are a mixed group in two categories (a) the nationals and (b) 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.

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25 Chapter 2, UNITED NATIONS ENVIRONMENT PROGRAMME Analysis of formalization approaches in the artisanal and small-scale gold mining sector based on experiences in Ecuador, Mongolia, Peru, Tanzania and Uganda; Uganda Case Study June 2012.; page 9
Thematic areas include: appropriate mining and processing methods, minerals trade, savings and cooperatives, mineral rights vs surface/land rights, environment, health and safety, social and economic issues. 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.

**Audit Comment**

Much as management indicated that comprehensive sensitization and awareness campaigns had been conducted, this could not be confirmed by audit as there was no evidence availed to audit to that effect.

**Conclusion**

The ASM operations remain largely informal which adversely affects enforcement of the law and monitoring of operations and ultimately encouraging illegal mining activities that are not only a source of leakage of mineral revenue but also whose mining practices that are not environmentally friendly.

**Recommendation**

The DGSM should liaise with the various stakeholders in the mining sector to further explore ways of encouraging the formalization of ASM activities and enforcement of the regulatory regime.

### 4.4. INSPECTION AND MONITORING OF MINING OPERATIONS

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.

Through review of the availed Ministerial Policy Statements (MPSs) for the 3 financial years 2012/13 to 2014/2015, it was noted that the DGSM planned to make 12 reports per year instead of 16. Thus, for the three years they planned for thirty-six (36) inspections that is twelve (12) per year and three (3) for every quarter. UGX 500 million was released for this activity, over the period covered by the audit as shown in Table 5 below. Whereas the DGSM indicated through interviews that they carried out a number of inspections and monitoring, a few reports were availed to the audit team.
Table 5: Licensing and inspection budget and actual releases to the DGSM

<table>
<thead>
<tr>
<th>FINANCIAL YEAR</th>
<th>BUDGET (UGX)</th>
<th>RELEASES (UGX)</th>
<th>% RELEASE</th>
<th>NO OF INSPECTIONS CONDUCTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010/2011</td>
<td>30,000,000</td>
<td>11,083,333</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>2011/2012</td>
<td>30,000,000</td>
<td>14,451,000</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>2012/2013</td>
<td>128,960,000</td>
<td>55,492,000</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>2013/2014</td>
<td>207,000,000</td>
<td>126,073,000</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>2014/2015</td>
<td>321,000,000</td>
<td>293,300,662</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>716,960,000</td>
<td>500,399,995</td>
<td>70%</td>
<td>23</td>
</tr>
</tbody>
</table>

Source: OAG analysis of DGSM financial records obtained from MEMD over the F/Y’s 2010/2011 – 2014/2015

Figure 2: Budget and actual releases for licensing and inspection and number of inspections conducted.

Source: OAG analysis of financial records and inspection and monitoring reports of the DGSM

In addition, 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. The audit team also noted that the DGSM did not prepare inspection and monitoring work plans but instead relied on the forecasts laid in the MPS. However, review of the MPSs revealed that projections were lumped together basing on districts to be covered without clearly indicating the actual number of sites to visit per region. There were no inspections and monitoring work plans prepared for each regional office, target set, Key Performance Indicators (KPIs) not agreed upon and no follow-ups on the performance of the regional inspectors conducted. Through review of the inspection reports availed, it was noted that coverage of the ASM sites were not reported...
on. There were no inspection and monitoring guidelines to provide direction on how this activity would be executed.

Failure to prepare budgets and work plans for each regional office, preparation of KPIs and ensuring adherence to such plans led to the low inspection and monitoring coverage over the audited period.

There is a risk that money was not put to the intended purpose. Failure to prepare inspection and monitoring work plans for each regional inspection office led the inspection and monitoring division to do haphazard and reactive rather than proactive inspections. Accordingly, the division was unable to self-generate extracted quantities of minerals by different mining operation sites but relied upon the submissions from the license holders. Since computations of royalties are based on quantities mined, Government was left to solely rely on information availed by the private companies on the quantities declared as mined with no mechanism put in place to mitigate the risks of under declaration.

**Management response**

The Ministry has been undertaking inspections and monitoring of mining operations in the country though with challenges. The increased number of licences; prospecting, exploration, retention, location and mining operations for instance, at 31st December 2002, were 157 as compared to 818 at 30th November 2015. However, the capacity of the Ministry at DGSM to carry out inspections and monitoring is not matched with the above growth. In response to this gap, the Ministry has created a division for inspections and monitoring at DGSM. The division needs to be strengthened by (i) recruitment of more Mines Inspectors and Engineers (ii) Manpower training in addition to strengthening time based diaries of staff.

**Audit comment**

Review of the staffing structure for inspection and monitoring division revealed that it had ten (10) filled positions out of twelve (12) as shown in appendix (iv) indicating that the low inspection and monitoring coverage could not be as a result of understaffing as per their prevailing approved structure.

**Conclusion**

By not conducting adequate inspection and monitoring, the DGSM could not effectively track the performance of all the mineral licences issued and enforce compliance of mining regulatory framework.

**Recommendation**

The DGSM should consider enhancing inspection and monitoring activities by streamlining their planning and budgeting, indicating sites to visit per region, setting KPIs with regional inspectors and ensuring adherence.
4.5 PROVISION OF LABORATORY SERVICES

Among the objectives of the DGSM was to provide effective and reliable laboratory services in the mineral sector for institutional and public use. Through interviews with the Assistant commissioner and the Lab technician, review of documents and inspection of the laboratory, it was noted that MEMD had carried out some renovation of the laboratory buildings and purchased some specialised lab equipment. However, the national mineral laboratory in Entebbe only addresses preliminary test and analysis as it is not yet accredited by ISO. Mining companies operating in Uganda were compelled to export samples abroad for complex mineral tests and analysis. This requires them to apply for export permits from the Director GSM which result into additional costs. In addition, review of the laboratory equipment inventory register and physical inspections revealed that 34 (33%) out of the 104 equipment were not functioning. The audit team also established that there were no measures put in place by the DGSM to track the results of tests conducted abroad.

Failure to equip the national mineral laboratory and securing its ISO certification was due to lack of prioritisation of this activity by the MEMD. Lack of comprehensive laboratory services at the Directorate results into additional cost by the investors in testing samples abroad. Such added cost affects Uganda’s comparative advantage to attract potential investors in the sector.

Management response

The Ministry has noted the need for ISO certification to improve the mineral laboratory’s analysis. Some steps toward ISO certification have been taken by improvement of laboratory buildings, acquisition of specialized laboratory equipment for mineral analysis and four (4) standards (periodic table) used to calibrate equipment for mineral element established. However, the challenges the laboratory is facing to upgrade to ISO are (i) ISO certification policy (ii) adequate staff and (iii) training of Staff in ISO certification technologies. To undertake these activities more resources will be needed.

Recommendation

The MEMD, through its DGSM, should expedite the process of formulating the laboratory policy, adequately equip the mineral laboratory and pursue its ISO certification.

4.6 GENERATION AND DISSEMINATION OF THE GEOLOGICAL DATA

One of the DGSM objectives was to systematically collect, interpret, preserve and disseminate geological information that would be maintained in the national geoscience database and to maintain a body of expertise that could use this data to advise the Government, the private sector and the general public. In addition, the mineral policy provided that, Government was to carry out geological, geochemical and geophysical surveys of the entire country at various scales; process, analyze and interpret the geoscientific data; archive, package and disseminate the data to potential users through publications and electronic media. Private operators in the sector were obliged to provide acquired geoscientific data at appropriate stages of exploration for enhancing the National Geoscientific data bank.
Through review of documents, it was noted that government through the SMMRP established a cadaster system at a total cost of USD1.2 million that would be fed with information, process, disseminate geo-logical information and allowing for electronic submission of mining right applications and tracking as per the SMMRP implementation manual and implementation completion and results report. However, through interviews with the Assistant Commissioner, geodata, it was noted that whereas users were able to track and view the location and status of areas licensed and those under application, potential applicants were not able to apply and submit their applications online. The current management information system would only allow the applicant print an application form but not apply online. The website was found to be lacking in several fields, namely:

b) Mineral deposits: there was no information available.

The short falls within the system were due to failure by the users (DGSM) to engage the consultant to align the provisions laid in the project implementation manual to the equipment’s installed capabilities.

As the system does not provide for online application, all interested parties have to be within Uganda. In addition, since the website is not up to date, it does not provide adequate information to potential mining investors which impair the directorate’s effort to promote the mineral sector as had been envisaged the policy.

Management response
The Ministry provides basic mineral information using geo-information systems and portals at flexicadastre.com/uganda to facilitate search for available geo information related to geology, minerals and mining in Uganda. Currently, the mineral rights applications processes cannot be completed online though the infrastructure was set up because there is still deficiency in the existing legal and regulatory frame work. However, the gap in the existing legislation is being addressed.

Audit Comment
The audit team, however, established by browsing through the system that online registration was not provided for.

Conclusion
Uganda’s mineral sector remains underdeveloped with a variety of mineral endowments remaining unexploited due to failure to attract potential investors.

Recommendation
The (DGSM) should engage the consultant to align the provisions laid down in the project implementation manual to the equipment’s installed capabilities so as to allow online registration.
## Glossary of Terms

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Green Paper</td>
<td>First-draft document on a specific policy area circulated among interested parties who are invited to join in a process of consultation and debate. The objective of a green paper is to arrive at a general consensus before drafting the official policy document, the white paper.</td>
</tr>
<tr>
<td>Mining Lease</td>
<td>License granted to holder of exploration or retention license that has quantified a mineral deposit of commercial significance to carry out mining operations.</td>
</tr>
<tr>
<td>Exploration License</td>
<td>License granted to explore for minerals in an area not more than 500 sq. km</td>
</tr>
<tr>
<td>Retention license</td>
<td>License granted to the holder of an EL when the identified mineral deposit cannot be exploited due to economic reasons.</td>
</tr>
<tr>
<td>Prospecting License</td>
<td>License granted to prospect for all minerals around the country, it is not area specific.</td>
</tr>
<tr>
<td>Mineral right</td>
<td>Means a Prospecting License, Exploration License, Retention License, a Mining Lease or Location License.</td>
</tr>
</tbody>
</table>
APPENDIX (I): DGSM ORGANIZATION STRUCTURE:
## APPENDIX (II): DOCUMENTS REVIEWED

<table>
<thead>
<tr>
<th>Document</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining Policy 2001</td>
<td>To obtain a thorough understanding of the Mineral Policy and conceptualize its provisions.</td>
</tr>
<tr>
<td>Mining Act 2003</td>
<td>To enrich ourselves with the provisions of the Mining Act, 2003 as well as internalize and extract its shortfalls in formalizing and regulating the mineral sector.</td>
</tr>
<tr>
<td>Mining Regulations 2004</td>
<td>To conceptualize regulations of the mining sector and establish their shortfalls.</td>
</tr>
<tr>
<td>Reports by DGSM i.e. (Annual reports, and</td>
<td>To understand the activities undertaken by the Ministry and the directorate of geological surveys and mines. Establish issues reported on, coverage of the reports, other agencies coordinated with while executing the monitoring activities and frequency of reporting. Ascertain whether inspection and monitoring work plans are prepared and adhered too. Assess their reporting mechanism of findings raised and actions taken.</td>
</tr>
<tr>
<td>Field inspection / monitoring reports</td>
<td></td>
</tr>
<tr>
<td>Return files over the period of audit</td>
<td>To establish the format, adherence to submission requirements and track progress of performance for the different mining lease sites.</td>
</tr>
<tr>
<td>Occupational Health and Safety Act, 2006</td>
<td>To establish the prevailing occupational health and safety guidelines issued for the mining industry.</td>
</tr>
<tr>
<td>Financial statements for the FYs 2010/2011 –</td>
<td>To assess the level of funding released to the department and utilization by the department in line with its mandate and work-plans. To be able to compare the DGSM’s funding with other departments in the Ministry of Energy and Minerals Development in proportional terms.</td>
</tr>
<tr>
<td>2014/2015</td>
<td></td>
</tr>
<tr>
<td>Organization structure</td>
<td>To obtain an understanding of the DGSM structure. Establish the roles and responsibilities of the different positions within the organogram.</td>
</tr>
<tr>
<td>Concession holders / Licensed companies</td>
<td>Ascertain the number of licensed companies, their areas of operation and the mineral commodities dealt in. Use the information as a basis for preparing inspection plans.</td>
</tr>
<tr>
<td>documentations</td>
<td></td>
</tr>
</tbody>
</table>
## APPENDIX (III): OFFICERS INTERVIEWED

<table>
<thead>
<tr>
<th>No.</th>
<th>Officer Interviewed</th>
<th>Interview Focus</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Ag. Director DGSM</td>
<td>To get an understanding of the mineral industry and its regulatory framework in Uganda. Ascertain measures to ensure that all mining operations are regulated. How the DGSM ensure that all provisions of the prevailing legal framework is adhered to and how non-complying mineral right holders are dealt with. Ascertain challenges faced and possible ways of taking the sector forward.</td>
</tr>
<tr>
<td>2.</td>
<td>Ag. Assistant Commissioner, Geo-Science</td>
<td>To establish how the geological data is generated disseminated and mechanisms used. Comprehensiveness of the available data and frequency of updating the national geo-data base. Ascertain challenges faced in generating the data and way forward.</td>
</tr>
<tr>
<td>3.</td>
<td>Ag. Assistant Commissioner, Licensing, Mines</td>
<td>Ascertain procedures for processing and assessing mineral right license. Establish agencies coordinated with in implementing the mining regulatory framework, duration for processing mineral right applications, and mechanisms in place to address applications that do not meet the laid procedures. Appreciate challenges faced and way forward.</td>
</tr>
<tr>
<td>4.</td>
<td>Ag. Assistant Commissioner Monitoring and Inspection</td>
<td>Establish whether inspection and monitoring activities are planned for and budgets prepared accordingly. Ascertain whether work plans are prepared for each regional mining inspection office, targets set Key Performance Indicators (KPIs) agreed upon and measures to ensure that they are achieved. Determine whether inspection and monitoring schedules are prepared, sites to visit indicated with timelines set and adhered to. Take note of measures in place to ensure that all annual mineral rents and royalties are timely assessed and payments followed up. Establish penalties enforced against defaulters, note the level at which accounts unit is involved i.e. as and when the right to earn annual rents and royalties fall due or only when PRNs are issued. Find out if demand notes are issued and follow up measures to recover arrears. Appreciate challenges faced and way forward.</td>
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</tr>
<tr>
<td>5.</td>
<td><strong>Regional inspectors</strong></td>
<td>Ascertain their level of participation in planning and budgeting for inspection activities. Enquire into whether inspection work plans for their respective regions are prepared, targets set and adhered to. Find out frequency of reporting to headquarters and how they are monitored by their supervisors. Take note of the coverage of their reports, funding and staffing levels on ground. Appreciate the challenges faced and way forward.</td>
</tr>
<tr>
<td>6.</td>
<td><strong>Principal Geologist [Exploration]</strong></td>
<td>To obtain an understanding of the activities and processes involved in the geological and survey division and the interaction with the mines and geothermal divisions.</td>
</tr>
<tr>
<td>7.</td>
<td><strong>Kamuntu Investments Limited</strong></td>
<td>To get an overview and an understanding of the mining industry in the perspective of the private sector / licensed companies. Appreciate the mineral dealer’s challenges and way forward.</td>
</tr>
<tr>
<td>8.</td>
<td><strong>Mines Liaison Officer, Tororo Cement Limited</strong></td>
<td>To obtain an evaluation of the royalty assessment process. Find out if returns are timely submitted, challenges faced and proposed solutions.</td>
</tr>
<tr>
<td>9.</td>
<td><strong>Chairpersons of small scale miners – [Moroto, Busia united, Kasanda miners association etc.</strong></td>
<td>To assess the role of formation of artisan associations in the mineral rich areas, progress of formalizing and regulating their activities.</td>
</tr>
<tr>
<td>10.</td>
<td><strong>Chief Administrative officers of Kabale, Shema, Tororo, Mbale, Busia, Namayingo, Iganga, Mbarara, Rubirizi, Ntungamo, Bushenyi, Kasese, etc. districts</strong></td>
<td>To obtain an understanding of the involvement of the district in the licensing process and in monitoring of the licensed companies.</td>
</tr>
<tr>
<td>11.</td>
<td><strong>Asst. commissioner, Natural resources Dept. Uganda Revenue Authority</strong></td>
<td>To understand the role of URA in the mining industry and the treatment of non-tax revenue.</td>
</tr>
<tr>
<td>12.</td>
<td><strong>Commissioner Customs and domestic taxes at URA</strong></td>
<td>Appreciate the coordination mechanism between URA and DGSM. To understand the role of URA in the mining industry and the treatment of non-tax revenue.</td>
</tr>
<tr>
<td>13.</td>
<td><strong>Principal environment officer - NEMA</strong></td>
<td>Ascertain the level of coordination with DGSM</td>
</tr>
<tr>
<td>14.</td>
<td><strong>Asst. Commissioner, Laboratories, DGSM</strong></td>
<td>To get an understanding of the mineral industry, background to the industry in Uganda, challenges faced and the roles of the department in the industry.</td>
</tr>
</tbody>
</table>
### APPENDIX (IV): STAFFING OF THE INSPECTION AND MONITORING DIVISION AS AT AUGUST 2015

<table>
<thead>
<tr>
<th>Inspection And Monitoring Division</th>
<th>Approved Positions</th>
<th>Filled Positions</th>
<th>Vacant Positions</th>
<th>Scale</th>
<th>Staff</th>
<th>SEX</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistant Commissioner (Monitoring &amp; Inspection)</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>U1E</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Principal Inspector of Mines</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>U2</td>
<td>C.B. Rudigizah</td>
<td>M</td>
</tr>
<tr>
<td>Senior Inspector of Mines</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>U3</td>
<td>Grace Deborah Nakku Nvule</td>
<td>F</td>
</tr>
<tr>
<td>Inspector of Mines</td>
<td>3</td>
<td>3</td>
<td>0</td>
<td>U4</td>
<td>Sebagala David</td>
<td>M</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tabaaro Muheirwe Morris</td>
<td>M</td>
</tr>
<tr>
<td>Senior Assistant Inspector of Mines</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>U4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Senior Mines Warden</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>U4</td>
<td>Nathan Mushetsya</td>
<td>M</td>
</tr>
<tr>
<td>Assistant Inspector of Mines</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>U5</td>
<td>Mathias Mugere</td>
<td>M</td>
</tr>
<tr>
<td>Mines Warden</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>U6</td>
<td>Eneku Gerald</td>
<td>M</td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>12</strong></td>
<td><strong>10</strong></td>
<td><strong>2</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: MEMD Staff structure as at August 2015