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PARLIAMENT OF THE REPUBLIC OF UGANDA

**REPORT OF THE COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES ON THE MINING AND MINERALS BILL, 2021**

OFFICE OF THE CLERK TO PARLIAMENT

FEBRUARY 2022

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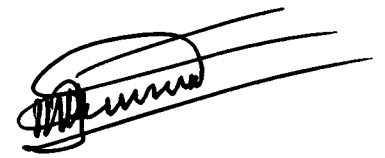
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LIST OF ACRONYMS

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ASM	Artisanal and Small scale Mining
DGSM	Directorate of Geological Surveys and Mines
EITI	Extractive Industries Transparency Initiative
GoU	Government of Uganda
ICGLR	International Conference on the Great Lakes Region
ISO	International Organization for Standardization
MEMD	Ministry of Energy and Mineral Development
MoU	Memorandum of Understanding
NEMA	National Environment Management Authority
NFA	National Forest Authority
PSA	Production Sharing Agreement
UNMC	Uganda National Mining Company
UWA	Uganda Wildlife Authority
SSML	Small Scale Mining Licence
LSML	Large Scale Mining License
MSML	Medium Scale Mining Licence

1.0. INTRODUCTION



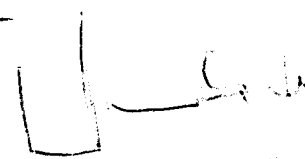
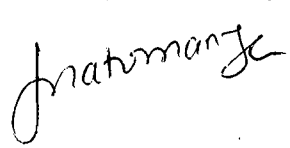
Rt. Hon. Speaker and Hon. Colleagues,

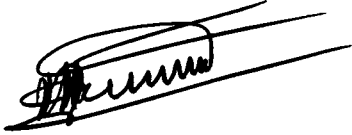
The Mining and Minerals Bill, 2021 was Read for the First Time on the 17th of November 2021 and referred to the Committee on Environment and Natural Resources for scrutiny. The Committee considered the Bill in accordance with Rule 189(c) of the Rules of Procedure of Parliament, and hereby reports as follows.

2.0 BACKGROUND TO THE BILL

The Mining and Minerals Bill, 2021 provides for a robust, predictable and transparent legal regime set to unlock the potential of the mineral subsector to spur economic development and transformation of Uganda. Airborne geophysical surveys undertaken in 2011 indicated the presence of over 27 different minerals in Uganda. The key minerals include Gold, Copper, Tin, Limestone, Gemstones, Wolfram, Cobalt, Tin, Kaolin, Vermiculite, Nickel, Ironore, Tantalite, Tungsten, Limestone, Marble, Rare earth minerals, amongst others. Currently the subsector's contribution to the national economy stands at a dismal 1.4% despite its huge potential.

In line with the national requirement to review policies after every ten years, and the need to align Uganda's mining sector to the continental aspirations as espoused in the Africa Mining Vision, the Ministry of Energy and Mineral Development embarked on the development of a new Mining and Minerals Policy. The process that started in 2016 culminated into the Mining and Minerals Policy that was approved by Cabinet in May 2018 to replace the 2001 Policy. The goal of the policy is "to develop the mining industry through increased investment, value addition, national participation and revenue generation to contribute significantly to socioeconomic transformation and poverty eradication". Among the many objectives, the policy sought to review





and update mining codes, regulations and standards, hence the drafting of the Mining and Minerals Bill, 2021 which seeks to repeal the Mining Act of 2003.

It is therefore in line with the above policy that the Mining Bill seeks to address the inconsistencies in the subsector, fill the gaps identified in the Mining Act, 2003 and also align Uganda's legislative framework with the emerging trends in the national development agenda and global mining industry.

3.0 OBJECTS AND BENEFITS OF THE BILL

The object of the Mining and Minerals Bill, 2021 is to provide a robust, predictable and transparent legal regime, improve mining and mineral administration and business processes, ensure efficient collection and management of mineral revenues, promote value addition to minerals and increase mineral trade. The Bill is further intended to address emerging issues such as mineral certification, value addition, mineral revenue management and formalization of artisanal and small-scale miners among others and seeks to repeal and replace the Mining Act 2003.

The Mining and Minerals Bill, 2021 has 22 parts. These parts contain clauses on; preliminaries, mineral rights, administration, mineral agreements and application for mineral rights, licensing of building materials exploited for commercial purposes, value addition and beneficiation of minerals, buying, selling and dealing in mineral rights, general provisions relating to licenses, surface rights, certification of mineral products, financial products, national content, geological, geoscientific and mineral information, registration, information and records, protection of environment, community engagement, occupational safety and health, inspection, monitoring and enforcement, earth scientists registration board, offences, penalties and administrative penalties and miscellaneous.



4.0 THE BILL'S COMPLIANCE TO THE NATIONAL DEVELOPMENT PLAN (NDP III).

The Third National Development Plan (NDP III) 2020/21-2021/25 national development outlook is hinged on the need for rapid industrialization and nurturing the potential of minerals. The aim of the Mineral Development Programme is to increase exploitation and value addition in selected resources for quality and gainful jobs in industrialization. In line with Vision 2040 and the National Development Plan III, the Bill seeks to develop the mining sector in order to catalyse broad-based growth and development of the down-stream linkages into agriculture, value addition and Manufacturing.

5.0. METHODOLOGY

The Committee was guided by the provisions of Rule 129 of the Rules of Procedure of the Parliament of Uganda to examine the Bill in detail and make all such inquiries in relation to it. In line with these rules, the Committee;

- i. Received submissions and held meetings with the sponsors of the Bill; the Ministry of Energy and Mineral Development, received views and interfaced with other key Government Ministries, Departments and Agencies.
- ii. Received submissions and held meetings with members from the private sector.

The comprehensive list of all stake holders with whom the Committee interacted with includes; Uganda Chambers of Mines and Petroleum, Uganda Law Society, National Environment Management Authority, Ministry of Finance and Economic Development, Civil Society Organization, Attorney General, Gold Refiners and Dealers Association, African Union, Advocates for Natural Resources and Development and Nalule Energy and Minerals Consultants.



6.0. LIMITATIONS

Due to resource limitations the Committee did not benchmark countries with thriving mining sectors in East Africa, Africa and others; as well as visiting the host communities, artisanal miners and sites where exploration is currently ongoing in Uganda.

In conclusion therefore, the limitations notwithstanding, the Committee interacted with various stakeholders, examined the Bill and came up with proposed amendments. The Committee therefore calls upon this Parliament to rise to the occasion and express the highest spirit of patriotism for our country in order to boost Uganda's mineral sector for the transformation of our mother land.

7.0 COMMITTEE ANALYSIS, OBSERVATIONS AND RECOMMENDATIONS

This part of the report will examine the proposed clauses of the Bill, their legality, effect and effectiveness in light of the Constitution, existing laws and policy, court decisions, and the mischief it intends to cure. The analysis will be on thematic areas as provided for in the Bill as well as new proposals to the Bill.

7.1 COMMENCEMENT

Clause 1 of the Bill seeks to provide for the date the Act shall come into force. The Bill provides that the Act shall commence on the date appointed by the Minister by Statutory Instrument. The Committee was concerned that this may delay the commencement of the Act since there are instances where Ministers take up to two years to commence an Act.

Committee Recommendation

The Committee recommends that the clause be amended to provide that the Act shall come into force on the date of publication in the Gazette.



7.2 INTERPRETATION

Clause 8 of the Bill seeks to define the terms used in the Bill. The Committee however noted that certain phrases as defined by the Interpretations clause do not provide the clarity that is envisaged therein. For instance;

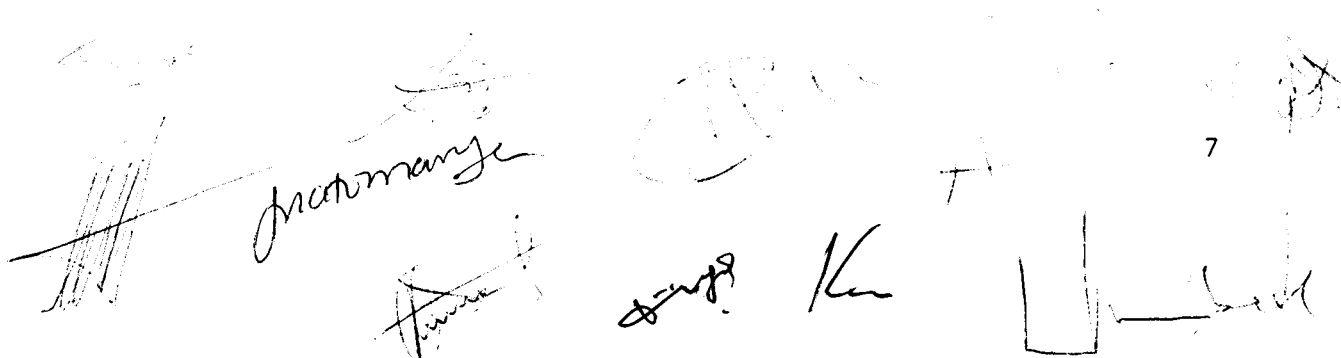
- (i) The inclusion of “rare earth elements” in the definition of precious minerals. This inclusion is erroneous because industrial minerals and rare earth elements are not treated as precious minerals by world markets.
- (ii) The word ‘value addition as used throughout Part VII of the Bill is not defined.
- (iii) The phrases, “environment, environment audit, environment and social impact assessments” have been given distinct meanings and definitions different from the principal law; The National Environment Act, 2019.
- (iv) The definition of the phrase “surface rights” makes reference to the word “mineral operations” which is not defined under the Bill.

Committee Recommendations

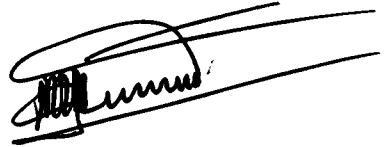
The Committee recommends that “rare earth elements” should be given an independent definition.

The term “value addition” should be defined as follows: Value addition: includes beneficiation, smelting, refining, cutting, blasting, or polishing of minerals.

The definition of the following words; “environment, environment audit, environment and social impact assessments” should be deleted and instead reference made to the definitions under National Environment Act 2019 wherever they are used in the Bill.



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The Committee recommends that the word “mineral operations” as used under the definition of “surface rights” be replaced with the word “mining operations”.

The Committee further recommends that the term “primary host community” be defined.

7.3 RESPONSIBILITY OF MINERAL RIGHTS HOLDERS

Clause 5 of the Bill places an obligation on the mineral rights holders to conduct their mining operations in accordance with the Bill as well as all other written laws.

The Committee noted that Clause 5(2) further places an obligation on the mineral rights holder to ensure that the contractors and subcontractors comply with the Bill and other written laws. However, it is only the Government with the capacity to ensure compliance. Furthermore, it would be irrational to penalize a mineral rights holder for actions of a contractor or subcontractor especially if the Memorandum of Understanding between the two parties provides for compliance to the relevant laws.

Committee Recommendation

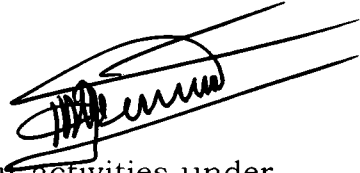
The Committee recommends that the words “contractor” and “subcontractor” be deleted from clause 5(2).

7.4 PROHIBITION OF ACTIVITIES WITHOUT AUTHORISATION

Clause 10 (1) makes reference to the applicability of regulations made under the Mining and Minerals Bill, 2021. The Committee noted that an Act of Parliament should only make reference to another Act rather than regulations.

Committee recommendation

The Committee recommends that any reference to regulations made under this “Act” be deleted.



Clause 10(3) of the Bill proposes that a person who carries out activities under the Act without authorisation commits an offence and should be fined an amount not exceeding one hundred thousand currency points for individuals and corporate entities. The Committee contends that there is need to provide for a forfeiture clause under clause 10 and also penalize persons that shall aid or assist illegal operators or prospectors.

Committee Recommendations

The Committee recommends that clause 10 (3) (b) be amended to reduce fines to be paid by individuals and corporate entities from one hundred thousand currency points to fifty thousand currency points and a term of imprisonment not exceeding five years.

The Committee further recommends that a new clause be inserted under clause 10 to read as follows;

“A person who shall within the meaning of the provisions of the Penal Code Act , aids or assists illegal prospectors or operators commits an offence and is liable upon conviction to a fine not exceeding twenty five thousand currency points or imprisonment not exceeding three years.”

The Committee also recommends that another new clause be inserted under clause 10 to provide that in addition to the penalties imposed under this clause, court may order that the mineral substances that were extracted illegally and any items and instruments used in the commission of the offence be seized by and forfeited to Government.

Clause 10(4) of the Bill seeks to ban persons that have been convicted under Clause 10 (3) from obtaining a licence in Uganda for a period of five years. The Committee noted that this is double punishment and unfair to the people that have already served their sentences.



Committee Recommendation

The Committee recommends that Clause 10 (4) be deleted.

The Bill under Clause 10 (2) seeks to grant the Minister powers to prohibit mining operations in the interest of security, public safety, environmental protection or national economic development.

The Committee observed that this power was ambiguous since it does not specify how long the prohibition will last and how the infringements resulting to prohibition shall be brought to the attention of the Minister to commence prohibition.

The Committee was further concerned that this blanket power could easily be abused by the Minister since the Clause does not provide any mechanisms to check this power of the Minister to prevent arbitrariness.

Committee Recommendation

The Committee recommends that Clause 10 (2) be amended to require the Minister to notify Parliament of his/her decision to prohibit mining and the latter to make a decision on the prohibition within 14 days.

7.5. RESTRICTION ON ACQUISITION OF MINERAL RIGHTS

Clause 12 of the Bill seeks to propose instances where a mineral right shall not be granted to a person.

The Committee noted that Clause 12(2) bundles a quarry licence together with mineral rights which subsequently creates the impression that a quarry licence is a mineral right, yet a quarry licence is not among the mineral rights listed under Section 14.



Committee Recommendation

The Committee recommends that the term “quarry licence” be deleted from Clause 12 (2).

7.6. ADMINISTRATION

Part III of the Bill seeks to provide for the administration, management and regulation of the mineral subsector which shall be undertaken by the Directorate of Geological Survey and Mines (DGSM), subject to the overall policy guidance of the Minister as per Clause 15.

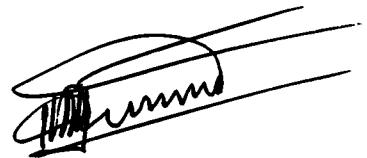
The Bill further provides for the powers and functions of the Director under clause 17 and 19 respectively.

The Committee noted that the Director of the Directorate of Geological Survey and Mines is given sweeping power over the full spectrum of the licensing and regulation of the mining sector. It is worth noting that, of the challenges the sector is grappling with under the current legal regime is excessive discretionary powers held by the Commissioner for the Geological Survey and Mines Department. The expectation was that the Bill would address this challenge. However, it is pertinent that the Mining and Minerals Bill, 2021 is seeking to maintain this status quo by vesting the same discretionary powers in the Director. This scenario creates opportunity for abuse.

Committee Recommendations

The Committee recommends that a new clause under Part III of the Bill be inserted to provide that any person that is aggrieved by the decision of the Director may appeal to the responsible Minister who shall respond to the issues raised within 21 days.

The Committee further recommends that the word “Minister” under clause 17 (3) be replaced with the word “Director”.



Clause 18 of the Bill seeks to provide for the Directorate of Geological Surveys and Mines and its functions. The Committee observed that Clause 18 enumerates the functions of departments that fall within the Directorate and is of the view that, the matter is purely administrative and should not form part of the Bill.

Committee Recommendations

The Committee recommends that clause 18(1) be amended to include the word “any other department that shall be created by the Directorate”.

The Committee further recommends that Clause 18 be redrafted to enumerate the general functions of the Directorate of Geological Surveys and Mines to include the core functions of the relevant departments; to regulate, licence, collect and provide geological data, and any other functions incidental to its functions.

The Committee recommends that Clauses 18(2) and (3) providing for functions of departments that fall within the Directorate be deleted.

The Committee further recommends that a sub- clause be inserted under clause 18 providing that the departments under the Directorate of Geological Survey and Mines shall have functions as prescribed by the Minister in the Regulations.

7.7. MINERAL EXPLORATION UNIT

Clause 21 of the Bill seeks to provide for the functions of the exploration unit. The Committee observed that the mineral exploration unit falls under the Department of Geological Survey that is under the Directorate of Geological Survey and Mines whose functions are already enumerated under clause 18; thereby rendering clause 20 redundant.



Committee Recommendation

The Committee recommends that clause 21 of the Bill be deleted.

7.8. UGANDA NATIONAL MINING COMPANY

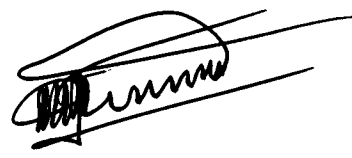
Clause 22 of the Act seeks to establish the Uganda National Mining Company incorporated under the Companies Act, 2012 wholly owned by the State to manage Uganda's commercial holding and participating interests in mineral agreements.

The Committee observed that Clause 22(3) of the Bill seeks to give supremacy to the Mining Bill over the Companies Act, 2012. The Companies Act, 2012 provides for incorporation, regulation and administration of companies and makes provision for related matters.

It is on this premise that the Committee concluded that the Mining and Minerals Bill 2021 cannot be held supreme over the Companies Act 2012 which is the principal law on company related matters, specifically on matters dealing with corporate governance. In Uganda, the Companies Act 2012 provides the primary framework for governance of companies and as such introduced a code of corporate governance that is voluntary for private companies and mandatory for new public companies. This code of Corporate Governance is enshrined under Table F of the Companies Act.

The Committee noted that the functions of the Uganda National Mining Company that are included under paragraphs (c) , (d) ,(e) and (g) are duties imposed on them by the Companies Act, 2012 and the Memorandum of Association as well as Articles of Association that are submitted during the incorporation of the company. Secondly paragraph (b) is a function that falls under paragraph (a).

The Committee further noted that the Uganda National Mining Company shall hold 15% free equity in all large and medium mining ventures as well as have



the right to pay up 20% extra shares in the mining ventures at the commercial rate. However, the Bill is silent on the sources of financing of Uganda National Mining Company.

Committee Recommendations

The Committee recommends that clause 22 (3) be deleted.

The Committee recommends that clause 23(c), (d), (e) and (g) be deleted.

The Committee recommends that the term “handle” under clause 23(a) be replaced by the term “manage”.

The Committee also recommends that the term “commercial” be replaced by the term “strategic” under clause 23(a).

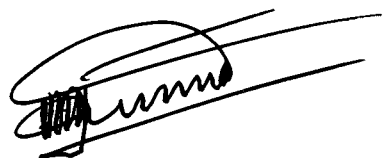
The Committee further recommends that the word “investigate” under clause (h) be replaced with the word “explore”.

The Committee recommends that Clause 23(h) be amended to replace the word “investigate” with “explore” and to read as “to explore and propose new mining ventures locally and internationally.”

The Committee recommends that a new clause be inserted under clause 23 providing that the Uganda National Mining Company shall perform any other function incidental to handling the state’s commercial interest in the mineral subsector.

The Committee further recommends that Clause 24 that deals with the Board of Directors of Uganda National Mining Company be adopted with amendments to include national character, gender and consist of nine (9) members.

The Committee recommends that Clause 25 be adopted with an amendment to include a new sub-clause (c) that will read “that funding of this Company shall come from the Consolidated Fund and any other.”



The Committee recommends that Clause 26 be adopted with amendments to re-draft the clause to include instructions to the “Board” and not “Uganda National Mining Company”.

7.9. INSTRUCTIONS TO UGANDA NATIONAL MINING COMPANY

Clause 26 of the Bill seeks to grant the Minister powers to instruct the company on matters of management. The Committee was concerned that this contravenes the autonomy of the Company as it gives the Minister unfettered power over the Company.

Committee Recommendation

The Committee recommends that Clause 26 be redrafted to specify that the instructions of the Minister shall be limited to matters of the Mining policy and shall be given to the Board of Directors.


8.0. MINERAL PROTECTION FORCE

Clause 27 of the Bill seeks to establish the Mineral Protection Force in order to protect minerals against malpractices and generally enforce the provisions of the Act and other relevant laws.

The Committee noted that the mandate of the Force is a replica of the Directorate of Geological Surveys and Mines’ mandate. This overlap in mandate is likely to result into disputes and conflicts.

The Committee further noted that the clause does not specify to whom the Force shall report and this can result into impunity of the officer under the Force.

The Committee further observed that protection forces attached to government agencies and departments have been misused to violate the rights of the persons carrying out businesses in the respective sectors. For instance, on



several occasions, the Forces arbitrarily confiscate people's land or properties in the process of ensuring compliance to laws.

Committee Recommendations

The Committee recommends that Clauses 27 and 28 be deleted from the Bill.

The Committee further recommends that the responsible Minister enters into a Memorandum of Understanding with Uganda Police Force so that enforcement Officers are designated and attached to the Directorate of Geological Surveys and Mines.

8.1. LOCAL GOVERNMENT

Clause 29 of the Bill seeks to provide for the role of local governments in the mining sector.


The Committee was informed that in the past, non-involvement of local governments in mining operations has made it difficult for districts, sub counties and land owners to assess the expected royalties from within their boundaries. In addition, there have been reports of mining companies not allowing local authorities to access and inspect mines.

Committee Recommendation

The Committee recommends that a new sub-clause should be inserted under clause 29 to provide that Local governments shall receive reports and plans of the companies operating in their jurisdiction every six months.

8.2. MINERAL AGREEMENTS

Clause 30 of the Bill seeks to provide for mineral agreements that may be entered into by the Minister and any person with respect to any matter relating



to or connected with operations or activities under an exploration licence or a large-scale mining licence.


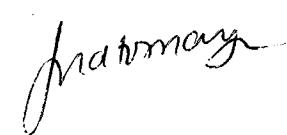

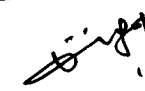
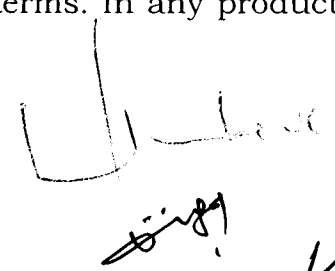
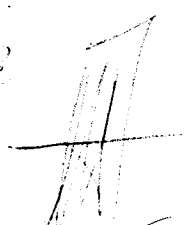
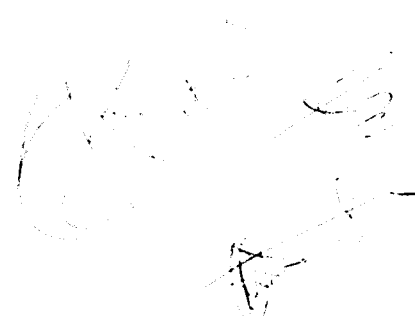

The Committee noted that Clause 30 (1) gives power to the Minister to enter into an agreement and further gives terms and conditions for such agreements under 30(2). The Committee specifically notes that 30 (2)(d) provides that the mineral agreement will provide for production sharing arrangements. Although the Bill in clause 23 proposes the Uganda National Mining Company as the responsible entity for handling the State's commercial interests in the minerals subsector, the Board of the Mining Company does not participate in the decision to sign the said mineral agreements. This duplicates centers for decision making in regard to commercial interests of the country, goes against the principles of accountability and good governance that might result into financial losses; especially that the minerals agreements are entered into for large scale mining operations.


Therefore, it is the Committee's view that the decision to enter into Production Sharing Agreements should be taken by the Minister, in consultation with the Board of the National Mining Company.

Clause 30(2) (d) proposes that a mineral agreement shall include terms and conditions relating to Production Sharing Agreements.

The Committee observed that stakeholders held two divergent views on this matter, with one section of the stakeholders being pro-production sharing agreements. This was considered as a means of increasing the State's benefits from the sector while the other section was anti-production sharing agreements. This would discourage investors and totally cripple the already struggling mining sector and it's international best practice for governments to benefit from their minerals through the royalty-tax based system.

The Committee was informed that Multi-national Mining Companies should come to invest in Africa on African terms. In any production, three factors are





needed; raw materials, capital/finance and technology (skilled labour). Africa has raw materials/natural resources that must optimally benefit from and which must feed in Africa's industrialization and manufacturing sectors.

The Committee learnt that Production Sharing Agreements (PSAs) are relatively common in the Oil Sector and are rare in the Mining Sector. Only a few countries have production-sharing requirements, and these usually arise in a negotiated mining agreement rather than as a hard and fast provision in the mining law.

The Committee further learnt that in 2014, Egypt introduced the PSA model for gold mining projects. The split was set at 50:50 with a royalty of 6 percent. Mining companies rejected the PSA model on the ground that the 6 percent royalty, the 50 percent share, the partial cost recovery before the start of production sharing, and the various bonus payments that were to be made to the state created a non-commercial operating environment for any mining investor. Indeed, most serious companies, including those that were already investing in Egypt declined to participate in the bidding rounds organised by the Egyptian government, citing the PSA model as the reason for their decision. Other companies suspended their operations until government agreed to repeal the PSA model. Egypt withdrew the PSA model and reverted to the traditional Tax and Royalty system.

In line with the above information, the Committee proposes redrafting the clause on production sharing arrangements and qualifying the application of the production sharing agreements is a middle ground. The Committee further found it necessary to qualify the application of mineral agreements for purposes of clarity.



Committee Recommendations

The Committee recommends that clause 30(1) be amended to add the phrase “in respect to high capitalized, heavy investment and complex mining”.

The Committee further recommends that the terms “high capitalized”, “heavy investment” and “complex mining” be defined.

The Committee recommends that Clause 30(2) (d) be amended to provide that “Production Sharing Agreements where the presence of minerals has been ascertained and quantified.”

The Committee recommends that clause 30 (2) (n) be redrafted to replace the terms ‘international arbitration or a sole expert’ with arbitration mechanism.

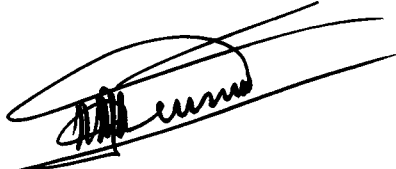
The Committee recommends that a new clause be inserted immediately after clause 30(4) providing that the Minister shall consult the Board of Directors of the Uganda National Mining Company prior to signing the Production Sharing Agreements.

The Committee recommends that clause 30(2) 0 be amended to deleted the word “small” immediately before the word “portions”.

The Committee recommends that a new clause be inserted immediately after clause 24(6) to provide that the Board of Directors of the Uganda National Mining Company shall advise the Minister on matters of Production Sharing Agreements.

8.3. MINERAL AGREEMENTS

The Committee observed that, although the Bill in clause 31 provides for laying of model agreements, it does not provide for laying of signed mineral agreements referred to under clause (30) before Parliament.



The Committee contends that transparency is a fundamental tool to promote efficiency and accountability in converting natural resource wealth into long-term social and economic development, as reflected in the overarching policy of the subsector; the Minerals and Mining Policy for Uganda. Therefore, by providing disclosure of the terms, including financial terms entered into, Parliament can ably carry its oversight, budgeting and appropriation roles.

Committee Recommendation

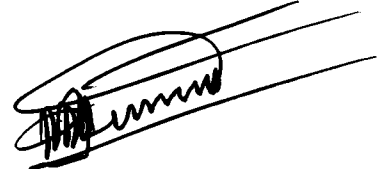
The Committee recommends that clause 30 be amended by inserting a new clause immediately after clause 30(2)) to obligate the responsible Minister to lay before Parliament signed mineral agreements within 60 working days.

8.4. ANNOUNCEMENT OF AREAS FOR EXPLORATION, MEDIUM SCALE OR LARGE SCALE LICENCE.

Clause 33 seeks to propose that the Minister may in exceptional circumstances as prescribed by regulations announce areas open for an exploration, medium scale or large scale mining licence.

It is the Committee's position that there is need to provide for participation of host communities in the entire decision making chain of mining. The Committee notes that mining operations are hosted by a plethora of local communities that are often disengaged from participation in decision making due to lack of access to information and low literacy rates. Despite limited participation, mining impacts host communities both positively and negatively. Mining may lead to creation of employment opportunities, provision of services and on the negative side environmental degradation and loss of source of livelihoods.

It is therefore imperative that authorities make available such information and reports on available licenses, acreage, economic, environmental and social impact assessments, and as far as practically possible consult with the locals



so as to obtain buy-in for proposed and ongoing mining projects. An informed citizenry is also better able to discuss with the Government the nation's strategic direction, manage expectations and provide a favorable ground to operate for mineral projects. This view would help in 62 (1) where such application is up to the level of relevant district, sub-county and parish headquarters.

Committee Recommendations

The Committee recommends that Host Communities should be availed the opportunity to participate in the decision making process of the entire minerals value chain.

The Committee recommends that information on licenses, environment and social impact assessment should be provided both at the national and local government level.

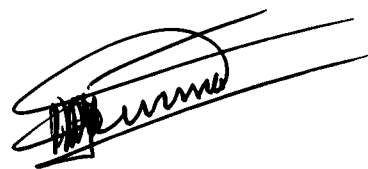
The Committee further recommends that clause 33 (2) should be amended to align it with the drafting in clause 62(1).

The Committee also recommends that similar amendments should be made for all licences where host government participation is required, for instance; clauses; 33(2); 34(1) etc.

8.5. AREAS OPEN FOR BIDDING

Clauses 33 to 35 seek to provide for areas open for bidding. The Committee noted that these clauses give the Minister Powers to announce areas that are open for bidding for exploration licenses, medium scale mining licenses or large scale mining licenses.

The clauses provide for announcement of such areas (clause 33), requirements for such announcements (clause 33), publication of notice of application (clause 34) and objection to proposed mining operation (clause 35). The Committee observes that all requirements given under these clauses should



apply for exploration licenses, medium scale licenses and large-scale mining licenses provided that they are announced for open bidding.

Committee Recommendations:

The Committee recommends that Clauses 34(2) (a); 35 (1); and 35(3) be harmonized to apply for open bidding in respect to exploration licenses, medium scale licenses and large scale mining licenses.

The Committee further recommends that the above clauses be amended to include the licences that have not been provided for.

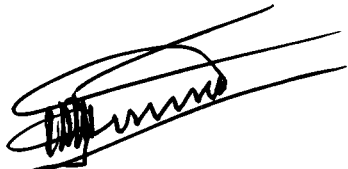
8.6. APPLICATION FOR PROSPECTING LICENSES

Prospecting licences are issued to a person to intentionally search for minerals and mineral deposits; which may include testing for mineral-bearing qualities of an area. This licence is the first step of entry into mining activities, with a validity of one year and is not renewable.

The Committee noted that clause 37 (2) provides for the requirements of a prospecting license in respect to a company but does not provide for individuals. In practice, this license can be issued to either a company or an individual.

The Committee further noted that although this licence is not renewable after its award, there is no obligation for its holder to transition into another minerals operation, that is, exploration or mining (at whatever scale), value addition or beneficiation. When compared to an exploration licence, the holder of an exploration licence under clause 54 of this Bill is required to apply for a small scale, medium scale or large scale mining licence. Failure to require prospectors to advance their operations might result into speculators within the sector as has already been the practice.

Further, the Committee in its oversight and appropriation role in the review of the National Budget Framework Paper for FY 2022/23 observed that 147



prospecting licenses were issued in 2021, a figure which increased in comparison to January 2018 where no prospecting licence was issued. This might be attributed to the phasing out of a location licence in the Bill. The Location License as previously provided for under Mining Act of 2003 allowed small scale mining. This necessitates that holders of prospecting licenses do not convert them into avenues for mining instead of data acquisition. Therefore, holders of these licenses should be monitored and supported to meet their obligations in regard to data acquisition and volumes of minerals that are extracted be limited to purposes of testing.

Committee Recommendations

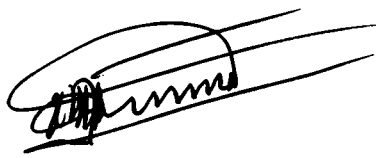
The Committee recommends that clause 37 be amended to provide for requirements in respect to individuals or groups of individuals.

The Committee further recommends that;

- i. The technical and financial resources available to the applicant as required to be given under 37(2)(c) should be given consideration by the licensing team while determining award of this licence.***
- ii. The Minister should provide for data requirements arising from tests carried out by prospectors in regulations.***
- iii. Operations of holders of prospecting licenses should be supervised to ensure that volumes of minerals extracted are limited to quantities as required for tests.***

8.7. APPLICATION FOR AN EXPLORATION LICENCE

Clause 43 of the Bill seeks to provide for the procedure of acquiring an exploration licence as well as details on an application for the same. Exploring is defining the extent and determining the economic value of a mineral deposit and includes activities undertaken in order to identify and determine the presence of mineral deposits and assess the extent and economic value of a



mineral deposit. Exploration Licences are therefore issued to enable these activities. The Committee noted that this Bill has provided for progressive clauses towards improvement of the licencing regime for exploration licences, albeit with some setbacks.

The Committee observed that there was an inconsistency in the Bill with regards to the duration of the exploration licence. Clause 43 (2) (f) requires the applicant to state the period, not exceeding three years, for which the licence is sought, whereas clause 49 allows duration for an exploration licence not exceeding four years.

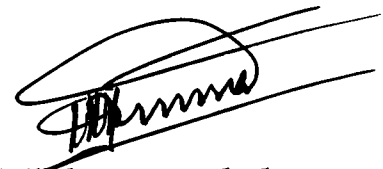
Clause 43 (2) (i) requires an applicant to provide a statement with proposals in regard to employment and training of Ugandan citizens, a training plan to that effect and a budget while applying for the licence. The Committee noted that this requirement as previously provided for in the Mining Act of 2003 is a right step in ensuring skills development for the subsector.

The Committee contends that the training should result into a succession plan for minimizing dependence expatriate in favour of skills developed through this training. This principle is already reflected within the Bill under clause 154 on obligations of the holder of mineral smelting licence, which requires the licensee to have a succession plan. For coherence, we shall refer to it as a recruitment plan for replacement of expatriate skills.

Committee Recommendation

The Committee recommends that the term “not exceeding three years” under Clause 43(3) (f) be replaced with “not exceeding four years”.

The Committee recommends that training and employment of Ugandans should be supported by a recruitment plan for replacement of expatriate skills as Ugandans progressively get trained.



The Committee further recommends that clause 43((2) (j) be amended to include planned training of Ugandans for employment and progressive reduction of expatriate workers in the industry.

8.7.1 Requirements for Uptake of Goods and Services by Ugandans

Clause 43 (2) (j) requires an applicant to provide a statement on the procurement plan for goods and services available in Uganda and commitment to purchase such goods. Whereas this is the requirement as previously provided for in the Mining Act of 2003, it may be further strengthened to compel the applicant to provide a comprehensive list of materials, goods and services required for the exploration activities as a way of providing Ugandans an opportunity for establishing required goods and services so as to develop capacity to supply these goods.

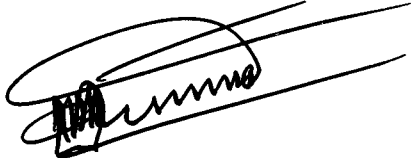
The Committee contends that a list of requirements for materials, goods and services provided by the applicant would go along way in developing capacity to supply since it would help them understand the demands of the sector.

Committee Recommendation

The Committee recommends that clause 43(2) (j) be amended to provide that a licensee shall provide a comprehensive list of materials, goods and services that will be required for the minerals operation scope of which shall be prescribed by the Minister in the regulations.

8.7.2. Environment Requirements

Part X of the National Environment Act (NEA), 2019 and schedules 4 and 5 therein provide for environment and social impact assessments for projects including those related to exploration and mining. Consequently, in the application for mining licence, applicant must demonstrate compliance to the provisions under the National Environment Act, 2019; by providing certificates or permits issued under the Act, a consequential Environment Plan that



includes provisions for waste disposal and a decommissioning plan. This will also align the clause with other licences like mineral smelting licence which provide for an ESIA, environment management plan, waste management plan and decommissioning plan in clause 152 (2).

Committee Recommendations

The Committee recommends that 43 (2) be revised to meet requirements under National Environment Act, 2019.

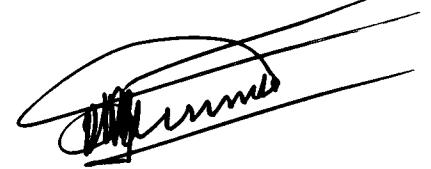
The Committee further recommends that this provision should be modified and inserted for all mining rights. Therefore, all applications for mineral rights should be revised to provide for ESIA certificates and permits, Environment Management Plan, provisions for waste disposal and a decommissioning plan.

8.8. CONTENT OF EXPLORATION LICENCE

Clause 46 of the Bill seeks to provide for what shall be contained in an exploration licence. Clause 46 (3) seeks to require that the option to acquire a stake in an exploration venture by the Government or the Uganda National Mining Company may be exercised at the time of grant of exploration licence and in case of a large-scale mining licence, the option to acquire stake to be exercised at the time of grant of large scale mining licence.

The Committee observed that, the state acquiring a stake at the exploration stage is not tenable due to the uncertainty around the outcomes of exploration because not all explorations result into the discovery of minerals.

The Committee further noted that although the requirement of a stake at exploration stage is not couched in mandatory terms, it would greatly discourage investors from undertaking exploration in Uganda, which would subsequently affect the entire mining sector. In addition, this Clause does not



reveal the percentage of the stake that shall be acquired by the state at exploration stage.

The Committee observed that the clause further provided for a stake by the state at the grant of a large scale mining licence, the inclusion of a mining licence in a sub clause on exploration is not only misplaced, unfounded but also redundant because this is already provided for in the Bill under Clause 206.

Committee Recommendation

The Committee recommends that Clauses 46 (2) and (3) be deleted.

8.9 EXPLORATION AREA

Clause 47 seeks to provide for the area of land in respect of which an exploration licence may be granted. The Committee noted clause 47(2) provides for when the exploration area shall be reduced in size. Paragraph (c) specifically provides for where an area is covered by any retention licence or mining licence granted in respect of the area.

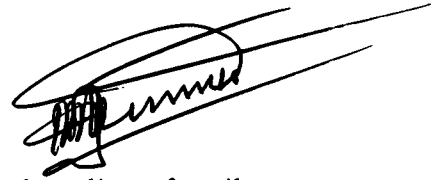
The Committee observes that this clause is redundant since it is not possible for an area covered by a retention licence or mining licence to form part of the exploration licence sought to be renewed. Once a retention licence or mining lease is granted over an area covered by an exploration licence, the area ceases to be an exploration area.

Committee Recommendation

The Committee recommends that clause 47(2) (c) be deleted from the Bill.

9.0. RESTRICTION ON GRANT OF EXPLORATION LICENCE

Clause 48 of the Bill seeks to propose areas where an exploration licence shall not be granted. The Committee observed that clause 48(1) lists areas covered by large scale mining licence, medium scale mining licence, retention licence,



artisanal or small-scale mining licence. The same clause further lists fragile or sensitive ecosystem or protected area without the consent in writing of the responsible Government Ministry, Department or Agency as a restricted area. The fact that these are two distinct areas, there is no point as to why they should be lumped up into one clause.

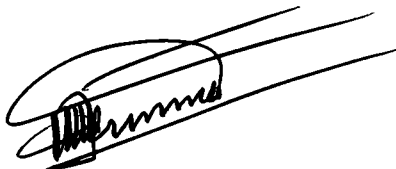
The Committee also noted that the condition under clause 48(3) (a) where in the applicant must satisfy to the Director that he or she has adequate financial resources, technical competence and experience to carry out effective exploration operations is very subjective. This is because the word “satisfy” makes the determination subjective, which puts the applicant at the mercy of the Director. Furthermore the best practice is that application for grant of mineral rights should be determined objectively, on the basis of verifiable facts.

Committee recommendations

The Committee recommends that the following words be deleted from clause 48(1) “is the subject of a large-scale mining licence, medium scale mining licence, retention licence, artisanal or small-scale mining licence; or in a fragile or sensitive ecosystem or protected area without the consent in writing of the responsible Government ministry, department or agency.

The Committee further recommends that paragraph (a) be inserted under clause 48(1) and shall read as follows; “is the subject of a large-scale mining licence, medium scale mining licence, retention licence, artisanal or small-scale mining licence”.

The Committee also recommends that paragraph (b) be inserted immediately after paragraph (a) (supra) and shall read as follows; “or in a fragile or sensitive ecosystem or protected area without the consent in writing of the responsible Government Ministry, Department or Agency”.



The Committee recommends that a new clause be inserted immediately after clause 3 to specify that for purposes of clause 3, the Minister shall prescribe in regulations what the applicant must provide to prove that he/she satisfies the requirements in (a) to (g).

9.1. COMPLIANCE BY AN EXPLORATION LICENCE HOLDER TO WRITTEN LAW.

Clause 51 confers rights to a holder of an exploration licence to erect camps and temporary structures including installations in any part of the waters forming part of the permit. It is this Committee's observation that such erected structures should conform to written law including NEA, 2019, the water Act, Occupational Safety and Health Act, Fisheries Act etc.

Committee Recommendation

The Committee recommends that Clauses 51 (2) and 51 (3) be amended to provide for the requirement to conform to written law.

9.2. OBLIGATION OF A HOLDER OF AN EXPLORATION LICENCE

Clause 52 seeks to provide for what a holder of an exploration licence ought to do. The Committee observed that a licence holder of an exploration licence ought to make good any damage to the surface of the land occasioned by such removal and other activities within sixty days of the expiry of the exploration licence, this clause alludes to the satisfaction of the Director.

The Committee was of the view that the Director is not qualified enough to determine whether the damage that has been suffered by the surface of the land as a result of the exploration has been made good.

Committee Recommendation

The Committee recommends that clause 52 (1) (e) be amended to add the word "and relevant authority".

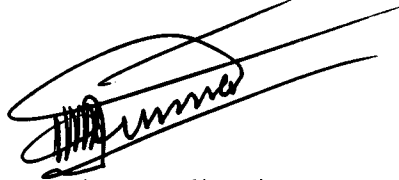
9.3. APPLICATION FOR A RETENTION LICENCE

Clause 55 seeks to provide for grounds upon which a holder of an exploration licence may apply for a retention licence. A Retention Licence is granted to an applicant that has identified a mineral deposit within the exploration area which is potentially of commercial significance or where the mineral deposit cannot be developed immediately by reasons of adverse market conditions, economic factors or other factors beyond reasonable control of the holder of an exploration licence, which are of a temporary nature. The retention licence is given for a period of three years, renewable once for a period of two years.

The Committee observed that minerals may naturally co-exist and may be found in the same geographical bedrock, as is the case for iron ore and Copper; Titanium, Tungsten and Tantalum. The Committee further observed that the Department of Geological Surveys and Mines often issues licences for minerals in respect to this unique characteristic. For instance, several Exploration Licenses have been awarded for base metals and gold under the same right.

The Committee however noted that retention licence should explicitly be made to new discoveries excluding those that naturally co-exist within the same ore. Directorate of Geological Survey and Mines should consequently have records or knowledge of such co-existence and where possible give regulation for analyses for such minerals, to prevent abuse of the retention licence.

It is observed that the nature of mineral prices is sporadic and difficult to predict. However although the retention licence allows a licensee opportunity to await favorable economic conditions, the requirements do not provide for a forecast in market trends. It was also observed that the total duration for a retention licence is 5 years. Since this retention licence is given in respect to an exploration licence, it would imply that a licensee might retain a licence for a total of 12 years before advancing the operation.



The Committee also noted that among the accompaniments to the application is a pre -feasibility study and assessment by appropriate experts or consultants acceptable to the Director under clause 55 (3) (e). This clause gives the Director discretion to approve a study by any person acceptable to them regardless of their professional standing.

Committee Recommendations

The Committee recommends that clause 55(3) be amended to provide a forecast for market trend.

The Committee recommends that a retention licence should be explicitly for new discoveries separate from any such minerals that would ideally be in co-existence with mineral(s) provided for in the Exploration licence

The Directorate of Geological Survey and Mines should consequently have records or knowledge of such co-existence and where necessary guide for such minerals to prevent abuse of the retention licence.

The Directorate of Geological Survey and Mines should exercise due diligence to ensure that the mineral for which a retention license is awarded, proceeds to mining together with the initial mineral in the exploration licence. Regulations for its implementation should be provided.

The Committee also recommends that clause 55 (3) (e) be amended as follows; replace the words “appropriate experts or consultants acceptable to the Director” with “an accredited consultant”

The Committee further recommends that the term “accredited consultant” be defined to mean a consultant accredited by a nationally or internationally recognized authority to undertake such studies.

9.4. RENEWAL OF A RETENTION LICENCE

Clause 58 seeks to provide for the grounds on which a retention licence may be renewed. The Committee noted that clause 58(1) gives the power to renew a licence to the Minister and yet the grant of a retention licence is by the Director. It is prudent that the powers that grant a licence should have the power to renew and revoke.

Committee Recommendation

The Committee recommends that the word “Minister” under clause 58(1) be replaced with the word “Director”.

9.5. APPLICATION FOR LARGE SCALE MINING LICENCE

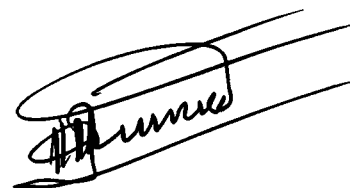
Clause 61 provides for the necessary requirements during the application of a large scale mining licence. Clause 61(2) requires that the application shall state the period applied for, informed by a bankable feasibility study, and it should be accompanied by a full feasibility study and assessment by appropriate experts or consultants acceptable to the Director.

The Committee observed that the term “bankable feasibility study” is neither defined in the Bill nor is it definable. This is because bankability depends on the bank looking at the study, the risk assessment criteria and appetite of a given bank.

The Committee found that it is more appropriate to use either “pre-feasibility study”, “feasibility”, or “full definitive feasibility study” and that these terms must be defined for purposes of clarity.

The Committee also observed that clause 61 (2) (p) requires an application for a large scale mining licence to be accompanied by details of the applicant’s proposals for insurance including life and health cover for its employees and workers’ compensation. Life insurance is an optional employment benefit that is not required by law to be offered to any employee

Committee Recommendations



The Committee recommends that the term “bankable” be deleted from Clause 61(2) (e).

The Committee further recommends that the term “full” be deleted from Clause 61 (2) (l).

The Committee recommends that the term “feasibility study” be defined according to internationally recognized mineral resource and reserve classification codes like the 2016 SAMREC CODE, JORC CODE.

The Committee recommends that the term life insurance be deleted from clause 61(2) (p).

9.5.1. Requirements to Training of Ugandans under LSML

The Committee makes the same observation as those given under Exploration licence.

Committee Recommendation

The Committee recommends that the provisions under 61(1) (o) should be revised to provide for planned training of Ugandans for employment and progressive reduction of expatriate workers in the industry.

The Committee recommends that clause 65 (e) should be amended to provide for succession/ recruitment plan for expatriate labour.

9.5.2. Requirements for Uptake of Goods and Services by Ugandans under LSML

The Committee makes the same observation as that given under Exploration licence.

Committee Recommendation

In line with 61(1) (n) regulations for a licensee to provide comprehensive list of materials, goods and services that will be required for the operation should be included. This information may be specified at the discretion of the Director.

9.5.3. Environment Requirements under LSML

The Committee makes the same observation as that given under Exploration licence.

Committee Recommendation

The Committee recommends that;

This provision should be amended and inserted in all clauses providing for all the mining rights, that is, revise clauses on applications (clause 61), renewals (clause 68) for mineral rights to provide for ESIA certificates and permits, Environment Management Plan, provisions for waste disposal and a decommissioning plan.

For this licence align 61 (2)(k), 61(2)(w)(v), 61(2)(w)(vi) and 61(2)(w)(vii) and also align 68(2) (c) and (d)

9.5.4. Editorial Corrections.

The Committee noted that where there are repetitions under clause 61(2), such provisions should be deleted.

Committee Recommendations

The Committee recommends that clause 61 (2) (v) be deleted as it is provided for under 61(2)(i)

The Committee further recommends that clause 61 (2)(w)(vi) and 61 (2)(w)(vii) be deleted as these are catered for under environmental



provisions and also replace the words “work for profit” with break-even point.

The Committee also recommends that clause 68(2) (f) be amended by deleting the words “only” after “part” and replacing them with and inserting...it shall” after...large scale mining licence area...”

The Committee recommends that clause 61(2)(t) be amended to include Community Development Plans.

9.6. REFUSAL TO GRANT LICENCE

The Committee observed that clause 62 (6) provides for refusal to grant licence, which should be done in writing stating reasons for refusal. The Committee also noted that the applicant should be given a period of notice for which to respond to this decision as per regulations.

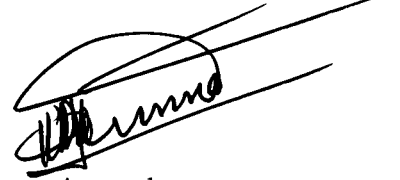
Committee Recommendations

The Committee recommends that clause 62 (6) be amended to provide the applicant with a period to respond to this decision as shall be prescribed by regulations.

The Committee recommends that the above recommendation be carried forward to other licenses.

9.7. RESTRICTION ON GRANT OF LARGE SCALE MINING LICENCE

Clause 63(1) seeks to provide for the circumstances under which the grant a large scale mining licence may be denied. The Committee was concerned with the use of the words “satisfy the Director” under clause 63(2). As earlier observed by this Committee; one of the major challenges that the sector is grappling with under the current legal regime is excessive discretionary powers held by the Commissioner for the Geological Survey and Mines department and



this clause is seeking to maintain this status quo by vesting the same discretionary powers in the Director. This challenge needs to be addressed.

Committee Recommendation

The Committee recommends that clause 63(2) be amended by replacing the words “satisfy the Director” with “provides the necessary documentation to prove that”.

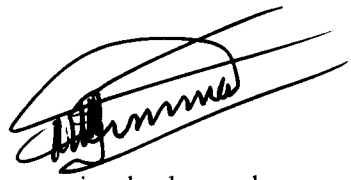
The Committee recommends that the above amendment is carried throughout the Bill wherever it applies.

9.8. CONTENTS OF LARGE SCALE MINING

Clause 65 seeks to provide for what shall be contained in a large scale mining company. The Committee noted that clause 65(h) requires a large scale mining licence to contain conditions with respect to value addition, disposal or sale of the mineral to be mined.

The Committee was informed that around the World, for most minerals smelting/refining is often done by a different company than the company involved in mining and mineral processing. Sometimes it is the same company, but it is often not. Mid-stream processing of minerals to a final refined metal is a cut-throat, low-profit margin business, requiring economies of scale and sometimes patented technology in order to compete, for instance; Rio Tinto is the world's second largest miner of iron ore (upstream), but it has no iron smelters to produce steel (midstream), and does not manufacture goods made from steel (downstream).

It is pertinent to not only understand but also appreciate that most mining companies do not have the expertise, capital, and scale to do mid-stream processing; and it is important for any mining company that is desirous of engaging in value addition or beneficiation acquire a licence for the same.



The Committee notes that large scale mining licenses may include value addition, as is the case for cement manufacturing facilities. However the value addition is not compulsory and should be qualified by “may”.

The Committee further observed that the list of contents of large-scale mining licence does not match the requirements.

Committee recommendation

The Committee recommends that clause 65 (h) be qualified by inserting the word ‘may’

The Committee further recommends that a new sub-clause should be inserted under clause 65 to provide for any other matters as might be prescribed in regulations.

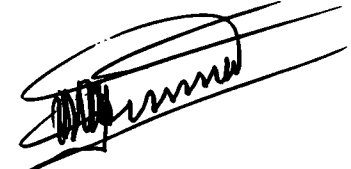
The Committee also recommends that the above amendment should be made for all lists that are not exhaustive under all mineral rights for instance clause 68(4)

9.9. CONTENTS OF A LARGE SCALE MINING LICENCE

Clause 68 (2) provides for requirements for renewal of large-scale mining licence. The Committee notes that since this licence is tagged to throughput, a provision for any expected increase or reduction in mining activities and estimated lifespan of the mine should be provided for. This is important to guide the award of the renewal including acreage. The Bill is also silent on the area to be awarded in respect to renewed licence.

Committee Recommendation

The Committee recommends that a new sub-clause be inserted to for any expected increase or reduction in mining activities and estimated lifespan of the mine.



The Committee recommends that a clause should be inserted under clause 68 to provide that the area under large scale mining licence not to exceed 50 sq.km or reduced as per guidance of the regulations.

10.0. RIGHTS OF HOLDER OF LARGE SCALE MINING LICENCE HOLDER

Clause 70 provides for rights of holder of large scale mining licence. The Committee noted that clause 70 (d) provides for disposal of mineral or waste product. The Committee observed that disposal encompasses other methods of management of waste and it is imperative that this clause provides a term that covers the breadth of the meaning of disposal.

Committee Recommendation

The Committee recommends that clause 70 (d) be amended to substitute the words “stack or dump” with “dispose”.

10.1. MINERAL UNDER A MINERAL RIGHT

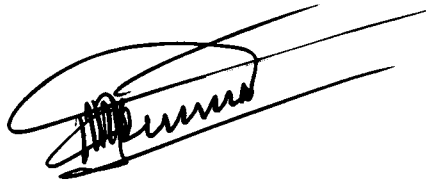
Clause 72 provides for instances where holder of a LSML in the exercise of his or her rights discovers a mineral that the mineral right does not relate to. The Committee noted that this phenomenon can apply for large scale, medium scale, small scale and artisanal mining.

The Committee observed that holder of LSML shall not be permitted to expand area of operation without requisite land rights and other requirements as per written law.

Committee Recommendations

The Committee recommends that editorial changes be made to clause 72 to cater for all licences.

The Committee further recommends that a new clause be inserted under the appropriate clauses to include under large scale, medium scale , small scale and artisanal mining licenses for instances where such



mineral not provided for in mineral right is found. i.e. make reference to this clause under respective rights/

The Committee also recommends that 72 (4) and 72 (5) be deleted.

10.2. APPLICATION FOR MEDIUM SCALE MINING LICENSING

The Committee observed that Clause 76 provides for application for a medium scale mining licence this consequently implies that the word “exploration and” should be deleted under 76 (1). The Committee noted that, in as much as exploration might occur co-currently with mining operations, this particular clause refers to application with respect to a MSML

It is further observed that requirements under 76(3) for exploration licenses should be aligned with previous similar provisions for alignment of the document.

Committee Recommendations

The Committee recommends that;

The term “exploration” under clause 76(1) should be deleted

A sub-clause under 76 (3) to provide that an application should contain a copy of the exploration licence or retention licence should be inserted

Insert provision for payment of taxes and dues, delete the word “where” under 76 (3)(a) and replace with “if”;

Clause 76 (4) should be deleted as it is already provided for under clause 76(3)g

The words “intends to mine should be substituted for mining purposes;

Clause 76(3)(i)(i) and 76(3)(i)(ii) on environment management should be amended to make reference to the environment and social impact assessment.

10.3. RESTRICTIONS ON GRANT OF MEDIUM SCALE MINING LICENCE

Clause 78 provides for restrictions on grant of medium scale mining licence. The Committee noted that a medium scale mining licence should be issued to areas not previously licensed or where exploration, retention, small scale and artisanal scale license belong to the same applicant. This is in line with the principle of no right issued on an existing license and also aligns to 79(2), and 63(1) hence a medium scale mining licence can be issued for an exploration licence.

The Committee further noted that clause 78(3) gives the criteria that an applicant for a MSML needs to meet in order to satisfy the Director prior to grant of the licence. The Committee found this clause to provide subjective discretionary power to the power which is very susceptible to abuse. This therefore calls for objective criteria.

Committee Recommendation

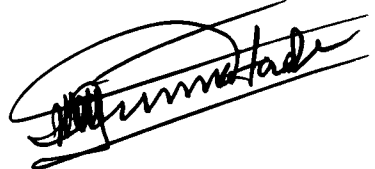
The Committee recommends that clause 78 (1) be amended to read as follows:

A medium scale mining licence shall not be granted over an area of land in or which is, an exploration area, a retention area or a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a small scale mining licence or large scale mining licence as the case may be, in respect of that area.

The Committee recommends that clause 78(3) be amended to delete and replace the satisfaction of the Director with unless the applicant proves that.

10.4. RESTRICTIONS ON A GRANT OF SMALL SCALE MINING LICENCE

Clause 89 provides for restrictions on grant of small scale mining licence. The Committee notes that SSML should be issued to areas not previously licensed



or where exploration, retention, medium scale and artisanal scale license belong to the same applicant. This is in line with the principle of no right issued on an existing license and also aligns to 79(2), 78(1) and 63(1) hence a SSML can be issued for an exploration licence.

Clause 91 (c) implies that there are minerals excluded for award of small scale licenses. However to allow for ease of amendment periodically, this can be provided for in the regulations.

Committee Recommendation

The Committee recommends that clause 89 (1) be amended to read as follows;

A small scale mining licence shall not be granted over an area of land in or which is, an exploration area, a retention area or a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a medium scale mining licence or large scale s mining licence as the case may be, in respect of that area.

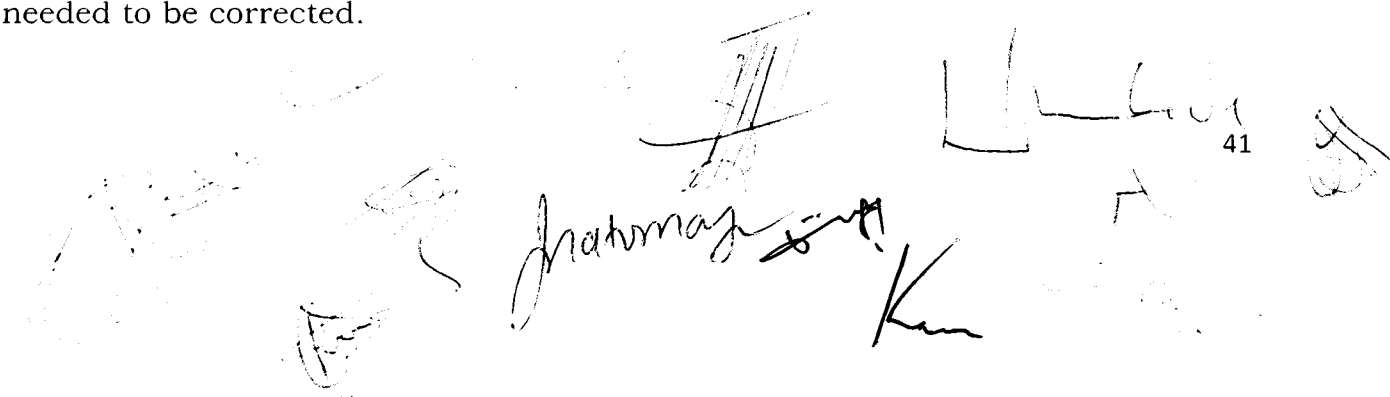
The Committee further recommends that a new clause should be inserted to provide that the List of the minerals under 91(c) should be included in the regulations.

10.5 RIGHTS AND DUTIES OF A SMALL SCALE LICENCE HOLDER

Clause 92 and 92 of the Bill provides for rights and duties SMSL of. The Committee contends that in line with observations on environment management made under analysis of medium scale mining licence and large scale mining licence, there is need to amend the above clauses on SMML and align them to previous recommendations on the other licences.

The Committee noted that these clauses had some typographical errors that needed to be corrected.

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Committee Recommendations

The Committee recommends that clause 92(6) be amended so that it is aligned with the provisions under medium and large scale mining licences as amended.

The Committee further recommends that clause 93(e) be amended to align with previous provisions on environment management keeping in mind the scale of mining operation

10.6. ARTISANAL MINING LICENCE

Clauses 96 to 105 provide for artisanal mining licenses. In light with observations on environment management made under LSML, MSML and SSML, the Committee noted that there is need to amend in order to and align the above clauses to previous recommendations. The Committee also noted that these clauses were marred with grammatical errors.

Committee Recommendations

The Committee recommends that clauses 98(h); 101(2)(d); 103(3)(g); 103(3)(h) be amended so as to align them with the proposed amendment under analysis of the other licences.

10.7. EXPLORATION, EXTRACTION AND DIRECT USE OF GEOTHERMAL RESOURCES.

Clause 115 of the Bill seeks to provide a period with in which a licence for extraction of geothermal resources for direct use shall be granted. The Committee observed that a geothermal resource does not have an estimated life.

Committee Recommendation

The Committee recommends that clause 115 be amended by deleting the words “or the estimated life of the geothermal resource whichever is shorter”.

10.8 VALUE ADDITION AND BENEFICIATION OF MINERALS

Part VII of the Bill comprising of clauses 148 to 150 that seek to provide for value addition and beneficiation of minerals.

The Committee notes that this part provides for value addition and mineral beneficiation for precious metals. Since trade is covered part VIII on buying, selling and dealing in minerals the word “trade” should be deleted where it appears under this part.

Committee Recommendation

The Committee recommends that the word “trade be deleted wherever it appears under this part.

10.8.1. Eligibility of Licence under this part.

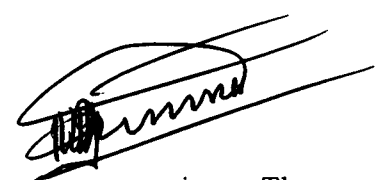
Clause 150 of the Bill seeks to provide for the eligibility for licence under the part. As earlier noted the use of words and terms should be consistent and arranged in a chronological manner.

Committee Recommendation:

The Committee recommends that this clause be amended to include the word ‘Process’ before smelt for consistency within the document.

10.8.2. Application for a Mineral Processing Licence

Clause 151 of the Bill seeks to provide for the person to whom an application for a licence is made the necessary accompaniments to the same. The Committee observed that that the mineral processing licence shall be granted



for a period not exceeding five years, renewable for three years at a time. The Committee notes that there is a big discrepancy with the other two beneficiation licences. Both the mineral smelting licence and mineral refining licence, hold for a period not exceeding fifteen years at grant, renewable for a period of ten years at a time.

This difference is attributed to the high cost and complexity often associated with mineral refining and smelting. The scope of mineral processing as used in this part is often for less complex facilities, requiring minimal capital investment and may not necessarily be involved in mining. This license is a step in the right direction in attracting processors into the sector but its short duration of tenure might also present challenges of lack of security for the investment.

Committee Recommendation

The Committee recommends that as DGSM acquires more data on these licenses, change in tenure for a mineral processing license may be considered for revision/ increase.

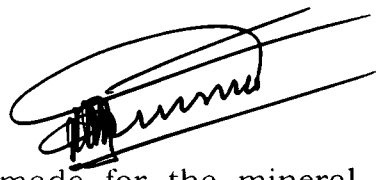
The Committee further recommends that clause 151 (4)(b) should be deleted ,as it is already provided for under 151(3)

10.8.2. (a) . Mineral smelting license

The mineral smelting licence is provided for under clauses 152, 153, 154.

The Committee observes and maintains its previous observations made under the mining licenses, on environment management, employment and training of Ugandans, procurement of goods and services and on consistency to be applicable for the smelting licence.

This is to ensure consistency and coherence within the Bill.



The Committee also notes that some provisions are made for the mineral smelting licence and not the mineral processing licence; these should be harmonized. The Committee observes that it is imperative to substitute the words stack or dump with dispose in order to encompass the breadth of waste management.

Committee Recommendation

The Committee recommends as follows;

- i. Make amendments on environment management, employment and training of Ugandans, procurement of goods and services, consistency to be applicable for the mineral smelting licence whenever they appear under clauses 152, 153 and 154.*
- ii. Provide for rights of holder of processing licence and obligations of holder of that licence to align with 153 and 154 respectively.*
- iii. Substitute the words stack or dump with dispose, wherever it appears through these licences.*

10.8.2. (b).Mineral Refining Licence

Provisions in this licence are given in clauses 155 to 157. The Committee observes and maintains its previous observations made under the mining licenses, on environment management, employment and training of Ugandans, procurement of goods and services, to be applicable for the smelting licence. This is to ensure consistency and coherence within the Bill.

The Committee also notes that some provisions made under the three beneficiation licenses differ in level of detail. They should be harmonized where practically possible.

Committee Recommendations

The Committee recommends that clauses 155 to 157 should be amended to cater for the observations above.

The Committee recommends that the provisions of mineral processing and smelting licences should be revised and amended according to the Committee observations and recommendations in order to harmonize documents.

10.8.2.(c). General provisions relating to Mineral Processing, Smelting and Refining Licence

Clauses 158 to 166 seek to provide for general provisions relating to Mineral Processing, Smelting and Refining Licence.

The Committee observes and maintains its previous comments made under the mining licenses, on environment management, employment and training of Ugandans, procurement of goods and services, consistency to be applicable where possible under general provisions.

The Committee notes that Clauses 159 (2)(a); 159 (2)(b); 159 (2)(c) should be amended to harmonize them and remove overlaps. The Committee also notes that Clause 159 (2)(e) should also cover purity levels as beneficiation processes to an extent will achieve varying degrees of purity.

The Committee observes that the Mineral Protection Force as provided for under 161 (2) should be deleted and consequential amendment made in line with the Committee's decision on clauses 27 and 28.

Committee recommendations

The Committee recommends that clauses 158 to 166 t be amended in order cater for modifications in the observations above.

The Committee further recommends that any reference to the Mineral Protection Force should be deleted.

10.9. General Provisions Relating to Licences

Part of the Bill that comprises clauses 182 to 196 seeks to provide general provisions relating to licences. The Committee observes that a general provision to curtail formation of cartels and monopolies be drafted and included under a new clause 197 in licencing for mining operations. This will align with 165 on formation of cartels and monopolies as observed under clause 45(5).

Committee Recommendation

The Committee recommends that a new sub clause should be inserted so as to address monopolies in mining.

11.0. EXPORT OF MINERALS

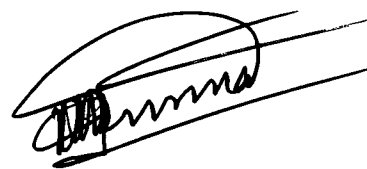
Clause 177 seeks to prohibit any export of minerals from Uganda without an export permit. Clause 177(4) specifically requires that where the minerals are not from Uganda, an export permit from the Country of origin is required. The Committee observed that an export permit is a document that is common in Uganda but some of the neighboring countries, it may not be readily available but they have alternative documents that serve the same purpose.

The Committee further observed that there was need to broaden the scope of authority with regards to minerals that are not from Uganda such that where there is no export permit; an alternative document from relevant Government department can serve the purpose.

Committee Recommendation

The Committee recommends that clause 177(4) be amended to read as follows; “where minerals are not from Uganda. an export permit or an

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authority document from relevant Government department from the county of origin”.

11.1 REVOCATION OF A MINERAL RIGHT.

Clause 186 of the Bill seeks to provide instances when the Director may revoke a mineral right. Clause 186(a) provides for one such instance to be where the mineral right holder fails to fails to make payment on the due date, whether due _____ to _____ the Government or another person, required by or under this Act.

The Committee observed that qualifying the persons to whom the payments were due to did not serve a particular purpose and that the clause was better served by qualifying those payments that could result into a revocation of a mineral right were those required by this law.

Secondly revocation of mineral right may occur where a mineral right holder shall be convicted by any court of competent jurisdiction for an offence under this Act as per clause 186(1) i.

The Committee observed that it would amount to double jeopardy if a mineral right holder lost their mineral right due to a conviction of any offence under the Act.

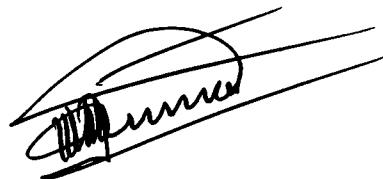
Committee recommendation

The Committee recommends that this clause be amended to read as follows; fails to make payments on the due date required by or under this Act.

The Committee recommends that clause 186(1) I should be deleted.

11.2. NATIONAL CONTENT

11.2.1. Recruitment, Training and Promotion Plan



Clause 222 seeks to provide for what a mineral right, licence or permit issued under this law shall include. It provides that the licence or permit shall include a commitment by the holder to maximise knowledge transfer to Ugandan citizens and to establish in the country, management and technical capabilities and any necessary facilities for technical work.

The Committee observed that the purpose of this clause is to ensure that the mining sector shall have progressive development of human resource that will support the sector's growth as the years go by. As well as enhance skills and technology acquisition.

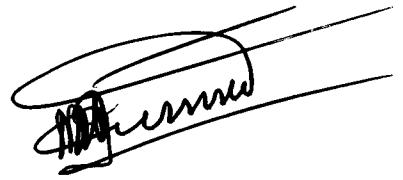
The Committee further observed that Clause 222 (2) that specifically that deals with recruitment, training and promotion plans the issues of gender and equity were not clearly captured contrary to the purpose of the Bill to; promote and protect human rights in the mining sector including gender, labour and children's rights.

Committee Recommendation

The Committee recommends that clause 222(2) be amended to read as follows:

“The Holder of a mineral right, licence or permit shall within twelve months after the grant of the mineral right, licence or permit under this Act, and on each subsequent anniversary of that grant, submit to the Directorate for approval, a detailed programme for recruitment, training and promotion of Ugandans and shall take into account gender, equity and persons with disabilities and in accordance with this Act and any other applicable written law”.

11.2.3. Employment of Ugandan Citizens



Clause 223 seeks to require a mineral rights holder, licensee, contractor and subcontractor to employ and train Ugandan employees. The Committee noted that there was need to prioritize the people that lived in the local communities where the mining activities shall be carried out.

Committee Recommendation

The Committee recommends that a new sub-clause be inserted immediately after clause 223(10) to provide that during the training and employment the people living in the host communities of the mining operations shall be prioritized.

11.2.4. Priority of Goods and Services Available in Uganda and the Region.

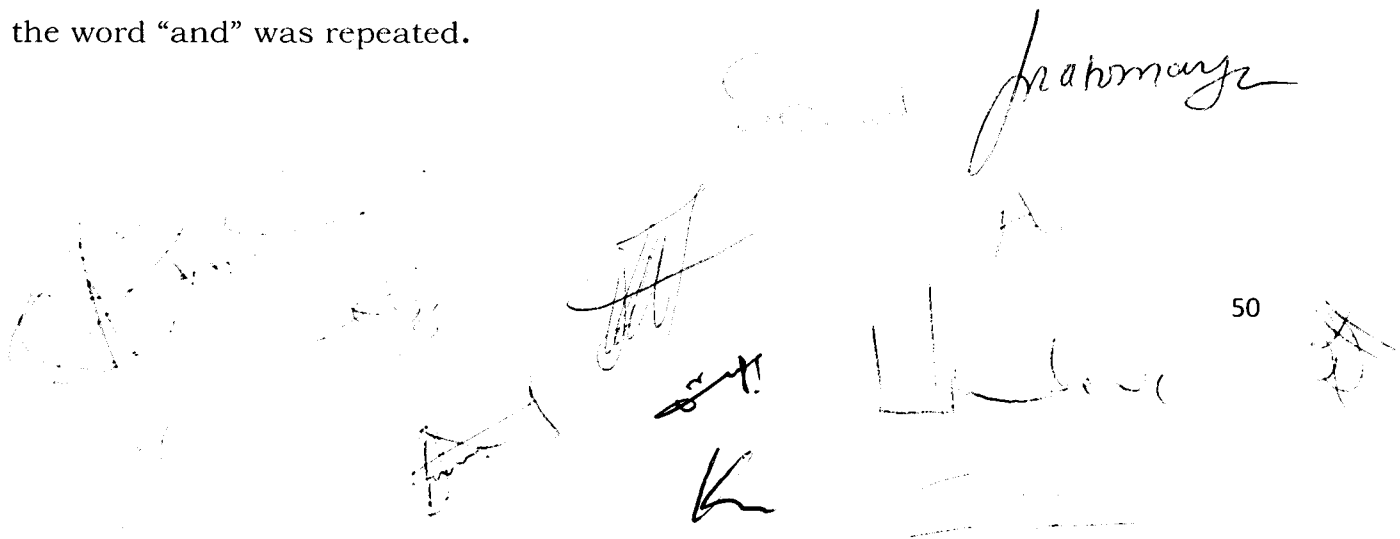
The Committee observed that Clause 224 which deals with the priority of goods and services available in Uganda and the region had a typographical error under sub-clause (2) where the word “the” was omitted between “within” and “said area”.

Committee Recommendation

The Committee recommends that Clause 224 (2) be amended to insert the word “the” immediately after the word “within”.

11.2.4. Technological Transfer

The Committee observed that Clause 225 (1) which seeks to address technology transfer had an editorial error where the word “licence” was repeated. The Committee further observed that Clause 225 (4) had an editorial error where the word “and” was repeated.



Committee Recommendations

The Committee recommends that the extra word “licence” be deleted from clause 225(1).

The Committee recommends that the extra word “and” between “geophysical records” and “technical data” be deleted under clause 225(4).

11.3. GEOLOGICAL, GEOSCIENTIFIC AND MINERAL INFORMATION

11.3.1. Collection, Ownership, Custodianship, Management and Accessibility

The Committee observed that there was a typographic error on Clause 228 (3) omitting the letter “s” from the word “regulations”.

Committee Recommendation

The Committee recommends that this clause be amended to add include the letter “s” on the word “regulation”.

11.3.2. Geological Surveying or Prospecting

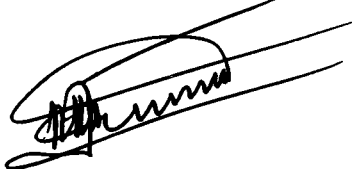
The Committee observed that there was an editorial error on the word “activity” on Clause 229 that seeks to address geological surveying or prospecting.

Committee Recommendation

The Committee recommends that Clause 229 (3) (b) be amended to substitute the word “activity” with the word “activities”.

11.4. RESTRICTION ON EXERCISE OF MINERAL RIGHTS

Clause 197 of the Bill seeks to provide for the restrictions on the exercise of mineral rights. The Committee observed that clause 197 is restricting responsibility to authorize the use of national parks, swamps and forest



reserves to a sole entity despite the fact that other authorities could have a hand. Furthermore the Committee observed that; with the current rationalising and mainstreaming of government agencies, ministries and authorities going on, it is prudent not to not tie authority to a particular agency

Committee Recommendation

The Committee recommends that clauses 197(1)(g),(h) and (j) be deleted.

The Committee further recommends that a new sub-clause be inserted immediately after clause 197(1),(f) to read as follows; in a national park, swamp, within a forest reserve, unless the holder of the mineral right has first given notice to and obtained permission from the relevant authorities and complies with any conditions imposed by the authorities.

11.5. ACQUISITION OF EXCLUSIVE RIGHT BY APPLICANT FOR MINERAL RIGHTS

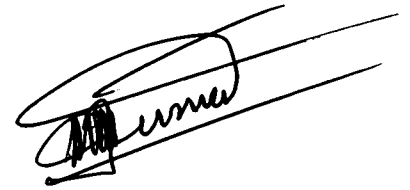
Clause 199 of the Bill seeks to provide for the acquisition of exclusive right by applicant for mineral right. Clause 199(2) seeks to allow compulsory acquisition where the exploration or mining operations are significant to Government.

The Committee contended that compulsory acquisition by Government should be restricted to mining operations because it is not tenable to compulsorily acquire land for purposes of exploration whose outcome is not definitive.

Committee Recommendations

The Committee recommends that Clause 199 (2) be adopted with an amendment to delete the word "exploration".

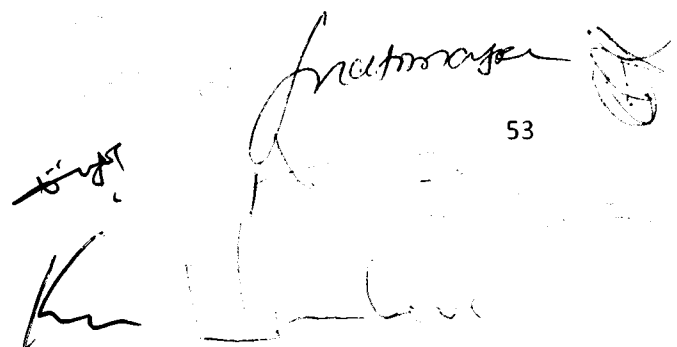
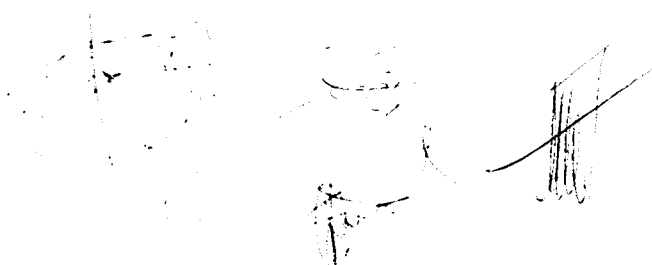
11.6. STATE EQUITY PARTICIPATION

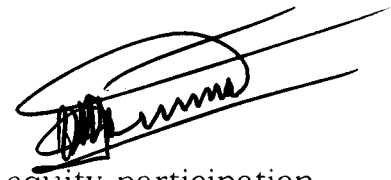


The Bill under Clause 206 seeks to introduce state equity participation under large and medium scale mining licences. This clause is to the effect that the grant by the Director of a large scale or medium scale mining licence may give the State an ownership interest, at no cost, of up to a maximum of fifteen percent (15%), in a large scale mining licence, or medium scale mining licence. The clause further provides state can also acquire up to 35% of total participation however the remaining 20% shall be a paid for interest. This Clause attracted two divergent views from stake holders. The stake holders that were against the 15% free carry opined that; free carried interest should apply during exploration phase, and thereafter Government should contribute to development and operations, as is the case in the petroleum sector. Further, there must be a mechanism for recovery of exploration costs incurred on behalf of Government during the exploration phase, as is the case in the petroleum sector.

On the other hand the stake holders that were in support of the 15% free carry stated that State participation enables policy makers to show the citizens that the resources have not been simply “given away” to foreign mining companies, but that as a sovereign state, the country is benefiting from its resources maintaining a level of national ownership. They further contended that; state equity participation guarantees national capacity building, improved monitoring as well as direct financial dividends, direct financial dividends further also implies that, the state also shares in some of the project risk. If the project does not make profits, the State does not receive dividends.

The Committee noted that the principle of state equity participation was not unique Uganda through the proposed Bill, but that several countries in Africa applied this principle, for instance; Tanzania has a 16% rights to equity, Kenya-10%, Lesotho-20% and others.





It is on this premise that the Committee agreed that state equity participation shall be a very vital tool to maximise Uganda's benefits from the minerals, however considering that Uganda has not yet been de-risked (de-risking includes conducting extensive exploration work, arranging appropriate financing in the short to medium term and lowering production costs), the maximum percentage of rights should be lowered.

Committee Recommendation

The Committee recommends that clause 206 be amended to replace the words "fifteen per cent" (15%) with 'ten per cent "(10%)."'

11.7. ROYALTIES

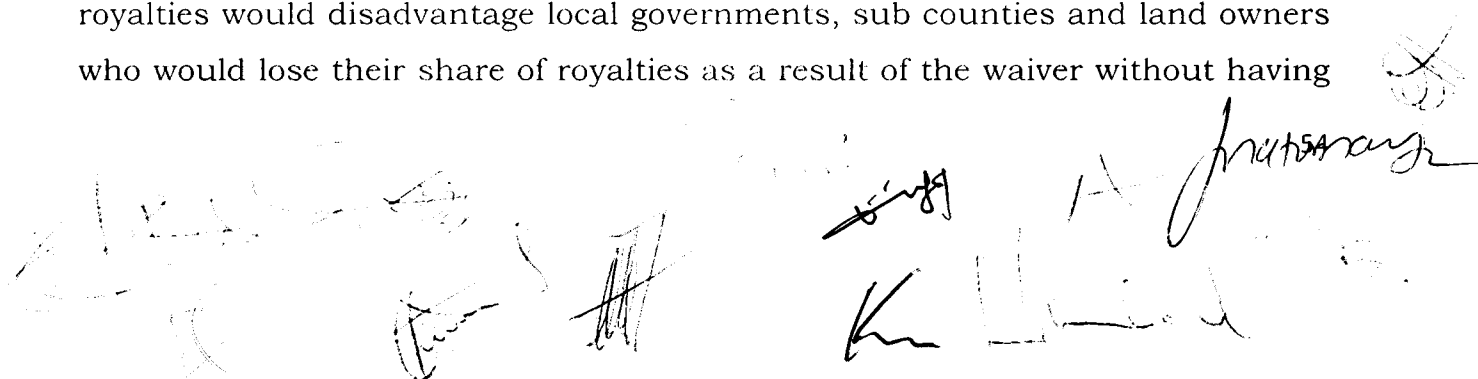
Clause 207 of the Bill seeks to provide for the payment of royalties, this clause should be read together with schedule 2 of the Bill that lays out the sharing of the royalties. The Committee noted that mining does a lot of physical and social damage to communities and that since the central government has other revenue streams beyond royalties, it is important that the percentage of royalties received by local governments be increased given that they are the ones that have to contend with the negative impacts of the project.

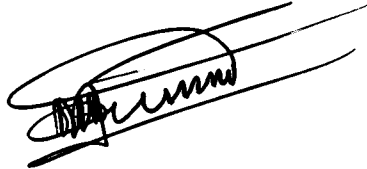
Committee Recommendation

The Committee recommends that schedule 2 should be amended to provide for the sharing of royalties as follows; 65% to central government, 20% to local government, 10% to sub county and 5% to the land owner.

11.8. WAIVER OF ROYALTIES

Clause 210 of the Bill seeks to propose conditions wherein the Minister may waive the payment of royalties. The Committee is of the opinion that waiver of royalties would disadvantage local governments, sub counties and land owners who would lose their share of royalties as a result of the waiver without having





a say in it. It is further this Committees observation that there are other means through which government can incentivize mining companies other than waiving royalties.

Committee recommendation

The Committee recommends that clause 210 be deleted.

11.9. PAYMENT OF TAX AND OTHER FEES

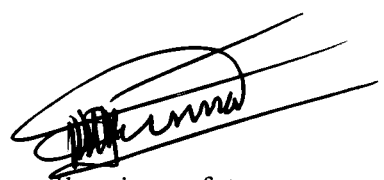
Clause 218 of the Bill seeks to subject all mining activities under this act under the tax regime of Uganda.

It is worth noting that the Mining Act 2003 was amended in 2021 by the Mining (Amendment) Act No.8, 2021 that commenced on 1st July 2021. This Act amended section 116 of the Mining Act 2003 by inserting section 116A to impose a levy on processed gold at the rate of five percent of the value of a kilogram which is exported out of Uganda.

The Act further amended the Mining Act 2003 by an insertion of section 116 B that provides for a levy on unprocessed minerals, at a rate of ten percent of the value of the unprocessed minerals which is exported out of Uganda.

The Committee was informed that the current taxation of 5 %(processed) and 10% (unprocessed) gold that was passed by Parliament for the FY2020/21 has caused tensions and disruption of the gold processing and export business. The taxation rates were not informed by the nature of the business. For example, only a portion of the value received from the export is retained in Uganda.

The Committee was further informed that the Executive had agreed with key stakeholder on the following rates per kilogram; processed gold-USD 2000 and unprocessed gold -1 percent of the value.



The Committee also learnt that Government agreed to halt collection of taxes based on the approved rates until the law is amended such that the assessment shall be based on the above proposed rates and that the private sector parties have been ready to pay assessed taxes to Uganda Revenue Authority to avoid accumulation of massive obligations to Government.

The Committee observed that it was imperative that levies from the export of processed and unprocessed minerals be collected by the responsible authority so as to raise revenue for the services and income supports the country needs. Furthermore Article 152 prohibits the imposition of any tax without the authority of an Act of Parliament and therefore it is important that this act provides for the taxation of export of minerals.

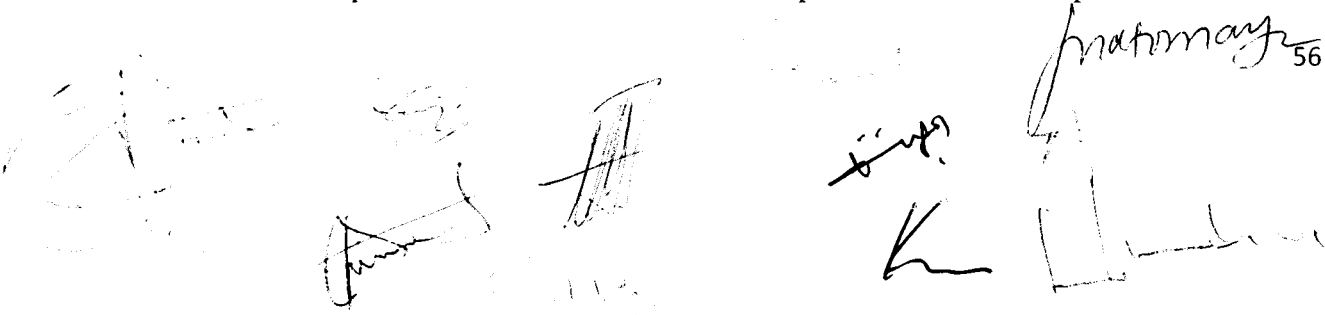
Committee Recommendation

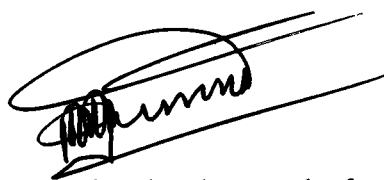
The Committee recommends that a new sub-clause be inserted immediately after clause 218(1) inserted to provide that there shall be a levy on minerals to be paid to the Uganda Revenue Authority at the time of exporting the minerals out of Uganda at a rate prescribed by the Minister in the Regulations.

The Committee also recommends that the Ministry finds a mechanism to recover the pending taxes that have not been remitted to government from 1st July 2021.

12.0. POWERS OF MINISTER RESPONSIBLE FOR FINANCE IN RELATION TO TAXATION

Clause 221 of the Bill seeks to provide for the powers of the Minister responsible for finance in relation to taxation and more specifically the grant of incentives. Specifically Clause 221(2) lists the incentives for companies that may be granted by the minister. The Committee noted that Clause 221 (2) (e) makes the provision of services or material and equipment to licensees for free or at discounted prices an incentive. It is important that the provision of the





services or material and equipment be provided at a discounted price instead of given out for free. This will ensure uniformity and rule out instances where some licensees have free access and others pay for the same albeit at a discounted price.

Committee Recommendation

The Committee recommends that the word “free” under clause 221(2) (e) be deleted.

12.1. PARTICIPATION OF MINING COMMUNITIES

The Committee observes that the introduction of community development agreements in the mining communities is a step in the right direction as it puts communities in a position to better negotiate for their development interests and creates harmony between the mining companies and the communities in the mining areas. However, the Committee observes that Clause 255 (2) refers to ‘primary host community’ without giving a definition of this term and therefore, it becomes difficult to know who is supposed to be included in the Community Development Agreements.

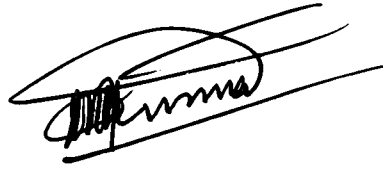
Committee Recommendations

The Committee recommends that the term ‘primary host community’ be defined to avoid confusion and numerous claims on ownership of land.

12.2. NEGOTIATION OF COMMUNITY DEVELOPMENT AGREEMENTS

Clause 256 of the Bill seeks to obligate a holder of a mineral except the holder of a prospecting, exploration or artisanal mining license to negotiate a Community Development Agreement with the community likely to be affected by their operation.

The Committee welcomes the idea of a community development agreement because this guarantees socio-economic progress for the communities. The



Committee however observed that the use of the word “may” in Clause 256 (5) makes the development of a model Community Development Agreement by the Director discretionary as well as his or her consultation with the relevant stakeholders in the development of the agreement optional.

It is this Committee’s opinion that there is need to make it mandatory for the Director to develop a model Community Development Agreement in consultation with relevant stakeholders .This is because if the development of a model agreement is not made mandatory, the Director may opt not to develop a model agreement and this shall result into the community representative not having a holistic guiding document to guide negotiations.

The Committee further agreed that it was imperative to have at least the mandatory terms and conditions that should be entailed in a Community Development Agreement as was the case with the Mineral Agreement.

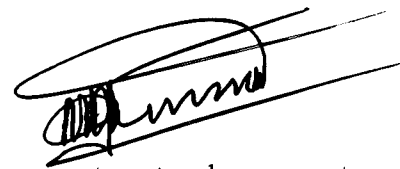
Committee Recommendations

The Committee recommends that the word “may” under clause 256(5) be replaced with the word “shall”.

The Committee further recommends that a new clause be inserted immediately after clause 256(7) requiring the Minister to prescribe in the regulations the terms and conditions that must be contained in a Community Development Agreement.

12.3. SAFETY

The Committee observes that whilst this provision relates to safety in the mines, clause 258(4)(a) by implication allows child labor as it provides for only children aged below 14 not to be allowed in the mines. The clause provides that the operator of the mining shall not employ children below 14 years. Much as the maturity age as per the constitution is far above this one at 18 years, the



age provided in the provision is actually below the age for contractual consent and employment which is 16 years.

Committee Recommendation

The Committee recommends that Clause 258 (4) (a) should be revised to increase the age of employment in the mines from 14 years to 16 years which is the age of contractual consent prescribed in the Employment Act.

12.3. EARTH SCIENTIST REGISTRATION BOARD

Part XX (clauses 280-291) of the Bill seeks to establish the Earth Scientist Registration Board.

The Committee observed that the board that is sought to be established is a professional regulatory body that is meant to all persons that are qualified to be earth scientists. The primary purpose of a regulatory Board is to serve the public by ensuring competent practice within an occupation. Boards typically have substantial power, which enables them to impact individual practitioners, members of the public, and the profession as a whole.

It is therefore this Committee's observation that the regulation of the earth sights will be more efficient if regulated under a separate law in order to ensure independence as is with other professional bodies.

Committee Recommendation

The Committee recommends that part XX of the Bill be deleted from the Bill.

The Committee further recommends that Government moves a different Bill to regulate the profession of earth scientists.

12.4. AUTHORISED OFFICERS

Clause 217-279 of the Bill seeks to provide for authorized officers and the extent of their powers. The Committee observed that clause 272 (2) of the Bill makes reference to mineral protection force that the Committee recommended to delete. (Refer to the Committee observation and recommendation on the Mineral Protection Force).

The Committee noted that clause 273 gives the authorized officer the power to demand name and address of offender or to arrest offender. Provision of name and address may not be sufficient to assist in the tracking / locating of an officer and it is therefore better to demand identification which includes; all identification documents.

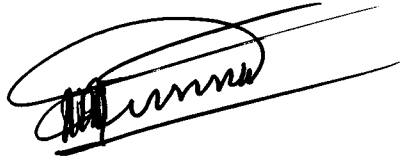
The Committee further observed that clause 278 seeks to give authorized officers powers to prosecute subject to authorisation from the Directorate of Prosecution. The Committee noted that requiring the authorized officers to prosecute would imply that DGSM which falls under the Ministry of Energy and Mineral Development possesses a legal department where officers authorized to prosecute shall fall. This would contravene Article 119 that charges the Attorney General with powers to represent and give legal advice to the Government.

Furthermore this would demonstrate a lack of trust in the capacity of the Directorate of Public Prosecutions to execute their mandate.

Committee Recommendation

The Committee recommends that the word “mineral protection force” be deleted from clause 272(2).

The Committee recommends that the words name and address under clause 273 be replaced with the word “identification”.



The Committee recommends that the words “him or her” be deleted from clause 273.

The Committee recommends that the word “demolish” under clause 274 (k) be replaced with the words “may cause demolition”.

The Committee recommends that the words “may cause” be inserted immediately before the word “arrest” under clause,273, 274(i) and clause 275 (1) c.

The Committee recommends that the words “in consultation with the Minister responsible for internal affairs regarding; powers of search and arrest, training, discipline and use of firearms”.

The Committee recommends that clause 278 of the Bill be deleted.

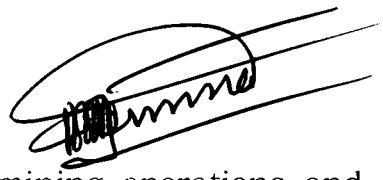
12.5. GENERAL OFFENCES RELATING TO MINERAL RIGHTS, LICENCES OR PERMITS

Clause 299 provides for offences relating to mineral rights, licences or permits. The Committee under clause 10 of the Bill reduced the penalties of the persons convicted for conducting prohibited activities without authorisation and therefore found that the penalties under clause 299 (1) punishing persons aiding or asisiting illegal prospectors or operators should be adjusted accordingly.

Committee recommendation

The Committee recommends that clause 299 ((1) d be amended to provide for the penalty to be a fine not exceeding twenty five thousand currency points or imprisonment not exceeding three years or both. .

12.5. PROHIBITION OF USE OF HAZARDOUS CHEMICLAS WITHOUT AUTHORISATION



Clause 302 seeks to prohibit the use of mercury in mining operations and further prohibit the use of cyanide without authorisation. The clause further seeks to provide penalties for the contravention of the aforementioned penalties. Submissions to the Committee by the various stakeholders in the mining sector in the country indicated that the use of mercury and cyanide especially in the mining of gold is inevitable considering the locally existing technology. Therefore, efforts should be focused on proper and safe use of these chemicals with authorization.

The Committee further observed that Clause 303 (1), which prohibits the use of mercury, is mostly disadvantageous to women in the sector who use it for gold processing and yet the Bill does not extend this prohibition to the entire value chain of supply and procurement of these chemicals.

Committee recommendation

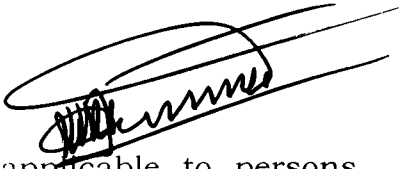
The Committee recommends that clause 302 (1) be amended to include the words “without authorisation” immediately after the word “operations”.

The Committee further recommends that a new clause be inserted to provide that the use of cyanide and mercury shall be as prescribed by the Minister in regulations to this Act.

12.6. GENERAL PENALTY

Clause 319 seeks to provide for a penalty for a contravention of a provision of this act where no penalty is specifically provided. The Penalty for contravention by an individual is a fine not exceeding five thousand currency points or imprisonment not exceeding seven years or both and fro an entity , a fine not exceeding fifty thousand currency points.

The Committee noted that general penalties are more applicable in a body of law that defines criminal offenses, regulates the apprehension, charging and



trial of suspected persons and modes of treatment applicable to persons convicted under that law for instance; the penal code act rather than a law regulating a sector because this would be quite vague in such a law like the mining Bill.

Furthermore all contraventions under the provisions of the act have penalties attached to them and others have been subject to fines as shall be prescribed by the Minister under regulations.

Committee Recommendations

The Committee recommends that clause 219 be deleted.

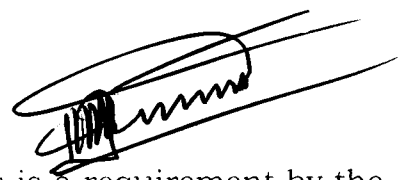
12.7. FEES, FINES, PENALTIES AND OTHER CHARGES

Clause 326 of the Bill seeks to the Directorate of Geological Survey and Mines the mandate to levy the following fines; administrative fines, express penalties, coercive fines which money shall form part of the funds of the Directorate and can be spent at source. Furthermore the clause imposes a surcharge of five percent of the amount in default for each day of default.

The Committee observed that express penalties, coercive fines are not defined nor the offences or contraventions from which such penalties or fines shall be imposed listed. Secondly, since the Directorate has already been granted powers under clause 327 to impose administrative fines, the Committee was of the opinion that this wide discretion was sufficient enough to deter any contraventions without the addition of expressive penalties and coercive fines that are vague.

The Committee further noted that clause 326 (3) seeks to grant the Directorate of Geological Survey and Mines the power to collect and spend money at source.

It is this Committee's opinion that all monies collected by a Government entity should be remitted to the Consolidated Fund where the monies shall be



appropriated by an Act of Parliament. Furthermore this is a requirement by the Public Finance Management Act.

Committee Recommendation

The Committee recommends that clause 326 be deleted.

12.8. ADMINISTRATIVE FINES

Clause 327 of the Bill seeks to provide for administrative fines, these are applicable in instances where an authorized officer or inspector has to believe that a person has contravened the provisions of this act.

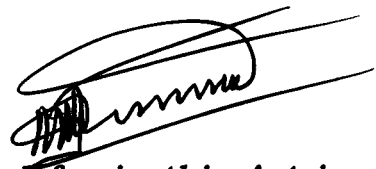
The Committee noted that there is no appeal mechanism for where a person has been fined and they have grounds to object to the fines but instead the clause subjects a person who objects to the fines to prosecution by the Directorate of Public Prosecutions. Secondly clause 327(7) does not preclude the Minister from adding offences whose penalties have already been provided for in the act to offences subject to administrative fines which would amount to double jeopardy.

Committee Recommendation

The Committee recommends that clause 327(6) be amended by deleting the word “denies, by notice in writing to the authorized officer, that an offence has been committed”

The Committee further recommends that a new clause be inserted immediately after clause 327(6) providing that a person who objects to the offence that he has been charged with in the notice shall have a right to appeal to the Minister or follow any other appeal mechanism that has been provided for in the Act.

The Committee also recommends that a new clause be inserted immediately after clause 7 stating that a Minister shall not include



offences whose penalties have already been provided for in this Act in the regulations specifying offence liable to administrative fines.

12.9. GENERAL OBSERVATIONS ON THE MINING AND MINERALS BILLS, 2021

12.9.1 FINANCIAL IMPLICATION

The Committee observes that implementation of the Bill over a period of ten years will require US\$ 2,372.181 Billion, of which only US\$ 26.166 Billion, an equivalent of 1 % has been committed. The balance will be US\$ 2,346 Billion to be met through the Medium-Term Expenditure Framework of the Ministry of Energy and Mineral Development and therefore additional financial implications to the Government of Uganda.


The implementation of the Mining and Minerals Amendment Bill, 2021 is expected to raise up to UGX 8,155 Billion (USD 2.33 Billion) in revenue over a period of ten years from increase in Non-Tax Revenue generated from mineral royalties that arise out of an improved legal regulatory framework as well as the infrastructure developed. However, the Committee notes that there is no corresponding financing in the 2021 budget to implement the Bill as noted above. In addition, the Mineral Development Program remains underfunded despite being prioritized under NDP III as one of the key growth areas for industrialization.

Committee Recommendation

The Committee recommends that Government prioritises the implementation of the Mining and Minerals Amendment Bill, 2021 by ensuring adequate funding.

12.9.2. APPLICATION

Clause 2 (a) seeks to bring to bring the application of the Mining and Minerals Bill to substances excluded from the definition of minerals under article 244 (5)



of the Constitution and exploited for commercial purposes including clay, murrum, sand, aggregate or any stone commonly used for building or similar purposes.

The Committee noted that Article 244 (6) granted Parliament powers to regulate the substances that have been excluded from the definition of minerals under Article 244(6). It is on this premise that the Committee opined that the regulation for the exploitation of these building materials should be regulated in a separate law rather than being lumped up in a law intended to regulate minerals.

The Committee was further of the view that a separate law regulating the exploitation of building substances would ensure the efficient and proper governance of these substances.

The Committee also observed that the Bill shall apply to the extraction of geothermal resources for direct use under clause 2(c), however the term geothermal resources is not defined under the interpretation clause.

Committee Recommendations

The Committee recommends that Part VI of the Bill and any reference to the licensing of building substances exploited for commercial purposes be deleted from the Bill.

The Committee recommends that Government moves a Bill to regulate building substances within 6 months from the date of gazettelement of this Bill.

The Committee recommends that the term "geothermal resources" be defined under the interpretations clause".

12.9.3. PRIOR, PROMPT AND ADEQUATE COMPENSATION

The Committee observed that throughout the Bill, there is numerous mention of a condition that the Director may withdraw or cause to be relinquished portions of the licence area covering land that has been ear marked by Government for a public infrastructure project, at no cost to Government.

The Committee was concerned that instances where the holder of the licence has already undertaken mining operations and established the existence of minerals in the affected area, forcing the holder of the licence to relinquish the affected area without compensation would violate the right to property guaranteed under Article 26 of the Constitution of the Republic of Uganda.

However the Committee was informed that there is a distinction between a licence holder and land owner even if these happened to be the same person and that whereas the land owner shall always be compensated in situations where their land has been compulsorily acquired, this cannot be the same with the licence.

This is because there are instances where the licence holder has barely carried out any activities prior to the withdrawal of the licence and thus suffers no losses where a portion of the licensed area is reduced to cater for government infrastructure.

Committee Recommendations

The Committee recommends that a new omnibus clause be inserted under Part XXII to provide that compensation to licence holder where he/she has already undertaken mining operations shall be premised on the extent of the activities undertaken and levels of investment.

12.9.3. MINING OF PROHIBITED MINERALS

Clause 302 – Prohibition of Use of Explosives without Authorization

Committee Observation

The Committee observed that the title of Clause 302 prohibits the use of hazardous chemicals without authorization; however, Clause 302 (1) totally prohibits the use of mercury. Submissions to the Committee by the various stakeholders in the mining sector in the country indicated that the use of mercury and cyanide especially in the mining of gold is inevitable considering the locally existing technology. Therefore, efforts should be focused on proper and safe use of these chemicals with authorization.

The Committee further observed that Clause 303 (1), which prohibits the use of mercury, is mostly disadvantageous to women in the sector who use it for gold processing and yet the Bill does not extend this prohibition to the entire value chain of supply and procurement of these chemicals.

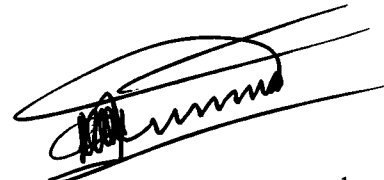
Committee Recommendations

The Committee recommends that there should be regulation of the use of mercury in the informal sector of artisanal and small-scale gold mining. Clause 302 (1) should prohibit the unauthorized use of mercury and therefore should read as, **“The importation, supply, purchase and use of mercury in mining operations without authorization is prohibited.”**

The Committee further recommends that a new sub-clause - Clause 302 (4) be inserted to read as, **“The Minister shall develop regulations to give effect to Clause 302 (1).”**

12.9.5. OFFENCES PENALTIES AND ADMINISTRATIVE PENALTIES

Part XXI of the Bill generally provides for a number of offences, penalties and administrative penalties but does not explicitly provide for offences and



penalties relating to environmental and social impact assessments and environmental risk assessments. The National Environment Act, 2019 under Section 157 provides for this offence with a maximum penalty of fifteen years and one hundred thousand currency points for an individual and five hundred thousand currency points for a corporate body.

Committee Recommendation

Considering the negative externalities that the mining sector poses to the environment, the Committee recommends that the penalties provided for offences relating to environmental and social impact assessments and environmental risk assessments in the National Environment Act, 2019 should be adopted to this Bill by inserting a new sub-clause under General Offences as follows:

Clause 298 (3), 'A person who commits an offence relating to environmental and social impact assessments and environmental risk assessments, is liable on conviction to the penalties prescribed in the National Environment Act, 2019.'

12.9.6. CHRONOLOGY OF PROVISIONS

The Committee notes that editorial changes need to be made to allow for flow of ideas and coherence throughout the Bill with specific emphasis on the various licenses. For instance, while providing for environment management, it is prudent that an Environment and Social Impact Assessment is preceded by an Environment Management Plan and not the other way round.

Furthermore, when providing for the power of an authorized officer to enter and search, it is prudent that such power is qualified in the subsequent clause that; the power shall be exercised with a search warrant.



Committee Recommendation

The Committee recommends that the clauses of the Bill should be arranged in a chronological manner for purposes of clarity and consistency.

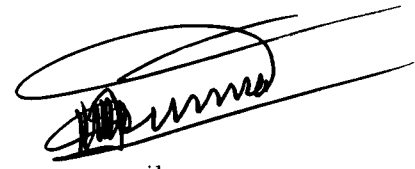
12.9.7. NUMBER OF LICENCES THAT CAN BE HELD BY A LICENSEE

Clause 45 (5) provides that an exploration licence holder may hold up to five such licenses at any given time, and in special circumstances as prescribed by regulations the number might be higher. The Committee notes that an exploration licence covers an area not exceeding 250 square kilometers (25,000 hectares). For holder of at least 5 Exploration licenses, this would imply an area of 1250 sq.km (125,000 hectares) if up to the maximum area is granted for all 5 licences.

The Committee observed that the Mining Act of 2003, provided for an exploration licence of up to 500 sq. km (twice as big as the one proposed) in the Bill except that a licensee could hold more than one licence. At renewal that licensee would subsequently relinquish half of the area at every grant, implying that at the end of seven years (3 years for initial renewal, 2 years of subsequent initial renewal and another 2 at subsequent renewal) such licensee would be left with 125sq.km.

The Committee observed that although the initial licensing area in the Bill has been reduced, the renewal may not warrant reduction in the licensed area since the Director has the discretion to renew beyond 50% with consideration of up to 100%. Further the total number of licenses allowable of at least five interests may place large chunks of land cumulatively under one licensee. Analysis of licenses issued as at January 2019 as received by the Committee shows that several mining companies have more than one licence.

Considering that medium and large scale licences both cover up to 50 sq.km, and the general principle that such mining rights may not be conferred to



areas exceeding exploration areas, the Bill should therefore prescribe measures to curtail hording of licences and formation of cartels and monopolies as provided for under clause 165. This will ensure that applicants of exploration rights are able to optimize their resources (technical, financial and others) for data acquisition within timelines

Committee Recommendation

The Committee recommends that monitoring of holders of exploration licences should be robust to ensure that they meet the terms under which licences are issued, failure of which could result into revocation of rights. Tests should be carried out routinely and submitted to the DGSM.

The Committee recommends that award of multiple exploration licences although under the discretion of the Director should be in respect to regulations.

13.0. CONCLUSION

Rt.Hon. Speaker and Rt. Hon. Colleagues,

A thriving minerals sector contributes immensely to a Country's social and economic development. The Mining and Minerals Bill 2021 should be passed with the proposed amendments. This Bill is pertinent in addressing the existing gaps in the current Mining Act 2003 such as licensing of Artisanal Small-scale Miners, issuing production sharing agreements that prioritize the Country's interests, establishing a National Mining Company and strengthening the role of local government in the minerals sector.

This Bill will further provide a framework for gender mainstreaming, equity and eradication of child labor in the mining industry in addition to the Community Development Agreements.

The Mining and Minerals Bill 2021 will also promote international investments; facilitate research, technology and infrastructural development. This Bill will fast-track industrialization in Uganda and greatly contribute to achieving the National Development Plan III vested into establishing sustainable industrialization for inclusive growth, employment and wealth creation. Therefore, passing the Mining and Minerals Bill 2021 will strengthen the legal and regulatory framework as well as the human and institutional capacity that will immensely enhance the minerals sub-sector.

I beg to report.



PROPOSED AMENDMENTS TO THE MINING AND MINERALS BILL, 2021:

1. Clause 1. Commencement:

Substitute the provision as follows-

“The act shall come into force on a date of publication in the gazette.”

Justification: To avoid delay in the implementation of the Act.

2. Clause 2. Application

Delete sub-clause (2)(b)

Justification: Building materials should be regulated separately because it's excluding from Article 244 (5) the Constitution from forming part of minerals

3. Purpose of the Act

Amend paragraph (c) by deleting the words **“extraction of building substances”** and delete any reference to building substances wherever it appears in the bill.

Justification: Consequential

4. Clause. 8 Interpretation.

- Amend the definition of **“precious mineral”** under (b) by deleting the words **“rare earth elements”**

Justification: Rare earth elements are not precious minerals. They are industrial minerals and are not treated as precious by world markets. Rare earth elements should be separately defined.

- **Introduce definitions of new words as follows**

- **“Borehole”** means a narrow shaft bored into the ground, either vertically or horizontally as part of geotechnical investigation, environmental site assessment, mineral exploration, temperature measurement, installing piers or underground

utilities, for geothermal installations, or for underground storage of unwanted substances.”

- **“Complex project”** means a project with significant integrated components, unique equipment, multifaceted systems, intricate phasing, or that is marginal in context.”
- **“Geothermal Resource”** means a reservoir of heat occurring naturally within the subsurface of the earth carried to the earth’s surface by water and/or steam.”
- **“Highly capitalized project”** means a project whose capital investment is above USD 300 Million (Three Hundred Million United States Dollars).”
- **“primary host community”** means a single community of persons mutually agreed by the holder of a large scale, medium scale, or small scale mining licence and the local government where the mining area is located, but if there is no community of persons residing within thirty kilometres of any boundary defining the mining area, the primary host community shall be the local government.
- **“rare earth elements”** means a group of seventeen elements appearing in the periodic table comprising fifteen lanthanides, yttrium, and scandium.

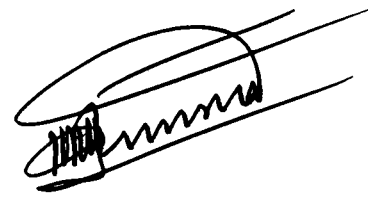
5. Clause 10. Amend the provision as follows-

- a. In the headnote to read as –

“Prohibition of unauthorized activities”

Justification: For clarity

- b. In sub clause (1) by deleting the reference to **“regulations made under this Act”**



Justification: An Act must make reference to its equivalent and not regulations. And besides, reference to the Act includes regulations made there under.

- c. **In sub clause (2)** by inserting the words **“in consultation with the relevant state authority”** after the word **“Minister”**

Justification: To enable the Minister to consult with the relevant authority in order to make decisions from an informed point of view.

- d. **in sub clause (3)**

- paragraph (a) by substituting **“one hundred thousand currency point”** with **“fifty thousand currency point”** and **“imprisonment not exceeding ten years”** with **“imprisonment not exceeding five years”**
- paragraph (b) by substituting **“one hundred thousand currency point”** with **“fifty thousand currency point”**

Justification: To avoid giving a very stringent penalty

- e. **Delete sub clause (4)**

Justification: The punishment under sub section (3) is adequate and there shouldn't be any additional penalty.

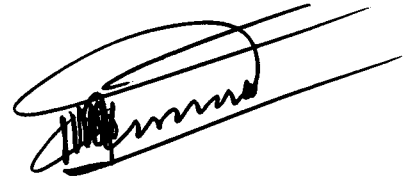
- f. **Insert a new sub clause** to read as follows-

“Court may in addition to the penalties imposed under this section, order that the mineral substances that were extracted illegally and any items and instruments used in the commission of the offence be seized and forfeited to Government.”

Justification: For a robust penalty.

- g. **Insert a new clause** after clause 10 to read as follows-

“Aiding illegal operators.



A person who aids illegal prospectors or operators in contravening the provisions of section 10 commits an offence and is liable on conviction to a fine not exceeding twenty-five thousand currency points or imprisonment not exceeding two years."

Justification: To be all inclusive

6. Clause 12.

Amend **sub clause (2)** by deleting the words **"quarry licence"**

Justification: Clause 12(2) bundles a quarry licence together with mineral rights, which subsequently creates the impression that a quarry licence is a mineral right and yet a quarry licence is not among the mineral rights listed under Section 14.

7. Clause 16. Insert a new paragraph immediately after paragraph (a) to read as follows-

"provide policy guidance, oversight and adherence to standards"

Justification: To be more comprehensive

8. Clause 17. Powers of Director

a. Amend sub clause (3) by substituting the word **"Minister"** with **"Director"**

Justification: Typographic error. The clause provides for the powers of Director and reference to "Minister" is misplaced.

b. **Insert a new sub clause (4)** to read as follows-

"A person aggrieved by the decision of the Director may appeal to the Minister and the Minister shall respond to the appeal within 21 days from the date of appeal."

Justification: To provide for appeal process

9. Clause 18. Functions of Directorate of Geological Surveys and Mines

Redraft the sub clauses (1),(2),(3) and (4) to read as follows

“

(1) The Directorate of Geological Surveys and Mines is responsible for the regulation and management of minerals and mining activities through the department of geological surveys, the department of mines, the department of geothermal resources and **any other departments that shall be created by the Directorate**”.

(2) The department of geological survey shall-

- (a) establish and promote the mineral potential of Uganda through reconnaissance, exploration, geological mapping, geochemical surveys, geophysical surveys and any other method;
- (b) collect, manage and provide access to geological data and information from mineral exploration and development operations;
- (c) promote mineral beneficiation and value addition;
- (d) establish and maintain an accredited mineral laboratory for analysing mineral samples, rocks, mineral concentrates, tailings or minerals;
- ~~(e) compile, publish and disseminate data and information concerning the geology and mineral resources of Uganda;~~
- (f) promote and conduct research and development in the minerals subsector;

- ~~(g) map and monitor geo-hazards including earthquakes; Covered under (a)~~
- ~~(h) generate, compile and disseminate geological data and geological information on the mineral wealth of Uganda; Covered under (a)~~
- ~~(i) carry out analysis of mineral samples, rocks, mineral concentrates, tailings or minerals; and Covered under (d)~~
- ~~(j) improve the availability of public information to the private sector and the public. Covered under (e)~~
- (k) perform such other functions incidental to the department of geological survey.**

(3) The department of mines shall-

- (a) be responsible for the regulation of mineral rights, monitor implementation of programs, plans and reports: and inspect, monitor and audit mining operations;
- (b) enforce the provisions of this Act and any other written law to implement the certification of designated minerals;
- (c) ~~inspect, monitor and audit mining operations; Collapsed into (a)~~
- (d) assess **and verify** mineral royalty and other payments under this Act;
- (e) mainstream and organise artisanal mining in Uganda;

- (f) ~~ensure confidentiality of data owned by mineral rights holders in accordance with the Access to Information Act, 2005;~~ Not core, important and shall be done even when not in the Law.
- (g) ~~promote and ensure national participation in mining operations;~~ This is a role of the entire Ministry and the National Mining Company
- (h) regulate and manage the impact of mineral activities on the economy, environment and socio-economic life;
- (i) ~~evaluate and monitor the implementation of feasibility reports, mining programs and plans, annual mining performance reports, certificates of approval of environmental and social impact assessment, environmental management plans and reports of mining companies;~~ Collapsed into (a)
- (j) facilitate the development of skills and capacity among Ugandans and promote technological development in the minerals subsector;
- (k) encourage private sector participation in the exploration and exploitation of mineral resources;
- (l) recommend to the Director the suspension or revocation of mineral rights as a result of inspections and monitoring;
- (m) develop and observe internationally accepted standards of health, safety, environmental protection and the protection of human rights in the minerals subsector in consultation with the Uganda National Bureau of Standards and other relevant **stake holders government agencies;** and

(n) ~~effectively coordinate with other Government ministries, departments, local government and agencies in the execution of mineral sector policy measures and strategies.~~ This is a role for the entire ministry

(o) perform such other functions incidental to the department of mines

(4) The department of geothermal resources shall

(a) Conduct surface and subsurface exploration of geothermal prospects;

(b) undertake pre-feasibility and feasibility studies in order to provide an economic basis for licensing of geothermal resources;

(c) participate in the preparation of agreements including implementation agreements, ~~power purchase agreements, connection agreements,~~ and direct use contracts to support licences and enable private sector participation in the development of energy from geothermal resources;

(d) promote the sustainable ~~commercial~~ development of geothermal resources;

(e) ~~liaise with relevant Government ministries, departments and agencies and development partners in regard to the development of geothermal resources;~~ Incidental to (d)

(f) regulate and monitor the performance and technical compliance of licences for geothermal operations;

(g) recommend to the Director the suspension or revocation of licences for geothermal operations as a result of ~~inspections and monitoring~~ **non-compliance**;

(h) manage the geothermal database and provide information to stakeholders: and conduct research and advise on appropriate geothermal technology and development.

(i) ~~conduct research and advise on appropriate geothermal technology and development.~~ Collapsed in (h)

(j) perform any other function incidental to the functions of the department of geothermal resources.

(5) The Directorate may, for the purposes of this Act, establish regional offices.

10. Clause 20. The Mining Cadastre Department.

(1) The Minister responsible for public service shall, in consultation with the Minister establish a Mining Cadastre Department within the Directorate of Geological Surveys and Mines to administer mineral rights and maintain the cadastral registers.

(2) The Mining Cadastre Department shall –

(a) receive, evaluate and process applications for mineral rights and other licences and permits under this Act including applications for renewal, extension, reduction, transfer, and abandonment; and make recommendations to the Director on the applications;

(b) establish and manage a transparent, accessible and competitive licensing regime and implement a well-developed mining cadastre and registry system;

~~(c) administer mineral rights and other licences and permits under this Act;~~ Incidental to (b)

(d) manage the computerised mining cadastre and registry system; and

(e) maintain public cadastral maps and cadastre registers.

(f) “perform any other function incidental to the function of of the department of mines”

Justification: To merge functions which repetitive.

11. **21.Delete.**

Justification: The functions are merged under the Department of Geological Survey (clause 18(2)).

12. **Clause 22.**

Delete sub clause (3)

Justification: The Companies Act should apply in regulating the provisions under this Act, and this Act should not supersede the Companies Act under any circumstance.

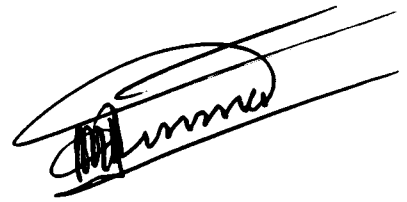
13. **Clause 23.**

Amend the provision to read as follows-

“23. Functions of the Uganda National Mining Company.

The functions of the Uganda National Mining Company are-

(a) to **manage** the State's **strategic** commercial interests in the minerals subsector;



- ~~(b) to manage State participation in exploration and mining operations;~~
- ~~(c) to manage the marketing of the State's share of minerals received in kind or mined and processed;~~
- ~~(d) to develop in depth expertise and capacity to effectively manage State participation in the mining ventures;~~
- ~~(e) to optimize value to its shareholders;~~
- (f) to participate in accordance with the terms of mineral agreements, in joint ventures in which it holds an interest on behalf of the State;
- ~~(g) to participate in meetings of the operating committees in furtherance of its participation in the respective joint operating agreements; and~~
- (h) to **study** and propose new mining ventures ~~initially~~ locally and later internationally;
- (i) to undertake the exploration and mining operations in the best interest of the state where private entities are unwilling to do so.**

Justification: To provide for a robust functions of the board.

14. Clause 24: Board of directors of Uganda National Mining Company.

Amend the provision to read as follows-

- a. In sub clause (2) by inserting the words and **demonstrable competence** immediately after the words **"experience and"**
- b. By inserting two new sub clauses after sub-clauses (2) as follows –
 - **"The chairperson and members of the board shall be persons of high moral character and proven integrity."**
 - **"At least two thirds of members of the board shall be women"**

Justification: To take into consideration character, gender and qualifications of the members.

c. Delete sub clause (4) (d)

Justification: Redundant

d. By inserting immediately after sub clause (6) to read as follows-

“(7) the Board of Directors of the Uganda National Mining Company shall advise the Minister on matters of Production Sharing Agreements.”

Justification: For information

16.Clause 25.

Insert a new paragraph (c) to read as follows-

“funding of the Uganda National Mining Company shall come from the Consolidated Fund and any other sources that may from time to time be directed by the Minister responsible for finance, and shall be managed in accordance with the National Management Act 2015.”

17. Clause 26.

Redraft the provision to read as follows-

“26. Instructions to Uganda National Mining Company.

Redraft the provision to read as-

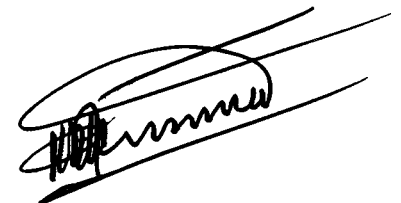
“

(1)The Minister may issue instructions to the board in respect of how the Uganda National Mining Company shall execute its functions under this Act.

(2) Instructions issued under sub section one shall be in respect of the mining policy.”

18. Clause 27. Establishment of the mineral protection force.

Delete the provision



Justification: This can easily be abused. The Mineral Protection force should be assigned from the Uganda police force and should only be called upon as and when required. The Ministry can create an enforcement unit internally through regulations. This clause is a replica of the mandate of the directorate of Geological survey and mines.

19. Clause 28. Delete

Justification: Consequential, and besides, the same roles and functions are provided for under the roles and functions of the department of mines, under clause 18.

20. Clause 29. Role of local governments

Amend sub clause (1) as follows-

- a. by amending paragraph (b) by substituting the words **“building substances”** with the word **“minerals”**

Justification: Consequential

- b. by Inserting a new paragraph after paragraph (e) to read as follows-

(f)receive reports and plans of the companies operating in their jurisdiction every six months”.

Justification: To empower local government to monitor mining activities under their jurisdiction.

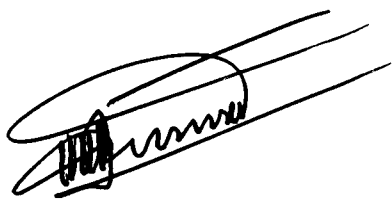
21. Clause 30. Mineral Agreements

Amend the provision as follows-

- a. in sub clause (1) by inserting the words **“in respect of high capitalized, and complex projects”** at the end of the provision.

Justification: For clarity

- b. In Sub clause (2)(d) by inserting the words **“where minerals have been ascertained and quantified”** at the end of the provision.


Justification: For clarity. So that Government can only enter Production sharing arrangement where there is projected production.

c. By redrafting sub-clause 2(n) to read-

“resolution of disputes through arbitration mechanisms.”

Justification: To avoid limiting the state to international arbitration which is costly.

d. In sub clause (2) (o) by deleting the word **“small”** appearing before the word **“portions”**

e. by inserting the word **“of”** before the words **“the registered”**

Justification: To correct a grammatical error.

f. Amend (2) (f) by deleting the words **“whether wholly or partly in Uganda”**

g. Insert **a new sub clause immediately after sub clause (4)** to read as follows-

“The Minister shall lay before Parliament mineral agreements signed and adopted by Government within 60 days from the dated of signing of the agreement.”

Justification: To comply with Extractive Industries Transparency Initiatives (EITI)

22. Clause 33. Redraft sub clause (2) to read as follows-

“The announcement referred to in subsection (1) shall be published in the Gazette and in a newspaper of wide circulation and in other electronic and print media.”

23. Clause 34. Amend as follows-

a. Amend sub clause (1) by substituting the words **“...in at least one national newspaper of wide circulation in Uganda”** with **“in a newspaper of wide circulation and in other electronic and print media”**

Justification: For consistency

- b. **In sub clause (2) (b) by inserting the words “medium scale licence and large scale mining licence” at the end of the provision.**

Justification: To be all inclusive.

- 24. Clause 36.** Amend sub clause (2) by spelling the word “cadaster” as “cadastre”

Justification: For consistency

- 25. Clause 37.** Amend sub clause (2) by inserting the first sub clause as follows

“(2) An application for a prospecting license shall-

- (a) Contain in respect of an individual, the name and nationality of each individual making the application;”**
• **Renumber the provision accordingly**

Justification: A prospective license should apply to an individual as well. And also to be consistent with clause 43(2) and other clauses

- 26. Clause 43.**

- a. Amend **sub clause (2)(f)** by substituting “**not exceeding three years**” with “**not exceeding four years**”

Justifications: For consistency with the current laws

- b. Insert a new sub clause after sub clause (2) to read as follows-

“application made under this section shall be in accordance with the National Environment Act 2019, Act 5 of 2019.”

- 27. Clause 46.**

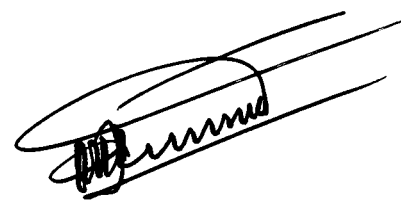
Delete sub clauses (2) and (3)

Justification: Redundant

- 28. Clause 47.** Amend the provision by deleting sub clause (2) (c)

Justification: Redundant

- 29. Clause 48. Amend the provision as follows-**

- 
- a. in sub clause(1) by deleting the words **“is the subject of a large-scale mining licence, medium scale mining licence, retention licence, artisanal or small-scale mining licence; or in a fragile or sensitive ecosystem or protected area without the consent in writing of the responsible Government ministry, department or agency.”**

And redrafting the provision to read as follows-

“(1) is the subject of a large-scale mining licence, medium scale mining licence, retention licence, artisanal or small-scale mining licence”.

- b. In sub clause (3) by inserting a new paragraph immediately after paragraph (a) to read as follows-

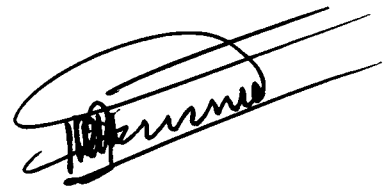
“or in a fragile or sensitive ecosystem or protected area without the consent in writing of the responsible Government Ministry, Department or Agency”.

- c. By inserting a new clause immediately after sub clause (3) to read as follows-

“for the purpose of this section, the Minister shall by regulation prescribe information needed from the applicant to prove that he or she satisfies the requirements in (a) to (g).”

Justification: To avoid any confusion.

30. Clause 52. Amend sub clause (1) (e) by inserting the words **“and any relevant authority”** at the end of the provision.



Justification: To abide by the principles of good governance

31. Clause 55. Amend the provision as follows-

- a. In sub clause (3) (e) by substituting the words **“appropriate experts or consultants acceptable to the Director”** with **“an accredited consultant”**

Justification: For clarity

- b. Inserting a **new provision under sub clause (3) (e)** to read as follows-

“(iii) forecast for market trend.”

Justification: This is a necessity

- c. Inserting a new provision after sub clause (3) as follows-

“(4) For the purpose of this section “accredited consultant” means a consultant accredited by a nationally or internationally recognised authority to undertake such studies.”

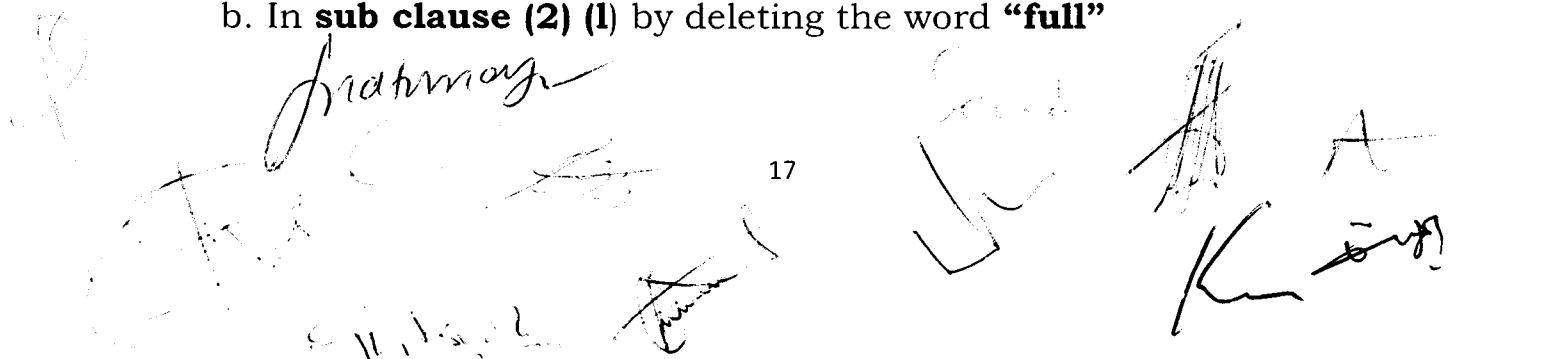
Justification: For clarity

32. Clause 58. Amend sub clause (1) by substituting the word “Minister” with the word “Director”.

Justification: To correct an error

33. Clause 61. Amend the provision as follows-

- a. in **sub Clause (2) (e)** by deleting the term **“bankable”**
b. In **sub clause (2) (1)** by deleting the word **“full”**



- c. In sub clause (2) (o) by inserting the words **“and progressive reduction of expatriate workers in the industry.”**
- d. In **sub clause (2) (p)** by deleting the words **“life and”**.
- e. **Sub clause (2) (v)** be deleted

Justification: provided for under 61(2)(i)

- f. clause 61 (2)(w)(vi) and 61 (2)(w)(vii) be deleted.

Justification: Catered for under environmental provisions.

- g. replace the words “work for profit” with “break-even point”.

Justification: Grammatical correction

- h. in sub clause (2) (f) by deleting the words **“only”** appearing after the word **“part”**

Justification: Redundant

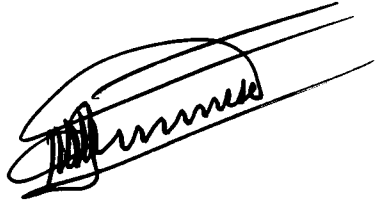
34. Clause 65. Amend the provision as follows-

- a. clause 65 (h) be qualified by inserting the word **‘may’**
- b. Inserting a new sub-clause under clause 65 to provide **for “any other matters as might be prescribed in regulations.”**

35. Clause 70. Amend **paragraph (d)** be amended to substitute the words **“stack or dump”** with the word **“dispose”**.

36. Clause 72. Delete **sub clauses (4) and (5)**.

Justification: To avoid repetition.



37. Clause 78. Redraft sub clause (1) to read as follows-

“A medium scale mining licence shall not be granted over an area of land in or which is, an exploration area, a retention area or a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a small scale mining licence or large scale mining licence as the case may be, in respect of that area.”

Justification: To be all inclusive

38. Clause 89. Amend the provision as follows-

In sub clause (1) by substituting the provision as follows-

“(1) A small scale mining licence shall not be granted over an area of land in or which is, an exploration area, a retention area or a mining area unless the applicant is the holder of an exploration licence, a retention licence, an artisanal mining licence, a medium scale mining licence or large scale s mining licence as the case may be, in respect of that area.”

Justification: To be all inclusive

39. Clause 115. Amend the provision as follows-

- a. by deleting the words **“or the estimated life of the geothermal resource whichever is shorter”**

Justification: A geothermal resource does not have an estimated life

- b. by deleting **sub clause (4)(b)**

Justification: as it is already provided for under sub clause (3)

40. Clause 119. Amend **sub clause (1) (i)** by inserting the words **“which may include traditional use of geothermal resources”** at the end of the provision.

Justification: To protect the historical use of geothermal resources.

41. Clause 154. Amend **paragraph (h)** Substitute the words **“stack or dump”** with **“dispose”**, wherever it appears through the bill.

42. Clause 177. Amend sub clause (4) (d) by inserting immediately after the words **“export permit”** the words **“or any related documents issued by the relevant Government department from the county of origin”**.

43. Clause 186. Delete sub clause (1).

Justification: Subject to abuse

b. In paragraphs (i) and (j) by substituting the word **“without”** in with the words **“except with”**

Justification: For consistency

44. Clause 197. Amend as follows-

a. 197(1)(g),(h) and (i) be deleted.

Justification: Redundant.

b. Insert a new sub-clause immediately after clause 197(1),(f) to read as follows-

“in a national park, swamp, within a forest reserve, unless the holder of the mineral right has first given notice to and obtained permission from the relevant authorities and complies with any conditions imposed by the authorities.”



45. Clause 199. Amend as follows-

- a. in **sub clause (2)** by deleting the word **“exploration”**.

Justification: Misplaced

- b. Amend **sub clause (3)** by substituting **“fourteen days”** with **“thirty days”**

Justification: To allow sufficient time for consideration and determination of the matter submitted for arbitration.

46. Clause 205. Amend **sub clause (1)** by substituting reference to **“Act, 2017”** with **“Act, 2018”**

Justification: To correct an error.

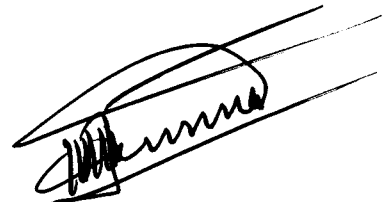
Clause 206. Substitute **“fifteen per cent” (15%)** with **“ten per cent” (10%)**.

Justification: Uganda is no among countries that have been de-risked, and therefore state equity participation of 10% is appropriate.

47. Clause 222. Substitute **sub clause (2)** to read as follows-

“The Holder of a mineral right, licence or permit shall within twelve months after the grant of the mineral right, licence or permit under this Act, and on each subsequent anniversary of that grant, submit to the directorate for approval, a detailed programme for recruitment, training and promotion of Ugandans and shall take into account gender, equity and persons with disabilities and in accordance with this Act and any other applicable written law”.

Justification: To be all inclusive



48. Clause 223. Insert a **new sub-clause** immediately after **sub clause (1)** to read as follows-

“Persons living in the host communities of the mining operations shall be given first priority in training and employment.”

Justification: To exercise fairness.

49. Clause 224. Amend sub clause (2) by inserting the word **“the”** immediately after the word **“within”** appearing on the third last line of the provision.

Justification: Correct a typing error

50. Clause 225. Amend **sub clause (1)** by

- a. deleting extra word **“licence”**. and
- b. deleting the extra word **“and”** between **“geophysical records”** and **“technical data”** under sub clause (4).

Justification: To correct an error.

51. PART XX. Delete

Justification: Should be regulated under another law. Government should move another bill to handle this **part**.

52. Clause 272(2). Delete the words **“mineral protection force”**

Justification: **Consequential.**

53. Clause 278. Delete

Justification: Can easily be abused

54. Clause 326. Delete

Justification: All monies must be collected and remitted to the consolidated fund’.

55. Clause 335. Insert a new paragraph **after sub clause (2)(r)** to read as follows-

“Fees, **levies** and charges payable for export of minerals”

Justification: To be all inclusive.

56. Clause 243. Redraft sub clause (1) to read as follows-

“Every holder of a mineral right, license or permit shall carry out an environmental and social impact assessment **and human rights risk assessment** of his or her proposed operations in accordance with the National Environment Act, 2019.”

Justification: The inclusion of human rights risk assessment should be contained under this part because it’s a big component in regard environment assessments.

57. Clause 335. Regulations.

Amend sub clause (2)

- a. by inserting a new clause immediately after paragraph “r” to read as follows-

“levies payable for export of minerals”

Justification: For clarity

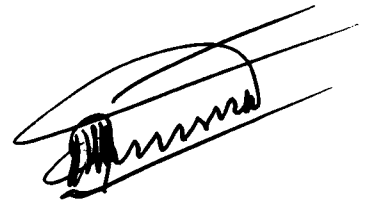
- b. Insert another paragraph to read as-

“category of minerals excluded for small scale operations”

Justification: For clarity

58. Schedule 2

Amend the royalty for Government by substituting “70%” with “65%” and that of local government by substituting “15%” with “20%”



Justification: To enable local governments to receive more revenue from minerals in their jurisdictions.

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MINORITY REPORT ON MINING AND MINERALS BILL, 2021.

Moved Under Rule 205 of the Rules of Procedure

FEBRUARY 2021

A handwritten signature in black ink, appearing to be "J. S. S.".

A handwritten signature in black ink, appearing to be "R. S. S.".

1.0 INTRODUCTION

Rt. Hon. Speaker and colleague Members of Parliament, on behalf of members of the committee on Environment and Natural Resources who have signed on to this Minority Report, I would like to state from the onset that we support legislation that provides legal effect to Mining and Minerals in our country.

The Mining and Minerals Bill, 2021 was tabled on the 18th November, 2021 and referred to the Committee on Environment and Natural Resources for scrutiny and processing in line with Rule 129 of the Rules of Procedure of Parliament.

Pursuant to Rule 205 of the Rules of our Rules of Procedure, on behalf of the undersigned members, I hereby present a dissenting opinion from the overall opinion of majority of the Committee.

2.0 AREA OF DISSENT

We dissented with majority of the Committee on 2 grounds:

- i. Inadequate Consultations
- ii. Procedural flaws

3.0 DISSENTING OBSERVATIONS

Rt. Hon. Speaker, the Minerals and Mining Bill combined both Minerals and Building Substances including clay, murrum, sand and stones. Millions of Ugandans are directly employed in both mining and the construction industry.

Processing and passing of the Mining and Minerals Bill, 2021 will affect the livelihood of millions as well as income for the country for many generations to come. Processing such a Bill that touches on the lives of millions across the country requires this House engaging a multitude of stakeholder categories to arrive at a more representative conclusions.

3.1 Inadequate consultations

A public notice by the Clerk to Parliament went out in the New Vision of Tuesday 8th February inviting members of the Public and Stakeholders to prepare Memoranda of opinions about the Bill and return those opinions to the office of the Committee Clerk.

Rt. Honorable Speaker, this Parliament giving a notice of less than 24 hours to artisanal miners in Busia, Karamoja, Rubanda, Buhweju, Ibanda, Busia and

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even Mubende among other areas to prepare their views on a Bill that touches their livelihood and then deliver them to Parliament is laughable at best and a gross abuse of legislative authority entrusted on us by the people of Uganda. Giving a 2 day notice just by newspaper instead of Radio or Television aware that newspaper reach is limited to urban centers was a breach of public trust bestowed on us as a people's representatives.

All stakeholders ought to have been afforded the opportunity to comment on Bill before it is enacted into law. This is especially so in circumstances where the parent law, the Mining Act, 2003 is being repealed by this Bill with hundreds of active mining licenses.

Due to the illegally (I will demonstrate the illegality) rushed processing of the Bill, the committee never interacted with the following key stakeholders;

- i. Artisanal Miners
- ii. Producers of building substances
- iii. Medium or Large Scale Miners
- iv. Local Governments
- v. Uganda Revenue Authority,
- vi. Owners of land on which minerals have been discovered.
- vii. Uganda Bureau of Statistics.
- viii. Ministry of Finance, Planning and Economic Development
- ix. Bank of Uganda

The matter of hurriedly passing a law, regulation or a policy without adequate public consultation is settled law in Uganda and administratively against the Guide to Good Regulation" as set out In a matter of High court, Miscellaneous Cause NO. 91 OF 2020; it was established in an uncontested court ruling that;

- i. Passing a law, policy or regulation without adequate consultation of key stakeholders is illegal, irrational and procedurally not proper.
- ii. Passing a law, policy or regulation without reasonable stakeholder participation is unconstitutional. Court based on the Constitutional requirement to consult and involve people in the formulation and implementation of development plans and programs pursuant to **Article 8A(1) and Principle X of the National Objectives and Directive Principles of State Policy of the Constitution of Uganda-1995.**

Effectively, the Constitution of the Republic of Uganda imposes on us Members of Parliament, a duty to take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them. This House comprised of colleague Members who swore to defend and uphold the Constitution, has a duty to involve the public by at

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least consulting some specific interested groups like artisanal miners in making laws affecting the public. Currently, almost all mining in Uganda is artisanal. Not engaging them in a law making process offends the Constitution.

Rt. Hon. Speaker, through the Rt. Hon. Leader of the Opposition, we notified your office and the Clerk to Parliament of the need to allocate the committee more time to process the Minerals and Mining Bill. The possibility of failing to consult was raised by the LOP as procedural red flag which parliament ought not to have ignored.

3.2 Procedural flaws

Rt. Hon. Speaker, our major difference with the majority is fundamentally on the methodology used to scrutinise the Bill. The Committee did not put this highly technical Bill to the standard of scrutiny required of it by Rule 129 (2) of the Rules of Procedure of the Parliament of Uganda. The rule demands that the committee examines the Bill in detail and make all such inquiries in relation to it.

Rt. Hon. Speaker, the Committee is the Government's own **Guidelines to Good Regulation** approved by cabinet in 2003 and published in 2004. The guidelines used when developing a Bill before bringing it to Parliament are at the minimum supposed to be relied upon to assess whether they were applied by the sponsoring Agency of Government or not. The Guidelines require any new law, policy or regulation to involve adequate public consultations. Processing of the Mining and Minerals Bill by all measures flouted these official guidelines.

By bypassing public consultations, the process offended the Cabinet Handbook of 2012 at page 15, paragraph 3.3.3 where it states expressly that we must ensure that all organizations affected by a proposal are consulted and that their views are accurately reflected. The duty to consult implies reasonable time be given to those whose advice or consultation is sought to express their views. Consultations should not be treated as a mere opportunity to make ineffective representations¹.

The Committee was never afforded the Regulatory Impact Assessment (RIA) of the Mining and Minerals Bill. As a matter of Government Policy stipulated in the Guide to Good Regulation, every Bill is based on a RIA which is an analysis of the costs and benefits associated with the introduction of a new policy, law or regulation. RIA enhances the information brought up policy making process

¹ See page 198 Public Law in East Africa by Ssekaana Musa: Law Africa Publishers.

and is an important contributor to rational, evidence-based policy making. Processing a Bill with potentially high effect on people's livelihood and a nation's income without accessing a RIA was an incurable misstep by the Committee.

Scrutiny of the Bill was strictly limited to presentations and observations made by a few stakeholders who could afford a few observations on a small number of clauses.

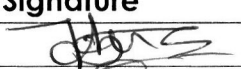
Recommendation.

Parliament in line with **Article 8A(1) and Principle X of the National Objectives and Directive Principles of State Policy of the Constitution of Uganda-1995** compels the committee to complete the inquiry into the Bill by conducting public consultations of relevant stakeholders around the country. Many artisanal miners logistically can't make it to Parliament but Parliament can dedicate a few days of reaching them in their respective mining areas.

CONCLUSION.

Rt. Hon. Speaker and Honourable Colleagues, we request you to consider and support the Minority Report.

MEMBERS OF THE COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES WHO SIGNED THE MINORITY REPORT ON THE MINING AND MINERALS BILL, 2021

SN	Name	Signature
01	TEBANDIKE CHARLES	
02	KAMUKE DONALD EVANS	