



Republic Of Zambia

Office of the Auditor General

Compliance Audit Report on the Awarding and Monitoring of Mining Rights for 2017 Accounts





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ACRONYMS

AFROSAI-E	-	African Organization of Supreme Audit Institutions - English Speaking
CASP	-	Compliance Audit Strategic Plan
EI	-	Extractive Industries
INTOSAI	-	International Organization of Supreme Audit Institutions
ISSAI	-	International Standards for Supreme Audit Institutions
GSD	-	Geological Survey Department
MLC	-	Mining Licence Committee
MMMD	-	Ministry of Mines and Minerals Development
MPL	-	Mining Prospecting Licence
MSD	-	Mine Safety Department
OAG	-	Office of the Auditor General
PACRA	-	Patents and Company Registration Agency
XRF	-	X Ray Fluorescence (Hand held device used to detect mineral contents)
ZDA	-	Zambia Development Agency
ZEMA	-	Zambia Environmental Management Agency
ZRA	-	Zambia Revenue Authority





STANDARDS USED IN CARRYING OUT THE AUDIT

The audit was conducted in accordance with the Provisions of Article 250 (c) and (d) of the Constitution of Zambia (Amendment Act) No.2 of 2016, and Public Audit Act No.13 of 1994, and was based on ISSAI 400, Fundamental Principles of Compliance Auditing and ISSAI 4000 - Compliance Audit Guidelines.



1. EXECUTIVE SUMMARY

The Extractive Industries (E.I) has been in existence for almost a century and remains the country's dominant industry. It is the largest contributor to development and growth of the economy through taxes, social-economic infrastructure, and creation of employment, provision of education and health services.

The Ministry of Mines and Minerals Development (MMMD) administers the overall E.I sector and is responsible for the development and management of mineral resources in a sustainable manner for the benefit of the people of Zambia. The MMMD's portfolio functions are outlined in the Government Gazette Notice number 183 of 2012, which among others, includes management of mines and minerals development in Zambia. The responsibility of the Ministry in this respect is to conduct statutory monitoring and inspections of mining and minerals processing operations and ensure sustainable mining development as provided for in the Mines and Minerals Development Act No. 11 of 2015.

The objective of the audit was to ascertain whether MMMD carried out its responsibilities in the awarding and monitoring of mining rights in accordance with the provisions of the Mines and Minerals Development Act No. 11 of 2015. The audit also included an examination, on a test basis, of evidence supporting compliance and adherence in all material respects with the relevant laws and regulations.

The audit was also conducted in accordance with the International Standards for Supreme Audit Institutions (ISSAIs 4000). It covered the period 1st January to 31st December, 2017 focusing on the compliance of the Ministry during the period under review.

According to the result of the audit scrutiny of records and other relevant documents including verification exercises conducted at the Ministry Headquarters, various exit points and stations, the major findings are:

- a. The Mining Licensing Committee (MLC) is the formal body that awards mining licenses. It should comprise of all representatives as stipulated in Section 6(2) (a – f) of the Mines and Minerals Development Act No. 11 of 2015.

There were no representative from the Ministry of Water Development, Sanitation and Environmental Protection on the committee in 2017 contrary to the provisions of Section 6(2) (a-f) of the Mines and Minerals Development Act No 11 of 2015.

- b. Neither appointed representatives nor alternate members from Mine Safety, Ministry of Finance, and Ministry of Lands attended the meetings for three consecutive sittings contrary to provisions of the Section 6, 2, 3 c of the Mines and Minerals Development Act No 11 of 2015.
- c. Lack of adequate assessment of applications before the awarding of mining rights evidenced by the non-commencement of operations by most mining right holders due to the facts that the applicants should have fulfilled before the awarding of the rights, e.g. financial constraints, lack of clearance by ZEMA and consent issues.
- d. During the year 2017, only 12% of the awarded exploration mining right holders submitted quarterly reports to the Geological Survey Department (GSD). The rest of the exploration mining right holders were non-compliant to the provisions of the Act.
- e. From the GSD data base consisting of seven hundred and nine (709) exploration right holders, nine (9) exploration mining right holders exported minerals before obtaining



mining licences. This was Contrary to the provisions of Section 25,1(c) of the Mines and Minerals Development Act No 11 of 2015.

- f. Some mining right holders were discovered to be exporting mineral elements not included on the Mineral Valuation Certificate and Mineral Export Permit.

Recommendations

The Ministry of Mines and Minerals Development must ensure that all the members of the MLC, as stipulated in the Act, are appointed, and that they consistently attend the committee meetings.

In view of the fact that the MLC has a substantial amount of applications and cases during their sessions. The Cadastre office, being the secretariat of the committee, should thoroughly carry out preliminary assessment of the applications to enable the committee to make appropriate decisions in awarding the rights.

The Ministry should be coordinating with ZRA by making use of the reports or records generated during the XRF verification exercise to identify mining right holders who may be exporting minerals not included on the export permit and timely take punitive action on non-compliant mining right holders as stipulated in Section 72,1(a-h) of the Mines and Minerals Development Act No.11 of 2015.



2. INTRODUCTION

2.1 Background

The Extractive Industry has been in existence for almost a century and remains the country's dominant industry. It is the largest contributor to development and growth of the economy through taxes, social-economic, infrastructure, creation of employment, provision of education and health services, among others. The main mineral resource extracted by mining companies is copper and other known mineral reserves being cobalt, zinc, lead, uranium, coal, limestone, gold, emeralds and diamonds. In addition, Zambia has engaged in oil and gas exploration. During the last decade, several new mines have been opened which has raised considerable interest for their potential to contribute towards economic growth and poverty alleviation.

The Ministry of Mines and Minerals Development (MMMD) is responsible for the development and management of mineral resources in a sustainable manner for the benefit of the people of Zambia. The MMMD's portfolio functions are outlined in the Government Gazette Notice Number 183 of 2012 which among others includes management of mines and minerals development in Zambia.

The Mines and Minerals Development Act No 11 of 2015 was necessitated by various internal and external factors, for instance, inconsistencies in the processes of awarding mining rights, lack of disclosure of relevant information by some right holders to other stakeholders and under declaration of production figures.

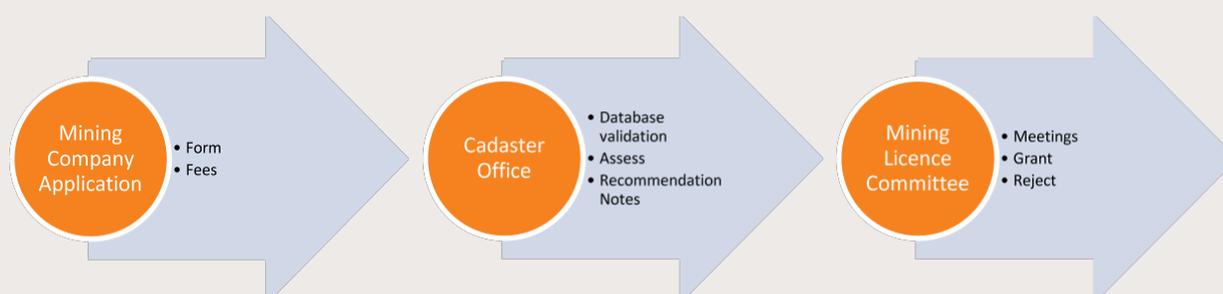
The compliance of the Ministry in the awarding and monitoring of mining rights during the period 1st January to 31st December 2017 was subject to audit by the Auditor General in terms of Article 250(c) and (d) of the Constitution of Zambia (Amendment) Act No. 2 of 2016, Public Audit Act No. 13 of 1994 and the relevant International Standards for the Supreme Audit Institutions (ISSAIs).

The responsibility of the Ministry is to conduct statutory monitoring and inspections of licensed mining and mineral processing operations. This is done in order to ensure sustainable mining development, as provided for in the Mines and Minerals Development Act No 11 of 2015.

2.2 System Description

The Process of Awarding Mining Rights involves the following:

Figure : Process description awarding of mining licenses



Applicants submit duly filled-in application forms to Cadastre office, with coordinates in prescribed formats with application fees.

The Cadastre office, according to Section 8(a–c) of the Mines and Minerals Development Act No. 11 of 2015, is the secretariat of the MLC and the national repository of physical and

electronic mining rights records. At Cadastre Office, the applications are validated through a computer system to check the grid, availability and priority. The consideration of chosen area by Cadastre is done based on the principle of first come, first serve. Physical files with recommendation notes are then prepared in readiness for the Mining Licence Committee meeting. Based on the assessment and recommendations made by the Cadastre office, the MLC, will either grant or reject the application during its meeting.

The Ministry has the statutory responsibility to award, monitor and conduct inspections of mining and mineral processing operations in areas where it has issued out mining and mineral processing licenses countrywide in order to ensure sustainable mining development as provided for in the Mines and Minerals Development Act No 11 of 2015.





3. SUBJECT MATTER AND SCOPE

The audit focuses on the compliance in the awarding of mineral rights to large and small scale right holders during the year 2017, and monitoring of all existing large and small scale rights as at 30th September 2017.

4. AUDIT OBJECTIVE



The objective of the audit was to ascertain whether MMMD carried out its responsibilities in the awarding of mining rights and monitoring of operations of large and small scale right holders in accordance with relevant provisions of the Mines and Minerals Development Act No 11 of 2015 for the year ended 31st December, 2017.

The specific objectives were as follows:

- a. To establish whether all relevant stakeholders were represented on the Mining Licencing Committee.
- b. To establish whether all applicants submitted the necessary documents.
- c. To establish whether all applications were duly and properly processed by the mining Cadaster Office, and duly and properly considered by the committee before awarding the mining right.
- d. To ascertain whether the Directors of: Mines Development, Geological Survey, Mines Safety, and Mining Cadastre carried out inspections and monitoring in order to ensure compliance by mining right holders , and
- e. To establish whether the Ministry exercised punitive measures to non-compliant mining right holders.

4.1 Responsibility of Management and Auditors

The maintenance of effective control measures and compliance with laws and regulations are the responsibility of the Controlling Officer. Our responsibility is to give an assurance on the effectiveness of the internal controls in the awarding and monitoring of mining rights.

4.2 Risk Assessment that Led to the Selection of the Identified Subject Matter

It is of importance for Zambia that the awarding of mining rights and monitoring processes are verified, as the awarded mining rights have a direct impact on performance of the industry and the economy as a whole.

In this regard, there were identified risks regarding the awarding of mining rights and monitoring such as rights being awarded to applicants who do not have the capacity to execute planned activities in accordance with the provisions of the law.

5. AUDIT CRITERIA

The audit criteria are derived from the following authorities such as the laws, legislation, rules and regulations that were used in the audit.

- a. The Mines and Minerals Development Act No. 11 of 2015
- b. Service Commission Act of 2016
- c. Statutory Instrument No. 7 of 2016





6. METHODOLOGY

This audit was based on document analyses, interviews and meeting discussions with directors of Mining Cadastre, Geological Survey, Mines Safety Department and Director of Mines. In the process of information gathering, meetings were held with Zambia Development Agency (ZDA), and Patent and Company Registration Agency (PACRA). Further, the Annual Report and Work Plans for the MMMD were used and other audit testing techniques related to the audit criteria mentioned above.

According to the compliance audit strategy plan (CAP1), the following audit questions were established:

Audit Question No 1

Are all relevant stakeholders represented on the Mining Licensing Committee?

In order to answer question 1, document analysis on all the appointment letters and Minutes for the Mining Licensing Committee (MLC) was done for the year under review.

There was also a query issued to the Director of Cadastre on the non-existence of a representation from the Ministry of Water Development, Sanitation and Environment Protection.

Audit Question No. 2

Did all awarded applicants submit the necessary documents as required by the law?

In order to answer question 2,

The senior officers at the Cadastre explained the procedures involved and provided the documentation in form of a system description. A review of a sample of fifty (50) successful applicants' files for 2017 using risk based systematic sampling to check whether the applicants attached all the documents as required by law was carried out.

Audit Question No. 3

Were all applications duly and properly processed by the mining Cadaster office and duly and properly considered by the committee before awarding the Mining Rights?

In order to answer question 3, an analysis was made on the fifty (50) files mentioned in question 2, compared the information to the recommendations made on the same files to check whether the applications had been duly and properly processed by the Cadastre office as well as the committee.

There was also carried out a document analysis of the MLC minutes for the year 2017 to check whether the recommendations made by Cadastre were properly evaluated.

Audit Question No. 4

Have the Directors of the ministry carried out inspections and monitoring to ensure compliance by mining right holders?



Requested for quarterly returns from mining right holders to establish levels of compliance with obligations attached to issuance of licenses. Consequently, evidence was collected in form of GSD summary analysis reports on mining right holders who were submitting and those who were not submitting the quarterly returns.

In order to verify whether the Mining right holders were operating within the relevant regulation, structured questionnaires were issued out to right holders who filled them in and later returned the same to the audit team.

Further, verifications were carried out in five (5) exit borders to establish whether the exports were being done in accordance with the criteria. In this regard, evidence was obtained in form of the XFR (A machine used to detect mineral elements contained in a consignment) analysis reports. Documentation on export permit details accompanying sampled mineral exports was also obtained.

Audit Question No. 5

Has the ministry exercised punitive measures to non-compliant mining right holders?

In order to answer question 5, a review of the inspection reports from the Ministry was conducted to establish the non-compliant issues.

A preliminary query was issued to the Director of Mines on action taken on non-compliant mining right holders.



7. FINDINGS

1) Audit Question No, 1

Are all relevant stakeholders represented on the Mining Licensing Committee?

Criteria(s)

Section 6(2) (a-f) of the Mines and Minerals Development Act No 11 of 2015 (See Appendix 1)

Finding for Audit Question No 1

The criteria requires that there should be a Mining Licensing Committee comprising permanent representatives namely; Director Mines, Director Geological Survey, Mine Safety, Cadastre, and one representative each from the ministries responsible for environment, land, finance, labour, Attorney General, Zambia Development Agency (ZDA), and the Engineering Institution of Zambia.

The Act emphasizes that all representatives should consistently attend the MLC meetings to ensure that the interests of relevant stakeholders are taken into consideration before awarding the rights.

- (a) A review of appointment letters and minutes of the Mining Licence Committee (MLC) sittings for the year 2017 revealed that contrary to the above criteria, there was no representative from the ministry responsible for environment on the committee.
- (b) *A review of Mining License Committee (MLC) minutes for the period under review revealed that representatives from Mine Safety, Ministry of Finance, and Ministry of Lands had not attended the meetings for three consecutive sittings contrary to the provision of Schedule-Section 6, 2, 3 (c) of the Mines and Minerals Development Act No 11 of 2015. Further, there were no alternate members for those members absent from the committee sittings, as provided for in Section 6, 2, 3 (c) of the Act. See analysis table 1 below:*

Position	meetings										% Attendance	
Director of Mines	1	1	1	1	1	1	1	1	1	1	1	92 %
Director of GSD											11	92 %
Director of Mines Safety												33 %
Director of Mining Cadastre	1	1	1	1	1	1	1	1	1	1	11	92 %
Environment												
Lands	1	0	0	1	1	0	0	1	1	1	6	50 %
Finance												
Labour	1	1	1	1	1	0	1	0	1	0	8	67 %
Attorney General												83 %
ZDA	0	1	0	1	1	1	1	1	1	1	9	75 %
Engineering Institute												
Total Attendees	8	7	7	8	7	6	7	7	8	9	10	
Sum attendance of committee in %	73 %	64 %	64 %	73 %	64 %	55 %	64 %	73 %	73 %	82 %		

Table 1 shows attendance in percent at each meeting and for each representative.

The absence of a member (Environment, Mine safety, Ministry of lands and Finance) consistently may mean that the component represented by such a member is compromised

2) Audit question No. 2

Did all awarded applicants submit the necessary documents as required by the law?

Criteria(s)

Part II Section 7(1) of Statutory Instrument No 7 of 2016 (See Appendix 2)

Finding for Question No. 2

When applying for mining rights, all applications should be supported by the attachment of; estimates of the investment commitment, environmental commitment plan, proposals to promote local businesses, proposals for employment and training of citizens of Zambia, tax clearance certificate, and consent from appropriate authority, among others.

The attachments serve as an indication to the MLC that the applicant has fulfilled the requirements of the law.

A review of a sample of fifty (50) files of the awarded mining right holders during the year under review revealed that all the necessary documents were submitted and necessary fees paid in accordance with the criteria.

3) Audit question No. 3

Were all applications duly and properly processed by the mining Cadastre office and duly properly considered by the committee before awarding the Mining Rights.

Criteria(s)

The Service Commissions Act of 2016 provides principles and values applicable for all public servants. (See Appendix 3)

The awarding of mining rights is regulated by the Mines and Minerals Development Act No 11 of 2015, Sections 6 (1) (a – d); 8 (1) (a – c); 22 (1) (a – c); and 31 (1) (a – g). (See Appendices IV to VII)

In light of the values and principles of the Public service and the objective of the mining Cadastre office, as set forth in the Act, the office, is expected to receive and process the applications to prepare them for the consideration by the Mining License Committee.

The processing entails some sort of case by case handling of applications by the Mining Cadastre Office as a secretariat to enable the MLC to duly and properly consider them. Hence, it implies also that the preparation of the issues to be considered by the committee has to be done by the cadastre office. Further, in light of the principles of professionalism and accountability there is also an expectation that these preparations are made in writing before the consideration of the MLC.

Finding for Audit Question No 3

There are many complex and comprehensive factors to be considered by the MLC on the applications before awarding the mining right; these are

- whether the applicant has the financial resources and technical competence and the financing plan was compatible with the programme of mining operations;
- that the proposed programme of mining operations was adequate and compliant

with the decision letter in respect of the environmental project brief or environmental impact assessment approved by the Zambia Environmental Management Agency;

- that the standards of good mining practice and the applicant's proposed programme for development, construction and mining operations in order to ensure the efficient and beneficial use of the mineral resources for the area over which the license is sought; among others.

A review of MLC Minutes for the year under review revealed that the committee meets once in a month during which meeting they consider an average of seventy (70) Applications within two hours thirty minutes per meeting.

In order to consider these many cases within this limited time, the committee considerations are dependent on a case preparations by the Cadastre department which has the responsibility as the committee secretariat to receive, process and make recommendations. This is done in order to enable the committee considerations to be duly and properly performed in accordance with the requirement of the Act.

In this regard, a review of a sample of fifty (50) files of the Mining rights awarded during the year under review revealed that the committee used the notes or recommendations made by the Cadastre (Technical Assessment Form which is a check list of all criteria requirements) to arrive at their final decision of deferring, approving or disapproving.

A compliance verification exercise was carried out on some of the mining right holders awarded during the year under review. The following were observed:

- a) Among the fifty (50) sampled mining right holders in Western, Eastern, North Western, Copperbelt and Central provinces eight (8) exploration licences had no fixed abode as the physical addresses, contact numbers and emails of the these mining rights holders, as the case may be could not be traced. Consequently, it was difficult to authenticate the existence and verify their compliance status.
- b) Contrary to provisions in Section 25 (1) (a – i) of the Mines and Minerals Development Act No. 11 of 2015, twenty one (21) mining right holders who were visited, in the Copperbelt, North-Western and Central provinces, had not commenced operations as of September 2018, nine (9) to twelve (12) months after the awarding of the rights.

The reasons advanced by most of the mining right holders for non-commencement of operations were bordering on factors like financial constraints, consent disputes with surface right holders, lack of clearance by ZEMA, and other land related issues with various stakeholders such as chiefs, among others.

Considering that these are among the factors that applicants should have demonstrated to possess or to have fulfilled before being awarded the rights, a conclusion therefore could be made that the analysis made on the technical assessment form on which the decision is based to award were not duly and properly processed by the Cadastre office and duly and properly considered by the Mining Licence Committee.

4) Audit question 4

Have the Directors of: Mines, Geological Survey, Cadastre, and Mines Safety carried out inspections and monitoring to ensure compliance by mining right holders?

Criteria(s)

Sections 10 (1) (a – g); 25 (1) (a – c), 2(c), 3; and 35 (1) (a), (b), (d), (e), (g) of the Mines and Minerals Development Act No 11 of 2015.

Findings for Audit Question No 4

According to the Mines and Minerals Development Act No. 11 of 2015, the four (4) departments (Mines and Minerals Development, Geological Survey, Mine Safety and Cadastre) may carry out inspections and monitoring in line with their mandates.

A review of the annual report, inspection reports and data analysis from the ministry reviewed the following:

a) Non-submission of quarterly reports - Geological Survey Department

One of the monitoring activity the GSD may carry out is that the mining right holders should submit quarterly returns on their operations.

An analysis of a sample of Exploration licences awarded data with Quarterly reports submitted to GSD revealed that contrary to Section 25 (3) of the Mines and Minerals Development Act No 11 of 2015, out of seven hundred and nine (709) companies only eighty six (86) submitted quarterly reports representing 12% compliance. The remaining 88% did not comply with the requirement of submitting the quarterly report.

This situation may mean that the ministry was unable to closely monitor the activities of the mining right holders.

b) Export of minerals by mining right holders with Exploration licences - Mines Development Department

Exploration license holders should declare to the ministry when they have found the minerals they were exploring and obtain mining license which would legally allow them to export those minerals. Where an exploration right holder is found to be exporting minerals without a mining right, further investigations are carried out by the ministry, and punitive measures taken when one is found wanting.

According to the Act, only holders of mining licenses are allowed to mine and export minerals, meaning that holders of exploration rights have to obtain a mining license before starting to mine and export minerals.

An analysis of data, obtained from GSD, on the exploration licence holders and the data from Zambia Revenue Authority (ZRA) ASYCUDA system on the export of minerals for the year 2017 revealed that, contrary to Section 25 (c) of the Mines and Minerals Development Act No 11 of 2015, out of seven hundred and nine (709) exploration right holders, there were nine (9) companies who exported minerals despite being holders of exploration licences.

c) Export of minerals (Elements) not included on the Mineral Valuation Certificate - Geological Survey and Mines Development Departments

When exporting minerals, a mining right holder should ensure that his consignment is accompanied and supported by an Export Permit and Mineral Valuation Certificate, among

other documents. The Mineral Valuation Certificate indicates details of which elements in what percentages are contained in the mineral consignment being exported.

At the exit points, the ZRA carries out a monitoring activity of checking and verifying the mineral content in consignments being exported using an XRF machine. The XRF is a machine used to identify which elements are contained in the mineral consignment being exported and in what percentages. It should be noted that the ZRA carry out the XRF test for tax purposes only. Although, the Ministry of Mines, however, has the mandate to allocate a representative at the exit point to monitor the export of minerals, there were no representative from the Ministry.

The results provided by the XRF machine verification should match the details on the mineral valuation certificate. Where differences arise the exporter, should be questioned and further investigations instituted.

According to Section 47, 3 (b) (ii) of the Mines and Minerals Development Act No 11 of 2015 exporters of minerals are supposed to export minerals as specified on the Mineral valuation certificate and Export permit.

A sample XRF verification exercise carried out from four (4) exit points (Katimamulilo, Kazungula, Livingstone and Chirundu) manned by Zambia Revenue Authority revealed that when Mining Right holders are exporting the products, mineral elements which are not included on the Mineral Valuation Certificate and Mineral Export Permit are also exported.

A summary analysis schedule showing differences between authorised Mineral Valuation Certificate details and actual mineral export content details as captured by the XRF machine from the four (4) exit points is detailed in Schedule 5 refers.

5) Audit question No. 5

Has the ministry exercised punitive powers against non-compliant mining right holders?

Criteria(s)

Section 72 (1)(a-h), 108 (1)(a-c), 111 (1)(a-b), 113 (b) of the Mines and Minerals Development Act No 11 of 2015. (See Appendices 11 to 14)

Findings for Audit Question No 5

According to the Mines and Minerals Development Act No. 11 of 2015, the four (4) departments namely Mines and Mineral development, Geological Survey, Mine Safety and Cadastre of the Ministry may carry out inspections and monitoring in line with their mandates.

The departments of Mines and Minerals Development, is mandated to carry out inspections and monitoring of the operations of the awarded rights and other mining activities in the sector.

A review of twenty-four (24) inspection/verification reports at headquarters on some mining right holders during the period under review revealed issues of non-compliance as follows

- (a) No fine paid for Operating a mineral processing plant without a licence - Geological Survey Department.

According to existing procedure, a right holder should possess a mineral processing license in order to have the legal right to process minerals. It is the responsibility of the Ministry to ensure that all persons involved in mineral processing have licenses.

According to the charge later dated 7th September 2017 issued by the Director – Geological Survey Department, a Company named Mineral Junction and Transport Limited was fined K1,500,000 for operating a mineral processing plant without a Licence.

However, there was no evidence that the fine had been settled although, in response to a query raised on this issue, the Ministry had indicated that the company has since obtained two (2) mineral processing licenses numbered 20423-HQ-MPL and 20726-HQ-MPL.

- (b) Export of minerals by a mining right holder without Minerals export permit – Mines and Mineral Development Department

In order to have the legal right to export minerals, a right holder should obtain an export permit, which has to support a consignment at the point of exit. The ZRA through its ASYCUDA System has a data base of all the mineral exports for the country, while the Ministry, through the Mines and Minerals Development Department maintains a data base of all issued-out export permits. This, therefore, implies that all the exporters of minerals reflecting on the ZRA data base for a given period should also reflect to have been issued with export permits by the Ministry for the same period.

An analysis of data for mineral export permits issued out during the year 2017 and export data from the ZRA ASYCUDA system for the same year revealed that contrary to the provisions of the Mines and Minerals Development Act No 11 of 2015, there were seven (7) Companies who exported minerals but were not on the data of Mineral export permits that were issued out during the period under review.

In the response to the query, Management indicated that six (6) of the said companies were issued with Export permits during the year under review, but one (MM Integrated Steel Mills Ltd) was not issued any export permit.

However, the Ministry could not indicate any action taken on the mentioned mining right holder as of September 2018.

- (c) Lack of Punitive Action on Exploration mining rights holders discovered to be exporting minerals – Mines and Mineral Development Department

A holder of an exploration license should only start mining upon obtaining a Mining license, and later on export the minerals mined. The only justification of an exploration right holder exporting minerals would be if they possessed a mining license for a different area. Where an exploration right holder is found to be exporting minerals without a mining right, further investigations are carried out by the Ministry, and punitive measures taken when one is found wanting.

One of the controls to be applied before issuing out an export permit, is that the Ministry has to be satisfied that the mining right holder has a mining license and mineral trading, among others, to enable him export.

An analysis of data for exploration licence holders and export of minerals data from Zambia Revenue Authority (ZRA) ASYCUDA system for the year 2017 revealed that contrary to Section 25 (c) of the Mines and Minerals Development Act No 11 of 2015, there were nine (9) Companies who exported minerals but are holders of exploration licences.

No documentation was submitted on action taken on the same as of September 2018.

- (d) Lack of Punitive Action against Mining right holders exporting minerals (Elements) not included on the Mineral Valuation Certificate.

When exporting minerals, a mining right holder should ensure that his mineral export consignment contains the elements in right percentages as indicated on the Mineral Valuation certificate issued by the Geological Survey department. Any material variances should further be investigated, with punitive action taken on those found wanting. Considering that ZRA conducts export mineral content verification at points of exit, the Ministry could use the findings of the verification exercise to monitor and take action on non-compliance exporters.

An XRF verification exercise carried out from four (4) exit points (Katimamulilo, Kazungula, Livingstone and Chirundu) manned by Zambia Revenue Authority revealed that when Mining Right holders are exporting their products, they also export mineral elements which are not included on the Mineral Valuation certificate and Mineral export permit.

There was no evidence of punitive measures taken against the mining right holders involved as of September 2018.

- (e) No punitive action taken against Mining right holders not submitting quarterly Reports

Holders of exploration licenses are required to submit quarterly reports on their operations after obtaining an exploration right. This is to enable GSD monitor progress and compliance on the exploration activities being undertaken. Failure by the right holder to submit quarterly reports will render the monitoring process ineffective.

An analysis of a sample of Exploration licences awarded data with Quarterly report submitted to GSD revealed that contrary to Section 25 (3) of the Mines and Minerals Development Act No 11 of 2015, from seven hundred and nine (709) companies only eighty six (86) did submit the quarterly reports representing 12% compliance.

There was no evidence of punitive measures taken against the non-compliant mining right holders made available for audit scrutiny as of September 2018.

8. CONCLUSION

The objective of the audit was to ascertain whether MMMD carried out its responsibilities in the awarding of mining rights and monitoring in accordance with the provisions of the Mines and Minerals Development Act No. 11 of 2015 for the year ended 31st December, 2017.

The specific objectives were as follows:

- a. To establish whether all relevant stakeholders were represented on the Mining Licensing Committee,
- b. To establish whether all applicants submitted the necessary documents as required by the law,
- c. To establish whether all applications were duly and properly processed by the mining Cadastre office and considered by the committee before awarding the mining rights,
- d. To ascertain whether the Directors of the Ministry carried out inspections and monitoring in order to ensure compliance by mining right holders, and
- e. To establish whether the Ministry exercised punitive powers to non-compliant mining right holders.

In line with the above objectives, the following main issues were observed:

- Lack of representation on the Mining Licence Committee by Environment, and some members not consistently attending MLC meetings, could lead to the aspects requiring their expertise not being addressed.
- Although the awarded applicants submitted the necessary documents and paid related fees as required by the law, there was no proof of adequate assessment of applications before awarding of mining rights. This is evidenced by the non-commencement of operations by most mining right holders due to factors that applicants should have fulfilled before the awarding of the rights, such as financial constraints, lack of clearance by ZEMA, consent issues etc.
- Contrary to Section 25 (3) of the Mines and Minerals Development Act No 11 of 2015, only eighty six (86) out of seven hundred and nine (709) companies did submit the quarterly reports representing 12% compliance.
- There was no evidence of punitive measures taken against the non-compliant mining right holders.
- Some isolated cases where punitive measures were recommended but not undertaken were observed
- There was no proper coordination between the Ministry and ZRA, who carried out the XRF gunning exercise. Although the Ministry has a mandate to have a representative at all exit points, a check on the ground revealed that there was no Ministry representative at the visited exist points.

In this regard, the evidence obtained is sufficient and appropriate to provide a basis for a conclusion that in most of material aspects of the applicable criteria there was non-compliance in the awarding and monitoring of mining rights

9. RECOMMENDATIONS

Based on the findings and conclusions made the following are the recommendations:

- The Ministry of Mines should appoint a representative from environment and ensure that all stakeholders who are members of the Mining Licencing Committee (MLC) attend the meetings consistently, in order for them to be accountable.
- Considering the fact that the Mining licence committee handles a lot of applications and cases within a short time, the Cadastre office being the secretariat of the committee should adequately carry out preliminary assessment of the applications to enable the committee to make informed decisions in awarding the rights.
- The Ministry should be coordinating with ZRA by making use of the reports or records generated during the XRF verification exercise to identify mining right holders who may be exporting minerals not included on the export permit and timely take punitive action on non-compliant mining right holders.
- The Ministry should have a representative at all points of exit.
- Punitive measures should be taken timely against the non-compliant right holders.



APPENDICES

The Sections of the Laws and Regulations quoted are in respect of the Statutory Instrument No.7 of 2016 of The Mines and Minerals Development Act No. 11, 2015 (The Mines and Minerals Development (General) Regulations, 2016) unless otherwise stated.

1. Section 6 (2) a-f

Mining Licensing Committee

- (2) The Committee shall consist of the following members who shall be appointed by the Minister –
- a) The Director of Mines;
- i) The Director of Geological Survey;
- ii) The Director of Mines Safety;
- iii) The Director of Mining Cadaster who shall be secretary;
- iv) One representative each of the Ministries responsible for –
- The environment;
 - Land;
 - Finance; and
 - labour;
- v) A representative of –
- The Attorney-General;
 - The Zambia Development Agency; and
 - The Engineering Institution of Zambia.

(SCHEDULE (Section 6) THE MINING LICENSING COMMITTEE 1. (1) The Minister shall nominate an alternate member for each of the members referred to in paragraphs (a) to (d) of subsection (2) of section six. (2) The Ministries, Attorney-General, organizations and associations referred to in paragraphs (e) and (f) of subsection (2) of section six shall nominate an alternate member for each of their respective members.

(3) The office of a member becomes vacant

- (c) If the member is absent, without reasonable excuse, from three consecutive meetings of the Committee of which the member had notice, without the prior approval of the Committee;

2. Part II Section 7(1)

Submission of necessary documents when applying for mining rights

A person who wishes to undertake exploration or mining shall apply to the Director of Mining Cadaster for an exploration license or a mining license in (Form 1) set out in the first schedule upon payment of the fees set out in the second schedule.

3. The Service Commissions Act of 2016 provides principles and values applicable for all public servants.

The act section 3, stipulates that the values and principles of the public service include among others:

- (b) Efficient, effective and economic use of national resources;
- (c) High standard of integrity and professional ethics;
- (e) Accountability for administrative acts.



These principles are the overarching principles that all public servants must comply with when performing public service in Zambia.

4. Sections 6 (1)(a – d);

There is established the Mining Licensing Committee which shall -

- (a) consider applications for mining rights and non-mining rights and grant, renew or refuse to grant or renew mining rights and non-mining rights; (b) terminate, suspend or cancel mining rights and non-mining rights; (c) amend the terms and conditions of mining rights and non-mining rights; and (d) advise the Minister on matters relating to its functions under this Act'

5. Section 8 (1) a - c

There shall be a Mining Cadaster Office which shall -

- (a) Receive and process applications for mining rights and mineral processing licenses; (b) administer mining rights and mineral processing licenses; and (c) maintain public cadastral maps and cadaster registers

6. Section 22 (1)(a - c)

The Committee shall, in considering an application made under section twenty-one, take the following into account:

- (a) That the applicant has the financial resources and technical ability to conduct the proposed exploration optimally in accordance with the exploration work programme;
- (b) That the estimated expenditure is compatible with the proposed exploration work programme, area size and duration of the exploration work programme;
- (c) if the land is within a National Park, Community Partnership Park, Game Management Area, bird or wildlife sanctuary, National Forest, Local Forest, Botanical Reserve or private forest or is land to which subsection (1) of section fifty-two applies, the applicant has obtained the necessary written consent of the appropriate authority;

7. Section 31 (1) a – g.

(1) The Committee shall, in considering an application under section thirty, take the following into account:

- (a) whether there are sufficient deposits or resources of minerals to justify their commercial exploitation;
- (b) That the area of land over which the license is sought is not in excess of the area required to carry out the applicant's proposed programme for mining operations;
- (c) That the proposed programme of mining operations is adequate and compliant with the decision letter in respect of the environmental project brief or environmental impact assessment approved by the Zambia Environmental Management Agency;
- (d) Where consent is required for the area under any written law, that the applicant has submitted evidence of that consent;
- (e) The standards of good mining practice and the applicant's proposed programme for

development, construction and mining operations in order to ensure the efficient and beneficial use of the mineral resources for the area over which the licence is sought;

- (f) In respect of large-scale mining—
 - (i) Whether the applicant has the financial resources and technical competence and the financing plan is compatible with the programme of mining operations;
 - (ii) The applicant's undertaking for the employment and training of citizens and promotion of local business development;
 - (iii) Whether the applicant's feasibility study report is bankable; and
 - (iv) The applicant's capital investment forecast; and
- (g) That the applicant is not in breach of any condition of the exploration license or any provision of this Act.'

8. Section 10 (1) a - g,

- (1) The Directors or an authorized officer may, at any reasonable time, enter upon a mining area or any premises or working on or under the mining area to —
 - (a) Inspect the area, premises or workings and examine exploration, mining or mineral processing operations or the treatment of minerals at the area, working or premises;
 - (b) Ascertain whether or not the provisions of this Act or the conditions of a mining right or non-mining right are being complied with;
 - (c) Ascertain whether or not any nuisance exists upon the area, land or mine or in the premises or workings;
 - (d) Give directions and take steps to enforce any provision of this Act or to abate or remove any nuisance;
 - (e) Take soil samples or specimens of rocks, ore concentrates, tailings, minerals or any other material from the area, premises or workings for the purpose of examination or assay;
 - (f) Examine books, accounts, vouchers, documents, maps, drilling logs or records of any kind; or
 - (g) Obtain any information necessary for the purposes of this Act.

9. Section 25 (1) a - c, 2c, e, h and j, and 3,

- (1) A holder of an exploration license shall —
 - (a) Only commence exploration operations if the holder submits to the Mining Cadastre Office—
 - (i) A decision letter in respect of the environmental project brief approved by the Zambia Environmental Management Agency; or
 - (ii) Written consent from the appropriate authority where subsection (1) of section fifty-two applies to the land;
 - (b) Within one hundred and eighty days of the grant of the exploration license, register a pegging certificate at the Mining Cadastre Office;
 - (c) Give notice to the Director of Mining Cadastre of the discovery of any

mineral deposit of possible commercial value within thirty days of the discovery;

- (2) A holder of an exploration licence shall keep full and accurate records, at the holder's office, of the exploration operations which shall indicate –
 - (d) The minerals discovered;
 - (e) the result of any analysis or identification of minerals removed from the exploration area;
 - (f) Any other exploration work;
 - (g) Such other matters as may be prescribed.
 - (3) A holder of an exploration license shall furnish to the Directors, at least once in every three months, digital and hard copies of the records, as may be prescribed.
10. Section 35(1) (a – j),
- (1) A holder of a mining license shall –
 - (a) within one hundred and eighty days of the grant of the mining licence, register a pegging certificate at the mining cadastre office;
 - (b) develop the mining area, and carry on mining operations, with due diligence and in compliance with the programme of mining operations and the environmental impact assessment;
 - (c) take all measures on or under the surface to mine the mineral to which the mining license relates;
 - (d) for large-scale mining -
 - (i) implement the local business development undertaking attached to the mining license; and
 - (ii) employ and train citizens of Zambia in accordance with the proposal for employment and training attached to the license;
 - (e) comply with the proposed forecast of capital investment;
 - (f) demarcate the mining area and keep it demarcated in the prescribed manner;
 - (g) maintain at the holder's office –
 - (i) complete and accurate technical records of the operations in the mining area which should include mine plans and sections, primary and secondary developments, ore resources and reserves, ore recovery and treatment and production costs;
 - (ii) copies of all maps and geological reports, including interpretations, mineral analysis, aerial photographs, satellite maps, core logs, analyses and test results obtained and compiled by the holder in respect of the mining area;
 - (iii) accurate and systematic financial records of the operations in the mining

area and such other books of account and financial records as may be prescribed;
and

- (iv) where the holder is engaged in any other activity not connected with the operations under the mining license, separate books of account from the operations under the mining license;
- (h) permit an authorized officer, at any reasonable time, to inspect the books and records maintained pursuant to paragraph (b) and deliver to the Director of Mines, Director of Geological Survey, Director of Mines Safety or Director of Mining Cadastre without charge, copies of any part of the books and records as may be required;
- (i) keep and preserve records and submit reports on mining operations and the protection of the environment as may be prescribed;
- (j) submit to the Director of Mining Cadastre such reports, records and other information as the Director of Mining Cadastre may require concerning the conduct of the operations in the mining area;
- (k) submit to the Director of Mining Cadastre, within three months of the end of each financial year—
 - i) a copy of the annual audited financial statements showing the profit or loss for the year and the state of the financial affairs of the licensee at the end of that financial year; and
 - ii) for large-scale mining, a return showing compliance with the obligations specified in paragraph (d); and
- (1) maintain security and ensure that there are no illegal miners at the licensee's tenements.
- (2) The holder of a mining licence shall submit to the Directors as may be prescribed—
 - (a) annually, mine plans and sections, primary and secondary developments, ore recovery and treatment and production costs; and
 - (b) every two years, ore resources and reserves statements.

11. Section 72 (1)(a–h)

- (1) Subject to the other provisions of this Act, the Committee may suspend or revoke a mining or non-mining right if the holder –
 - (a) obtained the right by fraud or submission of false information or statements;
 - (b) contravenes this Act, any other written law relating to the right or any terms and conditions of the right;
Surrender of mining right or mineral processing Licence
 - (c) fails to carry out mining operations in accordance with the approved plan of mining operations and the gross proceeds of sale of minerals from the mining area in any three successive years is less than half of the deemed turnover applicable to the mining licence in each of those years;
 - (d) gives false information on the recovery of ores and mineral products, production costs or sale; (e) fails to pay annual area charges;

- (f) fails to pay mineral royalty;
- (g) fails to execute the approved exploration programme, in the case of a holder of an exploration licence;
- (h) has ceased to fulfil the eligibility requirements under this Act; or
- (i) the suspension or revocation is in the public interest.

12. Section 108, 1 a – c, 2 and 3,

- (1) A holder of a mining or non-mining right who –
 - (a) fails to keep a record or information required to be kept under this Act;
 - (b) fails to supply a record or mineral samples to the Director of Mines, Director of Geological Survey, Director of Mines Safety or Director of Mining Cadastre, as the case may be, in accordance with this Act; or
 - (c) supplies a false or misleading record, report, plan or information required for purposes of this Act; commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.
- (2) A person who, without reasonable excuse, omits to make or furnish any plan, report, return, notice, record, register or other document required by or under this Act to be made or furnished, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.
- (3) A person who –
 - (a) in an application under this Act;
 - (b) in a report, return or affidavit submitted for the purposes of this Act;
 - (c) in purported compliance with a requirement under this Act to furnish any information, make a statement or answer a question; furnishes information or makes a statement that is false or misleading in a material particular, commits an offence and is liable, upon conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a period not exceeding three years, or to both.

13. Section 111, (a – b),

- (1) A person commits an offence who –
 - (a) Fails, neglects or refuses to comply with any direction given under this Act;
 - (b) Explores, retains a mineral deposit or mines otherwise than in accordance with the provisions of this Act;

14. Section 113,

- (1) A person commits an offence who, with intent to deceive –
 - (a) Mingles or causes to be mingled with any sample of ore any substance which will enhance the value or in any way change the nature of the ore.

Glossary of Terms

Alternate member	A person chosen to attend meeting in place of appointed the member
ASYCUDA s system	Automated system for customs data used by ZRA
Criteria	A rule or principle for evaluating or testing something.
Exploration license	The license awarded to an applicant that gives the holder exclusive rights to explore specific minerals within a designated area but does not permit actual mining.
Extractive industry	Entities involved in extraction of any non-renewable resources, consisting of any operations that remove minerals, aggregates, dredging and quarrying among others.
Mineral export permit	Permit issued out to an applicant for export of minerals and ores, issued out by the Director of Mines in the prescribed form upon payment of fees.
Mineral valuation certificate	A certificate issued out by the department of Geological survey (GSD) reflecting the material, weight, mineral content and the value of a consignment.
Preliminary query	An initial inquiry issued out by an auditor during the course of the audit assignment to seek clarification from the responsible officer on a particular issue.
Systematic sampling	Statistical method used in selecting members of the population to be tested according to a random starting-point and a fixed periodic interval.
Mining Cadastre office	Secretariat for the Mining Licensing Committee responsible for receiving and processing mining rights applications.
XRF Verification	Witnessing the exercise of detecting the mineral contents using a hand held machine at exit points.



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