



REPUBLIC OF ZAMBIA

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

REPORT OF THE AUDITOR GENERAL

ON THE

**THE COMPLIANCE AUDIT ON THE AWARDING AND MONITORING OF MINI
RIGHTS FOR 2017 ACCOUNTS**

FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY



Printed by the National Assembly of Zambia

REPORT

OF THE

COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS

ON THE

REPORT OF THE AUDITOR GENERAL

ON THE

**THE COMPLIANCE AUDIT ON THE AWARDING AND MONITORING OF MINING
RIGHTS FOR 2017 ACCOUNTS**

FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

TABLE OF CONTENTS

ITEM	PAGE NO	
1.0	Membership of the Committee	1
2.0	Functions of the Committee	1
3.0	Meetings of the Committee	1
4.0	Procedure adopted by the Committee	1
5.0	Standards used in Carrying out the Audit	1
5.1	Background to the Audit	2
5.2	Subject Matter and Scope	2
5.3	Risk Assessment that Led to the Selection of Identified Subject Matter	2
5.4	Audit Objective	3
5.5	Audit Questions	3
5.6	Methodology	3
5.7	Sources of Assessment Criteria	4
6.0	Consideration of Submissions on the Audit	4
	Findings and Observations	
6.1	Lack of representation by some stakeholders on the Mining Licence	4
6.2	Submission of the necessary documents when Applying for mining rights	7
6.3	Processing of application by the Mining Cadastre Office and consideration of applications by the Mining Licencing Committee before awarding the Mining Rights	7
6.4	Inspections and monitoring to ensure compliance by mining rights holders	10
6.5	Exercise of punitive powers against non-compliant mining right holders	16
7.0	Conclusion	21
	Appendix I – Officials of the National Assembly	22
	Appendix II – List of Witnesses	23

REPORT OF THE COMMITTEE ON NATIONAL ECONOMY, TRADE AND LABOUR MATTERS ON THE REPORT OF THE AUDITOR GENERAL ON THE COMPLIANCE AUDIT ON THE AWARDING AND MONITORING OF THE MINING RIGHTS FOR 2017 ACCOUNTS FOR THE FOURTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

Membership of the Committee

1.0 Dr S Musokotwane, MP (Chairperson); Ms M Miti MP, (Vice-Chairperson); Mr G G Nkombo, MP; Mr E M Mwila, MP; Mr C Chali, MP; Mr D Chisopa, MP; Dr S C Kopulande, MP; Mr D Livune, MP; Mr E Kamondo, MP; and Mr M Mubika, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir

The Committee has the honour to present its Report on the Report of the Auditor General on the Compliance Audit on the Awarding and Monitoring of Mining Rights for 2017 Accounts for the Fourth Session of the Twelfth National Assembly.

Functions of the Committee

2.0 The functions of the Committee are set out under Standing Order No. 157 (2). Among other functions, the Committee is mandated to consider special audit reports that may be referred to it by the House.

Meetings of the Committee

3.0 The Committee held ten meetings to consider the Report of the Auditor General on the Compliance Audit on the Awarding and Monitoring of Mining Rights for 2017 Accounts.

Procedure Adopted by the Committee

4.0 The Committee requested written and oral submissions from the stakeholders listed at Appendix II.

Standards Used in Carrying out the Audit

5.0 The Committee was informed that the audit was conducted in accordance with the provisions of Article 250 (c) and (d) of the *Constitution of Zambia as amended by Act No.2 of 2016*, and the *Public Audit Act, No.13 of 1994*. The audit was based on ISSAI 400, Fundamental Principles of Compliance Auditing and ISSAI 4000 – Compliance Audit Guidelines.

Background to the Audit

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

The Committee was informed that the Ministry of Mines and Minerals Development was responsible for the development and management of mineral resources in a sustainable manner for the benefit of the people of Zambia. The Ministry's portfolio functions were outlined in the Government Gazette Notice Number 183 of 2012, and they included management of mines and minerals development in Zambia.

The Committee was further informed that the mining sector encountered various internal and external factors, such as inconsistencies in the processes of awarding mining rights, lack of disclosure of relevant information by some rights holders to other stakeholders, and under declaration of production figures. This necessitated the enactment of the *Mines and Minerals Development Act, No 11 of 2015*.

The Committee learnt that 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 as amended by Act No. 2 of 2016*, the *Public Audit Act No. 13 of 1994* and the relevant International Standards for the Supreme Audit Institutions (ISSAIs).

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

Subject Matter and Scope

5.2 The Auditor General stated that the audit focused on the compliance in the awarding of mineral rights to large and small scale mining right holders during the year 2017, and monitoring of all existing large and small scale mining rights as at 30th September, 2017.

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

5.3 It was stated in the Report of the Auditor General that since the awarded mining rights had a direct impact on performance of the industry and the economy as a whole, it was important for Zambia to verify the awarding of mining rights and monitoring processes.

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

Audit Objective

5.4 The objective of the audit was to ascertain whether the Ministry of Mines and Minerals Development carried out its responsibilities in the awarding of mining rights and monitoring of operations of large and small scale mining 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 of the audit were as outlined below.

- 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 Cadastre Office, and that they were duly and properly considered by the Mining Licencing 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.
- e) To establish whether the Ministry exercised punitive measures to non-compliant mining right holders.

Audit Questions

5.5 Based on the audit objective, the audit was designed to answer the questions set out below.

- i. Were all relevant stakeholders represented on the Mining Licencing Committee?
- ii. Did all awarded applicants submit the necessary documents as required by law?
- iii. Were all applications for mining rights duly and properly processed by the mining Cadastre office, and were they duly and properly considered by the Mining and Licencing Committee before awarding the mining rights?
- iv. Did the Directors of the Ministry carry out inspections and monitoring to ensure compliance by mining right holders?
- v. Did the Ministry exercise punitive measures to non-compliant mining right holders?

Methodology

5.6 In gathering audit evidence, the audit relied on document analyses, interviews and meeting discussions with Directors of the Mining Cadastre, Geological Survey Department, Mines Safety Department and Director of Mines. In the process of information gathering, meetings were held with the Zambia Development Agency (ZDA) and Patents and Companies

Registration Agency (PACRA). Further, the Annual Report and Work Plans for the Ministry of Mines and Minerals Development were used, as well as other audit testing techniques related to the audit criteria mentioned above.

Sources of Assessment Criteria

5.7 The criteria for assessing the compliance of awarding and monitoring mining rights for the 2017 accounts was derived from the different sources listed below.

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

Consideration of submissions on the audit findings and observations

6.0 The Committee considered submissions from the identified stakeholders and the Minister of Mines and Minerals Development. The submissions of these stakeholders and the Ministry of Mines and Minerals Development, as well as the observations and recommendations made by the Committee are set out below.

6.1 Lack of representation by some stakeholders on the Mining Licence Committee

- a) The Report of the Auditor General highlighted that following a review of appointment letters and minutes of the Mining Licence Committee (MLC) sittings for the year 2017, it was revealed that contrary to the criteria provided by law, there was no representative from the ministry responsible for environment on the committee.

Stakeholders' Submission

Stakeholders submitted that the absence of a representative of the ministry responsible for environment on the MLC was a serious lapse given the importance of environmental risks associated with mining. Stakeholders submitted that mineral rights, whether large scale or artisanal, required compliance with the environmental regulations of the country.

The Ministry of Water Development, Sanitation and Environmental Protection submitted that the Ministry of Mines and Minerals Development was better placed as the custodian of the *Mines and Minerals Development Act, No. 11 of 2015* to initiate the process of appointing a permanent representative from the Ministry of Water Development, Sanitation and Environmental Protection. However, the Ministry had established contact with the Ministry of Mines and Minerals Development to ensure that this anomaly was corrected within the shortest possible time.

Response by the Minister of Mines and Minerals Development

The Minister acknowledged the findings by the Auditor General and informed the Committee that the MLC from its inception in February, 2016 was fully constituted as provided by section 6

of the *Mines and Minerals Development Act, No. 11 of 2015*. At that time, the environment portfolio was under the Ministry of Lands, Natural Resources and Environmental Protection and was represented by an officer from that Ministry. However, when the ministries were restructured, the environmental protection mandate was moved to the Ministry of Tourism and subsequently to the Ministry of Water Development, Sanitation and Environmental Protection. Due to these changes, the officer could not continue to sit on the Mining Licensing Committee.

The Committee was informed that the term of office for MLC members who were appointed in 2016 expired in 2019. When constituting a new committee, the Ministry of Mines and Minerals Development took into account the changes in ministerial portfolios and requested for nominations from the Ministry of Water Development, Sanitation and Environmental Protection to ensure that environmental matters were adequately considered in the process of granting mining rights. An officer had since been appointed to represent the Ministry of Water Development, Sanitation and Environmental Protection on the MLC on 23rd May, 2019 and a letter of appointment was attached for verification.

Committee's Observation and Recommendation

The Committee is dismayed that the Ministry of Water Development, Sanitation and Environmental Protection is not aware that the Ministry of Mines and Minerals Development has appointed one officer as a representative to sit on the MLC which indicates a lapse in coordination between the two ministries. The Committee agrees with the Auditor General that the lack of representation by the ministry responsible for environmental protection was a serious omission with far reaching consequences. The Committee contends that mining is degrading in nature and has serious impacts on the environment which could contribute to climate change, food insecurity water and air pollution, among others. However, the Committee commends the Minister for appointing a representative from the ministry responsible for environmental protection, and urges the Minister to strengthen collaboration with all the relevant stakeholders and ensure that all Members of the MLC attend meetings at all times. The Committee also urges the Minister to send correspondences relating to appointment of members of the MLC from Ministries to the Permanent Secretary and not directly to the officers.

- b) The Report of the Auditor General outlined that after a review of Mining License Committee (MLC) minutes for the period under review it was established that representatives from Mine Safety, Ministry of Finance and Ministry of Lands and Natural Resources had not attended the meetings for three consecutive sittings contrary to the provision of 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.

Stakeholders' Submission

Stakeholders submitted that the absence of some members of the MLC was regrettable. They expressed concern that the absence of such key players compromised the quality of deliberations of the MLC.

The Ministry of Lands and Natural Resources submitted that it was re-aligned under Government Gazette No. 183 of 2012 to create the Ministry of Lands, Natural Resources and Environmental Protection (MLNREP). This entailed that the Ministry was responsible for land, forestry and environment. In 2016, the MLNREP was further realigned under Government Gazette No. 836 of 2016 in which the environment function was removed from the Ministry.

The Ministry of Finance submitted that the Ministry's representative on the MLC was attending to other equally pressing national issues, and the Committee was duly notified of this development. However, as of 2018, the Ministry had appointed an alternate member who would be attending the Committee sittings in the absence of the permanent committee member to ensure that the views of the Ministry were represented and taken into consideration.

Some stakeholders were concerned that there was no transparency in the issuance of mining licences because of the absence of some members of the MLC. This was evidenced by the defaulting of 874 licences and cancellation of 816 licences in January, 2020 by the Government.

Other stakeholders were of the considered view that the membership of the MLC should be expanded to enhance diversity in the Committee. The current composition excluded Chief's representatives and ZEMA. The views of these stakeholders would enhance the debates within the MLC and offer alternative views when awarding mining licences. While appreciating the compliance of applicants on attaching all required documents, some stakeholders had reservations on how consents were obtained from chiefs. They were of the opinion that the consent given by a chief should be obtained before the Cadastre Office submitted the files to the MLC.

Response by the Minister of Mines and Minerals Development

The Minister reported that representatives from the Mine Safety Department, Ministry of Finance and Ministry of Lands and Natural Resources missed three consecutive meetings during the year under review. However, section 2(3) (3) of the *Mines and Minerals Development Act, No. 11 of 2015*, sub-section (3) (c) provided that a member could only be removed from the committee if they were absent for three consecutive meetings without reasonable excuse. The Committee learnt that the members cited for missing meetings always notified the Committee of their non-availability through the Secretariat. The members cited commitments to other national duties and therefore, the excuses were reasonable. The non-availability of alternate members was also formally communicated, and this was mainly due to commitments to other assigned duties.

The Minister informed the Committee that the Act was not explicit that members of the MLC were required to communicate in writing if they were unable to attend meetings. However, going forward, it was resolved that members would be requested to formally write to the Secretariat to indicate reasons for missing meetings. Furthermore, paragraph 4 (5) of the Schedule also stated that a quorum of the MLC meeting shall be half of the members of the Committee. The MLC was therefore within the law to hold meetings in the absence of some members because the quorum was formed in each particular case.

