



**TRANSPERANCY  
INTERNATIONAL  
UGANDA**

# **Who Pays the Costs of Governance Failures in the Mining Sector Revenue Sharing System?**

**Case Studies;  
Moroto and Kabale Districts**

May 2016





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# Acronyms

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ACAO	Assistant Chief Administrative Officer
ASM	Artisanal and small scale mining
CAO	Chief Administrative Officer
CFO	Chief Financial Officer
CSO	Civil Society Organizations
DGSM	Department of Geological Survey and Mines
EITI	Extractives Industries Transparency Initiative
GDP	Gross Domestic Product
MEMD	Ministry of Energy and Mineral Development
NGO	Non Government Organization
PFMA	Public Finance Management Act
UNDP	United Nations Development Programme
URA	Uganda Revenue Authority
UWA	Uganda Wildlife Authority

# Acknowledgement

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Uganda is endowed with a diverse supply of minerals including: metallic minerals including copper, gold, iron, and lead; non-metallic minerals including talc, graphite, mica, limestone and marble; and rare earth minerals. These assets attract many companies throughout Uganda and around the world to extract these highly profitable resources. Thus, these resources present huge investment potential for the country and could completely alter the country's economy for several years. Among the many potential risks, the risk of administrative anomalies including graft and mismanagement of oil and mineral revenues is of huge concern considering Uganda's longstanding history of corruption and lack of institutional transparency. Managed effectively and transparently, the extractive industry revenues could serve as a basis for successful economic growth and poverty reduction

The government has convened an inter-ministerial committee to undertake the review of the Mineral policy 2001, Mining Act 2003 and regulatory instruments. Alongside this process, NGOs must carry out their duty to provide input and recommend necessary changes to the laws on behalf of the interests of the citizens. This is critical considering that structurally, governments play multiple roles in domestic mining sectors that can clash and cause a conflict of interest.

The consequences of under regulation are vast and far-reaching and while this report does not attempt to highlight all such consequences, it does demonstrate certain ways in which under regulation can manifest harmfully on the ground.

This paper therefore comes out not only to focus on the challenges in the sub-national revenue sharing system but to reinforce the argument for stronger governance and robust legislation in the extractive sector if Ugandan Citizens are to benefit from the revenues.

Our sincere gratitude goes to the Democratic Governance Facility (DGF) for providing funds to undertake this research under the Extractive Industry Transparency project.

We look forward to all our stakeholders to studying the findings and recommendations so that we can collectively come up with plausible solutions and actions that shall ensure transparency and accountability in the extractive sector.

Thank you.



Peter Wandera.

# Introduction

As a developing country with little previous knowledge or experience in the extractive industries, Uganda has endeavoured to develop strong domestic legislation to regulate the sectors. Following the discovery of commercially viable oil reserves, the country updated and passed several pieces of legislation to guide the development of the sector including the Oil & Gas Policy 2008, the Petroleum (Exploration, Production and Development) Act 2013, and the Petroleum (Refining, Conversion, Transmission and Midstream Storage Act 2013.

Currently, the government is undertaking a review process to update the relevant mining legislation including the Mineral Policy 2001 the Mining Act 2003 and other regulatory instruments.<sup>1</sup> This is a very important process considering that mineral reserves span the entirety of the country and will have significant impact on the environment and the lives of citizens country-wide. It is also important given that the mining sector has been marked by under regulation and malfeasance in the past due to a general vagueness in the laws as well as a failure to implement laws on the ground.<sup>2</sup>

The government has convened an inter-ministerial committee to undertake this review. Alongside this process, NGOs must carry out their duties to provide input and recommend necessary changes to the laws on behalf of the interests of the citizens. This is critical considering that structurally, governments play multiple roles in domestic mining sectors that can clash and cause a conflict of interest.

First, government must see that mineral extraction contributes positively to the further development of the country and benefits the citizenry as the Constitution mandates. At the same time, the government sees itself as an investment partner for companies. In this role, government must attract investors and cater to their demands in order to secure contracts with companies to carry out the extraction.

While these two duties are not necessarily incompatible, tension can arise if the interests of citizens and companies do not coincide. It is the role of civil society as an independent third party to see that government develops laws with the interest of the people held paramount, so that the mineral reserves are developed for the people of Uganda—not in spite of them. This is a

<sup>1</sup> Ladu, I.M., “Review of mining laws begins,” The Daily Monitor, 2014, available from: <http://www.monitor.co.ug/Business/Commodities/Review-of-mining-laws-begins/-/688610/2391222/-/h7ko9iz/-/index.html>.

<sup>2</sup> Imaka, I., “The dulled promise of Uganda’s gold sector,” The Daily Monitor, 2012, available from: <http://www.monitor.co.ug/artsculture/Reviews/The-dulled-promise-of-Uganda-s-gold-sector/-/691232/1480404/-/item/1/-/7mtrel/-/index.html>.

valid concern given numerous comments from government officials in the past indicating that government is willing to sideline the needs of citizens to appease investor demands.<sup>3</sup>

It is within this context that civil society has strongly come out to influence this legal review process to ensure that government passes strong legislation to guide the mining sector. By gathering evidence to show the failures of the current legislation to protect citizens' needs, civil society can make strong evidence-based recommendations for change. This evidence demonstrates the tangible repercussions of poor governance in the mining sector as realized by citizens on the ground in a diverse range of settings.

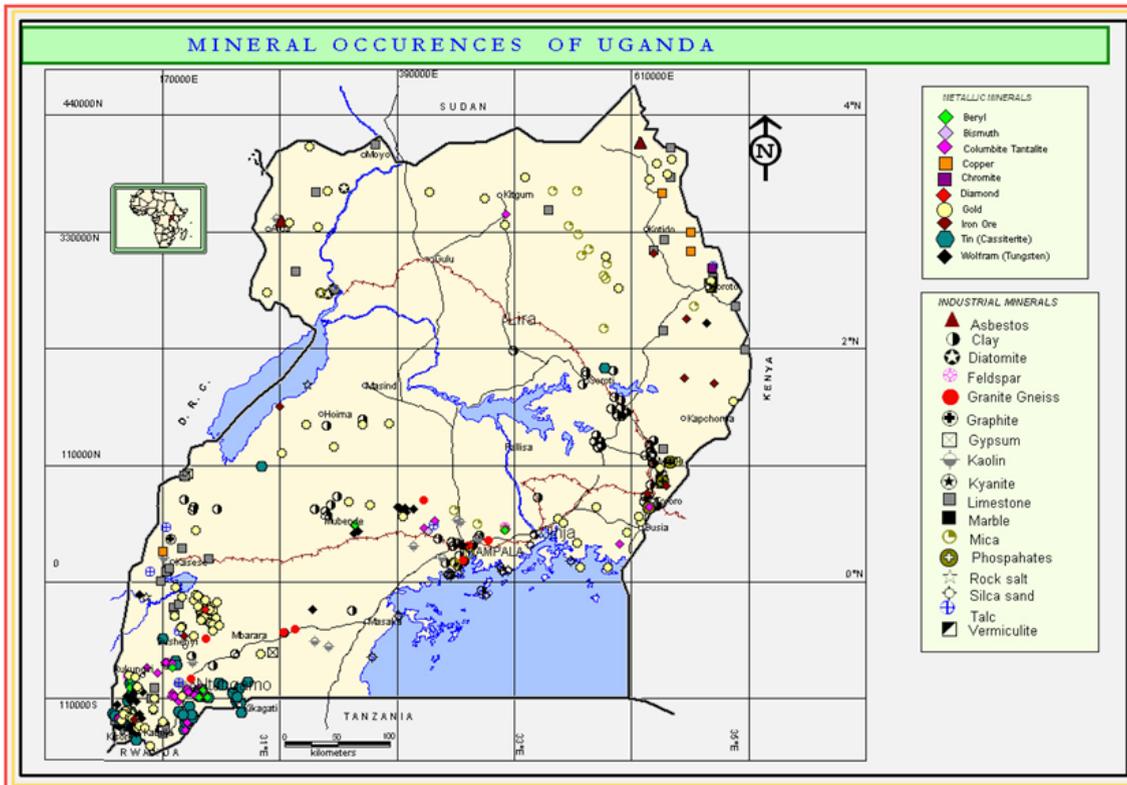
The consequences of under regulation are vast and far-reaching and while this report does not attempt to highlight all such consequences, it does demonstrate certain ways in which under regulation can manifest harmfully on the ground.

This research-based evidence reinforces the point that arguments for strong governance and robust legislation are not hypothetical. Under regulation in Uganda's mining sector already negatively affects peoples lives in significant ways everyday. We must undertake this review process in order to mitigate the problems faced by citizens associated with the mining sector as well as prevent future problems as the sector continues to develop and expand.

However, we must also acknowledge that strong legislation will not inherently lead to good governance. Strong legislation is meaningless if it is not implemented. Many of the problems in the functioning of the subnational royalty sharing system are due to implementation and operationalization failures, rather than deficiencies in the legislation.

Therefore, alongside recommendations for improvements to the legislation, priority implementation gaps must be addressed. The government must commit to fully capacitating and supporting the Department of Geological Survey and Mines so that these operational failures may be corrected. This paper provides recommendations for improvements in the current legislation as well as implementation.

<sup>3</sup>Wesonga, N., "Owners will lose rights over mineral-rich land—Museveni," The Daily Monitor, 2014, available from: <http://www.monitor.co.ug/News/National/Owners-will-lose-rights-over-mineral-rich-land---Museveni/-/688334/2471678/-/f4jchu/-/index.html>.



A Geology And Mineral Occurrence Map Of Uganda. Photo from Ministry of Energy and Mineral Development

<sup>4</sup> Ssekika, E., "Petroleum institute collapsing," The Observer, 2014, available from: [http://www.observer.ug/index.php?option=com\\_content&view=article&id=30694:petroleum-institute-collapsing&catid=79:businessstories&Itemid=68](http://www.observer.ug/index.php?option=com_content&view=article&id=30694:petroleum-institute-collapsing&catid=79:businessstories&Itemid=68).

<sup>5</sup> "Statistical Abstract 2014", Ministry of Energy and Mineral Development, 2014, available from: [www.energyandminerals.go.ug/](http://www.energyandminerals.go.ug/).

<sup>6</sup> Ibid.

<sup>7</sup> "The East African bribery index," Transparency International Kenya, 2013, available from: <http://tikenya.org/index.php/the-east-african-bribery-index?download=218:the-east-african-bribery-index-2013>.

<sup>8</sup> "The East African bribery index, Transparency International Kenya.

# Background

Modest projections estimate the wealth of oil and gas reserves in Uganda to be 150 billion dollars.<sup>4</sup> Early projections estimate that oil returns will double Uganda's revenue for at least thirty years. The total value of minerals produced in Uganda in 2014 was 48.7 million dollars although this number only represents a portion of the country's overall mineral potential.<sup>5</sup> The mineral reserves currently being explored throughout the country will add a great deal to this figure. As of December 2014, a total of 818 licenses were active in the mining sector held by various companies and individuals throughout the country.<sup>6</sup>

As such, Ugandan government officials regularly refer to the country's extractive reserves as the key to potential development and transformation for the country. Uganda is endowed with a diverse supply of minerals including: metallic minerals including copper, gold, iron, and lead; non-metallic minerals including talc, graphite, mica, limestone and marble; and rare earth minerals. These assets attract many companies—from throughout Uganda and around the world—to extract these highly profitable resources. Thus, these resources present huge investment potential for the country and could completely alter the country's economy for several years. In short—there is ample to gain, and to lose.

The risk of government corruption and mismanagement of oil and mineral revenues is of huge concern considering Uganda's longstanding history of corruption and lack of institutional transparency. Regarding intra-government management of oil and oil-based revenues, the government of Uganda faces many challenges. According to the East African Bribery Index 2013, Uganda is currently the most corrupt country in East Africa.<sup>7</sup> The surveys included in this report illustrated that

Ugandan citizens think corruption levels are very high and increasing still. Allegations of corruption, embezzlement and graft exist at most local levels of government up to the highest offices.<sup>8</sup>

Apart from risks of corruption, managing an inflow of oil and mineral revenue can prove challenging for countries with little experience in the extractive industries. Governments must plan carefully to integrate extractive industry revenues into the national budget with absorption constraints in mind to prevent "Dutch Disease" effects. Governments must also make expenditure and investment decisions so as to extend extractive industry benefits past the lifetime of the project and to achieve intergenerational equity. These decisions require expertise and foresight. The magnitude of economic change brought on by oil and mineral extraction must be adequately planned for and carefully incorporated into a long-term revenue management plan to ensure that the oil revenues have long-term positive benefits on the country. Failure to do so could have catastrophic economic effects.

Managed effectively and transparently, the extractive industry revenues could serve as a basis for successful economic growth and poverty reduction. In countries such as Uganda, it is especially important that extractive industry benefits are realized directly by citizens since citizens are the ultimate owners of natural resources, according to the Constitution. In this context, it is imperative that natural resource windfalls bring tangible and equitable benefits to all citizens rather than negatively affect the country.

# Planning Investment And Spending Of Extractive Industry Revenues

Government make use of different types of earmarking scheme to re-distribute oil and mining revenues based on principles of equity and efficiency. According to Matteo Morgandi, there are two principal ways of doing this:<sup>9</sup>

01

## Agency Earmarks

A way by which funding is allocated to agencies responsible for regulating, monitoring, and serving the extractive industries as they grow

02

## Policy Earmarks:

A way by which revenues generated from natural resource extraction are used to drive improvements in economic, social, or human development.

In countries where extractive industries represent a large portion of their national budget, varying degrees and combinations of these methods are used as a form of derivation. Literature on the subject has shown that earmarking in general is only effective when complimented by explicit strategies designed to help spur growth in specific sectors.

In Botswana, for example, all revenues generated from non-renewable resources must be reserved for investment expenditure, following the economic model of 'Hartwick's rule for sustainability.'<sup>10</sup> There, economic performance assessments routinely carried out by the government closely monitor the ratio of non-investment spending to recurrent revenues. Funds raised by these industries have been directly re-invested into infrastructure, human capital, and basic services, helping lift the country out of poverty and into the World Bank's category of an 'Upper-Middle Income' country.<sup>11</sup>

Brazil, on the other hand, has favoured agency earmarks to help directly spur additional growth within their oil & gas sector. There, the central government receives a 10% royalty on all gross revenues generated, redistributing 26% to the producing and transporting municipalities, 8.7% to all municipalities in the producing state, and 52.5% to the producing state. Additionally, a 0.5-1.0% land royalty is awarded to private landowners.<sup>12</sup> The total amount of local compensation is relatively diminutive when considering the total rents being generated by the resource extraction, and is done primarily to compensate for the negative externalities associated with these industrial activities.

As a third example, Papua New Guinea is actively engaged in redistributing portions of royalties directly towards specific sectors such as "projects executed according to local expenditure plans, a fund for future generations, payments towards private and communal land owners, and local health, education and social development programs."<sup>13</sup> The general structure of sub-national revenue sharing in Papua New Guinea has generally been lauded as an equitable system to help benefit affected local communities. However, the greatest issue found with disbursement has been the lack of revenue transparency at the sub-national level. This is not just an issue in Papua New Guinea, but one faced by many countries heavily endowed with natural resources.

<sup>9</sup> "The East African bribery index, Transparency International Kenya.

<sup>10</sup> Lange, G.M., & Wright, M., "Sustainable development in mineral economies: The example of Botswana," CEEPA Discussion Paper Series University of Pretoria, 2002, available from: <http://ageconsearch.umn.edu/bitstream/18019/1/dp020003.pdf>.

<sup>11</sup> Ibid, p. 502.

<sup>12</sup> Morgandi, M. 'Extractive industries revenue distribution at the sub-national level,' prepared for Revenue Watch Institute, 2008, p. 21, available from: [http://www.resourcegovernance.org/sites/default/files/RWISubnatlRevSharing\\_2008\\_0.pdf](http://www.resourcegovernance.org/sites/default/files/RWISubnatlRevSharing_2008_0.pdf)

<sup>13</sup> Ibid, p. 32.

While the revenues generated from resource extraction are intended to benefit the wider population of a country as a whole, schemes are sometimes introduced to compensate communities in the immediate vicinity of the resource extraction. This is because communities that live within the affected regions may disproportionately experience the negative impacts of extraction including environmental degradation, disruption of livelihoods, and other negative consequences.

To help mitigate this, sub-national royalty sharing schemes aim to transfer funds received from oil or mineral extraction from the central government to local governments, and sometimes even citizens directly.

The oil revenue management plans, as prescribed in the Public Finance Management Act 2015 (PFMA) outline a scheme for subnational distribution of oil revenues. According to the PFMA, royalties arising from petroleum production will be divided so that the central government retains 94% of royalties and the remaining 6% shall be shared between the local governments located within the petroleum exploration and production areas based on the level of production in each locality and the population size, geographical area, and terrain of each locality.<sup>14</sup> The remaining 1% of royalties will be shared with cultural institutions based in oil producing districts such as the Bunyoro Kingdom.

According to the Mining Act 2003, royalties are to be shared with mineral producing districts based on a basic revenue sharing scheme. The Second Schedule to the Mining Act stipulates that the central government is to take 80% of royalties collected and then distribute 17% to “local governments” as well as 3% to “owners or lawful occupiers of land subject to mineral rights.”<sup>15</sup> These types of subnational revenue sharing schemes are common in mineral and oil rich countries as they recognize the rights of local bodies and landowners as well as the localized consequences born during extraction.

Theoretically, these revenue sharing schemes should work to adequately distribute mining revenues in a way that directly addresses those affected by extraction. Schemes like this are common practice in other oil producing countries, however, vague legislation, poor parliamentary oversight, and weak contract transparency laws make it difficult to ensure that affected rural Ugandan communities are getting their fair share.<sup>16</sup>

<sup>14</sup>See Section 75 of the Public Finance Management Act 2015, available from: [http://www.ugandainvest.go.ug/uia/images/Download\\_Center/DOCUMENTS/Uganda\\_Public\\_Finance\\_Management\\_Act\\_2015.pdf](http://www.ugandainvest.go.ug/uia/images/Download_Center/DOCUMENTS/Uganda_Public_Finance_Management_Act_2015.pdf)

<sup>15</sup> See the Second Schedule of the Mining Act, 2003, available from: <http://www.osall.org.za/docs/2011/03/Uganda-Mining-Act-2003.pdf>

<sup>16</sup> “Best practice in allocation for Uganda briefing”, Global Witness, 2013, available from: <https://www.globalwitness.org/campaigns/uganda/uganda-contract-allocation-briefing/>.

The unequal distribution of social and environmental burdens onto local communities is something which revenue sharing should aim to redress. Subnational royalty distribution is a form of fiscal decentralization. According to a 2005 study by the UNDP/World Bank Energy Sector Management Assistance Programme, fiscal decentralization “must be based on clearly set principles that must provide rules and limits that will make it possible to maintain the macroeconomic and fiscal stability.”<sup>17</sup> These principles include:

- i) Clearly defined powers and distribution of administrative functions and responsibilities between the national, regional and local government entities.
- ii) Transparency and predictability in the provision of fiscal returns to the subnational government entities.
- iii) Neutrality in the transfer of resources based on a well-organised schedule established with neutral fiscal effects.
- iv) Fiscal responsibility based on the establishment of fiscal rules compatible with the transparency and fiscal soundness rules of the national government.<sup>18</sup>

These principles may be helpful when developing a subnational revenue sharing system. They also provide a relevant basis for review of the current operationalization of the subnational mineral royalty sharing scheme in Uganda.

A well-functioning royalty sharing system also helps to address

heightened expectations from citizens amidst oil and mineral development and can prevent local conflict. The discovery of oil has raised expectations for many citizens hoping to reap the benefits in Uganda. As such, many rumours and misconceptions spread regarding the distribution of benefits. According to a September 15, 2013 article in Uganda’s New Vision newspaper, relations between different ethnic groups in the Albertine region of Western Uganda have become increasingly strained over the past few years. This is due to expectations of variation in oil revenue allocation between the different ethnic groups.<sup>19</sup> By implementing a transparent and equitable royalty sharing system, such misconceptions and social tension can be dispelled.

The vast majority of countries engaged in extractive industries utilize some form of redistributive action to help compensate for the issues outlined above. In a report prepared for the Revenue Watch Institute, Matteo Morgandi observed that as extractive industries revenues increasingly take up greater shares of national budgets, the degree of redistribution also increases. These results may imply that “redistribution becomes politically more important as resources from extractive industries become essential to sustain the overall budget expenditure.”<sup>20</sup>

Although these industries currently make up a small portion of Uganda’s GDP, the amount of proven reserves that have been discovered show an immense amount of potential for revenue and subsequent revenue redistribution. As such, it

<sup>17</sup>“Comparative study on the distribution of oil rents in Bolivia, Colombia, Ecuador, and Peru,” Joint UNDP/World Bank Energy Sector Management Assistance Programme, 2005, p. 30, available from: [https://www.esmap.org/sites/esmap.org/files/FRFR27965\\_Bolivia\\_Ecuador\\_Columbia\\_Peru\\_Mexico\\_Comparative%20Study%20on%20the%20Distribution%20of%20Oil%20Rents.pdf](https://www.esmap.org/sites/esmap.org/files/FRFR27965_Bolivia_Ecuador_Columbia_Peru_Mexico_Comparative%20Study%20on%20the%20Distribution%20of%20Oil%20Rents.pdf).

<sup>18</sup> Ibid, p 30.

<sup>19</sup>Mutegeki, G., & Atuhairwe, R., “Peace reconciliation vital for oil sector,” New Vision, 2013, available from: <http://www.newvision.co.ug/news/647251-peace-reconciliation-vital-for-oil-sector.html>.

<sup>20</sup>M. Morgandi, p. 9, 2008.



A team of engineers making final touches on the gold mining machine in Moroto District. Photo by Stephen Ariong of Daily Monitor

is important for us to draw from international best practices before work on the ground continues to expand.

By examining the current mineral royalty sharing system in Uganda using case study evidence, this paper will assess the strengths and weaknesses of the current system with recommendations for improvement through policy

amendments and implementation corrections. These lessons learned can also guide policymakers interested in developing the oil royalty sharing system. The recommendations provided are intended to instruct the development of subnational extractive industry royalty sharing in Uganda to improve efficiency and equity in the distribution of oil and mineral revenues.

# Moroto District: Watching The Trucks Go By

## Failures In The Subnational Royalty Sharing Scheme

Theoretically, the national mineral sector revenue sharing scheme should work to adequately distribute mining revenues in a way that directly addresses those affected by extraction. Although, according to the case of Moroto, this revenue sharing scheme is not carried out in practice leaving the districts, sub-counties and local landowners at a loss.

Moroto is rich in mineral resources, particularly gold, limestone, gypsum, iron, graphite, and marble. There are a number of companies actively mining in Moroto district including Tororo Cement, the largest cement and steel manufacturing company in Uganda. Tororo Cement sources a portion of its raw materials from Moroto for its cement processing facility in Tororo. There are currently multiple active mining licenses in the district, which would lead one to believe that the district would receive regular royalty payments as per the subnational revenue sharing scheme. However, according to district officials, this is not the case.

According to Edward Eko, Moroto Assistant Chief Administrative Office (ACAO), the district receives royalty payments from central government irregularly and unpredictably. "What is very key, what is our challenge, is that both the sub-county and the district are not getting royalties as scheduled. If we do get royalties, they have been irregular but some years they do not come at all."<sup>21</sup> The Chief Administrative Officer

(CAO) of Moroto, Robert Mulondo, says that in the past three years the district has received sporadic royalty payments one or two times. According to Mulondo, the arrival of royalty payments is very random and the total figure can also vary from year to year by one hundred million shillings and more.<sup>22</sup> According to the Chief Financial Officer (CFO), Mr. Alinga Ben Richard, this presents a huge challenge for annual budgeting processes since the district government has no idea what to expect each year in terms of royalty allocation.



An open pit limestone mine in Tapac sub-county, Moroto district.

<sup>21</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Assistant Chief Administrative Officer, February 18, 2015, Moroto.

<sup>22</sup>Transparency International Uganda interview with Alinga Ben Richard, Moroto Chief Financial Officer, February 18, 2015, Moroto.

According to district officials, when royalties are dispersed into the district government account, there is no accompanying analysis, breakdown or explanatory information behind the figure. Therefore, the district government is given no information as to the basis for the calculation and has no way to validate that the royalty payment adequately reflects the mining activity actually taking place in the district and the royalties therefore owed to district government.

As described by Mulondo, "The problem is in the determination of these royalties, they are not sharing information about how they arrive at the royalty figures, they are not explaining anything. We just see the money in the account with 'royalties' next to it."<sup>23</sup> According to Mulondo, there is also no indication for which reporting period the royalties align with so there is no way to know the time that the royalty payments cover.<sup>24</sup> This lack of detail does not bode well for ensuring accountability on the part of central government. According to Edward Eko, "We suspect that we are losing out on money that we should be owed because the money is not coming as expected."<sup>25</sup>

The district then faces another challenge in distributing the royalties to sub-counties based on the aggregate royalty payment. Since the royalty payments are not disaggregated by project, the district government has no way of knowing what proportion of the overall royalties can be attributed to which project. When there are multiple mining projects in multiple sub-counties, some with substantially more activity than others, this information is very important so as to accurately distribute the royalties based on the mining activities within

each sub-county.

As of now, Moroto district government officials reported that they distribute the royalty payments among all sub-counties with royalty generating projects along the lines of population. This mechanism, however, does nothing to account for the differences in mining activity and the extent to which actual activity in each sub-county has contributed to the overall royalty figure and therefore should be returned back to that sub-county proportionately.

Yet different sources provided conflicting information. District authorities in Moroto described a system in which the central government disperses 17% of royalty payments to the district government, which then distributes to sub-counties. However, according to records from the central government, 10% is to be distributed to districts while 7% is to be directly distributed to urban councils and sub-counties. This inconsistency highlights the lack of transparency and information sharing between central, district and council governments in the royalty sharing system. In the case of Moroto, the district and sub-county officials interviewed had conflicting understandings of the system. Sub-county officials believed they were to receive royalty dispersals directly from central government while district officials believed that the money was to come to the district and then be dispersed among sub-counties. This is a very important inconsistency that demonstrates the lack of basic common understanding between all parties that could result in the misallocation of large sums of money.

<sup>23</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Chief Administrative Officer, February 18, 2015, Moroto.

<sup>24</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Chief Administrative Officer, February 18, 2015, Moroto.

<sup>25</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Assistant Chief Administrative Officer, February 18, 2015, Moroto.

One core problem lies in the lack of agency provided to the local governments within the revenue sharing scheme. According to the CAO, "Mining in our laws is not decentralized, it is a central government activity so our powers are very limited to basics."<sup>26</sup> Neither district nor sub-county officials in Moroto have access to any data on mining output in the area. No one knows the volume of minerals that leave the district daily, weekly, monthly, or annually. One reason for this lack of information is that Moroto has no district weigh bridge. The closest weigh bridge is in a neighbouring district. This means that there is no way to measure, per tonnage, the volume of minerals being extracted and transported out of the district on a regular basis.

As a last resort, sub-counties have tried to task their sub-county clerks with counting daily the amount of trucks in and out to try to keep a count for the basis of a rough estimation of output. Still, when the district does receive royalty payments there is no way to validate the accuracy against output records. In the case of Tororo Cement, the Uganda Revenue Authority does have a weigh bridge in Tororo that weighs the tonnage of all trucks as they go to the Tororo facilities.

While this helps standardize the royalty calculation, these figures are only sent from URA to central government. The CAO expressed concern as he mentioned the practices of Hima Cement in Kasese, which weighs trucks after they are loaded at the mine site and at the factory site. According to the CAO the figures are then reconciled.<sup>27</sup> If such a system were set up in Moroto, all actors including the district government, central government and company would benefit.

Recently, the district government became privy to the royalty information they desired, provided by Tororo Cement directly. In a document given to the district by Tororo Cement, the company provided their monthly royalty payments related to mining activities in Moroto District to central government from January to October 2014 and from January to December 2014.

While this type of disclosure is hugely helpful to district government, unaudited voluntary self-disclosures by companies should certainly not be the only source of information available to local governments in validating their royalty shares. While there is no indication or reason to believe that Tororo has misrepresented their royalty payments, any such figures should ideally be audited by an independent third party accompanied by a full and comprehensive financial audit. However, because Moroto district government has no way of cross-checking this information with their own records, they simply accept it as fact.

Meanwhile, the affected communities that customarily own the surface rights to the land under the mining license for Tororo Cement in Tapac sub-county have never received their royalty allocation. According to the Mining Act, 2003, 3% of royalties derived from mining activities are to be shared directly with the owners or lawful occupiers of the land subject to mineral rights.<sup>28</sup> But, according to local authorities, the customary community landowners in Tapac sub-county, have never received this payment.<sup>29</sup>

<sup>26</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Chief Administrative Officer, February 18, 2015, Moroto.

<sup>27</sup>Transparency International Uganda interview with Mulondo Robert, Moroto Chief Administrative Officer, February 18, 2015, Moroto.

<sup>28</sup>See the Second Schedule of the Mining Act, 2003.

<sup>29</sup>Transparency International Uganda interview with Akol Michael, Katikekile LCIII Chairperson, February 17, 2015, Moroto.



A truck full of limestone to be transported to the Tororo Cement Factory

The Constitution and the Land Act both explicitly acknowledge customary ownership claims as legitimate in the eyes of the state.<sup>31</sup> However, according to a 2014 report by Human Rights Watch, this does not translate into practice due to this registration process.

“

Ugandan law upholds the rights of customary land owners, in principle. In practice, asserting those rights and securing evidence of that ownership has been nearly impossible for communities, putting them in jeopardy when private investment and development projects are pursued on their lands.<sup>32</sup>

”

According to the Land Act, the residents must form a community land association and register a customary ownership certificate for their claims to be legitimized, despite the incompatibility of this requirement with local land customs in Karamoja. According to a Human Rights Watch report regarding human rights abuses in Karamoja’s mining industry, “The 1998 Land Act lays out the procedure for how such certificates should be issued but the process is heavily contingent on the existence and functionality of the Area Land Committee and the ability of the applicant to follow complex procedures and pay required fees.”<sup>30</sup>

<sup>30</sup>“How can we survive here? The impact of mining on human rights in Karamoja, Uganda,” Human Rights Watch, 2014, p. 66, available from: [https://www.hrw.org/sites/default/files/reports/uganda0214\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/uganda0214_ForUpload.pdf)

<sup>31</sup>See the Constitution of Uganda, Article 237. Also see the Land Act Cap 227, 1998, Section 2.

<sup>32</sup>Ibid, p.65.

In their report, Human Rights Watch quoted one indigenous rights expert who asserted that “government is at best indifferent and at worst resistant to communal land claims. It is therefore virtually impossible for Karamojong communities to use the existing land registration system in Uganda to defend their lands and livelihoods.”<sup>33</sup> This causes great concern among Karamojong communities who fear that their land could be easily grabbed. Due to the preponderance of land grabbing in Uganda’s oil region, this concern is certainly valid.<sup>34</sup>

Thus, year after year the royalties due to these communities go uncollected and remain with central government. According to records, only one community in Moroto, in Katikékile sub-county has formed a legally recognizable entity in order to receive royalty payments. In 2013, the Katikékile Action for Development Land received a payment of 4.7 million Uganda shillings.<sup>35</sup> No other communities have followed suit. Such royalty payments could have hugely positive impacts on rural Karamajong communities.

The Karamoja region has the worst development indicators in the entire country.<sup>36</sup> In 2015, Karamoja was hit by another drought emergency that caused several deaths and left over 640,000 people in the region facing food shortages.<sup>37</sup> Due to the severity of the food crisis in the region, Moroto and Kaabong districts have been reclassified from a “stressed” state to a “crisis” state.<sup>38</sup> It is no doubt that a better mineral royalty distribution system that effectively delivered royalty payments to landowners would help provide these communities with much needed, and much deserved income.

<sup>33</sup>Ibid, p. 68.

<sup>34</sup>Twesigye B., & Brophy, K., “Up against giants: Oil-influenced land injustices in the Albertine Graben in Uganda,” Civic Response on Environment and Development, 2015, available from: [http://creduganda.org/uploads/up\\_against\\_giants.pdf](http://creduganda.org/uploads/up_against_giants.pdf).

<sup>35</sup>Human Rights Watch, 2014, p. 49.

<sup>36</sup>Okiror, S., “Uganda’s Karamoja faces drought emergency,” IRIN News, 2016, available from: <http://www.un.org/africarenewal/news/uganda%E2%80%99s-karamoja-faces-drought-emergency>

<sup>37</sup>Okiror, S., 2016.

<sup>38</sup>Okiror, S., 2016.

## Systemic Issues

Although local governments do justifiably complain of their lack of access to information, this is on the assumption that central government has this critical information in the first place. Upon further examination, it seems this may not be the case. Under the current system, the government's major source of information regarding mineral production is corporate or individual self-disclosure. Based on self-disclosure by the license holder, the government calculates royalties owed and any other relevant fees to be paid. These declarations may be supplemented by information calculated by URA at regional weigh bridges although as seen in the case above, this system does not adequately cover all mineral extraction in the country on a district-by-district basis.

Dependence on corporate self-disclosure is very risky considering the interest of the license holder to underreport their production so as to minimize the amount of royalties they owe to government. This way, they can maximize their profit. This system of self-policing depends on the unlikely assumption that license holders will go against their own bottom line interest in reporting their actual outputs. This assumption is often proven wrong.

In one case in 2011, the government recovered UGX 5.4 billion in unpaid royalties from one company based on information from an employee who informed the police that the company regularly under quoted their invoices in order to lower their royalty payments.<sup>39</sup> According to the 2014-2015 Annual Performance Report of the Government of Uganda, published by the Office of the Auditor General, another mining company was found to have failed to officially declare 3.5million tonnes of cassiterite that it had mined.<sup>40</sup> In order to prevent underreporting, regular audits should be integrated into the sector as well as an improved system of ongoing mine site inspections in order to cross check the disclosures provided.

According to the Auditor General's report, these mechanisms for oversight and verification are not currently in place. "The mines department of DGSM did not conduct adequate inspection and monitoring and thus could not track the performance of all the mineral licenses issued and enforce compliance of mining regulatory framework" in the 2014-2015 financial year.<sup>41</sup> According to the 2012-2013 Annual Performance Report by the Office of the Prime Minister, MEMD inspected 18 mine sites in that year which represents 2% of the 867 operational licenses at the time.<sup>42</sup>

<sup>39</sup>Vision Reporter, "Uganda losing billions to mineral smuggling," New Vision, 2014, available from: [http://www.newvision.co.ug/new\\_vision/news/1336948/uganda-losing-billions-mineral-smuggling](http://www.newvision.co.ug/new_vision/news/1336948/uganda-losing-billions-mineral-smuggling).

<sup>40</sup>Annual report of the Auditor General for the year ended 30th June 2015," Office of the Auditor General, 2016, available from: <http://www.oag.go.ug/wp-content/uploads/2016/01/Perfomance-Report-30th-June-2015.pdf>.

<sup>41</sup>Annual report of the Auditor General for the year ended 30th June 2015," 2016.

<sup>42</sup>"The government annual performance report 2012-2013," Vol. 1, Department of Monitoring and Evaluation Office of the Prime Minister, 2014, available from: <http://www.opm.go.ug/assets/files/GAPR/Vol.%20I%20-%20Government%20Annual%20Performance%20Report%20FY2012-2013.pdf>

One reason for this underperformance is that the Ministry of Energy and Mineral Development is currently underfunded. According to the Office of the Prime Minister, the Ministry only received 15% of its approved budget for the 2012-2013 financial year.<sup>43</sup> The annual budget performance report for the 2013-2014 financial year submitted by the Ministry of Finance confirmed that the Ministry again was only released 15% of its approved budget.<sup>44</sup>

However, the report does describe that the mineral exploration, development and production vote function received 95% of its approved budget.<sup>45</sup> But, it is unclear what activities are included under this vote. Considering that the entire ministry is undertaking both petroleum and mineral sector development activities under 15% of its approved budget, it is highly unlikely that mine inspections would be prioritized for funding amidst the competing demands of the Ministry.

According to an article in the *New Vision*, this underfunding is very apparent on the ground. As the article describes, there are three field inspectors stationed in Kabale, Mbarara, and Tororo. "Each inspector has more than five districts to monitor on a fuel budget of sh300,000 for every three months" due to the overall funding deficit in the department.<sup>46</sup>

Because of this lack of oversight and inspection, significant revenues have been lost. According to the Auditor General, the amount outstanding between mineral taxes/fees assessed versus those received by Government in the financial year 2014/2015 totalled UGX 500 billion.<sup>47</sup>

This problem is not only due to underreporting, but also to a misrepresentation of mineral outputs as samples. According to the *New Vision*, holders of exploration and prospecting licenses illegally mine, export and sell mineral deposits disguised as exploration "samples", often without paying any money to government.<sup>48</sup> Since inspection is so lacking, companies or individuals holding a prospecting or exploration licence can mine and sell materials without penalty even though such rights are only legally granted to the holder of a mining lease or a licenced minerals dealer.

According to the Mining Act, "all minerals obtained or mined in the course of prospecting, exploration, mining or mineral beneficiation shall be subject to the payment of royalties" unless, those minerals are samples.<sup>49</sup> "Samples of minerals for the purposes of assay, analysis or other examination, and in such quantities as shall be determined by the Commissioner, shall be exempted from the payment of any royalty."<sup>50</sup>

<sup>43</sup>"The government annual performance report 2012-2013," 2014.

<sup>44</sup>"Annual budget performance report FY 2013/14," Ministry of Finance, Planning and Economic Development, 2014, available from: <http://www.budget.go.ug/budget/sites/default/files/National%20Budget%20docs/ANNUAL%20BUDGET%20PERFORMANCE%20REPORT%20FY%202013-14.pdf>.

<sup>45</sup>Ibid, p. 30

<sup>46</sup>Vision Reporter, 2014.

<sup>47</sup>"Annual report of the Auditor General for the year ended 30th June 2015," 2016.

<sup>48</sup>Vision Reporter, 2014.

<sup>49</sup>See Mining Act 2003, Section 98(1) p.52.

<sup>50</sup>See Mining Act 2003, Section 98(3) p.53.

Therefore, if a company can export the outputs that they mine and transport as “samples” then the royalty fees normally tagged to the material are waived.

Since the Ministry does not have a high-functioning minerals testing laboratory, companies have legitimate excuse to send their tax-free samples for testing abroad.<sup>51</sup> While some rights holders do undertake testing abroad, the practice is also abused. According to the article, “a number of players are hiding under exploration licenses to smuggle minerals out of Uganda” for commercial sale.<sup>52</sup>

For instance, one mineral explorer brought 500kg of gold worth over UGX 400 million to Entebbe Airport last year disguised as samples and was permitted by uninformed airport staff to export the material out of the country free of charge.<sup>53</sup>

Using these tactics, the license holder fails to report any commercial production and instead mislabels the material as exploration samples when in reality, it is intended for sale. In these cases, the government loses out on due royalties. Based on 2014 statistics provided by the Ministry, the country has approximately 500 exploration licenses active. Therefore, this type of abuse could have significantly negative impacts on mining sector revenues if it is not mitigated.<sup>54</sup>

However, in the case of gold and other high-value minerals, the material is often not declared at all. Due to the ease with which one can conceal high-value minerals such as gold and diamonds, smuggling becomes an area of critical concern. Smuggling can begin directly at the mine site. For instance, according to sources in Mubende, once gold is extracted and processed at the mine site, miners can simply choose to put the material in a personal bag and carry it to Kampala in a local taxi.<sup>55</sup> Once in Kampala, there are a number of different buyers that it can be sold to before it is exported from the country to international gold markets. In the case of such private transactions and undeclared exports, the government receives no revenues at all on the sale and export of the resource.

According to one representative from Aviation Security the firm in charge of screening handheld luggage at Entebbe Airport, employees find someone with undeclared gold in their handheld luggage at least once a week, usually carrying anywhere from 1-5kg of gold.<sup>56</sup>

<sup>51</sup>Vision Reporter, 2014.

<sup>52</sup>Vision Reporter, 2014.

<sup>53</sup>Vision Reporter, 2014.

<sup>54</sup>“Statistical Abstract 2014”, Ministry of Energy and Mineral Development.

<sup>55</sup>Transparency International Uganda interview with Kinene Vincent Mubende District Natural Resource Officer, Mubende, 2015.

<sup>56</sup>Mthembu-Salter, G., “Baseline study four: Gold trading and export in Kampala, Uganda,” 9th ICGLR-OECD-UN GoE Forum on Responsible Mineral Supply Chains, 2015, available from: <http://www.oecd.org/daf/inv/mne/Gold-Baseline-Study-4.pdf>

According to the 2013 Annual Report from MEMD, only one company reported any gold production despite the numerous mining and location licenses active in gold mining.<sup>57</sup> Meanwhile, district officials in Mubende say that artisanal miners admit to mining an average of .5-1 kg gold per day.<sup>58</sup> Under the current system, huge amounts of gold are being mined, sold and exported from the country without ever being declared.

In cases where wolfram is transported in truckloads and district officials are told it is for sampling purposes, there is at least opportunity for officials to report suspicious activity to the Ministry for further investigation. Detecting high-value mineral smuggling is much more difficult. But, mitigating smuggling is very important in order to improve revenue collection including royalties and related fees owed to government as these minerals are higher in value and would therefore generate substantial royalties.

In 2015, the Ministry published a list of mineral license holders who had failed to pay their fees owed to government in an effort to enforce compliance. According to the list, there were 174 cases of default resulting in a total of 850 million shillings owed to the government.<sup>59</sup> The Ministry said that companies would be given three weeks to settle their accounts or risk losing their licenses and would be prohibited from travelling outside of the country.<sup>60</sup> Although, it is unclear whether these penalties were enforced.

<sup>57</sup>“Annual Report 2013”, Ministry of Energy and Mineral Development, 2014, p. 170, available from: [www.energyandminerals.go.ug/](http://www.energyandminerals.go.ug/).

<sup>58</sup>Transparency International Uganda interview with Kinene Vincent Mubende District Natural Resource Officer, Mubende, 2015.

<sup>59</sup>Nalubega, F., “Mining royalty feeds defaulters named, face travel bans,” Oil in Uganda, 2015, available from: <http://www.oilinuganda.org/features/economy/mining-royalty-fees-defaulters-named-face-travel-bans.html>

<sup>60</sup>Nalubega, F., 2015.

# Kabale: The Missing Money

## Near Complete Lack Of Royalty Sharing

Kabale district is part of Uganda's mineral-rich Kigezi region in the country's southwestern tip. The Kigezi region is endowed with a diverse body of mineral reserves including large amounts of iron ore. Geological surveys conducted by the Ministry have confirmed at least 200 million metric tonnes of iron ore deposits in the region.<sup>61</sup> Kabale is rich in minerals including iron ore, gold, lithium and tungsten.<sup>62</sup> There are multiple exploration and mining leases currently active in the district as well as a number of pending applications.

Until 2014, Kabale district had not received royalties from mining activities in the district for twenty years.<sup>63</sup> Last year, money was dispersed from the Ministry for the first time due to inquiries made by the Kabale Chief Finance Officer (CFO), Mujuni Julius. It was out of this effort by the district government that the money reached district coffers.

The Chief Administrative Officer (CAO) of Kabale, Masiko Albert, has been in the district for two years. Prior to that, he was in Buyukwe, a district that receives annual hydro royalties.<sup>64</sup> During his time as CAO Buyukwe, the district was receiving on average 200 million shillings per annum in hydro royalties. According to the CAO, this background inspired his interest in pursuing mining royalty dispersals for Kabale. "When I came here and saw the mineral prospectus I asked

where the royalties are?"<sup>65</sup> The Regional Inspector of Mines for Kigezi informed Masiko that his only option would be to go the Ministry headquarters in Entebbe himself and uncover the district data that would serve as the basis for making an aggregate royalty calculation for that time period.<sup>66</sup>

However, it seems that the Ministry may not have the information at hand, according to the Assistant Chief Administrative Officer (ACAO) Kasangaki Benard. Kasangaki recalls a meeting with officials from MEMD during a ministry visit to the district wherein ministry officials admitted that they do not know aggregate figures of average mineral quantities leaving the district.<sup>67</sup> According to the officials, the minimal funds allotted to the Ministry prohibit them from undertaking such detailed monitoring on the ground, information that was later reiterated in subsequent meetings with Ministry officials.

This complete lack of decentralized oversight in the mining sector prohibits accurate subnational monitoring of mineral extraction, transport, sale and export in a way that provides accurate district by district figures. As was the case in Moroto, the closest URA weigh bridge for trucks leaving Kabale is in Mbarara. According to the officials interviewed, district officials have no communication with URA in a way that would provide updated feedback on minerals leaving the district.<sup>68</sup>

<sup>61</sup>"200m metric tons of iron ore discovered in Kigezi, The Observer, 2015, available from: <http://allafrica.com/stories/201510180279.html>.

<sup>62</sup>"What minerals exist in Uganda?" Uganda Chamber of Mines and Petroleum, available from: <http://www.ucmp.org/details?imgt=news&cid=30&name=%20WHAT%20MINERALS%20EXIST%20IN%20UGANDA?&typ=news>.

<sup>63</sup>Transparency International Uganda interview with Albert Masiko Kabale Chief Administrative Officer, 6 October 2015, Kabale.

<sup>64</sup>Transparency International Uganda interview with Albert Masiko Kabale Chief Administrative Officer, 6 October 2015, Kabale.

<sup>65</sup>Transparency International Uganda interview with Albert Masiko Kabale Chief Administrative Officer, 6 October 2015, Kabale.

<sup>66</sup>Transparency International Uganda interview with Albert Masiko Kabale Chief Administrative Officer, 6 October 2015, Kabale.

<sup>67</sup>Transparency International Uganda interview with Bernard Kasangaki Kabale Assistance Chief Administrative Officer, 6 October 2015, Kabale.

<sup>68</sup>Transparency International Uganda interview with Bernard Kasangaki Kabale Assistance Chief Administrative Officer, 6 October 2015, Kabale.

Therefore, district officials have no way of knowing how much mineral material is leaving Kabale.

According to the District CFO, the CFO for the Town Council of Kabale Municipality had informed him that there was money in the Ministry of Energy coffers due to the district.<sup>69</sup> According to the CFO for the Town Council of Kabale, Titus Byarushaya, he had received a written request from the Ministry asking the municipality to submit bank account details so that they could receive their royalties due from mining.<sup>70</sup> After receiving this request, Byarushaya met with one of the chief accountants at the Ministry to find out more information. This official urged Byarushaya to inform other sub-county and district leaders in Kabale that there is money lying idle in Kampala and that they should follow it up.<sup>71</sup> After his meeting, Byarushaya got in contact with local authorities to spread the information.

The District CFO called to inquire with the Ministry and was affirmed that there was money from the 2013-2014 and 2014-2015 financial years for Kabale district. Mujuni said the money came one week after his phone call with the Ministry. The Ministry dispersed 29 million, 14 million for each financial year and an additional one million.<sup>72</sup>

According to Mujuni, these figures were not accompanied by any explanation or further information. "We don't know the basis that they used to arrive at these figures. The data they used was insufficient, it was guess work. They just told us that for

two financial years, it was 29 million. We said now, where is the data, we want to know how you arrived at this, but we were not told."<sup>73</sup> Mujuni only got the information of the financial years because he explicitly asked for the break down.

Because the district had never received royalties, this type of dispersal was not built into the annual budget. At the local level, the district normally collects small local license fees paid by individuals, especially those working under a prospecting license.<sup>74</sup> Thus, the district had budgeted for three million shillings in local mining revenues into the budget. With the last dispersals, the district local council has begun to start trying to budget for a token amount of royalties, but according to the Assistant CAO, it is difficult with so much uncertainty. "If you don't know how much royalty you are going to get, it is difficult to budget so we will just try to guess and put a placeholder figure."<sup>75</sup>

While district officials were happy to have received the royalties, they admit that the 14 million shilling per annum dispersal did seem low compared to their perceptions of the licensed mineral activities occurring in the district.<sup>76</sup> Yet, the officials also admitted that they do not have a strong gauge on what the figure should be considering that none of the officials interviewed knew exactly how many active mining licenses there were in the district or the companies currently involved in extraction. None of the officials interviewed had been to a mine site in the past year.

<sup>69</sup>Transparency International Uganda interview with Julius Mujuni Kabale Chief Financial Officer, 6 October 2015, Kabale.

<sup>70</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>71</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>72</sup>Transparency International Uganda interview with Julius Mujuni Kabale Chief Financial Officer, 6 October 2015, Kabale.

<sup>73</sup>Transparency International Uganda interview with Julius Mujuni Kabale Chief Financial Officer, 6 October 2015, Kabale.

<sup>74</sup>Transparency International Uganda interview with Albert Masiko Kabale Chief Administrative Officer, 6 October 2015, Kabale.

<sup>75</sup>Transparency International Uganda interview with Bernard Kasangaki Kabale Assistance Chief Administrative Officer, 6 October 2015, Kabale.

<sup>76</sup>Transparency International Uganda interview with Alex Twebaze, Kabale District Planner 6 October 2015, Kabale.

Apparently, the only person with updated and detailed information regarding mining activities in the district is the Regional Inspector of Mines, an official from the Ministry. Unfortunately, district officials reported that he is rarely in Kabale due to his overlapping obligations in other districts as the regional inspector for the Kigezi region. According to the Kabale District Natural Resource Officer Adios Kyumukama, the office for the mines department at district headquarters is almost always locked.<sup>77</sup> Thus, the district government currently has no way to know how much money is being generated from district mining activity, leaving all of the information with the Ministry. As the Kabale LCV Local Chairperson Patrick Besigye phrased it, "Whatever they [Ministry] sends is their wish."<sup>78</sup>

It is noteworthy that Kabale Municipal Council received 20 million for the 2013-14 and 2014-15 financial years compared to the 29 million dispersed to the district for that same time period. According to Byarushaya, the Kabale municipal council was treated as a sub-county in this case and was given a 7% royalty cut, dispersed directly from the Ministry.<sup>79</sup> Byarushaya added that in all years prior, the municipality had never received anything close to this number, only receiving very little or no dispersal at all.<sup>80</sup>

However, according to the municipal and district officials, none of the active mining leases touch Kabale municipality<sup>81</sup>.

The only mining activity within the locality is small-scale iron ore extraction consisting of individual miners that mine iron ore and sell it to buyers.<sup>82</sup> Therefore, it is unclear what mining activity those royalty payments sent to Kabale municipality pertain to.

Apart from Kabale Municipality and Rubanda Sub-County that received a single one-off payment of four million shillings in mining royalties, sub-counties in the district do not receive mining royalty payments.<sup>83</sup> However, according to the Ministry, this money is being held in trust for the various jurisdictions. From his meetings with Ministry accountants, Kabale CFO Titus Byarushesha learned that according to the Ministry, the onus is fully on the districts and sub-counties to receive these payments.<sup>84</sup>

Byarushesha was told to instruct sub-counties in Kabale if they are interested in receiving royalty money, they must go to Entebbe and do the necessary research at the Ministry to uncover it. As he explained, "The Ministry made it clear that it is on our onus to gather the data and claim according to that data."<sup>85</sup> While this may be understandable considering the meagre resources allotted the Ministry, it is not a realistic demand. Most CAOS, CFOs and other lead district officials simply do not have the time or resources to make such a trip, thus the money is not recovered.

<sup>77</sup>Transparency International Uganda interview with Adios Kyumukama Kabale District Natural Resources Officer, 6 October 2015, Kabale.

<sup>78</sup>Transparency International Uganda interview with Patrick Besigye LCV Chairperson Kabale, 6 October 2015, Kabale.

<sup>79</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>80</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>81</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>82</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>83</sup>Transparency International Uganda interview with Alex Twebaze, Kabale District Planner 6 October 2015, Kabale.

<sup>84</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.

<sup>85</sup>Transparency International Uganda interview with Titus Byarushaya Kabale Municipal Council Chief Financial Officer, 7 October 2015, Kabale.



An artisanal iron-ore mine site in Hamurwa town council in Kabale district

According to the Kabale District Planner Alex Twebaze, placing the burden on local governments is unfair. “We are like beggars, begging for our own money,” said Twebaze.<sup>86</sup>

Kabale Principle Assistant Secretary James Mugisha contrasted the difficulties the district and sub-counties experience with the mineral royalty system with the successes of the Uganda Wildlife Authority (UWA) national park subnational tourism

payment system.<sup>87</sup> As Mugisha explained, “In contrast that one is very elaborate, there is a system and a process that is very clear and it benefits communities surrounding the park.”<sup>88</sup> According to Mugisha, local parishes neighbouring Bwindi National Park receive regular annual payments. Last year, parishes in Kabale received a total of 149 million shillings.<sup>89</sup> As Mugisha explained, central government pays the money to the district where 5% is taken out for monitoring. The rest of

<sup>86</sup>Transparency International Uganda interview with Alex Twebaze, Kabale District Planner 6 October 2015, Kabale.

<sup>87</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>88</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>89</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

the money is sent to the sub-county where a subsequent 5% is taken out for monitoring, then the balance goes directly to the communities to fund community projects.<sup>90</sup>

The citizens engage in a community-based planning approach where they develop and submit a work plan to UWA for approval. Then, the money is spent based on the projects outlined in the work plan.<sup>91</sup> According to Edison Twinomugisha, the Sub-County Chief of Muko, the process works quite well.<sup>92</sup> Twinomugisha explained that UWA is accessible and easy to work with and that community members are generally happy with the system.<sup>93</sup>

While officials believed most of the mining to be happening under company licenses, there is also a significant amount of unlicensed mining taking place in the district. For instance, small-scale iron ore extraction takes place at multiple sites. This type of extraction is typically undertaken by informal groups of men working without a license. Therefore, neither central nor local government can collect any revenues from this activity since the Ministry currently has no system in place to regulate mining at such a small-scale. In one case, officials in Hamurwa Town Council explained that the local government collects a small transport tax on the trucks that collect the iron ore at the small-scale iron ore mining sites in the area, but

otherwise the activity remains unregulated.<sup>94</sup>

Due to a lack of effective oversight both at the local and central level, district officials were very worried about the frequency of licence holder underreporting. Almost all of the local officials interviewed expressed serious concern that not all of the minerals extracted in the district were being accurately reported. Local officials expressed certainty that in at least one case a company with an exploration license is undertaking commercial mining activities.<sup>95</sup> Apparently, the company transports truckloads of minerals out of the district everyday for purported "bulk sampling." The local officials are very suspicious of such activity but since they have no relevant powers in the given circumstance, they do nothing. As the District CFO explained, "The companies completely bypass local government."<sup>97</sup>

District officials noted that most of the minerals in the district were yet to be extracted, noting that most of the confirmed reserves of iron ore, wolfram and gold were still in the ground. Thus, district officials are very eager to improve the operations of the subnational royalty sharing system as well as related oversight and inspection mechanisms so as to better regulate mining in the district. With improvements, the Kabale district government will realize the revenues from mineral extraction

<sup>90</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>91</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>92</sup>Transparency International Uganda interview with Edison Twinomugisha Muko Sub-County Chief, 7 October 2015, Kabale.

<sup>93</sup>Transparency International Uganda interview with Edison Twinomugisha Muko Sub-County Chief, 7 October 2015, Kabale.

<sup>94</sup>Transparency International Uganda interview with Ariho Mikorasi Hamura Town Council Clerk, 7 October 2015, Kabale.

<sup>95</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>96</sup>Transparency International Uganda interview with James Mugisha Principle Assistant Secretary, 7 October 2015, Kabale.

<sup>97</sup>Transparency International Uganda interview with Julius Mujuni Kabale Chief Financial Officer, 6 October 2015, Kabale.

## Recommendations & Conclusion

As these case studies demonstrate, there are many operational weaknesses in Uganda's mineral royalty subnational distribution scheme. These weaknesses impair the system so that the scheme can not fulfil its basic mandate to compensate landowners and communities in areas of mineral extraction.

Based on preliminary research, it seems that the subnational royalty sharing system is failing to meet any of the UNDP and World Bank principles for fiscal decentralization outlined above. The royalty dispersals to local governments and landowners are both unpredictable and unreliable. Many local governments and landowners do not receive money they are owed. In the cases where money is dispersed, not enough information is shared so that the local government fully understands the figure and can verify its accuracy. Information is highly centralized and concentrated almost entirely in the Ministry. District officials in Kabale and Moroto are very uninformed, to the point where they do not understand the correct protocols for basic royalty distribution and dispersal between central government, district government, and sub-county governments.

In order to improve the subnational mineral royalty sharing system, based on the cases studied in this report, government and relevant stakeholders should undertake the following actions:

- ▶ The Ministry of Energy and Mineral Development should establish a system to share information with the districts regarding total royalty payments by companies into the central royalties account on a quarterly basis. Whenever mining royalties are

dispersed there should be an accompanying breakdown provided that provides company-by-company, project-by-project disaggregation of payments.

- ▶ MEMD should establish a dispersal schedule and share this schedule with district governments and landowners so that royalties are dispersed regularly and predictably. Any deviations to this schedule should be communicated promptly to the beneficiaries.

- ▶ MEMD should host all relevant local government officials in districts and sub-counties where mineral activity is currently taking place or may soon take place for a training so that officials in all beneficiary districts and sub-counties understand the system clearly and can implement the same procedures (e.g. CFO, district financial officers, CAO, sub-county chiefs and clerks etc.)

- ▶ Communication channels between districts and MEMD should be improved so that district officials can effectively communicate with Ministry officials regarding pertinent issues such as suspicious activity, royalty payments, etc.

- ▶ The Ministry should consider placing a full time MEMD official in districts with especially high levels of mineral activity in order to enable better monitoring and oversight of activities.

▶ The Ministry of Lands and Ministry of Energy and Minerals should come together in a joint effort to assist communities living on mineral rich land in registering their ownership so they can retrieve due royalty payments and so that their tenure is secure. Civil society organisations should also work with government to assist in this joint initiative. This should be completed as a matter of priority. The government should consider halting further mineral licensing until this process has been completed.

▶ Central government releases for approved budget funds to MEMD must be improved so that the Ministry receives all of the funds it has been approved to receive. Funds should be particularly dedicated to fully capacitating the inspections arm of DGSM so that the Ministry can expand oversight and monitoring capacity on the ground in an effort to recover a greater percentage of due revenues. This money should be used to better capacitate regional minerals inspectors.

▶ During the governmental review of the Mining Act and regulations, Section 98(3) of the Mining Act should be amended so that the mineral “samples” exempt from royalty payment may not be exported without an export permit granted by the Ministry, as is the practice with non-exempted minerals.

Licences should also provide detail as to the permissible maximum quantities that may be

extracted, transported and exported as samples as quantification is currently vague and left to the discretion of the Commissioner.<sup>98</sup>

▶ The Mining Act should also be amended to better recognize artisanal and small-scale miners and introduce regulations for their activities that effectively deter illegal mining and allow the government to collect revenue and royalties from ASM activity.

▶ URA and MEMD should train customs officers at high-risk border checkpoints including Entebbe Airport so that officials understand procedures set out in the law in order to better detect and prevent smuggling. Also train Aviation Security staff regarding procedures to prevent minerals smuggling in carry on luggage.

▶ MEMD should work with URA and Aviation Security management to enforce and monitor integrity mechanisms and systems to detect internal corruption or malpractice by customs officers or security personnel that could compromise enforcement of the law.

In addition to these recommended changes, the success of the subnational royalty sharing scheme will also depend on certain advances made at the central level in regards to extractive industry revenues. There is currently no system to ensure that the mineral royalties are spent equitably and

<sup>98</sup>For a full review of the Mining Act with a comprehensive list of recommended amendments, please see the Civil Society Submission on the Mining Act 2003.

efficiently at the central or local level. While the central government has recognized the uniqueness of oil revenues and the enhanced need to manage oil returns to benefit all citizens, no such acknowledgment has been made in regards to mineral revenues.

However, both oil and minerals are treated as nationally endowed resources in Article 244 of the Constitution. Therefore, government is to manage these resources on behalf of the citizens.<sup>99</sup> For this reason, government is expected to be particularly transparent about the use of oil and mineral revenues. Ideally, government should publish an earmarked expenditure and investment plan for both oil and minerals revenue so that citizens understand exactly how these returns will be spent.

The Ugandan government has stated that it will use oil revenues for infrastructure and development projects, but this type of statement is vague and must be expounded upon so that citizens can effectively track the use of oil money.<sup>100</sup> The same must be done for mineral revenues as well. On principle, the application of such fiscal rules and policy earmarks should also apply to local governments in receipt of oil and mineral royalties. That way, the same rules for transparency and protocols for policy earmarking will apply equally throughout the fiscal decentralization scheme.

This transparency will also help reduce the chances that rents generated from extractive industries will be misused—accrued and used by politicians for short-term political gains,

neglecting long-term national economic interests.<sup>101</sup>

Botswana has utilized multi-year national development plans that have worked in the country's best interest to responsibly harness the rents earned from mineral extraction. These plans must be approved by Parliament and contain an embedded rule in the decision making process that all mineral revenues must be undertaken as investment expenditures.<sup>102</sup> This is but one example of how strong institutions can ensure that citizens as a whole benefit from extractive industries.

If Uganda wishes to achieve its Vision 2040 goals using extractive industry revenues, it must first take necessary steps towards ensuring full contract transparency. Contracts negotiated in private are intended to be kept secret and leave the general public in the dark. As an organization, Transparency International is fundamentally opposed to this type of negotiation and strongly encourages the full disclosure of all negotiation and licensing materials. Mineral licences as well as oil production sharing agreements should be made publicly available and accessible, especially to affected communities and local governments.

Contract transparency would also help provide more transparency in the royalty sharing system. Currently, due to lack of contract transparency, there is no protocol to check the total value of the royalties against the percentage paid to local governments and therefore no way to validate that the royalty calculation and the amount dispersed reflects the true total amount of royalties collected. This is a very important component that would help provide more accountability. If

<sup>99</sup>See the Constitution of Uganda, Article 244.

<sup>100</sup>See the Public Finance Management Act, 2015.

<sup>101</sup>Stevens, P., & Dietsche E., 'Resource Curse: An analysis of causes, experiences and possible ways forward', Energy Policy, Vol. 36, 2008, p. 59, available from: <http://www.resourcegovernance.org/sites/default/files/Stevens%20&%20Dietsch%20-%20Resource%20Curse%20-%20Causes,%20Exp%20&%20Way%20Forward.pdf>

<sup>102</sup>Ibid, p. 60.

local governments were aware of the production and royalty rates agreed upon in the contracts, they could monitor activities and cross-check the validity of their royalty dispersals. This would allow for greater oversight in ensuring that royalties are adequately collected and shared amongst the affected regions.

The first and most effective step to increase extractive industry transparency in Uganda would be to sign onto the Extractive Industries Transparency Initiative (EITI). The EITI mandates disclosure and reporting of information in order to crack the 'black box' of resource extraction and make the process much more transparent and open to citizens, who, in most countries, are the true owners of the natural resource endowment itself. Not only does the initiative mandate government and company reporting, it also incidentally mandates the inclusion of civil society and public actors into the extractives sector.

The EITI requirements help to create a multi-stakeholder governed extractive sector that is marked by the principles of democratic governance including widespread participation, access to information, independent oversight, and the right to dissent. The EITI mandate, including the compulsory reporting of revenue information and the engagement of multiple stakeholders outside of the government-company dualism, signals an important transformation in the extractives sectors that has not generally been practiced in the past.<sup>103</sup> Once such transparency mechanisms are properly

<sup>103</sup>Rogan, D., (ed.), "The EITI Standard 2016," The EITI International Secretariat, 2016, available from: [https://eiti.org/files/english\\_eiti\\_standard\\_0.pdf](https://eiti.org/files/english_eiti_standard_0.pdf).

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