Mining Act of Uganda 2003; Proposed Amendments Developed by a Civil Society Working Group[1]

[1] This submission was developed by a civil society working group led by Transparency International Uganda including organisations whose logos are displayed above. The submission was developed in part based on generous pro-bono legal analysis provided by the Columbia Center on Sustainable Investment.

Section	Title	Original	Proposed Change	Justification
GOVERNANCE, REGULATION AND INSTITUTIONAL STRENGTHENING				
Section 2	Interpretation	"Artisanal mining operations" is not defined.	Define "artisanal mining operations" by providing identifiers and a distinguishing threshold between artisanal mining operations (below threshold) and small-scale mining operations (above threshold.)	The mining sector encompasses a diverse set of activities that must be categorized appropriately and distinguished from one other so that they are each treated separately under the law. The law should identify and introduce specific regulatory frameworks for (1) artisanal mining operations (2) small-scale mining operations, (3) large-scale or industrial mining operations.[2]
Section 2	Interpretation	"Environmental impact assessment has the meaning assigned to it under the National Environment Statute, 1995 (Statute No. 4 of 1995);"	Redefine "environmental impact assessment" according to the definition in the new National Environment Bill, when it is passed into law.	The National Environment Act referenced is currently being revised; the new mining law should reference the most recent version of the Act once it is

[2] For examples of definitions for "artisanal", "small-scale", and "large-scale" mining operations, see the Sierra Leone Mines and Minerals Act, 2009 available from: http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf. This act also provides separate sections guiding the regulation of holders of artisanal mining licences, small-scale mining licences, and large-scale mining licences separately. An alternative example of this type of division can be found in Divisions 2 and 3 of the Zambia Mines and Minerals Development Act, 2015 where separate provisions are made for artisanal, small-scale exploration, small-scale mining, large-scale exploration, and large-scale mining licences. Available from: http://www.sierra-leone.org/Laws/2009-12.pdf

			Throughout the act, revise reference to National Environment Bill, which when passed into law will significantly affect environmental provisions of this Act.	finalized.
Section 2	Interpretation	"Small-scale operations' means prospecting or mining operations, which does not involve expenditure in excess of five hundred currency points or the use of specialized technology."	Define "small-scale mining operations" in relation to thresholds distinguishing small-scale mining operations from artisanal mining operations (below threshold) and large-scale mining operations (above). A clause should be added to give the minister powers to set the threshold for small scale and artisan mining to cater for inflationary changes in the feature.	In order to clearly define the different types of mining operations and distinguish them from one another, certain identifiers and thresholds between the three categories should be provided.
Section 2	Interpretation	"Large-scale mining operations" is not defined.	Define "large-scale mining operations" in relation to small-scale mining operations by placing a threshold between the two categories and describing identifying characteristics of large-scale mining operations.	Same as above.
General	Compliance with environmental principles	There is no preliminary section outlining adherence to social and environmental principles.	Insert a preliminary section between sections 2 and 3 that outlines overarching environmental and social principles to be followed in all aspects of the act similar to Section 3 *"Compliance with environmental principles"* of the Petroleum (Exploration Development and Production) Act	Section 3 of the Petroleum (EDP) Act establishes the importance of compliance with environmental principles. The Mining Act should improve upon Section 3 of the Upstream Act by establishing the

			2013.	foremost importance of compliance with environmental *and social principles* in all mineral activities.
Section 4(3)	Acquisition of a mineral right	The fines for undertaking unlawful mining activity shall not exceed twenty-five currency points in the case of an individual and fifty currency points in the case of a body corporate.	Throughout the act, make all penalties for non-compliance more severe so as to effectively deter unlawful behaviour. Specifically, penalties should be made more severe in Sections; 4(3), 15, 17, 32, 59, 88, 94, 107, 111, 115, 116, 117 and 120. Special attention should be given to Part XI- Protection of the Environment.	The current penalties for offenses throughout the act are not strong enough and do not provide necessary deterrence. The penalties in Part XI are especially minimal and will not serve to deter important and potentially irreversible offences.
Section 4(4)(b)	Acquisition of a mineral right	Where a person is convicted of an offense and the court orders the forfeiture of minerals unlawfully obtained or their value, "any minerals or their value so forfeited shall become the property of the Government and shall be disposed of as the Commissioner may direct."	Clearly outline protocols for the disposal of minerals seized in such court proceedings in the Regulations to the Act. Also insert text so that the disposal of minerals or their value is in line with Article 244 of the Constitution: *"Any minerals or their value so forfeited shall become the property of the Government* ***held on behalf of the citizens of Uganda*** *and shall be disposed of* ***to benefit the citizens of Uganda*** *in a manner…"*	The discretion for the disposal of seized assets should not be left with the Commissioner. Instead, the procedures to be followed should be explicitly outlined in the regulations in the law to prevent potential corruption or misuse of public goods. Minerals or their value disposed of during court processes are still property of the Republic of Uganda

				and should be treated as such.
Section 4(5)	Acquisition of a mineral right	"Notwithstanding the provisions of subsection (2) of this section, the Commissioner may authorize any person to undertake exploration or prospecting operations without a mineral right in the course of scientific investigations into the geological or mineral resources of Uganda, subject to such conditions as the Commissioner may determine."	Change to, "[…] the Commissioner may, ***with approval from the Uganda National Council for Science and Technology*** authorize any person to undertake exploration or prospecting operations without a mineral right […]" Add to the end of the sub-section, *"The findings of such scientific research shall be made available to the Geological Survey and Mines Department no later than 30 days after the termination of research."*	The circumstances under which an individual may undertake exploration or prospecting without first obtaining a mineral right should be strictly governed and monitored so that the privilege is not abused. Therefore, the person seeking authorization should also seek approval from the Uganda National Council for Science and Technology when such an authorization is being granted. Furthermore, a report of the scientific investigations undertaken should be submitted to Government to ensure that the intended purpose was achieved.
Section 6(3)	Transfer of mineral right	Currently, no restrictions regarding the timing of a transfer.	Amend the section so that a rights holder must hold a licence or lease for at least one year before they can transfer a licence or lease.	This will help provide protection against companies and individuals interested in receiving rights with the intention of selling them for profit

				rather than undertaking mining activity.
Section 6(3)	Transfer of mineral right	Currently, an application for the approval of the transfer of a mineral right shall contain information as may be prescribed together with information as the Commissioner may require.	Amend the section so that where a company wishes to transfer rights, the new company must not only meet the requirements of Section 5 but should also submit details of their technical and financial standing, work plans and beneficial ownership as is the case for new applications. As detailed below, the publicly available cadastre and register should be updated with the details of the new company that the right has been transferred to no later than 30 days after the approval of the transfer.	There are currently insufficient checks and requirements in relation to new transferees that could provide a loophole for abuse.
Section 6(4)	Transfer of mineral right	Unclear drafting	Amend as follows: *"under joint or common control with, the holder of the mineral right,* ***and no other provision under this Act prevents such transferee from holding the mineral right sought to be transferred."***	The current wording is unclear and requires further clarification.
Section 6	Transfer of mineral right	Better establish procedural requirements for approval of a transfer of mineral rights by the Commissioner	This section should outline a more elaborate set of procedures to be followed in seeking authorization from the Ministry for a transfer of mineral rights or share of such rights and any relevant restrictions on such transfer	While Clauses 15 and 48 of the regulations mention applications for consent in the transfer of shares in an exploration or mining lease, the Act does not adequately

			of shares. Section 6(2) should be expanded to include: *"a transfer, **cession, assignment, novation, or other disposal of**" a "right or a **share or an interest in that right, or a [direct or indirect] controlling interest in the licence holder company."***	state the process for seeking authorization and any restrictions therein.[3] Requiring authorization for a transfer of shares is important as it is the Ministry's right to approve or disapprove of any individual applying to hold a mineral right, as is the case with new applicants. Under this logic, changes of control in the licence-holding company should be treated as an indirect transfer and subject to the Commissioner's approval.
Section 7(1)	Form and content of mineral right	The power to grant mineral rights is held exclusively by the Commissioner.	The power to grant mineral rights is held exclusively by the Commissioner with very little oversight. This discretion must be checked by introducing an independent oversight body such as a "Minerals Authority" tasked with reviewing bids, approving applications and recommending	Similar to the Petroleum Authority established under the Petroleum (EDP) Act, 2013, an independent body should be created to oversee the Commissioner, Inspector of Mines or other public officers in the

[3] For an example of such protocols established, see Section 11 "Transferability and encumbrance of prospecting rights and mining rights," of South Africa's Mineral and Petroleum Resources Development Act 2002, available from: https://www.capetown.gov.za/en/EnvironmentalResourceManagement/publications/Documents/Minerals-and-Petroleum-Resources-Development-Act-28-of-2002.pdf

			actions to the Commissioner in regards to the granting, renewing, and revoking of mineral rights as well as other major decisions as specified in Part II of the Act on Administration. Regarding mineral rights, the Minerals Authority should review and approve applications and forward them to the Minister for licensing based on a prescribed procedure for the evaluation of bid information. (See "Procedures for evaluation of bids" section below) Amend as follows: *"A mineral right shall be granted by the Commissioner* ***upon approval of the application by the Mineral Authority*** *as provided for in this Act and shall be in such form as may be prescribed."* See also Sections 20(1), 27(1), 36(1), and 42(1), 43(4), 44(1), 57, 59, 70, 73, 74, 116, and 117. For further instruction regarding the	exercise of their duties so that promotion duties are separated from monitoring and enforcement duties. The Commissioner is currently allowed to make a number of critical decisions, particularly related to the granting, renewing and revoking of rights without consulting any body or committee. This means that the Commissioner has direct and unfettered discretionary control over the sector. Other countries like Zambia and Ghana have introduced oversight bodies to provide additional scrutiny during the bidding and allocation processes.[4]

[4] For more information, see Section 6 of the Mines and Minerals Development Act of Zambia, 2015. Available from: http://www.parliament.gov.zm/sites/default/files/documents/acts/The%20Mines%20and%20Minerals%20Act,%202015.pdf. Also see Section 100 of the Minerals and Mining Act of Ghana 2006. Available from: http://faolex.fao.org/docs/pdf/gha85046.pdf.

			establishment of the Mineral Authority see Part II-Administration below.	
General	Allocation of mineral rights	No protocols outlined to ensure that mineral rights will be allocated through a prescribed and standardized process that ensures fairness and objectivity, and limits the possibility of corruption.	Between Sections 8 and 9, insert a new section that outlines the bidding processes to be followed in the allocation of rights for the different types of licences. The Ministry should consider establishing a first come first serve system where participants are only eligible for bidding on exploration, prospecting and mining leases if they meet a publicly available, predetermined list of financial and technical qualifications provided in the regulations to the Act. Alternatively, the government may consider establishing two bidding systems. (1) Competitive bidding for areas where the value of geological reserves are well-known and adequate documentation exists and (2) First come first serve bidding as described above for areas that are unknown or for which no data has been collected.	In order to prevent practices of poor and/or corrupt allocation in the mining sector, licences must be granted strictly to qualified and capable applicants through transparent and standardized processes with no opportunity for political interference. The Ministry should establish an allocation system based in strong pre-qualifications for bidders and stringent criteria for bid evaluation. Based on the current status of the mining sector, the government may consider a system incorporating competitive bidding in some cases and first come first serve in others. Competitive auction systems are recommended as the optimal system for

				transparent rights allocation in the extractive industries.[5] The government should consider utilizing this system for areas where geological surveys have been undertaken and adequate documentation exists. However, the same principles of fairness and objectivity can be incorporated into a strong first come first serve bidding process as well.
General	Procedures for public announcement regarding opening of an area for bidding	The act does not include any provision requiring the government to publicly announce the opening of a new area for bidding.	Include a section akin to Sections 54 and 55 of the Upstream Act, that establishes a process for public notice of proposed mining activities in a given area and invitations for objections by affected parties prior to the granting of the right. However, unlike the Upstream Act, assign an independent tribunal or committee to first hear objections	The act must establish a process for public announcement so that affected parties may voice objections before the mineral right has been granted. An independent tribunal, rather than the Minister, should receive these

[5] According to the Precept 3 of the Natural Resource Charter, "Well-designed auctions are preferable since competitive bidding should secure greater value for the country and auctions can also help overcome information deficits that the government may have relative to international companies. Auctions are also inherently more transparent than direct negotiations, helping to mitigate the risk of inappropriate companies or individual receiving exploration and extraction rights." For more information see the Natural Resource Charter, Precept 3 p. 14, available from: http://www.resourcegovernance.org/sites/default/files/NRCJ1193_natural_resource_charter_19.6.14.pdf

			rather than the Minister. After reviewing objections, the tribunal will write a judgement shared with the parties along with a detailed recommendation submitted to the Minister. If the Minister refuses to act according to the recommendation or a party takes issue with the recommendations, the aggrieved parties may appeal the decision of the committee through the court system.	objections to ensure an objective and autonomous review of the case.[6] However, this grievance mechanism should not serve to obstruct the right of an aggrieved party to seek remedy in the courts.
General	Procedures for evaluation of bids	There is currently no section describing the process of bid evaluation.	Insert a section that explains the bid evaluation process. The bid evaluation process should include the following steps: 1. The Commissioner shall forward applications to the Minerals Authority. 2. The Authority shall technically evaluate the bids based on a set of objective criteria outlined in the Regulations or by other statutory instrument. 3. The Authority shall, only in cases where a bid has been	The bid evaluation process must be transparent and predictable to ensure that standard procedures are followed in all cases to limit opportunities for corruption and political interference. Basing the bid evaluation process in a pre-determined set of objective criteria will ensure that rights are allocated to only the most qualified bidders based on their financial and technical capabilities.

[6] See Section 10, "Consultation with interested and affected parties" of South Africa's Mineral and Petroleum Development Act 28 of 2002 which sets out a procedure of notification within 14 days after an application has been lodged. Then, objections are referred to a 'Regional Mining Development and Environmental Committee' that considers the objections and advises the Minister thereon.

			approved based on satisfaction of the necessary criteria, recommend to the Commissioner that the bidder be granted a mineral right. The Commissioner shall grant a licence to the holder with the best proposed programme in accordance with the recommendations of the Minerals Authority.	
Section 8	Types of mineral right	Specifies different licences including a prospecting licence, exploration licence, retention licence, mining lease, or location licence.	Divide location license into two levels; artisanal location licence and small-scale location licence.	These two types of mining activity are very different and should not be combined in order to specify nuanced regulatory frameworks for each.
Section 10	Further information in support of application	The power to request further information or make necessary consultations or investigations regarding an application lies exclusively with the Commissioner.	Amend as follows: *"The Commissioner* ***and/or Mineral Authority*** *may, for the purpose of, and prior to, making a decision whether or not to grant an application for a mineral right […]"* 4. In sub-section (a) and (b) include *"reasonably considers necessary."*	If the Mineral Authority is to assist the Commissioner in reviewing applications, it should have the power to seek more information while carrying out this process. However, in order to prevent this power from being used to make unreasonable demands of an applicant that the Commissioner or Authority

				wish to block out of a mineral right, it should only be exercised reasonably.
Part II	Administration	Currently, there is no explanation regarding structure, hierarchy, and delegation of duties within the DGSM.	The 'Administration' part should include sections outlining all of the powers and roles of (1) The Commissioners (2) The Minister (3) The Inspector of Mines (4) The Mineral Authority, and any necessary additional information indicating the power structure and/or hierarchy between these offices. Powers and duties of the "Mineral Authority" should be outlined here including; monitoring and regulating mining activities; reviewing and approving any proposed prospecting, exploration, location, retention licenses; reviewing and approving work programmes, appraisal programmes, production forecasts, field development plans and budgets submitted by a licensee and making recommendations to the Minister for approval, amendment or rejection of plans; advising the Minister in the negotiation of mineral agreements and in the granting and revocation of exploration and mining leases, etc.	One major purpose of this act is to outline a clear and consistent administrative architecture for the DGSM. However, the current act fails to do this. Powers of each individual entity as well as limits to those powers and relationships between entities should be made clearer so that the operations of the DGSM can be better understood. Setting out a transparent and standardized legal and regulatory framework for the operations of the DGSM will help foster accountability. Without clearly outlining these roles, responsibilities, powers and limits, Ministry officials would have no framework to adhere to and would be free to operate in a regulatory vacuum.

			All information outlining the incorporation, composition and operating modalities of the Mineral Authority should also be provided here. Since DGSM currently has more than one Commissioner, and the Department is now a Directorate with many directors, titles should be clarified accordingly regarding Directors (formerly Commissioners) within the Directorate.	
Section 13(1)	Commissioner for Geological Survey and Mines Department	The President appoints a Commissioner for the Geological Survey and Mines Department.	Amend so that so that this Presidential appointment requires Parliamentary approval and that there is a fixed duration of term for the Commissioner (e.g. 5 years).	Executive appointments normally require Parliamentary approval. This appointment should follow standard protocol.
General	Inspector of Mines for Geological Survey and Mines Department	No mention of how the Inspector of Mines is appointed.	This appointment should follow the same protocols as above.	Same as above.
Section 17	Prohibition of officers to acquire interest	An officer found to have acquired a share in a mining company is liable to a fine not exceeding one hundred currency points or imprisonment for a term not exceeding one year, or both.	Include a forward-looking prohibition: *"While in office and for a period of not less than five years thereafter, no officer shall directly or indirectly acquire…"* Explicitly include all employees of the Mining Ministry including consultants and those seconded to the Ministry	The penalties prohibiting an officer from acquiring interest must be made stronger in order to deter the practice. The phrase "officer" should be more explicitly defined so as to include all employees and consultants in the

			from international donor agencies. This prohibition should also include parent companies of companies that hold licences.	prohibition to acquire interest.[7]
Section 18	Mineral Agreements	There is no mention of a Model Mineral Agreement to be used in negotiations.	Between 18(1) and (2) insert another sub-section to state the use of a Model Mineral Agreement that will form the basis of any mineral agreement, to be included as a Schedule to the Act.	International best practice encourages the use of model contracts.[8] In this case, a model mineral agreement would help provide structure to licence negotiations. Rather than requiring Parliamentary approval of every licence, Parliament may approve the templates and fixed terms to be used in negotiation so that the general terms may be approved. This prevents negotiators from making discretionary concessions that may not be in the public interest.

[7] Section 4.2 of the *Liberia Minerals and Mining Law, 2000* also prohibits the president, vice president, members of the National Legislature, Justices of the Supreme Court and subordinate courts, Cabinet Ministers, and Managing Directors of Public Corporations from becoming holders of mineral licences. For more information see p. 7, http://www.eisourcebook.org/cms/Liberia%20Minerals%20and%20Mining%20Law%202000.pdf.

[8] According to international best practice, negotiation processes that are guided by a set of fixed terms outlined prior to the negotiation process have the most positive outcomes for the country. According to the *IMF Guide on Resource Revenue Transparency*, "At the best practice end of the spectrum, it should be possible to define the resource industry tax baseline regime as those normal taxes applied to all corporations, plus a few policy variations that form an integral part of the regime." For more information, see the IMF *Guide*, available from: https://www.imf.org/external/np/pp/2007/eng/051507g.pdf

				Requiring that the model mineral agreement be included as a Schedule to the Act will ensure that the Parliament must scrutinize and approve it during the passing of the new Act.
Section 21(1)(b)	Restriction on a prospecting licence	"No prospecting licence shall authorise the holder of the licence to prospect over an area of land that is, or forms part of- a forest reserve, game reserve, national park…unless the holder of the prospecting licence has first given notice to and obtained permission from the relevant authorities…"	Relevant authorities should be consulted and provide their decision regarding approval prior to the granting of rights. Evidence of consultation and approval from the relevant authority should be included in the application materials when submitted for review. The act should establish this procedure and the Regulations should provide details necessary for implementation. This should also be applied to Section 78(1)(g)(h), "Restrictions on exercise of mineral rights."	Under the current wording, "the holder of a licence" is seemingly issued a licence to operate inside a protected area but cannot operate there without permission from the relevant authorities. This means that the person applying to the relevant authority for approval has already obtained a licence even though the relevant authority has not approved the holder to operate within that given area. This process means that an applicant can be given a licence but then be denied approval to operate in their licence area, which seems backward. This could also

				put unnecessary pressure on the relevant authorities to approve activities since the individual or company has already been provided with a licence. This could bias their decision. Consultation with the relevant authorities should occur before an application is submitted, similar to the EIA and other preliminary environmental consultations that should contribute to the decision as to whether the right should be granted.
Section 21(1)(b)	Restriction on a prospecting licence	"No prospecting licence shall authorise the holder of the licence to prospect over an area of land that is, or forms part of- a forest reserve, game reserve, national park…unless the holder of the prospecting licence has first given notice to and obtained permission from the relevant authorities…"	If the relevant authority has approved the proposed operations, the authority should also be granted oversight and monitoring rights to ensure the licence holder abides by the conditions on which permission was granted. This should also be applied to Section 78(1)(g)(h), "Restrictions on exercise of mineral rights."	Forest reserves, game reserves, and national parks are all endowed with specific authorities to oversee and manage their territories. Therefore, these authorities should have rights to monitor mining activities occurring within the territory to ensure continuous compliance

				with the conditions on which the permission to mine was granted.
Section 26 & 27	Application for and Grant of an exploration licence	There is no section outlining the full content of an exploration licence.	Akin to Section 45 "Contents of a mining lease", a section should be inserted to list the standard contents of an exploration licence.	The contents of an exploration licence should be standardized as is the case for the mining lease.
Section 26	Application for an exploration licence	Information regarding plans to manage environmental impacts is currently not included in the application materials for an exploration license.	Amend so that an applicant is required to include the completed environmental impact assessment with certificate approval from NEMA as well as their environmental management and restoration plans in their application for an exploration license. This should also apply to Section 41, "Application for mining lease."	Environmental and social impact assessments are supposed to be conducted prior to the allocation of rights. That way, the environmental and social impacts as well as planned mitigation strategies are taken into account as important criteria during the decision to allocate the rights.[9]
Section 28(3)	Restriction on exploration license	"No exploration license shall be granted to an applicant unless the Commissioner is satisfied that-"	Amend as follows: "*No exploration license shall be granted to an applicant unless the Mineral Authority is reasonably satisfied that-…"* After subsection (f), add: *"The Mineral Authority shall in every case make best efforts to determine whether the*	The changes reflect the introduction of the Mineral Authority as the body responsible for evaluating applications.

[9] Section 8.4 of the Minerals and Mining Law of Liberia, 2000 requires applicants to submit a completed environmental impact assessment study "prior to the grant of any such application."

			above criteria have been met." This also applies to Section 43(3), "Restriction on grant of mining lease."	
Section 28(3)(c)	Restrictions on exploration licence	"No exploration licence shall be granted to an applicant unless the Commissioner is satisfied that…the applicant's proposal for exploration operations has provided for the employment and training of Ugandan citizens.	The regulations to the act should provide specifications to be followed for the ratios of Ugandan nationals to be employed by different sized licensees throughout different phases of the project based on the license or leaseholders number of overall employees. These requirements should also identify the positions that Ugandan nationals will hold within the internal structure of the company. These requirements should also specifically outline the ratio of Ugandan nationals from the local communities, disaggregated from the total number of overall Ugandan employees, to be employed at different levels within the company structure. This should be also be applied to Section 43(3)(e).	Countries around the world are ensuring that citizens benefit from resource extraction by introducing local content requirements for foreign operators. According to the UN Conference on Trade and Development, this helps "foster the development of an industrial and manufacturing capacity in host countries."[10] While the Act cannot put a blanket requirement on the employment of nationals for all licence holders, the regulations could set out basic relative guidelines to be followed by different licence holders based on the size and makeup of the company holding the licence.

[10] For more information, see *Extractive Industries: Optimizing Value Retention in Host Countries,* United Nations Conference on Trade and Development, available from: http://unctadxiii.org/en/SessionDocument/suc2012d1_en.pdf.

Section 31(2)	Rights of an exploration licence holder	"For the purposes of exercising the right under subsection (1), the holder of an exploration license may…enter the exploration area and erect camps and temporary buildings, including installations in any waters forming part of the exploration area…"	Limit to those strictly necessary and as set out in the programme of proposed exploration operations. Amend as follows: *"…erect only such camps and temporary buildings, including installations in any waters forming part of the exploration area; as are strictly necessary for this exercise of the right and as are detailed in the programme of proposed exploration operations or otherwise approved in writing by the Commissioner following consultation with the Mineral Authority."* The same should be applied to Section 49, "Rights of a mining lease holder."	Licence holders should be limited to erect camps, buildings and installations only in cases where they are necessary and have been previously approved so as to prevent licence holders from erecting unapproved and/or superfluous structures. This will help limit and minimize the environmental and social impacts of the project.
Section 33	Amendment of exploration programme	"The holder of an exploration licence may from time to time notify the Commissioner of amendments he or she wishes to make to his or her programme of exploration operations; and the amendments shall, unless rejected by the Commissioner within two months after being notified, have effect after such period."	Amend section as follows: *"the holder of an exploration license may from time to time notify the Commissioner of amendments he or she wishes to make to his or her programme of exploration operations. No amendments shall be permitted without express authorisation of the Commissioner. The Commissioner shall, along with the Mineral Authority, consider any proposed amendments along with documents and information previously submitted under Section 26 as if they together formed a fresh application for an exploration license and*	Based on the current wording, amendments to the programme of exploration operations can occur without any scrutiny. This should be changed so that changes cannot occur without Ministerial approval. Amendments to the programme signify a deviation for a previously approved plan and therefore must require explicit approval.

			shall notify the holder of the` license of the outcome of the application to amend the programme of exploration operations within two months of being notified." This should also be applied to Section 48, "Amendment of programme of operations of mining lease."	
Section 41	Application for mining lease	The required content for a mining lease application does not include the name and nationality of each person making the application and in the case of the body corporate, the name and place of incorporation, the names and nationality of directors, managers and other officers of a similar rank and the name of any person who is the beneficial owner of more than five per cent of the issued share capital.	Amend Section 41, akin to Section 26 (d)(i)(ii) "Application for exploration licence", so that applicants for a mining lease are required to provide critical ownership information.	There is no reason why information pertaining to the identify of the applicant, and/or incorporation and ownership information regarding a body corporate would be required for an application for an exploration licence but not a mining lease. This information is critical in both cases and should be disclosed in both types of applications.
Section 42	Disposal of application for mining lease by holder of exploration licence	The Commissioner is currently obliged to grant a mining lease to holders of exploration licenses on terms he shall determine.	All applications for mining leases should be required to go through the same process in terms of scrutiny e.g. business plan, operational model, EIA, etc. This section should be amended so	This clause must be changed so that people cannot move straight to a mining lease upon discover of an ore body, especially considering that the criteria for an exploration license

			that this full application process cannot be subverted.	are less stringent than a mining lease.
Section 43(3)	Restriction on grant of mining lease	The criteria contain many subjective decisions with little detailed information as to the content of the requirement, e.g. that things are "satisfactory" and "adequate."	Revise criteria to include objective tests and minimum conditions to be satisfied where possible to limit over discretion. e.g. (f) provides no guidance as to what "satisfactory" would entail. In particular, stronger objective criteria are required in relation to the environment, where Section 43(3)(b) builds in significant discretion and requires only that the proposed operations "take proper account of" the EIA and other environmental information.	The evaluation of bids should follow a set of objective criteria that is made transparent and is consistently followed in the evaluation of all bids. This will reduce opportunities for abuse in the granting of rights.
Section 47	Renewal of mining lease	"Subject to subsection (4) of this section, where an application is duly made under this section for the renewal of a mining lease, the Commissioner shall renew…" "The Commissioner shall refuse to renew a mining lease if…the programme of mining operations proposed to be carried out is not adequate or satisfactory and	Amend this section so that there is not a default position that "the Commissioner shall renew" a licence where an application is duly made. Rather, the renewal process should include extensive oversight including full consideration and review.	The current wording states a default position that the Commissioner will renew a lease unless a condition in 47(4) applies. The renewal process should be guided by more oversight and thorough review. The Commissioner should by no means be obliged to renew a licence or an application for renewal is duly made as the current wording implies.

		the renewal will be contrary to the national interest;"		
Part IV- Location Licence	Location Licence	Location license holders are addressed as one group and the regulatory framework designed accordingly.	In light of the aforementioned recommendation to distinguish artisanal miners from small scale miners, make additions to this part so that it provides all information necessary to understanding the application for, granting, regulation and revocation of two types of location licenses; one for artisanal miners and one for small-scale miners.	Based on the logic presented above, the law should identify and introduce specific regulatory frameworks for three different types of mining so as to adequately address each type. Location licences can be split into two types to serve this purpose.
Part IV- Location Licence	Location Licence	Neither location licence applicants nor licence holders are required to undertake any preliminary environmental assessments, impact management procedures, or risk mitigation strategies.	Considering that location licence holders are formally exempted from undertaking EIAs according to Section 108(4), this section should outline the alternative procedures location licence applicants and licence holders must follow to assess and manage environmental impacts prior to and throughout the duration of licence. Once two tiers of location licences are created for artisanal and small-scale, consider requiring environmental impact assessments for small-scale location licence applicants.	While it may be appropriate to exempt location licence applicants from undertaking the same environmental impact assessment process as industrial size applicants, artisanal and small-scale applicants must still undertake procedures to assess and manage environmental impacts. While they may be considered smaller in scale, ASM operations may still contribute to severe environmental impacts.

				These impacts, as well as management and mitigation plans must be taken into account before the allocation of rights.
Section 56(1)	Application for location licence	An application for a location licence shall be made to the Commissioner.	Individuals applying for an artisanal location license should be able to apply at the local or regional level. To this end, Regional Mines Inspectors or other regional officers so placed should receive applications for artisanal location licences and forward them to the Commissioner for review by the Authority.	Artisanal miners currently lack adequate access to Ministry officials and cannot realistically afford to undertake the centralized application requirements. This, among other things, leads to high levels of illegal mining. The application process should be made more accessible for individuals interested in mining at the artisanal level.[11]
Section 57	Grant of location licence	The Commissioner is obliged to grant location licences for small-scale operations if the applicant provides correct paperwork.	Consider whether stricter criteria and or more requirements should be introduced in the granting of a location licence.	The current requirements are very few and may not be sufficient to ensure that incapable applicants do not receive a location licence and that licence holders will adhere to strong performance standards.

[11] The South Africa Mineral and Petroleum Resources Development Act, 2002 instructs all applicants to submit their applications at the office of the Regional Manager who accepts applications and then forwards them to the Minister for consideration. A similar process is outlined in Section 8 of the Zambia Mines and Minerals Development Act 2015.

Sections 61, 62	Inquiry into disputes & Inquiry proceedings	"The Commissioner or an authorised officer may inquire into and decide any dispute between persons engaged in small-scale mining operations, either amongst themselves or as between themselves and third parties…"	An adjudication tribunal or committee or perhaps a separate Ombudsman should preside over small-scale disputes rather than the Commissioner. However, aggrieved parties must retain their right to appeal the decision of the committee through the court system.	The current set-up is a breach of the separation of powers. The Commissioner, as an executive, should not be involved in judicial matters.
Section 74	Retail shopkeepers	"The Commissioner may in his or her discretion…authorise any retail shopkeeper to manufacture and sell articles partly manufactured from precious minerals without being licensed as a goldsmith, if the shopkeeper satisfies the Commissioner that the selling of such articles shall not constitute the sole or principal portion of his or her business."	Remove this exception so that all shopkeepers manufacturing or selling articles partly manufactured from precious minerals must be licensed as a goldsmith.	This exception should be reconsidered given the preponderance of gold smuggling in Uganda. It creates a loophole that risks effective enforcement of the licensing regime.
Section 79	Right under mineral right to be exercised reasonably	"The rights conferred by a mineral right shall be exercised reasonably and in such a manner as not to adversely affect the interests of any owner or occupier of the land on which the rights are exercised."	Add to the section: *"and in such manner as not to adversely affect the environment."*	It should be made clear that the licence holder should strive to undertake operations with minimal environmental impacts in the short and long term.

Section 90(1)	Conditions for suspension or cancellation of mineral rights	The section does not expressly mention failure to use a mineral right or comply with work plans as a ground for cancellation of rights.	Insert another section under 90(1) to read as follows; (f) If the holder of such rights fails to make full beneficial use of the license as per the approved work plan with two (2) years from the date of the granting of rights.	This will help to reduce cases of speculators holding licences for the full period of the license without undertaking activity. By adding this section, the Ministry has recourse to intervene before the expiry of the licence.
Section 93	Register	Records of mineral rights and any dealings with or affecting every such mineral right "to be kept in a register, in this Part referred to as 'the register."	While there may be a physical register housed at the Ministry, an online, publicly available version of this information should be made available through the online Mining Cadastre. Amend the entire section so that whenever information is to be recorded in the register, it is also to be posted on the Mining Cadastre.	Contract transparency and associated access to information efforts have been recognized as critical keys to success in the extractive industries.[12] While Uganda has not yet made extractive industry contracts public, government has committed to publishing contracts as well as signing onto the EITI Global Standard many times.

[12] For best practice guidance on the topic, see the IMF *Guide on Resource Revenue Transparency* (2007) available from: http://www.imf.org/external/np/pp/2007/eng/051507g.pdf. This guide suggests that the obligation to publish contracts may strengthen government performance in contract negotiation and enable governments to negotiate better deals. The Natural Resource Charter (2014) also advocates for full information transparency throughout the entire extractive industry decision chain to best engage citizens and help ensure good governance. Also see *Contract Disclosure in the Extractive Industries* (2016) published by Open Contracting Partnership, Natural Resource Governance Institute, Oxfam Americas, and Columbia Center on Sustainable Investment, available from: http://www.open-contracting.org/wp-content/uploads/2016/02/OCP2016_EITI_brief.pdf

				In order to bring the act up to date with international standards, an online database of mining contracts should be established. The current register system is inadequate as it is not accessible for most citizens. To provide true access to important documents regarding mineral sector activity, contracts and all accompanying documents should be made available online.
Section 93(2)	Register	Only the name of the person to whom the mineral right is granted shall be recorded in the register as the registered holder of that mineral right.	After 93(2) insert another sub-section that reads: *"When a mineral right, other than a prospecting licence, is granted, the Commissioner shall cause* ***the contents of the licence (and all annexes including the work plan) as well as details of the beneficial ownership information to be recorded in the register and also published, accessible online through the Mining Cadastre and on district and sub-county notice boards in the relevant***	According to international best practice, extractive industry licenses should be made publicly available and accessible so that citizens may understand the nature of the agreement entered into between the company and government and can monitor adherence to contract terms. International consensus increasingly recognizes that

			areas." In order to protect commercially sensitive information, the government should establish tightly defined exemptions for genuinely commercially sensitive information such as proprietary technology. Unless the information falls within narrowly and clearly defined exemptions, it should be made public. Notification regarding the granting of a mineral right should be sent to the District CAO no later than 30 days after the granting of the right along with copies of the above information with instructions that the CAO retain a copy of the information and also post the information on the appropriate notice boards.	beneficial ownership information should be made publicly available so that the true owners of companies can be publicly identified.[13] If contracts are made available online and at the district and sub-county level, there is a greater chance that citizens may view the documents and learn about the mining activity in their areas.
Section 93(4)	Register	"The grant, renewal, suspension or termination of any mineral right…shall be published in the Gazette."	Amend the section so that such changes are published on the Mining Cadastre. Notifications should also be sent to the CAO of the District no later than 30 days after the change so	The Cadastre and local information sharing system must be kept up to date so that citizens have a tool to inform them about actual

[13] For more information on the importance of beneficial ownership transparency in the extractive industries, see *Disclosing beneficial ownership information in the natural resource sector* (2016), published by the Natural Resource Governance Institute, Open Government Partnership and World Resources institute, available from: http://www.opengovpartnership.org/sites/default/files/FIN%20OGP%20Issue%20Brief%20BO%20Disc.pdf. Also see *Owning up: Options for disclosing the identities of beneficial owners of extractive companies* (2015), published by the Natural Resource Governance Institute, available from: http://www.resourcegovernance.org/sites/default/files/documents/nrgi_beneficial_owners20150820.pdf

			that the information can be posted on local notice boards.	current mineral sector activity.
Section 115	Disposal of minerals	"No minerals shall be disposed of…except-with the written consent of the Commissioner."	Amend this section so that no minerals may be removed or disposed of without written consent of the Commissioner.	This section restricts the disposal of minerals without written consent of the Commissioner but does not also restrict removal. The Ministry may better control this practice especially regarding minerals removed and disposed of for sampling purposes, through explicit authorization of removal and disposal.[14]
Section 118 & 119	Administrative review by Minister	"Any person aggrieved by any decision of the Commissioner may…request, in writing, an administrative review of the decision by the Minister."	An independent adjudication tribunal or committee should receive requests for review of a Commissioner's decision and carry out such reviews rather than the Minister.	The current set-up is a breach of the separation of powers. The Minister, as an executive, directly oversees the Commissioner's decisions. Therefore, it may not be possible for the Minister to be an objective judge in an administrative review case.
Section 121	Regulations	"The Minister may make regulations for the conservation and	Amend so that criteria is outlined which could constrain the Minister's, the Commissioner's or any other	When a public official is given room to exercise discretion in a given

[14] See Section 20, "Permission to remove and dispose of minerals" of the South Africa Mineral and Petroleum Resources Development Act of 2002 which restricts a holder of a prospecting license from removing and disposing of minerals without written permission from the Minister. See also Section 13(10) of the Ghana Minerals and Mining Act, 2006.

		development of mines and minerals on new areas or areas already gazetted as such and otherwise for the purpose of giving effect to the provisions of this Act."	public officer's discretion when making major decisions.	decision, the exercise of discretion should be in accordance with specific criteria.[15]
General		The use of "etc." in section headings.	Substitute "etc." for a more legally appropriate word	Etc. is not preferred.
General		The use of the term "Commissioner"	The Commissioner has been replaced by the position of the Director. Where powers have been conferred to the Commissioner, now it should be conferred to a managing individual within the Directorate, which includes the Director and Departmental Commissioners.	Update the Act so that it reflects current Ministry practices and administrative changes incorporated since the passing of the last act.
SURFACE RIGHTS & LAND ACQUISITION				
Section 78	Restrictions on exercise of mineral rights	In the case of written permission granted by the appropriate Minister or other relevant authority, there is no provision requiring public hearing.	Amend as follows: *"The holder of a mineral right shall not exercise any of his or her rights under that mineral right […] except with the written consent of the appropriate Minister or other relevant authority* ***subject to public hearing with the relevant stakeholders involved."***	Free, Prior and Informed Consent, as well as other forms of pre-project community consultation are recognized as international best practice that must be undertaken prior to any project related land acquisition or land use.[16]

[15] For instance, see Section 110 of the Ghana Minerals Act which allows the Minister to promulgate regulations which provide for circumstances where the minister is exercising a discretionary power."

[16] While official guidelines for "Free, Prior and Informed Consent" are currently only required when engaging with indigenous peoples, the three-point framework should be used to guide mining sector investors in their engagement with project affected communities. The law should mandate that investors must

			Additionally, this section should be amended so that the holder of a mineral right shall be mandated to undertake community consultations in order to secure free, prior and informed consent from the affected communities before applying for a mineral right. Evidence of this consent must be submitted to the Ministry as part of the application process. The regulations to the act should outline the necessary components and procedures to be included in the consultation process as well as options for dispute resolution and grievance mechanisms.	An applicant should not be granted a mineral right in any case without obtaining community consent. Licence holders need a social licence to operate. Without community consent, this cannot be secured. Requiring such community consultations will prevent negative relations between the community and the licence holder and will ensure that the community is aware and in support of an upcoming project.
Section 78		The law does not clearly state the right of the landowner or lawful occupier to withhold their consent.	As a part of Section 78, insert a clause outlining the rights of landowners and lawful occupiers to withhold consent: *"Notwithstanding the above subsections the relevant owners or lawful occupiers shall under no circumstances be obliged to provide consent to provide the holder of a mining lease the exclusive use of the whole or any part of the*	It is critical that community members do not feel coerced or strong-armed into providing consent. The community consultation process must be carried out sincerely so that the community is

obtain free, prior and informed consent from affected communities before the mineral right can be granted. For more information, see the *UN-REDD Guidelines on Free, Prior and Informed Consent* (2013) available from: http://www.un-redd.org/Newsletter39/FPIC_GuidelinesLaunch/tabid/129671/Default.aspx. Also see *FPIC and the extractive industries* (2013) published by International Institute for Environment and Development (UK), available from: http://pubs.iied.org/pdfs/16530IIED.pdf

			mining area concerned."	consulted and permission is sought and earned. This is much different than simply informing community members of an upcoming planned project.
Part VII (general)	Mineral rights and surface rights	There is no mention of a mediation process in the event of stalemate between the landowner or lawful occupier and the mineral rights holder apart from vague reference to arbitration in Sections 81(1) and 82(3).	A section should be inserted that provides for an independent mediation tribunal or committee to handle disagreements between the landowner and the mineral right holder. However, aggrieved parties must retain their right to appeal the decision of the committee through the court system.	Arbitration is not a realistic option for all landowners or lawful occupiers because it is cost prohibitive. If an applicant is interested in undertaking mining operations in a certain area and there is a stalemate with the local community over land rights, the Ministry should provide for an independent party to mediate the issue free of charge to the community. However, this should not restrict aggrieved parties from seeking justice through the court system.
Section 80(1)(a)	Right to graze stock and cultivate	"Any loss or damage to stock or crops arising out of the exercise of such right shall be borne by the owner or lawful occupier of the land"	Amend this section so that the cost is borne by the licence or leaseholder.	It is inappropriate to charge the owner or lawful occupier for this damage since the loss or damage has arisen from mining activity.

Section 80(1)(b)	Right to graze stock and cultivate	"Any interference by the owner or lawful occupier with the proper working or operation in such area for prospecting, exploration or mining purposes shall be a ground for terminating such right."	Amend this section so that the termination of such a right must be decided upon by an independent mediation committee or tribunal. However, aggrieved parties must retain their right to appeal the decision of the committee through the court system.	The section currently does not explain how this right may be terminated. It must be made clear that the request to terminate such a right must go through an independent judicial body, in line with the Constitution. If this process is not followed, a citizen may be unduly denied of their right to property.
Section 81	Acquisition of exclusive right by holder of mining lease	"…as may be agreed between the holder and the owner or lawful occupier of the land in question, or failing an agreement, as may be determined by arbitration."	Insert a new subsection, 81(3) to the effect that: *"Notwithstanding the above subsections 81(1) and 81(b), the relevant owner or lawful occupier shall under no circumstances be obliged to enter into any agreement providing the holder of a mining lease the exclusive use of the whole or any part of the mining area concerned."*	Again, it is critical that community members do not feel coerced or strong-armed into providing consent. An applicant for a mineral right must approach the community in willing-seller, willing-buyer negotiations in the hopes of reaching a settlement. However, if the community is unwilling to sell their land, this must be respected.
Section 82(1)	Compensation for disturbance of rights	"The holder of a mineral right shall on demand made by the owner or lawful occupier of any land subject	Amend the section as follows: *"The holder of a mineral right shall on demand made by the owner or lawful occupier*	A 90-day timeline for the payment of compensation must be explicitly stated so that payments to the

		to such mineral right, pay the owner or lawful occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier."	*of any land subject to such mineral right* ***and no later than 90 days after the formal demand has been made****, pay the owner or lawful occupier fair and reasonable compensation…"* Alternatively, if the parties cannot agree, the license holder must submit a request for mediation to the Ministry before the 90-day period has expired. Consider introducing a penalty for delay of payment that includes payment of an additional late fee to the community if the deadline for payment or submission of a mediation request is not met.	community may not be unnecessarily delayed.
Section 82(1)	Compensation for disturbance of rights	"The holder of a mineral right shall…pay the owner or lawful occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder's operations; and shall on demand made by the owner of any crops, trees, buildings or works damaged during the	Insert a subsequent clause at the end of the sentence: *"and shall on demand made by the owner or occupier pay for the complete remediation of any other environmental harm caused or significantly contributed to by the holder's operations."*	Mining operations may lead to significant environmental damage and degradation. The mineral holder should be held liable for any contributions to social and environmental harm. The rights holder should pay appropriate compensation not only for certain disturbances, but any disturbance or negative environmental impact caused by mining

		course of such operations, pay compensation for any crops, trees, buildings or works so damaged."		operations if and when they arise.[17]
Section 82(3)	Compensation for disturbance of rights	An individual is limited to claiming compensation to within "one year from the date when the act which is the basis for such claim occurred."	Amend the sub-section to allow claims for compensation within four years from the date when the *"claimant first became aware of, or should reasonably have become aware of, the harm resulting from the act which is the basis for such claim."*	Section 139(3) of the Petroleum (EDP) Act establishes a four-year window for compensation claims to be made. The Mining Act should also allow for a four year statute of limitations at a minimum.
Section 85(3)	Access to public roads	"…either party may lodge a complaint with the Minister for his or her decision on the dispute."	This type of case should also be referred to the independent mediation committee recommended above. However, aggrieved parties must retain their right to appeal the decision of the committee through the court system.	As an executive, the Minister is not the appropriate party to adjudicate such a dispute. All matters requiring adjudication or mediation must be referred to a tribunal to preside over the matter.
Section 89	Surrender of area covered by a mineral right	"Subject to section 53 of this Act and the regulations, the holder of a mineral right may, subject to any conditions of his or her licence, surrender the area	Lawful surrender of an area covered by a mineral right must also be subject to Section 110 of this Act.	A license holder should not be permitted to surrender any area covered by a mineral right until the license holder has executed the terms of their

[17] For guidance, see Section 87 of the Zambia Minerals Act which outlines a mineral rights holder's liability for harm or damage caused by operations including harm or damage caused to the environment, biological diversity, human and animal health and socio-economic conditions.

		covered by his or her mineral right or part of such right […]"		environmental restoration plan with respect to the area to be surrendered.
General		The phrase "owner or lawful occupier" of land is used throughout the Act but is not defined anywhere.	In the Interpretation section of the Act, define these terms to provide explicit clarification. These terms should be defined with respect to the forms of land ownership and lawful occupation outlined in Section 2 of the Land Act Cap 227. The Act should also provide for adjudication regarding dispute over lawful ownership or occupation. See also First Schedule to the Act.	The Act must explicitly define these terms so as to provide conceptual clarity.
MINERAL REVENUE MANAGEMENT & FINANCIAL PROVISIONS				
Section 71	Liability of minerals dealers for royalties	"Every holder of a mineral dealer's licence shall be liable for the due payment to the Commissioner of all royalties due on any minerals…"	Replace "the Commissioner" with "Government" to be specified further in the regulations. The Commissioner should not receive royalty payments.	The Commissioner is not the appropriate officer to receive payments. Similar to section 154 of the Upstream Act, royalties should be payable to "government." The procedures for payment should be outlined in the regulations to the Act.
Part X	Financial Provisions	No mention of particular procedures to be followed for the collection and management of mineral revenues.	A Minerals Fund and a Minerals Investment Reserve should be established in the Bank of Uganda to hold revenues generated from mining activity. This fund should be managed	Similar to the Petroleum Fund established in the Public Finance Management Act 2015, mineral returns should be

			according to same mechanisms outlined in the Petroleum Section of the Public Finance Management Act 2015.	paid into a central minerals account.[18] Returns from mineral activity should be collected and tracked. The government should establish a transparent and pre-determined spending and investment plan for mineral revenues. All activity of the account should be included in a publicly available annual report that disaggregates payments into the account on a project-by-project basis and provides detailed information regarding any withdrawals of funds.
Section 98(2)	Royalties	"Royalty shall be shared by the Government, Local Governments and owners or lawful occupiers of land, subject to mineral rights as	"Local governments" should be defined more specifically as district governments. Another schedule should be added to prescribe the formula district governments are to use to	The royalty system currently suffers from many operational failures as well as information asymmetries that lead to

[18] For detailed recommendations on the operations of a natural resource fund(s) in Uganda, please see *Recommendations and comments on the Public Finance Bill* (2013) published by the Civil Society Coalition on Oil & Gas. Available from: http://csco.ug/files/downloads/CSCO%20Recommendations%20on%20the%20Public%20Finance%20Bill.pdf. Also see, *Comments on petroleum revenue management in the draft Ugandan Public Finance Bill 2012* (2012), published by Revenue Watch Institute. Available from: http://www.resourcegovernance.org/sites/default/files/RWI_comments_PRM_bill_Uganda.pdf.

		specified in the Second Schedule to this Act."[19]	transfer royalty dispersals to sub-counties based on various levels of mining activity within the sub-counties.	dysfunction. The new act must explicitly outline the procedures to be followed to improve understanding at the district level and prevent inconsistencies.
Section 98(3)	Royalties	"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."	After 98(3) insert another sub-section which reads: *"For the avoidance of doubt, any mineral rights holder found selling for commercial purposes, 'sample' minerals exempted from royalties by the Commissioner will face a financial penalty and potential imprisonment."*	Smuggling and misrepresentation of minerals as "samples" is a significant problem in Uganda. The act must acknowledge this problem and try to limit the practice of misrepresentation by imposing explicit penalties to deter the practice.
Section 98(3)		"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."	Add to this section a stipulation that mineral samples exempt from royalty payment may not be exported without an export permit granted by the Ministry, as is the practice for non-exempted minerals. Licences should also provide detail regarding restrictions and maximum quantities of minerals that may be extracted, transported and exported as samples.	The practice of extracting minerals for sampling purposes must be better regulated so that the sample minerals are not sold for commercial purposes.

[19] According to the Second Schedule to the Mining Act, "government" takes 80% from royalties, "local governments" take 17% and "owners or lawful occupiers of land subject to mineral rights" take 3% from royalties.

Section 99	Waiver of royalty, etc.	The Minister may waive in whole or in part any royalty payable with the approval of the Cabinet.	In line with the protocol for the granting of tax exemptions, the section must require the Minister to seek approval from Parliament, rather than Cabinet, before waiving royalties.	Such types of exemptions require Parliamentary approval. A waiver of royalty is similar in nature. Such a decision should require Parliamentary approval to ensure that the Minister's power to waive a royalty obligation is not abused or misused.
Section 101	Valuation of minerals	"The value of any mineral, whether for export or for domestic consumption, shall be determined in such a manner as shall be prescribed."	Amend section to identify the specific instrument that will be used to determine mineral values e.g. regulations, licences, etc.	As much as possible, valuation should be standardized to provide consistency and predictability for all leaseholders.
Section 106(1)	Annual mineral rents	"There shall be payable to the Commissioner by an applicant for, or the holder of, a mining lease, a location licence, a retention licence or an exploration licence, an annual mineral rent of such amount as shall be prescribed."	Replace "the Commissioner" with "Government" to be specified further in the regulations.	The Commissioner should not receive annual rental fee payments. This is not an appropriate role for the Commissioner. The procedures for payment should be outlined in the regulations to the Act.
Section 107(5)	Commissioner's power to require for information	"Any person who contravenes subsection (4) of this section commits an offence and is liable on conviction to a fine of not less than one hundred and	Section to be amended so that a person found to contravene subsection (4)(c)(d) is liable to a fine as well as full repayment of principal figure that was falsified.	The money principally owed to government should be repaid with an additional penalty for the offense of failure of payment.

		fifty currency points or to a term of imprisonment not exceeding one year, or both."		
ENVIRONMENTAL & SOCIAL ISSUES				
Section 51	Wasteful mining and treatment practices	No information provided regarding the determination of wasteful mining and treatment practices.	Better define "wasteful mining and treatment practices" and provide more detail to the term. The regulations should clearly outline offenses considered to be "wasteful mining and treatment practices" and industry standards to be followed so as to assist the rights holder in avoiding the offense.	The section currently does not explain or provide any detail necessary to understanding what actions may be considered "wasteful mining and treatment practices." The Act, and regulations, must provide enough information so that the rights holder may know how to prevent the offense.
Section 87(2)	Grant of water rights	Requires a water permit to be obtained in the pursuance of water rights.	This section should establish a "zero mine wastewater discharge" requirement for all mining leaseholders. Water permits must only be granted upon consultation with the relevant environmental authority and upon	Water permits should only be granted in cases of absolute necessity. Zero water discharge systems and other techniques for mine site water recycling and reuse have now become commonplace.[20]

[20] For more information please see the Columbia Center on Sustainable Development Policy Paper, *Leveraging mining investments in water infrastructure for broad economic development: Models opportunities and challenges*. Available from: http://ccsi.columbia.edu/files/2014/05/CCSI-Policy-Paper-Leveraging-Mining-Related-Water-Infrastructure-for-Development-March-2014.pdf. Also see Section 1.4 "Water Conservation" in the IFC *Environmental, Health, and Safety Guidelines*, available from: http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES

			verification that the mining lease holder has used its best effort to maximize water efficiency in mine water use, including through recycling and reuse of mine water, water treatment, and the careful management of tailings. If this has not been found, a water permit should not be granted. A leaseholder should be mandated to renew their water permit at regular intervals so that the conditions upon which the permit was granted may be inspected and verified regularly by the relevant authority for the purposes of renewal.	Leaseholders must prove that they have the mechanisms in place to recycle and reuse the maximum amount of mine site water before seeking a water permit for additional resources.
Section 87(2)	Grant of water rights	Does not include obligations to minimize negative impacts for downstream users.	Unless stated in the Water Statute, 1999 (Statute No. 9 of 1995), this section should establish that a water permit related to mining operations should be granted only if the applicant has undertaken extensive community consultations regarding the application resulting in a signed Memorandum of Understanding between the leaseholder and downstream communities where the communities have consented to the water permit based on a set of agreed upon	This section is silent on the risk posed by competition for water between mines and other users including downstream communities. The leaseholder must undertake community consultations informing downstream users of the intended application and negotiate terms for their consent of the permit that

			conditions. This MOU must be approved by NEMA and the relevant Commissioner and attached in the application for the water permit.	include agreements on continued access, pollution prevention strategies, and compensation in the case of disturbance of access or other unintended consequences restricting communities access to clean and safe water. Otherwise, downstream communities may be negatively impacted without their consent, or even knowledge of the reason for disturbance.[21]
Section 87(2)	Grant of water rights	No mention of the relationship between a water permit and the environmental impact assessment	If a water permit is granted, NEMA should require that the environmental impact assessment for the project be updated and resubmitted to incorporate this.	This will provide that the environmental impact assessment is comprehensive and exhaustive and that the annual audits incorporate the new set of impacts associated with the water permit.

[21] According to the IFC *Environmental, Health and Safety Guidelines*, "Project activities involving wastewater discharges, water extraction, diversion or impoundment should prevent adverse impacts on the quality and availability of groundwater and surface water resources." In order for a water permit to be granted, the applicant must demonstrate commitment to this principle and explain mechanisms to ensure continuous prevention of adverse impacts. For additional information, see: http://www.ifc.org/wps/wcm/connect/554e8d80488658e4b76af76a6515bb18/Final%2B-%2BGeneral%2BEHS%2BGuidelines.pdf?MOD=AJPERES

Section 108	Environmental impact assessment and environmental audits	The scope of the environmental impact assessment is not defined.	Unless stated in the update to the NEMA Statute, an environmental impact assessment must include assessment of all environmental and social impacts of a project.	The act only refers to an "environmental impact assessment" and while this label is fine, there must be clarification that the EIA includes environmental and social impacts.[22]
Section 108	Environmental impact assessment and environmental audits	"A holder of an exploration licence or a mining lease shall carry out an environmental impact assessment."	Amend this section as follows: *"Every **applicant** for an exploration licence or a mining lease shall carry out an environmental impact assessment."*	Environmental and social impacts must be considered during the decision of whether to grant a mineral right. Therefore, EIAs must be carried out before the mineral right is granted.
Section 108	Environmental impact assessment and environmental audits	A holder of a mineral license must submit an EIA in order to "commence his or her operations."	The holder of a mineral license should be required to submit updated EIAs not only once but periodically throughout the duration of the lifetime of the licence.	If an element of the initial environmental and social impact assessment changes, the applicant should revise the ESIA document to either include the new impact and mitigation strategy or remove sections that become irrelevant. This allows the Ministry to be updated on the project and the evolving impact mitigation strategies of the

[22] Applicants should be required to undertake a comprehensive assessment of environment and social impacts. For more information on E(S)IA components, see Chapter 5.1 of the Initiative for Responsible Mining Assurance *Standard for Responsible Mining Draft v1.0* (2014), available from: Also see the IFC *Performance Standard 1: Assessment and management of environmental and social risks and impacts* (2012), available from: http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afdf998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES

				licence holder throughout the duration of operations.
Section 108	Environmental impact assessment and environmental audits	There are currently no requirements for engagement with affected community members or other stakeholders during the EIA process.	This section should establish requirements for stakeholder engagement and community consultation to be carried out during the initial EIAs and also during periodic EIA updating procedures.	It is critical that all relevant stakeholders are engaged during the environmental impact assessment and that their perspectives and feedback are included in the assessment. Stakeholder engagement has become a standard requirement during EIA development. For instance, the World Bank requires clients to create a Stakeholder Management Plan as part of the EIA process.[23]
Section 108(3)	Environmental impact assessment and environmental audits	"…the holder of a license…shall carry out an annual environmental audit, and shall keep records describing how far the operations conform to the approved environmental	Amend so that the licence holder must submit an annual environmental audit to NEMA for certification. If NEMA refuses to certify an audit, NEMA must provide the explanation for refusal in writing and provide the licence holder with 30 days to rectify	The environmental audits as currently established, may not serve the intended goal. The section must clarify NEMA's powers to use the information presented in the audit to

[23] According to the World Bank, "Stakeholder engagement is the basis for building strong, constructive, and responsive relationships that are essential for the successful management of a project's environmental and social impacts." For more information see the IFC *Performance Standard 1: Assessment and management of environmental and social risks and impacts*.

		impact assessment."	the problem and resubmit the audit. NEMA should be given the right to request the license holder to commission an independent third party to conduct an environmental audit to be submitted to NEMA for review in cases where NEMA has credible cause for concern that the license holder may be non-compliant and the request for such audit has been approved by the Commissioner. If the audit results in the finding of non-compliance with the environmental impact assessment, NEMA may require certain actions to be taken by the licence holder to reach compliance and resubmit the audit. At all times, a licence holder is required to have their most recent environmental audit on file and available. Failure to undertake an annual environmental audit or failure to obtain NEMA certification for an environmental audit will result in strong penalty.	require remedial action. The act currently does not stipulate than an audit must be undertaken by an independent third party. While that may be permissible, NEMA should reserve the right to require an independent audit should concern arise over the integrity of the audit or the capacity of the licence holder. Environmental audits are critical tools that allow the Ministry and licence holder work together to continuously mitigate environmental harm if the right processes are in place.

Section 109	Environmental protection standards	"The holder of an exploration licence or a mining lease shall submit to the Commissioner and the Executive Director of the National Environment Management Authority…"	The act must clarify the roles between the Commissioner and Executive Director of NEMA in these cases, especially in cases where the two actors disagree.	The relationship between the two entities is not clear. The rights and roles of NEMA should be explicitly outlined in relation to the Ministry. Care should be taken so that NEMA is given a strong role in handling environmental issues related to mining activity.
Section 109	Environmental protection standards	"The holder of an exploration license shall submit to the Commissioner and the Executive Director of the National Environmental Management Authority an environmental management plan…"	109(4) should be amended to provide for reports on and updates to the environmental management plan to be regularly submitted to the Commissioner and NEMA, possibly annually along with the annual environmental audit. NEMA should be given the right to request the license holder to commission an independent third party to conduct a compliance audit of the environmental management plan to be submitted to NEMA for review in cases where NEMA has credible and legitimate cause for concern that the license holder may be non-compliant and the request for audit has been approved by the Commissioner.	There is no further information indicating the enforcement or monitoring of the environmental management plan. This section should specify the purpose of the Environmental Management Plan and how it will be used to regulate waste generation and disposal.

Section 109	Environmental protection standards	The scope of the environmental management plan is not established.	Clarify this section to establish that the environmental management plan should cover both environmental and social risk management.	According to international standards, environmental and social performance must be managed throughout the lifetime of any project. The World Bank suggests establishment of an Environmental and Social Management System (ESMS) for all projects.[24]
Section 110(3)	Environmental restoration plan	"In making a decision whether to accept the environmental restoration plan, the Commissioner shall take into account-"	Amend to align with the previous section so that the environmental restoration plan is submitted to the Commissioner and the Executive Director of NEMA.	In the previous section, environmental materials must be submitted to the Commissioner and the Executive Director of NEMA. The same should apply here.
Section 111	Direction for the protection of the environment	"The Commissioner may, by notice served on the person who was the last holder of the exploration licence..."	The language must be made stronger so that the license holder must restore land upon termination of the license or lease in all cases.	There should not be any case where a leaseholder is not required to restore the land upon terminating operations. Proper site restoration is one of the most important obligations of a rights holder and

[24] In Performance Standard 1 of the Operational Manual, the World Bank underscores the importance of establishing an Environmental and Social Management System to continuously monitor and manage "environmental and social risks and impacts in a structured way on an ongoing basis." For more information, see http://siteresources.worldbank.org/OPSMANUAL/Resources/OP4.03_PS1.pdf

				should not be lifted in any circumstance.[25]
Section 112	Environmental performance bond	"The Commissioner may require the holder of an exploration licence or a mining lease to execute an environmental performance bond to ensure the fulfilment of all the environmental requirements under this Act."	Amend so that execution of an environmental performance bond is required by the license or leaseholder in all cases.	According to international best practice, the government must require financial assurance so that the operator secures financial resources to meet mine closure requirements in all cases.[26]
Section 113(1)	Preference for Ugandan products and employment of Uganda citizens	The sub-section only mentions requirements for the preferential procurement for local goods and services, "to the maximum extent possible and consistent with safety, efficiency and economy."	The provision should specifically state that companies should only procure goods and services out of the country in the case that the good or service cannot be found that is comparable with international standards. Akin to Section 25 of the Upstream Act, the licensee should be required to submit an annual report detailing it's achievements in utilizing Ugandan	Countries around the world are ensuring that citizens benefit from resource extraction by introducing local content requirements for foreign operators. According to the UN Conference on Trade and Development, this helps "foster the development of an industrial and

[25] For further guidance, see Chapter 4.1 of the *Standard for Responsible Mining Draft v1.0* (2014) published by the Initiative for Responsible Mining Assurance, available from: http://www.responsiblemining.net/images/uploads/IRMA_Standard_Draft_v1.0(07-14).pdf

[26] For more information, please see the *Financial assurance for mine closure and reclamation* study prepared by the International Council on Mining and Metals (2005), available from: https://www.icmm.com/document/282.

			goods and services with a list accompanied by justifications for cases in which the licensee failed to procure a local good and/or service and had to procure the good abroad.	manufacturing capacity in host countries."[27] The act must introduce local content requirements in order to maximize use of Ugandan goods and services as much as possible.
Section 114	Underground work for women etc.	"A woman may be employed in any underground work in any mine or in any operation or activity relating to or associated with mining."	This section should be amended to clearly specify that companies must enact affirmative action policies to employ women in an adequate ratio to overall employees. Also, include a section unequivocally prohibiting child labour in mining and introducing penalties for the offence.	Women face many barriers to employment in the mining sector despite their capabilities. Companies must enact a policy to hire women staff in different type of work on the mine site. Due to the commonality of child labour in the mining sector in Uganda, the act must unequivocally prohibit such a practice and enforce penalties for the offence.

[27] For more information, see *Extractive Industries: Optimizing Value Retention in Host Countries,* United Nations Conference on Trade and Development, available from: http://unctadxiii.org/en/SessionDocument/suc2012d1_en.pdf.

General	Occupational health and safety requirements	The act fails to establish any requirements for occupational health and safety to be followed by licensees.	A section should be introduced which specifies occupational health and safety requirements to be followed by all licensees in regards to their employees and labourers e.g. ensuring general workplace health and safety, protection from hazardous materials etc.	Mining is a potentially dangerous and hazardous form of employment and licence holders must be required to protect their workers (including employees and labourers) from unnecessary harm.[28]
General	Licensee liability for security firms employed	The law is silent on the issue of private security firms employed by licensees or military officials working on behalf of the licensee.	Introduce a section that details licensee liability for the actions of security firms employed by the licensee as well as members of the military where they are shown to be acting on behalf of the licensee.	According to the UN Guiding Principles on Business and Human Rights, businesses are responsible for any human rights violations due to a company's activities or are "directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts." The Guiding Principles place responsibility on business enterprises to "avoid causing or contributing to

[28] For more information regarding occupational health and safety guidelines, please see the International Finance Corporation's *Environmental, Health and Safety Guidelines for Mining* available from: http://www.ifc.org/wps/wcm/connect/1f4dc28048855af4879cd76a6515bb18/Final%2B-%2BMining.pdf?MOD=AJPERES&id=1323153264157

				adverse human rights impacts."[29]

[29] For further guidance, please see the UN's *Guiding principles on business and human rights* (2011), available from: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

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