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Hon. Benjamin Wabule
Halima Ahmed

PERFORMANCE AUDIT REPORT ON

MONITORING OF MINING OPERATIONS

BY

THE STATE DEPARTMENT OF MINING



APRIL 2019

VISION

Accountability and effective management of public resources

MISSION

To audit and report on the management of public resources for improved service delivery to the Kenyan people.

CORE VALUES

Integrity

Objectivity

Professionalism Competence

Innovation

Team Spirit

MOTTO

Enhancing Accountability

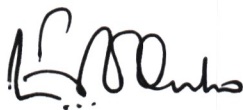
Foreword by the Auditor – General

I am pleased to present this performance audit report which assessed the effectiveness of the State Department of Mining in monitoring the activities of mining companies. My Office carried out the audit under the mandate conferred to me by the Public Audit Act, 2015 Section 36. The Act mandates the Office of the Auditor – General to examine the Economy, Efficiency and Effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

Performance, financial and continuous audits form the three pillar audit assurance framework that I have established to give focus to the varied and wide scope of the audit work done by my office. The framework is intended to provide a high level of assurance to stakeholders that public resources are not only correctly disbursed, recorded and accounted for, but that the use of the resources results in positive impacts on the lives of all Kenyans. The main goal of our performance audits is to ensure the effective use of public resources and promote services delivery to Kenyans.

Our performance audits examine compliance with policies, obligations, laws, regulations and standards, and whether the resources are managed in a sustainable manner. They also examine the economy, efficiency and effectiveness with which public resources have been utilised. I am hopeful that corrective action will be taken in line with our recommendations in the report.

The report shall be tabled in Parliament in accordance with Article 229 (7) of the Constitution. Also, as required of me in Section 36 (2) of the Public Audit Act 2015, I have submitted the original copy of the report to Parliament. In addition, I have remitted copies of the report to the Cabinet Secretary, Ministry of Mining and Petroleum, the Permanent Secretary, Ministry of Mining and Petroleum, the Principal Secretary, National Treasury and the Secretary Presidential Delivery Unit.



FCPA Edward R. O. Ouko, CBS

AUDITOR – GENERAL

23 April, 2019

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ABBREVIATIONS

CSR	-	Corporate Social Responsibility
ESIA	-	Environmental Impact and Social Assessment
EMCA	-	Environmental Management and Coordination Act
GDP	-	Gross Domestic Product
INTOSAI	-	International Organization of Supreme Audit Institutions
ISA	-	International Standards on Auditing
NEMA	-	National Environmental Management Authority
SDoM	-	State Department of Mining
OAG	-	Office of the Auditor-General

EXECUTIVE SUMMARY

University of Mombasa and Taita Taveta University.

Background to the Audit

1. Monitoring of operations in the mining sector is crucial to ensure that the country is benefiting from extraction of its mineral resources. In Kenya, mining activities are majorly undertaken by private entities although the State Department of Mining (SDoM) oversees the operations in the Sector.
2. Prior to a mining company being allowed to extract minerals in Kenya, they apply and are issued with a mining license with set conditions that they must fulfill. The Directorate of Mines in SDoM is responsible for monitoring and enforcement of licensing conditions and other provisions under the Mining Act, 2016.

Objective of the Audit

3. The overall audit objective was to establish the effectiveness of the SDoM in monitoring the activities of mining companies. Specifically, the audit sought to establish whether SDoM has been monitoring mining activities to ensure that;
 - i. Mining companies pay the right amount of royalties and annual ground fees within the specified timelines
 - ii. Mining companies transfer skills to Kenyan citizens
 - iii. Mining companies provide collaboration and linkages with training institutions to train Kenyan citizens
 - iv. Mining companies conduct CSR activities geared towards making provision for basic amenities for the mine community
 - v. Mining companies comply with environmental regulations

Scope of the Audit

4. The audit focused on the effectiveness of the SDoM in monitoring implementation of conditions set out in the mining licenses between the periods of July, 2013 to December, 2017. The audit sampled the major mining companies in the country. This include Base Titanium, Karebe Gold, Kilimapesa Gold and Tata Chemicals Limited. The audit also sampled Universities offering mining courses, these are the Technical

Summary of Findings

5. The audit revealed that there was low level of involvement of the State Department of Mining in ensuring that mining companies adhere to provisions in the Mining Act and fulfill licensing conditions as indicated below;

Irregular and Non-Payment of Royalties and Annual Fees

- i. **The State Department of Mining has not been Adequately Monitoring Payment of Royalties**
6. There were discrepancies in the amount of royalties paid by the mining companies and the data maintained by the SDoM. The discrepancies were attributed to poor records management at the SDoM and lack of monitoring and evaluation. The department relied on data provided by the mining companies.
 - ii. **Inconsistency in the Administration of Royalties Payments**
7. Although Section 183(1) of the Mining Act states that: the holder of a mineral right shall pay royalties to the State, documentary review revealed that Tata Chemicals was paying royalties to both the National and County governments.
8. Documentary review revealed that there were inconsistencies in the timelines for payment of royalties in Karebe Gold and Kilimapesa Gold despite both mining the same type of mineral. Karebe Gold paid royalties in advance before exportation while Kilimapesa Gold paid royalties after exportation
9. The Directorate has not been generating reports on mineral production and exports data and does not monitor the extraction of minerals. The SDoM is therefore not in a position to advise the government on how much revenue is expected from the mining sector despite the extractive industries being a key priority for the government in economic growth and job creation.
 - iii. **Inconsistency in the Administration of Annual Fees**
10. Companies were operating under different conditions with regards to payment of annual

fees. For instance, both Karebe Gold and Kilimapesa Gold were operating on a special mining license despite constant applications to the Department to convert the special mining license into a mining lease.

11. Tata Chemicals did not have a Mining lease but operated on a land lease acquired in 1911. The company was not paying annual fees to the Department but instead was paying land rates to both the Ministry of Lands and the County Government of Kajiado.

Inadequate Transfer of Skills in the Mining Industry

12. In Tata Chemicals, all the top level management were Kenyan citizens. In Base Titanium and Karebe Gold, Kenyan citizens in top management stood at 77% and 23%, respectively. No Kenyan citizen was in top management in Kilimapesa Gold.
13. The audit revealed that out of the four sampled companies, only Base Titanium had a training plan for transfer of skills to Kenyan citizens. The training plan had an elaborate implementation schedule clearly identifying timelines for the expatriates to be replaced and the Kenyans understudying them so as to eventually take over their positions. For the period under review, Base Titanium had replaced 20 expatriates. The succession plan indicated that the remaining 32 expatriates will be replaced by end of the year 2025.
14. At the time of the audit, the SDoM had not implemented strategies to address the gaps of the required skills. In addition, the SDoM did not have any information indicating the number of Kenyan citizens employed by the mining companies in the various cadres. Due to the skills gaps, mining companies continue relying on expatriates, denying Kenyans an opportunity to work in the Mining industry.

Mining Companies have Minimal Collaboration with Training Institutions

15. Of the sampled mining companies, only Base Titanium had a collaboration with a learning institution; the Technical University of Mombasa. Moreover, Base Titanium was the only company that consistently offered internship opportunities to students during the four years under review.
16. The SDoM has not been actively involved in ensuring that the mining companies collaborate

with learning institutions leading to laxity by the mining companies complying with the regulation. The SDoM does not have an inventory of skills required in the Mining industry that could inform the learning institutions on courses they should offer. This has resulted to lack of incorporation of practical skills in the mining courses taught in the institutions. Consequently, graduates lack requisite skills required in the mining industry, resulting to mining companies hiring expatriates.

Inadequate Implementation of Corporate Social Responsibility activities by Mining Companies

17. The SDoM was not monitoring CSR activities implemented to ensure that the mine community benefited from the operations of mining companies. Despite the lack of monitoring, documentary review and physical verification revealed that mining companies were carrying out CSR activities using different approaches.
18. Although all the sampled mining companies were carrying out various CSR activities, the SDoM was not involved in the identification and prioritization of needs for the mine communities. In addition, the SDoM was not monitoring CSR activities carried out by the companies resulting to some implementing minimal CSR activities that had little impact on the mine community.

Non-compliance with Environmental Regulations

19. Physical verification of Base Titanium's operations revealed that there was extensive loss of biodiversity due to the destructive nature of the mining operations. It was difficult for the company to decommission and rehabilitate the areas exhaustively mined to their original state because after the exhaustion of minerals, the only by-product left was beach sand which cannot support the growth of the original vegetation. The company was rehabilitating the mined areas by planting grass for the purpose of preventing erosion.
20. In Karebe Gold, the audit revealed that tailings generated after the processing of gold using mercury and cyanide were dumped in an open place. There were no mechanisms in place to ensure that the harmful chemicals used in the refining of gold like cyanide and mercury were not

washed back to the environment after heavy rains.

21. There have been complaints from the community that Kilimapesa Gold was dumping water containing elements of cyanide and mercury into nearby water ways that are used by livestock leading to livestock deaths.

22. During the last decade, both the depth and area of Lake Magadi has decreased tremendously due to sediments that currently covers up to 20% of the lake surface. The sediments result from soil erosion caused by poor farming methods by the communities living upstream

23. The SDoM has not been involved in the implementation of environmental regulations. However, NEMA monitors the implementation of environmental regulations.

Reasons for Inadequate Monitoring of Mining Operations

i. Inadequate Staff for Monitoring Operations in the Mining Sector

24. At the time of the audit, the SDoM had only 11 mine inspectors leaving a deficit of 221 which made it very difficult to effectively perform its duties.

25. The SDoM had not developed a monitoring and reporting framework with timelines for monitoring mining activities. This led to laxity by the companies in implementing the licensing conditions.

26. The regional offices were not adequately capacitated to carry out their mandate. Interviews with regional inspectors of mines revealed that the office did not have adequate technical staff despite the complex nature of mining operations.

ii. Inadequate Facilities for Monitoring Mining Operations

27. The SDoM does not have the required equipment for determining the quality and quantity of minerals mined in the country and relies on values declared by the mining companies for purposes of computation of royalties. This poses a risk of using undervalued minerals for the determination of royalties.

28. The regional offices did not have machinery for weight measurements to ascertain and verify the quantities of minerals produced by the mining companies. They therefore had to rely on mineral production data given by the mining companies. This greatly hindered determination of quantities being exported yet these are used for calculation of royalties due to the government.

29. The SDoM has a mining cadaster portal which provides all data regarding details of all the mining companies. A visit to the regional offices revealed that they did not have computers and network infrastructure to access the online cadaster and could not use the portal to effectively monitor mining operations.

Conclusion

30. There has been minimal monitoring of operations in the mining sector despite the enactment of the Mining Act 2016, in an effort to spur the Country's economic growth. The sector has the potential to contribute up to 10% of the country's GDP but currently contributes less than 1%. This can be attributed to inadequate monitoring of implementation of provisions set out in the Mining Act, and licensing conditions by the mining companies.

31. There are inconsistencies in the administration of royalties and annual fees payments with some mining companies paying annual fees to other government agencies and community groups contrary to the provisions in the Mining Act.

32. The SDoM has not ensured that there is transfer of mining skills to Kenyan citizens. Consequently, mining companies are relying on expatriates at the expense of many Kenyan citizens who would otherwise be employed. In addition, SDoM has not ensured that mining companies collaborate with training institutions to address the skills gap in the country.

33. There is minimal monitoring on implementation of CSR activities carried out by the mining companies resulting to some mining companies implementing CSR activities that have little impact to the mine communities.

34. Despite the destructive nature of mining activities, the Department has not ensured that the mining companies rehabilitate the mined areas to their original state and responsibly dispose waste. This has resulted to loss of

biodiversity and pollution of water bodies.

35. The inefficient monitoring of mining operations in the mining sector is attributed to inadequate staff and facilities at the State Department of Mines.

Recommendations

36. To ensure that there is timely payment of royalties and annual fees, the SDoM should;

- i. Keep updated records on royalties and annual fees payments to enable the department easily identify mining companies that are not complying with the provision of payment of royalties and annual fees.
- ii. Implement provisions set out in the Mining Act on late or non-payment of royalties and annual fees to deter mining companies from non-compliance with the provisions.
- iii. Ensure that there is uniformity in the administration of royalties and annual fees to avoid payment to other agencies that are not mandated by the Mining Act.
- iv. Streamline the process of payment of royalties and annual fees for companies dealing in the same minerals to ensure uniformity for easier administration.
- v. Have the relevant equipment's for determining the value of minerals mined to avoid loss of revenue through undervaluation by the mining companies. They should also ensure they have officers on site to monitor the extraction of minerals to deter smuggling.

37. To ensure that there is transfer of skills in the mining sector the SDoM should;

- i. Ensure that mining companies collaborate with learning institutions for purposes of research and environmental management to enable students acquire relevant practical experience. Further, the SDoM should ensure that the mining companies file returns with the department on the number of collaborations they have with learning institutions and their future plans on the collaborations.
- ii. Work closely with the mining companies to enable them have an inventory of skills required in the mining industry. The SDoM should use this information to make sure that

courses offered by the learning institutions are relevant to the mining industry.

- iii. Ensure that mining companies develop and implement elaborate training plans for replacement of expatriates with Kenyan citizens.

- iv. Collaborate with multi-national companies in the mining and construction industries for donation of heavy machineries to learning institutions upon completion of their projects in the Country. This will help to equip students with practical skills that are required in the mining sector.

38. To ensure that mining companies implement CSR activities that impact on the mine communities the SDoM should;

- i. Ensure that mining companies have annual plans on CSR activities to be implemented. The department should also ensure that the mining companies involve the mine community in selection of CSR activities to be carried out. This will ensure that the CSR activities carried out have an impact to the mine community.
- ii. Monitor the implementation of the annual plans on CSR activities to be carried out by mining companies.
- iii. Sensitize the mine communities on the benefits of engaging with the mining companies in the selection of CSR activities.

39. To ensure that mining companies comply with environmental and safety regulations the SDoM should;

- i. Collaborate with the relevant government agencies to ensure that mining companies comply with provisions on environmental regulations provided in the Environmental and Management and Coordination Act and safety regulations.

CHAPTER 1

1.0 BACKGROUND TO THE AUDIT

Introduction

- 1.1 Monitoring of operations in the mining sector is crucial to ensure that the country is benefiting from extraction of its mineral resources. In Kenya, mining activities are majorly undertaken by private companies but the State Department of Mining oversees the operations in the Sector.
- 1.2 Prior to a Mining company being allowed to extract minerals in Kenya, they apply and are issued with a mining license with set conditions that the mining companies must fulfill. The Directorate of mines in the State Department of Mining is responsible for monitoring and enforcement of licensing conditions and other provisions under the Mining Act, 2016.

Motivation for the Study

- 1.3 The Auditor – General authorized the audit after having considered the following;
 - i. Most of Kenya’s natural resources are yet to be exploited yet there are significant opportunities for growth. The mining sector currently contributes only 1% to Kenya’s Gross Domestic Product (GDP), though it has potential to contribute between 4% and 10%. An audit was therefore necessary to find out what needs to be done to ensure that the sector contributes significantly to the GDP.
 - ii. With the country being fairly new in large scale mining there is need to ensure effective monitoring structures are in place to ensure that all Kenyan citizens benefit from the extraction of mineral resources. An audit was therefore necessary to find out whether the monitoring structures in place were being implemented by the Directorate of Mines.
 - iii. There have been public outcries by mine communities regarding displacement of households, lack of employment opportunities in the mining companies, poor infrastructure and high poverty levels. An audit was necessary to find out the role of the Directorate of Mines in ensuring that the mining companies operations uplift the

living standards of the mine community.

- iv. According to an article authored by the Director, Extractives Baraza, Strathmore University, the mining sector is dominated by expatriates. The article states that very few Kenyans are in possession of the highly technical skills required in the mining sector resulting to mining companies getting the required skills from expatriates. This denies Kenyans an opportunity to work in the mining industry in highly technical areas. An audit was necessary to find out what action the State Department of Mining was taking to ensure that more Kenyans acquire the required mining skills.

CHAPTER 2

2.0 DESIGN OF THE AUDIT

Objective of the Audit

- 2.1 The overall audit objective was to establish the effectiveness of the State Department of Mining in monitoring the activities of mining companies.
- 2.2 Specifically, the audit sought to establish whether the State Department of Mining has been monitoring mining activities to ensure that;
 - i. Mining companies pay the right amount of royalties and annual ground fees within the specified timelines
 - ii. Mining companies transfer skills to Kenyan citizens
 - iii. Mining companies provide collaboration and linkages with training institutions to train Kenyan citizens
 - iv. Mining companies conduct CSR activities geared towards making provision for basic amenities for the mine community
 - v. Mining companies comply with environmental regulations

Audit Questions

- 2.3 To achieve the above audit objectives, the audit sought to answer the following questions;
 - i. Do the mining companies pay the right amount of royalties and annual ground fees within the specified timelines?
 - ii. Have mining companies been providing collaboration and linkages with training institutions to train Kenyan citizens?
 - iii. Have the mining companies been transferring skills to Kenyan citizens?
 - iv. Do the mining companies conduct CSR activities through provision of basic amenities to the mine community?
 - v. Do the mining companies comply with environmental and safety regulations?

Scope of the Audit

- 2.4 The audit focused on the effectiveness of the State Department of Mining in monitoring implementation of conditions set out in the mining licenses between the periods 1st July 2013

to 31st December, 2017. The audit sampled the major mining companies in the country. These include Base Titanium, Karebe Gold, Kilimapesa Gold and Tata Chemicals Limited. The audit also sampled Universities offering mining courses, these are the Technical University of Mombasa and Taita Taveta University.

The Assessment Criteria

- 2.5 The audit criteria used was drawn from the specific mining licenses issued to the sampled mining companies, Mining Act, 2016, the Environmental Management and Coordination Act, 1999, mining and minerals policy 2016, the Strategic plan 2013-2017 and the Kenya Mining Investments Handbook 2016. Details on the audit criteria are provided in Annexure 1.

Methodology of the Audit

- 2.6 The audit was conducted in accordance with performance auditing guidelines issued by the International Organization of Supreme Audit Institutions (INTOSAI) and audit policies and procedures established by the Office of the Auditor- General (OAG). The guidelines and policies fulfill the requirements of the International Standards on Auditing (ISA).
- 2.7 To understand the monitoring of operations by the State Department of Mining, the audit reviewed; the Mining Act, Chapter 306, 1987, the Mining Act, 2016, the mining and minerals policy 2016, the Strategic plan 2013-2017, the Kenya Mining Investments Handbook 2016, and other documents listed in **Annexure 2**. The purpose of reviewing the mentioned documents is detailed in the same annexure.
- 2.8 The audit focused on operations of the State Department of Mining with regards to monitoring activities that were still being monitored in the previous Mining Act, Chapter 306, 1987. This was with the exception of Corporate Social Responsibility which was voluntary before the enactment of the new Mining Act, 2016.
- 2.9 To understand the various functions and operations of the Directorate of Mines with regards to monitoring of mining operations, the director of mines and other officers involved in monitoring mining operations were interviewed as detailed in **Annexure 3**.
- 2.10 To understand the operations of the mining companies, the management of the mining

companies were interviewed.

- 2.11 To get an understanding on the effects of the mining operations on the mine communities, area chiefs were interviewed.
- 2.12 Physical verification was also carried out to ascertain the CSR activities carried out.

CHAPTER 3

3.0 DESCRIPTION OF THE STUDY AREA

Background Information

- 3.1 Prior to the establishment of the State Department of Mining under the Ministry of Petroleum and Mining in 2018, the Ministry of Mining was an independent Ministry.
 - 3.2 Before the enactment of the new Mining Act in May 2016, mining activities in the country were regulated by the Mining Act, Cap 306, 1987.
 - 3.3 The mandate of the State Department of Mining includes;
 - i. Minerals exploration and mining policy and Management
 - ii. Inventory and mapping of mineral resources
 - iii. Mining and minerals development
 - iv. Policies on the management of quarrying and mining of rocks and industrial minerals
 - v. Management of health and safety in mines
 - vi. Policy around extractive industry
 - vii. Resource surveys and remote sensing
 - viii. Maintenance of geological data
 - 3.4 To enhance service delivery and fulfill its mandate and objectives the State Department of Mining has six directorates based at the headquarters in Nairobi, namely;
 - i. Directorate of administration and planning
 - ii. Directorate of resource survey and remote sensing
 - iii. Directorate of mines
 - iv. Directorate of policy and regulation
 - v. Directorate of Mine, Health, Safety and Environment
 - vi. Directorate of Mineral promotion and value addition
 - 3.5 The State Department of Mining has three regional offices in Mombasa, Migori and Embu which facilitate the Directorate of Mines in monitoring mining operations in regions outside Nairobi.
- Monitoring of Mining Operations**
- 3.6 Monitoring of mining operations is under the Directorate of Mines working in liaison with the other five (5) Directorates in fulfilling its core functions which include;
 - i. monitoring and auditing quantity and quality of minerals produced and exported by large, medium and small scale miners to determine revenue generated to facilitate collection of payable royalty;
 - ii. assessing values of minerals produced by large, medium and small scale miners to facilitate collection of payable royalty;
 - iii. collecting, analyzing, interpreting and disseminating minerals production and exports data for projecting government revenue;
 - iv. auditing and possibly tracing minerals in a bid to establish their true sources in order to reduce cases of smuggling and fraud in the sector and further encourage genuine trade in minerals;
 - v. counteracting minerals smuggling and minerals royalty evasion in collaboration with relevant government authorities;
 - vi. sealing samples due for testing to the laboratory to reduce cases where samples are shipped for commercial purposes under the guise of testing;
 - vii. advising on all matters relating to the administration of the mineral sector revenue streams with main focus on monitoring and auditing of mining operations to maximize government revenue;
 - viii. conducting mine inspection to ascertain compliance with set standards in relation to health standards;
 - ix. examining and monitoring implementation of feasibility reports, mining programs and plans, annual mining performance reports and environmental management plans and reports of mining companies;
 - x. promoting and conducting research and development in the mineral sector that will lead to increased government revenue.

Provisions on Monitoring of Mining Operations

3.7 The Provisions set out in the Mining Act, 2016 are the same ones stipulated as conditions in the mining licenses. Provisions on monitoring of operations in the Mining Act, 2016 are as detailed below;

- i. The Mining Act Section 140 (h) stipulates that the holder of a mining permit shall pay royalties, fees, mining taxes and charges. It further states that in the event that the mineral right holder does not pay the royalties payable within sixty days, the Cabinet secretary shall revoke the license or permit. Where the holder of a mineral right fails to pay the prescribed royalty within the prescribed period, the Cabinet Secretary may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder.
- ii. The Mining Act Section 47. (1) Stipulates that the holder of a mineral right shall give preference in employment to members of the community and citizens of Kenya.

Section 47 (2) stipulates that in the case of a large scale operation, the holder of a mineral right shall -

- (a) conduct training programmes for the benefit of employees;
- (b) undertake capacity building for the employees;
- (c) only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law;
- (d) work towards replacing technical non-citizen employees with Kenyans, within such reasonable period as may be prescribed by the Cabinet Secretary;
- (e) provide a linkage with the universities for purposes of research and environmental management;
- (f) where applicable and necessary facilitate and carry out social responsible investment for the local communities; and

(g) implement a community development agreement as may be prescribed in Regulations.

- 3.8 Mining companies are also required to carry out an Environmental Impact and Social Assessment (ESIA) before commencing operations after which they are issued with a certificate of compliance. The companies are expected to comply with the Environmental Management and Coordination Act which in article 42(e) states "that no person shall deposit any substance in a lake, river or wetland or in or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake, sea or wetland".
- 3.9 Conditions in mining license require mining companies to make provisions for basic amenities necessary for the mining communities living within the mining areas. The basic amenities include; adequate housing, water and sanitary arrangements, facilities for dispensaries and medical treatment, schools, shops or other means of procuring daily supplies, social or community centers and transport facilities.

Roles and Responsibilities of Key Players

Mineral Rights Holders

- 3.10 They are individuals or companies in possession of a prospecting license, retention license, mining license, prospecting permit, mining permit or an artisanal permit. They are obliged to pay license prescribed fees, royalties, ground rates and taxes. They are required to abide by the mining Act and conditions as set in the mining license.

National Environment Management Authority (NEMA)

- 3.11 NEMA is responsible for reviewing and approving Environmental Impact Assessments (EIA) reports, advising the Ministry of mining on environmental issues and monitoring mining activities to assess their impact on the environment.

The Process of Monitoring Operations in the Mining Sector

- 3.12 The mines department under the directorate of mineral exploration, is in charge of monitoring mining operations. The monitoring is carried out by mining inspectors based at the headquarters and in the regions.
- 3.13 Mineral Right Holders are issued with mining licenses that set out conditions to be fulfilled in their mining operations. The mining inspectors are required to monitor the implementation of

the mining conditions and compile reports clearly indicating the compliance status. The report contains recommendations on actions that need to be taken in the event of non-compliance.

3.14 In some cases, the department works in liaison with other agencies to ensure implementation of their recommendations. For instance, NEMA in the case of non-compliance with environmental requirements or the Kenya Revenue Authority for

collection of duties on mineral exports.

Sources of Funding

3.15 The State Department of Mining derives funds for its operations from the Government of Kenya budgetary provisions. There is no separate budget set aside for monitoring of mining operations. The department's funding and expenditure is as shown in **Table 1**.

Table 1: Sources of Funding

Year	Budget (Ksh.)	Actual Expenditure (Kshs)	Variance (Kshs)	Percentage Variance
2013/14	1,414,983,034	994,040,737	420,942,297	30%
2014/15	1,960,211,140	1,627,554,148	332,656,992	17%
2015/16	2,237,393,519	2,352,382,855	-114,989,336	-5%
TOTAL	5,612,587,693	4,973,977,740	638,609,953	

Source: OAG Kenya analysis of Ministry Financial Statement

CHAPTER 4

I. Irregular and Non-Payment of Royalties and Annual Fees

4.0 FINDINGS

4.1 The State Department of Mining is charged with the responsibility of ensuring that mining companies adhere to provisions in the Mining Act, 2016 and licensing conditions. The audit revealed that there was low level of involvement of the State Department of Mining in ensuring that mining companies adhere to provisions in the Mining Act and fulfill licensing conditions. The findings are detailed below;

i. The state Department of Mining has not been Adequately Monitoring Payment of Royalties

4.2 The Mining Act 2016, Section 183 (1) states that the holder of a mineral right shall pay royalties to the state in respect of the various mineral classes won by virtue of the mineral right. Documentary review revealed that Base Titanium, Karebe Gold and Kilimapesa Gold had paid the due royalties for the period under review. However, Tata Chemicals had not paid royalties for the financial years 2015/2016 and 2016/2017 amounting Ksh. 16 Million as shown in Table 2.

Table 2: Royalties Payment by the Mining Companies (Amounts are in Ksh.)

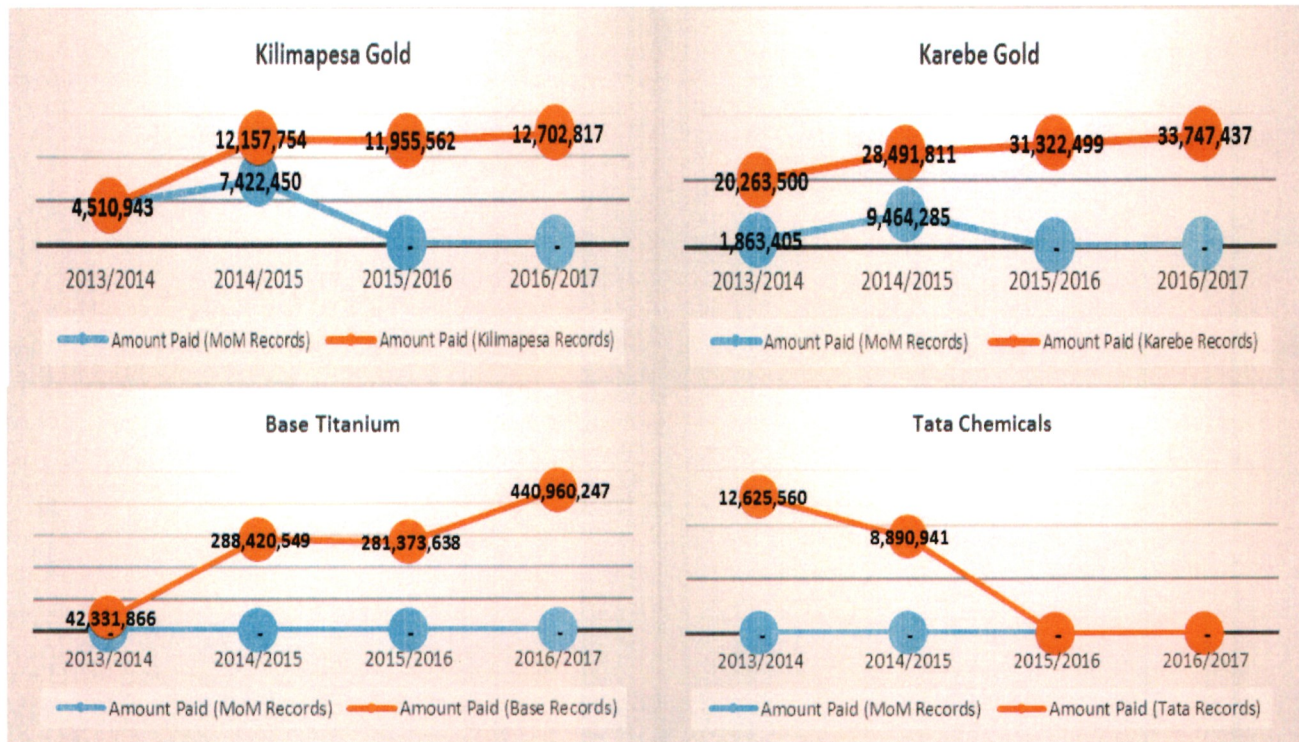
Year	Kilimapesa		Karebe		Tata Chemicals		Base Titanium	
	Amount Due	Amount Paid (Kilimapesa Records)	Amount Due	Amount Paid (Karebe Records)	Amount Due	Amount Paid (Tata Records)	Amount Due	Amount Paid (Base Records)
2013/2014	4,510,943	4,510,943	20,263,500	20,263,500	12,625,560	12,625,560	42,331,866	42,331,866
2014/2015	12,157,754	12,157,754	28,490,916	28,491,811	8,890,941	8,890,941	288,420,549	288,420,549
2015/2016	11,955,562	11,955,562	31,322,499	31,322,499	8,351,633	-	281,373,638	281,373,638
2016/2017	12,702,817	12,702,817	33,747,437	33,747,437	7,941,745	-	440,960,247	440,960,247
Totals	41,327,076	41,327,076	113,824,352	113,825,247	37,809,879	21,516,501	1,053,086,300	1,053,086,300

Source: OAG-K Analysis of Data from Mining Companies

4.3 Despite Tata Chemicals failing to remit royalty on due dates, the company was still in operation contrary to section 187 (3) of the Mining Act. The Act states that in the event that the mineral right holder does not pay the royalties payable within sixty days, the Cabinet Secretary shall revoke the license or permit. It further states that where the holder of a mineral right fails to pay the prescribed royalty within the prescribed period, the Cabinet Secretary may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder. The State Department of Mining was yet to enforce this provision on Tata Chemicals and there was minimal follow up from the department with regards to payment of the arrears.

4.4 Data availed by the mining companies and analysis of company files at the State Department of Mining revealed that there were discrepancies on amount of royalties paid by the mining companies and the data maintained by the SDoM as shown in Plate 1. For instance, data availed by the State Department of Mining revealed that Base Titanium had not paid any royalties for the period under review. However, Base Titanium management provided payment receipts for royalties paid to the then Ministry of Mining for the four financial years under review. The receipts indicated that they had paid all royalties due, amounting to Ksh. 1 billion for the period under review.

Plate 1: Discrepancies on Amount of Royalties Paid between SDoM and Mining Companies Records (Amounts are in Ksh.)



Source: OAG-K Analysis of Data from Mining Companies

4.5 The discrepancies were attributed to poor records management at the State Department of Mining and lack of monitoring and evaluation. The department relied on data provided by the mining companies.

ii. Inconsistency in the Administration of Royalties Payments

4.6 The directorate of mines is tasked with the role of advising the Government on all matters relating to the administration of the mineral sector revenue streams with the main focus on monitoring and auditing of mining operations to maximize government revenue.

4.7 Section 183 (1) of the Mining Act states that the holder of a mineral right shall pay royalties to the State in respect of the various mineral classes won by virtue of the mineral right. Documentary review revealed that Tata Chemicals was paying royalties to both the National and County governments. There was also no communication from the State Department of Mining directing Tata Chemicals to pay all the royalties due to the National government.

4.8 Documentary review revealed that there were inconsistencies in the timelines for payment of royalties in Karebe Gold and Kilimapesa Gold despite both companies mining the same type of mineral. Karebe Gold paid royalties in advance

before exportation based on the quantity of gold being exported, level of purity, and the price of Gold in the international market at that time of export and the current exchange rate.

4.9 With Kilimapesa Gold, royalties are paid based on the selling price of Gold determined by the purchasing overseas company after exportation. The State Department of Mining is therefore not involved in the determination of the level of purity of gold which is a major variable in determination of the amount of royalties' payable. There is therefore the risk of mining companies colluding with the purchasing overseas company to undervalue the mineral so as to pay less royalties to the government.

4.10 The directorate of mines is responsible for collecting, analyzing, interpreting and disseminating minerals production and exports data for projecting government revenue. The directorate has not been generating reports on mineral production and exports data. In addition, field visits revealed that the directorate of mines does not monitor the extraction of minerals. For instance, the directorate does not monitor gold smelting operations to ascertain the quantities of gold refined which may create an avenue for Gold being sold through illegal means.

4.11 The State Department is therefore not in a position to advise the government on how much revenue is expected from the mining sector despite the extractive industries being a key priority for the government in economic growth and job creation.

iii. Inconsistency in the Administration of Annual Fees

4.12 Section 182 of the Mining Act states that the holder a mineral right shall pay fees and prescribed charges annually upon grant of relevant mineral right for the duration of the right. In addition, conditions prescribed in the mining license require the mining companies to pay a specific amount of annual fees depending on the size of the area licensed.

4.13 The sampled mining companies were paying the annual fees as required. However, documentary review revealed the companies were operating under different conditions with regards to payment of annual fees. For instance, both Karebe Gold and Kilimapesa Gold were operating on a special mining license despite constant applications to the Department to convert the special mining license into a mining lease.

4.14 The companies were operating on privately owned land and paying land rent to the owners of the land. For instance, Karebe Gold which operates on an area of 82 km² pays a range of Ksh. 12,000-18,000 per acre per month to the land owners, two years in advance, while Kilimapesa Gold, which has been in operation for the last 12 years, operates on land owned by a local community group called Moyoi group ranch and has been paying the group monthly rent of Ksh. 812,000.

4.15 Further, documentary review revealed that Tata Chemicals did not have a Mining lease but operated on a land lease acquired in 1911. The company was not paying annual fees to the Department but instead was paying land rates to both the Ministry of Lands and the County Government of Kajiado. The Department was therefore not receiving annual fees from Tata Chemicals despite the company being involved in extraction of minerals.

ii. Inadequate Transfer of Skills in the Mining Industry

4.16 The Mining Act. Section 47 (1) stipulates that the holder of a mineral right shall give preference in employment to members of the community and citizens of Kenya. Further, in the case of a large

scale operation, the holder of a mineral right shall work towards replacing technical non-citizen employees with Kenyans, within such reasonable period as may be prescribed by the Cabinet Secretary.

4.17 The audit revealed that Karebe Gold and Base Titanium had Kenyan citizens in their top management. The citizens in Top management comprised of 77% in Base Titanium and 23% in Karebe Gold. However, there was no Kenyan citizen in Kilimapesa Gold top management. In Tata Chemicals, all the top level management were Kenyan citizens. The representation is as shown in **Table 3**

Table 3: Composition of Kenyan Citizens in Mining Companies

	Top Management		Middle Level	
	Ken-yans	Expatri-ates	Ken-yans	Expatri-ates
Base Titanium	109	32	667	0
Karebe Gold	3	13	258	0
Kilimapesa Gold	0	15	17	0

Source: OAG-K Analysis of Data from Mining Companies

4.18 Documentary review of sampled mining companies revealed that only Base Titanium had a training plan for transfer of skills to Kenyan citizens. The training plan had an elaborate implementation schedule clearly identifying timelines for the expatriates to be replaced and the Kenyans understudying them so as to eventually take over their positions. For the period under review, Base Titanium had replaced 20 expatriates. The succession plan indicated that the remaining 32 expatriates will be replaced by end of the year 2025.

4.19 Interviews with the management of sampled companies indicated that the reason for the high number of expatriates in the top management was due to the lack of the required mining skills in the country. As at the time of the audit, the State Department of Mining had not implemented strategies to address the gaps of the required skills. In addition, the Department did not have any information indicating the number of Kenyan citizens employed by the mining companies in the various cadres. Due to the skills gaps, mining

companies continue relying on expatriates, denying Kenyans an opportunity to work in the Mining industry.

III. Mining Companies have Minimal Collaboration with Training Institutions

- 4.20 Section 47 (2) (e) of the Mining Act. states that mining companies should provide a linkage with Universities for purposes of research and environmental management. This is to ensure that Universities offer courses that are relevant to the mining industry. This would ensure that Kenyan citizens are absorbed in the mining industry.
- 4.21 Of the sampled mining companies, only Base Titanium had a collaboration with a learning institution; the Technical University of Mombasa. In the MOU, students were trained at the university for 3 months and attached at the company for 9 months to gain hands on experience. The first batch of 20 Diploma holders in Mechanical Engineering and Electrical Engineering were all absorbed by the Company after they completed their studies.
- 4.22 The audit revealed out of the four sampled companies, only Base Titanium had consistently offered internship opportunities to students in the four years under review. The number of beneficiaries who benefited from internship opportunities in the sampled companies is shown in **Table 4**.

Table 4: Internship Beneficiaries

Mining Company	No. of Beneficiaries
Base Titanium	155
Karebe Gold	0
Kilimapesa Gold	1
Tata Chemicals	0

Source: OAG-K Analysis of Data from Mining Companies

- 4.23 The State Department of Mining has not been actively involved in ensuring that the mining companies collaborate with learning institutions leading to laxity by the mining companies

complying with the regulation. In addition, interviews with the management of the Technical University of Mombasa and Taita Taveta University revealed that, SDoM does not have an inventory of skills required in the Mining industry that could inform the learning institutions on courses they should offer. This has resulted to lack of incorporation of practical skills in the mining courses taught in the institutions. Consequently, graduates lack requisite skills required in the mining industry, resulting to mining companies hiring expatriates.

IV. Inadequate Implementation of Corporate Social Responsibility activities by Mining Companies

- 4.24 One of the conditions set out in the mining license is that the mineral right holder shall in the planning of its development, make provision for basic amenities necessary for the mine community. The basic amenities include; adequate housing, water and sanitary arrangements, facilities for dispensaries and medical treatment, schools, shops or other means of procuring daily supplies, social or community centres and transport facilities.
- 4.25 Interviews with management of sampled companies revealed that the SDoM was not monitoring CSR activities implemented to ensure that the mine community benefited from the operations of mining companies. Despite the lack of monitoring, documentary review and physical verification revealed that mining companies were carrying out CSR activities using different approaches as detailed below;

i. Base Titanium

- 4.26 Base Titanium had an elaborate plan on how to carry out CSR activities and spent an average of 2% of its annual revenue on community investment and social management activities as indicated in **Table 5**

Table 5: Base Titanium Community and Social Investment

Year	Community Investment (Ksh)	Social Management (Ksh)	Total Community (Ksh)	Annual Revenue (Ksh)	Community investment as % of Reveune (%)	Total community costs as % of Revenue (%)
2014	157,732,576	33,173,898	190,897,419	3,094,283,836	5.1	6.2
2015	302,230,282	30,195,458	332,425,740	12,153,872,091	2.5	2.7
2016	239,758,843	53,815,838	293,574,680	12,772,790,676	1.9	2.3
2017	198,237,399	73,369,689	271,606,987	16,342,372,178	1.2	1.7

Source: OAG-K Analysis of Base Titanium Documents

4.27 The CSR activities carried out by the company include construction of schools, health centres, roads and water projects among others as detailed in Table 6 and shown in **Plate 2**.

Table 6: CSR Activities carried out by Base Titanium

CSR Activities	Brief Description
Agriculture/ Water	<ul style="list-style-type: none"> • Cultivation of 100 acres of cotton in which 60 Community Based Organization members benefited • 100 community members engaged in commercial beekeeping • Training of poultry farmers on the improvement of poultry feeds • Doing research on how to improve potato seedlings in Kwale County • Drilling of water boreholes in Majimboni, Kibwaga and Kigombero
Health	<ul style="list-style-type: none"> • Construction of Msambweni referral Hospital blood Bank • Construction of Likoni Hospital maternity wing • Construction of Magaoni health centre • Construction of two staff houses at Ng'ombeni dispensary • Supply of medical drugs to various health centers • Employment of community health workers • Training members of the community on health related issues
Education	<ul style="list-style-type: none"> • Granted Scholarships to 147 tertiary level students and 878 secondary level students to the value of Ksh. 88 million • Construction of Kidimu Primary School Special Unit for the deaf dormitory • Construction Kidimu Primary School Special Needs Unit • Construction of a resource centre for the Kenya Medical Training College in Msambweni • Construction of a science laboratory at Kiruku secondary school • Renovation of a girl's dormitory at Shimba Hills Secondary School • Fencing of the agricultural training College's farm • Construction of a guard house in Mkongani • Electrical wiring and fencing at Magaoni Secondary School
Infrastructure	<ul style="list-style-type: none"> • Construction of the road linking Base Titanium to Kwale Mombasa highway

Source: OAG-K Analysis of Base Titanium Documents

Plate 2: Base Titanium SCR Activities



CSR activities implemented by Base Titanium namely the Cotton livelihood programme, Magaoni Base Secondary School, Magaoni Health Centre and the Blood Bank at Msambweni Hospital

ii. Karebe Gold

4.28 The Company did not have a plan on how to implement CSR activities but implemented them on a need basis. **Table 7** and **Plate 3** detail the CSR activities carried out by the company.

Table 7: CSR Activities carried out by Karebe Gold

CSR Activities	Brief Description
Education	<ul style="list-style-type: none"> • Supply of school books to 4 schools within the mine community • Contribution of Ksh. 500,000 annually towards the school fees for the needy and poor students in various schools within the mine community • Participation in the soccer team sponsorships and awards during various tournaments
Infrastructure	<ul style="list-style-type: none"> • Construction of an access road to a tune of Ksh.10M • Water supply to the mine community using water bowsers during dry season • Construction a laboratory, classroom, library and a toilet for a local school • Construction of a police station • Construction of a boda boda shade shelter • Construction of a pit latrine at the chief's camp • Construction of a pit latrine at the local dispensary

Source: OAG-K Analysis of Karebe Gold Documents

Plate 3: Karebe Gold SCR Activities



CSR activities carried out by Karebe Gold namely Construction of Chemase police Post, Boda Boda Shelter for the locals, a Library for the Local Secondary School and Pit latrines for the Chief’s Office

iii. Tata Chemicals

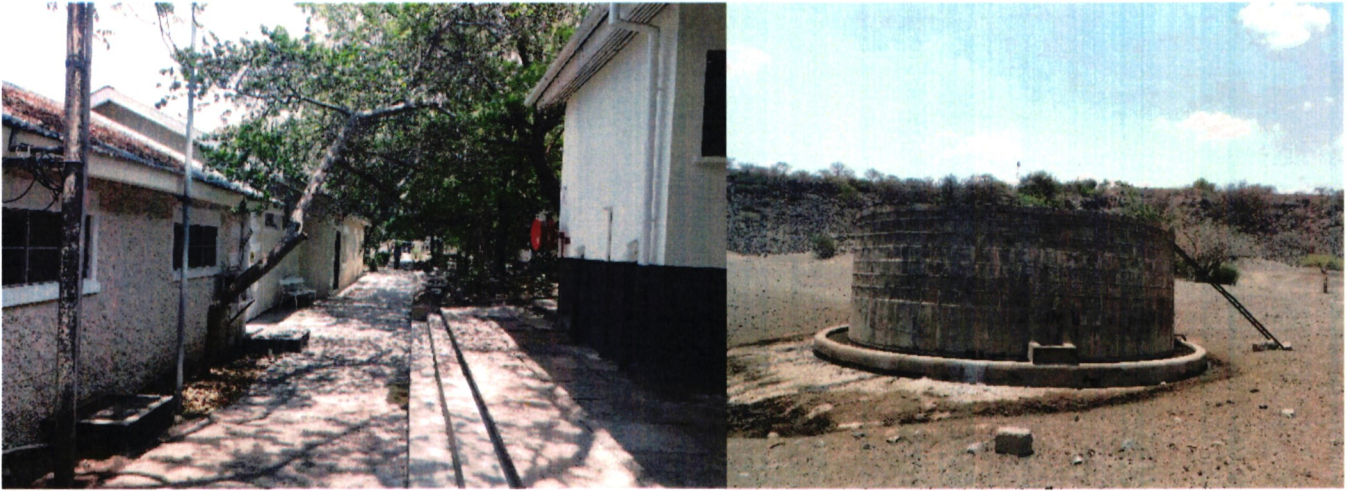
4.29 The company had initiated various CSR activities as shown in **Table 8** and **Plate 4**.

Table 8: CSR Activities Carried out by Tata Chemicals

CSR Activities	Brief Description
Water	<ul style="list-style-type: none"> • Supply of clean water to Magadi Town • Establishment of various watering points in areas that lack piped water • Establishment of various watering points for animals
Health	<ul style="list-style-type: none"> • Establishment of Magadi hospital which is the only health facility in the region. The hospital has a maternity wing with modern facilities. The hospital serves both the staff and the public
Education	<ul style="list-style-type: none"> • Contribution of Ksh. 7.2M annually on 18 secondary and 54 university scholarships to needy students
Infrastructure	<ul style="list-style-type: none"> • Maintenance of Magadi road and rehabilitation of 71.5 km of roads for the local community

Source: OAG-K Analysis of Tata Chemicals Documents

Plate 4: Tata Chemicals CSR Activities



CSR activities carried out by Tata Chemicals namely; Magadi Hospital which is entirely run by the company and Watering points for animals

iv. Kilimapesa Gold

- 4.30 The company did not carry out CSR activities directly, but had an MOU with Moyoi ranch group that specified how CSR activities were to be financed. The Moyoi ranch group owns the land on which Kilimapesa operates. Documentary review revealed that part of the annual fees of Ksh. 812,000 the company was paying to the Moyoi ranch group was to be used for CSR activities. It was upon the members of the Moyoi ranch group to identify, prioritize and implement CSR activities.
- 4.31 Although all the sampled mining companies were carrying out various CSR activities, the SDoM was not involved in the identification and prioritization of needs for the mine communities. In addition, the SDoM was not monitoring CSR activities carried out by the mining companies resulting to some companies implementing minimal CSR activities

that had little impact on the mine community.

V. Non-compliance with Environmental Regulations

- 4.32 One of the requirements in the NEMA licensing conditions is that every mineral right holder should decommission a mined area to its original form in the event that they exhaust minerals in a mining location. Physical verification of Base Titanium's operations revealed that there was extensive loss of biodiversity due to the destructive nature of the mining operations. It was difficult for the company to decommission and rehabilitate the areas exhaustively mined to their original state because after the exhaustion of minerals, the only by-product left was beach sand which cannot support the growth of the original vegetation. The company was rehabilitating the mined areas by planting grass for purpose of preventing erosion as shown in **Plate 5**.

Plate 5: Rehabilitation Efforts by Base Titanium



Extent of destruction of the natural vegetation, efforts to rehabilitate the mined areas using grass cover.

- 4.33 The companies are expected to comply with the Environmental Management and Coordination Act which in article 42(e) states that no person shall deposit any substance in a lake, river or wetland in or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake, sea or wetland. However, in Karebe Gold, the audit revealed that tailings generated after the processing of gold using mercury and cyanide were dumped in an open place as shown in Plate 6. There were no mechanisms in place to ensure that the harmful chemicals used in the refining of gold like cyanide and mercury were not washed back to the environment after heavy rains.
- 4.34 Interviews with the Migori Inspector of Mines revealed that there have been complains from the community that Kilimapesa Gold was dumping water containing elements of cyanide and mercury into nearby water ways that are used by livestock leading to livestock deaths.

Plate 6: Karebe Gold



Vast tailings at Karebe Gold dumped at an open place with no mechanisms to ensure that mercury and cyanide are not washed back to the environment during heavy rains.

- 4.35 Documentary review and physical verification revealed that during the last decade, both the depth and area of Lake Magadi has decreased tremendously due to sediments that currently covers up to 20% of the lake surface. The sediments result from soil erosion caused by poor farming methods by the communities living upstream along River Kisamis and River Suswa. In addition, the construction of Maltauro culverts along the Suswa Narok road concentrated the flow of water downstream leading to deep gullies that enhanced

sediment flow into the lake. These sediments threaten to reduce the amount and quality of trona and efforts by Tata chemicals to seek help from the State Department of Mining in addressing the issue were not successful.

- 4.36 Interviews with the management of the mining companies revealed that the State Department of Mining has not been involved in the implementation of environmental regulations. However, NEMA monitors the implementation of environmental regulations.

VI. Reasons for Inadequate Monitoring of Mining Operations

i. Inadequate Staff for Monitoring Operations in the Mining Sector

- 4.37 According to the State Department of Mining (2013 – 2017) strategic plan, the Directorate of Mines which is charged with monitoring of operations in the mining sector should have 232 mine inspectors. Documentary review and interviews with key management staff revealed that the department has only 11 mine inspectors leaving a deficit of 221 inspectors as indicated in Table 9. This made it very difficult for the department to effectively perform its duties.

Table 9: Directorate of Mines Staff Establishment

Designation	Staff Establishment	Current No. of Staff	Variance
Licensing Division			
Senior Principal Superintending Inspector of mines	1	0	1
Principal Superintending Inspector of mines	2	0	2
Chief Superintending Inspector of mines	14	0	14
Senior Superintending Inspector of mines	14	3	11
Superintending Inspector of mines	14	8	6
Inspector of mines I	32	0	32
Total	77	11	66
Mines Inspectorate Division			
Senior Principal Superintending Inspector of mines	1	0	1
Principal Superintending Inspector of mines	2	0	2
Chief Superintending Inspector of mines	18	0	18
Senior Superintending Inspector of mines	16	0	16
Superintending Inspector of mines	16	0	16
Inspector of mines I/II	40	0	40
Total	93	0	93
Minerals Audit Unit			
Senior Principal Superintending Inspector of mines	1	0	1
Principal Superintending Inspector of mines	2	0	2
Chief Superintending Inspector of mines	8	0	8
Senior Superintending Inspector of mines	10	0	10
Superintending Inspector of mines	9	0	9
Inspector of mines I/II	32	0	32
Total	62	0	62

Source: OAG-K Analysis of Data from SDoM

4.38 The audit revealed that the Department was not adequately monitoring the operations of the mining companies. The department had not developed a monitoring framework with timelines and reporting framework for monitoring mining activities. This led to laxity by the companies in implementing the licensing conditions. For instance, Tata Chemicals and Kilimapesa Gold mining companies had arrears in royalty payments and yet there was no documented evidence from the SDoM demanding for the payments of the arrears. Consequently, there was no timely receipt of revenue negatively impacting government budgetary plans of revenues generated from the

mining operations.

4.39 The regional offices were not adequately capacitated to carry out their mandate. Interviews with regional inspectors of mines revealed that the office did not have adequate technical staff as shown in **Table 10**. This was despite the complex nature of mining operations. For instance, at the time of the audit, there was only one inspector of mines covering Kwale County, Mombasa County, Kilifi County and Taita Taveta County leading to inadequate monitoring.

Table 10: Regional Offices Staff

Regional Office	No. of Staff	Counties Covered	No. of mining companies
Mombasa	1	Mombasa, Kwale, Taita Taveta and Kilifi Counties	184
Migori	1	Migori, Kisii, Homabay and Narok Counties	15
Embu	1	Embu, Meru, Tharaka Nithi, Isiolo, Kitui, Garissa Counties	59

Source: OAG-K Analysis of Data from SDoM

4.40 In Migori regional office, there was a vehicle but with no driver, the officer therefore had to request for a driver from other government institutions in order to go to the field for monitoring activities. The drivers were not always available when needed, leading to irregular monitoring of the vast mining operations in the region.

ii. Inadequate Facilities for Monitoring Mining Operations

4.41 One of the core functions of the Directorate of Mines is assessing the value of minerals produced by large, medium and small scale miners to facilitate collection of payable royalty. SDoM does not have the required equipment for determining the quality and quantity of minerals mined in the country. They therefore rely on values declared by the mining companies for purposes of computation of royalties. This poses a risk of SDoM using undervalued minerals for the determination of royalties.

4.42 Another core function of SDoM is monitoring and auditing the quantity and quality of minerals produced and exported by large, medium and small scale miners to determine revenue generated to facilitate collection of payable royalty. The regional offices did not have machinery for weight measurements to ascertain and verify the quantities of minerals produced by

the mining companies. They therefore had to rely on mineral production data given by the mining companies. This greatly hindered determination of quantities being exported yet these quantities are used for calculation of royalties due to the government.

4.43 The SDoM has a Mining cadaster portal which provides all data with regards to details of all the mining companies. A visit to the regional office revealed that they did not have computers and network infrastructure to access the online cadaster. They therefore could not use the portal to effectively monitor mining operations.

CHAPTER 5

5.0 CONCLUSIONS

- 5.1 There has been minimal monitoring of operations in the mining sector despite the enactment of the Mining Act, 2016. in an effort to spur the Country's economic growth. Though the sector has the potential to contribute up to 10% of the country's GDP, it currently contributes less than 1%. This can be attributed to inadequate monitoring of implementation of provisions set out in the Mining Act and licensing conditions by the mining companies.
- 5.2 There are inconsistencies in the administration of royalties and annual fees payments with some mining companies paying annual fees to other government agencies and community groups contrary to the provisions in the Mining Act.
- 5.3 The State Department of Mining has not ensured that there is transfer of mining skills to Kenyan citizens. Consequently, mining companies are relying on expatriates at the expense of many Kenyan citizens who would otherwise be employed. In addition, SDoM has not ensured that mining companies collaborate with training institutions to address the skills gap in the country.
- 5.4 There is minimal monitoring on implementation of CSR activities carried out by the mining companies resulting to some mining companies implementing CSR activities that have little impact to the mine communities.
- 5.5 Despite the destructive nature of mining activities, the Department has not ensured that the mining companies rehabilitate the mined areas to their original state and responsibly dispose waste. This has resulted to loss of biodiversity and pollution of water bodies.
- 5.6 The inefficient monitoring of mining operations in the mining sector is attributed to inadequate staff and facilities at the State Department of Mines.

CHAPTER 6

6.0 RECOMMENDATIONS

6.1 In view of the findings and conclusions of the audit, the Auditor-General has proposed the following recommendations for implementation by the State Department of Mining to ensure that there is effective monitoring of mining operations in the mining sector.

I. To ensure that there is timely payment of royalties and annual fees, the SDoM should;

- i. Keep updated records on royalties and annual fees payments to enable the department easily identify mining companies that are not complying with the provision of payment of royalties and annual fees.
- ii. Implement provisions set out in the Mining Act on late or non-payment of royalties and annual fees to deter mining companies from non-compliance with the provisions.
- iii. Ensure that there is uniformity in the administration of royalties and annual fees to avoid payment of royalties and annual fees to other agencies that are not mandated by the Mining Act.
- iv. Streamline the process of payment of royalties and annual fees for companies dealing in the same minerals to ensure uniformity for easier administration.
- v. Have the relevant equipment's for determining the value of minerals mined to avoid loss of revenue through undervaluation by the mining companies. They should also ensure they have officers on site to monitor the extraction of minerals to deter smuggling.

II. To ensure that there is transfer of skills in the mining sector the SDoM should;

- i. Ensure that mining companies collaborate with learning institutions for purposes of research and environmental management to enable students acquire relevant practical experience. Further, the SDoM should ensure that the mining companies file returns with the department on the number of collaborations they have with learning institutions and their future plans on the collaborations.

- ii. Work closely with the mining companies to enable them have an inventory of skills required in the mining industry. The SDoM should use this information to make sure that courses offered by the learning institutions are relevant to the mining industry.

- iii. Ensure that mining companies develop and implement elaborate training plans for replacement of expatriates with Kenyan citizens.

- iv. Collaborate with multi-national companies in the mining and construction industries for donation of heavy machineries to learning institutions upon completion of their projects in the Country. This will help to equip students with practical skills that are required in the mining sector.

III. To ensure that mining companies implement Corporate Social Responsibility activities that impact on the mine communities the SDoM should;

- i. Ensure that mining companies have annual plans on CSR activities to be implemented. The department should also ensure that the mining companies involve the mine community in selection of CSR activities to be carried out. This will ensure that the CSR activities carried out have an impact to the mine community.

- ii. Monitor the implementation of the annual plans on CSR activities to be carried out by mining companies.

- iii. Sensitize the mine communities on the benefits of engaging with the mining companies in the selection of CSR activities.

IV. To ensure that mining companies comply with environmental and safety regulations the SDoM should;

- i. Collaborate with the relevant government agencies to ensure that mining companies comply with provisions on environmental regulations provided in the Environmental and Management and Coordination Act and safety regulations.

ANNEXURES

ANNEXURE 1: ASSESSMENT CRITERIA

S/N	Source of Criteria	Criteria Used
1	The Mining Act, 2016	The mining Act, 2016 stipulates that the holder of a mining permit shall; <ol style="list-style-type: none"> i. Pay royalties, fees, mining taxes and charges ii. Give preference in employment to members of the community and citizens of Kenya iii. Provide a linkage with the universities for purposes of research and environmental management iv. facilitate and carry out social responsible investment for the local communities
2	Environmental Management and Coordination Act, 1999	The Mining companies are required to carry out an Environmental Impact and Social Assessment (ESIA) before commencing operations after which they are issued with a certificate of compliance. The Act stipulates that no person shall deposit any substance in a lake, river or wetland or in or under its bed, if that substance would or is likely to have adverse environmental effects on the river, lake, sea or wetland.
3	Mining Licenses	Conditions in mining license require mining companies to make provisions for basic amenities necessary for the mining communities living within the mining areas
5	Strategic Plan	Functions of the Directorate of Mines and the staff establishment

ANNEXURE 2: LIST OF DOCUMENTS REVIEWED AND REASONS FOR REVIEW

S/N	DOCUMENT REVIEWED	REASONS
1	The Mining Act, 2016	To understand the mandate of the State Department of mining in monitoring the mining sector.
2	Mining Act, Chapter 306, 1987	To understand the mandate of the State Department of Mining before the Enactment of the Mining Act 2016.
3	The Mining and Minerals Policy, 2016	To obtain information on policy statements in the mining sector
4	Environment Management and Coordination Act (EMCA), 1999	To understand the environmental compliance requirements in the mining sector
5	The Kenya Mining Investment Handbook	To understand the background information and overview of the mining potential and the mining potential and its occurrence in Kenya
6	Strategic Plan 2013-2017	To understand the Ministry's mission, vision, objectives, strategies, outcomes and performance benchmarks
7	Audited Financial Statements	To obtain information on how the State Department of mining is funded and their expenditures with regards to monitoring of operations
8	Mining company's reports	To obtain the information on revenues generated by the mining companies and the levels of compliance with various provisions
9	Field Monitoring reports	To obtain information on efforts by the State Department of mining to monitor mining operations
10	Licensing conditions	To understand various conditions that the mining companies must comply with
11	Documents on Payments of annual fees and royalties	To obtain information on royalties and annual fees payments made by the mining companies

ANNEXURE 3: LIST OF PEOPLE INTERVIEWED AND REASONS FOR THE INTERVIEW

S/N	PERSONS INTERVIEWED	REASONS
1	State Department of Mining Officials	To get an understanding of how monitoring of operations in the mining sector is carried out. To ascertain challenges faced and possible ways of mitigating them.
2	Management staff in the mining companies	To get an overview of their mining operations. To understand their interaction with state department of mining with regards to monitoring of implementation of licensing conditions. To ascertain payments of royalties and annual fees made to the Ministry
3	Representatives of the mine community	To get an understanding of the CSR activities carried out by the mining companies To ascertain the effect of mining activities to the mine community
4	Management staff in Universities offering mining courses	To get an understanding of linkages universities have with mining companies To find out whether the mining courses offered by the universities are relevant to the mining industry

ANNEXURE 4: STATE DEPARTMENT OF MINING (SDOM) MANAGEMENT COMMENTS ON AUDIT FINDINGS

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 13 (4.2 in the Report) Irregular and non- payment of royalties and annual fees. Tata Chemicals Magadi Limited (TCML) had not paid royalties for the financial years 2015/2016 and 2016/2017</p> <p>Data availed by the mining companies and analysis of company files at the State Department of Mining revealed that there were discrepancies on amount of royalties paid by the mining companies and the data maintained by the SDoM. The discrepancies were attributed to poor records management at the State Department of Mining and lack of monitoring and evaluation. The department relied on data provided by the mining companies.</p>	<p>Management agreed with the finding. The State Department of Mining conducted a scrutiny of the annual reports by TCML which confirmed that the company was in arrears. TCML in its response to the SDM proposed to pay the outstanding royalties over a duration of three (3) years. The company has since then been reducing the arrears in instalments.</p> <p>To verify declarations, a task force was formed vide letter Ref: MOM/SP.AUD.AUD/09/ (32) dated 17th April 2018 with the objective of ascertaining the remittance by TCML, amongst other companies operating in the Mining sector. The Task Force finding was that there was no material difference on self-declared royalties and the self-declared royalties from sales report.</p>	<p>The action taken by the State Department of Mining is commendable. During a future follow up audit, the Office will establish whether all arrears have been paid up as planned and agreed between the State Department of Mining and TCML.</p> <p>Due to the aforementioned, our finding remains as reported.</p>
<p>Paragraph 14 (4.3 in the Report) Despite Tata Chemicals failing to remit royalty on due dates, the company was still in operation contrary to section 187 (3) of the Mining Act. The Act states that in the event that the mineral right holder does not pay the royalties payable within sixty days, the Cabinet Secretary shall revoke the license or permit. It further states that where the holder of a mineral right fails to pay the prescribed royalty within the prescribed period, the Cabinet Secretary may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder. The State Department of Mining was yet to enforce this provision on Tata Chemicals and there was minimal follow up from the department with regards to payment of the arrears.</p>	<p>Management agreed with the finding. The explanation given by the SDoM is that they were not able to act on this matter due to the fact that TCML has been operating on a 1924 land lease that authorized extraction of Trona from lake Magadi instead of operating under a mining lease or mining permit as provided under the repealed Mining Act Cap 306 or the current Mining Act, 2016 which have provisions for the Cabinet Secretary to enforce the said measures in the company.</p> <p>Currently, the SDoM is currently engaging the Company on the need to formalize their mining operations by applying for a mineral right and considerable progress has been made in the matter. (Appendix V)</p>	<p>The response is applicable to Mining cadaster and not mining lease. It is worthwhile to note that Appendix V is on online transactional mining cadastre application for data collection purposes and not for a mining lease or mining permit. The finding therefore remains as reported.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 15 (4.4 in the Report) Discrepancies on Amount of Royalties Paid between SDoM and Mining Companies Records; Data availed by the mining companies and analysis of company files at the State Department of Mining revealed that there were discrepancies on amount of royalties paid by the mining companies and the data maintained by the SDoM.</p> <p>For instance, data availed by the State Department of Mining revealed that Base Titanium had not paid any royalties for the period under review. However, Base Titanium management provided payment receipts for royalties paid to the then Ministry of Mining for the four financial years under review.</p>	<p>Management agreed with the finding. The SDoM has been receiving self-declared remittance of royalties. However, to verify the declarations the Ministry invoked Annex 'D' of the Special Mining Lease No. 23 and undertook an audit. The audit was conducted by PWC Kenya and the report indicated that there were no material discrepancies between these declarations and findings of the audit. The same findings were confirmed by a Task Force.</p> <p>Further, under re-organization of regional offices and creation of offices at border, exit and entry points to improve management of mineral trade and revenue collection, offices have now been opened at the mine site and Likoni Shipping Point for the verification of the company's exports (Appendix VI)</p>	<p>The action taken by the State Department of Mining is commendable. However, the finding remains as reported as at the time of the audit, the SDoM did not have all documentation on royalty payments. The Office will conduct a follow up audit to verify whether the SDoM maintains up to date record of all royalty payments as opposed to relying on self-declared remittances from the Mining companies.</p> <p>The action taken by the SDoM is commendable in sealing revenue loss loopholes. However, since this was after the completion of the audit, we will conduct a follow up audit to verify the operationalization of the new initiatives taken up by SDoM.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 18 (4.7 in the Report) Inconsistency in the Administration of Royalties Payments Documentary review revealed that Tata Chemicals was paying royalties to both the National and County governments. There was also no communication from the State Department of Mining directing Tata Chemicals to pay all the royalties due to the National government.</p>	<p>Management agreed with the finding. TCML had been in arrears in payment of royalties and the payments had not been captured as arrears owed to the National Government.</p> <p>However, the SDoM is addressing the issue and established through examination of TCML mother company reports that TCML owed Government and the same was billed and the company has now paid the same. Reliance on the company's self-declarations has also been corrected through the Task Force undertaking. The Government and TCML are currently in discussions on moving away TCML operation from merely under a Land Lease agreement for which the company pays royalties to County Government of Kajiado for the company to operate under the mining Act, 2016 under which TCML will pay all the royalties due to the National Government.</p>	<p>The action taken by the SDoM is commendable. However, arising from the media report on the conflict between the County Government and TCML there is need for a follow up audit to establish;</p> <ul style="list-style-type: none"> - Whether SDoM is collecting its own accurate data and therefore stopped relying on self-declarations. - Whether TCML has moved its operations from using a land lease to operating under the provisions in the Mining Act, 2016.
<p>Paragraph 19 (4.10-4.11 in the Report) Inconsistent timelines for royalties payments Documentary review revealed that there were inconsistencies in the timelines for payment of royalties in Karebe Gold and Kilimapesa Gold despite both companies mining the same type of mineral. Karebe Gold paid royalties in advance before exportation based on the quantity of gold being exported, level of purity, the price of Gold in the international market at that time of export and the current exchange rate. With Kilimapesa Gold, royalties are paid based on the selling price of Gold determined by the purchasing overseas company after exportation</p>	<p>Management agreed with the finding. Kilimapesa Gold operates under the Special Mining lease No. 27 of which the timeline for royalty payment is prescribed in condition No. 4 which provides that the company 'shall pay a fixed royalty of 5.0% on the gross sales value (FOB) of the Gold. Payment will be made in quarterly basis and not later than 14th day of the month following the quarter (Appendix VII). This requirement therefore allows Kilimapesa to do quarterly payments after sale of Gold. Karebe Gold, on the other hand, holds mining locations, unlike Kilimapesa which holds a special mining lease. Accordingly, Karebe Gold pays royalty on export as per the general provisions in the repealed Mining Act, Cap 306, which does not confer any special conditions. These provisions of the repealed law (Mining Act, Cap 306) are still in force as they are not inconsistent with the new law (Mining Act, 2016) and consideration that Regulation on royalties under the Mining Act, 2016 are yet to be published, the provisions are still enforceable under the new law until regulations enforcing the new law are published.</p>	<p>The finding remains is as reported.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 21-22 (4.12-4.15 in the Report)</p> <p>Monitoring of Minerals extraction</p> <p>The directorate of mines is responsible for collecting, analyzing, interpreting and disseminating minerals production and exports data for projecting government revenue. The directorate has not been generating reports on mineral production and exports data. In addition, fields visits revealed that the directorate of mines does not monitor the extraction of minerals. For instance, the directorate does not monitor gold smelting operations to ascertain the quantities of gold refined which may create an avenue for Gold being sold through illegal means.</p> <p>The State Department is therefore not in a position to advise the government on how much revenue is expected from the mining sector despite the extractive industries being a key priority for the government in economic growth and job creation.</p>	<p>Management agreed with the finding.</p> <p>SDoM management acknowledged that at the time of the audit, SDoM had not been able to monitor fully extraction of minerals. This is because the department has been having a severe shortage of officers to carry out the work.</p> <p>However, in 2017, thirty-four Inspectors of Mines were recruited beefing up the team. The officers have undergone mentoring and have now been deployed to key mining areas that require keen vigilance as detailed in Appendix VI.</p> <p>Nevertheless, the Department still faces challenges in facilitating movement of the officers due to shortage of transport and low funding. This is now being addressed through improved service provision to attract increased A-I-A to be ploughed back into the budget.</p>	<p>The action taken by the State Department of Mining is commendable. During a future follow up audit, the Office shall conduct a follow up audit to establish whether the steps taken have enhanced monitoring of minerals extraction. The finding therefore remains as reported.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 23-26 (4.14-4.17 in the Report) Inconsistency in the Administration of Annual Fees The sampled mining companies were paying the annual fees as required. However, documentary review revealed the companies were operating under different conditions with regards to payment of annual fees. For instance, both Karebe Gold and Kilimapesa Gold were operating on a special mining license despite constant applications to the Department to convert the special mining license into a mining lease. The companies were operating on privately owned land and paying land rent to the owners of the land. For instance, Karebe Gold which operates on an area of 82 km² pays a range of Ksh. 12,000-18,000 per acre per month to the land owners, two years in advance, while Kilimapesa Gold, which has been in operation for the last 12 years, operates on land owned by a local community group called Moyoi group ranch and has been paying the group monthly rent of Ksh.812,000.</p> <p>Further, documentary review revealed that Tata Chemicals did not have a Mining lease but operated on a land lease acquired in 1911. The company was not paying annual fees to the Department but instead was paying land rates to both the Ministry of Lands and the County Government of Kajiado. The Department was therefore not receiving annual fees from Tata Chemicals despite the company being involved in extraction of minerals</p>	<p>Management agreed with the finding. It is true as established through the performance audit that different companies pay different fees for land rent. This is because of different types of land tenure where companies operate. Under the Mining Act, fees payable as ground rent are prescribed in the Legal Notice No. 28 of 2014 (Appendix VIII).</p> <p>Accordingly, different categories of mineral rights have different rates. For example, under item under (g) the annual ground rent for exclusive prospecting license or special license is Ksh. 2500 per sq.km subject to minimum of Kshs. 50,000. As opposed to that as indicated under item (k), the annual ground rent for a lease per hectare is Kshs. 2,000 per Hectare subject to a minimum of Kshs. 500,000.</p> <p>In addition, in the case of private land, arrangements of mining companies with land owners are private and are not provided for in the mining law as the case of Kilimapesa and the Moyoi community and Karebe Gold and the private land owners in Nandi County.</p> <p>TCML has been operating under a land lease, as earlier stated, as the company does not hold a mineral right or permit and therefore provisions of ground rent under the mining law is not enforceable on TCML.</p>	<p>Finding remains as reported – Following the acrimony between the Kajiado County Government and the TCML there is a need for SDoM to intervene and resolve the impulse.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 27-30 (4.18-4.21 in the Report) Inadequate Transfer of Skills in the Mining Industry</p> <p>The audit revealed that Karebe Gold and Base Titanium had Kenyan citizens in their top management. The citizens in Top management comprised of 77% in Base Titanium and 23% in Karebe Gold. However, there was no Kenyan citizen in Kilimapesa Gold top management. In Tata Chemicals, all the top level management were Kenyan citizens.</p> <p>Documentary review of sampled mining companies revealed that only Base Titanium had a training plan for transfer of skills to Kenyan citizens. The training plan had an elaborate implementation schedule clearly identifying timelines for the expatriates to be replaced and the Kenyans understudying them so as to eventually take over their positions. For the period under review, Base Titanium had replaced 20 expatriates. The succession plan indicated that the remaining 32 expatriates will be replaced by end of the year 2025.</p> <p>Interviews with the management of sampled companies indicated that the reason for the high number of expatriates in the top management was due to the lack of the required mining skills in the country.</p>	<p>Management agreed with the finding.</p> <p>It is true that at the time of the audit, the SDoM had not implemented clear strategies to address the gaps of the required skills. It is also true that the SDoM did not have systematic information indicating the number of Kenyan Citizens employed by the mining companies in the various cadres.</p> <p>The shortcomings were because, for a long time Kenya's mining sector had not had a significant stake in the economy and with that there had not been significant demand for skills in mining. In that scenario, tertiary institutions had not considered mining related curricular in their training programmes.</p> <p>However, this has now changed. The SDoM now recognizes fully the critical role played by tertiary institutions in matters of the mining sector and has factored in the re-organized mining sector organogram (Appendix IX)</p> <p>Accordingly, the State Department has taken measures to strengthen the Geologists' Registration Board (GRB) for management and regulation of the Geoscientific profession which supports the mining sector in the country.</p> <p>Also the State Department is spearheading operationalization of the National Mining Institute (NMI) an Institution under purview of the Department, through development of a Bill for the Institute with incubation Centre at Taita Taveta University; Mining Exploration Centre at UON; and Mining and Mineral Processing Centre at JKUAT; among other such arrangements. In the changing scenario, Taita-Taveta and Jomo Kenyatta Universities have opened mining engineering departments and even graduated batches of mining engineers, some of whom have joined the State Department for Mining.</p>	<p>The action taken by the State Department of Mining is commendable. The Office shall conduct a follow up audit to establish whether there is improvement in transfer of mining skills to Kenyans.</p> <p>Further, the follow up audit will also establish whether the Legal Notice No. 82 of 2017, the Mining (Employment and Training) Regulation is being implemented effectively.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>As at the time of the audit, the State Department of Mining had not implemented strategies to address the gaps of the required skills. In addition, the Department did not have any information indicating the number of Kenyan citizens employed by the mining companies in the various cadres. Due to the skills gaps, mining companies continue relying on expatriates, denying Kenyans an opportunity to work in the Mining industry</p>	<p>The State Department for Mining is also now carefully implementing provisions for transfer of skills by expatriates to locals and progressive replacement of expatriates through the framework of skills transfer and provided for in the Legal Notice No. 82 of 2017, the Mining (Employment and Training) Regulation (Appendix X).</p>	

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 31-34 (4.22-4.25 in the Report) Mining Companies have Minimal Collaboration with Training Institutions</p> <p>Of the sampled mining companies, only Base Titanium had a collaboration with a learning institution; the Technical University of Mombasa. In the MOU, students were trained at the university for 3 months and attached at the company for 9 months to gain hands on experience. The first batch of 20 Diploma holders in Mechanical Engineering and Electrical Engineering were all absorbed by the Company after they completed their studies.</p> <p>The audit revealed out of the four sampled companies, only Base Titanium had consistently offered internship opportunities to students in the four years under review.</p> <p>State Department of Mining has not been actively involved in ensuring that the mining companies collaborate with learning institutions leading to laxity by the mining companies complying with the regulation. In addition, interviews with the management of the Technical University of Mombasa and Taita Taveta University revealed that, SDoM does not have an inventory of skills required in the Mining industry that could to inform the learning institutions on courses they should offer. This has resulted to lack of incorporation of practical skills in the mining courses taught in the institutions. Consequently, the graduates lack requisite skills required in the mining industry, resulting to mining companies hiring expatriates</p>	<p>Management agreed with the finding.</p> <p>It is true that at the time of the Performance Audit, the State Department for Mining did not have an inventory of skills required in the Mining Industry that could inform the learning institutions on the courses they should offer. However, following the changed approach as captured under the new organogram of the Mining Sector, this has now changed. The State Department is now working to ensure that implementation of the provisions of the Legal Notice No. 82 of 2017, the Mining (Employment and Training) Regulation on creating linkages between mining companies and training institutions which has now taken off is carefully enforced.</p> <p>The State Department, as Lead Stakeholder in the Mining Sector, is leading in efforts of putting in place the National Mining Institute Headquartered in the Ministry, but with campuses of different Mining Specializations at different universities as already indicated. Under this arrangement, inventory of skills required in the Mining Industry are being worked out for implementation by the respective universities.</p> <p>That there had been a slow start on this is attributed to mining companies' low capacity to host this initiative in terms of offering internships due to cost implications; given that apart from Base Titanium Limited other mining companies are small to medium scale and are struggling financially.</p> <p>However, the State Department is working out on how it will further engage with the companies on how to actualize this collaboration. This is expected to improve commensurately with the improved staffing of officers of the State Department in the Regional Offices that has also being implemented.</p>	<p>The action taken by the State Department of Mining is commendable. The Office shall conduct a follow up audit to establish whether there is improved collaboration between mining companies and training institutions.</p> <p>The follow up audit will also seek to establish whether the Legal Notice No. 82 of 2017, the Mining (Employment and Training) Regulation is being implemented effectively.</p> <p>The finding therefore remains as reported.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 35-42 (4.26-4.33) in the Report) Inadequate Implementation of Corporate Social Responsibility Activities by Mining Companies. Interviews with management of sampled companies revealed that the SDoM was not monitoring CSR activities implemented to ensure that the mine community benefited from the operations of mining companies. Base Titanium had an elaborate plan on how to carry out CSR activities and spent an average of 2% of its annual revenue on community investment and social management activities. Karebe Gold did not have a plan on how to implement CSR activities but implemented them on a need basis. Kilimapesa Gold was not carrying out CSR activities directly, but had a MOU with Moyoi ranch group that specified how CSR activities were to be financed. Although all the sampled mining companies were carrying out various CSR activities, the SDoM was not involved in This regulation provides for creation of a community development committee for each large scale mining project in a mining community that is responsible for managing a fund that is set aside by the mining company for purposes of a community development. The law prescribes a minimum of one percent of gross sales from minerals be disbursed to community under the Community Development Agreement. The identification and prioritization of needs for the mine communities. In addition, the SDoM was not monitoring CSR activities carried out by the mining companies resulting to some companies implementing minimal CSR activities that had little impact on the mine community.</p>	<p>Management agreed with the finding. It is true as was established by the Performance Audit that different mining companies were implementing different approaches to CSR activities, resulting in some companies implementing mineral CSR activities with little impact on the mining communities. It is also true that due to constraints in human resources at the time the State Department for Mining was unable to effectively work with the mining companies and mining communities to properly identify and prioritize needs for the communities. It is also true that the State Department had at the time not been monitoring CSR activities by mining companies and that recommended CSR voluntary initiatives by mining companies were therefore not enforceable in law. However, the situation has now changed in that under the Mining Act, 2016, CSR has now been regularized and remodeled and changed from voluntary initiative to a collaborative venture between the communities and mining companies. Under the new arrangement, the framework for remodeled "CSR" is provided for in the Legal Notice No. 148 of 2017, the Mining (Community Development Agreement) Regulation. Membership of the Committee is well balanced as it is drawn from all key stakeholders in the Mining sector namely; the National Government, County Government, National Political Leadership, County Political Leadership, Civil Society, Leadership of Community level (elders), Marginalize groups and with Gender consideration of Youth and Women. Accordingly, the Community Development Committee makes decisions on projects to be funded by the minimum one percent mineral gross sales from the mining company. The State Department for Mining is currently engaged in formation of CDA committees for Base Titanium Limited, Karebe gold and other large scale mining projects around the country (Appendix XI).</p>	<p>The action taken by the SDoM is commendable. The Office shall conduct a follow up audit to find out how the Legal Notice No. 148 of 2017, the Mining (Community Development Agreement) Regulation is being implemented.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 43-47 (4.32-4.36 in the Report) Non- Compliance with Environmental Regulations Physical verification of Base Titanium's operations revealed that there was extensive loss of biodiversity due to the destructive nature of the mining operations. It was difficult for the company to decommission and rehabilitate the areas exhaustively mined to their original state because after the exhaustion of minerals, the only by-product left was beach sand which cannot support the growth of the original vegetation. The company was rehabilitating the mined areas by planting grass for purpose of preventing erosion. In Karebe Gold, the audit revealed that tailings generated after the processing of gold using mercury and cyanide were dumped in an open place. There were no mechanisms in place to ensure that the harmful chemicals used in the refining of gold like cyanide and mercury were not washed back to the environment after heavy rains. Interviews with the Migori Inspector of Mines revealed that there have been complains from the community that Kilimapesa Gold was dumping water containing elements of cyanide and mercury into nearby water ways that are used by livestock leading to livestock deaths. Documentary review and physical verification revealed that during the last decade, both the depth and area of Lake Magadi has decreased tremendously due to sediments that currently covers up to 20% of the lake surface. The sediments result from soil erosion caused by poor farming methods by the communities living upstream along River Kisamis and River Suswa.</p>	<p>Management agreed with the finding. The State Department for Mining appreciates the observations on matters of environmental regulations contained in the Performance Audit Report. Some of these observations relate to activities that are of a wider scope beyond mining causes, and which are threatening the very existence of the mining like what was noted in regard to upstream sedimentation which is seriously reducing the amount and quality of trona in Lake Magadi. Some of the observations are specifically due to actions done to redress effects of mining activities, but which require time for the targeted results to be seen.</p> <p>In this regard, it is true that Base Titanium Limited has extracted heavy minerals and modified the biodiversity on mining sites. Extractive operations inevitably cause changes to morphology of the land.</p> <p>However, Base Titanium has an elaborate decommissioning plan that is being progressively implemented in accordance with NEMA approved Environmental Management Plan (EMP). The good results over the currently apparent open wide mined out areas will be emerging with time. The State Department is satisfied, that so far the company is implementing the EMP as required and good results will be achieved.</p> <p>Karebe Gold has constructed and is operating a tailings dam in accordance with the standard practice for cyanide-based gold processing facilities. Cyanide laden water from the processing plant is discharged on the tailings dam and allowed to decant into a sump. The water is exposed to sunlight which has effect of neutralizing the cyanide and also suspended solids are allowed to settle out.</p> <p>From the sump, the water is pumped back into the processing plant. It therefore a closed circuit system, with no process water allowed into the environment.</p> <p>The State Department is satisfied that as so long as the company operates the mining and processing of gold in the closed circuit as indicated above, then the environmental requirements are being adequately met by Karebe Gold</p>	<p>The explanation given by the State Department of Mining on the tailings dam in Karebe Gold and Kilimapesa Gold is satisfactory and will be included in the report. However, since there has been an incidence of death of animals at Kimapesa Gold, we will wish to retain the finding but add the explanation on the tailings dam so as to conduct a follow up audit on how the tailings dam is operating.</p> <p>The elaborate decommissioning plan being progressively implemented at Base Titanium is commendable. Since it is still in its early implementation stages, the Office will maintain the finding and allow time for the implementation of the plan. A follow up audit will then be conducted to find out how effective the decommissioning plan is. The Office will also conduct a follow up audit to verify the outcome of the discussions of the State Department of Mining and Tata Chemicals Magadi Limited. The audit will seek to find out whether a solution was found to deal with the siltation in Lake Magadi.</p> <p>The finding therefore remains as reported with additional informational of how the tailings dam at Kilimapesa Gold and Karebe Gold operate.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>In addition, the construction of Maltauro culverts along the Suswa Narok road concentrated the flow of water downstream leading to deep gullies that enhanced sediment flow into the lake. These sediments threaten to reduce the amount and quality of trona and efforts by Tata chemicals to seek help from the State Department of Mining in addressing the issue were not successful.</p> <p>Interviews with the management of the mining companies revealed that the Ministry of Mining has not been involved in the implementation of environmental regulations. However, NEMA monitors the implementation of environmental regulations.</p>	<p>Kilimapesa Gold also runs a similar tailings dam and on the same principles. There was one reported incident of where cyanide contaminated water from the company spilled into a river and animals that drank the water died. However, the company was asked to and took corrective actions promptly, including reinforcing the tailings dam and compensation for the lost animals. There has not been any other occurrence of such incident again.</p> <p>The State Department for Mining is the lead agency on all matters environmental in mining and continues to engage the other stakeholders adequately on environment matters. For example, currently the State Department is in discussion with TCML as to how do deal with the challenge of siltation of Lake Magadi negatively affecting the quality and volume of Soda ash.</p>	

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 48-51 (4.37-4.40 in the Report) Inadequate Staff for Monitoring Operations in the Mining Sector</p> <p>Documentary review and interviews with key management staff revealed that the department has only 11 mine inspectors leaving a deficit of 221 inspectors. The audit revealed that the Department was not monitoring the operations of the mining companies. The department had not developed a monitoring framework with timelines and reporting framework for monitoring mining activities. This led to laxity by the companies in implementing the licensing conditions. For instance, Tata Chemicals and Kilimapesa Gold mining companies had arrears in royalty payments and yet there was no documented evidence from the SDoM demanding for the payments of the arrears. Consequently, there was no timely receipt of revenue negatively impacting government budgetary plans of revenues generated from the mining operations. The regional offices were not adequately capacitated to carry out their mandate. Interviews with the regional inspector of mines revealed that the office did not have adequate technical staff.</p>	<p>Management agreed with the finding.</p> <p>It is true as captured in the Performance Audit Report that the State Department for Mining had been grossly understaffed with result that the Directorate of Mines within the State Department was being run by a handful of officers, only thirteen, which severely handicapped the capacity to effectively monitor the national function.</p> <p>However, there was a relief in 2017 when thirty-four officers new Inspectors of Mines were recruited and most of these have now been deployed to increased number of regional offices from twelve (12) to twenty-three (23) as part of service delivery improvement. (Appendix XII)</p> <p>At the time of audit, the existing Regional offices (12) were Kakamega, Kisumu, Migori, Eldoret, Baringo, Nakuru, Embu, Nyeri, Garissa, Wundanyi, Kwale and Mombasa. The newly opened Regional Offices are Busia, Elgeyo Marakwet, Lodwar, Kisii, Nairobi West, Nairobi East, Jomo Kenyatta International Airport (JKIA Nairobi Central), Mwingi, Tana River, Malindi and Likoni. Each of the 23 Regional Offices is staffed by at least one Inspector of Mines and one Geologist to support mining activities in the region.</p> <p>In addition, the State Department for Mining has also opened Border, entry and exit point offices at the key stations of Lunga Lunga, Taveta, Namanga, Isebania, Busia, Malaba, JIKIA, Likoni and Wilson Airport to closely monitor mineral exports/imports and revenue collection. Each of these offices is staffed with at least one Mining Inspector and one Geologist.</p> <p>It is true that inspections of mining operations had not been regular, as captured in the Performance Audit Report, but this is expected to now significantly improve. Standard practice is that inspections are carried out quarterly which is now being implemented. The difficulty was also brought about by gross and severe transport shortage and inadequate and untimely funding of out of station inspection exercises. These are challenges also now being addressed as earlier stated.</p>	<p>The actions taken by the State Department of Mining is appreciated.</p> <p>However, the finding remains as reported as that was the situation prevailing at the time of the audit.</p> <p>The Office will conduct a follow up audit to find out whether the newly recruited staff, newly opened regional offices and border entry and exit points have improved the level of monitoring operations in the mining sector.</p>

Audit Finding	Response by SDoM Management	Auditors' Comments
<p>Paragraph 52-54 (4.41-4.43 in the Report)</p> <p>Inadequate Facilities for Monitoring Mining Operations</p> <p>SDoM does not have the required equipment for determining the quality and quantity of minerals mined in the country. They therefore rely on values declared by the mining companies for purposes of computation of royalties. This poses a risk of SDoM using undervalued minerals for the determination of royalties. Another core function of SDoM is monitoring and auditing quantity and quality of minerals produced and exported by large, medium and small scale miners to determine revenue generated to facilitate collection of payable royalty. The regional offices did not have machinery for weight measurements to ascertain and verify the quantities of minerals produced by the mining companies. They therefore had to rely on mineral production data given by the mining companies. This greatly hindered determination of quantities being exported yet these quantities are used for calculation of royalties due to the government.</p> <p>The SDoM has a Mining cadaster portal which provides all data with regards to details of all the mining companies. A visit to the regional office revealed that they did not have computers and network infrastructure to access the online cadaster. They therefore could not use the portal to effectively monitor mining operations.</p>	<p>Management agreed with the finding. It is true as captured in the Performance Audit that the State Department relied on values declared by the companies to compute royalties to be paid by companies. However, this has now changed with the Department having acquired and using equipment such as hand held XRF to confirm the quality of minerals at exit/entry points that have been opened as reported above. Self-declared values are now only used after comparisons have been made with trending market prices.</p> <p>Prices of commodities like gold, titanium minerals, iron ore, soda ash, are widely traded globally and their spot prices are publicly available. However, pricing of gemstones continues to pose challenges due to many qualifying parameters that must be met by a stone to qualify for the top dollar. To deal with this, the pricing of gemstones is also now being addressed through development of the Voi Gemstone and Value Addition Centre.</p> <p>In addition, The State Department for Mining has planned training in gemology and intelligence on market prices of gems in the major gem markets like Thailand and Hong Kong.</p> <p>As a rule, high value low volume mineral exports are now carefully determined by a Committee of Professionals comprising Geologists and Inspectors of Mines at the time of processing exports permits in Madini House, Nairobi, where they are weighed at the State Department's laboratory. Values of Bulk exports of minerals are determined during processing of permits at the ports of exits and as captured in bill of lading, for instance, under the new arrangement, at Kilindini port a multi-agency team processes exports and verifies tonnage of minerals being shipped.</p> <p>The State Department for Mining is also implementing its own locally developed Integrated Mining Information Reporting (IMIR) system currently at the piloting stage, that would enable timely capturing of data and information on production, sales and export of minerals. Whereas it is true that some regional offices don't have computers and internet connectivity, the State Department has set provision of IT infrastructure in the regional offices as one of its performance contract targets in this financial year to help overcome the challenge.</p>	<p>The actions taken by the State Department of Mining are Commendable. The Office will during a follow up audit establish whether their implementation has led to improved monitoring of mining operations. The finding remains as reported as it prevailed at the time of the audit. The initiatives by SDoM are also fairly new and need to be given time for them to have an impact on the level of Monitoring in the mining sector.</p>

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