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OFFICE OF THE PRINCIPAL SECRETARY**

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29th July 2024

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Samuel Njoroge, CBS
Clerk of the National Assembly
Main Parliament Buildings
P.O Box 41842-00100
NAIROBI

PARLIAMENT
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Dear *Samuel,*

SUBMISSION OF THE MINING (ROYALTY COLLECTION AND MANAGEMENT) REGULATIONS, 2024 FOR PUBLICATION SCRUTINY

The above subject matter refers;

In July 2023, the Ministry in collaboration with the Office of the Attorney General and legislative drafters from the Kenya Law Reform Commission embarked on developing the Mining (Royalty Collection and Management) Regulations, 2024. In September 2023, the regulations were taken through stakeholder engagements and through pre-publication scrutiny before the Committee on Delegated Legislation on 1st March 2024. The Ministry incorporated the Committee's comments and the regulations were subsequently published on **3rd July 2024** when this Committee was on recess.

The purpose of this letter is to present the aforementioned regulations together with the supporting documents as guided by the Statutory Instruments Act for publication scrutiny.

Your continued support is highly appreciated.

Yours sincerely,

Eli
Elijah Mwangi, CBS
PRINCIPAL SECRETARY

Encl.



Copy to: **Hon. Musalia Mudavadi, EGH**
Prime Cabinet Secretary
Office of the Prime & Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
Ag. Cabinet Secretary
Ministry of Mining, Blue Economy and Maritime Affairs
NAIROBI

SPECIAL ISSUE

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LEGAL NOTICE NO. 106

THE MINING ACT,

(Cap. 306)

THE MINING (ROYALTY COLLECTION AND MANAGEMENT)


REGULATIONS, 2024

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—Interpretation
- 3—Objective
- 4—Application
- 5—Principles pertaining to royalty payment
- 6—Determination of royalty base
- 7—Royalty base for export minerals
- 8—Royalty base for minerals consumed in Kenya
- 9—Royalty rates
- 10—Determining royalty payable
- 11—Due dates for payment of royalty
- 12—Reduction or suspension of payment
- 13—Royalty on samples
- 14—Arm's length consideration
- 15—Royalty assurance through reconciliation
- 16—Reconciliation payment
- 17—Dealer reconciliation
- 18—Reconciliation by a holder of a mining permit or licence holder
- 19—Transferor's reconciliation of mineral rights
- 20—Revocation

Schedule—Royalty Rates

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	06 AUG 2024
DAY:	TUE 6/8/2024
TABLED BY:	Deputy Majority Whip
CLERK AT THE TABLE:	Benson Inzotu

THE MINING ACT

(Cap. 306)

IN EXERCISE of the power conferred by section 223 of the Mining Act, the Cabinet Secretary makes the following Regulations—

THE MINING (ROYALTY COLLECTION AND MANAGEMENT)
REGULATIONS, 2024

1. These Regulations may be cited as the Mining (Royalty Collection and Management) Regulations, 2024.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“acquire” means to acquire by sale, barter, import, holding on deposit as pledge or security, receipt as a gift, or receipt under any other supply or disposition, whether for consideration or otherwise;

“assurance of royalty reconciliation” means the system of reporting royalty liability and making reconciliation payments at reconciliation points”

“cost plus value” means the value of a mineral product that includes all the costs of producing it as a mineral product;

“dealing right” means a mineral dealer’s licence, a diamond dealer’s or a mineral dealer’s permit;

“deferred royalty” means a royalty amount put on hold, in part or whole, for periods and conditions as shall be agreed between the Cabinet Secretary and the holder when royalty suspension is granted;

“disposal” means sale, barter, export, deposit as pledge or security, donation as a gift, or other supply or disposition, whether with or without consideration and includes loss by theft or misappropriation, and “disposed” has the corresponding meaning;

“full market value”, in relation to a mineral product, means—

- (a) the reference price for a mineral product where a reference price has been assigned to the product;
- (b) where the reference price of the product has not been assigned to a mineral product, the full market value of the mineral product computed from “netback” and “cost plus” calculations; and
- (c) where the reference price of the product has not been assigned and the full market value of the mineral product cannot be computed, the full market value of the mineral product as determined by the Director of Mines;

“marketable form” means a state or condition in which a mineral or mineral product can be sold or traded in the market;

“netback value”, in relation to a mineral product, means the computation of the value of the product through the deduction the costs of producing the end product from the reference price of the mineral product;

“reconciliation point” means the specific time when a holder of a dealing right, mining permit, mining licence or artisanal mining permit, or a mineral right transferor is required to reconcile and pay any outstanding royalty amounts;

“reconciliation report” means a reconciliation analysis between minerals and mineral products and royalty paid, calculated at the time of the date of the report or, if earlier, the date the report was due showing—

- (a) royalty paid on reported minerals and their mineral products; and
- (b) unpaid royalty on minerals and their mineral products;

“reduction of royalty” means a reduction of royalty rate for a specified mineral for periods and conditions as shall be prescribed by the Cabinet Secretary;

“reference price” means the price of a mineral or mineral product—

- (a) in a market with significant number of sellers, a significant number of buyers, and an openly quoted price;
- (b) that, if it is adjusted, is adjusted according to objective criteria (such as grade or quality”;
- (c) that is applicable to the time or period in relation to which it is to be used; and
- (d) that is arrived at on arm’s length terms;

“royalty base” means the total to which the royalty rate for a mineral is applied in order to determine the amount of royalty due;

“royalty rate” means the percentage rate or unit-based rate applied to the royalty base of a mineral to determine the amount of royalty due; and

“unit-based royalty rate” means a flat rate charge on a unit weight or volume or on such other measure of a mineral.

3. The objective of these Regulations is to give effect to section 183 of the Act and to provide for royalty payments determination, reduction, suspension and payable royalty rates.

Objective.

4. These Regulations shall apply a—

Application.

- (a) holder of a mineral right;
- (b) holder of a mineral dealing right; and
- (c) mineral right transferor.

5. The payment of royalties shall be guided by the following principles—

Principles pertaining to royalty payment.

- (a) to provide monetary compensation to the people of Kenya for the extraction of mineral resources;

- (b) royalties shall be based on the full market value of the mineral in its most processed and marketable form while taking into account any enhancement made to increase the market value of the mineral;
- (c) the basic royalty rate to be shared shall be the full gross value of the minerals extracted;
- (d) deductions and offsets in the computation of the value to which each royalty rate applies shall be disallowed except for specific deductions and offsets specified in the Act and these Regulations; and
- (e) ensuring safeguards at appropriate and convenient points including periodic reconciliation from dealers, periodic reconciliation for export of any minerals or mineral products, and reconciliation on transfer of mineral rights to ensure recovery of all royalties that may be due.

6. (1) The royalty base shall be determined for each quantity of mineral that is extracted under a mineral right within a royalty period and—

Determination of royalty base.

- (a) that is transported from the licence or permit area during that royalty period if it was not previously accounted for in a royalty base calculation; or
- (b) that has not been previously moved but is subject to a mineral dealing right during that royalty period and was not previously included in a royalty base calculation.

(2) The value of the royalty base for a mineral shall be the full market value of all mineral products capable of being produced from the mineral and that are saleable.

(3) The value of the royalty base for a particular mineral shall be equal to the full market value of all products that can be sold and produced from that mineral.

(4) Where no reference price is available for a mineral product, the full market value shall be determined by—

- (a) subtracting the cost of producing end products from the mineral (netback value) from the reference price of commercially producible end products from the mineral; and
- (b) incorporating all costs associated with the mineral product (cost-plus value) into the value of the mineral product:

Provided that any cost requiring allocation is assigned in such a way that it is not claimed in both the netback value and cost-plus value calculations or when calculating the values of the different mineral products; and

- (c) if there is a difference between the netback value and cost-plus value, taking the average of the two.

(5) Where there is insufficient information to enable the Director of Mines to determine the royalty base for the holder of a mineral right

for a royalty period under subregulation (4), the Director of Mines shall determine the royalty base using the information available at the time of the determination.

7. The royalty base for minerals for export shall be the value of the mineral at the port of exit that shall consist of the free board value based on the full market price of the minerals.

Royalty base for export minerals.

8. Where the Director of Mines is satisfied that a mineral won under a particular mineral right is to be used or consumed exclusively within Kenya, the Director may permit the method for the calculation of the royalty base may be adjusted as follows—

Royalty base for minerals consumed in Kenya.

(a) for minerals transported from the area of the mineral right and sold directly at the extraction site (mine gate or ex-factory), the sale price may serve as the basis for the royalty calculation; and

(b) using the sale price at which the mineral is delivered, if it is sold at delivery after being moved away from the area of the mineral right, deductions or offsets shall not be allowed.

9. The specific royalty rates for various identified minerals shall be as set out in the Schedule.

Royalty rates.

10. The royalty due is calculated by applying the appropriate royalty rate to the appropriately determined royalty base.

Determining royalty payable.

11. (1) Royalty for locally sold or exported minerals shall be paid within one hundred and twenty days from the final day of the month in which the sale or export took place.

Due dates for payment of royalty.

(2) Despite subregulation (1), royalty payments can be made at any point before the specified due date.

(3) An administrative penalty equivalent to the prevailing Central Bank of Kenya interest rate shall be imposed on compounding basis to any royalty paid after the due date.

(4) If royalty has already been paid for the same minerals in a different royalty period, the amount paid shall be credited against the liability for royalty due for those minerals in any future royalty period.

(5) The credited royalty for a particular royalty period will only be acknowledged up to the amount that was actually paid for the minerals.

(6) In any case where more than one party is liable for royalty for the same minerals within a given period, any payment made by one party shall be credited in calculating the royalty due from the remaining parties.

(7) Subregulation (6) does not infringe upon any right of contribution that any party may have against another.

12. (1) The holder of a mineral right may apply to the Cabinet Secretary for a reduction of royalty rate or temporary suspension of royalty payment applicable to the minerals that are the subject of that mineral right.

Reduction or suspension of payment.

(2) An application for reduction of royalty rate or temporary suspension of royalty payment shall not exceed six months.

(3) Any approved reduction of royalty rate or suspension of royalty payment shall not apply retroactively to minerals won prior to the application.

(4) An application for a reduction of royalty rate or suspension of royalty payment may only be made if all reports and statements in relation to mining operations have been submitted as required under the Act.

(5) The Cabinet Secretary shall not reduce a royalty rate by more than fifty per cent of the specific rate set out in the First Schedule.

(6) The reduced royalty rate shall revert to the prescribed rate at the end of the six months after the date the Cabinet Secretary allowed the reduction or suspension.

(7) If a reduction of royalty is allowed, the holder of the mineral right shall not be liable to pay the difference between the reduced and standard royalty rates.

(8) Where suspension of royalty payment is granted, the holder of the mineral rate shall pay the deferred amount of the royalty at the end of the six months suspension period.

(9) The deferred amount shall not incur interest for the first six months following the suspension period's end but thereafter shall accrue interest at the prevailing Central Bank of Kenya rate.

(10) A mineral right holder who fails to comply with the provisions of the Act or these Regulations shall not be eligible for a reduction of royalty rate or temporary suspension of royalty payment.

(11) A mineral right holder seeking a suspension of royalty payment or reduction of royalty rate shall provide evidence including financial statements, audited accounts, and any other information requested by the Cabinet Secretary to demonstrate that the reduced rate or suspension is intended to alleviate a temporary but significant adverse impact on the mineral right holder.

(12) In addition to evidence in subregulation (11), a mineral right holder applying for suspension of payment of royalty shall provide a payment plan detailing how the deferred royalty amount shall be paid at the end of the suspension period.

(13) The Cabinet Secretary shall, on the advice of the Mineral Rights Board, approve or reject an application for a reduction of the rate or temporary suspension of royalty payment within the ninety days from the date of the submission of the application.

13. (1) Any sample of any mineral that is removed for testing shall be subject to royalty if the total value of the mineral exceeds the maximum permitted value for samples as set out in subregulation (4).

Royalty on samples.

(2) Any sample of a mineral won and removed for metallurgical testing shall be subject to royalty if the total value of the mineral

exceeds the maximum permitted value for samples as set out in subsection (5).

(3) The market value of the sample of the mineral shall be calculated based on quantity, composition and prevailing market price.

(4) In determining whether or not the value of a sample of a mineral exceeds the maximum permitted value, the average grade and quantity of valuable minerals in the sample extracted within a quarter shall be used.

(5) The maximum permitted value of any sample of a mineral accumulated per consignment is two hundred thousand shillings.

14. (1) Where the reference price used to decide the full market value of a mineral product results from an arrangement where parties are not dealing at arm's length and this leads to a lower price, the Director of Mines shall adjust the reference price to reflect what the price that would have been applicable to the mineral in an arm's length transaction.

Arm's length consideration.

(2) If associated costs arising under an arrangement decreases the apparent market value of a mineral product, the Director of Mines shall adjust the costs to reflect what the costs would have been in an arm's length sale.

(3) Each party to an arrangement includes every person involved directly or indirectly in creating or affecting the arrangement.

(4) This regulation shall apply to reference price and costs including those that arise from financing arrangements.

(5) The Director of Mines may require any party to provide information to determine whether reference prices under an arrangement are consistent with arm's length transactions.

15. (1) The due date for royalty shall be the date that the reconciliation point and late payment accrue monthly penalties from the start of the month when the royalty reconciliation payment remains unpaid.

Royalty assurance through reconciliation.

(2) The reconciliation point for a mining permit or licence holder shall be ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(3) The reconciliation point for an artisanal mining permit holder shall be ninety days after the last day of the month in which a mineral or mineral product was sold or exported.

(4) The reconciliation point following a transfer of mineral rights shall be the date that the Cabinet Secretary approves the transfer.

(5) For holders of dealing rights, the reconciliation point shall be—

- (a) the date that an export is made where the holder has applied for a permit to export a mineral product; or
- (b) within fourteen days after aggregated domestic sales that had been made in the immediately preceding month.

16. (1) Where a reconciliation report identifies an outstanding royalty, a reconciliation payment equal to the amount of unpaid royalty shall be due from the holder of the mineral right.

Reconciliation payment.

(2) Interest, at the current Central Bank of Kenya interest rate per month, shall accrue for each royalty period in which a reconciliation payment is unpaid or partly unpaid.

(3) Where a reconciliation payment has been made for minerals in respect of another reconciliation point, that payment will be credited against any reconciliation payment due at the subsequent reconciliation point.

(4) If a person is due to make a reconciliation payment for minerals or mineral products but has transferred the minerals or mineral products to another person who holds a dealer's right before the date of the reconciliation point, the reconciliation payment due from the first person shall be reduced by the amount due on those minerals or mineral products.

17. (1) When a dealing right reconciliation point arises, the holder of the dealing right shall make a reconciliation report in respect of the minerals and mineral products that the dealer holds or has held during the reconciliation period.

Dealer reconciliation.

(2) The report shall—

(a) set out the amount of minerals and mineral products acquired by the holder during the period minus the amount for which royalties have already been paid or which were exported or sold to another dealer; and

(b) calculate the remaining unpaid royalty for minerals and their mineral products.

(3) The reconciliation payment shall be equal to the total unpaid royalty on those minerals and their mineral products.

(4) If a dealer makes a reconciliation payment, the dealer can recover that amount from the holder of the mineral rights who should have paid the royalty at the time the reconciliation payment was made.

18. (1) When a mining permit including an artisanal or a mining licence holder reconciliation point arises, the holder shall submit a reconciliation report.

Reconciliation by a holder of a mining permit or licence holder.

(2) The report shall detail the minerals and mineral products exported or sold during the period offset against royalty payments made in respect of the minerals and mineral products by the mineral right holder and any other previous reconciliation payments made.

(3) The holder must make a reconciliation payment for all minerals and mineral products for which no royalty payments have been made and for which no previous reconciliation payment has been recorded.

(4) The amount of the reconciliation payment shall be equal to the outstanding royalty on those minerals and mineral products.

(5) If a holder makes a reconciliation payment, they can recover that amount from the original holder of the mineral right who should

have paid the royalty or from any dealer who should have paid a reconciliation payment for those minerals or mineral products.

19. (1) When a mineral right transfer reconciliation point arises, the transferor of the mineral right shall submit a reconciliation report in respect of the royalty due in relation to that mineral right as if the royalty period had ended at the time of the transfer.

Transferor's reconciliation of mineral rights.

(2) For all minerals for which a royalty or a reconciliation payment cannot be shown to have been made, the transferor shall make a reconciliation payment.

(3) The transfer shall not be registered until the payment is made.

(4) The reconciliation payment shall be equal to the royalty that would otherwise be payable for the minerals to the date of the transfer at the end of the royalty period.

20. The following Regulations are revoked—

Revocation.

- | | |
|--|-----------------|
| (a) the Mining (Prescription of Royalties on Minerals) Regulations, 2013; | L.N. 187/2013. |
| (b) the Mining (Prescription of Royalties for Fluorspar Products) Regulations, 2013; | L.N. 2020/2013. |
| (c) the Mining (Prescription of Royalties for Magadi Soda Products) Regulations, 2013; | L.N. 221/2013. |
| (d) the Mining (Prescription of Cement Minerals Levy) Regulations, 2013; and | L.N. 222/2013. |
| (e) the Mining (Prescription of Royalties for Diatomite) Regulations, 2015. | L.N. 40/2015. |

SCHEDULE

(Regulation 8)

ROYALTY RATES

The royalty rates chargeable in respect of gross value of the extracted minerals are as follows:

<i>S/No.</i>	<i>Gross value of extracted minerals</i>	<i>Royalty rate</i>
1.	Precious metals (gold and platinoid group metals)	3%
2.	Rare earth elements and radioactive minerals	8%
3.	(a) Metallic ores (copper, zinc, aluminium, vanadium, manganese)	5%
	(b) Other metallic ores	
	(c) Titanium mineral sand, titanium ores and zircon	
4.	Coal	7%
5.	Limestone, gypsum, dolomite, silica sand, talc	3%
6.	Dimension stones and other construction minerals, clays	3%
7.	Carbon dioxide	3%
8.	Diatomite, fluorspar	4%
9.	Soda ash	3%
10.	Clinker	2%
11.	Rough gemstones	6%
12.	Cut gemstones	1%
13.	Cement	1.6%
14.	Salt	1.6%
15.	All other minerals	4%

Made on the 29th May, 2024.

SALIM MVURYA,
*Cabinet Secretary for Mining,
 Blue Economy and Maritime Affairs.*

EXPLANATORY MEMORANDUM TO THE MINING (ROYALTY COLLECTION AND MANAGEMENT) REGULATIONS, 2024

PART I

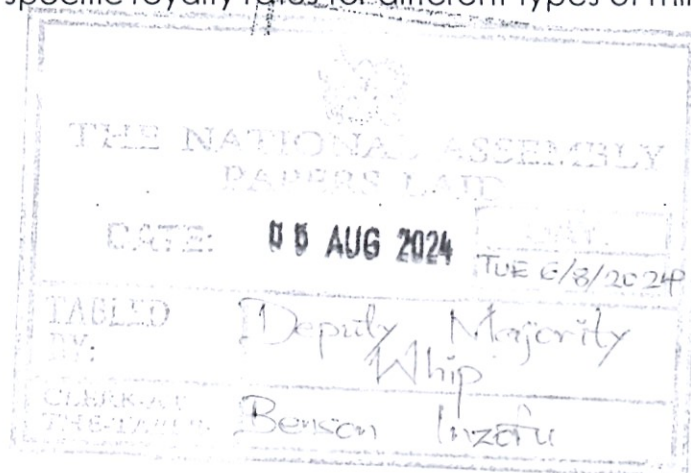
Name of the statutory instrument	Mining (Royalty Collection and Management) Regulations, 2024
Name of the Parent Act	Mining Act, Cap. 306
Enacted pursuant to	Section 223 of the Mining Act, Cap. 306
Name of the Ministry/Department:	Ministry of Mining, Blue Economy and Maritime Affairs
Gazetted on Tabled on	3 rd July 2024

PART II

1. The Purpose of the Mining (Royalty Collection and Management) Regulations, 2024

The Mining (Royalty Collection and Management) Regulations, 2024 aim to:

- i. Establish a system for determining, collecting and managing royalty payments on minerals extracted in Kenya. (Regulation 3)
- ii. Provide a framework for calculating the royalty base, which is the value used to determine the amount of royalty owed. (Regulation 6)
- iii. Set specific royalty rates for different types of minerals. (Schedule)



2. The Legislative Context

- 2.1 These regulations are made under the authority of the Mining Act (Cap. 306) of Kenya. Specifically, Section 223 of the Act empowers the Cabinet Secretary to make regulations for various aspects related to mining, including royalty collection and management. (Regulation 1)

3. Policy Background.

3.1 What is being done and why

The regulations are a response to a need for a more transparent and efficient system for collecting mineral royalties in Kenya. The previous regulations mentioned in the revocation clause (Regulation 20) were revoked by the High Court for lack development without being subjected to public participation. Additionally, the policy direction was guided by the need to:

- a. Increase government revenue from the mining sector.
- b. Ensure a fair share of the benefits from mineral extraction for the people of Kenya. (Regulation 5(a))
- c. Encourage responsible mining practices.

3.2 Consolidation

Once operational, the State Department will officially publish the final amendments alongside the existing regulations. This consolidated document would make it easier for miners and the public to understand the complete regulatory framework.

4. Consultation outcome

The Mining (Royalty Collection and Management) Regulations, 2024 were subjected to stakeholder engagements in September 2023 in various regions in Kenya including but not limited to Machakos, Mombasa, Embu, Garissa, Narok, Kisumu, and Eldoret with a reach of 43 counties. A public notice was issued in a newspaper of wide

circulation (**My Gov**) on 15 August 2023 seeking written comments on the Regulations from the public and informing the public on the dates for stakeholder engagements. Comments received from mining stakeholders were positive. These comments were taken into consideration in the final amendment regulation. A matrix is attached.

5. Guidance

The State Department for Mining will continuously sensitize stakeholders in the mining sector, especially Mineral Rights Holders, and the public on the provisions of the Mining (Royalty Collections and Management) Regulations, 2024 to encourage the stakeholders to be compliant with the said regulations.

6. Impact

6.1 Fundamental Rights and Freedoms

The regulations are unlikely to directly infringe on fundamental rights and freedoms. However, they could indirectly impact the right to property of those involved in the mining sector, as it introduces a financial obligation (royalty payments) on mineral extraction.

6.2 Private Sector

The regulations will likely have a significant impact on the private sector, particularly mining companies and mineral dealers. They will need to:

- a. Adapt their accounting and reporting systems to comply with the new royalty calculation and reconciliation requirements. (Regulations 5, 15)
- b. Potentially face reduced costs due to the new reduced royalty rates on most minerals. (Schedule)
- c. Apply for reductions or suspensions of royalty payments if needed. (Regulation 12)

6.3 Impact on the Public

The regulations will have a positive impact on the public by:

- i. Increasing government revenue from mining, which could be used to fund public services and development projects.
- ii. Ensuring communities benefit from mineral extraction through royalty payments. (Regulation 5(a))
- iii. Overall, the impact on the public depends on how effectively the regulations are implemented and enforced.

6.4 An impact assessment statement

A Regulatory Impact Assessment Report has been developed and is hereby attached to these Regulations.

7. Monitoring and Review

7.1 The State Department for Mining shall monitor the application of the regulations to:

- i. Assess the effectiveness of the regulations in achieving their intended outcomes.
- ii. Identify any unintended consequences of the regulations.
- iii. Evaluate the impact of the regulations on the different stakeholders (private sector, public sector, workers).
- iv. Determine if any amendments or adjustments are needed to improve the regulations.

Contact Person.

The Department in charge of Policy Direction and implementation of these Regulations is the State Department for Mining with the following contact person: -

Elijah Mwangi, CBS

Principal Secretary

State Department for Mining

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Email: ps@mining.go.ke

THE NATIONAL ASSEMBLY PARLIAMENT BUILDING	DATE: 06 AUG 2024	TIME: 6/8/2024
TABLED BY: Deputy Majority Whip		
FOR KENYA: Benson		
FOR UTAH: Inzofu		



REPUBLIC OF KENYA

REGULATORY IMPACT ASSESSMENT FOR

THE DRAFT MINING (ROYALTY COLLECTION AND MANAGEMENT) REGULATIONS, 2023

SEPTEMBER, 2023

This Regulatory Impact Assessment (RIA) has been prepared by the State Department for Mining pursuant to Sections 6 and 7 of the Statutory Instruments Act (No. 23 of 2013).

ABBREVIATIONS

RIA - Regulatory Impact Assessment

RIS- Regulatory Impact Statement

SIA - Statutory Instruments Act

AMV - Africa Mining Vision

SDG - Sustainable Development Goals

UNEP - United Nations Environment Programme

BETA - Bottom-up Economic Transformation Agenda

1. INTRODUCTION

1.1 Regulatory-making Authority and the Legal Mandate

The Mining Act under Section 12 empowers the Cabinet Secretary responsible for Mining with the general administration of the Act. The mandatory requirement upon the Cabinet Secretary is to respect and uphold the principles and values enshrined in Article 201(c) and (d); and Article 69 (1) (a) and (h) of the Constitution. The Regulatory Making Authority in the instant case is the Ministry of Mining, Blue Economy and Maritime Affairs and specifically the State Department for Mining. The Mining Act mandates the Cabinet Secretary to make regulations to prescribe the procedure for consideration of the applications made under the Act; and negotiation, grant, revocation, suspension, or renewal of mineral rights hence the development of the draft Royalty Collection and Management Regulations.

1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 (SIA) is the legal framework governing the conduct of Regulatory Impact Statement (RIS) in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, before making the statutory instrument, prepare a regulatory impact statement about the instrument.

The Act further sets out certain key elements that must be contained in the Regulatory Impact Assessment (RIA) namely

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;

(c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;

(d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and

(e) the reasons why the other means are not appropriate.

Section 5 of SIA requires that a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.3 What is a Regulatory Impact Statement?

Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs, and effects of new or existing regulations. A RIS is an analytical report to assist decision makers in arriving at an informed policy decision. As an aid to decision making RIS includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach provides the greatest net public benefit. Typically, the structure of a RIS should contain the following elements:

(a) title of the proposal;

(b) the objective and intended effect of the regulatory policy;

(c) an evaluation of the policy issue;

(d) consideration of alternative options;

(e) assessment of all their impacts distribution;

- (f) results of public consultation;
- (g) compliance strategies, and
- (h) processes for monitoring and evaluation.

RIA is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation to assess whether the regulation is likely to achieve the desired objectives. RIS promotes evidence-based policymaking as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, the RIA should confirm whether a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIS therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

2.0 PURPOSE AND OBJECTS OF THE PROPOSED REGULATIONS

The Mining (Royalty Collection and Management) Regulations, 2023, serve various purposes to regulate the collection and management of royalties in the mining sector. These regulations aim to strike a balance between facilitating the mining industry's operations and ensuring that the government receives fair compensation for the extraction of its mineral resources while promoting transparency and accountability in the sector:

- a) **Royalty Collection:** These regulations establish a framework for the collection of royalties from entities involved in mining and dealing with minerals. The primary objective is to ensure that the government receives compensation for the depletion of its non-renewable mineral resources.
- b) **Determining Royalty Base:** The regulations provide guidelines for determining the royalty base, which is the value to which the royalty rate is applied. This ensures that the royalties are based on the full market value of minerals, including enhancements made to increase their saleability.
- c) **Setting Royalty Rates:** The regulations specify the royalty rates for various minerals, including precious metals, rare earth elements, metallic ores, industrial minerals, and gemstones. This helps in standardizing royalty rates for different mineral categories.
- d) **Reconciliation and Accountability:** The regulations establish a reconciliation system to ensure the accurate reporting and payment of royalties. It includes reconciliation points for dealers, mining permit or license holders, and transferors of mineral rights, thereby promoting transparency and accountability.

- e) **Reduction or Suspension of Royalty Rates:** The regulations provide a mechanism for holders of mineral rights to apply for a reduction or suspension of royalty rates, under specific conditions. This helps mitigate adverse impacts on mining operations and encourages compliance.
- f) **Export Control:** The regulations specify that royalties for export minerals are based on the value of minerals at the port of exit, promoting control over mineral exports and ensuring that royalties are paid on minerals leaving the country.

2.1 Realization of Kenya's Mineral Potential

The mining sector in Kenya holds a pivotal role in the nation's economic development, poised to make substantial contributions to socio-economic progress. The mineral resources within the country are held in trust by the national government on behalf of the people of Kenya. The aim of exploiting these mineral resources is to ensure that the benefits are reaped by the citizens of Kenya.

The Mining Act, of 2016 plays a central role in providing a comprehensive regulatory framework for the management and development of mineral resources in the country. To ensure that the benefits derived from mineral exploitation are shared with the people of Kenya, the Cabinet Secretary responsible for the mining function is mandated to establish regulations governing the collection of mineral royalties. These royalties serve as a crucial source of revenue, not only to compensate for the extraction of mineral resources but also to contribute to the socio-economic advancement of the nation.

The development of these regulations aims to give effect to the implementation of the Mining Act and to provide a transparent and structured framework for the collection of mineral royalties. By doing so, the Ministry aims to

make a substantial and sustainable contribution to the responsible utilization of mineral resources, benefiting both the current and future generations.

2.2 Scope

The scope of the proposed Regulations is to:

- a) Provide the principles pertaining to royalty payment
- b) Provide basis for charging mineral royalties on the exploited resource
- c) promote sustainable development of mineral resource in the country
- d) Provide basis for determination of Royalty base
- e) Provide the basis for reconciliation of royalty payments

2.3 General Objective

The general objective of the proposed Regulations is to give full effect to the Mining Act No. 12 of 2016 by providing a framework to ensure sustainable management and development of Kenya's Mineral wealth.

2.4 Specific Objectives

The objectives of the regulations is to balance the interests of the government, the mining industry, and the public while maintaining transparency and accountability in royalty collection and management.

- a) **Compensation:** Ensure that royalties provide monetary compensation to the government for the depletion of Kenya's non-renewable mineral resources.

- b) **Accuracy:** Establish clear guidelines for accurate determination of royalty amounts based on the full market value of minerals
- c) **Standardization:** Set standardized royalty rates for different mineral categories to ensure consistency in royalty payments.
- d) **Transparency:** Implement a reconciliation system to promote transparency and accountability in reporting and paying royalties.
- e) **Flexibility:** Allow for the reduction or suspension of royalty rates under specific conditions to address temporary adverse impacts on mining operations.
- f) **Export Control:** Control royalties for exported minerals based on their value at the port of exit, ensuring that royalties are paid on minerals leaving the country.

3. BACKGROUND AND CONTEXT OF THE PROPOSED REGULATIONS

3.1 Background of Kenya's Mining Industry

The mining sector dates back to the colonial period where the sector was for a long time operated within a legal framework enacted way back in 1940. The Mining Act no.12 of 2016 revoked the law (1940) consequently opening the sector to more players, in particular recognizing artisanal mining as a game changer for economic growth at the grass root. Mineral royalty collection has been operating without a clear legal framework and for this reason, the current proposed Royalty collection Regulation seeks to provide a clear framework within which this is done.

3.2 International and Regional Context of the Mining Sector

3.2.1 Africa Mining Vision (AMV)

Africa Mining Vision aims to create "a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development". The Vision was adopted by Heads of State at the February 2009 AU summit following the October 2008 meeting of African Ministers responsible for Mineral Resources Development. It is Africa's response to tackling the paradox of great mineral wealth existing side by side with pervasive poverty. It recognizes 6 intervention areas namely: 1) fiscal regime and revenue management; 2) geological and mineral information systems; 3) building human and institutional capacity; 4) artisanal and small-scale mining; 5) mineral sector governance; 6) linkages, investment and diversification.

3.2.2 Sustainable Development Goal (SDG)

The United Nations Member States in 2015 adopted 17 Sustainable Development Goals (SDGs) that are to guide poverty eradication, improve health and education, reduce inequality, and spur economic growth – strategies all while tackling climate change and working to preserve oceans and forests. Out of the 17 sustainable development goals, number 7, 8,

9, and 13 have been identified as those relating to the mining sector. Affordable and clean energy, decent work and economic growth, industrial innovation, and infrastructure climate Action. All these speak to the optimal and sustainable mining sector.

3.3 Local Context of the Mining Sector

3.3.1 Bottom-up Economic Transformation Agenda (BETA)

In recognition of the potential contribution of the Mining sector in job creation, the Government under the BETA approach has earmarked the formalization of artisanal mining which provides livelihoods for over 800,000 people. This sub-sector can create more decent jobs with the adoption of safe and sustainable mining techniques with guaranteed markets. On the same note, mineral value addition has also been identified as a game changer in maximizing the full worth of a mineral resource along the whole value chain.

3.3.2 Kenya Vision 2030

The economic pillar, one of the enablers of the vision, is set to be actualised by a wide range of sectors; mining being one of them. Efficient royalty collection will guarantee the country maximum benefit from its mineral wealth.

3.3.4 Strategic Plans

The just-ended Strategic Plan for the State Department for Mining provided a roadmap for implementing the Mineral Resources Sector Plan which is one of the priority sectors under the Economic Pillar of Vision 2030. The Plan provided an important framework for realizing the government's commitment to a transformative and competitive extractive industry as a key driver of the effective implementation of Kenya Vision 2030, and positioned Kenya as a regional focal point and a frontier for foreign direct investment in the Mining Sector.

3.3.5 Mining and Minerals Policy

The Mining and Minerals Policy was developed in 2016. The rationale behind the policy was to provide a framework to give clear guidance for sustainable mineral resources development, to address gaps that existed in the mining sector, form the basis for a review of the outdated Mining Act of 1940, and align the industry's strategic direction with African Mining Vision, Vision 2030 and Constitutional Provisions. In addition, to strengthen the institutional framework and address governance and operational issues, environmental protection, equity, mineral value addition, post-mine closure activities, capacity building, and mainstream artisanal and small-scale mining. The policy will promote the use of appropriate technology including Geo-spatial technology and airborne geophysical surveying to enhance information on the country's mineral potential and increase investment in mining. The policy led to the development of the Mining Act, 2016

4.0 RATIONALE AND JUSTIFICATION FOR THE PROPOSED REGULATIONS

4.1 Policy Issue

Mining royalty collection has emerged as a significant concern within Kenya's mining and minerals sector. Mining royalties serve as a critical source of government revenue derived from mineral extraction. However, several pressing policy issues demand focused attention and necessitate the implementation of a comprehensive RIA.

One key concern is the need to optimize revenue collection from mining royalties. An effective royalty collection system is vital to ensure that Kenya receives its rightful share of revenue from the exploitation of its mineral resources. Evaluating existing royalty collection mechanisms and identifying areas for improvement is essential to maximize revenue generation.

Furthermore, there is a growing emphasis on the equitable distribution of royalties. RIA can play a pivotal role in determining whether the current distribution of royalties among different stakeholders, including local communities and the government, is fair and in line with the principles of resource benefit sharing.

The persistent challenges of mining royalty evasion and underreporting necessitate attention. RIA should delve into measures that address these issues, such as enhanced monitoring and enforcement, as well as the development of transparent royalty collection processes.

Promoting transparency and accountability in royalty collection is another crucial aspect. Implementing measures to enhance transparency, such as technology-driven solutions for royalty tracking and reporting, will foster public trust and reduce the risk of corruption in the sector.

Finally, a well-structured royalty collection system should be designed to support sustainable development. This includes directing a portion of collected royalties into community development projects, environmental conservation, and infrastructure development in mining regions.

4.2 Opportunities for Kenya to realize the full potential in the Mining Sector

RIA focused on mining royalty collection highlights several opportunities for Kenya to enhance its revenue collection mechanisms.

Firstly, modernizing royalty collection systems is imperative. The introduction of technology-driven platforms can significantly improve the efficiency, accuracy, and transparency of royalty collection. This can be achieved through the development of digital platforms for tracking, reporting, and payment.

Secondly, strengthening monitoring and enforcement mechanisms is essential to prevent royalty evasion and underreporting. This includes leveraging data analytics to track mining activities and ensure compliance with royalty payment obligations.

Thirdly, exploring innovative revenue-sharing mechanisms that prioritize equitable distribution of royalties among various stakeholders, including local communities, the national government, and county governments, will reduce disparities in mining regions and contribute to local development.

Additionally, public engagement and awareness initiatives are pivotal. Promoting public awareness and engagement in the royalty collection process can lead to greater accountability and transparency. Developing education campaigns and platforms for public participation can facilitate this.

Lastly, ensuring that Kenya's royalty collection mechanisms align with international best practices, including the Extractive Industries Transparency Initiative (EITI) and the principles of good governance in resource-rich countries, will enhance the country's reputation and credibility in the global mining industry.

CONCLUSION

Conducting a Regulatory Impact Assessment (RIA) on mining royalty collection is a critical step in optimizing revenue generation, ensuring equitable distribution, preventing evasion, promoting transparency, and supporting sustainable development. By identifying areas for improvement and capitalizing on the opportunities highlighted in the RIA, Kenya can enhance its royalty collection mechanisms and further its economic and social development goals. This aligns with the principles of responsible resource management and good governance.

5.0. POLICY AND LEGAL FRAMEWORK FOR THE PROPOSED REGULATIONS

5.1 The Constitution of Kenya, 2010

Part 2 Article 69 (1) (a) of the Constitution provides that the State shall ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefit. This regulation will provide a framework for the management and utilization of minerals for current and future generations.

5.2. The Mining Act of 2016

The legal framework for governance of the Mining sector in Kenya is primarily under the Mining Act, No 12 of 2016. The Act outlines the rights and obligations of mineral rights holders, establishes the process for granting mineral rights and dealers rights, and defines the regulatory framework for mining operations and all other related activities in the sector

Further, the Mining Act under Section 223(1) gives the Cabinet Secretary the power to make the regulations necessary for the proper administration and implementation of the Act. Several regulations have been developed to aid in the implementation of the Mining Act 2016.

3.3.5 Mining and Minerals Policy

The Mining and Minerals Policy was developed in 2016. The rationale behind the policy was to provide a framework to give clear guidance for sustainable mineral resources development, to address gaps that existed in the mining sector, form the basis for a review of the outdated Mining Act of 1940, and align the industry's strategic direction with African Mining Vision, Vision 2030 and Constitutional Provisions. In addition, it to strengthen the institutional framework and address governance and operational issues, environmental protection, equity, mineral value addition, post-mine closure activities, capacity building, and mainstream artisanal and small-scale mining. The policy will promote the use of appropriate technology including Geo-spatial technology and airborne geophysical surveying to enhance information on the country's mineral potential and increase investment in mining. The policy led to the development of the Mining Act, of 2016.

6.0. PUBLIC PARTICIPATION AND CONSULTATIONS

Public Participation refers to the process by which citizens, as individuals, groups, or communities (also known as stakeholders), take part in the conduct of public affairs, interact with the state and other non-state actors to influence decisions, policies, programs, legislation and provide oversight in service delivery, development and other matters concerning their governance and public interest, either directly or through freely chosen representatives.

It is a constitutional requirement that policy and law-making should be done in an open and transparent manner, with appropriate procedures for effective and timely input from professionals and persons affected by the policy instruments.

6.1 Legal Basis for Public Participation and Consultation

Participation of the people, inclusivity, transparency, and accountability are constitutional requirements whenever the State or public officer applies the Constitution, enacts any law, or makes or implements a public policy. This requirement is premised on the sovereignty principle, which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement.

Transparency of public finances and performance is ensured through rules, mechanisms, and capacities for sharing information on government programs, budgets, expenditures, and results with citizens.¹⁰ Participation mechanisms enable citizens to participate in setting budget priorities, monitor expenditures and assess service delivery performance. They also include feedback systems, which provide citizens with the opportunity to provide comments and grievances. Accountability mechanisms include both direct and indirect relationships, where service providers are sanctioned if they fail to meet an established standard.

The objects of devolution give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. The values and principles of public service require the involvement of the people in the process of policymaking and include transparency and provision to the public of timely and accurate information.

Regarding the subsidiary legislation-making process, the Statutory Instruments ACT 15 requires that the regulatory-making authority shall undertake public consultations before making statutory instruments (Regulations), particularly, where the proposed Regulations are likely to have a direct or substantial indirect effect on the business or restrict competition.

The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation-making authority shall have regard to all relevant matters, including the extent to which the consultation: drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be less than fourteen days or be invited to participate in public hearings concerning the proposed instrument.

6.2 The Process of Public Participation and Consultations

Pursuant to section 5 of the Statutory Instruments ACT, the Ministry of Mining Blue Economy and Maritime Affairs identified specific stakeholders whom it engaged in a consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instrument.

6.2.1 Stakeholders Mapping

The following stakeholders were identified for the purpose of developing and consultations on the proposed Regulations:

- a. National Assembly,
- b. Office of the Attorney General,
- c. Kenya Law Reform Commission,
- d. National Treasury;
- e. County Governments;

- f. Large and Small scale scale miners;
- g. Artisanal miners;
- h. Kenya Association of Manufacturers;
- i. Kenya Chambers of Mines,
- j. Non-Governmental Organizations;
- k. Environmentalists; and
- l. Members of the public.

6.2.2 Public Consultation Approach and Methodology

The Ministry adopted the following methodology for purposes of public participation and inclusivity:

- a. The Drafts on Mining (Royalty Collections) Regulations, 2023, were developed with technical assistance from Kenya Law Reform Commission,
- b. The drafts were posted on the Ministry's website with links to download, where the stakeholders had access,
- c. Invitation of all stakeholders to public consultative meetings across the Country and submitting written memoranda,
- d. The stakeholders were also notified of the Regulation-making process and invited to give submissions on the draft Regulations within a specified period as per Statutory Instruments Act;
- e. Internal Stakeholder Consultations
- f. Executive Office Consultations
- g. A public notice in My Gov was published inviting all persons to submit their comments and also in; and
- h. The public notice also invited all stakeholders and members of the public for physical consultative meetings which were held as follows:-

REGION (CLUSTERED COUNTIES)	MEETING VENUE	DATE	TIME
Nairobi, Machakos, Makueni, Kajiado, Kiambu, Kitui	National Industrial Training Authority- Machakos County	4 th September, 2023	9.00 am - 4.00 pm
Nakuru, Uasin Gishu, Elgeyo Marakwet, Samburu, Nandi, Turkana, West Pokot, Baringo	Rift Valley Technical Training Institute- Eldoret	4 th September, 2023	9.00 am - 4.00 pm
Mombasa, Taita Taveta, Kwale, Kilifi, Voi, Lamu	Mombasa Beach Hotel- Mombasa	6 th September, 2023	9.00 am - 4.00 pm
Homabay, Kisumu, Siaya, Kakamega, Vihiga, Bungoma	Kisumu Hotel- Kisumu	6 th September, 2023	9.00 am - 4.00 pm
Garissa, Wajir, Mandera, Tana River	Garissa Farmers Training Centre- Garissa	11 th September, 2023	9.00 am - 4.00 pm

Kericho, Bomet, Narok, Kisii, Migori	Maasai Mara University - Narok	11 th September, 2023	9.00 am - 4.00 pm
Embu, Kirinyaga, Nyeri, Murang'a, Mbeere, Tharaka Nithi, Meru, Isiolo, Marsabit	Kenya School of Government -Embu	13 th September, 2023	9.00 am - 4.00 pm

Table 2: Meetings with Mining Stakeholders. N/B: Attached to this Regulatory Impact Statement is a detailed matrix report (Annexure) indicating representations received from the stakeholders and action taken in revising the Regulations.

6.2.3 Report on Stakeholder Consultative Process

A report on the stakeholder consultative meetings containing the records of comments and how they were considered and incorporated into the draft Regulations was prepared. The report is annexed to this report as a separate document as Annexure.

7.0. AN OVERVIEW OF THE PROPOSED ROYALTY COLLECTION REGULATION, 2023

The Mining (Royalty Collection and Management) Regulations, 2023 aim is to facilitate the collection of mineral royalties. The proposed regulation applies to holders of mineral rights and dealing rights. These regulations give effect to sections 188(2) and 223(2)(a) of the Mining Act, 2016.

The principles pertaining to royalty payment are to;

1. provide monetary compensation to the people of Kenya, as owners of the minerals as they are extracted, for the depletion of the nation's non-renewable resources.
2. Royalties should be based on the full market value of the mineral in its most processed, marketable form, taking into account all enhancements made to increase its saleability.
3. The basic rate to share is the full gross value from the minerals extracted, thus disallowing deductions or offsets in computing the value to which each royalty rate applies, except for specific deductions or offsets delineated in these Regulations or in the Act.
4. Ensure safeguards at appropriate and convenient points including periodic reconciliation from dealers, periodic reconciliation for the sale of any minerals or mineral products, and reconciliation on transfer of mineral rights to ensure recovery of all royalties due.

The proposed regulations provide a determination of the royalty base to which royalty is charged, which is divided into a royalty base for minerals and mineral products sold locally and minerals and mineral products meant for export. These proposed regulations also outline the royalty rates that will be charged for individual and individual classes of minerals and mineral products under the first schedule.

In addition, the proposed regulation also provides a basis under which the Cabinet Secretary may allow a reduction or suspension of a royalty rate and finally provides reconciliation points and royalty reconciliation periods.

7.1 The proposed Regulations provide for the following salient features:

These regulations are broken down into 18 regulations;

1. Citation- Provides that These Regulations may be cited as the Mining (Royalty Collection and Management) Regulations, 2023.
2. Interpretation- outlines the key definition of words and phrases used within these regulations.
3. Application- The application outlines the jurisdiction of these regulations that is the persons both natural and legal who shall be expected to adhere to the provisions of these regulations.
4. Principles pertaining to royalty payment- This part outlines the aim of royalty payment, what royalties should be based on, the base to which the computation shall be done and the necessary safeguards to ensure full payment.
5. Determination of royalty base and royalty base for export minerals - This part provides the formula that shall be applied in determination of the base for computation of royalties both for minerals extracted and consumed within the borders of Kenya and those that are meant for export.
6. Royalty rates- The proposed applicable royalty rates are as set out in the first schedule.
7. Determining royalty payable- this part just outlines that the determination of royalty payable shall be computed by applying the appropriate rate to the applicable appropriated royalty base.
8. Due dates for payment of royalty- this outlines the dates under which the royalty payment shall fall due but does not limit payment of royalty before the due dates.
9. Reduction or suspension of royalty rate- this provides for the conditions under which reduction or suspension can be applied and the applicable periods for reduction/ suspension.
10. Royalty on samples - This part of the regulations provides that samples determined to be valued beyond a given amount shall attract an applicable royalty.
11. Arm's length consideration- this outlines that under all circumstances the state shall seek to ensure that the declared value for the application of royalty was market value and was not determined by anything other than market forces. If it is determined that the same was not observed the values shall be adjusted to reflect the market value before computation of royalty due to the state.

- 12 Royalty assurance through reconciliation, reconciliation payment, dealer reconciliation, reconciliation for a mining permit/license holder and reconciliation for transferors of mineral rights - these parts aim to ensure the collection of unpaid royalty and provide the reconciliation points for dealers, mineral right holders and reconciliation during transfer
- 13 First schedule - the first schedule outlines the applicable rates for various classifications of minerals.

8.0. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS

8.1 The Alternatives

8.1.1 *Option One: The Status Quo*

The High Court of Kenya on 12th May, 2023 nullified the Mining (Prescription of Royalties on Minerals) Regulations, 2013 on grounds of lack of public participation. Following the Court Ruling, an urgent letter of instructions was sent to the Office of the Attorney General on 18 May 2023, by the State Department for Mining requesting the Attorney General to file an urgent application for a stay of execution at the Court of Appeal against the High Court Order. The Attorney General however advised that the likelihood of success in the appeal was low, and the State Department should create new regulations in compliance with the Constitution and the Statutory Instruments Act, 2013. This nullification and expiry puts in jeopardy collections of approximately **Ksh 6 Billion** Revenue in the FY 2023/24 Budget, as the Regulations are the basis of these collections.

8.1.2 *Option Two: Application of Administrative Measures*

There are no administrative measures applicable to the proposed regulations.

8.1.3 *Option Three: Adopting the Proposed Regulations*

The proposed regulations will provide a legal instrument to enable the State Department for Mining to continue collecting royalties as provided for in Section 186 of the Mining Act 2016. By adopting the proposed regulations, the Department will efficiently and effectively discharge its mandate and enhance revenue collections. The regulations

also include royalty management and give guidance on all matters touching on royalty including; the royalty base, reconciliation, suspension, or reduction of royalties per the Mining Act 2016 among other provisions that were not previously included

8.2 Cost-Benefit Analysis

Option	Description	Costs	Benefits	Priority and Distribution of Impacts	Risks	Overall Impacts
Option One: Status Quo	Non existence of legal instruments for charging royalty rate due to court nullification of Legal Notice 187 of 2013.	Loss of Revenue for the Government: Ksh. 6 Billion Reduced investor confidence due to unpredictable fiscal regime;	No benefits	No shareable royalty to the National Government, Counties and Communities; Reduced efficiency in Service Delivery; Lack of finances to formalize ASMs; Reduce Regional Competitiveness; Reduced	May Contribute to illegal Mining; Depletion of mineral resources without benefits to Kenyans; Degradation of environment; Exposure to	Inability to collect royalty and levies translates to lack of resources to build capacity in the mining sector

				community support to mining investment;	potential Litigation;	
Option Two: Application of Administrative Measures	Not applicable since the Mining Act 2016, Section 223(2)(a) requires the Cabinet Secretary to prescribe royalty rates by way of regulations	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

<p>Option Three: Adopting the Proposed Regulations</p>	<p>Legal instrument for charging royalties with prescribed royalty rates</p>	<p>Regulations implementation cost: KSh. 385m</p>	<p>Increased Royalty collection from KSh. 3.7bn to KSh. 6 billion.</p> <p>Promoted mining investment due to predictability in the fiscal regime;</p>	<p>Increased Royalty shared amounts to the county and community;</p> <p>A formalized ASM sub-sector;</p> <p>Improved Regional Competitiveness (mining);</p> <p>Enhanced inspection and surveillance;</p> <p>Improved social economic developments in the mining areas;</p> <p>Increased availability of geological data;</p> <p>Improved mineral laboratory services;</p>	<p>Potential mineral smuggling in absence of effective compliance and enforcement;</p> <p>Potential investor flight risk;</p>	<p>Fast-track development and implementation of a Royalty Management System;</p> <p>Undertake stakeholder sensitization on the Royalty Collections and Management Regulation;</p> <p>Quarterly inspections and mineral audits</p>
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8.3 Conclusion: The Preferred option

The preferred option for the State Department for Mining is to adopt the proposed regulations as they will seal the existing gap created by the nullification and expiry of the Mining (Prescription of Royalties on Minerals) Regulations, 2013.

9.0. Compliance and Implementation

It is necessary to consider and determine how compliance and implementation of the proposed Mining (Royalty Collection) Regulations, of 2023 will be achieved. As per Executive Order No. 1 of 2023 and the Mining Act, it is the duty of the State Department for Mining to oversight, regulate, and enforce compliance on all mining operations within the Country. It is therefore the mandate of the State Department to assess the effectiveness of its regulatory provisions concerning compliance and design responsive implementation strategies.

9.1 Conforming to legal obligations in developing the proposed Regulations

Section 223(2)(a) of the Mining Act, 2016 grants powers to the Cabinet Secretary responsible for Mining to make regulations necessary to give effect to the Act. As for these proposed regulations, the Act under section 183 provides for the Cabinet Secretary to prescribe royalty rates. Therefore, the Cabinet Secretary has the required legislative powers to propose these Regulations.

The Statutory Instruments Act, No. 23 of 2013 under Section 5 requires that the State Department for Mining conduct public consultations and draw on the knowledge of persons having expertise in fields relevant to royalties prescription and collection. Also, through public participation, persons likely to be affected by the proposed regulations have an adequate opportunity to provide views on the proposed regulations. Sections 6 and 7 require that a Regulatory Impact Assessment (RIA) be prepared where a statutory instrument is likely to impose significant costs on the community.

9.2 Implementation of the Regulations

Implementation of these proposed Regulations shall give effect to the provisions of the Mining Act on payments of royalty upon extraction and sale of mineral resources. These Regulations will be implemented through the set out legal and institutional framework at the State Department for Mining to ensure there is adequate compensation to Kenyans on extracted minerals through royalties and promote the mining industry.

These proposed Regulations do not propose to amend any of the existing laws. It harmonizes with other laws and regulations making its implementation more effective. The proposed Regulations as drafted are clear, consistent, comprehensive, and comprehensible enough to cover all matters.

9.3 Conclusion and Recommendation

After conforming to the legal obligations in developing these proposed Regulations like undertaking the necessary public participation and developing an accompanying Regulatory Impact Assessment, it is apparent that all the necessary measures and implementation safeguards have been considered. In view of this conclusion, it is recommended that the proposed Mining (Royalty Collection) Regulations, 2023 be adopted.

ANNEXURES

Annexure 1: List of participants in the study