

**FREQUENTLY ASKED QUESTIONS (FAQs) on LAND ACCESS,
COMPENSATION, RELOCATION AND RESETTLEMENT IN THE
MINERAL RESOURCE SECTOR IN KENYA**

[DOCUMENT SUBTITLE]

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Mining operations require large tracts of land to explore for mineral deposits to increase the probability of successfully finding an economically viable deposit. As a result, the onset of any mining activity may lead to the need for communities (inhabitants) on the land to be compensated, relocated or resettled on other lands. It is therefore important, at the onset, to fully address issues of land access and community consent.

LAND ACCESS & COMPENSATION

How does one access land for a mineral right? (Regulation 23) License and Permit Regulations 2017

Application for a mineral right shall only be granted with the consent of the land owner. This consent shall be in the form of a written agreement and clearly describes the land boundaries of the permit or license area. The signed copies shall then be submitted to the Ministry responsible for mining at that time.

Note: the success of this depends on a **reliable** and **accessible** land title registry

Who should be informed about an application for a mineral right? (Section 34, Mining Act 2016)

The Cabinet Secretary shall give notice in writing of a pending application for a mineral right to the following:

- a) the land owner or lawful occupier of the land where the mineral right is located
- b) the community
- c) the relevant county government

What does consent mean? (Regulation 23) License and Permit Regulations 2017

Consent in the context of the Mining Act 2016 means:

- right of the county government and local communities to be adequately informed about the potential benefits and impacts

of any mineral activity or mining operation in a timely manner and be given the opportunity to approve or reject the mineral activity or mining operation before the commencement of any activity or operations;

- parties shall strive for full and prior disclosure of any relevant information as part of the consultation;
- process of consultation and participation is undertaken through negotiation and good faith between the applicant for a mineral right and the local communities; and
- outcome of any negotiated agreement is formalized in a written document and is a legal commitment binding on both parties.

Is Consent of community leaders similar to community consent? (Regulation 23) License and Permit Regulations 2017

No. The support of community leaders shall not substitute the need for community consent.

Can a person or community object to the grant of a licence? (Section 34, Mining Act 2016)

Yes. This should be done within the following time frames:

- a) within twenty one days in the case of an application for a prospecting licence
- b) within forty two days in the case of an application for a mining licence

What rights does a person or community have after the grant of a mineral right? (Section 152, Mining Act 2016)

Surface rights are granted/retained by the community to continue utilizing the land in areas under the mining right but not an active mining site. The land owner or lawful occupier or user of an area which is the subject of a mineral right shall continue to enjoy the right to graze livestock on the land or to cultivate the land to the extent, in each case, that in doing so:-

- a) does not unduly interfere with the relevant prospecting or mining operations; and
- b) does not, by virtue of those operations, constitute a danger or hazard to livestock or crops.

What is compensation?

Compensation is something, typically money, awarded to someone in recognition of loss, suffering, or injury. In the case of mining operations, communities may lose their land and sources of livelihood and thus require to be compensated.

Who is entitled to be compensated? (Section 153, Mining Act 2016)

The people entitled for compensation are:

- a) lawful occupier and
- b) the landowner.

A lawful occupier is someone who legally occupies and accrues benefit from the land upon which a mineral right has been granted.

What are the forms of compensation? (Section 153, Mining Act 2016)

There are two major forms of compensation, money for land or land for land. When the compensation is land for land, the people are said to have been relocated or resettled in an alternative land.

Communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law.

Who compensates? (Section 152, Mining Act 2016)

The holder of the mineral right is responsible for compensating the landowner or lawful occupier of the land in which the holder intends to confer the mineral rights.

A mineral right holder compensates the landowner or the lawful occupier if the mining operations, disturbs or deprives the owner or any lawful occupier or user of the land or part of the land; causes loss of or damage to buildings and other

immovable property; causes damage to the Water table or deprives the owner of water supply; in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings or sustenance suffered by the owner or lawful occupier of the land. The lawful occupier or the landowner will sign an agreement when the two parties agree on the the specifics of the compensation process.

What rights or interest are compensated? (Section 152, Mining Act 2016)

The level of compensation is determined by the community and the mineral rights holder with the following considerations:

- depravation of use; causes loss of or damage to buildings and other immovable property; causes damage to the water table or deprives the owner of water supply; in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings or sustenance suffered by the owner or lawful occupier of the land, a demand or claim for compensation may be made to the holder of the mineral right to pay prompt, adequate and fair compensation to the lawful owner, occupier or user of the land in accordance with the provisions of this Act.

Therefore, the mineral right holder and the land owner or lawful occupier agrees on what/how much is adequate and fair compensation.

What happens when disputes arise from the compensation process? (Section 153, Mining Act 2016)

In case the people to be compensated and the mineral rights holder do not come to an agreement on compensation, one of the parties may lodge a complaint with the Cabinet secretary for mining who will determine the dispute.

The Cabinet Secretary may inquire into and determine the following matters—

- A dispute of the boundaries of an area held under a prospecting or mining right.
- Any wrongful act committed or omitted in the course of prospecting and mining operations, by any persons against any other person.
- A claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes.

- A claim to have any priority of water taken, diverted, used or delivered for mining purposes, as against any other person claiming the same.
- Assessment and payment of compensation.

Can compensation be done as mining operations continue?

No. The holder of the mining right shall first compensate before embarking on any form of mining activity.

Does the law establish a compensation mechanism for landowners/lawful occupiers?

The law provides for reasonable and fair compensation.

Note: There is currently no framework to guide **the quantum of compensation**. With low public awareness, the mineral right holder has high chances of under-compensating the land owners and legal occupiers/users.

Does the law create an effective and practical mechanism to enforce such provisions; 9, 10, 11 above?

No. The law lays the burden of drafting the compensation plan on the mineral right holder, and talks of disputes resolution mechanisms for solving matters arising from such compensation.

What is resettlement?

Resettlement is moving a group of people from one place to another. In case of mining operations, communities may be resettled to alternative lands to pave way for the mineral rights holder to commence mining operations in their land.

What considerations should be made when doing resettlement? (Section 153, Mining Act 2016)

Communities who opt for resettlement should be resettled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement are carried out in accordance with the relevant physical planning law. The cost of resettlement shall be borne by the mineral right holder.