What Community Need to Know about Mining Act 2016
Mining Act became in use on 27th May 2016

Mineral Ownership

Every mineral on land, lake, river, stream or sea within Kenya belongs to the Republic and is vested in the national government in trust for the people of Kenya.

Affected Community

A group of people living around an exploration and mining operations area or a group of people who may be displaced from land intended for exploration and mining operations.

Administration

- Cabinet Secretary is the one in charge of administering the act
- Cabinet Secretary and any person administering the Act must be guided by the values & principles in the constitution

Minerals Rights Board

- Advises the Minister on matters related to licenses and permits, trading, procurement and tendering and transfer of mineral rights Agreements.
- Considers grants, rejection, renewal or revocation of mining license

National Mining Corporation

- This is the investment arm of the National Government in Minerals
- Can Prospect and Invest in Minerals in Kenya

County Mining Office

- In charge of granting, renewing and revoking of artisanal mining permits.
- Keep register of the artisanal miners
- Ensure fair trade by ensuring that Artisanal Miners

Types of Mining

- Large Scale carried out in a large area
- Small Scale Mining
- Artisanal Mining
Mineral Rights/Licenses

- Reconnaissance License - for large scale mineral survey for 2 years non-renewable
- Prospecting License - for large scale mineral search for 3 years and renewable twice
- Retention License – For preserving minerals in an area for 2 years and renewable for any period up to 2 years
- Mining License – allow mining and selling of minerals for 25 years and renewable for 15 years or remaining life of mine
- Reconnaissance Permit – for small scale mineral survey for 1 year nonrenewable
- Prospecting Permit – for small scale mineral search for 5 years and renewable once
- Mining Permit – allow mining in small scale up to 5 years duration nonrenewable
- Artisanal Mining Permit – allow artisanal mining for 3 years and renewable once

Artisanal Mining

- This is mining using basic tools and traditional skills
- Allowed only for Kenyan Citizens above 18 years
- Controlled at the county Level through the county director of mine office
- One must acquire a mining permit
- Miners encouraged to form associations

Artisanal Mining Committee

- To be set up in all counties and its role is to advice on granting, renewal and revocation of artisanal mining permits
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- Chaired by the Governor’s representative and representative of the Director of Mines as the secretary;
- 3 persons not being public officers elected by the association of artisanal miners in the County
- A person from inspectorate division of the Ministry;
- A person from NEMA
- A person from the county lands board

- For mining right to be granted on community or private land, the registered owner(s) must give free and informed CONSENT
- The land owner(s) cannot deny CONSENT to mine without proper reason
- The CONSENT is given if there exists a legally binding arrangement with regard to mining right

Benefit Sharing...

- The Act provides for a ratio of sharing of royalties 70%–National government, 20% to county government and 10% to the community.
Local Content

- Goods and services—The mining company to source for goods and services locally before thinking of importing.
- Employment and Training—Kenyans and locals are given a first priority in employment and the mining company to train locals to fill up positions held by foreigners after a certain period of time.

Community Development Agreement

- For a large Scale operation, there must be a community development agreement with an affected community.
- The preparation of the agreement shall be done by community development committee bringing together representatives of affected community, mining company, county governor or a representative, national government representative, area elected local leaders, village elders, civil society organization representative, youth and women representatives.

Health, Safety and Environment

- Any person granted mineral rights, licenses and permits under the mining act are not exempted and must comply with the environmental laws.
- An applicant for a mining license cannot be issued with a mining license unless s/he has obtained: Environmental Impact Assessment, Social Heritage Assessment and Approved Environmental Management Plan.
- The Mining Right Holders must comply with the Occupation, Health and Safety Act on matters concerning safety of workers and mining operations.
- Prospecting license, retention license or mining license shall not be granted to the applicant without a site mitigation, rehabilitation or mine closure plans for approval.

Compensation is to be given when...

- Mining disturbs or prevents the owner or any lawful occupier or user of the land or part of the land;
- Mining causes loss of or damage to buildings and other immovable property;
- Mining causes damage to the Water table or hinders water access to owner;
- Mining causes any loss of earnings or sustenance by the lawful owner/occupier
- It is a requirement of Compensation before starting Mining
- Mineral Bond: A mineral right holder will be required to deposit a compensation guarantee bond with the relevant Ministry.