

Mitigating Against Conflicts in the Kenyan Mining Cycle: Identification of Gaps in the Participation and Recourse for Rights Holders (Civil Society & Community)

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Abstract— One of the major obstacles to sustainable development of the mining sector in Africa is conflicts. These conflicts emanate from various sources. However one of the key sources of misunderstanding is lack of communication between the rights holders (community) and duty bearers (government and corporate) and this breakdown of communication is due to poor or nonexistent mechanisms of involvement of affected communities in decision making and ignorance. This study sought to examine the Kenyan Mining cycle and identify procedural and systemic gaps that if not addressed could trigger conflict in the emerging mining sector and suggest ways of mitigating them. Key among the greatest barriers to communal participation is ignorance regarding mining activities and also the language of instruction. Most rural people are uneducated and yet a large number of communications and notices are in English. Poor management of expectations is also a critical source of misunderstanding and leading to conflict. Poor communal organization and lack of some sort of recognized authority gives room for disorder and hence poor channels of communication.

Keywords: New Mining Act, Mining Cadaster, human rights, rights holders, duty bearers, community participation, mining licence, prospecting licence, licence requirements, mining cycle

I. INTRODUCTION

The management of extractive industries is one of the most critical challenges facing many resource-dependent developing countries today. Rather than stimulating broad-based economic development, reliance on resource extraction has tended to concentrate wealth and power in the hands of a few, exacerbate corruption and inequalities, lead to environmental degradation and pollution, while doing little to reduce poverty, economic disparities and generate employment. Worse still, in many countries extractive resources have fuelled violent conflicts.

The recent announcement of oil discovery and other minerals has propelled Kenya as a new player in the global market for hydrocarbons and valued minerals. The International Monetary

Fund (IMF) projects that oil production in Kenya is expected to start in two to three years from now, giving the country time to prepare to manage its endowment to achieve its development goals as stipulated in the 2030 Vision.

Kenya is well endowed with bulk mineral resources, some of which are already being exploited by private companies and some are yet to be prospected and exploited.

Minerals found in Kenya include inter alia soda ash, fluorite, diatomite, carbon dioxide, gold, iron ore, lead, vermiculite, Kyanite, manganese, titanium, silica sands, gemstones and precious minerals, gypsum and limestone.

II. OBJECTIVE OF THE STUDY

The key objective of this study is to examine the Kenyan mining cycle and identify gaps and priority areas for future learning and activities to ensure involvement of affected communities in the decision making process. One of the key aspects in mitigating mining related conflicts is to internalize human rights in the mining cycle. It is important to note that meaningful participation is a core human right principle that is important to minimize negative social and environmental impacts of mining and it is important to note that there can be no participation without communication. In line with this thinking, it is important to examine the legal procedures and identify procedural entitlements of rights holders and corresponding responsibilities of duty bearers along the mining cycle process from a human rights based perspective.

The aim of this study was to contribute to a more user-driven design of the way government agencies interface with people

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and to ensure engagement from a human rights perspective in the public administration of the mining sector.

Procedural rights, including accessibility, right to be heard, participation, transparency, right to appeal and accountability are enshrined in the Constitution of Kenya 2010, as well as in other legal frameworks and public administration guidelines that govern the mining sector in Kenya.

However, current administrative practice often does not take into account these existing legal entitlements or the perceived needs of the end user. Furthermore, rights holders as well as duty bearers are often unfamiliar with procedural rights based on the three pillars of right to information, participation and access to justice. Therefore, there is a need to map, illustrate and communicate procedural rights along the mining cycle in a clear, accessible and transparent way.

An illustration of the entry points for right holders in the Kenyan mining cycle could advise the government on which parts of their administrative processes might benefit from re-engineering for improved adherence to the legal framework and international human rights standards. This holds the potential of improving state-society relations through addressing citizen's expectations for voice and participation towards a more inclusive, transparent, just and responsible management of the mining sector.

The specific task of the study will be to make a "users' journey" – examine the point of contact/interface between duty bearers (government agencies and mining companies) and rights holders (civil society) hereunder the various entry points for participation and recourse throughout the mining cycle; from establishing a mining site, exploration, licensing, engagement of stakeholders to actual mining and the final closure of the mines, within the framework of existing laws regulating the mining cycle in Kenya.

III. ENACTMENT OF A NEW MINING ACT 2016

Kenya enacted a new law in 2016 to reinvigorate the mining sector. The new Act seeks to provide clear guidance on mining activities in Kenya. It introduces amongst other things legalization of Artisanal Miners and Transparency and Accountability through use of the Online Mining Cadastre portal for licensing and for management of mineral rights and permits. It also introduces Community Development Agreements, mandatory for all holders of large scale mining rights, and sharing of royalties among the national government, the county governments and the local communities.

The Act is intended to streamline the country's mining sector and open the gates for its development as well as ensure environmental conservation and sustainable development in the mining sector. It also seeks to address the key gaps in the Mining Act of 1940, and align the sector to the latest global trends such as value-addition and the use of technology to spur investor interest. The Cabinet Secretary for Mining has termed the Act as one of the most "progressive mining laws in the continent."(Oraro & Co. Advocates)

From a human rights based perspective the new Act introduces major changes in how communities (rights holders) will be engaged in the mining cycle and licensing process.

A. Community Development Agreement

The Act makes it mandatory for a holder of a large scale mining licence to enter into an agreement with the community where the mining operations will be carried out. This agreement is known as the Community Development Agreement

B. Employment and Training

The Act seeks to ensure employment opportunities are created for Kenyans, ensure skills transfer and capacity building for the citizens. Section 46 thereof provides that each mineral right holder is required to submit to the Cabinet Secretary, a program detailing how it shall recruit and train Kenyans.

Furthermore, the holder of a mineral right is required to give preference to members of the community and Kenyan citizens when it comes to employment and only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law.

C. Local Equity Participation

The Act protects local participation with provisions for equity participation in large mining operations. The Act also provides for the prioritization of local procurement of goods, services and workforce.

D. Land Use, Water Rights Laws and Pollution

A holder of a mineral right is also required to comply with the prevailing laws on water rights and use the land in accordance with the terms of the permit of licence. In doing so, the holder of the permit or licence will ensure that the land is used in a sustainable manner.

Section 179 of the Act which deals with land use requires the holder of a permit or mining licence to ensure the sustainable use of land through restoration of abandoned mines and quarries; that the seepage of toxic waste into streams, rivers, lakes and wetlands is avoided and that disposal of any toxic waste is done in the approved areas only; that blasting and all works that cause massive vibration are properly carried out and muffled to keep such vibrations and blasts to reasonable and permissible levels in conformity with the Environmental Management and Coordination Act, (Cap. 387); and that upon completion of prospecting or mining, the land in question shall be restored to its original status or to an acceptable and reasonable condition as close as possible to its original state.

E. Health and Safety

The Act has provisions to ensure the health and safety of persons working at the mines. It provides that the holder of a mineral right will comply with the Occupational Health and Safety Act, 2007 with regards to the safety of workers and mine operations.

F. Revenue Sharing

The Act makes provision for the sharing of the royalties that are payable under the Act. Section 183(5) provides that the National Government will be entitled to 70%, the County Government 20% and the community where the mining operations occur will be entitled to 10% of the revenue.

This provision has been viewed as being probably one of the most progressive provisions in the Act, if not the environmental provisions. It embodies the spirit of the Constitution that requires equitable distribution of revenue among the national and county governments and inclusion, more so, financial inclusion for the people of Kenya.

G. Dispute Resolution

Section 154 of the Act provides for dispute resolution. It provides that any dispute arising as a result of a mineral right issued under the Act, may be determined by the Cabinet Secretary, through a mediation or arbitration process as may be agreed upon by the disputing parties or as may be stated in an agreement; or through a court of competent jurisdiction. Section 155 sets out the disputes that may be determined by the Cabinet Secretary.

H. International Best Practice on Mining

The Act generally prescribes for the carrying out of prospecting and mining activities in accordance with international best practice. Below is a discussion on some of the international best practices on mining.

I. Sustainable Development in Mining

Sustainable development is at the heart of international best practice on mining. There is no universally adopted definition of sustainability in the mining industry. However, there are five (5) main pillars that embody sustainable mining practices. These are Economy, Safety, Resource efficiency, Environment and Community. A brief description of each dimension follows.

J. Environmental Management

Environmental assessment is a process that will ensure the mineral right holder considers the potential environmental effects before they can begin the mining process. It is important that the impact to the environment is managed through specialized low impact exploration practices, water management, pollution prevention and control and the rehabilitation of mines after closure.

The Act has several very progressive provisions on environmental management, which include the requirement for a person to obtain an impact assessment licence before being granted a mining licence. The Act also requires the holder of a mineral right to comply with the prevailing laws on water and use the land in a sustainable manner

The Act has enhanced the provisions on the environment, health and safety. Section 176(1) states that a mineral right or other licence or permit granted under the Act shall not exempt a person from complying with any law concerning the protection of the environment. Section 176(2) further provides that a mining licence shall not be granted to a person under this

Act unless the person has obtained an Environmental Impact Assessment licence, social heritage assessment and the environmental management plan has been approved.

After completion of the prospecting or mining, the mineral right holder will ensure that the land in question is restored to its original status or to an acceptable or reasonable condition as close as possible to its original state.

IV. JUSTIFICATION

Despite the fact that the new Mining Act provides for community (rights holders) engagement in decision making on paper, the actual implementation is far from the spirit and letter of the Act. So it is important to review the licensing procedure and identify the existing gaps between the written law and practice. This is will be to:

- Identifying gaps in human rights inclusion in the mining cycle and communal involvement will help reduce potential mining related conflicts
- Enhance human rights in the mining sector that will ensure maximum returns to affected communities
- Identify loopholes in the licensing process with the objective of helping to improve the legislative regimes affecting the mining sector
- Address Human rights issues. One way or another touch on the environment. So improvement of the concerned regulations will lead to better environmental protection
- Manage reputation, operational, legal, and financial risks.
- Engage, retain, and motivate staff.
- Demonstrate leadership and management standards.

V. METHODOLOGY

The key objective was to analyze existing information; baseline data; mining policies, plans, and processes; and external reports and articles and using international instruments, such as the Aarhus convention, the Bali Guidelines and Principle 10 as reference points evaluate adherence to international best practice.

For conducting a comprehensive and in-depth literature review on policy and legal framework governing large scale mining, licensing process and focusing on community participation provisions issues in the sector, the following methodology was used:

A. Research, identification and gathering of reference materials. This entailed:

- Identifying relevant sources of information; Legal policy documents related to mining(old and new Acts),Print media articles, Electronic media documentaries submissions from court cases, Academic papers, Books, write-ups, government reports, International journals and UN case studies, Private Sector Assessment Reports, Feasibility Studies for mining Programs
- Collect and collate references materials
- Definition of topic, terms, scope of review as well as intentional exclusions

B. Information extraction:

This entailed: Reading and analysis of collected materials, Synthesize of content and presentation, Chronological/thematic organization of content, identify key themes, gaps, and opportunities by analysing available secondary data, Identify the context and indicators selected according to the assessment's priority outline an overview of the mining system and key players and evaluate trends in the mining sector

C. Identified weaknesses/strengths

Using international instruments such as the Aarhus convention, the Bali Guidelines and Principle 10 to establish conformity to international best practice the Kenyan Mining Cycle for conformity.

The three pillars of the Aarhus convention include:

a. Access to information: any citizen should have the right to get a wide and easy access to environmental information. Public authorities must provide all the information required and collect and disseminate them and in a timely and transparent manner.



Figure 1 ASMs at Mkuku area

b. Public participation in decision making: the public must be informed over all the relevant projects and it has to have the chance to participate during the decision-making and legislative process. Decision makers can take advantage from people's knowledge and expertise; this contribution is a strong opportunity to improve the quality of the environmental decisions, outcomes and to guarantee procedural legitimacy.

c. Access to justice: the public has the right to judicial or administrative recourse procedures in case a Party violates or fails to adhere to environmental law and the convention's principles.

4. Bali Guidelines

The Bali guidelines consist of fourteen key implementation guiding principles to ensure public access to information. These guidelines state as follows:

Guideline 1 – Public authorities to make information available upon request, Guideline 2 – Standards for environmental information in the public domain, Guideline 3 – Limited grounds for refusal to provide information, Guideline 4 – Public authorities to collect and update various types of environmental information, Guideline 5 – State of the environment reporting, Guideline 6 – Information in emergency situations, Guideline 7 – Provide means for and encourage effective capacity-building, Guideline 8 – Early and effective public participation in

decision-making, Guideline 9 – Authorities proactively seek transparent and consultative public participation, Guideline 10 – All information relevant to decision-making to be made available, Guideline 11 – Due account of comments received, Guideline 12 – Updating public participation where information or circumstances change, Guideline 13 – Public participation in preparation of legal norms, policies, plans and programs, Guideline 14 – Capacity-building, education and awareness-raising

D. Interviewed key persons/players and stakeholders in the mining sector:

Kenya National Commission for Human Rights (KNCHR), National Environmental Management Agency (NEMA), Ministry of Mining, Kenya Chamber of Mines, Ministry of Energy and Petroleum (ME&P)



Figure 2 Open mine pit at Mkuku area

VI. FINDINGS OF THE STUDY

A. Online Mining Cadastre

Under these regulations, application for Mining licenses and permits shall be done on-line on an “**Online Mining Cadastre**” (OMC). Pursuant to Clauses 191 and 192(3) of the Act the OMC means the online interactive, digital system for administering the provisions of the Act and these regulations in relation to the rights and obligations of licence and permit holders, which is available for public inspection. This shall act as the online repository and information management tool for regulating the licensing and the permitting of mineral rights, dealer's rights, import permits and export permits and shall be implemented by the Registrar.

The government shall maintain a “**cadastral register**”. This means a digital as well as a paper-based, spatially integrated database and associated applications used to store and manage all mineral rights' tenures within Kenya, including: reconnaissance licence register, prospecting licence register, retention licence register, mining licence register, reconnaissance permit register, prospecting permit register, mining permit register, artisanal mining permit register,

Mineral Agreements register and any other register established by the Director that is to be used to record information for all mineral rights and related matters, as specified in these regulations;

B. Mining Cadastre Office (MCO)

The Mining Cadastre Office shall be established under the Ministry of Mining, Directorate of Mines and may be referred to as the "MCO." The Office shall be headed by the Registrar of mineral rights and dealer's Rights and is referred to as the "Registrar". The Registrar shall be the authorised officer, appointed by the Cabinet Secretary, responsible for administering mineral rights and dealer's rights in Kenya. The Cabinet Secretary may establish County offices as are useful to implement the responsibilities of the MCO.

The Mining Cadastre Office responsibilities include:

- a) installation, operation and maintenance of the Online Mining Cadastre;
- b) developing, maintaining and updating the cadastral survey map;
- c) developing and maintaining registries to ensure up-to-date cataloguing of licence and permit applications and activities;
- d) managing licence and permit reporting requirements;
- e) harmonising, as required, with other cadastres including land, agriculture, social cadastres;
- f) participating, as required, in Ministry activities to ensure responsible implementation of licence and permit requirements; and
- g) Any other functions or responsibilities that the Cabinet Secretary may reasonably assign to the MCO.

Based on these new regulations the following is a summary of the Kenyan licensing requirements, procedures and obligations for interested large scale investors.

C. THE KENYAN MINING LICENSING PROCESS

There are about five licences issued in the Kenyan mining cycle, these include:

1. Reconnaissance Licence
Reconnaissance Licence (Airborne survey)
2. Prospecting Licence
3. Retention Licence
4. Mining Licence
5. Mineral Dealer's Licence

Reconnaissance Licence

For an interested party to acquire a reconnaissance licence the following are the requirements:

Requirements

1. Area coordinates, Digital area map and the area in respect of which the licence is issued
 2. approved plans for the procurement of Kenyan goods and services and plan for employment and training of Kenyan citizens
 3. certified or signed statement or formal letter of intent from a bank or other financial source
 4. Resumes of the Project Manager and key staffs committed at least throughout year one for airborne reconnaissance-all transfer camps, temporary installations or installed machinery shall be removed
 5. the legally registered name and address
 6. a statement of attestation of no mining Act Offence Penal conviction of the applicant using appropriate forms
 7. a statement of relevant past work
 8. a programme for reconnaissance or prospecting operations or mining operation a special
 9. a certified copy of the applicants' audited accounts for the previous three (3) years;
- Procedure**
10. agreement with the Government (for airborne survey)
 11. Within five (5) days of the end of every month of each licence year, monthly reports on mine development and mineral production, using appropriate forms
 12. A prospecting or reconnaissance licence holder shall submit a written notice in the form recommended in the regulations
 13. within fourteen (14) days of the end of six (6) months of each licence year, the holder shall submit a six (6) monthly progress report on all reconnaissance work carried out over the licence area

Prospecting Licence

Most requirements are as in reconnaissance licence above including:

1. a plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed
2. Identify activities and actions that, as a result of the programme of prospecting operations, may be reasonably expected to result in significant adverse effects on the environment, gender impact and on any monument, cultural heritage, artefacts or relic the rehabilitation programme
3. An agreement signed by all relevant land holders for land use including detailed information on compensation, resettlement or other land use arrangements

4. Submit consents and agreements should be submitted not later than forty-nine (49) days after the original application is made
5. In writing inform any affected land holders in accordance to the regulations before commencement of exploration/prospecting
6. provide a bond or some other form of financial security in this section called an environmental protection bond
7. Undertake an environmental and social impact assessment (ESIA) and submit a report and an environmental licence, providing an environmental and social management plan (ESMP), , accompanied by a mine closure and rehabilitation plan

Retention Licence

Most requirements for this licence are the same as those for reconnaissance and prospecting licence above including:

1. Submission of a full study and assessment of the mineral deposit by an independent expert, pursuant to Clause 87 of the Act, sufficient to demonstrate that the deposit is potentially commercially exploitable (retention licence)
2. demarcate and keep demarcated the mining area
3. The holder of a retention licence shall submit quarterly reports, accompanied by appropriate forms

Mining Licence

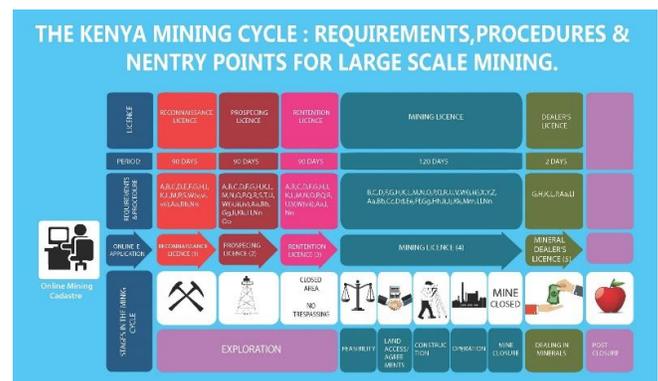
Most requirements for this licence are the same as those for reconnaissance, prospecting and retention licence above including:

1. The holder of a mining licence shall pay the annual area-based charges
2. The holder of a mining licence shall pay royalties, calculated as set out in the regulations
3. The holder shall submit the feasibility study report
4. The holder shall submit Community Development Agreement(s), giving particulars of the applicant's proposals with respect to social responsible investments for the local community
5. The holder shall submit a written notice by using appropriate forms not later than thirty-five (35) days before commencing mine development and shall at the same time inform all affected land holders
6. The holder shall submit a written notice using appropriate forms, at least thirty-five (35) days prior to the commercial production start date, and each time that there is a significant change in capacity
7. The holder shall submit the proposed programme of mining operations and production forecasts over the term of the licence, including plans for mineral processing and beneficiation within and outside of Kenya, mineral transportation, together with details

of the type and sourcing of equipment and mining methodologies expected to be used;

Mineral Dealer's Licence

1. The holder of a mineral dealer's licence shall keep a register of the mineral dealings & record in the register all the transactions and relevant information
2. The holder shall submit an Articles of Incorporation, place and date of incorporation
3. The holder shall submit the Resumes of the Project Manager and key staffs committed at least throughout year one. The holder shall update this information if at any time during the term of the licence the manager is replaced
4. The holder shall submit the legally registered name and address
5. Submit a statement of attestation of no mining Act Offence Penal conviction of the applicant using appropriate forms
6. The holder shall submit a statement of relevant past work
7. The applicant shall submit a certified copy of the audited accounts for the previous three (3) years;
8. The holder of a mineral dealer's licence shall submit to the Cabinet Secretary a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof



Licensing Requirements Key for the Poster

NO.	LETTER CODE	DESCRIPTION	LICENCE
1	A	Area coordinates	1,2,3,4
2	B	Digital area map	1,2,3,4
3	C	approved plans for the procurement of Kenyan goods and services	1,2,3,4

4	D	approved plan for employment and training of Kenyan citizens	1,2,3,4
5	E	for airborne reconnaissance-all transfer camps, temporary installations or installed machinery shall be removed	1
6	F	certified or signed statement or formal letter of intent from a bank or other financial source	1,2,3,4
7	G	Resumes of the Project Manager and key staffs committed at least throughout year one. The holder shall update this information if at any time during the term of the licence the manager is replaced	1,2,3,4,5
8	H	the legally registered name and address	1,2,3,4,5
9	I	a special agreement with the Government (airborne survey)	1
10	J	Submit a full study and assessment of the mineral deposit by an independent expert, pursuant to Clause 87 of the Act, sufficient to demonstrate that the deposit is potentially commercially exploitable (retention licence)	3
11	K	a statement of attestation of no mining Act Offence Penal conviction of the applicant using appropriate forms	1,2,3,4,5
12	L	a statement of relevant past work	1,2,3,4,5
13	M	a programme for reconnaissance or prospecting operations or mining operation	1,2,3,4
14	N	a plan describing how, on an ongoing basis, local government, traditional authorities and communities will be informed	2,3,4
15	O	Identify activities and actions that, as a result of the programme of prospecting operations, may be reasonably expected to result in	2,3,4

		significant adverse effects on the environment, gender impact and on any monument, cultural heritage, artefacts or relic the rehabilitation programme	
16	P	a certified copy of the applicants' audited accounts for the previous three (3) years;	1,2,3,4,5
17	Q	undertake an environmental and social impact assessment (ESIA) and submit a report and an environmental licence, providing an environmental and social management plan (ESMP), , accompanied by a mine closure and rehabilitation plan	2,3,4
18	R	All consents and agreements should be submitted not later than forty-nine (49) days after the original application is made	2,3,4
19	S	A prospecting or reconnaissance licence holder shall submit a written notice in the form of as recommended in the regulations	1,2
20	T	in writing inform any affected land holders in accordance to the regulations before commencement of exploration/prospecting	2
21	U	An applicant for a prospecting licence, a retention licence or a mining licence shall provide a bond or some other form of financial security in this section called an environmental protection bond within thirty-five (35) days of receiving notice of the amount submit copies of the bond document and other security via the OMC, and within a further seven (7) days shall deliver the original hard copy documents to the Mining Cadastre Office	2,3,4

22	V	demarcate and keep demarcated the mining area	3,4
23	W	<p>i. Within five (5) days of the end of every month of each licence year, monthly reports on mine development and mineral production, using appropriate forms</p> <p>ii. Within fourteen (14) days of the end of every quarter of each licence year, a quarterly progress report, using appropriate forms</p> <p>iii. An annual ESIA report, using appropriate forms or, where there is an ESMP attached to the licence, a detailed progress report prepared according to guidelines</p> <p>iv. Within thirty-five (35) days of the end of each licence year, a full and detailed annual technical report covering all prospecting activities carried out over the prospecting licence area in compliance with published Ministry guidelines accompanied by appropriate forms not later than thirty-five (35) days following the end of each licence year, a full and detailed annual report, using appropriate forms on all reconnaissance work carried out over the licence area</p> <p>v. within fourteen (14) days of the end of six (6) months of each licence year, a six (6) monthly progress report on all reconnaissance work carried out over the licence area</p>	1,2,3,4

		<p>vi. an annual declaration of minimum operational expenditures on reconnaissance activities using appropriate forms to accompany the annual report</p> <p>vii. The holder of a retention licence shall submit quarterly reports, accompanied by appropriate forms</p>	
24	X	the holder of a mining licence shall pay the annual area-based charges, calculated according to the Second Schedule within thirty-five (35) days of the grant of the licence and annually thereafter at the start date of each licence year	4
25	Y	The holder of a mineral dealer's licence shall keep a register of the mineral dealings & record in the register all the transactions and relevant information	5
	Z	The holder of a mineral dealer's licence shall submit to the Cabinet Secretary a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof	5
26	Aa	the name, nationality and address of the licence holder; or names and nationalities of Directors and names and address of all shareholders holding more than ten per cent (10%) of the registered share capital and registered address in Kenya for a company the mineral or minerals in respect of which the mining licence is issued	1,2,3,4,5
27	Bb	The holder shall provide the area in respect of which the licence is issued;	1,2,3,4
28	Cc	the holder of a mining licence shall pay royalties, calculated as set out in the	4

		Third Schedule(not yet generated), within thirty-five (35) days after the commencement of production, and monthly thereafter	
29	Dd	Submit the feasibility study report	4
	Ee	the Community Development Agreement(s), giving particulars of the applicant's proposals with respect to social responsible investments for the local community	4
	Ff	submit a written notice by using appropriate forms not later than thirty-five (35) days before commencing mine development and shall at the same time inform all affected land holders	4
	Gg	an agreement signed by all relevant land holders for land use including detailed information on compensation, resettlement or other land use arrangements	2,3,4
	Hh	submit a written notice using appropriate forms, at least thirty-five (35) days prior to the commercial production start date, and each time that there is a significant change in capacity	4
	Ii	performance bond or escrow account information for the previous three (3) years;	2,3,4
	Jj	Submit a written notice using appropriate forms not later than ninety-one (91) days before the commercial production start date and shall at the same time inform any affected land holders	4
	Kk	Community Development Agreement(s), giving particulars of the applicant's proposals with respect to social responsible investments for the local community;	2,3,4

	Ll	Articles of Incorporation, place and date of incorporation	2,3,4,5
	Mm	the proposed programme of mining operations and production forecasts over the term of the licence, including plans for mineral processing and beneficiation within and outside of Kenya, mineral transportation, together with details of the type and sourcing of equipment and mining methodologies expected to be used;	4
	Nn	The holder should submit a detailed statement of relevant past work;	1,2,3,4
	Oo	Report exploration results using the Australasian Code for Reporting of Mineral Resources and Ore Reserves (The JORC Code); or the Canadian Institute of Mining, Metallurgy and Petroleum (CIM), CIM Standards on Mineral Resources and Reserves; or The South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves (The SAMREC Code); or The SME Guide for Reporting Exploration	2

Types of Licenses

1. Reconnaissance License
2. Prospecting License
3. Retention License
4. Mining License
5. Mineral Dealers License

VII. THE OUTCOME OF THE ASSESSMENT AND EVALUATION OF PUBLIC INVOLVEMENT AND PARTICIPATION IN THE MINING SECTOR – KENYA

Analysis of the Kenyan mining cycle, based on the above stated international conventions including the Aarhus convention, Bali guidelines and Principle 10 reveals major gaps in the public, information, participation and involvement in the mining cycle. Most of these gaps emanate from the ignorance of the public, poor communication systems and lack of commitment on the part of the duty bearers. Identified gaps include (see appendix 1):

- Public notices inviting citizen participation are published in the print media which are unaffordable and not accessible to most common people
- These notices and publications are written in English language which is not familiar to the larger section of the uneducated population
- Experience shows that the public participation in ESIA's is limited and normally skewed towards duty bearers
- Over centralizing decision making power in the position of the Cabinet secretary delays the process of decision making and may lead to abuse of power.
- Ignorance on the part of the public regarding the mining sector and mining cycle has led to poor public participation, exploitation and conflicts. The most common means of engaging public participation is during the Environmental and Social Impact Assessment. However ESIA and ESMP reports are very technical documents for the uneducated population to comprehend
- Most local people are unskilled in complex negotiations dealing with compensation and resettlement with large multinational companies. This can lead to possible exploitation of unexposed communities
- Lack of understanding regarding the true value of land and dynamics and mining economics could lead to unrealistic expectations on the part of the public that often result in conflicts
- No clear regulations to identify and weed out land speculators
- Not well elaborated dispute resolution system
- The Online Mining Cadastre (OMC) system is unreliable currently due to poor connectivity. The management of the system is not well established yet. This will present a major challenge in the operationalization of the new online licence application system

- Mining Registration Board is not yet constituted and its mode of operation may be a major bottleneck if not handled properly. Checks and balances need to be put in place to curtail its likely susceptibility to corruption.

VIII. CONCLUSION

After a thorough examination of the Kenyan mining cycle it's revealed that Kenya's mining sector is comparatively young and this presents an opportunity for internalizing and integrating progressive ideas and culture that emulate international best practice at its infant stage. Setting the right foundation will ensure a stable and vibrant mining sector. To achieve this, it is imperative that public participation and involvement in decision making be an integral part of the mining policy. This study has revealed a number of challenges and missing links that hinder effective public participation. To mitigate these challenges it's here suggested that:

- There be developed a long-term public sensitization strategy regarding mining activities and the mining sector in Kenya to help in reducing conflicts and possible exploitation of the communities.
- There is needs to impose a legal requirement to compel government and mineral rights holders(duty bearers) to translate any public notices and communications to Kiswahili at least or to respective native languages
- The government needs to form a consortium of lawyers, mining and economic experts to offer probono services to local communities and individuals when carrying out land negotiations and writing agreements and consents.
- Provide as much information as possible about the exploration program, including its potential brevity, to manage community expectations
- The civil society needs to get involve in sensitizing the public on their rights and obligations regarding mining activities.
- There is need to engage experienced community relations staff at every stage of the way in a mine development to constantly appraise and enhance community participation and confidence
- The environmental protection bond should be paid annually as opposed to the current situation where it is paid once during application for licence. This will ensure that the fluctuation/depreciation of the shilling does not affect the value of the bond over time
- Technical documents such as the ESIA should be translated to local languages and simplified for the common people
- Social and political criteria should be part of a comprehensive feasibility study and collect data for cultural baseline and to identify stakeholders

- Due to the complex socio-cultural dynamics in Kenya the term community can be interpreted in many ways including clan, tribe or religion etc. So there is need to have a clear definition of the term community for the sake of those who will benefit from the royalties. It may also be prudent to define the benefitting community based on the distance from the mining operation or the degree of impact on a community in relation to resource extraction.
- There are various structures of communal organization in different areas in Kenya. There needs to be a legally recognized communal organization system that will manage the community royalties independent of government structures
- Allow communal access to monthly, quarterly and annual reports to ensure affected communities are sufficiently and regularly updated.
- Depoliticize the Mining Sector
- Competent staff with appropriate social science or community development training and experience will be needed to build a strong, stable and collaborative relationships and partnerships
- Adequate budget support will be needed to fund impact mitigation and community investment programs
- Design a full program of community investments in a participatory manner with community members and other partners. The program should be sustainable.
- Continuously collect socio-economic data using appropriate forms indicators to monitor mining activity impact

If these identified concerns are addressed there will more effective community participation in decision making in the mining sector in Kenya and this will in turn reduce potential conflicts in the mining sector.

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