



**THE MINING ACT, 2016**  
(No. 12 of 2016)

**ARRANGEMENT OF REGULATIONS**

**THE MINING (MINERAL ROYALTY SHARING) REGULATIONS, 2023**

*Regulation*

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**THE MINING ACT**  
*(No. 12 of 2016)*

**IN EXERCISE** of the powers conferred by Section 223 of the Mining Act No. 12 of 2016, the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs makes the following Regulations—

**THE MINING (MINERAL ROYALTY SHARING) REGULATIONS, 2023**

**PART I—PRELIMINARY PROVISIONS**

Citation.                    **1.** These Regulations may be cited as the Mining (Mineral Royalty Sharing) Regulations, 2023.

Interpretation.            **2.** In these Regulations, unless the context otherwise requires –

“Act” means the Mining Act No. 12 of 2016;

*No. 18 of 2012*                “Accounting officer” has the same meaning as defined under Section 2 of the Public Finance Management Act;

“Cabinet Secretary” has the same meaning assigned to it under the Act;

“community” means a group of people living around a mining operations area;

“committee” means the Community Mineral Royalties Management Committee established under these Regulations;

“Consolidated Fund” means a Fund established under Article 206 (1) of the Constitution;

“county revenue fund” means a fund established under Article 207 (1) of the Constitution;

“mineral royalty” means the royalty paid to the state by a holder of mineral right pursuant to section 183 (1) of the Act.

“State Department” means the State Department responsible for the management of Minerals and Mining activities in Kenya

Object of Regulations.            **3.** The objective of these regulations is to give effect to section 183 (5) of the Mining Act to provide for the sharing of mineral royalties

among the National Government, county governments and benefiting Communities.

## **PART II— RECEIPT AND SHARING OF MINERAL ROYALTIES**

Receipt of Mineral Royalties

**4.** (1) In accordance with Section 28 of the Public Finance Management Act, 2012, the State Department shall open a Mineral Royalties Collection Account upon which a holder of a mineral right shall pay a mineral royalty to the State in respect of the various mineral classes won in accordance with section 183 (1) of the Act.

(2) The amounts received under paragraph (2) shall be transferred to the Consolidated Fund pursuant to Section 75 of the Public Finance Management Act, 2012.

Submission of schedule of royalties.

**5.** (1) The accounting officer of the State Department shall prepare and submit to the National Treasury, by the 15<sup>th</sup> day after every quarter, a schedule of royalties on amounts—

(a) of royalties received from holders of mineral rights;

(b) payable to the National Government, County Governments and communities respectively.

(2) A schedule of accounts which shall then be published and publicized.

Distribution by the National Treasury.

**6.** (1) Upon receipt of the of the schedule of collection from the State Department, the National Treasury shall—

(a) affirm the retention of seventy percent of the amount into the Consolidated Fund as a distribution to the National Government in accordance with section 183 (5)(a) of the Act;

(b) transfer twenty percent of the amounts to the respective County Revenue Fund Accounts of benefiting Counties in proportions allocated in the schedule in accordance with section 183 (5)(b) of the Act; and

(c) transfer ten percent of the amounts to a Community Mineral Royalties Account as a trustee account for amounts distributable for the benefit of communities in accordance with section 183 (5)(c) of the Act operated under regulation 7.

(2) The transfer in paragraph (1)(b) shall be in accordance with the Annual County Government Additional Allocation Act,.

Account for  
Community share  
of royalties.

7. (1) Pursuant to regulation 6, the accounting officer in the State Department shall open and maintain the Community Mineral Royalties Account, upon which the National Treasury shall transfer ten percent of all the Mineral Royalties collected as a trust for the benefiting communities.

(2) The share of royalties deposited in the Community Mineral Royalties Account shall not lapse at the end of the financial year, and where not utilised, shall be re-budgeted for the subsequent financial year.

### **PART III – ALLOCATION TO THE COMMUNITIES**

Disbursement of  
funds to  
communities

8. (1) The accounting officer in the State Department shall open a special purpose mineral royalty account with a commercial bank at the County Level for receipt of funds due for respective communities in a county.

(2) The account shall facilitate the financing of projects or any other intervention identified by a benefiting community in accordance with these Regulations.

(3) The State Department shall only disburse funds to the account created under sub regulation (1) only where the amounts payable to such accounts sums up to one hundred thousand Kenyan shillings.

(4) Notwithstanding sub regulation (3), where a community submits to the State Department that the royalties due to the community below the threshold could be effectively utilized for a particular purpose, the State Department shall cause the disbursement.

(5) To facilitate the operation of the special purpose account, the Accounting Officer shall prepare and issue an authority to incur expenditure to a public officer in the State Department designating him/her as the overall custodian of the account.

Administration of  
Community Mineral  
Royalty.

9. (1) There shall be established a Community Mineral Royalty Management Committee for each benefiting community.

(2) The Committee shall consist of—

(a) The Deputy County Commissioner in the sub-county;

(b) the Sub-County Administrator or his representative;

- (c) the respective regional Mining Officer, who shall be the secretary to the Committee and an *ex-officio* member of the committee;
- (d) One representative elected from among the village elders of the community;
- (e) one representative of women elected by the community;
- (f) one representative of persons living with disability elected by the community; and
- (g) two representatives of the youth of either gender elected by the community.

(3) Upon the election of members other than *ex-officio* members, the Secretary shall Submit the names of the duly nominated members of the Committee to the State Department accompanied with duly approved minutes of Committee's first sitting for publication in the *Gazette*.

(4) The Deputy County Commissioner or his representative shall be the chairperson of the committee.

(5) The elected members under paragraph 3(d,e,f and g) shall serve for a period of three years which may be renewed once.

(6) The quorum for committee meetings shall be two thirds of the members.

(7) The Committee shall determine its own procedures for every meeting and shall meet quarterly.

(8) The Committee shall ensure that the administration and operation budget shall not be more than three percent of the total allocation to the community.

(9) The Committee may co-opt any other person with expertise knowledge in a meeting and for a specified purpose.

Functions of the Committee.

**10.** The functions of the Committee shall be to—

- (a) ensure that all the projects or any other intervention to be financed by the mineral royalties is well planned, evaluated, monitored and are based on the actual needs of the beneficiary communities;

- (b) provide a platform for the community to discuss, identify and approve, through a participatory process the projects or programmes to be financed by the mineral royalty's allocation;
- (c) ensure that the benefits of any project or programme financed by the royalties' allocation are available to a widespread or cross-section of the inhabitants of the beneficiary community;
- (d) facilitate continuous engagements and serve as the link among the relevant Stakeholders
- (e) settle any dispute or complaint that may arise between community members in relation to the uses of the funds.

Responsibility of the Secretary to the Committee.

**11. The secretary shall—**

- (a) by way of authorization, be designated to incur expenditure and be accountable for management of finances for the community;
- (b) be responsible for accounting and preparation of implementation reports, statement of expenditure and monitoring and evaluation reports;
- (c) submit the projects or interventions approved by the community to the State Department;
- (d) provide financial report to the Committee in every meeting supported by relevant documentation including bank statements.

**PART IV—FINANCING THE COMMUNITY INTERVENTIONS**

Project identification criteria.

**12. The Committee shall facilitate the identification of projects and interventions to be financed by the amounts of royalty allocation and shall—**

- (a) undertake public participation in the community;
- (b) prioritize projects and interventions identified;
- (c) build consensus with the community on identified priority projects or interventions;

- (d) ensure an identified project or intervention for a community is within their required ceilings.

Preparation and approval of work plan

**13.** The Committee shall prepare a work plan based on the identified and prioritized projects and interventions for each benefiting community.

(2) The secretary shall submit the work plans to the State Department for inclusion in the annual budget estimates of the State Department.

(3) The State Department shall ensure the submitted work plans are included in their proposed budget estimates in accordance with the Public Finance Management Act, 2012.

Disbursement of funds

**14.** (1) Upon the identification of a project or intervention, an accounting officer of the State Department shall disburse monies to the respective Committees' operations account.

(2) The funds shall only be disbursed to meet expenses for an identified project or intervention.

Programmes and Reporting.

**15.** Where applicable, the procurement for any project or intervention by a community may be carried out in accordance with the Public Procurement and Asset Disposal Act, 2015.

(2) The secretary shall prepare and submit to the State Department a quarterly report on the implementation of the projects or programmes identified by the Committee.

(3) A report prepared under paragraph (2) shall include—

- (a) information relating to the procurement of services and works in relation to the projects and programmes under the workplan;
- (b) a schedule of the works required to be undertaken and status of the implementation of projects and programmes;
- (c) the timelines for completion of specific phases of projects and programmes;
- (d) the manner in which the funds received have been utilized in relation to any project or programme;

- (e) the monies disbursed and any balance of unspent funds; and
- (f) such other information as may be required by the Accounting Officer.

Audit of accounts.

**16.** Within a period of three months from the end of each financial year, the Accounting Officer shall submit to the Auditor-General with a copy to the National Treasury, the accounts relating to the community projects together with—

- (a) a statement of the expenditure of the community projects during the financial year; and
- (b) statement of the assets and liabilities on the last day of that financial year.

#### **PART V-GENERAL PROVISIONS**

Dispute resolution

**17. (1)** The Committee shall establish a dispute resolution mechanism to handle disputes relating to handling of interventions or projects of the community.

(2) The Committee shall strive to ensure every dispute is amicably settled through the established alternative disputes resolution mechanisms.

(3) A person dissatisfied with a decision of the committee may appeal to the Cabinet Secretary for resolution.

Offences and Penalties

**18.** A person who misappropriates any funds or misuses assets or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Winding up of Committees

**19. (1)** A committee shall cease to exist where the community mineral royalty share is exhausted upon closure of mining operations by a mineral rights holder.



(2) Upon winding up of a committee, all assets both movable and immovable as held by the committee shall be transferred to the State Department.

Made on the .....day of.....2023

**Salim Mvurya**  
*Cabinet Secretary for  
Mining, Blue Economy and Maritime Affairs*