



REPUBLIC OF KENYA

**MINISTRY OF MINING, BLUE ECONOMY, AND MARITIME AFFAIRS
STATE DEPARTMENT FOR MINING**

Regulatory Impact Assessment for

- Mining (Dealings in Minerals) (Amendment) Regulations, 2023
- Mining (Licence & Permit) (Amendment) Regulations, 2023
- Mining (Mine Support Services) (Amendment) Regulations, 2023

December, 2023

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

EXECUTIVE SUMMARY

The State Department For Mining under the Ministry Of Mining, Blue Economy, And Maritime Affairs is pleased to present the Regulatory Impact Assessment Report for the Amendment of three existing Mining Regulations. The three amendments include:

- Mining (Dealings in Minerals) (Amendment) Regulations, 2023
- Mining (Licence & Permit) (Amendment) Regulations, 2023
- Mining (Mine Support Services) (Amendment) Regulations, 2023

This Regulatory Impact Assessment (RIA) is a policy tool prepared pursuant to Sections 6 & 7 of the Statutory Instruments Act (No. 23 of 2013) and its purpose is to examine and measure the probable benefits, costs and effects of the proposed amendments in the Regulations, both on the public and private sectors. By evaluating the most feasible alternatives of intended regulatory measures and other practical administrative options, this RIA has helped the State Department take on the most appropriate option.

The RIA examines the likely impacts of revising fees payable on the application of mineral rights, mineral dealings, and annually payable charges such as ground rents, with the main objective of enhancing regulatory function within the mining industry in Kenya.

The RIA identifies enormous benefits of developing and implementing the proposed Regulations that by far outweigh the identified costs and setbacks. Among the findings of this analysis include increased efficiency in service delivery and timely decision-making, improved regulation and ease of doing business among others.

Finally, the RIA concludes that the proposed Regulations are beneficial to industry and Kenya at large and recommends their adoption.

This RIA is divided into 10 parts.

Part 1 is the Introduction which outlines the Regulation Making Authority, legal mandate of the State Department and the Statutory requirements for RIA.

Part 2 of the RIA captures a statement of the objectives of the proposed Regulations and the grounds for having them.

Part 3 of the RIA provides a policy and legal background and local, regional and international contexts on mining regulatory framework.

Part 4 of the RIA precisely states the problem to be solved, giving evidence of its nature and magnitude, and explaining why it has arisen.

Part 5 takes us into the policy and Legal Framework for International and regional trade and outlines commitments from Vision 2030, the Constitution of Kenya 2010 and other strategies and plans adopted by the country.

Part 6 of the RIA is on the consultative process adopted to develop the regulations and RIA. It states the initial consultative process and other engagements with experts, partner agencies, stakeholders and the general public.

Part 7 of the RIA outlines the salient features of the proposed Regulations. It gives a general summary of the provisions of the Regulations.

Part 8 of the RIA is a cost-benefit analysis that weighs the costs of implementing the proposed regulations against the benefits of what the proposed regulations are anticipated to bring.

Part 9 of the RIA provides for the regulatory and non-regulatory options available and the appropriateness of each option. It also justifies why the regulatory option is appropriate.

Part 10 of the RIA is the conclusion and recommendations on the option to adopt and also charts compliance and implementation of the proposed Regulations.

ABBREVIATIONS

BETA	Bottom Economic Transformation Agenda
RIA	Regulatory Impact Assessment
GDP	Gross Domestic Product
AMV	Africa Mining Vision
SDG	Sustainable Development Goals
UNEP	United Nations Environment Programme
CMV	Country Mining Vision

1.0 INTRODUCTION

1.1 The Regulatory Making Authority

The State Department for Mining under the Ministry of Mining, Blue Economy and Maritime Affairs draws its broad mandates from the Presidential Executive Order No. 1 of January 2023 and the Mining Act, 2016. The Act grants the Cabinet Secretary responsible for mining powers to prescribe subsidiary legislation to give effect to the various provisions in the Act.

Therefore, the Cabinet Secretary

Also, the Cabinet Secretary through the Ministry has the collective responsibility of contributing to the Government's Bottom Economic Transformation Agenda (BETA) by leveraging on Kenya's mineral endowment to bring about the increased contribution of the mining sector to the GDP and ultimately improve the livelihoods of the mining community and Kenyans at large.

1.2 Statement of the Objectives and Purpose of the Proposed Regulations

The proposed amendments to the Mining Act Regulations aim to promote transparency, efficiency, and sustainability in Kenya's mining sector. They seek to create a more structured and predictable regulatory environment that benefits both the government and stakeholders involved in mineral exploration, extraction, and trading while contributing to the overall development of the mining industry and the country. The key objectives and purposes are outlined as follows:

- a) **Enhanced Transparency and Access to Information:** The amendments aim to enhance transparency and public access to information related to mining activities. This includes allowing public access to the Cadastre and the perusal of relevant documents. By

adding these provisions, the regulations facilitate greater public awareness and understanding of mining operations, which is crucial for accountability and community engagement.

b) **Streamlined Application Processes:** The amendments introduce application fees and specify the associated fees for different types of licenses and permits. This provides clarity and predictability to applicants, making the process more efficient and financially transparent. It also reduces the administrative burden on regulatory authorities.

c) **Introduction of Evidentiary Certificates:** The amendments introduce the provision for issuing evidentiary certificates pursuant to section 195 of the Mining Act. This ensures that the evidence related to mineral rights is properly documented and accessible, aiding in legal and regulatory compliance.

d) **Annual Rent and Fees Structure:** The amendments establish a structured framework for annual rent, application fees, renewal fees, and transfer fees, which is categorized based on the type of license or permit. This helps in creating a fair and consistent financial framework for mining rights holders, making the system more equitable and sustainable.

e) **Mineral Development Levy:** The introduction of a mineral development levy is a significant amendment. This levy, specified in the Second Schedule, serves the purpose of promoting sustainable mineral resource development in Kenya. It provides a mechanism for contributing to the broader development of the mining sector and the country's economy.

- f) **Clarity in Mineral Dealing Regulations:** The amendments related to the Mining (Dealing in Minerals) Regulations aim to provide more clarity in the application process, including specifying application fees. The inclusion of detailed information about applicants' agents and their operations improves the transparency of mineral dealing activities.
- g) **Improved Record-Keeping and Reporting:** The amendments require mineral dealers to maintain records of their mineral transactions, including details of minerals bought and sold, prices, royalties, and supplier/seller information. This enhances accountability and ensures that mineral dealers operate in accordance with the law.
- h) **Legal Compliance:** The amendments align the regulations with other relevant legislation, such as the Environmental Coordination and Management Act, 1999, to ensure that mining activities adhere to environmental regulations.
- i) **Simplified Application and Transfer Processes:** The amendments simplify the application and transfer processes by introducing online applications and clearly defining the fees and requirements. This streamlines administrative procedures and reduces processing times.

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)

The Africa Mining Vision is 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 own 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.

3.2.3 Minamata Convention on Mercury

In 2001, the Governing Council of the United Nations Environment Programme¹ (UNEP) invited the Executive Director of UNEP to undertake a global assessment of mercury and its compounds, including information on the chemistry and health effects, sources, long-range transport, and prevention and control technologies relating to mercury. In 2003, the Governing Council considered this assessment and found that there was sufficient evidence of significant global adverse impacts from mercury and its compounds to warrant further international action to reduce the risks to human health and the environment from the release of mercury and its compounds to the environment. To that effect the Governments were urged to adopt goals for the reduction of mercury emissions and releases and UNEP initiated technical assistance and capacity building activities to meet these goals.

On 22nd September 2023, Kenya ratified the Minamata Convention on Mercury and shall enter into force for Kenya on 21 December 2023 in accordance with article 31 (2) of the Convention which provides that each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.”

3.3 Local Context of the Mining Sector

3.3.1 Bottom-up Economic Transformation Agenda (BETA)

In recognition of potential contribution of the Mining sector in job creation, the Government under the BETA approach has earmarked formalization of artisanal mining which employs over 800,000 people. This sub-sector has the capacity to create more decent jobs with adoption of safe and sustainable mining techniques with guaranteed markets. In 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 Country Mining Vision (CMV)

The Africa Mining vision anticipates that all participating nations adopt and customize the vision into a country mining vision (CMV). Artisanal and small scale mining and mineral value addition have been identified as key transformative areas in Kenya context.

3.3.3 Kenya Vision 2030

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

3.3.5 Mining and Minerals Policy

The policies give a range of intervention areas among them the legal framework.

4.0 RATIONALE AND JUSTIFICATION FOR THE PROPOSED REGULATIONS

4.1 Policy Issue

The proposed amendments to mine support, mineral dealings, licensing, and permits in Kenya's mining sector warrant a comprehensive Regulatory Impact Assessment (RIA). These policy changes address critical aspects of the industry that require attention to foster sustainable development and economic growth.

First and foremost, the need for updated and streamlined mine support policies is evident. The existing framework may not adequately meet the evolving needs of the sector. An RIA assess the effectiveness of these policies in promoting responsible mining practices, enhancing safety, and supporting the growth of artisanal and small-scale mining (ASM) operations. This evaluation will inform necessary adjustments to ensure that the sector operates efficiently and in alignment with international standards.

Secondly, amendments in mineral dealings regulations are vital for enhancing transparency and accountability within the sector. An RIA evaluate the proposed changes to ensure that they provide clarity in mineral rights allocation, sales, and exports. Transparency in dealings is essential to attract local and foreign investors, instilling confidence in the sector and facilitating revenue collection. The RIA will pinpoint areas where the amendments can be further refined to achieve these objectives.

Regarding licensing and permits, a critical policy issue is the need for a more efficient and transparent process. The RIA investigate the proposed amendments' potential to simplify and expedite this process of licence issuance, making it more investor-friendly while maintaining essential environmental and safety standards.

Lastly, RIA on these amendments consider their impact on artisanal and small-scale mining operations. Supporting and regulating these smaller operators is essential for inclusive growth

and economic diversification. The evaluation determines whether the amendments adequately address the unique needs and challenges faced by ASM miners, and if not, propose how to create a more conducive environment for their participation in the sector.

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

Opportunities for Kenya in Mine Support, Mineral Dealings, Licensing, and Permits Amendments:

The proposed changes create an environment that better supports responsible mining practices. By assessing the effectiveness of these policies in promoting safety and encouraging ASM growth, the RIA highlight areas for enhancement. This includes the possibility of providing targeted support to ASM operations, further boosting the sector's contribution to the economy.

In mineral dealings, the amendments aim to enhance transparency and accountability. This is a crucial opportunity to attract investors and ensure that mineral rights allocation and sales align with international standards. The RIA similarly, identify areas for improvement in the amendments to maximize their potential impact.

For licensing and permits, streamlining and simplification attract more investments by reducing bureaucratic obstacles. The RIA uncover opportunities to make the process more efficient, ensuring that it remains compliant with environmental and safety standards.

In terms of artisanal and small-scale mining, the amendments create a conducive environment for their growth and sustainability. It pinpoint opportunities to provide targeted support, improve their access to technology and markets, and ensure they become integral contributors to Kenya's mining sector, thereby contributing to broader economic development.

CONCLUSION

Conducting a Regulatory Impact Assessment on these proposed amendments is critical to ensure they effectively address policy issues, enhance the sector's efficiency, transparency, and inclusivity. By capitalizing on the opportunities identified in the RIA, Kenya can create a regulatory framework that supports responsible mining practices, attracts investment, and fosters the growth of artisanal and small-scale mining, ultimately contributing to sustainable economic development. This aligns with the principles of responsible resource management and good governance in the mining sector.

Legal and Policy Framework

Overview of the proposed regulatory instruments

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 and 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), and particularly, where the proposed Regulations are likely to have a direct or a substantial indirect effect on 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 scale scale miners;
- g. artisanal miners;
- h. Kenya Association of Manufacturers;
- i. Kenya Chambers of Mines,
- j. Internal stakeholders
- k. Non-Governmental Organizations;
- l. Environmentalists; and
- m. Executive Office
- n. 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 three Drafts on Mining (Dealings In Minerals) (Amendment) Regulations, 2023, Mining (Licence & Permit) (Amendment) Regulations, 2023 And Mining (Mine Support Services) (Amendment) Regulations, 2023, were developed with technical assistance from Kenya Law Reform Commission,

- b. The three drafts were posted on the Ministry’s website with links to download, where the stakeholders had access to,
- c. inviting 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. A public notice in the local newspaper mygov were published inviting all persons to submit their comments and also in; and
- f. 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 MINING (DEALINGS IN MINERALS) (AMENDMENT) REGULATIONS, 2023, MINING (LICENCE &

PERMIT) (AMENDMENT) REGULATIONS, 2023 AND MINING (MINE SUPPORT SERVICES) (AMENDMENT) REGULATIONS, 2023

The Mining (licence and permit) (amendment) regulations, 2023 is an amendment to the Mining (Licence and Permit) regulations 2017. These proposed regulations seek to make a few minor amendments such as a provision for perusal of documents. It also introduces a new regulation on Mineral Development Levy and a second schedule which provides for the fees and levies charges.

The Mining (Dealings in Minerals) (amendment) regulations, 2023 seeks to amend The Mining (Dealings in Minerals) regulations 2017 by making amendments so as to introduce a third schedule which provides for the respective fees charged for dealings rights. These amendment regulations has also introduced a new regulation introducing a Mineral Dealers (Gemstone Value Addition and Jewelers) Licence with its corresponding application forms and reporting forms to cater for dealers dealing in mineral jewelry and a few minor amendments on the conditions for application.

The Mining (mine support services) (amendment) regulations, 2023 proposed regulations seek to amend The Mining (Mine Support Services) regulations 2017 by introducing a second schedule which outlines the fees charged when one makes an application for a license on mine support services, renewal or transfer of the license.

7.1 The proposed Amendments provide for the following salient features:

7.1.1 The Mining (Licence and Permit)(amendment) regulations, 2023

These amendment regulations are in 7 parts;

1. Citation - These regulations are cited as the Mining (Licence and Permits) (Amendment) Regulations, 2023.
2. Amendment of regulation 5 of *L.N. 87 of 2017* - This regulation has been amended to provide for the perusal of documents and the payment of a fee which is provided for under the second schedule
3. Amendment of regulation 9 of *L.N. 87 of 2017* - Regulation 9 has been amended to provide for the service to be offered under this regulation upon the payment of a fee under the second schedule.
4. Insertion of a new regulation to *L.N. 87 of 2017* - A new regulation has been inserted after regulation 25 which requires holders of mineral rights to pay annual rent as per section 223 (2)(a) and the specific rates are provided for under the second schedule.
5. Amendment of regulation 25 of *L.N. 87 of 2017* - This regulation has been amended to provide for the fee charged during transfer which is under the second schedule and addition of paragraphs to provide more clarity.
6. Insertion of a new regulation to *L.N. 87 of 2017*- A new regulation 28A has been inserted which introduces a Mineral Development Levy whose purpose is to promote sustainable mineral resource development in Kenya.
7. Second Schedule - The regulations have been amended by inserting a second schedule which outlines rates and fees charged under these regulations.

7.1.2 The Mining (Dealings in Minerals) (amendment) regulations, 2023

These amendment regulations are in 12 parts;

1. Citation - These Regulations may be cited as the Mining (Dealing in Minerals) (Amendment) Regulations, 2023.
2. Amendment of regulation 4 of L.N. 88 of 2017 - This regulation is amended to provide for the prescribed fee which is set out in the third schedule.
3. Amendment of regulation 5(2) of L.N. 88 of 2017 - the amendment is to the effect that the word inserted 'recognized' is to ensure that financial documents

provided are from a recognized institution. There is also a deletion of 2(g) and replacement with a much clearer version.

4. Amendment of regulation 7 of L.N. 88 of 2017 - the amendments to this regulation are to the effect that the requirements for Articles of Association and Memorandum of Association are being deleted. The amendment also makes the requirement of an environmental license for a dealers' processing license to be a requirement only when it's applicable. Regulation 7(2)(k) has also been deleted and replaced to provide more clarity.
5. Amendment of regulation 8 of L.N. 88 of 2017- This regulation has been amended mainly to remove the requirement of a license being issued digitally together with a paper copy.
6. Amendment of regulation 11 of L.N. 88 of 2017 -Regulation 11 is being amended to provide for a Jewellery license and a clarification by replacing environment and land courts with relevant courts.
7. Amendment of regulation 15 of L.N. 88 of 2017-This regulation has been amended mainly to remove the requirement of a license being issued digitally together with a paper copy and replacing the word 'licence' with permit under 3(C)(e).
8. Amendment of regulation 17 of L.N. 88 of 2017- The principal Regulations are amended in regulation 17 (4) by deleting the expression "Environment and Land Court" and substituting therefore the words "relevant courts," since not all cases will be applicable to the environment and land court.
9. Amendment of regulation 18 of L.N. 88 of 2017 - Amendment is for insertion of the word 'export' which was previously left out.
10. Amendment of regulation 19 of L.N. 88 of 2017- Amendment is to the effect that a jewellery license has been introduced under dealers.
11. Amendment of regulation 20 of L.N. 88 of 2017 - the amendment under this regulation is to provide for the fee charged for an export permit under the third schedule.

12. Insertion of the Third Schedule to L.N. 87 of 2017 - The third schedule provides a breakdown of the fees and charges under The mining (dealings in minerals) regulations.

7.1.3 The Mining (mine support services) (amendment) regulations, 2023

These amendment regulations are mainly broken down in 3 parts;

1. Citation - These Regulations may be cited as the Mining (Mine Support Services) (Amendment) Regulations, 2023.
2. Amendment of regulation 4 of L.N. 151 of 2017 - The schedule in the regulations is now the first schedule since the amendment regulations introduce a second schedule to provide for the fees charged.
3. Amendment of regulation 6 of L.N. 151 of 2017 - under 6(1) a new sub-regulation has been introduced which provides that the license in 6(1) shall be upon payment of an annual fee provided for in the second schedule.
4. Amendment of regulation 8 of L.N. 151 of 2017- provision has been made for transfer and sub-regulations introduced for an online application form MS5 for transfer/assignment, and the requirement that transfer shall only be registered in the cadastre upon completion of the form and payment of the fee specified in the second schedule.
5. Amendment of regulation 9 of L.N. 15 of 2017- amendment to provide for fee in the second schedule.
6. Amendment of regulation 11 of L.N. 151 of 2017- Providing clarity that form MS4 is now in the first schedule.
7. Amendment of regulation 9 of L.N. 15 of 2017 - Amendment meant to provide clarity that the 'Environmental Coordination and Management Act' is for 1999.
8. Amendment of the sub-heading Schedule to L.N. 151 of 2017- the previous schedule is renamed first schedule.
9. Amendment of the Schedule to L.N. 151 of 2017- A new form MS5 is introduced as an amendment after MS4

10. Amendment of the Schedule to L.N. 151 of 2017 - A second schedule is introduced immediately after the first schedule which outlines the fees charged for transfer and mine support services.

8.0. CONSIDERATION OF ALTERNATIVES TO THE PROPOSED REGULATIONS

The mining act 2016 whose commencement date is 27th May 2016 created new categories of small scale and largescale operations in both mineral rights and dealings. This lead to introduction of new licenses and permits several licenses and permits such as artisanal mining permits, mining permits, prospecting permits, mining license, prospecting license, reconnaissance license and permit, mineral dealers license and mineral dealers permits. Several regulations were developed to support the application, processing and management of these licenses and permits. However these regulations did not include the various charges and fees attached to these licenses and permits. Currently, legal notice number 38 of 2014 which prescribes the rates that were used in cap 306 is in use. The notice therefore does not cover all the license and permits that are under mining act 2016.

8.1 The Alternatives

8.1.1 Option One: The Status Quo

Maintaining status quo means that we continue matching charges under repealed cap 306 to their equivalent license type under mining act 2016. This locks out the small-scale operations created by mining act 2016. This will lead to a more disorganised sector and deny the government a chance to collect approximately 1.6 billion annually.

8.1.2 Option Two: Application of Administrative Measures

Not applicable since the Mining Act 2016, Section 223(2)(a) requires the Cabinet Secretary to prescribe fees by way of regulations

8.1.3 Option Three: Adopting the Proposed Regulations

These amendments targets to support fully implementation of mining act 2016 by prescribing fees to all the licenses and permits under mineral rights and mineral dealings.

8.2 Cost-Benefit Analysis

Option	Description	Costs	Benefits	Impacts and Distribution of Impacts	Risks	Compliance and enforcement
Option One: Status Quo	Maintaining the status quo means that the Regulations below shall continue to be in force and therefore challenges facing the full implementation of the Mining Act 2016 will not be addressed. The Mining (License and Permits) Regulations	Application fee for a mining permit - 1,000 For renewal of permit – 1,000 Application fee (prospecting licence, mining licence) – 50,000 Annual ground rent (prospecting licence) - 2,500/KM2 subject to a minimum of 50,000 Renewal License- 4,500 per hectare subject to a minimum of 1,000,000 Annual Rent for a license- per hectare subject to	Realized collection of Ksh 33 million Sector stability due to stability in charges	No realization of mining full potential ; Limited collection of Appropriation-In-Aid; Undefined fees and charges rate for some new licences and	Stunted growth of the mining industry Over-reliance on exchequer funding Conflicts between ASMs and large scale miners Environ	Poor regulatory enforcement and oversight in the industry due to funding challenges; Inability to formalise the Artisanal Miners;

	<p>2017 The Mining (Dealings in Minerals) Regulations 2017</p> <p>2017 The Mining (Mine support Service) Regulations 2017</p> <p>The Mining (Ammendment of Third Schedule) Order 2014 <i>(This legal notice No. 38 will lapse on 29th Ferbruary 2024)</i></p>	<p>a minimum of 500,000</p> <p>Prospecting right /renewal – 5,000</p> <p>Dealers Permit - 5,000</p> <p>Dealers License- 20,000</p> <p>Export Permit- 2,000</p> <p>Loss of government revenue amounting to Ksh 1.6 Billion</p>		<p>permits;</p> <p>Effect of inflation (reduced value of money over time due to inflation)</p> <p>.</p> <p>Inability to formalize over 160,000 artisanal miners</p> <p>Limited support to ASM</p>	<p>mental degrad ation</p> <p>Risk of not fully interpreting mining act 2016</p> <p>Loss of Revenu e by not formalizing jewellers</p>	
<p>Option Two:</p> <p>Application of Administrative Measures</p>	<p>Not applicable since the Mining Act 2016, Section 223(2)(a) requires the Cabinet Secretary to prescribe fees by way of regulations</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>	<p>Not Applicable</p>

<p>Option Three: Adopting the Proposed Regulations</p>	<p>Introduction of fees schedule for license and permits, dealership and mine support services</p> <p>Introduction of Mineral dealers (Gemstone value addition and jewellers) license</p>	<p>Management, compliance and enforcement KSh. 385m</p> <p>Duplication copy of license/Permit document- Ksh 2,000</p> <p>Duplication evidentiary Certificate- Ksh 2,000 per document</p> <p>Duplication of any other document- Ksh 2,000</p> <p>Application and renewal fee for a mining permit - Ksh 7,000</p> <p>Application and renewal fee for a prospecting permit- Ksh 7,000</p> <p>Application and renewal fee for a Reconnaissance Permit- Ksh 5,000</p> <p>Application and renewal fee for a mining License- Ksh 500,000</p> <p>Application and renewal fee for a Prospecting License- Ksh 500,000</p>	<p>Enhanced collection of fees, levies and charges to approximately Ksh 1.6 Billion;</p> <p>Reduction of annual ground rent after renewal of a mining license from 4500 to 2500 per Hectare will make Kenya a competitive</p>	<p>Increase efficiency in compliance and enforcement;</p> <p>Reduced over-reliance on exchequer;</p> <p>Support services for Artisanal Miners; Peaceful coexistence between the artisanal miners and large scale miners.</p> <p>Enhanced geological and mineral</p>	<p>Industry Opposition: Mining companies may resist the new regulations, leading to legal and compliance challenges.</p> <p>Economic Impact: Higher fees could affect the profitability of mining operations and deter investment.</p>	<p>Enhanced regular compliance, surveillance monitoring and enforcement.</p> <p>Undertake Publishing and sensitization on the provisions of the amended regulations.</p>
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		Application and renewal fee for a Reconnaissance License- Ksh 50,000	mining destination	explorari on activities	Potenti al Job Losses: Compa nies may reduce their workfor ce to manag e higher operati ng costs.	
		Application and renewal fee for an artisanal mining permit- Ksh 2,000	Sealin g of revenu e leakag es by formaliz ing the ASMs and regulat ing the dealer s in minera l jewelle ry.			
		Annual Ground Rent for Prospecting License- Ksh 3,000 per km2 subject to a minimum of Ksh 500,000				
		Annual Ground Rent for Retention License- Ksh 6000 subject to a minimum of 500,000				
		Annual Ground Rent for Mining License- Ksh 2,500 per Ha subject to a minimum of Ksh 500,000	Define d fees and charge s rate for new licence s and permit s			
		Annual Ground Rent for Mining Permit- Ksh 50,000				
		Annual Ground Rent for Prospecting Permit- Ksh	Discou rages			

		<p>20,000</p> <p>Transfer Fee for a Prospecting License- Ksh 50,000 per Km2 subject to a minimum of 5,000,000</p> <p>Transfer Fee for a Mining License- Ksh1,000,000</p> <p>Transfer Fee for a Mining Permit- Ksh100,000</p> <p>Transfer Fee for a Prospecting Permit- Ksh 100,000</p> <p>Transfer Fee for an Artisanal Mining Permit- Ksh 50,000</p> <p>Mineral Development Levy (All minerals except cement and salt) -1% of gross sale value</p> <p>Mineral Development Levy (Cement and Salt) -0.5% of the gross sale value</p> <p>Mineral dealers Processing licence (Precious</p>	speculators			
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		<p>metals and Base metals); Application fee 100,000, annual fee 500,000</p> <p>Mineral dealers Processing licence (Gemstone Faceting); Application fee 5,000, annual fee 50,000</p> <p>Mineral Dealers Trading License Application fee 5,000</p> <p>Industrial and Construction minerals - Ksh 50,000 (Annually)</p> <p>Precious and precious Stones - 20sh 20 (Annually)</p> <p>Base and Rare Metals -ksh. 500,000 (Annually)</p> <p>Precious Metals- Ksh 200,000 (Annually)</p> <p>Mineral Dealers permit</p>			
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		<p>Application fee ksh 2000</p> <p>Industrial and Construction minerals Ksh. 20,000 (Annually)</p> <p>Precious and Semi-precious stones- Ksh. 5,000(Annually)</p> <p>Base and Rare metals - Ksh. 5,000 (Annually)</p> <p>Mineral Dealers (Jewelers') Licence</p> <p>Application fee Ksh. 1,000</p> <p>Licence fee of 20,000(Annually)</p> <p>Mineral Export pe</p> <p>Processing fee of Ksh. 5,000</p>				
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8.3 Conclusion: The Preferred option

State Department for Mining prefers adopting the proposed regulations in order to align all the fees payable under each license and permits to the provisions of the mining act 2016. This will enable formalization of ASM and bring order to the mining sector.

Statement on Regulatory and Non-Regulatory Options

Option 1: Maintaining the Status Quo/ Doing nothing/definition of the problem

Option 2: Establishing LIMS administratively in the absence of the regulatory instrument

Option 3: Establishing NLIS and prescribing the enabling Electronic land Transaction Regulations

Options and Impact analysis

Option 1: Maintaining the Status Quo	Option 2: Establishing LIMS administratively in the absence of the regulatory instrument	Option 3: Establishing NLIS and prescribing the enabling Electronic land Transaction Regulations
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Preferred Option

Economic impact of the Regulations

Environmental impact

Social impact

Reasons why other Options are not appropriate

Statement explaining the effect of the proposed legislation: Benefits and

Costs analysis

Benefits

Financial cost

Effect on public sector

Effect on private sector

Effect on businesses

Fundamental rights and freedoms

Taxes/fees and revenue

Effect on existing legal frameworks

Statutory instruments proposed to be amended
Statutes proposed for consequential amendments

9.0. Compliance and Implementation

It is very important to consider and determine compliance and implementation of the proposed amendments in the three existing Mining Regulations will be achieved. The three amendments include: Mining (Dealings in Minerals) (Amendment) Regulations, 2023, Mining (Licence & Permit)(Amendment) Regulations, 2023, and Mining (Mine Support Services) (Amendment) Regulations, 2023.

As per the Executive Order No. 1 of 2023 and the Mining Act, it is the responsibility of the State Department for Mining to provide 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 performance with regards to 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 on prescription of fees to give effect to the Act's provision. As for these proposed regulations, the Act under section 182 provides for the Cabinet Secretary to gazette fees and other charges. Therefore, the Cabinet Secretary has the required legislative powers to propose and prescribe mining fees and other charges.

The Statutory Instruments Act, No. 23 of 2013 under Section 5 requires that the State Department for Mining conducts 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 amendment regulations shall give effect to provisions in the Mining Act on payments of application fees, annual ground rent, and other charges. These Regulations will be implemented through the set out legal and institutional frameworks at the State Department for Mining to ensure there is conducive business environment for mining investors and promote the mining industry.

These proposed amendment will revise three existing regulations. Considerations have been made to ensure there is harmony with the other regulations making its implementation effective. The proposed amendments in the regulations are clear, consistent, comprehensive, and comprehensible enough to cover all matters related to mining fees and other charges.

9.3 Conclusion and Recommendation

After conforming to the legal obligations in developing these proposed amendment regulations like conducting public participation and developing an accompanying Regulatory Impact Assessment, it is apparent that the necessary measures and implementation safeguards have been dealt with. In view of this conclusion, it is recommended that the proposed amendments in the Mining (Dealings in Minerals) (Amendment) Regulations, 2023, Mining (Licence &

Permit)(Amendment) Regulations, 2023, and Mining (Mine Support Services) (Amendment) Regulations, 2023, be adopted.