COMMUNITY GUIDE TO LARGE SCALE MINING IN KENYA

Who is This Guide For?
This guide has been developed for communities and individuals that own or occupy land that is subject to exploration or large-scale mining. Exploration and exploitation of minerals require the applicable licenses, and can be either large scale, small scale or artisanal operations. It is important for communities to know which type of operation the license holder is permitted to undertake in the land and the details of the subject land registration [private, public or community land]. Just like there are different types of land registrations, there are different mining-related licenses or permits with specific rights and responsibilities for the company and communities within which the operation is to take place.

This is a guide on what to expect if approached by an exploration or large-scale mining company or if one is notified that the land one owns or occupies, is under consideration for exploration or mining. This guide will also cover what to expect at each different phase of the mining lifecycle. The mining cycle is broadly divided into exploration, development, mining/operation and closure. This guide will provide important information about rights as a landowner, or as a member of a community registered or not, and affected by mining activities. This guide will also provide insights on how individuals or communities can get involved in the mining cycle activities.

This guide is intended as just that, and should not be used as a substitute for the Mining Act 2016 and the regulations thereunder or legal advice.

This guide can be used by civil society organizations or any other organized group, companies, and government officials to create awareness, improve institutional work practices, and empower communities in their participation in decision making regarding large scale mining projects.

Who Are the Main Actors in the Mining Sector?
The main actors in the mining industry are governments, companies and communities that host to the mining projects.

Government
In Kenya, the government is comprised of two levels, national government and county governments, each with distinct but interrelated relationships, obligations and duties towards the mining sector. The duties of the national government include the following:

- Develop policy, legal, regulatory and institutional framework to oversee the sustainable development the country’s mineral wealth. The Ministry in charge of Mining is the main institution charged with the implementation of the above frameworks.
- Map and maintain an inventory of mineral resources and other important geological data.
- Award mineral rights and conclude agreements with mining entities.
- Collect fees, charges, and royalties for exploitation of mineral rights.
• Monitor mining activities to ensure that they are undertaken in compliance with the law and the license terms and conditions.

The duties of the county governments involve the following;

• Giving consent for the development of mining projects on unregistered community land as held in trust for communities.
• Hold in trust for the community monies paid as compensation for unregistered land.
• Facilitate and support communities (registered or not) when negotiating with mining companies.
• Play a key role in the proper management of the environment through the County Environmental Committee and thus have an input in the environmental licensing and monitoring process to ensure proper management of environmental impacts.

The Ministry’s officers at headquarters and at county level, where present, can answer questions and provide additional information regarding mining activities.

Both national and county governments have a duty to ensure that the revenues earned from mining activities benefit the immediate communities and Kenyans at large.

Companies

Mining activities may be conducted by foreign or local companies. Their duties include:

• Obtain mineral rights from the national government in the form of licenses or agreements before commencing activities.
• In their operations, comply with the laws of Kenya and to licenses terms and conditions
• Negotiate with land owners for access and compensation to land and promptly pay compensation
• Engage with county governments for planning approval of designs in development of the mine
• Undertake environmental impact assessments and manage environmental impacts;
• Practice sustainable mining;
• Keep the county government and community informed
• Address public safety and land use concerns arising from the mining operations;
• Holders of mining licenses and mining agreements have a duty to consult and conclude community development agreements (CDA) with affected communities. [See section on CDA for more details]
• Pay all taxes and levies due to the state. Respect human rights as per Article 20 of the Constitution of Kenya 2010. To be able to do this, companies should endeavour to know how their operations impact on the enjoyment of human rights by carrying out due diligence, that is, identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts.
**Community**

What is a community?

A community as defined under the Mining Act 2016 means: “a group of people living around an exploration and mining operations area; or, a group of people who may be displaced from land intended for exploration and mining operations;”. In this guide the term community refers to individual land owners or a group of users of community land within an area affected by mining operations.

Communities and individual land owners whose land is subject to mining activities also have rights and responsibilities. These include:

- Right to give or withhold consent for access to land for mining activities and where consent is given, right to prompt, just and fair compensation for land and damage to property. Part IX of the Mining Act that deals with ‘Surface Rights, Compensation and Disputes’ gives additional details on the subject of access and compensation.
- Right to require production of the mineral rights License from License holders: License holders wishing to access land from communities or individuals must show proof of the mineral right if demanded by land owner/occupier.
- The land owner/occupier is entitled to retain the use of the subject land or portions of it, if that does not interfere or endanger the operations of the licensee.
- Right to compensation payable prior to commencement of mining activities: Grounds for compensation include: loss of land; loss of or damage to buildings and other immovable property; loss of earnings through deprivation of grazing or cultivation land; damage to water table resulting in deprivation of water. However no compensation is due for: permitting entry to land in exercise of mineral right; for the value of the mineral; or any loss or damage that cannot be legally assessed.
- Once granted consents are binding on all subsequent land owners. If consent is withheld or no agreement is reached on compensation, the dispute will be referred to the Cabinet Secretary in charge of mining for resolution in the first instance with a right to appeal to court.
- However, the government has the right to compulsorily acquire the land if land owners unreasonably withhold consent or where withholding consent is contrary to national interests but in so doing acquisition must be in accordance with the laid down legal procedures.
Diagram 1

1. The company identifies the land that they require for the project.
2. The company maps owners.
3. The company is required by law to seek the consent of landowners.
4. The company then negotiates compensation and resettlement packages. This should include restoration of livelihoods. Could also include alternative land.
5. Once agreement is reached, government then issues lease to the company.
6. Compensation paid and resettlement done, and before the project starts.

Monitoring, evaluation and grievance mechanisms should be part of the process throughout.
Diagram 2

- The right to information is an important enabler and affected communities should have access to information on the mining activities to enable them participate in and make informed decisions. Companies and government should ensure access to all information on the projects in a language and form that is understood by the community.
- Right to full compensation for individuals or communities with respect to land and other property where any form of displacement or damage as a result of mining takes place. Full and just compensation is payable before the start of mining activities. Furthermore compensation should leave the community better off and not worse off in the long term.
- Right to comprehensive informed consultations and negotiation of a benefit-sharing agreement. This includes the right to have full information to be able to make optimal decisions on what community development agreement is optimal to negotiate.
- Right to a clean and healthy environment in respect of which the government is directed to encourage public participation and a duty placed on persons including companies to cooperate with the state in its management, protection and conservation. In the context of mining these rights find expression in:
  - right to be consulted and give views during the environmental impact assessment process; and
  - right to be compensated for any adverse impact resulting in the violation of the right to a clean and healthy environment.
• Right to participation of individuals and communities in decision making with respect to development activities is a core value and principle of our governance¹ and thus there is an implicit duty and corresponding right to engage.

• Right to fair administrative action and good faith engagement at every phase of the process of acquisition of exploration license, information disclosure, ESIA, Land acquisition, compensation negotiations, mining license, development of mine, management of the mine with benefit sharing and decommissioning.

It is critical that government, companies and communities work collaboratively for the sustainable development of the mining sector so that it positively contributes to the socio-economic development and prosperity of communities and the country as a whole. Moreover, engaging communities can help maximize the benefits while minimizing the negative impacts of mining activities.

Community Engagement
Throughout the mining lifecycle there will be engagement between the community and the company (and government). Community engagement provides an opportunity to build on-going relationships that cover broad interactions over time. It is not a one-off event, but a continuous process that evolves just as the project evolves into new phases and new decisions are made.²

The International Association for Public Participation (IAP2) has developed a variety of approaches to community engagement (see the figure below): the choice of which approach to apply varies according to time and issue, but they are all useful in developing and maintaining strong relationships between the community and the company.

¹ See, County Public Participation Guidelines, 2016
Diagram 3

PUBLIC PARTICIPATION FORUMS

- Informing the public by providing information to help them understand the issues, options and solutions
- Consulting with the public to obtain the feedback on alternatives or decisions
- Involving the public to ensure their concerns are considered throughout the decision process particularly in the development of decision criteria and options
- Collaborating with the public to develop decision criteria and alternatives and identify preferred solutions
- Empowering the public by placing final decision making authority in their hands
Where to Find Information on Mining Activities?

The Ministry maintains an online map known as a digital cadastre map from which anyone can access information about the different minerals found in the country and the different mining blocks. For blocks where licenses have been issued, information about license holders may also be found. Note that licenses can change hands several times over the life time of the licensed activity and the rights and responsibilities including consents held by previous companies transfer to new companies.

Information on environmental impact assessments can be found from NEMA offices and online on its website.

County Governments also have an obligation to provide accessible mining information to communities on land within their counties.

Note: if your property falls within a mineral block or an area of an application, it does not automatically follow that entry to your land is required for mining activities.

Mining Sector Governance

All the minerals found in Kenya, are owned by the people of Kenya, and are held in trust by the national government. Whenever minerals are found in private or community land, access to them for exploration and/or mining may be required subject to just, fair and prompt compensation. The government regulates the sustainable and responsible development of minerals through various laws and institutions.

The policy, legal and regulatory framework governing the mining sector in Kenya has recently been updated. The new framework embodies, sustainable mining development, public participation, and benefit sharing, and establishes a number of new institutions with the aim of improving governance of the sector. It comprises:

- Constitution of Kenya 2010
- Mining and Minerals Policy 2016
- Mining Act 2016
- Mining Regulations 2017

Additionally, there are other laws that have a great impact on the governance of the sector. These include:

- Environmental Management and Coordination Act (Amended) 2015;
- Land Registration Act, 2012;
- National Land Commission Act 2012;
- Community Land Act 2016
The Mining Cycle
A typical mining operation has a number of stages. Broadly, these are, exploration, mining and closure: but the Mining Act 2016 further breaks these down to: reconnaissance, exploration, feasibility, construction, mining, mine closure and rehabilitation, and, post closure. In terms of licences also referred to as mineral rights, the large scale operators may be granted a reconnaissance, prospecting, retention, mining license or mining agreement. All stages begin with an application for a mineral right.

Diagram 4
How Can Communities Take Part In The Permitting Process?
An individual or company that wishes to engage in any type of mining activity must apply and obtain a license or mineral right prior to starting any work. On application, the Cabinet Secretary in charge of mining is allowed a period of either 90 days (in the case of reconnaissance, prospecting and retention) or 120 days (in the case of mining) within which to make a decision. Within this time, the Cabinet Secretary is required to publish and publicize information to the communities within the locality of the proposed mining activity to allow them time to raise concerns and bring objections for consideration before the application is considered. County governments and CSOs can help communities in accessing notices and in preparing and forwarding their concerns, if any.

“Publish” includes publishing the document in a newspaper, Government Gazette or other publication of general circulation; making the document available for reference at public libraries or offices of national government entities or in archives of those institutions; or even posting the document on the internet on a Government website. On the other hand, “publicize” means to make known to the public the general nature of the document and how and where it may be accessed and read by members of the public, through the national or local media. Based on the above, in order to meet the requirement to ‘publish’ and ‘publicize’, the Cabinet Secretary should make information available to all who may be potentially affected by the permit as defined by the land area covered in the permit. This should include ‘local publishing’ at community level, using relevant mediums and formats.

Exploration: What Can A Community Expect?
Exploration is the process of searching for minerals upon or under the earth’s surface. It comprises of two phases, reconnaissance and prospecting in respect of which two distinct licences that can be issued.

Reconnaissance licence
A reconnaissance licence grants the holder the right to undertake preliminary survey of an area of land using airborne surveys, or through simply walking around the area of interest collecting rock and soil samples from the ground. Most important is that activities at this stage are not invasive, and no drilling or other subsurface exploration techniques are used. This also means that there is little disruption of the community during this period. At this stage, the community is likely to see one or a few persons with simple equipment and it is too early to inquire about the future plans with regard to developing a mine. Persons or a company conducting these activities must have a reconnaissance licence from the government. A reconnaissance licence is valid for 2 years, and is non-renewable.

What can the community expect?
There is no legal requirement for community consultation at this stage as company activities do not affect the local communities. However, licence holders are required to inform the county government authorities and people on whose land they seek to collect samples from of what they are doing and ask for permission to enter upon the said land. There is no compensation for land that is paid to land owners or communities at this stage and communities can still use their land freely, but any damage to land or
property that may be caused during the activities should be compensated for. Additionally, there is no requirement for an environmental impact assessment, as long as the methods used have no/minimal impacts.

**Prospecting license**

During this phase of exploration, the company’s search for minerals intensifies and includes exploratory drilling. A prospecting license is valid for 3 years and can be extended for an additional two terms of 3 years each.

A company conducting such activities must have a prospecting license from the government. The law requires the Cabinet Secretary to publish a notice of application in a newspaper with wide circulation, in the official gazette and at the county offices within which the location of the proposed prospecting is situated. The notice gives any person 21 days from the day of notice to object in writing to the Cabinet Secretary.

The company must have sought and obtained written consent from the land owners or communities who would be affected by the prospecting. Similarly consent must be sort and obtained from the county government within whose jurisdiction the activities will take place. For communities and county government to make an informed decision, the company is required to disclose the potential benefits and adverse impacts of their activities and allow for adequate time to approve or reject the mineral activity before it can start. Negotiations should be carried out in good faith, should be balanced and inclusive of all the different categories of community members including vulnerable groups. Generally it is only when a majority of members agree, that consent is said to have been obtained but with respect to a registered community group, the Community Land Act sets the procedure and threshold for decision making by communities. Support of the project by community leaders only is not regarded as community consent.

The National Environmental Management Authority (NEMA) requires companies to undertake Environmental Impact and Social Heritage Assessment (ESIA), including and an environmental management plan. The procedure for this is provided under the Environmental Management and Coordination Act and it includes a requirement for community consultation. As part of the ESIA process, communities’ must be informed about the nature of activities and the impacts they are likely to have and give their views on how best to mitigate such impacts. Some of the information that may be useful for communities taking part in the EIA includes; what mineral, what types of prospecting methods will be used, how and where will be mining waste disposed, and what are the potential adverse impacts on land and other activities and mitigation strategies. The process is not for mere information but an opportunity for the local community to fully understand the proposed activity and to give their views in support or against the project. The EIA report is submitted and approved by the National Environmental Management Authority (NEMA) but before approval, there is a requirement to publish and make available the report to the community and seek their views on the same. If the community has any issues to raise about the process of consultation or the content of the report, they can do so through the county level NEMA officials. It is also within their rights or that of any person acting in public interest to petition to the High Court on the same.
A typical ESIA process:
1. Company hires an ESIA expert to undertake the exercise
2. ESIA expert scopes the study. At this stage the most critical issues to study are identified. Community involvement in identifying the issues is important
3. Prediction and mitigation is done. This involves identifying impacts and designing mitigation strategies. Community involvement is expected.
4. Preparation of ESIA report
5. Submission to NEMA for approval – NEMA makes available to the lead agencies and public and invites comments
6. Final ESIA incorporating feedback from stakeholders prepared together with an Environmental Monitoring Plan
7. Implementation of the EMP
8. Audit – monitoring of EMP implementation

What can the community expect?

Site offices are established and there are more company staff in the area being prospected. There will be clearing of vegetation and drilling, and for communities new to mining it may seem like mining is already taking place. There is a legal requirement for compensation for any resulting harm or damage to land and property, in addition to disturbance and loss of usage of land around exploratory drilling sites. There are established guidelines at the county level regarding valuation of crops that can help in reaching an agreement on the value of crops none exists for compensation for loss, damage or disturbance to other property. This is usually negotiated on adhoc basis with the affected land owners or community: it is therefore important that the community speak with one voice and for the company to adopt a uniform approach to avoid discontentment. This does not mean that everyone gets awarded the same compensation but that there is an agreed base from which to start. During this stage, land can still be freely used except where drilling is taking place - in which case it will be well demarcated.

Communities also want full disclosure of information not realizing that this is an exploratory phase, data is confidential and that few explorations are successful. Nevertheless, there should be openness and transparency – the company should explain clearly what prospecting is, and that no mining per se is taking place. Moreover, communities expect the company to establish a long-standing relationship characterized by elaborate social investments which is not legally required: nonetheless, most companies will invest in short-term local community development programs identified through community engagement activities. Managing these divergent interests is important if exploration is to be carried out successfully and economically, but also to establish a good base for future operations if successful in their quest for minerals. Both national and county government can play a crucial role in ensuring the community fully understands what is going on in their area by complementing company efforts in providing requisite and accurate information.

This is a challenging stage for the company and community because concerns and expectations escalate with communities eager to ‘share’ in the profits, yet the company is not making any money-in reality the company is only spending money.
At the end of the prospecting period, a company can either have been successful or unsuccessful in finding mineral deposits. If unsuccessful, the company is required to rehabilitate and restore the area as per the approved plan. If successful, the company may apply for a retention license.

Note: Experience has shown that only one out of 1000 exploration activities result into a successful mineral find leading up to the establishment of a mine.

**Retention licence**

A company holding a prospecting licence which has discovered mineral deposits potentially of a commercial value may apply for a retention license in order that it may conduct further prospecting. This involves carrying out additional drilling, geochemical geophysical surveys and tests as well as conducting studies and assessments of the prospects of commercial exploitation of the mineral deposits. These studies are referred to as preliminary or pre-feasibility studies and help the company to decide whether or not to put in additional funds into prospecting, and also whether or not to develop a mine, and therefore whether to apply for a mining license or not.

**What can the community expect?**

Essentially, communities may not differentiate this stage from prospecting because what they will see is a continuation of the former stage. Therefore, the company is also required in law to submit employment plans, procurement plans and an environmental and social impact license and environmental management plan (both issued by NEMA) in respect to activities to be carried out during the retention license period. Another round of consultations will be required in this phase to negotiate the terms of the additional set of activities.

Communities are usually keen to know, participate and fairly share out employment and local content opportunities. Distribution of these short term benefits, is known to cause high expectations. Open communication and sharing of benefits is an important way in which companies can not only build community confidence in their operations, but also trust in their information. However, companies should engage communities using established structures and seek to ensure as many in the community as possible participate in the process and companies should keep the community informed of the operations. Open communication contributes to building relationships, smooth running of project operations and ultimately, shared success of the venture. The exception will be where the company goes into new drilling sites, located in land not earlier permitted. Consent from new land owners or communities must be obtained, and additionally damage or loss of use during the retention license period must be negotiated and compensated in the manner and terms agreed by the parties. Communities are free to use land except on the drilling sites.

The term of the retention license is 2 years and it is renewable once for a further 2 years.
**Mining**

If mineral of commercial value is discovered and a decision to develop the mine is arrived at, the company obtains a mining license and develops the mine. The mining process includes a pre-mining step when the mine is being developed or constructed, followed by mine operation.

**Mine development**

A company may apply for a mining license if it has the intention to develop a mine. Developing a mine is a very expensive undertaking and a company needs to be certain that the mineral deposit can be extracted in a technically sound and economically sensible manner. To help reach this decision, the company will have carried out a feasibility study which also provide a basis for the design for construction of the mine, location of the mine and the mining methods. Construction of the mine will also take place at this stage. Moreover, oftentimes the study will also help the companies to raise funds for the venture from banks and other interested investors.

To apply for a mining license the company needs undertake a full ESIA in order to have an ESIA licence and an approved environmental management plan from NEMA (including plans for site restoration and rehabilitation and mine closure), resettlement plans for those to be relocated, livelihood replacements, plans for procurement of local goods and employment and training of Kenyans (locals and nationals), and plans for social responsible investments also known as a community development agreement.

Construction is the main activity during mine development and the most disruptive phase of the mining cycle: it takes 1-3 years to complete. It is dependent on and preceded by land acquisition and is characterized by lots of movement as construction materials are being brought in and numerous temporary jobs. Community engagement at this stage will centre on acquisition of land required for mine development; the location of mine relative to community life and assets; relocation of homes during resettlement; replacement of livelihood; compensation; valuation for replacement or compensation for lost or shared community assets including natural resources; environmental protection; jobs; procurement of local goods; company’s contribution to community development; access to locally available resources for construction among others. Additionally, mine closure, restoration and rehabilitation plans will also have to be developed with the involvement of the community as part of the ESIA licensing process (ideally, these should be updated regularly to reflect any changes in the operational environment). Whereas engagement at the start of mining phase is intensive and touch on numerous issues, engagement is involving and continuous related to information, consultation, participation in design, agreements say for resettlement and livelihoods replacement plans, then implementation of the approved plans.

**Community development agreements**

An important requirement during this phase is for the company to conclude a Community Development Agreement (CDA) within 30 days of grant of licence. A community that is impacted by more than one mining operations may enter into multiple CDAs. The CDA shall be prepared by the company together with representatives of the community and will be available in both Swahili and English and where possible the local language. The parties shall agree on how the consultations will be conducted and shall
publish the consultation schedule and timelines. The CDA shall be monitored by a CDA committee comprising elected county leaders, representatives of national government from the area, village elders, youth, women, marginalized groups within the community, civil society and the company. The Committee serves for a term of 3 years, renewable once.

A community that has not been identified as an impacted community for purposes of the CDA should formally let the company know that it should also be included. If the company agrees, then it will be included in the CDA and if not, that community may appeal to the Cabinet Secretary who will consult with the county government and NEMA. If the community is dissatisfied with the decision of the Cabinet Secretary, it may appeal to the Environment and Land Court.

The CDA exists for the lifetime of the mine but it may be amended from time to time; at least every 5 years.

**What is different at the mining stage?**

At this stage, it is important that the community remembers that a mine is a long term fixture, often present for several decades: the license is 25 years or the lifetime of the mine whichever is shorter and may be renewed once for 15 years of the remaining life of the mine whichever is shorter. Developing a mine involves the construction of significant infrastructure such as company offices, housing for employees, roads, laying of water and energy infrastructure, mine waste management structures (sometimes these consist of ponds or dams containing a mixture of water, chemicals and other sediments), social facilities for the workers, and the mine itself. At this stage, the community should expect that the resettlement plan would be implemented and displace some members to pave way for this infrastructure, livelihoods will change based on a livelihoods remediation plan and the mine will change the landscape for a long time to come. Newcomers will also join the community as mine employees, job seekers, business men, government officials and others just seeking new opportunities. All the above changes contribute to community upheaval and the weakening of the social fabric to the detriment communities. Ultimately, physical, social and economic displacement has huge impacts on society and engagement about these must be robust and inclusive as all.

**How can communities prepare themselves for consultations with the company?**

Communities should prepare themselves well for these meetings and negotiations so as to make sure that they understand the project and its impacts as best as possible and have a proper and complete inventory of all their assets, their usage and value. Because not everyone can be part of the negotiations, it is also important that the community select trusted representatives to negotiate on their behalf, for those negotiations that require representation. These should be people who have the welfare of the community at heart and not necessarily the elected leaders. In addition to taking stock of assets, it is also key to establish a procedure for intra-community consultation and decision making (that includes all segments of society, children, women, youth, elderly, persons with disabilities, and minorities) to be followed during
the negotiations. This will guide those negotiating on behalf of the community on how to consult the community and communicate back important questions or decisions.

Some communities have developed community protocols, outlining their decision-making procedures, consultation protocols, rights and responsibilities of community members, land and natural resources access and use among other issues relating to community life\(^3\). Such a tool can also guide the company on how to engage with the community, for example who to consult on arrival at the community and how to demonstrate respect for cultural traditions. Development of a community protocol, if done in an inclusive and consultative manner, can have the added benefits of bringing the community together to decide on their future while capturing important information that can be used by future generations.

Communities may wish to seek advice from technical experts in environment, mining, land, legal and other matters to help build their capacity and to prepare for negotiations. Because of the costs associated with this, CSOs with expertise in mining could be of great help.

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**What are community protocols?**

“Community protocols articulate community-determined values, procedures and priorities. They set out rights and responsibilities under customary, state and international law as the basis for engaging with external actors such as governments, companies, academics and NGOs. They can be used as catalysts for constructive and proactive responses to threats and opportunities posed by land and resource development, conservation, research, and other legal and policy frameworks.

Although each community protocol is adapted to its local context, it is generally a community-led instrument that promotes participatory advocacy for the recognition of and support for ways of life that are based on the customary sustainable use of biodiversity, according to standards and procedures set out in customary, national, and international laws and policies. In this sense, biocultural community protocols are community-specific declarations of the right to diversity. Their value and integrity lie in the process that communities undertake to develop them, in what they represent to the community, and in their future uses and impacts.”

*Source, Natural Justice, www.naturaljustice.org*

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**How much time to consult and is consultation a one off?**

Generally, consultations should not be rushed and should allow adequate time for the community to consult and reach an agreement among themselves and therefore give or deny their consent. However, consultations cannot be unending for the law sets the timelines within which decisions on applications for mineral rights and environmental licenses have to be given. For companies, delays can lead to escalation of costs as they may already have running financial commitments. Moreover, because the mine will be present in the community for a long time, engagement with the community should ideally continue throughout the life of the project. This is because the operating environment is constantly changing and important decisions impacting mine operations and communities are being made. Having in place a clear,

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established, accessible, acceptable, effective and efficient framework of communication between the company and community will allow for communication on any changes and challenges that may arise.

**How will grievances be resolved?**

In addition to a communication plan, a consultation plan should include a grievance mechanism which is equally effective and efficient to address potential community grievances. This will manage operational grievances between the company and the community. Such a mechanism should be established with the participation of the community, company, government (and any other stakeholder to be agreed upon) and should have balanced representation. The functionality of this mechanism be checked from time to time, by being subjected to stakeholder consultations. However, not all grievances will be resolved through this mechanism.

The Mining Act mandates the Cabinet Secretary to resolve grievances while preserving the right to seek judicial intervention. This means that a party that is dissatisfied with the resolution given by the Cabinet Secretary may take the matter to court. Additionally, where violations of human rights are alleged to have taken place, a complainant can seek the intervention of the Kenya National Commission on Human Rights; and with regard to environmental matters, those aggrieved by NEMA’s approval of developments and grant of EIA licenses can petition the National Environmental Tribunal and still maintain the right to go to court.

**Changes to expect and monitoring requirements**

It is possible that during the life time of a mine additional infrastructure will be built and the mine itself could expand to new locations. All these major processes will be subject to fresh ESIAs and calls for community participation. A company and community that has a long history of fruitful engagement will find it easier to deliberate and reach new agreements. If they have the capacity and are able to the extent possible, the community should also monitor mining activities and their impacts and communicate these back to the company and relevant authorities. County Governments are also critical facilitators of effective long term relationships between companies and communities. The Environmental Management Plan is an important tool that can help guide these monitoring efforts. Companies are also required to undertake and submit to NEMA annual environmental audits: communities that are organized are better able to monitor and engage in these processes bearing in mind that restoration and rehabilitation work is often continuous throughout the life time of a mine. The law requires that companies must at all times adhere to laws relating to the protection of the environment.

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4 The KNCHR receives complaints of allegations of human rights violations and is mandated to investigate and provide redress within the mandate under the KNCHR Act. For more information visit, http://www.knchr.org/Home.aspx

5 NEMA Tribunal is established under Section 125 of EMCA and mandated to hear complaints against licensing from individuals, groups or civil society organizations under Section 129(2). For more information visit, http://net.or.ke/
Decommissioning and Mine Closure

Before a prospecting and retention licence is issued, the company must present site rehabilitation plan and in the case of a mining licence, a site rehabilitation and mine closure plans. Additionally holders of mining licences and mining agreements are required to execute and deposit environmental bonds which are funds set aside for rehabilitation of mining sites. The site rehabilitation plan is also subject to community participation at initial plan and whenever any significant variation takes place from the original plan. County governments through relevant environmental, pollution, land and other departments are also key players in helping the community effectively protect their right to clean and healthy environment during implementation of mine rehabilitation plan and adequacy of and effective utilization of funds from environmental bonds.

How can communities be involved?

It is vital for communities to be aware of what is contained in the rehabilitation and /or closure plans to be able to monitor the process and be involved in planning for sustainability after closure. Furthermore, involvement in planning will help the community embrace the change to come. Likewise, national and county governments, and others that indirectly depend on the mine should be involved.

Subjects of consultation here will also be about the future of people that directly or indirectly depend on the mine (the community, mine employees, business community), and, control of rehabilitated land including monitoring of any unexpected changes, immovable mine infrastructure, mine supported social services and all other assets. The Mining Act 2016 and Regulations on assets upon termination will be a useful guide in this regard. Consultations should begin as soon as possible later than five years before the actual closure. A closure committee could be established for this purpose. The community must reflect on life before, and imagine life without the mine, and assess its social impact as the basis of planning.

In addition to social planning, physical rehabilitation and restoration of the environment is done. This is commonly characterized by clean-up, and safe-guarding and beautification of the site is another core activity in this phase. This is often expensive and if not done properly can be a source of physical hazards to people and animals. Pollution of the environment can continue for many years causing harm to communities’ health, land, water and their livelihoods. Communities can benefit from expert advice from persons with mine closure experience.

Overall, decommissioning and closure can last between 1 – 5 years, depending on the, size of the mine, complexity of site, and type of waste.

Post closure

At this stage the mine has been closed for several years and while the idea is to move towards independence and sustainability, it is imperative that communities continue monitoring the environmental impacts, health status and social conditions and report to the authorities any unusual changes that they might see. Rehabilitation and restoration does not always mean that former mining sites are safe and can be used in the same way as before the mining. Communities should work in tandem with the authorities and seek advice as to potential use the rehabilitated land can be put. There might also be continuing social and community obligations of the company that will need to be monitored but these will often have a definite end date.