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SWEDISH ENVIRONMENTAL PROTECTION AGENCY



Ministry of Mining



Draft Report (Main Report)



Strategic Environmental Assessment (SEA) for the Mining Sector in Kenya

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Habitat Planners

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LIST OF ABBREVIATIONS

ACC	Assistant County Commissioner
ALPs	Alternative Livelihoods Plans
AMV	Africa Mining Vision
ARM	Athi River Mining
ASALs	Arid and Semi-Arid Lands
ASM	Artisanal and Small-Scale Mining
ASSM	Association of Artisanal and Small-Scale Miners
AU	Africa Union
CBA	Cost Benefit Analysis
CBD	Convention on Biological Diversity
CDA	Community Development Agreements
CEAP	County Environment Action Plan
CFAs	Community Forest Associations
COTU	Central Organization of Trade Unions
CSR	Corporate Social Responsibility
DG	Director General
DOSHS	Directorate Occupational Safety and Health Services
DRU	Disaster Response Unit
EA	Environmental Audit
EAC	East African Community
EEZ	Exclusive Economic Zones
EIA	Environmental Impact Assessments
EIK	Environmental Institute of Kenya
EITI	Extractive Industries Transparency Initiative
EMCA	Environmental Management and Coordination Act
EMMP	Environmental Management and Monitoring Plan
EMP	Environmental Management Plan
ERP	Environmental Rehabilitation Plan
ESCP	Ecosystem and Species Conservation Plan
ESS	Environmental and Social Screening
ETSPs	Employment, Training and Succession Plans
FGD	Focused Group Discussion
GDP	Gross Domestic Product
GoK	Government of Kenya
GRM	Grievance Redress Mechanism
HIV/AIDS	Human Immuno-Deficiency Virus/Acquired Immuno Deficiency Syndrome
HR	Human Rights
ICT	Information Technology Communication
IDP	Internally Displaced Persons
IFC	International Finance Corporation
ILO	International Labour Organization
KCM	Kenya Chamber of Mines
KEPTA	Kenya Petroleum Technical Assistance Program
KFS	Kenya Forest Service
KIs	Key Informants
KNBS	Kenya National Bureau of Statistics
KNHCR	Kenya National Commission for Human Rights
KWS	Kenya Wildlife Service
LED	Local employment plan
MCO	Mining Cadastre Office
MCPs	Mine Closure Plans
MEAs	Multilateral Environmental Agreements

MEMR	Ministry of Environment and Mineral Resources
MOM	Ministry of Mining
NACC	National Aids Control Council
NBSAP	National Biodiversity Strategy and Action Plan
NCCRS	National Climate Change Response Strategy
NDOC	National Disaster Operation Centre
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NET	National Environment Tribunal
NGDP	National Gender and Development Policy
NGO	Non-Governmental Organizations
NLC	National Land Commission
NLP	National Land Policy
OMC	Online Mining Cadastre
OSH	Occupational Safety and Health
PCM	Public Consultation Meeting
PIEA	Petroleum Institute of East Africa
PPGs	Personal Protective Gears
PPP	Policies, Plans or Programme
PPPU	Public Private Partnership Unit
PSR	Project Study Report
PTC	Project Technical Committee
RERU	Rapid Environment Response Unit
RPB	Radiation Protection Board
SDG	Sustainable Development Goals
SEA	Strategic Environmental Assessments
SEPA	Swedish Environmental Protection Agency
SEA	Strategic Environmental and Social Assessment
SHIA	Social Heritage Impact Assessment
SIDA	Swedish International Development Corporation Agency
Tore	Terms of Reference
UDHR	Universal Declaration of Human Rights
UNCCD	United Nations Convention to Combat Desertification
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
WMP	Waste Management Plan
WRMA	Water Resources Management Authority
WRUAs	Water Resource Users Association
ZOPA	Zone of Possible Agreement

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NON-TECHNICAL EXECUTIVE SUMMARY

1. Introduction

The purpose of the policy SEA for the mining sector in Kenya was to assess ways in which environmental administration and governance is currently conducted in the sector at both the national and community levels, with a view to increase the level of attention to environmental, social priorities and human rights, improve sector capacity for managing environmental and social risks and strengthening social accountability. The SEA main report consists of nine sections which are structured according to the following subjects:

1. Introduction and background
2. Governance framework for mining sector, environment and human rights in the Kenya
3. Scope, approach and methodology for the SEA
4. PPP analysis and governance impact identification
5. Environmental impact assessment in the mining sector
6. Stakeholder engagement and governance impact analysis
7. Governance capacity analysis
8. Environmental management and monitoring plan
9. Conclusion and recommendations

2. Background

Kenya is endowed with over one hundred different types of mineral resources in many of the within the counties, but the exploitation of these assets is yet to reach peak level. Accordingly, , the Government of Kenya has recognized the mining sector as a key player for Vision 2030, and has recently included oil, gas, and other minerals as the seventh priority sector with a high potential of spurring economic growth. Kenya has therefore seen a burst of mining investor interest in the past decade, due to the increased global demand for precious metals and minerals. Like other sectors in Kenya, the mining sector is governed and managed through instruments which include policies, legal frameworks, regulations, and guidelines. With further exploration and development, it is estimated that Kenya will soon have the capacity to position itself as a regional mining sector hub for Eastern Africa. Similarly, the recent introduction of devolved governance system in Kenya provides an opportunity for sustainable management of mineral resources because the national constitution has ensured that the interests and rights of local communities are considered within all the economic sectors. However, although the government has recognized the key role played by the mining sector in driving the national economy, the implications of this role to environmental protection and human rights cannot be under estimated. It is therefore important to evaluate the current governance framework in the mining sector in order to determine its effectiveness in ensuring harmony between mining activities and other national and county interests especially environmental protection and human rights.

3. The Policy SEA

The overall governance in the mining sector in Kenya is undertaken using a framework consisting of 18 instruments which include the Mining and Minerals Policy, 2016, Mining Act, 2016, and the Local Content Bill, 2016 whose implementation and enforcement is supported by the Mining (Local Equity Participation) Regulations, 2012. In 2016 and 2017, up to 14 additional draft regulations were formulated with the aim of strengthening the governance framework. In addition, the Guidelines for Work Programmes and Exploration Reports, 2017 were prepared for additional support to the governance framework. Accordingly, there is need to evaluate and assess the effectiveness of the current mining governance framework in readiness for the future growth in the sector. This evaluation included the institutional framework involving a wide range of institutions namely, Ministry of Mining, Directorate of Mines, Directorate of Mineral Management and Regulations, Directorate of Geological Surveys, Directorate of Mineral Promotion and Value Addition, Directorate of Mine Health, Safety and Environment, Directorate of Resource Surveys and Remote Sensing, Directorate of Corporate Affairs, Geo-data Centre and Minerals Certification Laboratory, National Mining Corporation, Mineral Audit Agency, Mineral Rights Board, Ministry of Energy, Ministry of Environment and Natural Resources (MENR), National Environment Management Authority (NEMA), Directorate of Occupational Health and Safety Services, County Governments, The Kenya Chamber of Mines

(KCM), Association of Artisanal and Small-Scale Miners (ASSM), National Land Commission and the Kenya Chamber of Mines

The United Nations Development Programme (UNDP) in collaboration with the Swedish Environmental Protection Agency (SEPA) initiated a four-year programme funded by Swedish International Development Cooperation Agency (SIDA) to ensure the integration of environmental and social concerns into broader sustainable development policy making in the mining sector. The programme will provide targeted support to four countries namely; Colombia, Kenya, Mongolia, and Mozambique and is expected to strengthen human rights and rule of law in environmental public administration. The programme is aimed at strengthening gender, human rights, and rule of law dimensions of public administration in the mining sector. The policy SEA on the mining sector in Kenya was undertaken within this initiative in a partnership with the National Environment Management Authority (NEMA) and the Ministry of Mining (MoM).

Strategic environmental assessment (SEA) is a pro-active decision support instrument, acting as a 'critical friend' to those involved in policy, plan, and programme (PPP) making or strengthening. It aims at making strategic decisions above the project level more transparent, accountable and ultimately more environmentally sustainable. In this context, it does not simply assess impacts of proposed action (i.e. of a proposed policy, plan or programme) in a reactive manner. Rather, it aims at steering thinking of those involved in policy, plan and programme development regarding alternative options for achieving sustainable environmental and social goals. Ultimately, the SEA investigates and identifies ways to avoid, reduce or otherwise mitigate negative impacts while enhancing positive outcomes. The typology of strategic environmental assessments includes policy SEAs which interrogate policies, plan SEAs which interrogate plan and programme SEAs which interrogate development programmes.

The policy SEA for the mining sector in Kenya was conducted with a focus on relevant policies, legal frameworks and regulations. The SEA also interrogated relevant strategic plans. The specific objectives for the SEA were to:-

- a) Determine whether the governance frameworks in the sector have effectively considered the national environmental obligations,
- b) Establish whether the governance frameworks in the sector have effectively considered the national obligations for protection of human rights, and
- c) Determine whether there is adequate and effective capacity for ensuring environmental sustainability and protection of human rights in the mining sector.

The SEA was expected to offer recommendations for:

- a) Improvements in the processes of environmental administration and governance in the mining sector so that the purpose and expectations of the various legislations are fully attained;
- b) Enhancements in the engagement of communities and wider society in environmental administration and governance in the mining sector, while incorporating rule of law and human rights principles; and
- c) Capacity strengthening for both government and community stakeholders to allow the processes of environmental administration and governance in the mining sector to be conducted in accordance with best practices, and with proper consideration of the underlying goals of the National Constitution, and human rights principles.

4. Approach and Methodology

The policy SEA was undertaken in accordance with the National Guidelines for SEA (2012) in Kenya with the geographic scope being the whole of Kenya. However, the stakeholder engagement and fact-gathering field missions focused mainly on Kwale, Kitui and Nairobi counties. Kwale County was selected in order to represent an area in Kenya where active mining has taken place for several years, therefore offering a wide range of lessons on mining, environment and human rights. A wide range of mining activities are taking place in Kwale such as titanium mining in the Central, South and North Dunes, approximately 50km south of Mombasa, and 8km inland from the Indian Ocean with up to 143 million tonnes of the mineral. Kitui was selected to represent areas in Kenya with a huge mining potential where risks in mining, environment and

human rights can be identified and addressed ahead of active mining activities. Kitui County has a high mining potential for a wide range of minerals such as gypsum, iron ore and coal. The coal deposits in Mui Basin which runs from parts of Kitui East (blocks A and B) to Mwingi Central (blocks C and D) and is estimated to have up to 400,000 million metric tonnes (MT) of coal that can be exploited for about 50 years. Nairobi County was selected because it is the Capital City of Kenya, which hosts many national stakeholders (drawn from the public sector, private sector and civil society) in the mining sector, environment and human rights including those in.

The policy SEA involved a vigorous PPP analysis to determine how the prescriptions in 18 instruments which are used for the governance of the mining sector in Kenya (Mining and Minerals Policy, 2016, Mining Act, 2016, Local Content Bill, 2016, Mining (Local Equity Participation) Regulations, 2012, 13 additional draft Mining Regulations and 1 Mining Guideline) have integrated the national obligations for environmental sustainability and protection of human rights. The environmental sustainability and human right benchmarks used in the policy SEA consisted of key obligation in a total of 88 instruments including 76 environmental and 12 human rights governance frameworks (22 policies, 32 legal frameworks, 10 regulations, 7 guidelines and standards, 7 national strategies and action plans, and 7 multilateral environmental agreements). The PPP analysis involved a comprehensive evaluation of the mining sector governance prescriptions frameworks to determine the level of integration for environmental and human right obligations.

In addition to the PPP analysis, an evaluation of mining project Environmental Impact Assessments (EIAs) was also undertaken using the existing records in the NEMA to determine the effectiveness of the process in safeguarding the environment, and also providing a platform for stakeholder consultation and involvement in mining decision making. The evaluation was undertaken according to the guidelines in the quality Guidebook for Evaluating Mining Project EIAs by the Environmental Law Alliance Worldwide. The evaluation considered a 10-year period, between 2006 and 2016, and used a sample of 50 mining project EIA reports. The specific objectives for the evaluation were to:- a) determine the type of mining projects for which EIA licenses had been applied for including the location of mining and proponents, b) assess the qualifications, relevance and competence of the EIA experts, c) assess the quality of EIA implementation protocol and final reports in terms of adherence to relevant regulations and guidelines including comprehensive stakeholder consultation and involvement, d) evaluate the Capacity and quality of administrative review of mining project EIA reports by NEMA, and e) assess the quality of post mining project EIA report approval follow-up and compliance monitoring including post-EIA environmental audits.

Stakeholder consultations involved key informant consultations, focus group discussions, dialogue meetings and workshops. The consultations mainly targeted communities where mining is taking place and where minerals are known to exist but actual mining has not taken place. The consultations were aimed at providing a platform to identify strengths and weaknesses in the mining sector governance frameworks in relation to environmental sustainability and protection of human rights based on stakeholders at the grassroots. The consultations also provided a platform to discuss the level of public involvement in mining project EIAs, including issue of post-EIA monitoring and follow-ups. In Kwale County, such meetings were held in Nguluku, Mrima, Mkangombe, Denyenye, Tiwi-Maweni and Kuranze. In Kitui County consultative meetings were held in Ikutha, Kanziku, Zombe, Mui, and Ngaaiye. Three scoping consultation meetings were undertaken with one each in Kwale, Kitui and Nairobi with a total of 161 stakeholders were consulted (66 in Kwale, 48 in Kitui and 47 in Nairobi). In addition, three consultation workshops were held in Kwale and Kitui with the aim of sharing the draft SEA report with the stakeholders in accordance with the National Guidelines for Strategic Environmental Assessment in Kenya. The SEA process will end with a national validation and adoption workshop in Nairobi.

5. Findings

5.1: PPP Analysis

5.1.1: Environment

The integration of 76 environmental obligations in the 18 governance frameworks for the mining sector indicated that majority of the obligations in national policies were either fully, well or moderately integrated with only 4 out of 21 policies not integrated. The non-integrated policies include the National Water Policy (2012 Draft), National Wildlife Conservation and Management Policy, 2012, National Policy for Disaster Management, 2009, and the National HIV and Aids Policy, 2009. The pattern was similar for the legal frameworks with only 4 out of 24 legal being considered as not integrated in the mining sector governance frameworks, namely the HIV and AIDS Prevention and Control Act No. 14 of 2006 and the Radiation Protection Act Cap 243, Revision 2012 (1985), the National Cohesion and Integration Act 2011 (Amendment 2012), and the County Governments Disaster Management Bill, 2014.

The findings of the PPP analysis showed that the governance framework for the mining sector has not adequately integrated the Radiation Protection (Standards) Regulations, 1986 (Legal Notice 54/1986) and the Radiation Protection (Safety) Regulations, 2010. This omission might present a risk in radiation-related mining activities such as the on-going titanium mining in the Central and South Dunes of the Magarini Sands in Kwale County, with a population of over 3000 people. The same problem may affect the proposed niobium mining in Mrima Hill in the same county. The governance framework for the mining sector has adequately integrated most environmental obligations. However, the National Climate Change Response Strategy (NCCRS, 2010) including the National Climate Change Action Plan 2013-2017 which is a key national strategy is poorly integrated. The problem is further compounded by a lack of integration of two MEAs, namely the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification (UNCCD).

The PPP analysis identified the following potential negative environmental impacts due to the un-integrated environmental obligations in the mining sector governance framework:-

- a) Unsustainable mining and overconsumption of resources - water and energy
- b) Environmental degradation and pollution
- c) Mining disasters - Explosions, fires, shaft collapses and cave-ins, mine suffocation, mine flooding and so on
- d) Risk of climate change disasters such as floods, landslides and disease epidemics
- e) Deforestation by mining activities
- f) Loss and degradation of critical ecosystems and loss of species
- g) Wetland loss and degradation
- h) Introduction of alien invasive species
- i) Contamination of streams, rivers, lakes, wetlands and groundwater resources
- j) Deterioration of water quality
- k) Risk of mining related conflicts
- l) Public safety and health problems
- m) Risk of radiation exposure
- n) Increased spread of HIV/AIDS
- o) Weak CSR implementation
- p) Weak mitigation and adaptation for climate change in mining areas

5.1.2: Human Rights

The PPP analysis on the integration of obligations in 12 human right frameworks in the mining sector identified the following potential risks of human rights violation due to the un-integrated obligations in the governance framework:-

- a) Consumer rights
- b) Right to fair administrative action
- c) Right to access of public information

- d) Right to security and peace
- e) Right to proper physical and mental health
- f) Child labour

5.2: Mining EIAs

The quality of mining project EIAs in Kenya was evaluated according to the guidelines in the quality guidebook for evaluating mining project EIAs by the Environmental Law Alliance Worldwide (Environmental Law Alliance Worldwide 2010). The findings showed that the 2006-2016 reports were excellent with regard to baseline environmental assessment and prediction of potential physical impacts. The evaluation of the EIA process in mining projects was considered to be satisfactory with regard to the consideration of key EIA stages, prediction of potential social impacts, consideration of potential across all mining stages, consideration of alternative options, impact mitigation, and formulation of environmental management and monitoring plans (EMPs). However, the findings showed that the quality of reports was poor in terms of consideration of all the entire mining cycle, environmental regulatory frameworks, consideration of potential biological impacts, and human rights, and documentation on the EIA consultation meetings. The quality of the reports was considered as very poor in terms of the overall quality of stakeholder engagement and consultations, considerations for mining related climate change and cost benefit analysis (CBA). The evaluation identified the following challenges with regard to the manner in which NEMA reviewed mining project EIA reports and subsequent EMP compliance monitoring:-

- a) Poor working conditions in the EIA section
- b) Inadequate capacity and technical expertise for administrative review of EIA reports, and subsequent compliance monitoring follow-ups
- c) Lack of response for relevant lead agencies on the administrative review of EIA reports
- d) Political interest and interference in some mining projects
- e) Breach of license conditions

Summarizing, the review of mining projects EIAs in Kenya established that only a mere 7% (3 out of the 50 sampled) of the approved mining projects in the 2006-2016 period had undertaken third party follow-up environmental audits.

5.3: Institutional Capacity Analysis

A wide range of institutions are involved in the interface between, mining activities, environment and human rights. An evaluation of the capacity status at the National Environment Management Authority (NEMA), the Directorate of Occupational Safety and Health Services (DOSHS) and the Kenya National Commission on Human Rights (KNCHR) showed that appropriate efforts have been made to ensure harmony in the interface. The institutional capacity analysis showed adequate systemic capacity especially in terms of; a) grievance resolution for mining EIAs and issuance of an EIA licenses, However, there is a cross-cutting challenge in terms of institutional and personnel capacity especially in terms of; a) inadequate financial resources and essential instruments like vehicles and ICT, b) inadequate staff for timely inspection of mining project sites including the compliance monitoring of recommended EMP in mining EIAs.

5.4: Stakeholder Consultations

The synthesis of findings from the stakeholder consultations showed that the emerging issues were either identical or different to the findings in the PPP analysis. The identical governance issues included:- a) risk of deforestation by mining activities, b) likely loss and degradation of critical ecosystems and loss of species by mining activities, c) likely contamination of streams, rivers, lakes, wetlands and groundwater resources, d) risk of mining related conflicts, e) risk of public safety and health problems, f) risk of radiation exposure, g) likely spread of HIV/AIDS, h) weak integration of CSR obligations.

The governance gap issues raised by the stakeholders and not identified in the PPP analysis were:- a) widespread control of the mining sector by local and international cartels, b) inadequate capacity for mining governance agencies, c) lack of proper coordination for agencies involved in mining sector governance, d) lack of a national framework for compensation and resettlement of displaced communities, d) inadequate participation of county governments in the mining sector governance, e) ineffective mining liaison

committees, f) illegal artisanal mining, g) non-decommissioning of mines, and h) lack of proper mine inspection mechanisms. The difference could be attributed to a number of reasons, such as weak administrative capacity in terms of policy implementation and enforcement of laws, regulations and guidelines. The difference may also be attributed to the fact almost all the governance instruments in the mining sector as evaluated in the policy SEA are all new with the policy and legal framework having been formulated in 2016 while the mining regulations are in draft form except for the Mining (Local Equity) Regulations, 2012. That means that the impact of the restructured governance framework in the mining sector is yet to be felt and most of the stakeholder views were largely based on the previous frameworks including the Mining Act 1940 which originated from the colonial administration.

6. Conclusion and Recommendations

6.1: Conclusion

The governance framework for the mining sector is well configured in terms of environmental sustainability and human rights. However, the PPP analysis in the policy SEA identified the potential negative impacts (refer 5.1.1 in page 9), which are likely to emerge based on the current configuration of the governance framework.

The PPP analysis showed that the integration of the obligations in 12 human right frameworks including the Constitution of Kenya especially Chapter 4 on the Bill of Rights, the Universal Declaration of Human Rights, ILO Declaration on Fundamental Principles and Rights at Work and African Charter of Human Rights is weak with regard to the protection of a number of human rights such as right to fair administrative action, right of equal access to public service, right to access of public information, right to public health and safety and the right of no child abuse including child labour. From analysis of the mining governance, and human rights governance frameworks, it shows a high-level of integration on gender mainstreaming, and measures to eliminate discrimination against women, including in the work place. However, during public consultations, participating women reported that there was discrimination in offering women jobs in mining, on account of traditional gender roles and cultural barriers; and women lacked adequate representation or voice in the mining sector that would enhance opportunities and equality.

The review of the mining governance framework, the human rights governance framework, and the environmental governments framework demonstrate a fairly complex governance context – although not well integrated to ensure that mining activities are sufficiently supported environmental and human rights frameworks, in order to ensure or enhance sustainability. One disconnect arises from stakeholder consultations, where the mining communities do not demonstrate much knowledge or understanding of the current legal, institutional and policy architecture.

6.2: Recommendations

6.2.1: Strengthening of the Mining Sector Governance Framework

The following recommendations are made in order to strengthen the mining sector governance framework to deal with potential negative environmental and human right impacts:-

- a) Review of draft mining regulations (16 areas)
- b) Developing additional mining regulations (3 No.)
- c) Developing mining guidelines (4 No.)

6.2.1.1: Review of draft mining regulations

A review of some of the draft regulations should be undertaken in order to strengthen the governance framework by integrating the missing environment and human right obligations as shown below.

Environment and human right - obligation integration gap	Recommended governance intervention
1. Environmental pollution and degradation in mining areas	Review: <ol style="list-style-type: none"> Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 Draft Mining (Community Development Agreements) Regulations Mining (Licensing and Permitting) Regulations 2016 To introduce requirements for a Waste Management Plan (WMP) and Environmental Rehabilitation Plan (ERP)
2. Contamination of streams, rivers, lakes, wetlands and groundwater resources	Review: <ol style="list-style-type: none"> Draft Regulation on Guidelines for Work Programmes and Exploration Reports, Draft Regulations on Community Development Agreements, 2017 Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
3. Deterioration of water quality	Review the Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 to introduce a requirement for a water quality monitoring strategy and annual reporting in partnership with the local WRUAs
4. Mining disasters such as explosions, fires, shaft collapse, and cave-ins, suffocation, mine flooding, ETP accidents etc.	Review the Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 to introduce a requirement for Mining Disaster Prevention, Surveillance and Emergency Response Plan
5. Loss and degradation of critical ecosystems and loss of species by mining activities	Review: <ol style="list-style-type: none"> Draft Mining Guidelines for Work Programmes and Exploration Reports,2017 Draft Regulations on Community Development Agreements, 2017 Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
6. Deforestation by mining sector	Review: <ol style="list-style-type: none"> Draft Guidelines for Work Programmes and Exploration Reports, 2017 and Draft Regulations on Community Development Agreements, 2017 Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for Environmental Rehabilitation and Restoration Plan (ERP)
7. Wetland loss and degradation	Review the: <ol style="list-style-type: none"> Draft Guidelines for Work Programmes and Exploration Reports, 2017 Draft Regulations on Community Development Agreements, 2017 Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
8. Climate change disasters e.g. floods, drought, landslides and disease epidemics	Review the:- <ol style="list-style-type: none"> Draft Guidelines for Work Programmes and Exploration Reports, 2017 Draft Regulations on Community Development Agreements, 2017 To ensure adequate integration of climate change mitigation and adaptation in mining project EIA reports for NEMA approval at EIA ToR and in the review of mining project EIA reports
9. Risk of mining related conflicts	Review the:- <ol style="list-style-type: none"> Draft Guidelines for Work Programmes and Exploration Reports, 2017 and

	<ul style="list-style-type: none"> b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 <p>To introduce a requirement for a Grievance Redress Mechanism (GRM)</p>
10. Inadequate CSR interventions – e.g. transport, water, sanitation, and housing	<p>Review the:-</p> <ul style="list-style-type: none"> a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 b) Draft Regulations on Community Development Agreements, 2017, c) Mining (Employment and Training) Regulations, 2017. d) Mining (Licensing and Permitting) Regulations 2016 <p>To introduce a requirement for a CSR policy, implementation plan and annual reports</p>
11. Inadequate consideration of consumer rights	<p>Review the:</p> <ul style="list-style-type: none"> a) Draft Regulations on the Reporting of Mineral Related Activities b) Draft Regulations on Community Development Agreements c) Mining (Licensing and Permitting) Regulations 2016 <p>To adequately consider a) the Bill of Rights in the Constitution of Kenya, and b) the African Charter of Human and People’s Rights</p>
12. Inadequate consideration of the right to administrative action	
13. Inadequate consideration of the right to information, access	
14. Inadequate consideration of the right to security and peace	
15. Inadequate consideration of the right of equal access to public service	
16. Inadequate consideration of the right to proper physical and mental health	

6.2.1.2: Developing additional mining regulations

The following additional mining regulations should be developed in order to strengthen the governance framework by integrating the missing environment and human right obligations.

Environment and human right - HR obligation integration gap	Recommended governance intervention
1. Environmental pollution and degradation in mining areas	Environmental Rehabilitation and Restoration Regulations for Decommissioned Mines - in collaboration with NEMA
2. Public safety and health problems	Occupational Safety and Health Regulations and Guidelines
3. Risk of radiation exposure	Mining Radiation Safety Regulations and Guidelines – in collaboration with the Radiation Protection Board (RPB)

6.2.1.3: Developing additional mining guidelines

The following additional mining guidelines should be developed in order to strengthen the governance framework by integrating the missing environment and human right obligations.

Environment and human right - obligation integration gap	Recommended governance intervention
1. Unsustainable mining and over-consumption of resources	Guidelines on Efficient Water Use, Recycling and Rainwater Harvesting in Mining Areas
	Guidelines for Energy conservation in Mining areas
2. Introduction of alien invasive species in mining areas	Guidelines for Prevention of Alien Invasive Species in Mining Areas
3. Increased spread of HIV/AIDS	Guidelines for prevention of HIV/AIDS transmission in mining areas – in collaboration with NACC

6.2.2: Institutional capacity recommendations

Given the important oversight role played by these institutions in the mining sector especially in regards to protection of the environment and human rights, it is important to enhance their governance capacity and make them more effective in their mandates. This needs to be done by; i) allocating adequate financial resources and essential facilities like vehicles and ICT, ii) training and exposure of DOSHS technical staff on OSH issues associated with the mining sector, iii) employing adequate skilled staff and create suitable incentives for retaiance purposes, and, iv) strengthening NEMA's emergency response unit.

Since the contribution of the mining sector to the national economy is expected to increase, and with it the risk of negative environmental and social impacts, it is important to establish a permanent (possibly anchored in law) mining sector performance review board that comprises institutions established by the Mining Act, National Treasury, Mining responsible for economic planning, NEMA, and the Council of Governors. This will provide a forum to review sustainability trends in the mining sector: revenues, taxation, compliance with EMPs, benefits arising from various legal provisions and regulations: eg. Local procurement, training, employment, Community development agreements; and the taking of remedial action.

The following recommendations are made to enhance the participating of county governments and enhancing the coordination for agencies involved in mining sector governance:

- a) Provide a clear role for county governments in the negotiation of community development agreements to ensure there is no duplication with county plans for development, and to enhance contribution of the county in the socio-economic and environmental development of the community. The agreements are intended to avoid the Dutch disease for over-reliance on mining revenues, which is part of the economic planning responsibility of a county government.
- b) The participation of counties can further be enhanced by providing a role, through regulations, for county governments to play a role in monitoring compliance with mining sector EMPs for both artisanal and large scale mining activities, especially because these impact other county functions, such as water resources management, water quality, agriculture, and human rights.
- c) Increase the oversight role of independent constitutional commissions, on human rights and administrative justice (Ombudsman) in order highlight the dissonance between mining sector agencies (across mining, environmental and human rights governance frameworks).

6.2.3: Stakeholder recommendations

Most of the stakeholder recommendations were in agreement with those from the PPP analysis. However, the following unique recommendations were advanced by the stakeholders on various mining issues in the country.

a) Management of mineral resources

- Develop guidelines for valuation of with minerals.
- Re-classify mineral in schedule of the Mining Act 2016 into those to be administered by the national and county governments and gazette the classifications.
- Specify the functions of county governments in managing minerals under their administration
- Develop regulations to create mining institutional structures at county level.
- Support the County Environmental Committees (CECs) to incorporate a cross-sectoral integration sub-committee including mining sector.
- Establish county leadership forum to develop a common approach for governance in mining sector.

b) Environmental pollution and degradation

- Strengthen the capacity of government lead agencies to undertake more effective mining inspections.
- Develop additional regulations and guidelines for the governance of artisanal mining.

c) Social Environment

- Develop Occupational Safety and Health Regulations and guidelines for the mining sector.
- Develop guidelines on the formation and operationalization of the Liaison Committees and incorporate host communities in those committees.
- Empower local communities to effectively participate in the mining sector.
- Establish and gazette compensation and resettlement regulations at the local level as provided under Article 153(8) of the Mining Act 2016.
- Strengthen the capacities of mining governance implementing agencies.

d) Human Rights

- Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the Bill of Rights in the Constitution of Kenya
- Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the African Charter of Human and People's Rights

6.2.4: Mining EIAs

The following are recommended with regard to the implementation of mining project EIAs:-

EIA component	Recommendation
Approval of ToRs for mining project EIAs	The NEMA should tighten the rules considered in the approval of ToRs for mining project EIAs to ensure the following:- <ol style="list-style-type: none">a) The inclusion of a mining engineer or geologist in the EIA team,b) Comprehensive consideration of all the phases of mining projects,c) Adequacy of the environmental regulatory framework for the EIAs,d) Adequate consideration of potential biological impacts,e) Adequate consideration of human right issues and related climate changef) Convincing stakeholder engagement plans especially with regard to the number and locations for consultation meetings,g) Adequate strategies for cost benefit analysis
Review of EIA reports	The NEMA should consider the following <ol style="list-style-type: none">a) Improving the working conditions in the EIA section at the NEMA headquarters,b) Finding ways of involving the EIK to strengthen the quality of independent peer review of EIA reports,c) Involvement of at least one non-state environmental agency from project area, andd) Direct involvement of a few members of the public in the review of EIA reports through the local administration especially the local Chiefs.

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1. INTRODUCTION AND BACKGROUND

1.1: The Mining Sector in Kenya – Baseline situation and future scenarios

The Government of Kenya has recognized the mining sector as a key player for achieving Vision 2030, and has recently included oil, gas, and other minerals as the seventh priority sector with a high potential of spurring economic growth (GoK, 2015a). In the past, both soda ash or trona and fluorspar contribute significantly to the gross domestic product (GDP). Commercial trona (hydrated sodium bicarbonate carbonate) mining in Kenya has been undertaken for over 100 years since 1911 in Lake Magadi within the south rift region of Kenya. Lake Magadi is among the few places in the world where trona forms naturally, and it has one of the purest surface deposits of trona, which is one of the few renewable mineral resources in the world. In 2005, trona production in the lake was estimated to be more than one million tonnes (GoK, 2015). The mineral is used in the manufacturing of glass, chemicals, paper, detergents, and textiles. Mining of trona is an important part of the socio-economic fabric of the Lake Magadi region and source of employment for 450 people (GoK, 2005d; GoK, 2015a). Commercial fluorspar mining in Kerio Valley within the north rift was initiated in 1971, with a total of approximately 360,000 tonnes of ore being mined each year until the year 2016. Fluorspar production was estimated at 117,420 metric tonnes in 2012 compared to 110,000 metric tonnes in 2011. Fluorspar is used directly or indirectly to manufacture products such as aluminum, gasoline, insulating foams, refrigerants, steel, and uranium fuel. In 2012, Kenya contributed substantially to the world's natural soda ash and fluorspar production at about 2% and 5% respectively (Kostick, 2013; Miller, 2013). Kenya is endowed with other types of minerals besides soda ash and fluorspar such as gold, limestone, gemstone, titanium, niobium, and coal among others.

Gold is mainly extracted by artisan workers in western Kenya, and has been mined for many decades (GoK, 2015a; NCI, 2015). However, modern commercial gold extraction is yet to be undertaken so that it can make a significant contribution to the nation's GDP like other natural resources. Recently, Kenya has become an important source of coloured gemstones. In 2014, it was reported that Kenya had joined the league of mineral exporters with the first shipment of 25,000 tonnes of ilmenite to China, from Kwale Mineral Sands Project, owned by Base Titanium, the Kenyan subsidiary of the Australian Company Base Resources. It is estimated that 250,000 tonnes of Titanium ores will be exported annually from Kwale while a further 3.2 billion tonnes of the same mineral deposits are said to exist in the north coast. Overall, the country earned more than \$232 million from the mining sector in 2015 which was an increase from \$203m in 2014. However, most of the country's mineral resources remain unexploited and the mining sector is still greatly underdeveloped (GoK, 2015a). The contribution of the mining sector to the GDP is still low at less than 1% (GoK, 2015a; NCI, 2015). In 2012, the sector had employed approximately 8,400 people translating to less than 1% of Kenya's total labour force. With further exploration and development, it is estimated that Kenya could soon have the capacity to position itself as a regional mining sector hub for Eastern Africa. However, although the government has recognized the key role the mining sector plays in driving the national economy, policy issues have greatly undermined its development especially with regard to the integration of environmental protection and human rights (Mutua, 2014; NCI, 2015).

In this context, it is therefore important for Kenya to take policy and legal measures to enhance the socio-economic contribution of the mining sector to Kenya, while at the same time enhancing the levels of environmental protection, in order to support the country's pursuit of sustainable development. Indeed, in terms of Article 10 of the Constitution, it is a mandatory requirement to take into account sustainable development as a consideration when making or implementing any laws and policies, as well as when making public policy decisions. Kenya is a part of the global compact on the 2030 Agenda for Sustainable Development and the Sustainable Development Goals¹ agreed upon in 2015, with an object to fulfil them by the year 2030. This year, 2030, is the same target period for Kenya Vision 2030,² the current national development strategy. In the Second Medium Term to Vision 2030 (MTP 2) for the 2013-2017 period, a key target for Kenya was the development of a National Mining policy, Legal, Regulatory and Institutional Framework in order to support growth in the mining industry through for investment and maximization of

1 A/RES/70/1. Transforming our world: the 2030 Agenda for Sustainable Development. Resolution adopted by the General Assembly on 25 September 2015

2 Kenya, Sessional Paper No. 10 of 2012 on Vision 2030

benefits from exploitation of Kenya's natural resources.³ In line with the MTP 2 goals, Kenya now has in place the 2016 Mining Act, and the Minerals and Mining Policy that are the subject of this Strategic Environmental Assessment (SEA). As they form part of the Vision 2030 goals, and mining activities bear significant socio-economic and environmental impacts (both positive and negative) it is important to undertake a rapid assessment of how the Sustainable Development Goals interact with the mining legal and policy framework in Kenya as part of this SEA, in order to provide recommendations for corrective actions that will further enhance Kenya's ability to integrate sustainable development into the mining sector, as required by article 10 of the Constitution.

1.1.1: Mineral Occurrence and Mining Potential in Kenya

Kenya has a complex and diverse geology as shown in **Figure 1-1**. The country is usually classified into five major geological blocks with varying potential for mining development, namely i) Mozambique belt and Bukoban zone, ii) Sedimentary Palaeozoic/Mesozoic zone, iii) Tertiary/Quaternary volcanics, iv) Archean/Nyanzian and Kavirondian belt, and v) Sedimentary /Quaternary zone. The five geological belts are endowed with a variety of proven and undiscovered minerals which include; gold, gemstones (mainly ruby and several varieties of garnets), gypsum, silver, lead, manganese, zinc, copper, nickel, titanium and rare earth elements such as niobium (UNDP, 2014; GoK, 2015a).

The geological environment in Kenya for mineralization can be summarized into the following key landscapes:-

- a) Proterozoic Mozambique belt and Bukoban zone is most extensive in Central Kenya, and is associated with minerals such as; kyanite, orundum, graphite, wollastonite, marble, asbestos, fluorspar, magnesite, kaolin, and a variety of gemstones all of which are associated with basic and granitic rocks.
- b) Sedimentary Palaeozoic/Mesozoic zone is common in the south-eastern regions of Kenya which is a sources and hosts of limestone, gypsum, clays, manganese and possibly hydrocarbons. Base metal mineralization, lead-zinc-barite and copper are also known to occur in the sedimentary basin along the coastal belt. Heavy mineral sands also occur along the coastal beach sands, and recent deposits of about 3.2 billion tonnes of titanium have recently been discovered in Kwale County. Explorations around the Mrima Hill in Kwale County have also confirmed a total of 105 MT inferred mineral resource in the area at an average grade of 0.65% Niobium pentoxide (Nb_2O_5) including 12 MT of High Grade (HG) niobium at 1.21% Nb_2O_5 . This ore has been found to contain large deposits of rutile, ilmenite and zircon that contain titanium. The estimated area underlain by HG Niobium Ore at a cut-off grade of 0.9% Nitrogen (N_2) is estimated at 61ha, and up to 12.6MT of weathered ore with an estimated Life of Mine (LOM) of about twenty (20) years (Habitat Planners, 2013).
- c) Tertiary/Quaternary volcanic are associated with Rift Valley system which are known to have a variety of minerals such as trona (soda ash), diatomite, natural carbon dioxide, kunkar, gypsum and gemstones including quality rubies.
- d) Archean/Nyanzian and Kavirondian belt of Western Kenya around Lake Victoria is associated with a wide range of precious metals including gold, copper and silver. The zone is also associated with a potential for ferrous and non-ferrous metals and carbonatites.
- e) Sedimentary/Quaternary zone is widely distributed in the country with extensive deposits in the eastern region (east of the Rift Valley) with limited exposures to the northwest. Base metal mineralization, lead-zinc-barite and copper are known to occur in the sedimentary basin.

Overall, Kenya is endowed with over 129 different types of minerals. The mineral resources can be categorized into three main groups, namely; metallic minerals, non-metallic minerals and energy minerals. Each category is associated with various uses as highlighted in **Table 1-1**. **Figure 1- 2** shows the three mineral categories and their main uses. The mineral resources can be classified further into seven utility categories that include; i) 53 types of construction and industrial minerals, ii) 5 types of precious stones, iii) 8 types of precious metals, iv) 22 types of semi-precious stones, v) 35 types of base and rare metals, vi) 3 types

³ Kenya, Vision 2030 Second Medium Term Plan (2013-2017): Transforming Kenya: Pathway to Devolution, Socio-Economic Development, Equity and National Unity (Ministry of Devolution and Planning, 2013), at 11 and 69.

of gaseous minerals and, vii) 3 types of fuel minerals (UNDP, 2014). The occurrence and distribution of these minerals is widespread across the entire country as shown in **Figure 1-3, 1-4 & 1-5**.

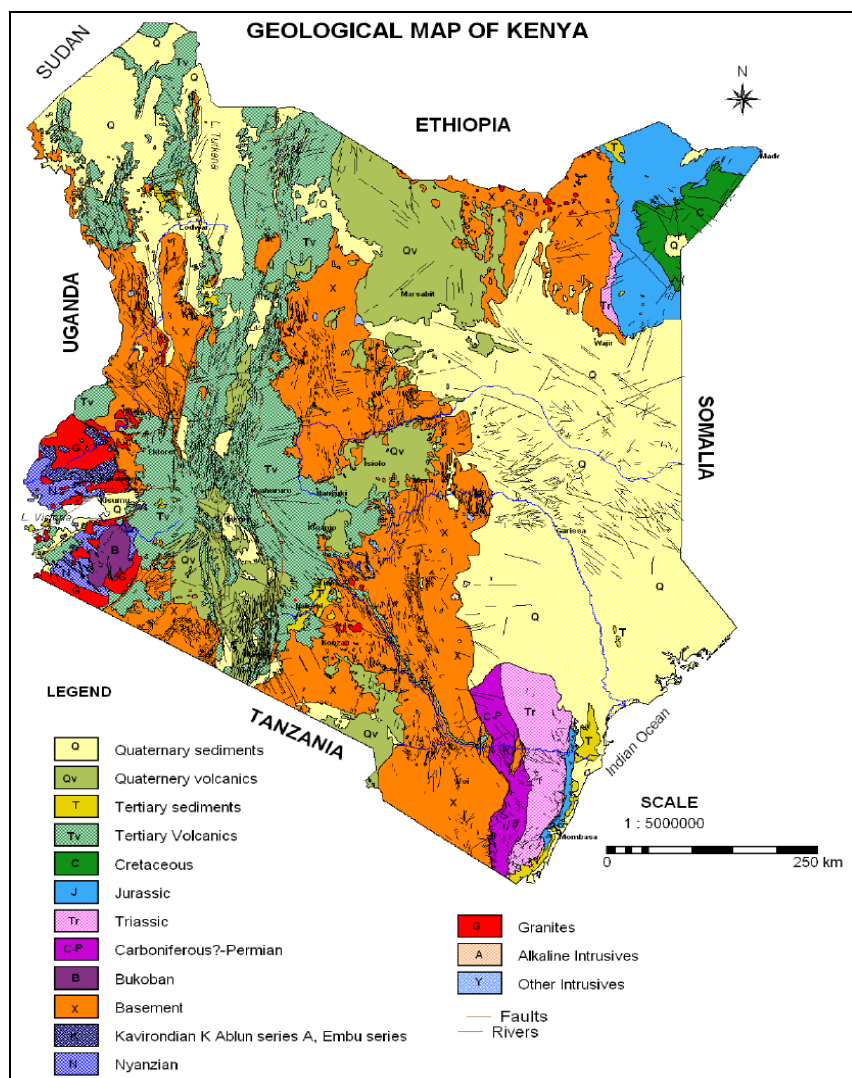


Figure 1- 1: Geological map of Kenya (Source: Republic of Kenya, 2015)

Table 1- 1: Mineral categories and their characteristics

Mineral category	Sub-category	Characteristics and uses
Metallic minerals	Ferrous metals	Minerals classified under this category include; iron ore, niobium, tantalum and titanium. They are used in the aerospace industry, construction, electronic engineering, manufacturing as well as steel manufacturing
	Precious metals	These include; gold, silver and platinum which are used for the manufacture of jewelry, minting currency as well as for industrial purposes
	Base metals	These include; bauxite, aluminum, cobalt copper, lead, magnesium, molybdenum, nickel and zinc which are mainly used in construction, electrical and electronic engineering as well as in a wide range of manufacturing operations
Non-Metallic minerals	Construction materials	Minerals under this category comprise of; bricks, building stones, cement, clay, crushed rock, aggregate, gypsum, sand, gravel and slate

	Industrial minerals	These comprise of; bentonite, industrial carbonates, kaolin, magnesia, potash, salt, sand, silica and sulphur. They are mainly used for the making of ceramics, chemicals, foundry casting, fillers, pigments, fuel, gas, iron, steel, and metallurgy
	Precious stones	These include diamonds and gems which are mostly used for the manufacture of jewelry and for industrial purposes. Precious metals also include the rare earth metals which comprises chemical elements found in the earth's crust that are vital to many modern technologies including; consumer electronics, computers and networks, communications, clean energy, advanced transportation, health care, environmental mitigation and defense equipment
Energy minerals		These minerals include coal, oil and gas and are generally used to produce electricity, organic chemicals, plastics, for process fuel, as well as for transportation. While they have other uses, they are predominantly used in the energy sector and the other uses are mainly as derivatives from their main use.

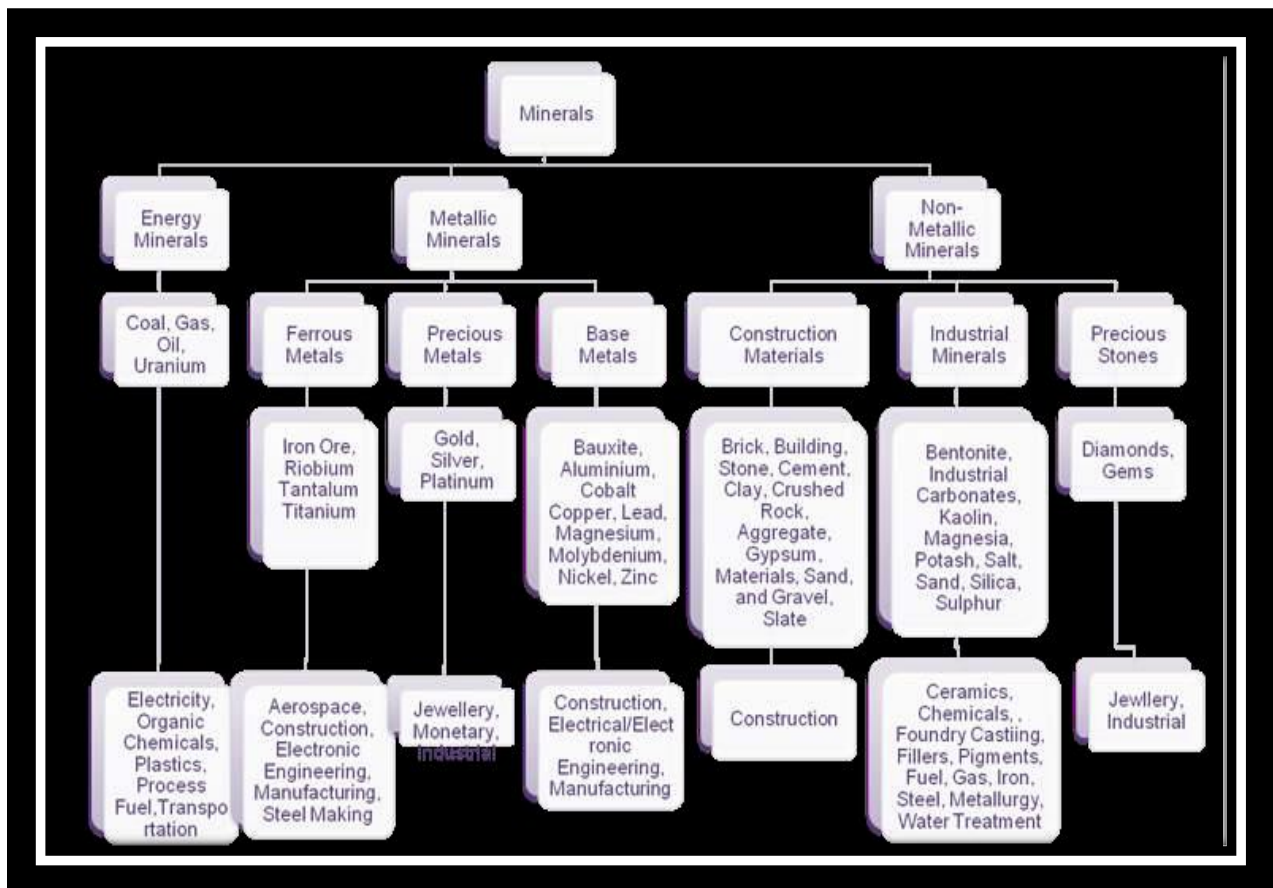


Figure 1- 2: Mineral categories and their key uses (Source: UNCTAD, 2007)

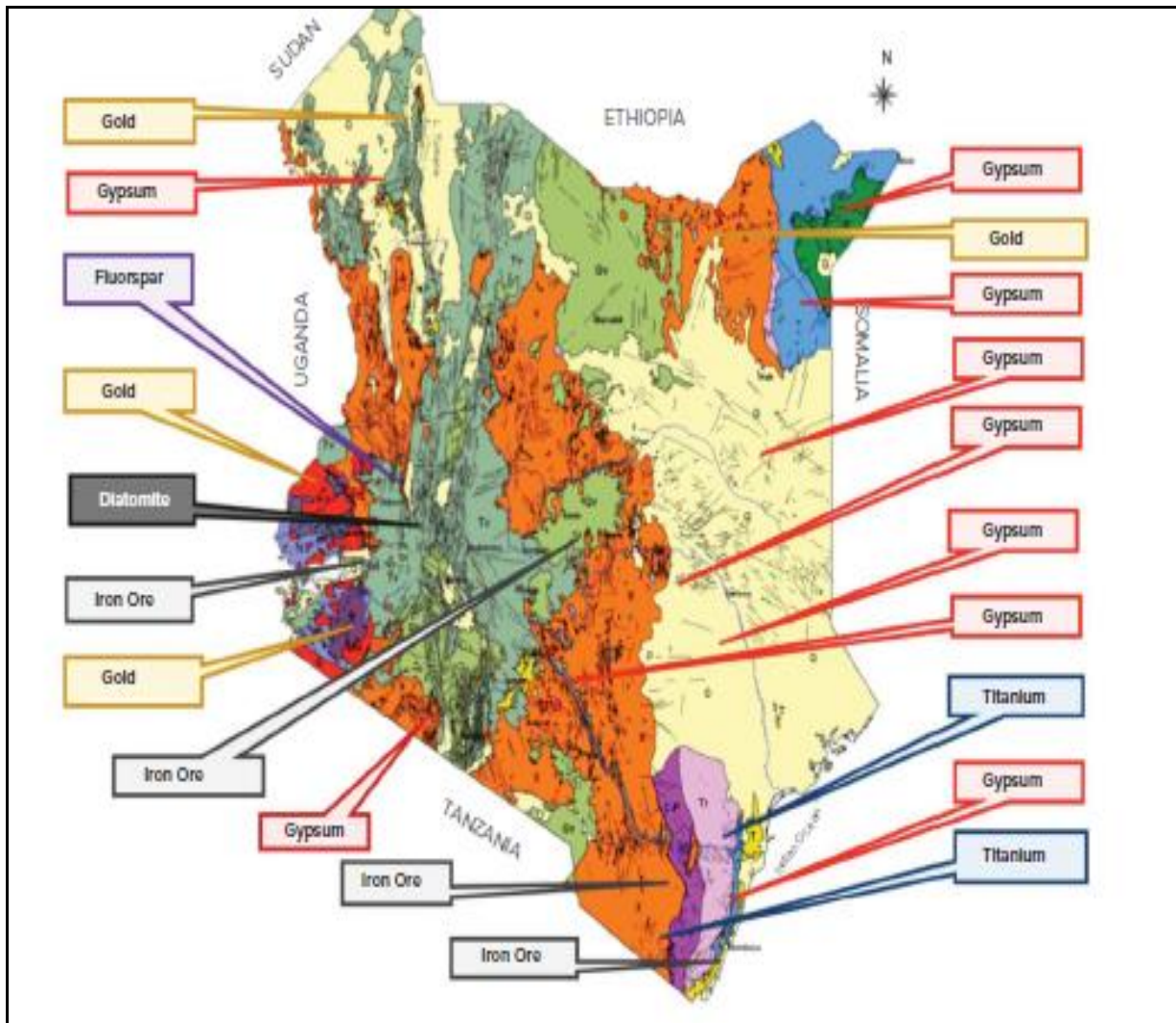


Figure 1- 3: Mineral occurrences in Kenya-1 (Source: Ministry of Mining, 2015)

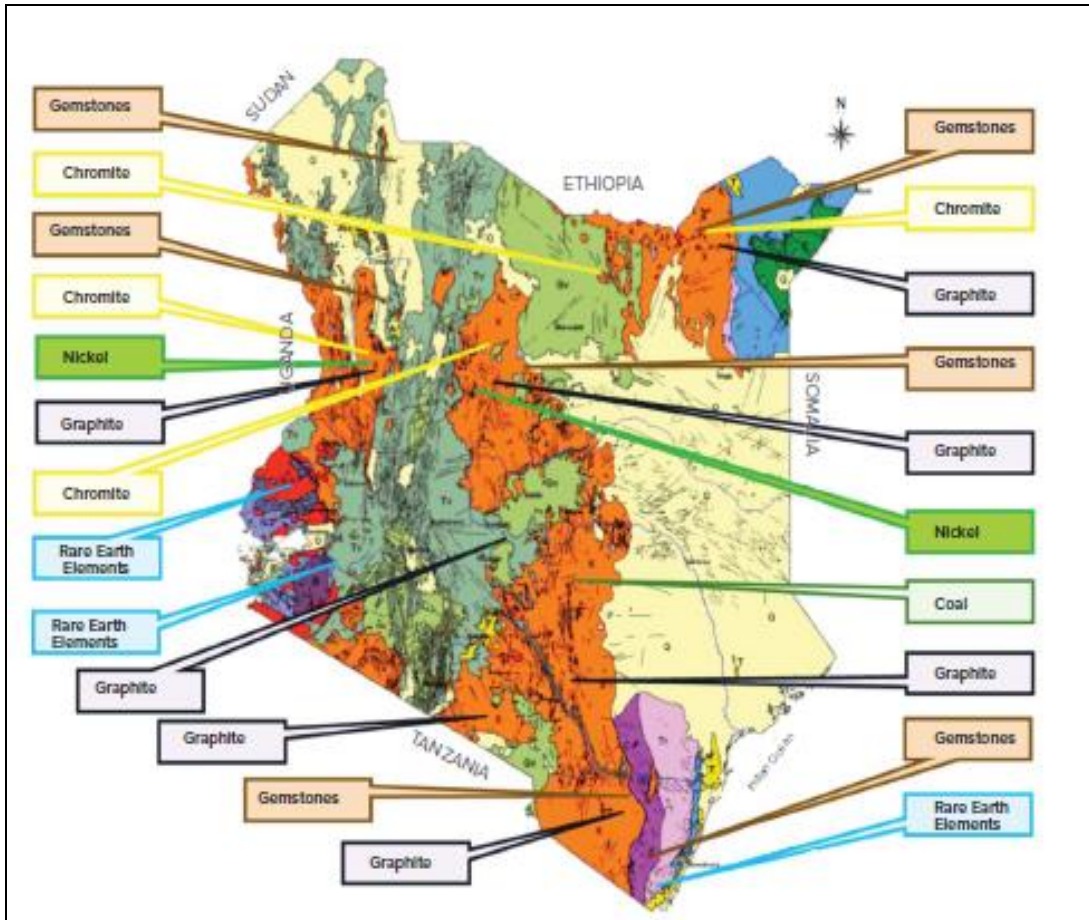


Figure 1- 4: Mineral occurrence in Kenya-2 (Source: Ministry of Mining, 2015)

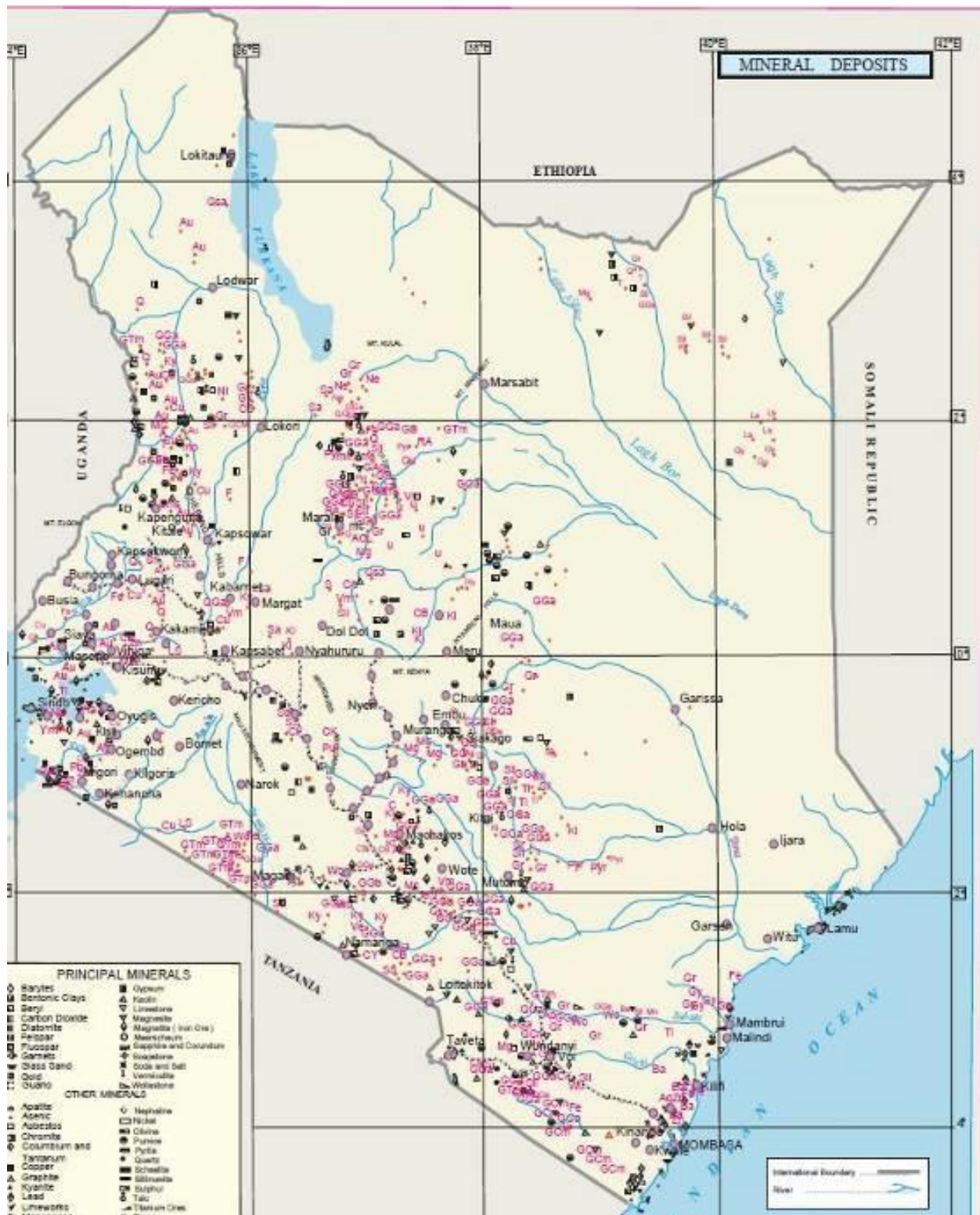


Figure 1- 5: Overall distribution of mineral deposits in Kenya (National Spatial Plan 2015-2045)

The distribution of the 129 different types of minerals in Kenya indicates that 28 of the 47 counties in the country are endowed with different types of minerals (GoK, 2015a) as shown in **Table 1-2**. The distribution shows that gemstones are the most prevalent and are found in 14 or 50% of the 28 counties, followed by gold which is found in 10 counties (36%) of the 28 counties while gypsum is the third most common, with

an occurrence in 7 or 25% of the 28 counties. Iron ore, which is a highly valued mineral worldwide due to its use in manufacturing iron and steel has also been documented in 8 areas including; Kakamega in the western zone of the country, Taita Taveta County, Ikutha area in Kitui County and Mrima Hills in Kwale County (GoK, 2005d) as shown in **Table 1-3**.

Table 1- 2: Mineral types in Kenya by county

County	Minerals
1. Kwale	Gemstones, heavy mineral sands (Titanium minerals), Silica sand, Rare Earth Elements, Niobium
2. Kilifi	Titanium Minerals, Manganese, Barytes, Gypsum and Gemstones
3. Taita Taveta	Iron ore, Gemstones, Manganese and Granites
4. Tana River	Gypsum
5. Makueni	Vermiculite, Gemstones
6. Kitui	Coal, Iron ore, Copper, Gemstones, Limestone, Magnetite, alumina clay and marble
7. Machakos	Gypsum and Pozzolana
8. Kiambu	Carbon dioxide and Diatomite
9. Tharaka Nithi	Iron ore, Gemstones, copper
10. Isiolo	Gemstones
11. Garissa	Gypsum
12. Mandera	Gypsum
13. Isiolo	Gemstones
14. Marsabit	Gold, Manganese, Chromite, Gemstones
15. Elgeyo Marakwet	Fluorspar
16. Baringo	Gemstones (Baringo Ruby), Diatomite
17. Nakuru	Diatomite
18. Kajiado	Soda ash, Feldspar, Limestone, Gypsum, Gemstones, Marble and Granite (dimension stones)
19. Uasin Gishu	Carbon dioxide gas
20. Turkana	Gypsum, Oil, Gold, Gemstones
21. West Pokot	Gold, Gemstones, Chromite
22. Samburu	Gold, Manganese, Chromite, Gemstone and vermiculite
23. Narok (Transmara)	Gold
24. Nandi (Kibigoni)	Gold
25. Kakamega	Gold, Dimension stone
26. Siaya	Gold, Iron ore
27. Migori	Gold, Copper
28. Homa bay	Iron ore and Gold

(Source: GoK, 2015a)

Table 1- 3: Distribution of iron ore deposits in Kenya

Ore deposit	Location	Ore type	Quantity	Quality
1. Marimante Iron Ore Deposit	Approximately 174 km NE of Nairobi in Meru County (38° 57' E 0 10' S)	Titaniferous magnetite (Ilmenite)	Area extend float material over 200ft traced for strike distance 0.5 miles	Grab sample assay yield 40-50% iron and 5-15% TiO ₂
2. Mraru Ridge Iron Deposit Mraru Ridge	Taita Taveta County 1.8 km SSW of Ndile Shopping Center (3° 21' S and 38° 28'E)	Magnetite	Not known	Fe ₂ O ₃ 66.98% and 8.7% TiO ₂
3. Wanjala Magnetite Ore Deposit	Taita Taveta County (38°10'E and 3°15'S)	Magnetite	Main occurrence 750m long by 3m thick on average Float lateral estimate 50m and thickness 0.3-1.5 m	59-63% iron
4. Ikutha Iron Ore Deposit	7km south of Ikutha Shopping Center, Kitui County (approximately 38°11' E and 2° 8'S)	Magnetite veins	Ore reserve estimate 80,000 tonnes of 66% Fe ₂ O ₃ magnetite concentrate and 31,000 tonnes of 35 % P ₂ O ₅ apatite	58.7% Fe ₂ O ₃ and 7.6% P ₂ O ₅
5. Bukura Iron Ore Deposit	15km southwest of Kakamega Town (Kakamega County)	Pyrite veins	This lode is estimated to contain 17 million tonnes of ore down to a depth of 90 metres and it is likely the reserves may exceed this figure since lateral extensions are known to exist	Not done
6. Ndere Island	In Kisumu the whole of the Ndere Island in the Winam Gulf	Banded limonite ironstones	Many of the ironstone bands are 5 metres thick, but some, less persistent range from 15 to 60 metres in thickness	Not done
7. At Mrima Hill South of Mombasa	Kwale County	Goethite (limonite) and magnetite	3 and 15 million tonnes of Fe ₂ O ₃	10 to over 50% Fe ₂ O ₃
8. Uyoma Peninsular, northern shores Lake Victoria	Siaya County	Titaniferous magnetite (Ilmenite) (containing 13% TiO ₂) beach sands	The tonnage present is not known but appears to be large and sufficient to warrant further investigation	Magnetite concentrations of up to 90% are known to occur

(Source: GoK, 2005d)

1.2: Mining Sector and Sustainable Development Goals (SDGs)

The policy SEA on the mining sector in Kenya was undertaken with full consideration of SDG framework developed by the UN Sustainable Development Solutions Network in July 2016,⁴. The framework enables the mapping of SDGs against the key development agenda in the mining sector. **Table 1-4** highlights the linkages between the mining sector and the SDGs. The analysis in **Table 1-4** demonstrates that although Kenya has a developed policy and legal frameworks, with prescriptions in place to support integration of the sustainable development agenda and the SDGs into the mining sector, some gaps still exist that require corrective action to be taken.

⁴ UN Sustainable Development Solutions Network (July 2016) Mapping Mining to the Sustainable Development Goals: An Atlas.

Table 1- 4: Linkages between the mining sector and the SDGs

No.	Sustainable Development Goal	Linkage with mining sector in Kenya	Policy and legal framework gaps
1	<p>Mining and Poverty Eradication</p> <p>1.1 By 2030, eradicate extreme poverty for all people everywhere,</p> <p>1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources</p> <p>1.a Ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation</p>	<ul style="list-style-type: none"> • Payment of taxes and royalties, including arms-length rule for transfer pricing • Public disclosure of royalties, and fair distribution system • Support local content, and local procurement • Support local participation in mining value chain • Dedicated legal framework, incentives and regulation for artisanal mining 	<ul style="list-style-type: none"> • Provision is not made either in the Mining Act or Draft Mining (Royalties) Regulations to provide mechanisms for actual delivery of royalties to a community, or the manner of distribution or utilization of such royalty • S.109 (i) of Mining Act (2016) obligates a mining license holder to sign a Community Development Agreement with the community where mining operations are undertaken. This is limited to large scale mining license holders only (s.4 definition of Community Development Agreement. • The 2017 Draft Mining (Community Development Regulations) have been drafted to guide implementation of s.109 of the Mining Act: <ul style="list-style-type: none"> ○ Although intended to, among others, provide a legal basis to ensure that benefits of the mining operations or activities are shared between the holder and affected community, does not provide a legal definition for the word “benefit” ○ The scope of these regulations does not extend to delivery and utilization of the community portion of royalties. • Mining Act does not provide mechanisms for disclosure of information, but at s.211(1) creates an offence: <ul style="list-style-type: none"> ○ A person who discloses confidential information otherwise than in accordance with this Act, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding six months, or to a fine of not more than five hundred thousand shillings, or both a term of imprisonment and a fine. • Confidentiality restrictions under the Mining Act should be reconciled the provisions for the limitation of the right to access information set out at section 6 of the Access to Information Act • Proactive disclosure of information is not provided for under the 2013 regulation • The Mining Act and the Draft 2016 Mining (Use of Goods and Services) Regulations do not provide for public disclosure of the returns provided by mining operators with respect to their compliance with the local content and local procurement rules • In membership to Artisanal Mining Committee, an assumption is made that there will be only one association of artisanal miners within a county • Regulations will be required to provide details on further regulation and governance of artisanal mining, including support in training, and fair trade of artisanal miners – which s.93 requires the government to provide as support • There is no provision for fiscal incentives that maybe provided to artisanal miners or associations

3	<p>Good Health and Well-being</p> <p>3.3 By 2030, end the epidemics of HIV/AIDS, tuberculosis, malaria and neglected tropical diseases, and other communicable diseases</p> <p>3.9 By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination</p>	<ul style="list-style-type: none"> • Safeguard occupational health and safety in mining operations • Addressing HIV/AIDS challenges at the work place 	<ul style="list-style-type: none"> • There is no linkage with governance framework for occupational diseases, such as tuberculosis • Direct linkage of HIV/AIDS as a challenge to mining sector can be addressed as part of the Occupational Health and Safety Regulations proposed under s.178(2) of the Mining Act
4	<p>Quality Education</p> <p>4.1 By 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education</p> <p>4.3 By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university</p> <p>4.4 By 2030, substantially increase the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship</p>	<ul style="list-style-type: none"> • Invest in quality industry relevant training to enhance citizen job opportunities • Regulate continuous in-service training for mining workers to update with risks management, business practices, etc • Completion of basic education by children to minimize risk of, or eliminate child labour 	<ul style="list-style-type: none"> • The provision does not address continuous in-service training of mining workers to update with risks management, business practices etc • S.46 of the Mining Act does not require affirmative action for gender and youth mainstreaming in preferential recruitment and training of Kenyan citizens
5	<p>Gender Equality</p>	<ul style="list-style-type: none"> • Make equal opportunities for women an immediate goal • Make artisanal mining opportunities and rules gender responsive 	<ul style="list-style-type: none"> • The Mining Act makes provisions requiring mining right holders to take steps to provide opportunities for Kenyan citizens: (s.46) - a detailed programme for the recruitment and training, and (s.47) - preference in employment to members of the community and citizens of Kenya. The provision assumes gender equality, and does not make any specific provision for affirmative action to provide certain preferences to women, in order to progressively move towards equality. • The provisions of the Mining Act relating to small scale and artisanal mining do not provide expressly for affirmative action for opportunities for women as a progressive step towards gender equality
6	<p>Clean Water and Sanitation</p>	<ul style="list-style-type: none"> • Watershed protection and management • Regulations for compliance and enforcement against use of toxic chemicals • Integrate watershed protection into Environmental Management Plans, and Audits • Industrial water recycling 	<ul style="list-style-type: none"> • No provision is made regarding industrial water recycling • Section 4 of Mining Act provides definition of Mining Support services which although not explicitly defining industrial waste water recycling as part of mine support services, includes the generic category of "any other services specifically and exclusively related to mining, which the Cabinet Secretary considers necessary for the effective and sustainable development of the mining industry," which through regulations can be extended to industrial waste water recycling • The 2016 Draft <i>Mine Support Services Regulations, 2015</i> can be modified to make provision and provide a mechanism through which industrial symbiosis can be enhanced for businesses that can carry out industrial waste water recycling, including from waste water treatment plans, which can be supplied to mining operators as recycled water for industrial use • There is need for regulations to address the restrictions and exceptions to seepage of toxic waste into streams under s.179. However it is important to reconcile s. 179 with rule 81-92 of the 2007 Water Resources Management Rules, made under the Water Act, regarding control of effluent discharge and control of pollution and the role of the Water Resources Management Authority over mining operations.

7	Affordable and clean energy	<ul style="list-style-type: none"> • Renewable energy options • Fiscal incentives for uptake of cleaner, renewable energy options • Energy audits, and investments in operations and maintenance for energy grids to minimize leakages 	<ul style="list-style-type: none"> • Mining Act 2016 does not make any provisions on access to energy, or preference for clean or renewable energy for mining operations • Definition of a facility – for purposes of undertaking of an energy audit under the Energy (Management) Regulations 2012 includes a factory, commercial buildings, and institutional buildings, local authorities but not mining operations • The designation under s.105 of Energy Act, and regulation 7 is limited to factories or buildings, and does not explicitly including mining operations
8	Decent work and economic growth	<ul style="list-style-type: none"> • Implementing impact-benefit/community agreements. • Drive local economy with direct procurement opportunities • Analyze economic limits of mining, including exposure to global economic shocks and communicate to stakeholders • Economic diversification to mitigate against external shocks 	<ul style="list-style-type: none"> • The provisions of the 2017 Draft Mining (Community Development Regulations) do not provide a legal definition of benefit. In addition, • Regulation 11(7-a) provides an obligation on the mineral right holder to provide undertakings, with respect to the social and economic contributions, that the project will make to the sustainability of the affected community. The regulations should provide details on the expected scope and parameters of such undertakings and socio-economic contributions • Regulation 11(7-b) requires the mineral right holder to provide assistance in creating self-sustaining, income-generating activities, such as, but not limited to, production of goods and services needed by the mine and the community; This clause has the impact of providing an avenue through which the local community can join the mining operations value chain. It also fits the scope and meaning of mine support services specified under the Mining Act, and the Mine support services draft regulations. The regulations should be amended to include this role for communities and by including communities in the mine support services, their role in the mining operations value chain will be more enhanced.
12	Responsible consumption and production	<ul style="list-style-type: none"> • Life-cycle approach to mining – including investment in industrial ecology options such as waste conversion re-use, e.g. recycling of waste water, re-use of mine tailings, etc. 	<ul style="list-style-type: none"> • S.180 regarding site restoration and mine-closure, and the regulations made for this purpose must be reconciled with the provisions of EMCA and the Environmental (Impact Assessment and Audit) Regulations of 2003, particularly the contents of an Environmental Management Plan on site restoration and mine-closure procedures
13	Climate Change	<ul style="list-style-type: none"> • Take measures to reduce Greenhouse Gas (GHG) emissions • Structuring business models to enhance Investments in climate resilience of mining operations and local communities • Invest in relevant research and development 	
15	Life on Land	<ul style="list-style-type: none"> • Mainstreaming biodiversity into mining policies, plans and laws • Conduct EIA's including compliance monitoring and audit 	<ul style="list-style-type: none"> • National Biodiversity Strategic Action Plans (NBSAP) are the main policy tool for guiding the mainstreaming biodiversity into sector areas such as mining. The Kenya NBSAP of 2000 is undergoing revision and should be examined to include the risks posed by mining operations to biodiversity in Kenya and actions to be taken

1.3: Current Status of the Mining Sector in Kenya

In the recent past, Kenya has seen a burst of mining investor interest due to the increased global demand for precious metals and minerals (UNDP, 2014; NCI, 2015). The country has proven deposits of titanium, gold and coal, and is estimated to hold significant deposits of copper, niobium, manganese and rare earth minerals. However, further geological exploration is required in order to get a full and clear picture of the country's mineral resources. Substantial infrastructure upgrades will be necessary to effectively exploit the proven mineral deposits. Ultimately, the increasing amount of mining revenue will help to diversify and expand the national economy and transform the country into a key mining hub in Eastern Africa (UNDP, 2014; GoK, 2015a).

One of the challenges associated with the expected growth in the mining sector is the need to ensure good sectorial governance in order to avoid the problems which other countries especially in Africa have encountered such as:- a) inequitable sharing of mineral resource benefits with a skewed favor for those in power, b) neglect of local economies where resources are located, c) mineral related conflicts across international and inter-county boundaries, d) clash between existing land uses such as agriculture and livestock husbandry and mining activities, e) environmental degradation due to mining activities, and f) violation of human rights by mining activities. The recent introduction of devolved governance in Kenya provides an opportunity for sustainable management of mineral resources by taking the interests and rights of the locals into consideration. Accordingly, there is need to evaluate the current governance framework in the mining sector to determine its effectiveness in ensuring harmony between mining activities and other national and county interests, especially environmental protection and human rights. This is necessary in order to ensure harmony between the mining sector and sustainable development, including adequate stakeholder engagement and participation, good governance and the rule of law. The overall aim of this is to avoid the resource curse paradox in Kenya which has affected many other mineral endowed countries in Africa (African Development Bank 2007, Appiah & Zhang 2013, Demissie & Naghshpour 2014).

1.3.1: Sector Management

The management of the mining sector in Kenya was until recently managed through the Department of Mines and Geology which was established in the 1930's through the Mining Ordinance of 1933 (GoK, 2005d; UNDP, 2014). For many years, the sector was operated under the Mining Act of 1940 which was revised twice in 1972 and 1987 (GoK, 2005d; UNDP, 2014). In 2016, the government in collaboration with stakeholders in the industry enacted a new legislation, the Mining Act of 2016, to govern all aspects of the sector, as well as environmental and human rights protection (GoK, 2016). In the same year, the government also introduced Mining and Mineral Resources Policy whose overall goal is to set out frameworks, principles, and strategies to provide for exploration and exploitation of mineral resources for the country's socio-economic development. In addition, a number of regulations have been developed with the aim of supporting the implementation of the Mining and Mineral Resources Policy (2016) as well as the Mining Act (2016). The new legislation is intended to establish a clearer and sounder platform for environmental public administration and governance of the mining sector. It is envisioned that this will eventually ensure the sector diversifies the country's economic pillars, whilst contributing to rapid and sustainable socio-economic development based on Kenya's Vision 2030 development blue print and the global Sustainable Development Goals (SDGs).

The management of the mining sector is undertaken through a wide range of institutions and agencies including:-

- Ministry of Mining
- Directorate of Mines
- Directorate of Mineral Management and Regulations
- Directorate of Geological Surveys
- Directorate of Mineral Promotion and Value Addition
- Directorate of Mine Health, Safety and Environment
- Directorate of Resource Surveys and Remote Sensing
- Directorate of Corporate Affairs
- Geo-data Centre and Minerals Certification Laboratory

- National Mining Corporation
- Mineral Audit Agency
- Mineral Rights Board
- Ministry of Energy
- Ministry of Environment and Natural Resources (MENR)
- National Environment Management Authority (NEMA)
- Directorate of Occupational Health and Safety Services
- County Governments (47 No.)
- The Kenya Chamber of Mines (KCM)
- Association of Artisanal and Small-Scale Miners (ASSM)
- National Land Commission
- Kenya Chamber of Mines

The overall management of Kenya's mining sector still requires a lot of effort to upscale and improve the quality of sector governance. This is one of the envisioned goal and aim of the Mining Act (2016) through which a fully-fledged Ministry of Mining was created. Additionally, an inter-ministerial committee comprising of the Ministry of Industrialization, the Treasury, State law office, NEMA, the Ministry of Energy, the Ministry of Mining and the Ministry of Environment and Natural Resources has been established as a platform to formulate better policies for the licensing of exploitation, mining and development of mineral deposits. However, one of the key mining sector management challenges is institutional cooperation and coordination due to the many institutions and agencies involved.

1.3.2: Current and potential and management challenges in the mining sector

Although mining in Kenya dates back to colonial times, its full potential has never been realized because most of the mineral resources are either partly exploited, unexploited, or unidentified (NCI, 2015; UK Aid, 2013). The earliest form of mineral exploitation in the country was gold mining with many near-surface gold extraction sites by local artisanal miners, and numerous historic colonial-era mines in the Nyanzian belt (NCI, 2015). One of the key factors that have contributed to the slow take-off in the mining sector since colonial times is the fact that Kenya's development agenda has tended to focus more on other sectors especially agriculture, manufacturing, and tourism, and service sectors, with little attention going to the mining sector (NCI, 2015). However, in the near future this situation is expected to change considerably as new vast reserves of oil, coal, natural gas and other minerals are discovered and are in the process of being exploited.

Mineral exports and associated revenue returns in Kenya have been observed to increase in the last couple of years as shown in **Figure 1-6, Table 1-5 & 1-6**. For instance in February 2014, the country exported 25,000 metric tonnes of titanium ore, and the country is expected to become a key global producer of this mineral (GoK, 2015a). According to GoK (2015d), the quantity of soda ash produced in 2005 was estimated at 360,161 metric tonnes and fluorspar at 109,594 metric tonnes (**Table 1-5**). Additionally, the total value of the 8 key minerals produced in the country was estimated at Kenyan Shilling (Ksh).9.06billion in 2005, and this increased to nearly Ksh.10.9billion in 2006, and Ksh18.8 billion and Ksh22 billion in 2008 and 2009 respectively (**Table 1-5**). In the same period (2005-2009), the export levels for soda ash and gold stood at 321,429 metric tonnes and 616,156GMS respectively, with the total mineral export value of more than 8 minerals estimated at Ksh 6.13 billion (**Table 1-6**). The highest total value for these minerals was in 2007 and 2008 at roughly Ksh10 billion for each year. With more development in the mining sector coupled with improved mineral rights, it is projected that Kenya can position itself as a key regional player in the mining sector in the East African region (GoK, 2005d). The recent discovery of large quantities of world class rare earth mineral deposits in the coastal region valued at about \$62.4billion will put the country in the top 5 nations in the world endowed with this mineral (GoK, 2015a). The recent discovery of high quality Niobium at Mrima Hills in Kwale County is eventually expected to project Kenya as the 6th country in the world in terms of availability of this treasured mineral (GoK, 2015a). Coal is another recently discovered mineral resource in the country and the Ministry of Energy postulates that the national benefits of the newly discovered coal deposits in the Mui Basin to include; a) enhanced energy security in the country, b) growth of the coal sub-sector, and c) macro industrial development and growth of other industries (Diakonia,

2014). Local benefits might comprise of; a) local employment opportunities, b) Corporate Social Responsibility (CSR) projects, c) coal revenue for national and county government, and d) stimulation of local businesses.



Figure 1- 6: Overall mineral production value (Ksh) for Kenya's mining sector (2003-2013)
Source: Kenya National Bureau of Statistics-KNBS, 2013)

The mining sector in Kenya is associated with a number of challenges including the problem of inadequate crop of skilled mining experts and personnel (GoK, 2005d; IEA, 2014; NCI, 2015). A larger number of mining practitioners are still using traditional artisanal approach (**Plate 1-1**). Artisanal mining is carried out under informal arrangement with no government oversight mainly by poor community members who are currently estimated to be 30,000 people (UK Aid, 2013; NCI, 2015). This kind of mining is commonly associated with gold and gemstones which are currently extracted especially in Taita Taveta and Migori counties where it is a key source of livelihood for a large population of local communities. It is perceived to be backward due to a wide range of issues like poor health and safety strategies, child labour, extensive environmental damage, government tax evasion and mineral smuggling. However, it is expected that with proper management through a favorable legal framework, artisanal mining in the country can be enhanced and ultimately up scaled in terms of production and revenue generation. In this regard, the new Mining Act of 2016 is expected to play a major role in revamping and mainstreaming this informal mining sector into a formal mining sector. Nonetheless, there are challenges that may be faced in trying to engage communities in the sector due to:-

- a) Encroachment into artisanal concession areas as large scale mineral discoveries occurs in various parts of the country. This is a potential source of conflict of interest, tension, and violent conflicts,
- b) Artisanal mining has been repressed for decades in favor of large scale miners thereby creating fertile ground for conflicts with regard to accessing mining concession areas. Some of the artisanal miners who operate without government permission are at risk of losing their land to large scale miners who hold titles to such land,
- c) Operators in the artisanal sector lack important skills and suitable mining technology thereby making their work hard, slow and unsafe. Some of the key dangers arising from this situation includes; poor work area ventilation, lack of safety equipment, inappropriate use and handling of mining chemicals,
- d) Difficulties of accessing markets for their minerals,
- e) Lack of financing to upscale to large scale mining.

Table 1- 5: Quantity and value (Ksh) of the mineral production in Kenya (2005 to 2009)

Mineral	Unit	2005		2006		2007		2008		2009	
		Qty	Value	Qty	Value	Qty	Value	Qty	Value	Qty	Value
Soda Ash	MT	360,161	3,782,249,000	374,210	4,532,391,000	386,578	4,769,457,000	502,846	8,881,714,000	404,904	6,085,430,000
Fluorspar	MT	109,594	1,061,908,000	132,030	1,155,794,000	85,115	995,867,000	130,100	1,949,194,287	5,500	122,540,000
Crushed Refined Soda	MT	640,291	3,287,710,000	662,939	4,317,757,000	843,043	5,448,046,000	865,788	6,974,924,000	948,076	13,202,957,000
Salt (from Magadi)	MT	26,595	110,382,000	35,024	164,438,000	11,596	58,068,000	24,345	139,171,000	24,125	154,730,000
Carbon Dioxide	MT	8,723	63,310,000	9,359	66,730,000	11,028	78,630,000	22,030	117,884,660	15,711	84,071,080*
Diatomite	MT	243	9,865,000	185	7,735,000	201	8,859,000	72	3,483,917	239	14,482,508
Gold	GMS	616	653,339,000	432	583,865,000	3,023	3,922,892,000	339,923	592,890,948	1,055,070	2,283,686,205
Gemstones	GMS	5,035	101,501,000	5,044	94,046,000	8927	110,975,000	20,933,983	178,606,352	474,992,600	158,162,279
Grand Total			9,060,459,000		10,922,756,000		15,392,794,000		18,837,869,164		22,021,987,992

(Source: GoK, 2005d)

Table 1- 6: Quantity and value (Ksh) of the mineral export in Kenya (2005 to 2009)

Mineral	Unit	2005		2006		2007		2008		2009	
		Qty	Value	Qty	Value	Qty	Value	Qty	Value	Qty	Value
Soda Ash	MT	321,429	3,858,117,000	316,077	4,026,646,000	307,289	3,937,130,000	389,100	7,214,146,000	365,358	5,086,583,000
Gold	GMS	616,156	653,398,888	432,371	583,864,799	3,023,325	3,922,891,880	339,923	592,890,948	1,055,070	2,283,686,205
Fluorspar	MT	109,594	1,061,907,940	132,030	1,155,794,760	85,115	995,867,000	130,100	1,949,194,287	5,500	122,540,000
Diatomite	MT	243	9,865,390	185	7,734,573	201	8,858,820	72	3,483,917	239	14,482,508
Crushed Refined Soda	MT	3,293	24,017,000	5,085	35,736,000	54,695	430,391,000	38,280	321,140,000	16,331	140,929,000
Salt (Magadi)	MT	72	1,300,800	837	6,627,600	2,109	15,505,000	1,106	12,574,000	592	6,655,000
Carbon Dioxide	MT	-	-	5,048	118,664,603	5,645	127,875,238	22,030	117,884,660	5,834	129,413,044
Gemstones	GMS	68,404,514	340,157,980	50,439,006	240,467,344	119,286,901	199,135,181	20,933,983	178,606,352	474,992,600	158,162,279
Other Minerals	MT	58,260	179,594,065	95,012	90,020,643	218,043	409,491,000	63,745,187	23,109	23,109	43,841,005
Grand Total			6,128,359,063		6,265,865,322		10,047,145,119		10,453,665,351		7,986,292,041

(Source: GoK, 2005d)



Plate 1- 1: The crude nature of artisanal mining in Kenya

At the moment, Kenya is unable to meet the labour and skills demands and needs, of international mining companies. In the last couple of years, training and skill development training has been offered by different institutions such as; Petroleum Institute of East Africa (PIEA), University of Nairobi, Jomo Kenyatta University of Agriculture and Technology, and Taita Taveta University College. In addition, the Ministry of Petroleum and Energy is also undertaking some professional training. However, there are concerns that the current training programmes are not preparing and creating well equipped and skilled manpower to meet the needs of an expanded extractive industry.

1.3.3: Environmental issues associated with the mining sector

The mining sector is associated with a wide range of environmental risks especially with regard to excavation and earthworks, tailings disposal and emissions which is likely to affect valued resources such as land, water, air quality, biodiversity and ecosystems in a negative way (UNDP 2014; NCI 2015). Generally, the exploratory and mining activities lead to extensive vegetation clearing presenting a threat to preservation of native flora biodiversity (**Plate 1-2 & 1-3**). Such sites then become vulnerable to degradation processes through soil erosion especially where soils are loose or heavy rains are prevalent. When large quantities of soils or sediments are washed away, they are likely to be deposited in water bodies such as rivers, streams, dams and lakes creating siltation, water contamination and other biophysical alterations (NCI, 2015). Waste management arising from different stages of mining processes is also a major environmental problem (**Plate 1-4**). The solid waste generated during mining is flushed and washed into aquatic environments especially during heavy storms thereby leading to water pollution (NCI, 2015). Depending on the degree of pollution, this can lead to serious health risks to the public, livestock and wildlife including aquatic life such as birds and fish.

In addition, the mining sector in many countries is associated with a wide range of negative social impacts including inequalities, conflicts, and corruption (NCI, 2015). Noise and vibrations arising from mining activities are currently of great public health concern to communities living near mining sites, and complaints on this disturbance are very prevalent in the country for instance where quarrying takes place (NCI, 2015). Dust emissions and disturbance associated with blasting are equally issues of great concern and in some instances they have been reported to cause diverse respiratory health problems among communities, whilst threatening their safety due to blasting. The mining area host communities in most parts of the country have not been adequately sensitized and equipped with the appropriate information,

knowledge and skills to hold mining investors accountable for any environmental damage caused. This is currently lacking in most mining areas, and has partly contributed to some of the environmental problems they are facing (OLF, 2012; IEA, 2014; NCI, 2015).



Plate 1- 2: Quarrying sites in the Kitengela Wildlife Dispersal Area



Plate 1- 3: Vegetation clearance in an artisanal mining site in Kenya



Plate 1- 4: A pile of waste rocks generated by quarrying activities in the Kitengela Wildlife Dispersal Area

1.3.4: Human rights issues in the mining sector

The mining sector throughout the world has been considered as having a high risk of violating human rights in a number of ways as shown in **Figure 1-7**. These challenges must be addressed in a collaborative manner by government through the duty to protect human rights, and mining companies through corporate social responsibility to respect human rights.

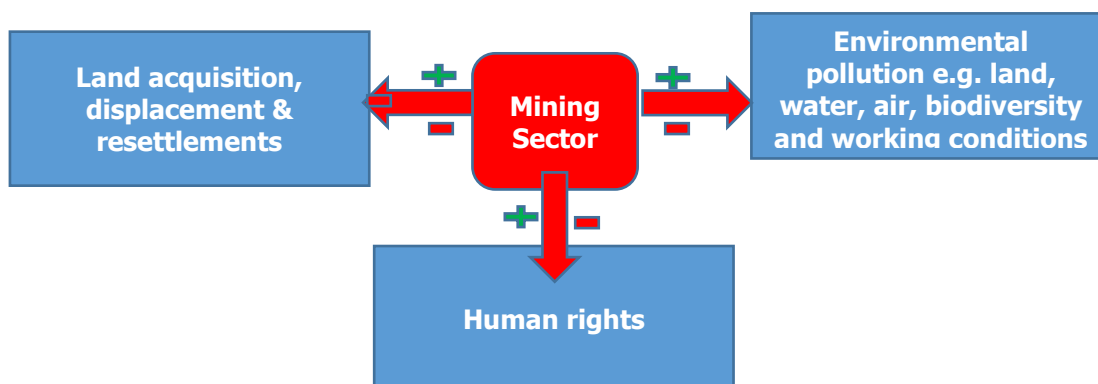


Figure 1- 7: Potential human rights impacts in the mining sector

The Constitution of Kenya, 2010 has clearly pronounced the various types of human rights which all the people of Kenya are entitled to, and which should not be violated by any development including activities in the mining sector. These rights are provided in Chapter 4 of the Constitution of Kenya under the Bill of Rights shown in **Table 1-7**. Article 42 of the Constitution of Kenya provides the right to a clean and healthy environment for the benefit of present and future generations. This right to a clean and healthy environment includes a procedural right, under article 70, that creates a legal pathway for anyone whose environmental right has been violated, or about to be violated, to apply to a court for redress through legal remedies. In addition, article 42 is to be fulfilled through the measures and mechanisms that are set out in article 69 of the Constitution, which include, among others, several obligations on the Kenyan state to –

- a) ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- d) encourage public participation in the management, protection and conservation of the environment;
- e) protect genetic resources and biological diversity;
- f) establish systems of environmental impact assessment,
- g) environmental audit and monitoring of the environment;
- h) eliminate processes and activities that are likely to endanger the environment; and
- i) utilize the environment and natural resources for the benefit of the people of Kenya.

In addition, article 35, 43, 46 and 47 set out the rights of access to information, the economic and social rights, consumer rights and rights for fair administration, respectively.

Like in other parts of the world, Kenya's mining sectors is characterized by a variety of human rights violations (KNCHR, 2013; KNCHR, 2016), and this needs to be effectively addressed as the government embarks on up-scaling the sector. Thus, the new Mining Act (2016) is expected to create an enabling environment that will enhance mitigation and creation of mechanisms that will promote respect for human rights in the industry. This should also be done by domesticating regional and international principles, regulations and practices aimed at respecting human rights. In addition, for purposes of upholding the human rights guaranteed in the Constitution of Kenya, the 2016 Mining Act, must be read together with, and in context of the various other laws and policies that provide for, and govern other aspects of human rights, as analyzed in Chapter 2 to this report. This is important in order to undertake a detailed evaluation

on the integration and observation of human rights in the mining sector in order to ensure harmony between mining activities, people and their livelihoods.

Table 1- 7: Human rights in the Constitution of Kenya

National Constitution of Kenya, 2010	Relevant human rights obligations
	<p>Chapter 4: The Bill of Rights</p> <p>2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom</p> <p>Part 2. Rights and fundamental freedoms</p> <p>26. Right to life (accidents)</p> <p>27. Equality and freedom from discrimination</p> <p>28. Human dignity</p> <p>32. Freedom of conscience, religion, belief and opinion</p> <p>33. Freedom of expression</p> <p>35. Access to information</p> <p>This right is restricted to citizens of Kenya, and provides a legal entitlement to information that is held by the State (government, and public entities); and a further entitlement to access information held by private persons (including private companies) only in situations where such information is necessary for the fulfilment of a fundamental rights. In addition, this right requires the government to proactively disclose and publicize information for public awareness.</p> <p>36. Freedom of association</p> <p>40. Protection of right to property including the right to hold and own property in any part of Kenya, and the entitlement to the prompt payment of just compensation if property is acquired by the State for public purposes, and/or in the public interest. Eligible purposes are defined in section 2 of the 2012 Land Act.</p> <p>42. Environment</p> <p>Every person has the right to a clean and healthy environment, which includes the right to--</p> <p>(a) Environmental protection for the benefit of present and future generations; and</p> <p>(b) have obligations relating to the environment fulfilled under Article 70</p> <p>Article 70. Enforcement of environmental rights</p> <p>(i) Right to a clean and healthy environment</p> <p>(ii) Prevention of acts that are harmful to the environment</p> <p>(iii) Compensation for any victim of a violation of the right to a clean and healthy environment</p> <p>43. Economic and social rights</p> <p>(1) Every person has the right to--</p> <p>(a) the highest attainable standard of health;</p> <p>(b) adequate housing, and to reasonable standards of sanitation;</p> <p>(c) clean and safe water in adequate quantities;</p> <p>(d) social security; and</p> <p>(e) education.</p> <p>46. Consumer rights</p> <p>(a) to goods and services of reasonable quality;</p> <p>(c) to the protection of their health, safety; and</p> <p>(d) to compensation for loss or injury arising from defects in goods or services</p> <p>47. Fair administrative action</p> <p>(1) right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair</p> <p>(2) (b) efficient administration</p>

The Government of Kenya established the Kenya National Commission for Human Rights (KNCHR) as the institution responsible for overseeing the implementation of human rights interventions in the country (KNCHR, 2013). KNCHR is mandated to ensure that the government and investors in the private sector observe human rights issues as articulated in the constitution (KNCHR, 2016). Its existence presents a great opportunity in regards to ensuring that all human rights violations and abuse in the mining sector are addressed. The functions of the commission as spelt out in Section (8) of the Act are to;

- a) Promote respect for human rights and develop a culture of human rights in the county,
- b) Take steps to secure appropriate redress where human rights have been violated,
- c) Act as the principal state organ in ensuring compliance with obligations under regional and international and conventions and treaties relating to human rights, except those related to the rights of special interest groups protected under the law relating to and non-discrimination and equality,
- d) Promote observance and protection of human rights in private and public institutions,
- e) Investigate, monitor and report on observance of human rights in all life aspects in the country,
- f) Receive and investigate complaints on human rights abuse allegation, except those relating to the violation of the principle of freedom and equality from discriminations under gender parity and equality principles,
- g) On the basis of complaints or complaints initiate investigate or research a matter in respect of human rights, and make recommendations to improve the functioning of state organs,
- h) Create and promote public awareness on human rights and the obligations of a citizen under the constitution and any other written law in the country.

The KNCHR normally receives information of human rights violations from the public including those associated with mining operations. The human rights violations can be classified into 3 categories, namely; i) group rights include the rights of special interest groups such as women, children, the elderly, marginalized communities and persons living with disability; ii) civil and political rights, include public participation, rights to political participation and access to justice and, iii) socio-economic rights include the rights to education, health, water and sanitation, environment, housing and social security. In 2008 and 2012, socio-economic and cultural violations in the country were the most reported cases of human rights abuse as shown in **Figure 1-8**.

Civil and political rights violations also increased in the same period but were much lower than the socio-economic and cultural violations. Group rights violations increased sharply from 2008 to 2010 but dropped sharply thereafter. Given the great interest the mining industry has created in the country among different interest groups and stakeholders, and the anticipated economic revenue generation, human rights violations arising from development of this sector are likely to be rampant especially in mineral host community areas.

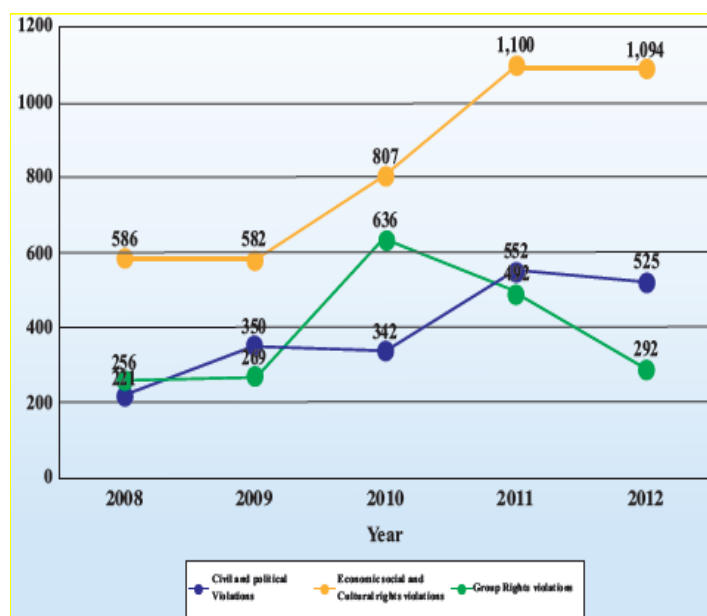


Figure 1- 8: Reported human rights violations in Kenya (2008-2012) Source: KNCHR, 2013)
 (Green line=Group rights violations, Blue=Civil and political rights violations, Orange=Socio-economic and cultural rights violations. Vertical axis represents count of each category)

1.3.5: Transparency and Accountability in the Mining Sector

In addition to human rights, the mining sector in Kenya is subject to a wide range of obligations associated with the need for transparency and accountability. The sector is usually subjected to commercial agreements between mining investors, government and host communities or individuals in the mining areas (Mutua, 2014; NCI, 2015; UK Aid, 2013). This is in line with the Extractive Industries Transparency Initiative (EITI), which is a global standard to promote the open and accountable management of oil gas and mineral resources (Darby 2008, Rich & Moberg 2015). EITI is a global standard aimed at promoting open and accountable management of extractive resources and strives to address key governance issues in the mining, oil and gas sectors (NCI, 2015). The EITI interests include; how licenses and contracts are allocated and registered, who are the beneficial owners of those operations, what are the fiscal and legal arrangements, how much is produced, how much is paid, where are the revenues allocated, and what is the contribution to the economy, including employment. The framework safeguards the integrity of the EITI by holding all EITI implementing countries to the same global standards. So far EITI standards have been enacted in 51 countries around the world including; Mozambique, Tanzania, France, Britain, USA and Australia (NCI, 2015). Although Kenya is not a member of the EITI family of nations, the Ministry of Mining has made a public commitment to EITI but no significant steps have been taken by the government to embrace this initiative (NCI, 2015).

The Constitution of Kenya 2010 strongly advocates for transparency in the government plus its operations in the country (GoK, 2010b; KNCHR, 2013 & 2016). For example, Article 35 grants the right to access information held by the government and its agencies; and for access to information held by private citizens only if that information is necessary for enforcing a right. This right is, however, restricted to citizens, defined in section 2 of the 2016 Access to Information Act as any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens. The right of access to information is complemented in enhancing transparency by the 2015 Fair Administrative Action Act, which is the legal framework for implementation of article 47 of the Constitution, and it provides a right for every person to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair; and this right extends to an entitlement for every person to be given written reasons for any administrative actions that is taken against them. Administrative action, under this law, is defined to include the powers, functions and duties exercised by authorities, and quasi-judicial tribunals. For purposes of the mining sector, the Fair Administrative Practices Act is a valuable legal framework because it is mandatory for state agencies exercising administrative authority, for instance those institutions created under the 2016 Mining Act, as well as those institutions exercising functions under other legal frameworks that impact the mining sector, such as the National Environment Management Authority (NEMA), which exercises extensive powers under the EMCA, which impact the mining sector, including EIAs and Audits.

Thus, as Kenya prepares to upscale the mining sector to exploit its enormous economic potential, the government should among other things examine the applicability of, and adopt various international best practices on mining governance that are relevant and beneficial to Kenya. This include –

- a) National adoption and enactment of EITI standards for application in Kenya – including through embedding in regulations made under the 2016 Mining Act,
- b) Committing to an open and competitive bidding system which should be embedded in new policies and legislation,
- c) Committing to agreement/contract transparency which is in line with emerging trends in the mining sector globally.

In the case of (ii) and (iii) best practices are available from the Open Contracting Partnership, which includes the Open Contracting Global Principles for disclosure and participation in public procurement,⁵ which serve as a guide to advance open contracting around the world; and the Open Contracting Data Standard (OCDS),⁶ which is intended to enable disclosure of data and documents at all stages of the

5 See: <http://www.open-contracting.org/get-started/global-principles> (accessed on 18 May 2017)

6 See: <http://standard.open-contracting.org/latest/en/#> (accessed 18 May 2017)

contracting process by defining a common data model to support organizations to increase contracting transparency, and allow deeper analysis of contracting data by a wide range of users.

- d) Promote transparency in all levels of extractives value chain and not just revenue management, and focus on outcomes rather than the process. This should be augmented by clear remedial guidelines in the event that transparency requirements are found to have been violated. In addition to the overall access to justice framework for protection of fundamental human rights, under article 22 and 70 of the Constitution, legal frameworks on transparency and accountability, such as those relating to access to information and fair administrative practice – as well as the laws establishing independent constitutional commissions (Human Rights, Gender and Equality and the Ombudsman) provide mechanism through which human rights violations can be reported, investigated and remedies provided. These are examined in Chapter 2 of this report.

1.4: Sustainable Management in the Mining Sector

The Second Medium Term Plan 2013-2017 of Vision 2030 considers development of mineral resources a priority and states that exploitation of these resources will benefit the people of Kenya. One of the major goals for the Government of Kenya is to ensure that exploitation of mineral resources in the country does not lead to environmental degradation and pollution including having negative social impacts on people and their livelihoods. Nonetheless, there is a wide range of environmental considerations in the exploration, exploitation and processing of mineral resources because mining activities can have a wide range of environmental and social risks as shown in **Box 1-1**.

Box 1- 1: Environmental and social risks in the mining sector

Box 1- 1: Environmental and social risks in the mining sector	
Environmental risks	<ul style="list-style-type: none"> • Habitat alternations, with adverse impacts for local communities, flora and fauna; • Waste management, including general wastes and hazardous wastes; • Gaseous emissions; • Hazardous effluents; • Use of explosives; • Specific hazards in underground mining (fires, explosions) • Water contamination; • Reduction in local water supply from overuse; • Energy use; and • Non-compliance with local environmental laws and regulations.
Social risks	<ul style="list-style-type: none"> • Child labour; • Forced labour; • Worker exposure to hazardous materials; • Use of explosives; • Physical hazards, notably from underground mining (fires, explosions, confined spaces); • Non-payment of minimum wages; • Lack of proper labour contracts; • Lack of workplace associations/unions; • Lack of proper training and protective equipment for workers; • Community concerns over land alternations from mining; • Resettlement of local communities from new or expanded mining operations; • Inflow of non-local workers to new or expanded mining sites, with potential adverse impacts for local communities such as an increase in prostitution and HIV/AIDS prevalence, especially if new non-local male workers are not with their families;

- Impacts on indigenous populations;
- Impacts on cultural heritage;
- If the mining site is remotely located, there are risks for improper living conditions for workers and their families;
- Risks associated with the use of a company security force; and
- Non-compliance with local health and safety laws and regulations

According to the Environmental Management and Coordination Act (EMCA, Cap 387), the management of all development activities in mining areas should be approved under appropriate legislation. The central legislation that is the bedrock for environmental protection is the EMCA, which is the framework and overarching legislation that takes precedence over other sectorial legislation that touch on any aspect of environmental management, including mining law. EMCA, through section 9, has established the National Environment Management Authority (NEMA) with powers to, among others, apply the authority for reviewing Environmental Impact Assessment (EIA) study reports (including undertaking public consultations at the EIA study review stage) and to either grant approval or refuse approval to mining activities based on the outcomes of an EIA study. Details of the procedure for undertaking an EIA study as well as the review process by NEMA are as required by the Environmental (Impact Assessment and Audit) Regulations, 2003.

It is important to note that in the Second Schedule to the EMCA (as amended in 2015), mining is set out as mandatory activities that require submission of an EIA Study report, and the scope of mining is defined to include quarrying and open case extraction of - a) precious metals b) gemstones (c) metalliferous ores d) coal, e) phosphates, f) limestone and dolomite, g) large scale commercial stone and slate, h) commercial large scale harvesting of aggregate, sand, gravel, soil and clay, i) exploration for the production of petroleum in any form, j) extracting alluvial gold with use of mercury, and k) Geothermal energy exploration and production.

Prior to 2015, the only legal provision for Strategic Environmental Assessment (SEA), was through Regulation 42 and 43 of the 2003 Environmental (Impact Assessment and Audit) Regulations. With the 2015 amendments to EMCA, a new section 57A was introduced, which provides a mandatory requirement for SEA, to be undertaken by the responsible entities, with respect to all policies, plans and programmes (PPPs) that are -

- a) under preparation, or subject adoption by an authority at regional, national, county or local level, or which are prepared by an authority for adoption through a legislative procedure by Parliament, Government, as the case may be;
- b) determined by NEMA as likely to have significant effects on the environment.

Section 57A further requires that all entities undertake or cause the SEA to be undertaken, at their own expense, and shall submit such assessments (SEA report) to NEMA for approval. In addition, NEMA is required to consult with lead agencies and relevant stakeholders to prescribe rules and guidelines in respect of Strategic Environmental Assessments.

1.5: Strategic Environmental Assessment (SEA) for the Mining Sector in Kenya

SEA is a pro-active decision support instrument, acting as a 'critical friend' to those involved in policy, plan and programme (PPP) making. It aims at making strategic decisions above the project level more transparent, accountable and ultimately more environmentally sustainable. In this context, it does not simply assess impacts of proposed action (i.e. of a proposed policy, plan or programme) in a reactive manner. Rather, it aims at steering thinking of those involved in policy, plan and programme making with regards to alternative actions for achieving overall economic, social, and other environmental aims. It investigates ways to avoid, reduce or otherwise mitigate negative impacts while enhancing positive outcomes. Strategic Environmental Assessment (SEA) is a systematic and comprehensive process for evaluating the environmental consequences of policies, plans or programmes (PPPs) and their alternatives (NEMA, 2012). The SEA is usually undertaken in order to assess the sustainability of development policies,

plans and programmes from which a wide range of development projects usually emerge. It is therefore a very broad test both in terms of space and time which is expected to ensure that all the strategic development interventions in a country are environmentally sustainable without which they can have far reaching implications on the state of environment in terms of the spatial extent of impacts and also in terms of the period of impact. Most policies, for example, usually cover the entire country and will be active for many years. Accordingly, the aim of a Policy SEA is to ensure that the existing or any new policies in a given sector are environmentally sustainable. One of the critical roles of the SEA as an advanced and superior assessment tool is usually to identify the projects in strategic plans and programmes which must be screened through EIA. On the other hand, the EIA especially through the prescribed environmental management plan (EMP) usually recommends the activities which require regular monitoring through environmental audits as shown in **Figure 1-9**.

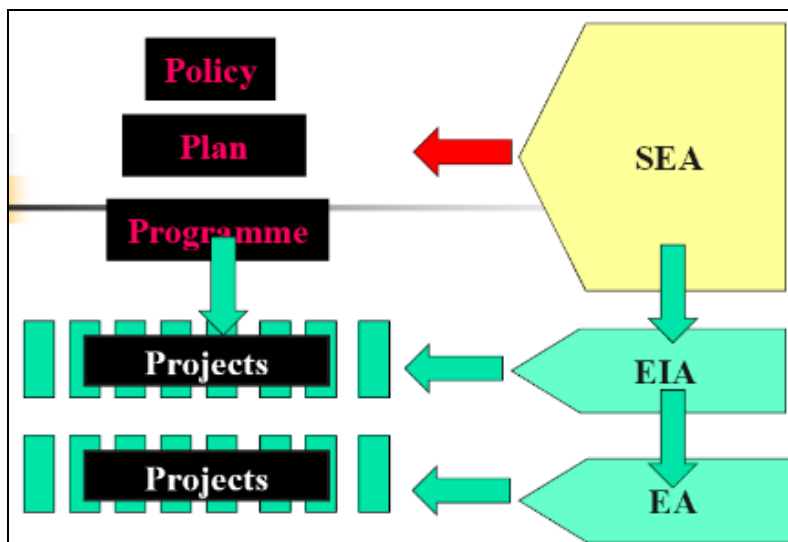


Figure 1- 9: The linkages between SEA, EIA and environmental audits

The major purpose of undertaking a Policy SEAs is based on the realization that not all policies, legal frameworks, regulations and guidelines for the governance of various development sectors will always be formulated in a sustainable manner. Some of them might not be environmentally sustainable in terms of compliance with existing environmental policies and international obligations and can therefore become a source of continuous strain on the biophysical environment and as well as the social environment including violating their human rights. SEA is a valuable tool for ensuring that environmental considerations are appropriately addressed in all the PPPs and can therefore be viewed as a decision-support tool for sustainable environmental management at strategic levels. Overall, the key aim and purpose of a SEA is to assess the environmental sustainability of PPPs, and improve the quality of environmental governance.

The mining sector in Kenya like in other countries is associated with a wide range of environmental risks especially with regard to tailings disposal and emissions which is likely to affect valued resources such as water, biodiversity and ecosystems in a negative way. In addition, the mining sector in many countries is associated with inequitable sharing of resource benefits, conflicts, lack of transparency and accountability in mining operations, corruption and disregard for human rights. Some of these challenges are associated with weak and ineffective governance frameworks including the inability of sector policy, legal and regulatory prescriptions to integrate the national environmental and human right obligations in an appropriate manner. Because of this, the mining sector requires effective application of Strategic Environmental Assessment (SEA) on existing and new sectorial policy, strategic plans and programmes (mining PPPs) in order to ensure that all the governance frameworks are environmental sustainable and human rights conscious. In addition to this, Environmental Impact Assessments (EIAs) at the pre-project commissioning stage and regular Environmental Audits are undertaken in order to ensure environmental protection and social harmony in mining activities. In this way, operations in the mining sector are screened

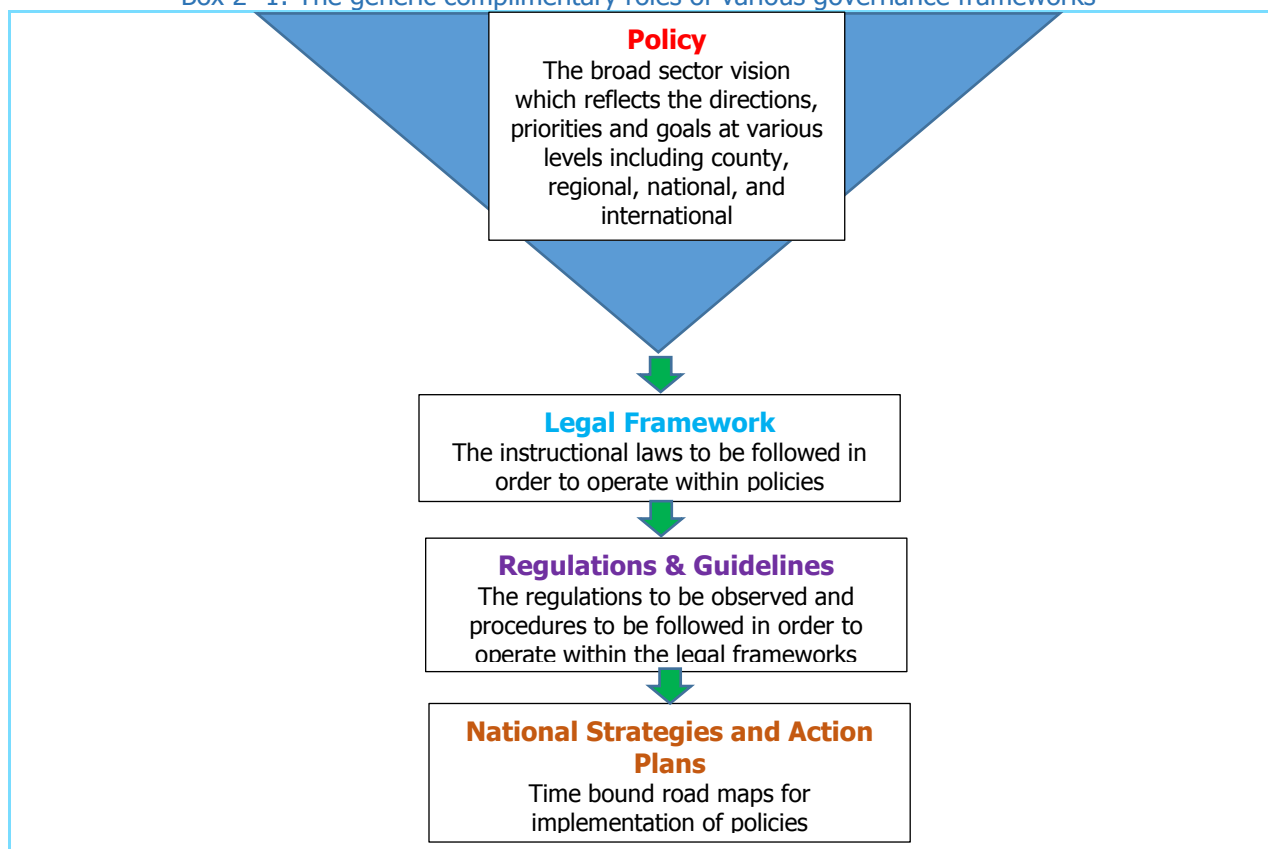
throughout the full mining life cycle right from the exploration and prospecting stage, mining approval, extraction/operation, processing and decommissioning.

The United Nations Development Programme (UNDP) in collaboration the Swedish Environmental Protection Agency (SEPA) initiated a four-year programme funded by SIDA (Swedish International Development Corporation Agency) in an effort to integrate environmental and social concerns into broader sustainable development policy making in the mining sector. The programme is expected to strengthen human rights and rule of law in environmental public administration. It will strengthen the gender, human rights and rule of law dimensions of public administration work in large-scale mining sectors. The programme will provide targeted support to four countries, namely Colombia, Kenya, Mongolia, and Mozambique. It will involve collaboration with ministries of environment, mining, planning and finance, as well as other public and private stakeholders.

2. GOVERNANCE FRAMEWORKS FOR MINING SECTOR, ENVIRONMENT AND HUMAN RIGHTS IN THE KENYA

The mining sector in Kenya like other sectors is governed and managed through use of a package of instruments which include; policies, legal frameworks, regulations, guidelines, national strategies and action plans. **Box-2-1** highlights the complimentary roles of the various governance frameworks and shows that the policy is the most superior and foundational governance instrument. A policy usually outlines what a government ministry hopes to achieve in a certain development sector including the guiding principles to be used to achieve them, and it usually states the goals of the government in a given sector. However, a policy document is not a law but rather, it will often identify the laws needed to achieve its goals.

Box 2- 1: The generic complimentary roles of various governance frameworks



A policy usually sets out goals and planned activities of a Ministry and department but it may be necessary to pass a law to enable the government put in place the necessary institutional and legal frameworks to achieve their aims. Laws must be guided by current government policy. Laws are binding, and set out standards, procedures and principles that must be followed. If a law is not followed, those breaking them can be prosecuted in court, often with a fine or custodial (prison) sentence or both, prescribed, if the accused person(s) is found guilty. In most cases, each legal framework requires one or several regulations to support the compliance and enforcement operations, and to provide further interpretation through administrative procedures that implementing public agencies will follow. In most countries, government agencies develop clear guidelines to be followed by development sectors in order to adhere to various regulations and laws. Finally, many governments prepare a wide range of national strategies and action plans to support implementation of policies. For instance, the National Climate Change Action Plan (2013-2017) prepared to implement the 2010 National Climate Change Response Strategy. Quite uniquely, the Sessional Paper No. 3 of 2014, is both the National Policy, and Action Plan on Human Rights, in Kenya.

2.1: Governance Framework in the Mining Sector

The overall governance in the mining sector in Kenya is undertaken using a framework consisting of 18 instruments which include; policy, legal frameworks, regulations and guidelines. The typology of frameworks is generic and common in all development sectors. **Table 2-1** highlights the various governance instruments for the mining sector in Kenya, which include laws, policies and regulations made specifically for the mining sector, and those that impact, or contain provisions that impact or government operations in the mining sector.

Table 2- 1: Governance framework for the mining sector in Kenya

Framework	Role	Designated focal institutions & agencies
Policy		
1. Mining and Minerals Policy, 2016	The policy provides a firm foundation and basis for establishment of an enabling framework for accelerated and sustainable development of the country's mining and minerals resources sector. The policy is expected to ensure that benefits from the sector are shared by stakeholders, including investors, local artisanal and small scale miners, national and county governments, local communities and the people of Kenya	Ministry of Mining
Legal framework		
1. Mining Act, 2016	The Act of Parliament to give effect to Articles 60, 62, (1) (f), 66 (2), 69 and 71 regarding minerals. It provides the terms and conditions for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals	Ministry of Mining
2. Local Content Bill, 2016	The Bill provides a framework to facilitate local ownership, control and financing of activities connected with the exploitation of gas, oil, and other mineral resources; to provide a framework to increase the local value Capture along the value chain in the exploration of gas, oil and other mineral resources	Ministry of Mining Ministry of Energy & Petroleum
Regulations		
1. Mining (Local Equity Participation) Regulations, 2012	The regulations require that the mineral right in respect of which mining license is issued shall have a component of local equity participation amounting to at least thirty-five per cent (35%) of the mineral right	Ministry of Mining
2. Draft Mining (Use of Local Goods and Services) Regulations, 2016	The purpose of these regulations is to:- <ul style="list-style-type: none"> • promote job creation through the use of local expertise, goods and services, businesses and financing in the mining industry value chain and their retention in the country • create mining and mineral related supportive industries that will provide jobs and sustain economic development • achieve and maintain a degree of participation for Kenyans or companies incorporated in Kenya for the local supply of goods and the provision of services • provide for a robust, transparent monitoring and reporting system 	Ministry of Mining
3. Draft Mining (Award of Mineral Rights by Tender) Regulations, 2016	The regulations are associated with award of mineral rights in order to ensure free and fair, open-market competition which encourages investment in the mining sector	Ministry of Mining
4. Draft Mining (Community Development Agreement) Regulations, 2017	The purpose of the regulations are to:- <ol style="list-style-type: none"> (1) provide a legal basis on which mining operations and mining-related activities are conducted throughout the entire life of the mine in order to ensure that: <ol style="list-style-type: none"> a) benefits of the mining operations or activities are shared between the holder and affected community; b) mining operations are consistent with the continuing economic, social and cultural viability of the community; and c) mining operations significantly contribute to the improved economic, cultural, and social welfare of the community; 	Ministry of Mining

	(2) ensure accountability and transparency in mining related community development; (3) define when Community Development Agreements (CDAs) are required and provide a framework for such agreements	
5. Draft Dealings in Minerals Regulations, 2016	The purpose of the regulations is to give effect to section 223(1) of the Mining Act in so far as it relates to dealings in minerals by providing for the scope and procedures to be followed by a person who requires a mining license or permit including the renewal and revocation of such licenses and permits	Ministry of Mining
6. Draft Mining (Employment and Training) Regulations, 2017	The purpose of the regulations is to:- a) promote job creation through the use of local expertise in the mining industry and across the entire mining value chain and retain the skills within the country; b) develop local capacities in the mining industry value chain through education, skills and technology transfer, research and development; c) achieve the minimum local employment level and in-country across the entire mining industry value chain; d) provide for the submission of the Employment and Training Plan in the mining industry which should include: <ul style="list-style-type: none"> • a recruitment and training programme; and • the supervision, implementation and monitoring schedule of holders of mineral rights to ensure that Kenyan nationals are employed and properly trained 	Ministry of Mining
7. Draft Mining (Mine Support Services) Regulations, 2016	The purpose of the regulations is to provide the scope and procedures to be followed by a person who requires a mine support service license including the renewal and revocation of such licenses	Ministry of Mining
8. Draft Mining (National Mining Corporation) Regulations, 2017	The purpose of the regulations is the establishment of the National Mining Corporation as the investment arm of the national government in respect of minerals	Ministry of Mining
9. Draft Mining (Reporting of Mineral Related Activities) Regulations, 2017	The purpose of the regulations is to provide directions on the submission of relevant reports on mining activities by mining companies	Ministry of Mining
10. Draft Mining (Use of Assets) Regulations, 2016	The purpose of the regulations is to ensure regular audit of all movable and immovable assets in mining activities	Ministry of Mining
11. Draft Mining (Licensing & Permitting) Regulations, 2016	The purpose of these regulations is to regulate the licensing and permitting of mineral rights and dealing permits in accordance with the Mining Act, 2016	Ministry of Mining
12. Draft Mining (Mineral Royalty) Regulations, 2017	The mineral royalty regulations apply to holders of mineral rights, dealers' licenses or permits under the Act and the former Act (Mining Act, 1940)	Ministry of Mining
13. Draft Mining (Strategic Minerals) Regulations, 2016	The purpose of the regulations is to provide clarity on the process through which strategic minerals are identified, declared as strategic and regulated based on a transparent and consultative process that includes technical review and expert consideration. Strategic minerals apply to all radioactive minerals	Ministry of Mining
14. Draft Mining (State Participation) Regulations, 2016	The purpose of these regulations is to provide for State participation in prospecting or mining operations carried out by the holder of a mineral right	Ministry of Mining
Guidelines		
1. Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017	The purpose of the regulations is to give effect to sections 223(1) and 221(1) of the Mining Act in so far as they relate to guidelines for work programmes and exploration reports. It provides guidance to applicants for, and holders of, reconnaissance, prospecting and retention licences on how to prepare and submit compliant work programmes and exploration reports	Ministry of Mining

The analysis of the above frameworks during the SEA process was undertaken in order to identify the specific governance prescriptions in the mining sector in Kenya. These prescriptions were the subject of the PPP analysis in which they were subjected to a detailed interrogation against the national obligations for environmental sustainability and protection of human rights. The identification of the specific governance prescriptions in the above instruments are presented below.

2.1.1: Policy

The Government of Kenya formulated the Mining and Minerals Policy (2016) to enable the country obtain maximum benefits from its mineral deposits after operating without a clear policy for many years since the colonial times. Previously, the mining sector was mainly governed on the basis of the Mining Act Cap. 306, a legal framework enacted way back in 1940. The Mining and Minerals Policy (2016) comprehensively addresses the gaps that have existed in the mining sector and aligns them with the aspirations of Kenya Vision 2030, the provisions of the Constitution of Kenya (2010) and the African Union Mining Vision (2009). The African Union Mining Vision policy aims at positioning mining as a key driver of Africa’s socio-economic development. In addition to the mining policy, there are other policies in Kenya, which directly impact the mining sector and therefore form part of the mining governance framework. The specific policy prescriptions in this policies in relation to environmental management and human rights are highlighted in **Table 2-2**.

Table 2- 2: Environmental and human rights prescriptions in the mining policy

Policy	Relevant prescriptions
Mining and Minerals Policy, 2016	3.2.Guiding principles <ol style="list-style-type: none"> i. Inter-generational equity and sustainable utilization of mineral resources ii. Integrating sound environmental protection, safety and health considerations in mineral resources development iii. Equitable access to mineral resources and benefit sharing iv. Transparency, accountability, and public participation v. Respect of socio-cultural values, access to justice, gender equality and inclusiveness vi. Value addition and development of horizontal and vertical linkages to the local economy
	Policy objectives are to provide a framework for:- <ul style="list-style-type: none"> • harmonizing mining, health and occupational safety and environmental legislations • gender mainstreaming and eradication of child labour in mining industry • mainstreaming activities of artisanal and small-scale miners • local participation in the mining investment ventures • equitable sharing of mineral benefits between the National Government, County governments and local community
	Policy strategies are to:- <p>Strategy 4: Develop legislative mechanisms for accessing land for mineral development</p> <p>Strategy 5: Achieve an acceptable balance between mining and environmental conservation and ensure that the sector operates within the approved (national and where necessary international) standards of health, safety, human rights and environmental protection</p> <p>Strategy 8: Pursue a responsive regulatory framework that ensures that benefits accruing from the mining sector are maximized for greater socio-economic development</p> <p>Strategy 9: Design mechanisms for sharing benefits accruing from exploitation of minerals between the National Government, the County Governments and Local Communities</p> <p>Strategy 10: Develop and implement mechanisms to enhance participation of Government (National & County), affected communities and other stakeholders in mining investments</p> <p>Strategy 11: Develop a framework for mainstreaming and formalizing artisanal and small scale mining operations in order to support livelihoods and entrepreneurship</p> <p>Strategy 12: Develop and implement frameworks, structures and mechanisms that ensure equitable participation, ownership and decision-making in mining value chains by women, youth, and disadvantaged groups</p>
	Chapter four: Institutional framework – establishment of directorates with clear mandates as follows:- <ol style="list-style-type: none"> 1. Directorate of Mines <ul style="list-style-type: none"> • Arbitration of mining disputes • Mine health, safety and environment 2. Directorate of Geological Surveys

	<ul style="list-style-type: none"> Evaluating and monitoring hazards associated with earthquakes, landslides, toxic minerals, subsidence and other ground failures
	<p>3. Directorate of Mineral Promotion and Value Addition</p> <ul style="list-style-type: none"> Promoting mineral value addition Providing extension services to small scale and artisanal miners on mineral processing and value addition
	<p>4. Directorate of Resource Surveys and Remote Sensing</p> <ul style="list-style-type: none"> Land use land cover mapping Data generation for sustainable conservation; and Mapping of land degradation

The specific environmental and human rights considerations in the Mining and Minerals Policy (2016) are summarized in **Table 2-3**.

Table 2- 3: Summary of the environmental obligations considered in the Mining and Minerals Policy (2016)

Impact dimension	Relevant statutes in Mining and Minerals Policy (2016)
Physical environment	<ul style="list-style-type: none"> Mining hazard monitoring and management Land degradation mapping and management
Biological environment	Nil
Social environment	<ul style="list-style-type: none"> Inter-generational equity and sustainable utilization of mineral resources Mineral value addition Equitable benefit sharing Transparency, accountability and public participation Stakeholder engagement Gender equality and inclusiveness Involvement of youth and disadvantaged groups Occupational safety and health Arbitration of mining disputes
Human rights	Eradication of child labour
Environmental protection	Environmental protection, safety and health
Environmental rehabilitation and restoration	Nil

2.1.2: Legal frameworks

Principally, the mining sector in Kenya is governed by the 2016 Mining Act, whose purpose is to; a) give effect to Article 60, 62(1(f), 66(2) and 69 of the Constitution, and b) provide for prospecting, mining, processing and any dealings in minerals. Previously, the mining sector was governed on the basis of the Mining Act Cap. 306 enacted way back in 1940, meaning that the industry was operating within an archaic legal framework which was out of touch with the constitution and current international best practices. The new mining law seeks to guide mineral resources wealth exploitation and address governance and environmental issues. It seeks to address key gaps in the Mining Act of 1940, and align the sector to the latest global trends such as value-addition and use of technology to spur investor interest. In addition to the mining legislation, there are other legal frameworks governing the mining sector, and which impact various elements of the mining sector, including investment promotion, employment, occupational safety and health, land legislation, physical planning legislation, and HIV/AIDs prevention and control. The specific legal prescriptions, from these legal frameworks, in relation to environmental management and human rights are highlighted in **Table 2-4**.

Table 2- 4: Environmental and human rights prescriptions in the mining law

Legal frameworks	Prescriptions
Mining Act, 2016	<p>20(1) Responsibilities for the Director of Mines:–</p> <ul style="list-style-type: none"> (i) facilitating access to information by the public (n) promoting co-operation among state agencies, county governments, the private sector, research bodies, non-governmental organizations and other organizations which are engaged in mining activities (o) advising on ways of ensuring that mining operations take into account local and community values <p>3) ensuring the health and safety of persons employed by a holder of a mineral right</p> <p>21(1) Responsibilities for the Director of Geological Survey:–</p> <ul style="list-style-type: none"> (c) undertaking geological, geophysical, geochemical, seismological and hydro-geological surveys, investigations and mapping aimed at defining the character and distribution of rocks and superficial deposits and determining the mineral potential (d) conducting geo-environmental studies; monitoring of seismic processes and mapping of potential geo-hazards (f) conducting geological analysis and valuations (g) developing a national repository of geo-science information and facilitating access to this information by the general public (i) undertaking audits of mineral right holders <p>36(2) Responsibilities for the Mineral Rights Board including mining approvals through:–</p> <ul style="list-style-type: none"> (a) National Land Commission, in relation to public land; (b) Relevant State agency where that mineral right is on public land (c) Appropriate Cabinet Secretary or other authority, where the area in respect of which a mineral right is in a place of burial, or an area of religious significance, a public building, or for any other public purpose; (e) Cabinet Secretary responsible for matters relating to wildlife conservation and management, where the mining land is situated within a marine park, a national park or a local sanctuary under the Wildlife Act (f) Cabinet Secretary responsible for matters relating to the environment, where the mining land is situated within a protected area, a protected natural environment, or a protected coastal zone under the Environmental Management and Coordination Act; (g) Director of the Kenya Forest Service (KFS), where the mining land is situated within forest area or; operations on, under or over an area, that has been declared a forest area under the Forests Act; <p>42. (1) Conditions before the granting of mineral right:–</p> <ul style="list-style-type: none"> (a) the protection of the environment (c) community development (d) safety of prospecting and mining operations (e) health and safety of persons undertaking those operations (f) the protection of the lawful interests of the holders of any other mineral right <p>43. Improper mining practice</p> <p>(1)(a) engage in wasteful mining or treatment practices</p> <p>46.(1) Skills transfer to and capacity building for the citizens of Kenya through recruitment and training:–</p> <p>(3) Replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens</p> <p>47. (1) Employment preference to members of the community and citizens of Kenya.</p> <p>(2) In the case of a large scale operation, the holder of a mineral right shall:</p> <ul style="list-style-type: none"> (a) conduct training programmes for the benefit of employees (b) undertake capacity building for the employees (c) only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law

Legal frameworks**Prescriptions**

- (d) work towards replacing technical non-citizen employees with Kenyans
- (e) provide a linkage with the universities for purposes of research and environmental management
- (f) facilitate and carry out social responsible investment for the local communities; and
- (g) Implement a community development agreement.

50. Preference for local products.

The holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and treatment operations, transport or any other dealings in minerals give preference to the maximum extent possible:

- (a) to materials and products made in Kenya
- (b) to services offered by members of the community and Kenyan citizens; and
- (c) to companies or businesses owned by Kenyan citizens

61 (3) Conditions for the granting of reconnaissance license by the Cabinet Secretary, on the recommendation of the Mineral Rights Board:

- (c) the local product plan by the applicant with respect to the procurement of locally available goods and services is acceptable; and
- (d) the local employment plan by the applicant with respect to employment and training of Kenyan citizens is acceptable

67. (1) Conditions for valid reconnaissance license holders shall:

- (e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction
- (f) not enter land that is excluded from the reconnaissance license
- (g) compensate users of land for damages to land and property resulting from reconnaissance operations in the license area

72. (2) An applicant for a prospecting license shall provide the following information to the Cabinet Secretary:

- (e) a plan giving particulars of the proposals by the applicant with respect to the employment and training of Kenyan citizens; and
 - (f) A plan giving particulars of the proposals by the applicant with respect to the procurement of local goods and services
- (3) The Cabinet Secretary shall not grant a prospecting license unless:
- (c) the applicant has submitted an environmental rehabilitation and restoration plan;
 - (d) the local product plan by the applicant with respect to the procurement of locally available goods and services are acceptable;
 - (e) the employment plan by the applicant with respect to employment and training of Kenyan citizens are acceptable

77. (1) The holders of a prospecting license shall

- (d) comply with the terms and conditions of the environmental rehabilitation and restoration plan

78. A prospecting license information issued in accordance with this Act shall include the following information an approved:-

- (a) programme for prospecting operations, including expenditure estimates;
- (b) plan for the procurement of local goods and services;
- (c) plan to employ and train citizens of Kenya;
- (d) an environmental impact assessment (EIA) report, a social heritage impact assessment and EMP, where required.

89. The holder of a retention license shall-

- (b) back fill or otherwise make safe in the prescribed manner, or as otherwise directed by the Cabinet Secretary any excavations made during the course of prospecting operations
- (c) permanently preserve, or otherwise make safe in the prescribed manner or as otherwise directed by the Cabinet Secretary, any boreholes made during the course of prospecting operations
- (d) comply with the terms and conditions of the environmental restoration, rehabilitation and heritage restoration plan
- (e) remove any equipment, plant or building erected for prospecting operations in the area specified in the license;

Legal frameworks	Prescriptions
	<p>Artisanal mining operations</p> <p>93. Establishment of offices in the county to:</p> <p>3 (b) compile a register of the artisanal miners</p> <p>(c) supervise and monitor the operation and activities of artisanal miners</p> <p>(d) advise and provide training facilities and assistance necessary for effective and efficient artisanal mining operations</p> <p>(f) facilitate the formation of artisanal association groups or cooperatives; and</p> <p>(g) promote fair trade for artisanal miners</p> <p>101(2) Information requirement in the application for a mining license under:</p> <p>(g) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens</p> <p>(h) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services</p> <p>(i) proof of submission and approval of an environmental and social impact assessment (EIA) report and environmental management plan; and</p> <p>(j) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community</p> <p>103. Conditions for granting a mining license:–</p> <p>(c) the applicant has obtained an approved EIA license, a social heritage assessment plan and EMP;</p> <p>(d) proposal for procurement of local goods and services;</p> <p>(e) proposal with respect to employment and training of Kenyan citizens;</p> <p>(f) project feasibility study;</p> <p>(g) proposal with respect to engaging in community investments is socially responsible</p> <p>106. Required mining license information:–</p> <p>(f) approved plan for the procurement of local goods and services;</p> <p>(h) approved plan to employ and train citizens;</p> <p>(i) approved EIA report, social heritage impact assessment and environmental management plan;</p> <p>109. Compliances for mining license holders:-</p> <p>(b) approved programme for mining operations;</p> <p>(c) terms and conditions of the approved EIA license , social heritage assessment plan and EMP;</p> <p>(d) demarcation of mining areas;</p> <p>(g) stacking or dumping of any mineral or waste products in the manner provided for in the license;</p> <p>(i) community development agreement (CDA).</p> <p>110(1) complete and accurate record of the mining operations including:-</p> <p>(2)(1) copies of all maps, geological reports, sample analysis, aerial photographs, cores, logs and tests and other data obtained and compiled by the license holder;</p> <p>115. Information required for application for the renewal of a mining license:-</p> <p>(c) approved EIA license, social heritage assessment plan, EMP and Community Development Agreement;</p> <p>Part V - Mineral agreements</p> <p>117(2) Terms and conditions for mineral agreements:–</p> <p>(d) environmental obligations and liabilities, subject to the requirement of the EMCA Cap 387;</p> <p>(j) community development plans.</p> <p>119. (1) Subject to Article 35 of the Constitution and any other written law, all mineral agreements shall be public and be made accessible to the public</p> <p>128 Conditions for allocation of mineral rights in community land</p> <p>(1) Consent requirement for reconnaissance license or permit and prospecting license from:–</p> <p>(a) the authority obligated by the law relating to administration and management of community land to administer community land; or</p> <p>(b) The county government in relation to the community land that is un-alienated.</p>

Legal frameworks**Prescriptions**

(2) Consent shall be deemed to have been given for the purposes of this Act where the registered community land representatives have:—

- (a) entered into a legally binding arrangement with the applicant for the mineral rights or with the Government, which allows the conduct of mining operations; or
- (b) entered into an agreement with the applicant for the mineral right concerning the payment of adequate compensation.

133. Terms and conditions for holders of a prospecting permit for protection of the environment;

140 Obligations to mining permit

- (c) demarcation of the mining area;
- (d) protection and restoration of the environment within the mining area;
- (f) stacking or dumping any minerals or building materials or waste products in the manner provided for in the permit;
- (g) not using such equipment as may be prescribed in Regulations or chemicals such as cyanide and mercury.

Part VIII—Surrender, suspension and revocation of mineral rights

144 (4) An application made under subsection (2) shall include –

- (b) proof of implementation of any EMPs
149. (1) The holder of a mineral right who applies to surrender the right shall furnish the Cabinet Secretary with
- (c) notification of any potentially hazardous substances.

Part IX—Surface rights compensation and disputes

152. The owner or lawful occupier or user of an area of land which is the subject of a mineral right shall continue to enjoy the right to graze livestock on the land or to cultivate the land to the extent subject to the following conditions—

- (b) does not, by virtue of those operations, constitute a danger or hazard to livestock or crops;
- (b) causing loss of or damage to buildings and other immovable property;
- (c) causing damage to the water table or deprives the owner of water supply;

153(1) Where the exercise of the rights conferred by a mineral right

- (b) causing loss of or damage to buildings and other immovable property;
 - (c) causing damage to the water table or depriving the owner of water supply;
 - (d) in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings
 - (e) a demand or claim for compensation may be made to the holder of the mineral right to pay prompt, adequate and fair compensation to the lawful owner, occupier or user of the land in accordance with the provisions of this Act
 - (8) The Cabinet Secretary in consultation with the community and the NLC shall ensure that the inhabitants or communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law
155. Subject to the provisions of this Act, the Cabinet Secretary may inquire into and determine the following matters:
- (a) a dispute of the boundaries of an area held under a prospecting or mining right;
 - (c) a claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes;
 - (d) a claim to have any priority of water taken, diverted, used or delivered for mining purposes, as against any other person claiming the same; or
 - (e) assessment and payment of compensation where provided for under this Act.

Part XI - Health, safety and environment

176 (1) A mineral right or other license or permit granted under this Act shall not exempt a person from complying with any law concerning the protection of the environment.

(2) A mining license shall not be granted to a person under this Act unless the person has obtained an EIA license, social heritage assessment plan and the EMP has been approved.

Legal frameworks	Prescriptions
	<p>177. A provision of this Act and any right or entitlement conferred under a mineral right shall not exempt a person from compliance with the provisions of the Water Act, 2016 concerning the right to the use of water from any water resource.</p> <p>187(1) A provision of this Act and a right or entitlement conferred under a mineral right shall not operate to exempt a person from compliance with the provisions of the Occupational Health and Safety Act, 2007 concerning the safety of workers and mine operations.</p> <p>(2) In addition to provisions in subsection (1), the Cabinet Secretary shall make regulations for safety and health of persons employed in mines, and the carrying on of prospecting or mining operations in safe, proper, sanitary and effectual manner.</p> <p>179. Conditions for holders of a permit or license to ensure that:-</p> <ul style="list-style-type: none"> (a) the sustainable use of land through restoration of abandoned mines and quarries; (b) the seepage of toxic waste into streams, rivers, lakes and wetlands is avoided and that disposal any toxic waste is done in the approved areas only; (c) blasting and all works that cause massive vibration is properly carried out and muffled to keep such vibrations and blasts to reasonable and permissible levels in conformity with the EMCA Cap 387; and (d) upon completion of prospecting or mining, the land in question shall be restored to its original status or to an acceptable and reasonable condition as close as possible to its original state. <p>180. (1) The Cabinet Secretary shall not grant a prospecting license, a retention license or a mining license to an applicant, unless the applicant has submitted a site mitigation and rehabilitation or mine-closure plans for approval.</p> <p>(2) The Cabinet Secretary may prescribe regulations for site rehabilitation and mine-closure obligations.</p> <p>181. (1) An applicant for a prospecting license, a retention license or a mining license shall provide a bond or some other form of financial security in this section called an environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations.</p> <p>(2) An environmental protection bond required under subsection (1) shall be in a form and for an amount as may be determined by the Cabinet Secretary having regard to the particular characteristics of the project.</p> <p>Part XIV—Monitoring, compliance and enforcement</p> <ul style="list-style-type: none"> (k) require such changes, as may be necessary in regard to the safety of the operation and protection of employees, to be implemented within a specified time, failing which the license holder will be considered in breach; (l) order the temporary cessation of operations where he considers that the mining or processing activities are so hazardous as to constitute a serious and imminent danger to life; (m) enter into any premises used in or connected with prospecting, mining or mineral processing operations to examine the circumstances surrounding any accidents or incidents affecting the health of employees including the subsequent actions taken by license holder; and <p>Part XV—Miscellaneous provisions</p> <p>221(1) The Cabinet Secretary may publish and disseminate manuals, codes or guidelines relating to large scale and small scale operations, including in relation to environmental matters.</p> <p>(2) In developing manuals, codes and guidelines for the purposes of subsection (1), the Cabinet Secretary shall ensure that any such publications are consistent with guidelines issued by other Government departments, agencies and authorities.</p> <p>(3) Evidence that a person -</p> <ul style="list-style-type: none"> (a) has complied with manuals, codes and guidelines may be used to show that the person has complied with his environmental obligations under this or any other Act; and <p>223(2) Without prejudice to the generality of the foregoing, the Cabinet Secretary may make Regulations prescribing,</p> <ul style="list-style-type: none"> (h) the measures to be observed to protect and rehabilitate the environment;
Local Content Bill, 2016	<p>Part II – Role of the national and county governments</p> <p>6. Obligations for national and county governments</p> <p>7. establishment of the Local Content Development Committee</p>

Legal frameworks	Prescriptions
	20. Local content plan 20(5): (a) employment and skills development plan; (b) research and development plan; (c) technology transfer plan (i) employment and skills development plan; (ii) research and development plan; (iii) technology transfer plan 23. Capacity building 24. Employment and skills development plan 25. Education and training for nationals 26. Consideration of employment of local persons 28. Strategies for transfer of technology 30. Transfer of technology plan 40. Preference of local companies 41. Preference of local goods and services 43. Thresholds for Kenyan equity stake in operator 51. Public participation

The specific environmental and human rights considerations in the Mining Act (2016) and Local Content Bill are summarized in **Table 2-5**.

Table 2- 5: Summary of the environmental obligations considered in the Mining Act (2016) and Local Content Bill

Impact dimension	Relevant statutes in Mining Act 2016 and Local Content Bill
Physical environment	<ul style="list-style-type: none"> • Mapping of potential geo-hazards • Prevention of wasteful mining practices • Protection of surface water and groundwater resource • Mitigation for massive vibration
Biological environment	<ul style="list-style-type: none"> • Protection of forests • Protection of wetlands • Protection of protected areas, national parks and sanctuaries
Social environment	<ul style="list-style-type: none"> • Community development agreements (CDAs) • Local employment plan (LEP) • Approved plan to employ and train citizens • Approved plan for the procurement of local goods and services • Skills transfer and Capacity building • Replacement of expatriates • Employment and training • Adequate and fair compensation for land for and property damage • Compensation for displacement • Proper resettlement • Dispute resolution • Protection of burial sites • Protection of areas of religious significance • Health and safety of prospecting and mining operations • Health and safety of mining workers • Mining accidents or incidents affecting the health of employees • Social heritage impact assessment (SHIA) • Heritage restoration plans
Human rights	No environmental obligation
Environmental protection	<ul style="list-style-type: none"> • Environmental impact assessment (EIA) • Environmental management plans (EMPs) • Demarcation of mining areas • Sustainable stacking or dumping of mineral waste • Controlled use of toxic materials such as cyanide and mercury

Impact dimension	Relevant statutes in Mining Act 2016 and Local Content Bill
	<ul style="list-style-type: none"> • Notification of any potentially hazardous substances • Prevention of toxic waste disposal into streams, rivers, lakes and wetlands • Environment, health and safety
Environmental rehabilitation and restoration	<ul style="list-style-type: none"> • Sustainable restoration of closed or abandoned mines and quarries • Environmental rehabilitation and restoration plans • Environmental protection bonds
Environmental framework referencing	<ul style="list-style-type: none"> • EMCA Cap 387 • Water Act, 2016 • Forest Act, 2005 • Wildlife Conservation and Management Act, 2013 Occupational Health and Safety Act, 2007

2.1.3: Regulations

The key regulations for the governance of the mining sector has previously been the Mining (Local Equity Participation) Regulations, 2012. However, up to 13 additional draft regulations are under preparation to support the implementation of the Mining and Minerals Policy 2016 and enforcement of the Mining Act 2016. These are:-

1. Mining (Use of Goods and Services) Regulations, 2016
2. Mining (Award of Mineral Rights by Tender) Regulations 2016
3. Mining (Community Development Agreement) Regulations, 2017
4. Dealings in Minerals Regulations, 2016
5. Mining (Employment and Training) Regulations, 2017
6. Mining (Mine Support Services) Regulations, 2016
7. Mining (National Mining Corporation) Regulations, 2017
8. Mining (Reporting of Mineral Related Activities) Regulations, 2017
9. Mining (Use of Assets) Regulations, 2016
10. Mining (Licensing and Permitting) Regulations 2016
11. Mining (Royalty) Regulations, 2017
12. Mining (State Participation) Regulations, 2016
13. Mining (Strategic Minerals) Regulations, 2016

The specific legal prescriptions in relation to environmental management and human rights are highlighted in **Table 2-6**.

Table 2- 6: Environmental and human rights prescriptions in the mining regulations

Regulations	Prescriptions
1. Mining (Local Equity Participation) Regulations, 2012 (LN 118, 2012)	3. Every mining license issued shall have a component of local equity participation amounting to at least thirty-five per cent (35%) of the mineral right
2. Mining (Use of Local Goods and Services) Regulations, 2017	3. The purpose of these regulations is to:- (a) promote job creation through the use of local expertise, goods and services, businesses and financing in the mining industry value chain and their retention in the country; (d) create mining and mineral related supportive industries that will provide jobs and sustain economic development; (e) achieve and maintain a degree of participation for Kenyans or companies incorporated in Kenya for the local supply of goods and the provision of services (f) provide for a robust, transparent monitoring and reporting system; (g) provide a plan for provision of goods and services;
3. Mining (Award of Mineral Rights by Tender) Regulations 2016	No relevant environmental & human rights prescriptions

Regulations	Prescriptions
<p>4. Mining (Community Development Agreement) Regulations, 2017</p>	<p>3. The objects of these regulations are:-</p> <p>(1) to provide a legal basis for ensuring that the entire life cycle of mining operations and mining-related activities is conducted in a manner that ensures the following:-</p> <p>(a) Equitable sharing of benefits between the holder and affected community;</p> <p>(b) mining operations are consistent with the continuing economic, social and cultural viability of the community; and</p> <p>(c) mining operations significantly contribute to the improved economic, cultural social welfare of the community and its members;</p> <p>(2) to ensure accountability and transparency in mining related community development</p> <p>5.(1) A holder, as part of the ESIA and with the approval of the NEMA, shall assess potential community impacts of its proposed operations and identify one or more communities with which it proposes preparation of a Community Development Agreement</p> <p>(2) The holder shall notify, in writing, the affected mine community or communities with copy of such notice to the Cabinet Secretary within seven days of the grant of a mining license.</p> <p>(3) A community that has not been identified by the holder may give notice to a holder that it should be identified as a party to a Community Development Agreement.</p> <p>(4) Where a community gives notice to a holder that it should be identified as a party to a Community Development Agreement and the holder is not in agreement, that community may give notice to the Cabinet Secretary.</p> <p>(5) The Cabinet Secretary in consultation with the County Government and the National Environmental Management Authority shall notify the holder within thirty (30) days from the date of such notice, specifying whether the community should be made a party to a Community Development Agreement.</p> <p>6. (1) Where a holder is required to enter into a Community Development Agreement (CDA) with more than one affected mine community, it shall enter into one agreement that includes multiple affected mine communities</p> <p>(2) Where there are several affected mine communities located in more than one county, the holder may have a separate Community Development Agreement with an affected mine community that is located in a different county.</p> <p>8. Drafting of community development agreement</p> <p>(4) The issues to be addressed in the CDA may include but not limited to the following:</p> <p>(b) educational scholarship, apprenticeship, technical training and employment opportunities for the people of the affected mine community;</p> <p>(c) employment for members from the affected mine communities;</p> <p>(d) financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power;</p> <p>(e) assistance with the creation, development and support to small-scale and micro enterprises;</p> <p>(f) special programmes that benefit women;</p> <p>(g) special programmes that benefit youth;</p> <p>(h) protection of natural resources;</p> <p>(i) support for cultural heritage and sports;</p> <p>(j) treatment of cultural and sacred sites;</p> <p>(k) treatment of ecological systems, including restoration and enhancement, for traditional activities such as hunting and gathering;</p> <p>(l) how cultural values will be respected;</p> <p>(m) funding and control mechanisms to ensure funds are utilized as intended and are transparent and auditable;</p> <p>(n) special programmes that will benefit persons with disabilities.</p> <p>10. (1) The holder and the affected mine community shall establish a schedule of consultations to be published in a manner that is acceptable to the affected mine community or any other mode of publication mutually agreed upon by the parties.</p>

Regulations	Prescriptions
	<p>11. (1) The content of a Community Development Agreement shall comprise of an explanation of the Community Development Agreement goals, objectives, obligations and activities aimed to achieve sustained community development</p> <ul style="list-style-type: none"> • description of environmental and social impacts; • description of environmental and social impacts including a gender awareness assessment; <p>16. (1) The parties shall use best efforts to establish meaningful mechanisms that ensure transparent transactions relevant to Community Development Agreement commitments</p> <p>18. Where a mining license is transferred to another holder in accordance with the Mining Act, the transferee shall, in writing, assume all rights and obligations of the transferor under any Community Development Agreement relating to the mining license or transitional mining right</p> <p>20. Where a holder of a mining lease or special mining lease has entered into a Community Development Agreement or has started some community development initiative, scheme or social development programme prior to the coming into force of these regulations, the holder shall ensure that such a scheme, initiative, programme, agreement or howsoever described shall be in compliance with the requirements of these regulations within eighteen months after coming into force of these regulations.</p> <p>24. Dispute resolution</p> <p>25. Dispute resolution committee</p> <p>26. Meetings and decisions of the committee</p> <p>27. Dispute resolution procedure schedules</p>
5. Dealings in Minerals Regulations, 2016	No relevant E&HR prescriptions
6. Mining (Employment and Training) Regulations, 2017	<p>5. (2) Where experienced expatriates are needed, a plan for the progressive replacement of expatriates by Kenyan nationals shall be required.</p> <p>6. (1) Every holder of a large-scale mineral right or a mine support service license shall, within ninety days of the coming into force of these regulations, submit to the Cabinet Secretary a detailed Employment, Training and Succession Plan which corresponds with the work programme or programme of mining operations that accompanied the application made by the holder for the grant of the license.</p> <p>(6) A holder of a mineral right shall comply with the relevant labour, employment, social security laws and any regulations made under such laws of Kenya.</p> <p>(7) A holder shall provide to the Director of Mines a half yearly report on the employment and training activities for the reporting period not later than fourteen days after the end of the reporting period.</p> <p>7. (1) A holder of a mineral right or mine support service license shall employ only Kenyans in junior level or middle level positions.</p> <p>(2) For the purpose of sub regulation (1), a junior or middle level position includes the position of foreman, supervisor or any other corresponding position or grades designated by the holder.</p> <p>9. (1) A holder of a mining license shall, within one (1) year of the commencement of mining operations, submit a programme to the Director of Mines for the promotion of education, research and development in Kenya in relation to its overall activities or operations</p> <p>10. (1) A holder of a mineral right or a mine support service license shall, not later than thirty days of the beginning of each year, submit to the Director of Mines an annual performance report covering all the activities related to employment and training for the year under review.</p>

Regulations	Prescriptions
7. Mining (Mine Support Services) Regulations, 2016	<p>11. Environmental obligations of mine support services providers</p> <p>(1) A person granted a license under these regulations to provide mine services shall comply with the conditions and obligations of the environmental license or any other authorization that may be issued to the person or any mineral right holder being offered a mine support service.</p> <p>(2) A person contracted by a holder of mining license or permit to provide mine support services shall be liable for the restoration or reclamation of any damage caused to the environment as a result of its operations.</p>
8. Mining (National Mining Corporation) Regulations, 2017	No relevant E&HR prescriptions
9. Mining (Reporting of Mineral Related Activities) Regulations, 2017	<p>4. (1) A holder including the National Mining Corporation shall submit to the Cabinet Secretary, not later than the first day of March every year, a report on,</p> <p>(a) gross revenue from the sale of minerals, disaggregated by mineral;</p> <p>(b) total number of persons directly employed by the holder including expatriates if any;</p> <p>(c) the identities of beneficial owners of holders of licenses of privately owned reporting companies or persons.</p> <p>6. (1) For each year, the report shall include but not be limited to the following information</p> <p>(h) total land area or blocks held under mineral rights;</p> <p>(i) total area or blocks surrendered during the year;</p> <p>(j) total number of each type of mineral right in force at end of the year;</p> <p>(k) number of mineral agreements entered into during the year;</p> <p>(l) number of mineral agreements in force at end of the year;</p> <p>(m) number of new operating large scale mines that commenced production during the year;</p> <p>(n) number of operating mines;</p> <p>(o) number of community development agreements entered into during the year;</p> <p>(p) total number of community agreements in force at end of the year;</p> <p>(q) identities of beneficial owners of mineral rights; and</p> <p>(r) any other statistics or information that the Cabinet Secretary may deem necessary.</p> <p>7. (1) The Cabinet Secretary shall ensure that a comprehensive and detailed report, prepared in accordance with regulations 5 and 6 above, is published annually by way of publication on the official website of the Ministry of Mining.</p>
10. Mining (Use of Assets) Regulations, 2016	No relevant E&HR prescription
11. Mining (Licensing and Permitting) Regulations, 2016	<p>8. Online Mining Cadastre (OMC) information management</p> <p>(6) Public access to the Online Mining Cadastre by the Mining Cadastre Office (MCO)</p> <p>16. Charges and fees, obligations and penalties</p> <p>(c) Other payments</p> <p>(vi) Environmental bonds</p> <p>20. Environmental and social information in support of applications</p> <p>(2) ESIA Report</p> <p>(3) An environmental and social screening (ESS) report shall be required before the commencement of activities under the following mineral rights</p> <p>(a) reconnaissance license;</p> <p>(b) prospecting license;</p> <p>(c) retention license;</p> <p>(d) reconnaissance permit;</p> <p>(e) prospecting permit;</p> <p>(f) artisanal mining permit</p> <p>(4) ESIA, ESMP and ESS reports shall comply with the requirements of the Environmental Management and Coordination Act (EMCA) and any regulations or guidelines</p> <p>22. Areas designated for small-scale mining or artisanal mining</p>

Regulations	Prescriptions
	<p>(1) The Cabinet Secretary may, by notice in the Kenya Gazette, designate land exclusively for small-scale mining and/or artisanal mining operations.</p> <p>37. Boundary disputes 38. Land surface rights 39. Consent from land holders to conduct mining operations 40. Categories of land (1) Restricted or excluded land (2) Private land (30) Community land 43. Inheritance of artisanal mining rights 44. land compensation guarantee bond 52. Management of assets and hazardous materials on expiry or revocation of mineral right Part VIII – Large scale mining operations Part IX – Small-scale mining operations Part X – Artisanal mining operations Part XI - Schedules</p>
12. Mining (Royalty) Regulations, 2017	<p>5. Royalty base 8. Royalty rate</p>
13. Mining (State Participation) Regulations, 2016	<p>6. State Right to Free Equity Participation 7. State Right to Participation Interest 8. State Participation in Prospecting Operations</p>
14. Mining (Strategic Minerals) Regulations, 2016	<p>1. Submission of request to declare a mineral, minerals or mineral deposit as Strategic 10. Authority to declare a mineral, minerals or mineral deposit as strategic 11. Declaration of Strategic Minerals and Strategic Minerals Deposits 12. Multiple Strategic Minerals 13. Mining of Strategic Minerals 14. Storage and Stockpiling of Strategic Minerals 15. Processing of Strategic Minerals 16. Transport of Strategic Minerals</p>

The specific environmental and human rights considerations in various management regulations in the mining sector are summarized in **Table 2-7**.

2- 7: Summary of the environmental and human rights obligations in various management regulations in the mining sector

Impact dimension	Relevant statutes in mining various management regulations
Physical environment	No relevant obligation
Biological environment	No relevant obligation
Social environment	<ul style="list-style-type: none"> • Community consultation and outreach • Community Development Agreements (CDAs) • Employment of mining affected communities • Mining benefits for youth and women • Mining benefit for persons with disabilities • Equitable benefit sharing • Employment, Training and Succession Plans (ETSPs) • Alternative livelihoods plans (ALPs) • Transparent monitoring and reporting • Improved economic, cultural social welfare of the community • Education, health or other community service CSR • Protection of cultural and sacred sites

Human rights	No relevant obligation
Environmental protection	<ul style="list-style-type: none"> • Environmental impact assessment (EIA)
Environmental rehabilitation and restoration	<ul style="list-style-type: none"> • Mine closure plans (MCPs) • Environmental restoration and enhancement • Post-mining environmental monitoring

2.1.4: Guidelines

The key guidelines associated with the mining sector are the Guidelines for Work Programmes and Exploration Reports, 2017. The specific legal prescriptions in relation to environmental management and human rights are highlighted outlined in **Table 2-8**.

Table 2- 8: Environmental and human rights prescriptions in the mining guidelines

Guidelines	Prescriptions
Guidelines for Work Programmes and Exploration Reports, 2017	<p>These regulation are to give effect to sections 223(1) and 221(1) of the Mining Act in so far as they relate to guidelines for work programmes and exploration reports.</p> <p>(2) Work programme for new applications: A work programme submitted in support of a new mineral right application will be assessed in relation to the known geology and mineralization in the area. The proposed work will be expected to take account of all available geological maps and reports (Geological Survey and previous company exploration reports, where these are available), and should build on past results.</p> <p>(4) Work programmes for renewal applications:</p> <ul style="list-style-type: none"> • The new work programme must make clear how it advances the geological understanding of the area and takes it to the next stage, • In the case of the second renewal of a prospecting license, the work programme and expenditure must cover the entire renewal period applied for (maximum (3) years). This must include plans for a feasibility study, EIA study and all other mine planning investigations necessary for a subsequent mining license application. <p>7. Confidentiality</p> <p>(2) It should be noted that all environmental and community reports are regarded as non-confidential and are, by definition, open to public scrutiny.</p> <p>Annex E: Checklist for Feasibility Study Mine closure plan - Financial plan; timetable and implementation; restoration/rehabilitation of land; alternative uses of mined out ground; safety considerations; social impacts; alternative livelihoods plan; removal of plant & machinery; alternative uses (conversion) of infrastructure; post-mining environmental monitoring of mine area (including tailings); contingencies; etc.</p> <p>ESIA - Full, expert assessment and modelling of effects of mining on the environment and social structures; hazard analysis; mitigation plan; monitoring programme.</p> <p>Annex G: Allowable Exploration Expenses - Environmental activities – includes baseline studies; environmental and social/cultural impact assessments; rehabilitation and mine closure/rehabilitation studies; environmental management and rehabilitation; community consultation and outreach</p>

2.1.5: Mining Governance Framework in Kenya and the African Mining Vision

The African Mining Vision (AMV),⁷ adopted in February 2009 recognizes that Africa is the world's top producer of numerous mineral commodities. The continent is a global leader in production and reserve deposits for several key minerals such as gold, diamond, aluminum, cobalt, chromium, manganese, vanadium, and phosphate, The AMV is a policy tool used to help African governments to better harness

⁷ African Union, African Mining Vision (Addis Ababa, 2009)

their natural resource wealth for socioeconomic development. It is a pathway formulated by African nations themselves, through the Africa Union (AU) that puts the continent's long term and broad development objectives at the heart of all policy making concerned with mineral extraction. The AMV sets out how mining can be used to drive continental development and all the AU member nations including Kenya are expected to adopt, domesticate and apply these policy tools. The tools therefore present an opportunity for Kenya to shape the Mining and Minerals Policy, 2016, Mining Act, 2016 as well as the Mining Regulations and Guidelines in accordance with the ideals of sustainable mining. The key intervention points for the AMV in Kenya, and their integration in the country's mining sector policy and law are outlined in **Table 2-9**.

Table 2- 9: Integration of the Africa Mining Vision (AMV) in Kenya

AMV obligations	Integration into Kenyan mining governance framework
Development of the local resource supplier/inputs sector	<ul style="list-style-type: none"> • Mining Act 2016, s. 50 – provides a requirement for reference for local products and services • The draft Mining (Use of Good and Services) Regulations, 2016 have been drafted to guide implementation of this provision
Development of local requisite human resources and technological capacity through stipulated investments in training and R&D	<ul style="list-style-type: none"> • Section 46 and 47 provide a requirement for mining license holders to provide preference to citizens of Kenya in employment and training, include a plan on how they will replace expatriate staff. • The draft Mining (Employment and Training) Regulations, 2016 have been drafted to guide implementation of these provisions.
Safeguarding transparency and good governance as well as enforce internationally acceptable safety and health standards, environmental and material stewardship, corporate social responsibility, and preferential recruitment of local staff	Section 176-177-178 provide that a license holder must remain in compliance with all the environmental, water and occupational safety and health laws applicable in Kenya
Public disclosure of royalties paid by mining companies	No provision is made in the Mining Act 2016 for public disclosure of royalties by holders of mining licenses
Declaration of minimum local equity participation requirements for mining license	Mining (Local Equity Participation) Regulations, 2012 (regulation 3) make it a condition of every mining license that the mineral right in respect of which the license is issued shall have a component of local equity participation amounting to at least thirty-five per cent (35%) of the mineral right
Minority equity participation by the state or community in mining operations	<ul style="list-style-type: none"> • Section 48 (1&2) of the Mining Act 2016 provide that where a mineral right is for a large scale mining operation and concerning strategic minerals, the State shall acquire ten percent free carried interest in the share Capital of the right in respect of which financial contribution shall not be paid by the State • The Draft Mining (State Participation) Regulations, 2016 have been draft to implement this provision
Allocating portions of central government mineral revenues to local mining communities, and the management of monies so allocated	<p>Mining Act 2016 in Section 183(5) that royalties paid by the holder of a mineral right will be distributed as follows:</p> <ul style="list-style-type: none"> • Seventy percent to the National Government • Twenty percent to the County Government; and • Ten percent to the community where the mining operations occur <p>However no provision is made to guide how the monies will be delivered to the communities and County governments, or how the funds will be utilized or managed. Special regulations to govern this will be required</p>
Special arrangements and understandings between mining companies and respective local communities that can significantly promote development of the communities	<ul style="list-style-type: none"> • Section 109(i) of Mining Act, 2016 obligates a mining license holder to sign a Community Development Agreement (CDA) with the community where mining operations are undertaken. This is limited to large scale mining license holders only (s.4 definition of Community Development Agreement).

AMV obligations	Integration into Kenyan mining governance framework
	<ul style="list-style-type: none"> • The Draft Mining (Community Development Regulations), 2017 are expected to guide mining operations with regard to the following: <ul style="list-style-type: none"> ○ Educational scholarship, apprenticeship, technical training and employment opportunities for the people of the affected mine community; ○ Employment for members from the affected mine communities; ○ Financial or other forms of contributory support for infrastructural development and maintenance such as education, health or other community services, roads, water and power; ○ Assistance with the creation, development and support to small-scale and micro enterprises; ○ Special programmes that benefit women; ○ Special programmes that benefit youth; ○ Agricultural product marketing; ○ Protection of natural resources; ○ Supporting for cultural heritage and sports; ○ Safeguarding of cultural and sacred sites; ○ Treatment of ecological systems, including restoration and enhancement, for traditional activities such as hunting and gathering; and ○ Special programmes that will benefit persons with disabilities.
Adopting legal prescriptions to avoid “Dutch disease”	<ul style="list-style-type: none"> • Mining Act, 2016 does not make provision for payment of royalties to a special fund as described under the African Mining Vision. • However, the Natural Resources (Benefit Sharing) Bill 2014 attempts to make provision for deposit of royalties into a Sovereign Wealth Fund, and further attempts to define how these fund will be distributed. • Section 26 of the Natural Resources (Benefit Sharing) Bill 2014 Natural Resources (Benefit Sharing) Bill 2014 provides that 20% of revenue collected from royalties for natural resources (including mining) shall be paid into a Sovereign Wealth Fund established by the National Government. Section 26(2) provides that 60% of this money shall be paid into a component of the fund comprising a futures fund; and 40% into a natural resources fund. It is important to note that the revenue sharing ratios proposed in this Bill are not consistent with the Mining Act, and that it proposes a separate institutional mechanism from those under the Mining Act 2016
Supporting artisanal and small-scale mining (ASM) and Provide ASM miners with analytical skills and training on sound business management	Section 93(3-d) of the Mining Act, 2016 sets outs functions of the County representative of the Director of Mines to include; providing advice and provide training facilities and assistance necessary for effective and efficient artisanal mining operations. Special ASM regulations can provide further guidance for implementation of this provision
Enhancing the formalization and the level of organization of ASM miners	The Mining Act, 2016 in Section 95 provides for an optional requirement for an artisanal and small scale mining license that a person may be a member of an artisanal mining cooperative association or group
Focus on development of diversified and alternative livelihoods to ASM, to facilitate transitions from artisanal to small-scale mining	No provision is made in this respect in the Mining Act, 2016. However Community Development Agreements (CDAs) are expected to support local community livelihoods as well as the final mine closure. However, special regulations for ASM can be developed to include this specific concern
Empowering women	Mining Act 2016:- Section 46 and 47 provide a requirement for mining license holders to provide preference to citizens of Kenya in employment and training, including a plan on how they will replace expatriate staff. However, this does not focus directly on empowerment of women, there is need for regulations that can provide further guidance on implementation of this clause, including how to provide affirmative action for women in both

AMV obligations	Integration into Kenyan mining governance framework
	training and employment. For this reason, the draft Mining (Employment and Training) Regulations, 2016 can be modified and amended
Eliminating child labour	Section 10(1) of the Children Act, Cap 141 Laws of Kenya requires protection of every child from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. However, special regulations maybe needed under the Mining Act to provide a governance framework on engagement of children, especially given prevalence of child labour in artisanal and small-scale mining, and to provide special powers for mining inspectors to enforce this rules. However, harmony must be sought with provisions of the Labour Relations Act (2007), and the powers of labour inspectors in this respect
Addressing environmental and human health issues, including HIV/AIDS and occupational hazards	Section 176-178 of the Mining Act, 2016 provides that a mining license holder must remain in compliance with all the environmental, water and occupational safety and health laws applicable in Kenya

2.2: Governance Framework in Environment

Environmental governance in Kenya is undertaken through use of a wide range of policies, legal frameworks and regulations. In addition, the country has developed several guidelines to be observed and standards to be adhered to in all sectors including the mining in order to ensure environmental sustainability. The country has also adopted several national strategies and action plans towards this goal. All the outlined or existing environmental governance instruments are also configured in accordance with the various multilateral environmental agreements (MEAs) which the country has ratified.

2.2.1: Policy

The mining sector is expected to operate within the spirit of the various environmental policies by integrating their obligations in the sectorial governance frameworks in order to ensure environmental sustainability. **Table 2-10** shows the environmental policies in Kenya, their roles and the relevant institutional custodians.

Table 2- 10: Environmental policies in Kenya

National policy	Environmental role	Focal institutions & agencies
1. The Constitution of Kenya (GoK 2010c)	The Constitution of Kenya is the supreme framework in the Republic of Kenya with Chapter 5 providing the most supreme directions for dealing with land and environment issues	Government of Kenya
2. Sessional Paper No. 10 of 2014 on the National Environment Policy	The policy is expected to provide the guidelines which serve as a framework for environmental governance in the country	<ul style="list-style-type: none"> Ministry of Environment and Natural Resources State Department of Environment and Natural Resources
3. National Land Policy (2009) (GoK, 2009d)	The National Land Policy (NLP) is the document expected to guide the country towards a sustainable and equitable use of land	<ul style="list-style-type: none"> Ministry of Lands and Physical Planning State Department of Land National land Commission
4. Draft National Land use Policy 2016 (GoK 2016)	The aim of the policy is to ensure a balance between different, yet related interests in land utilization such as concerns such as food security, human settlements, environmental protection and climate change; and other economic pursuits	<ul style="list-style-type: none"> Ministry of Lands and Physical Planning State Department of Physical Planning

National policy	Environmental role	Focal institutions & agencies
5. National Water Policy (2012 Draft) (GoK, 2012f)	The objective of the National Water Policy is to take cognizance of the existing water resources situation in the country and provide direction for action in a unified national perspective	Ministry of Water & Irrigation
6. National Oceans & Fisheries Policy, 2008 (GoK, 2008c)	The overall aim of the policy is to guide the sustainable development of the fisheries sector including the protection of fishing environments including the ocean	<ul style="list-style-type: none"> • Ministry of Agriculture Livestock and Fisheries • Department of Fisheries
7. Sessional Paper No.1 of 1999 on National Policy on Water Resources Management And Development	The policy provides directions for effective water resource management as key to both basic human needs and sustainable economic development	Ministry of Water & Irrigation
8. Draft National Policy for the Sustainable Development of Arid and Semi-Arid Lands of Kenya (2015) (GoK, 2015a)	The policy provides a strong foundation for the sustainable development of the ASALs. It acknowledges and responds to the specific ecological, social, economic and political realities in the ASALs that distinguish them from the rest of Kenya. The policy aims at providing livelihood security for all people through sustainable natural resource management, and a mission to ensure coordinated, efficient and effective management of natural resources through community Capacity building, participatory planning and decision making	Ministry of Devolution and Planning
9. National Policy on Wetlands Conservation and Management (2013) (GoK, 2013)	The goal of the policy is to ensure wise use and sustainable management of wetlands in order to enhance sustenance of the ecological and socio-economic functions of Kenya's wetlands for the benefit of present and future generations. The policy is based on the principles and values of, among others, wise use, precautionary principle, public participation, devolution and ecosystem based management, taking cognizance of the national and international cooperation	<ul style="list-style-type: none"> • Ministry of Environment and Natural Resources • State Department of Environment and Natural Resources
10. Sessional Paper of 2014 on National Climate Change Framework Policy	The policy was developed in order to facilitate a coordinated, coherent and effective response to the local, national and global challenges and opportunities that climate change presents. The policy aims to enhance adaptive Capacity and build resilience to climate variability and change, while promoting low carbon development pathways	<ul style="list-style-type: none"> • Ministry of Environment and Natural Resources • State Department of Environment and Natural Resources
11. National Wildlife Conservation and Management Policy, 2012 (GoK, 2012)	The aim of the policy is to create an enabling environment for the conservation in perpetuity, Kenya's rich diversity of species, habitats and ecosystems for the wellbeing of its people and the global community in accordance with the Constitution	<ul style="list-style-type: none"> • Ministry of Environment and Natural Resources • State Department of Environment and Natural Resources
12. Draft National Forest Policy 2015 (GoK 2015b)	The policy provides a framework for improved forest governance, resource allocation, partnerships and collaboration with the state and non-state actors to enable the sector contribute in meeting the country's growth and poverty alleviation goals within a sustainable environment	<ul style="list-style-type: none"> • Ministry of Environment and Natural Resources • State Department of Environment and Natural Resources
13. National Policy for Disaster Management, 2009 (GoK, 2009e)	The thrust of the policy is to institutionalize disaster management and mainstream disaster risk reduction in the country's development initiatives. The policy focus is in keeping with international and regional initiatives as contained in the Yokohama Strategy and Plan of Action for	<ul style="list-style-type: none"> • Ministry of Devolution and Planning • County Government Disaster

National policy	Environmental role	Focal institutions & agencies
	a Safer World (1994), the Johannesburg Plan of Implementation issued at the World Summit on Sustainable Development (2002) and the targets set to achieve the Sustainable Development Goals (SDGs), and finally the Hyogo Declaration and Hyogo Framework of Action 2005 - 2015	management Authorities
14. National Gender and Development Policy, 2000 (GoK, 2000)	The policy spells out a policy approach of gender mainstreaming and empowerment of women and clearly states that it is the right of women, men, girls and boys to participate in and benefit equally from the development process. The NPGD provides a framework for mainstreaming gender in all policies, planning and programming in Kenya and puts in place institutional mechanisms to ensure effective implementation	Ministry of Devolution and Planning
15. National Environmental Sanitation and Hygiene Policy 2016-2030	The policy commits the Government of the Republic of Kenya at both National and County levels to pursuing a robust strategy that will not only enable all Kenyans to enjoy their right to highest attainable standards of sanitation but also to a clean and healthy environment as guaranteed by the Constitution of Kenya 2010. The policy therefore focuses on a range of complementary strategies devoted to ensuring universal access to improved sanitation and clean and healthy environment. Ultimately, this policy aims at ensuring better health, dignity, social well-being and quality of life for all the people of Kenya	Ministry of Health
16. Draft National Policy on Peace Building and Conflict Management (2006) (GoK, 2006a)	The overall goal of the national Policy on Peace-building and Conflict Management is to promote sustainable peace and development in Kenya. It is intended to address the key challenges facing Kenya in her commitment to supporting sustainable peace and development through the reduction of poverty. It is expected to ensure that Kenya complies with her international and regional obligations under various international agreements relating to human security, conflict, development and human rights. The policy reflects on the values of the Kenyan people as embodied in the Bill of Rights of the Constitution of Kenya, which guarantees the fundamental rights, and freedoms of individual persons	Ministry of Devolution and Planning
17. Draft Devolution Policy, 2015 (GoKc)	The overall goal of the policy is to address the emerging issues on the implementation of devolution and to provide policy measures to enhance effective governance at both the national and county levels of government	Ministry of Devolution and Planning
18. National Policy on Occupational Safety and Health, 2012	The policy applies to all workplaces in all sectors and is expected to promote basic principles of assessing occupational risks and/or hazards; combating hazards at source; and developing a national preventative safety and health culture that includes information, consultation, research and training. The main purpose for the policy is prevention and control of work-related accidents and diseases, compensation and rehabilitation of workers injured in the course of work and those who contract occupational diseases	Ministry of Labour
19. National HIV/AIDS Policy (GoK, 2009)	The policy provides directions for dealing with the day-to-day HIV and AIDS related issues and problems that arise within the workplace and also outlines employee's rights, responsibilities and expected behavior in the workplace	Ministry of Health

National policy	Environmental role	Focal institutions & agencies
20. National Children Policy, 2010 (GoK, 2010)	The overall goal of this policy is to realize and safeguard the rights and welfare of the child. The policy goals stated are based on the key pillars of Child Rights as articulated in the (UNCRC), 1989. These are Survival Rights, Development Rights, Protection Rights and Participation Rights. The vision of this policy is to create an environment where all the rights of a child in Kenya will be fulfilled.	National Council for Children's Services
21. Policy Statement On Public Private Partnerships, 2011	The role of the policy is to articulate and underscore the Government's commitment for an enabling environment for attracting private sector partners by providing an appropriate public-private partnership framework to enhance the attainment of Kenya Vision 2030 development goals in all sectors	National Treasury
22. Sessional Paper No. 10 of 2012 on Kenya Vision 2030	The role of the Sessional Paper is that of providing a legitimate anchor for Vision 2030 as the country's economic and national development guiding policy framework and ensure it is sustained up to 2030	Ministry of Devolution and Planning

2.2.2: Legal frameworks

In addition to operating within the environmental policies, the mining sector is expected to strictly comply and operate within the various statutory obligations in the sectorial governance frameworks in order to ensure environmental sustainability. The non-compliance with statutory obligations can lead to legal liabilities including the discontinuation and closure of mines. **Table 2-11** shows the environmental legal frameworks in Kenya.

Table 2- 11: Environmental legal frameworks in Kenya

Legal framework	Environmental role	Relevant institutions & agencies
1. Environmental Management and Coordination Act (EMCA) year??Cap 387	The Act serves as the umbrella environment law. It provides for the establishment of an appropriate legal and institutional framework for the management of the environment	NEMA
2. Land Laws (Amendment) Act, 2016 No. 28 of 2016	This is an Act enacted to amend the laws relating to land in order to align them with the Constitution, to give effect to Articles 68(i) and 67(2) of the Constitution	<ul style="list-style-type: none"> • Ministry of Land & Physical Planning • National Land Commission (NLC)
3. Land Act No. 6 of 2012	The Act was enacted to give effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws and to provide for the sustainable administration and management of land and land based resources	<ul style="list-style-type: none"> • Ministry of Land & Physical Planning • National land Commission
4. Community Land Act No. 27 of 2016	The Act was enacted to give effect to Article 63 (5) of the Constitution in order to; provide for the recognition, protection and registration of community land rights; management and administration of community land; and to provide for the role of county governments in relation to unregistered community land	<ul style="list-style-type: none"> • Ministry of Land & Physical Planning • NLC
5. National Land Commission Act No. 5 of 2012	The Act makes further provision to the functions and powers of the NLC especially with regard to qualifications and procedures for appointments to the Commission. It also gives effect to the objects and principles of devolved government in land management and administration	<ul style="list-style-type: none"> • Ministry of Land & Physical Planning • NLC

Legal framework	Environmental role	Relevant institutions & agencies
6. Environment and Land Court Act No. 19, Revised edition 2015 (2011)	It is an Act of Parliament to give effect to Article 162(2)(b) of the Constitution; to establish a superior court to hear and determine disputes relating to the environment and the use and occupation of, and title to, land, and to make provision for its jurisdiction functions and powers	Environment and Land Court
7. Water Act, No. 43 of 2016	The Act provides for the management, conservation, use and control of water resources and regulation of rights to use water. It also provides for the regulation and management of water supply and sewerage services	<ul style="list-style-type: none"> Water Resources Management Authority (WRMA) National Water Harvesting and Storage Authority Water Services Regulatory Board
8. Forest Conservation & management Act No. 34, of 2016	The Act provides for the establishment, development and sustainable, management, including conservation and rational management of forest resources	Kenya Forest Service (KFS)
9. Wildlife (Conservation and Management) Act Cap 376, 2013	The Act provides the law relating to the protection, conservation and management of wildlife in Kenya	Kenya Wildlife Service (KWS)
10. The Natural Resources (Benefit Sharing) Bill, 2014	The Bill is expected to establish a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities	Natural Resources Benefits Sharing Authority
11. Climate Change Act No. 11 of 2016	The Act provides for a regulatory framework for enhanced response to climate change. It is expected to provide mechanisms and measures to achieve low carbon climate development	Climate Change Council
12. National Museums and Heritage Act 2011	The Act is responsible for the identification, protection, conservation and transmission of the cultural and natural heritage of Kenya	National Museums of Kenya
13. Physical Planning Bill 2015	The Act makes provision for the planning, use, regulation and development of land	<ul style="list-style-type: none"> National Physical Planning Consultative Forum County Physical Planning Consultative Forum NLC
14. Public Health Act, Cap 24, 1986	The Act makes provisions for securing and maintaining good standards of public health	Ministry of Health
15. Employment Act, No. 11 of 2007 Revised Edition 2012 (2007)	The Act deals with fundamental rights of employees and is expected to provide basic conditions of employment of employees and control the employment of children	Ministry of Labour
16. Work Injuries Benefits Act (WIBA), Cap 236 of 2007	The Act provides for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes	Directorate of Occupational Safety and Health Services
17. The Children Act Cap 141, 2001	The Act makes provisions for parental responsibility and protection of children in line with the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes	National Council for Children Services
18. Occupational Safety and Health Act 2007	The Act of Parliament deals with safety, health and welfare of workers at workplaces. It provides for the establishment of the National Council for Occupational Safety and Health	<ul style="list-style-type: none"> Ministry of Labour Directorate of Occupational Safety & Health

Legal framework	Environmental role	Relevant institutions & agencies
		<ul style="list-style-type: none"> National Council for Occupational Safety and Health
19. Radiation protection Act, Cap 243, (Revision 2012)	The Act provides for the protection of the public and radiation workers from the dangers arising from the use of devices or material Capable of producing ionizing radiation	Radiation Protection Board
20. Public Access to Information No. 31 of Act 2016	The Act gives effect to Article 35 of the Constitution and confers on the establishment of the Commission on Administrative Justice	Commission on Administrative Justice
21. County Government Act No. 17 of 2012 (Revision 2015)	The Act gives effect to Chapter Eleven of the Constitution; to provide for county governments' powers, functions and responsibilities to deliver services	<ul style="list-style-type: none"> Ministry of Devolution and Planning County Governments
22. County Governments Disaster Management Bill, 2014	The Act provides for the effective management of disasters by the county governments	<ul style="list-style-type: none"> Ministry of Devolution and Planning County Governments
23. Public Private Partnership Act No. 15 of 2013	The Act provides for the participation of the private sector to partner with the Government in development programmes through concession or other contractual arrangements	<ul style="list-style-type: none"> National Treasury Public Private Partnership Unit (PPPU)
24. HIV and AIDS Prevention and Control Act No. 14 of 2006	The Act aims to promote public awareness about the causes, modes of transmission, consequences, means of prevention and control of HIV and AIDS	Ministry of Health
25. National Cohesion and Integration Act No. 12 of 2008 (Amendment 2012)	The Act is aimed at encouraging national cohesion and integration by outlawing discrimination on ethnic grounds in all sectors	National Cohesion and Integration Commission

2.2.3: Regulations

Some of the legal frameworks in **Section 2.2.2** are accompanied by a wide range of regulations whose aim is to support effective enforcement of the law. The mining sector is expected to comply with these regulations in order to ensure environmental sustainability. **Table 2-12** shows the environmental regulations in Kenya.

Table 2- 12: Environmental regulations in Kenya

Regulations	Environmental role	Focal institution
1. Environmental (impact assessment and audit) regulations, 2003 (LN No. 101)	The regulations are applied in the undertaking of EIAs, SEAs and environmental audits for subjectable policies, plans, programmes and projects related to Part IV, Part V and the Second Schedule of the Environmental Management and Coordination Act (EMCA Cap 387)	NEMA
2. Environmental (Water quality) Regulations, 2006 (Legal notice No. 121)	The regulations apply to water use in all sectors with a key objective of prohibiting discharge of effluent into the environment contrary to the established standards. The regulations further provides guidelines and standards for the discharge of poisons, toxins, noxious, radioactive waste or other pollutants into the environment in line with the Third Schedule of the regulations of EMCA Cap 387	NEMA
3. Environmental Management and Co-ordination (Controlled Substances) Regulations, 2007	The regulations aim to regulate the production, trade and use of controlled substances and products in order to ensure the elimination of substances and products that deplete the ozone layer	NEMA
4. Environmental Management and Co-ordination (Waste management) Regulations, 2006 – Legislative supplement No. 37	The regulations apply to all categories of wastes including mining sector waste	NEMA

5. Environmental Management and Coordination (Noise and excessive vibration pollution) (Control) Regulations, 2009 – LN 61	The regulations aim at ensuring the maintenance of a healthy environment for all people in Kenya; the management of their surroundings and their psychological wellbeing by regulating noise levels and excessive vibration	NEMA
6. Environmental Management and Co-ordination (Air quality) Regulations, 2014	The regulations provide for the prevention, control and abatement of air pollution to ensure clean and healthy ambient air	NEMA
7. Environmental Management and Co-ordination (Wetlands, river banks, lake shores and sea shore management) Regulations, 2009 – LN 19	The regulations provide for the conservation and sustainable use of wetlands in both private or public land and their resources in Kenya	NEMA
8. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014	The regulations are applicable in development activities which are likely to have adverse effects on the environment. The purpose of the regulations is to ensure:- a) good environmental practices; b) adequate remediation is achieved without adversely affecting economic viability; c) compliance with remediation obligations; and d) availability of funds for remediation activities at the end of the development activities	NEMA
9. Draft Environmental Management and Coordination (toxic and Hazardous Industrial Chemicals and Materials Management) Regulations 2013	The regulations ensure protection of human health and environment from adverse effects of toxic and hazardous chemicals and materials. The regulations apply to toxic and hazardous industrial chemicals and materials as classified in the First Schedule of the regulations	NEMA
10. Draft Environmental Management and Co-ordination (E-Waste Management) Regulations, 2013	The regulations deal with the management, handling, collection, transportation, recycling and safe disposal of E-waste in all sectors	NEMA

2.2.4: Guidelines and standards

The Government of Kenya has developed a wide range of guidelines and standards to be used in various sectors for purposes of ensuring compliance with some of the environmental laws and regulations outlined in **Section 2.2.2** and **2.2.3 (Table 2-13)**. The mining sector is expected to implement these guidelines and operate within these standards in order to ensure environmental sustainability.

Table 2- 13: Environmental guidelines and standards in Kenya

Guidelines & standard	Environmental role	Focal institution
1. National Guidelines for Strategic Environmental Assessment (SEA)	The guidelines provide the general principles, basic steps of SEA application in policies, programmes and plans. The guidelines also prescribe the tools and techniques to be adopted to enhance the practice of SEA in Kenya	NEMA
2. Environment impact assessment (EIA) guidelines and administrative procedures	The guidelines provide information on the steps to be followed in the undertaking of project related EIAs in Kenya	NEMA
3. E-waste management guidelines	The role of the guidelines is to streamline the procedures of handling and disposal of e-waste generated by various sectors to avoid the problem of environmental pollution	NEMA
4. Environmental (Water quality) Regulations, 2006 (Legal notice No. 121)	The regulations contain standards for discharge of effluent into the sewer and aquatic environment	NEMA
5. Environmental Management and Co-ordination (Waste management) Regulations, 2006 – Legislative supplement No. 37	The regulations provides the standards for treatment and disposal of wastes in the Third schedule (Regulations 26, 47)	NEMA

6. County Public Participation Guidelines 2016	The aim of the guidelines is to strengthen democracy and participatory governance by increasing accountability, inclusivity and ownership in various devolution activities. The guidelines are intended for use by all stakeholders including national and county government officers, civil society and all government institutions that are engaged in public service delivery	Ministry of Devolution & Planning
7. Eviction and Resettlement Guidelines, 2009	The guidelines apply in respect of all land and all occupiers of land throughout the country	Ministry of Lands

2.2.5: Strategies and action plans

In addition to all the above instruments, the Government of Kenya has developed a wide range of national strategies and action plans environmental sustainability in all sectors (**Table 2-14**). The mining sector is therefore expected to support the implementation of these strategies and action plans in order to ensure environmental sustainability.

Table 2- 14: Environmental strategies and action plans in Kenya

Strategy/action plan	Environmental role	Focal institution
1. Kenya Vision 2030	Vision 2030 prescribes the flagship programmes to be undertaken by the year 2030 in order to ensure a clean and healthy environment for the current and future generations	Vision 2030 Delivery Secretariat
2. National Spatial Plan 2015-2045	The Plan details the national spatial vision that will guide the long term spatial development of the country for a period of 30 years. It covers the entire territory of Kenya and defines the general trend and direction of spatial development for the country. It aims at achieving an organized, integrated, sustainable and balanced development of the country, hence informing the future use and distribution of activities by providing a framework for better national organization and linkages between different activities within the national space	Ministry of Lands and Physical Planning
3. National Climate Change Response Strategy (NCCRS) 2010	The purpose of this strategy is to provide robust measures needed to address the challenges posed by climate variability and change in all sectors	<ul style="list-style-type: none"> Ministry of Environment & Natural Resources National Climate Change Council
4. National Climate Change Action Plan 2013-2017	The aim of the first Action Plan is to support the implementation of the National Climate Change Response Strategy (NCCRS) that was launched in 2010. It is subject to revision and updating, in terms of section 13 of the Climate Change Act, during 2017, for the 2018-2023 period.	<ul style="list-style-type: none"> Ministry of Environment & Natural Resources National Climate Change Council
5. National Environment Action Plan (NEAP) 2009-2013	The NEAP provides a framework for the implementation of the Environment Policy and realization of the Sustainable Development Goals (SDGs) and Vision 2030	NEMA
6. National Biodiversity Strategy and Action Plan (NBSAP) 2000	The NBSAP serves as a guide to integrate biodiversity concerns into relevant sectorial or cross-sectorial plans, programmes and policies, especially those that can have a bearing on national biodiversity. The NBSAP should be mainstreamed into the planning and activities of all those sectors that can have an impact (positive and negative) on biodiversity. Under the Convention of Biological Diversity, whose implementation is undertaken through the NBSAP, all countries including Kenya, are now required to revise and update their NBPSAPs to provide means of mainstreaming biodiversity conservation into sectorial areas, including the mining sector	Ministry of Environment & Natural Resources

7. National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012), (GoK, 2012b)	The Plan describes the rationale and justification as well as the goal, objectives, strategies and actions that will facilitate the realization of restoration, conservation and sustainable management of water catchment areas. The Plan will be implemented over a 19-year period from 2011 to 2030 in line with the Kenya Vision 2030 and the Constitution of Kenya, 2010	Ministry of Water and Irrigation
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2.2.6: Multilateral environmental agreements (MEAs)

Kenya is a signatory to a total of ten (10) MEAs. Under the now repealed Constitution of Kenya (repealed on 27 August 2010), the ratification of treaties was purely within the purview of the Executive Arm of government, which could determine whether to present a Treaty to Parliament for operationalization through Kenyan legislation. In terms of article 2(6) of the 2010 Constitution of Kenya, as read together with section 12(1) of the 2012 Treaty Making and Ratification Act (No. 45 of 2012), Kenya remains a dualist jurisdiction whereby for treaties to take legal effect in Kenya, it is mandatory for them to be approved both by Cabinet, and by Parliament. Approval by both the National Assembly and Senate is required where the treaty in question has an impact on a manner of shared jurisdiction between the national government, and county governments. **Table 2-15** shows the MEAs which the country has ratified and which are relevant for the mining sector to integrate and domesticate the obligations in the MEAs in order to ensure environmental sustainability. The country's goal is to improve the level of domestication and implementation for these MEAs which is eventually expected to boost national economic growth and contribute towards the achievement of both national and global ecosystem integrity.

Table 2- 15: Multilateral environmental agreements in Kenya

MEA	Environmental role	National focal point
1. Convention on biological diversity (CBD Secretariat, 1992)	The CBD is also known as the "Omnibus Convention" or the "Convention for all life on the Earth" and is regarded as the over-arching biodiversity convention which deals with many critical issues including access and benefit sharing. Kenya signed the CBD on 11 th June 1992 and ratified it on 26 th July 1994	Ministry of Environment & Natural Resources
2. Ramsar Convention (UN, 1971)	The objective of this Convention is to protect important habitats of water birds by controlling the encroachment and loss of wetlands and ensuring their wise use. Kenya signed the Ramsar Convention on 5 th October 1990 and ratified it on 5 th June 1991	KWS
3. World heritage Convention (UN, 1972)	The objective of the convention is to establish an effective system of collective protection of the cultural, historical and natural heritage of outstanding universal value. Kenya signed the World Heritage Convention on 5 th June 1991	NEMA
4. Convention on Migratory Species – Bonn Convention (UN, 1979)	The MEA was established in order to protect wild animals that migrate across national and trans-national boundaries, including migratory land and sea animals. The aim of the Convention is to ensure that the traditional migration of wildlife through different regions of the world is sustained through international collaboration. Kenya entered into the agreement of adopting the Convention on Migratory Species on 1 st May 1999	KWS
5. United Nations Framework Convention on Climate Change, UNFCCC (UN, 1992)	The convention sets an ultimate objective of stabilizing greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic (human-induced) interference with the climate system. Kenya ratified the convention in August, 1994	Ministry of Environment & Natural Resources
6. United Nations Convention to Combat Desertification, UNCCD (UN, 1994)	The Convention specifically addresses the arid, semi-arid and dry sub-humid areas, known as the drylands, where some of the most vulnerable ecosystems and peoples can be found. It aims at forging a global partnership to reverse and prevent desertification/land degradation and to mitigate the effects of drought in affected areas in	Ministry of Environment & Natural Resources

	order to support poverty reduction and environmental sustainability Kenya ratified the convention in June, 1997	
7. East African Community (EAC) Protocol on Environment and Natural Resources, 1999, Amendment 2006 (EAC, 1999)	The role of the protocol is to govern the partner states in their cooperation in the management of environment and natural resources over areas within their jurisdiction including transboundary environment and natural resources. It is a protocol of general application which applies to all activities, matters and areas of management of the environment and natural resources of the Partner States	EAC Secretariat

2.3: Governance Framework in Human Rights

Activities in the mining sector will, as indicated earlier, continue to interact with human rights and affect human rights of various people. This could be through impact on right to property in land, where compulsory acquisition is undertaken over private or community land, to make way for a mining concern; or the right to a clean environment where pollution of the air or water occurs; or socio-economic rights such as provision of employment and adequate wages, or otherwise; child rights, and many others. The human rights governance framework in Kenya is governed by various laws, whose implementation could help in mitigating human rights violations resulting from mining activities, or enhance the value drawn from mining, by supporting or enhancing fulfilment of human rights. Therefore, the baseline for human rights legal provision is the Constitution, through the Bill of Rights set out in Chapter 4, together with various policies and legislation enacted for that purpose.

2.3.1: Policy

The Constitution of Kenya is anchored on the fundamental human rights principles which are reinforced in nearly all the chapters. It is therefore imperative for all implementers in all sectors including mining to appreciate their role in integrating human rights in their policy, legal and regulatory frameworks. In addition to the national constitution, human rights in the country are also anchored in the various policies. **Table 2-16** highlights the human rights considerations in the existing policies.

Table 2- 16: Human rights related policies in Kenya

National policy	Human rights considerations	National focal point
1. National Constitution, 2010	<p>Article 42 – Ensuring the rights to a clean and healthy environment</p> <p>Article 43 – Access to clean and safe water</p> <p>Article 60 – Public participation in land management within the principles of equitability, efficiency, productivity and sustainable land management practices</p> <p>Article 69 - Environment and natural resources</p> <p>(1) (a) Sustainable exploitation, utilization, management and conservation of the environment and natural resources, and equitable sharing of the environment and benefits</p> <p>(b) Achievement and maintaining a tree cover of at least 10% by the year 2030</p> <p>(d) Encouraging public participation in the management, protection and conservation of the environment</p> <p>(f) Environmental impact assessment, environmental audit for environmental protection;</p> <p>(h) Sustainable use of environment and natural resources</p> <p>Article 66 – Regulating use of any land, or any interest or right over any land, in the interest of public health or public planning</p> <p>Article 69 – Sustainable exploitation, utilization, management and conservation of the environment and natural resources and equitable sharing of the accruing benefits</p> <p>Article 185:</p> <p>22 - Protection of the environment and natural resources</p>	Government of Kenya
2. Sessional Paper No. 1 of 2015 on the National Policy	1.3.5 Guiding principles	National Council for

<p>on Elimination of Child Labour</p>	<p>To achieve sustainable reductions in child labour, this policy will be mainstreamed, coordinated and implemented within the broad framework of the national economic and social policy.</p> <ul style="list-style-type: none"> (i) Best Interest: a child's best interests are of paramount importance in every matter concerning the child (ii) Equal Opportunity: all children should have equal access and opportunities to education and vocational training, healthcare, nutrition, leisure and other social needs (iii) Partnership: harnessing and coordination of stakeholder efforts is critical for effective elimination of all forms of child labour (iv) Participation: children have rights to participate in formulation, implementation and monitoring and evaluation of strategies, interventions and policies that seek to eliminate child labour (v) Sustainability: elimination of child labour must be mainstreamed into broader development plans for sustained efforts (vi) Decent work: where children above the legally set minimum age of employment must work, the employment must be available in conditions of freedom, equity, human security and dignity <p>1.3.4 Policy objectives</p> <ul style="list-style-type: none"> (i) Eliminate all forms of child labour (ii) Establish and maintain an up to date and reliable database on child labour (iii) Mainstream elimination of child labour in national, county and sectorial policies and programmes (iv) Harness stakeholder efforts towards elimination of all forms of child labour <p>Policy Strategies</p> <p>4.1 Enforce Employment Act</p> <ul style="list-style-type: none"> (i) To ensure that children do not enter adulthood in a disadvantaged position due to early work, the government in consultation with the social partners and other stakeholders will continue to restrict employment of children aged 13-15 years to light work only. (ii) The minimum age of employment will, however, be retained at 16 years in keeping with the Employment Act (iii) Those children below the minimum age for employment but are out of school will be required to undergo a compulsory vocational training and apprenticeship. (iv) Special consideration will be accorded to children with disabilities and other special needs. (v) The government in collaboration with the private sector, social partners and other labour market institutions will promote decent work for all those who have attained the minimum age of employment. <p>4.2 Support and Work with Families and Communities</p> <ul style="list-style-type: none"> (i) The government, in collaboration with community and faith based organizations engaged in activities towards elimination of child labour, will undertake sensitization and awareness raising programmes within families and communities. (ii) The programme will target mindset and attitudinal change by the families and communities on the rights, roles and responsibilities of children. <p>4.4 Enhance Enforcement of Laws and Regulations</p> <ul style="list-style-type: none"> (i) The government will increase budgetary allocation for the labour inspectorate and child protection officers. (ii) Awareness raising activities will be undertaken targeting families, communities, parents and general public to raise their awareness and sensitize them on the provisions of the law, their roles and responsibilities. 	<p>Children's Services</p>
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	<ul style="list-style-type: none"> (iii) Government will employ and deploy additional labour inspectorate and child protection staff to upscale child labour inspectorate and protection services. (iv) The government will mobilize resources to facilitate regular training of the labour inspectorate staff; child protection officers; police officers; volunteers; and committees dealing with elimination of child labour at all levels. (v) Information on child labour investigations, prosecutions and penalties netted on offenders will also be collated, analysed and disseminated to all stakeholders. <p>4.6 Establish Child Labour Free Zones</p> <ul style="list-style-type: none"> (i) The government will initiate establishment of CLFZs in each of the subsequent years up to 2019/2020 (starting 2015/16) in all counties, with priority will be accorded to the counties with the highest prevalence of child labour. It is expected that by 2020, all counties will have at least a CLFZ 	
<p>3. Sessional Paper No. 3 of 2014 on National Policy and Action Plan on Human Rights</p>	<p>1.6 Guiding principles</p> <ul style="list-style-type: none"> (i) Universality and Inalienability: All human beings are born free and equal in dignity. All human rights inherently belong to each individual by birth, and cannot be taken away. (ii) Indivisibility: All human rights have equal status. Denial of one right invariably impedes the enjoyment of other rights. (iii) Interdependence and interrelatedness: The fulfilment of one right often depends, wholly, or in part, upon the fulfilment of other rights. (iv) Equality and non-discrimination: All individuals are equal as human beings and by virtue of the inherent dignity of each human person. (v) Participation and empowerment: All persons are entitled to active, free, and meaningful participation and access to information relating to the decision-making processes that affect their lives and well-being. (vi) Accountability, transparency, and Rule of Law: The State, its organs and its officials are the primary duty bearers in the fulfilment of human rights and are answerable for the observance of human rights. This means complying with legal norms and standards including accountability and transparency in this regard. <p>1.5 Policy objectives</p> <ul style="list-style-type: none"> (i) To promote the observance, respect, promotion, protection and fulfilment of all human rights by the State and Non- State actors. (ii) To strengthen the capacity of all State and Non- State actors to observe, respect, protect, promote and fulfil human rights. (iii) To promote the human rights based approach to planning, implementing, monitoring and evaluating of programmes in all sectors in the country. (iv) To mainstream human rights in public policy development and resource allocation. 	<p>Office of the Attorney General, and Department of Justice</p>

2.3.2: Legal frameworks

A number of legal frameworks in Kenya contain various statutory requirements to ensure protection of human rights in all sectors the mining sector included. **Table 2-17** outlines some of the relevant legal frameworks for development activities in the mining sector.

Table 2- 17: Human rights related legal frameworks in Kenya

Legal framework	Human rights considerations	National focal point
1. Kenya National Commission on Human Rights Act, 2011	The Act established the Kenya National Commission on Human Rights pursuant to Article 59(4) of the Constitution; to provide for the membership, powers and functions of the Kenya National Commission on Human Rights	Kenya National Commission on Human Rights
2. The Access to Information Act No. 31 of 2016	The Act gives effect to Article 35 of the Constitution and confers on the Commission on Administrative Justice the oversight and enforcement functions and powers	Commission on Administrative Justice
3. Commission on Administrative Justice Act No 23 of 2011	The Act established the Commission on Administrative Justice pursuant to Article 59(4) of the Constitution	Commission on Administrative Justice
4. The Fair Administrative Action Act, 2015	The Act gives effect to Article 47 of the National Constitution on fair administrative action	Commission on Administrative Justice
5. Land Act No. 28 of 2016	The Act gives effect to Articles 68(c)(i) and 67(2)(e) of the Constitution, to provide for procedures on evictions from land	<ul style="list-style-type: none"> Ministry of Lands National Land Commission (NLC)
6. Community Land Act No. 27 of 2016	The Act gives effect to Article 63(5) of the Constitution to; provide for the recognition, protection and registration of community land rights; management and administration of community land; provide for the role of county governments in relation to unregistered community land	<ul style="list-style-type: none"> Ministry of Lands National Land Commission (NLC)
7. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act), 2012	The Act makes provision for the prevention, protection and provision of assistance to internally displaced persons and affected communities and give effect to the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, and the United Nations Guiding Principles on Internal Displacement	National Consultative Coordination Committee on Internally Displaced Persons
8. Labour Relations Act No. 14 of 2007	The Act of Parliament consolidates the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratization of trade unions and employers organizations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development	Ministry of Labour

2.3.3: International agreements

Protection of human rights in Kenya is also undertaken in accordance with a number of international agreements which Kenya has ratified and these are in **Table 2-18**.

Table 2- 18: Human rights related international agreements

Legal framework	Human rights considerations	National focal point
1. United Nations Universal Declaration of Human Rights	The Universal Declaration of Human Rights (UDHR) is a milestone document on human rights. The Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected and it has been translated into over 500 languages	United Nations
2. ILO Declaration on Fundamental Principles and Rights at Work	The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, makes it clear that these rights are universal, and that they apply to all people in all states - regardless of the level of economic development. It particularly mentions groups with special needs, including the unemployed and migrant workers. It recognizes that economic growth alone is not enough to ensure equity, social progress and to eradicate poverty	International Labour Organization
3. African Charter of Human and Peoples' Rights	The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent	<ul style="list-style-type: none"> • Africa Union • African Court on Human and Peoples' Rights
4. International Covenant on Economic, Social and Cultural Rights	The International Covenant on Economic and Social Rights defines various socio-economic and cultural rights to which every human being is entitled, including enjoyment of just and favourable conditions of work such as through fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; and safe and healthy working conditions. The Covenant requires all state parties to take steps, individually and through international assistance and co-operation, to the maximum of their available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appropriate means, including particularly the adoption of legislative measures	Committee on Economic, Social and Cultural Rights

3. SCOPE, APPROACH AND METHODOLOGY

The purpose of the Strategic Environmental Assessment (SEA) in Kenya was to assess ways in which environmental administration and governance in Kenya's mining sector is currently being conducted at both the national and community levels, with a view to increase the level of attention to environmental and social priorities, improve sector capacity for managing environmental and social risks and strengthen social accountability. The SEA is expected to offer recommendations for:

- a) Improvements in the processes of environmental administration and governance in the mining sector so that the purpose and expectations of the various legislations are fully attained;
- b) Enhancements in the engagement of communities and wider society in environmental administration and governance in the mining sector, while incorporating rule of law and human rights principles; and
- c) Capacity building for both government and community stakeholders to allow the processes of environmental administration and governance in the mining sector to be conducted in accordance with best practices and with proper consideration of the underlying goals of the National Constitution, and human rights principles.

The SEA considered the following aspects:-

- a) Extent of meaningful consultations with affected communities in the mining sector before licenses are granted with focus on representative, inclusive and fair process;
- b) Quality and effectiveness of the Environmental Impact Assessment (EIA) process for mining projects in the country;
- c) Quality of Environmental Management Plans (EMPs) in mining project EIAs including their implementation and follow-up monitoring;
- d) Community access to mining information in a timely and understandable way;
- e) Coordination between national and county governments including the relevant departments and agencies and their role on environmental and social impact of the mining sector.

These aspects were examined throughout the entire life cycle of the mining process, starting from the issuance of an exploration permit, the EIA and licensing process, monitoring of the EMP, up to post-closure rehabilitation of mining sites. The SEA also broadly interrogated the spirit of the Mining Act 2016 especially with regard to existing institutional framework, mineral agreements, pre-emptive rights, mineral rights, mining benefit sharing, local equity participation, labor relations dispute resolution, and environmental protection.

3.1: Terms of Reference for the Strategic Environmental Assessment

The purpose of this Strategic Environmental Assessment (SEA) was to assess ways in which environmental administration and governance in the Kenya's mining sector are currently being conducted at both the national and community levels, and offer recommendations for:-

- a) Improved processes of environmental administration and governance in the mining sector so that the purpose and expectations of the various legislations are fully attained;
- b) Enhanced engagement of communities and wider society in environmental administration and governance in the mining sector, while incorporating rule of law and human rights principles; and
- c) Capacity building for both government and community stakeholders to allow the processes of environmental administration and governance in the mining sector to be conducted in accordance with best practices and with proper consideration of the underlying goals of the National Constitution, and human rights principles

Additionally, the SEA was expected to consider the following issues:-;

- a) Extent of meaningful consultations with affected communities in the mining sector before licenses are granted with focus on representative, inclusive and fair process;
- b) Quality and effectiveness of the Environmental Impact Assessment (EIA) process for mining projects in the country;
- c) Quality of Environmental Management Plans (EMPs) in mining project EIAs including their implementation and follow-up monitoring;

- d) Community access to mining information in a timely and understandable way;
- e) Coordination between national and county governments including the relevant departments and agencies and their role on environmental and social impact of the mining sector.

The detailed ToR for the SEA are is provided in **Annex 1**.

This SEA was undertaken in accordance with the National Guidelines for SEA (2012) in the country. Its geographic scope considered the whole of Kenya but the stakeholder engagement focused on Nairobi which is the national seat for the governance of the mining sector in the country as well as Kwale and Kitui Counties. The technical scope considered the issues provided in the Terms of Reference for the SEA. (**Section 2.8**). The scope was also configured carefully in order to ensure full consideration of the requirements in the National Guidelines for SEA (2012).

3.2: Overall Scope and Road Map

The overall scope of the SEA covered environmental administration and governance of the mining sector as is currently being conducted at the national and community levels, and observance of human rights. The SEA interrogated improvement processes of governance, community engagement, environmental administration and incorporation of human rights in the sector. It further explored capacity building for the government and community stakeholders in accordance with the Kenya Constitution 2010, relevant regulation frameworks and human rights principles.

3.2.1 Geographical scope

The SEA process was conducted at national level through involvement of high-level upstream stakeholders in Nairobi and also at the local level with a focus on Kwale and Kitui Counties. The SEA focus in Nairobi involved consultations with key stakeholders in Nairobi which included mining government institutions, government agencies mandated to oversee governance in the mining sector, businesses, prospecting companies, mineral dealers, trade unions, research institutions, civil society organizations, academic institutions, professional bodies, and individuals. The geographical scope covered the proposed coal mining sites of Mui Basin in Kitui County and other key mineral rich landscapes in the county. It also considered the current mining areas in Kwale County such as Base Titanium operational areas and artisanal mining sites. Consideration was also given to potential mining site such the niobium are in Mrima Hill.

3.2.1.1: Nairobi

The City of Nairobi is the Capital of Kenya and the principal seat of power in Kenya. Moreover, most of the head offices associated with the mining sector (Ministry of Mining, Directorate of Mines, Directorate of Geological Survey, Mineral Rights Board, National Mining Corporation, Kenya Chamber of Mines and Artisanal and Small-Scale Miners (ASSM), environmental governance (Ministry of Environment and Natural Resources, National Environment Management Authority (NEMA) and human rights (Attorney General, Kenya National Commission on Human Rights, Law Society of Kenya, Federation of Women Lawyers)) are all situated in Nairobi. In addition, most of the mining companies in the country have their head offices in Nairobi.

3.2.1.2: Kwale County

Kwale County was included in the SEA process because of the prevalent and active mining activities taking place in the area such as titanium mining in the Central, South and North Dunes, located approximately 50km south of Mombasa, and 8km inland from the Indian Ocean with an estimated 143.0 million tonnes of the mineral. The county is one of the six Counties in the coastal region lying between latitudes 30 3'and 40 45'South and longitudes 380 31'and 390 31'East. It borders Taita Taveta County to the North West, Kilifi County to the North East, Taita Taveta and Kilifi to the North. Mombasa County and Indian Ocean are located to the East and United Republic of Tanzania to the South of Kwale (**Figure 3-1**). The county covers an area of 8270.2 km², of which 62 km² is under water. The area excludes the 200-miles coastal strip known as the Exclusive Economic Zones (EEZ).

The position of the county puts it in a strategic location for accelerated economic growth within coast region. Kwale County is divided into three administrative sub-counties namely; Matuga, Kinango and Msambweni. These sub-counties are further divided into a total of nine divisions, 37 locations and 84 sub locations. Population density and distribution in Kwale County is strongly influenced by the topography and the agro-ecological set-up. The total population of Kwale was projected to be 713,488 persons in 2012 comprising of 346,898 males and 366,589 females. This is a 9.8 per cent increase from 649,931 in 2009. The county population growth rate is 3.1 per cent, and the sex ratio is 95 males per 100 females (Kwale County Government, 2013).

The mineral potential of sedimentary rocks of the Kenyan coast has been recognized since the turn of the last century. Silica sands for manufacture of glass are mined at Waa, Ramisi and Msambweni but much more potential exists for its exploitation. The county has potential for the exploitation of dozens of minerals which have not been fully exploited. These include; Titanium (rutile, ilmenite, zircon) at Nguluku and Shimba Hills; Gemstones at Kuranze; Rare Earth Elements (niobium, phosphates) at Mrima Hills and Samburu; Silica Sand at Waa, Tiwi and Ramisi; Zinc, Lead and copper at M Kang'ombe, Mwache, Dumbule and Dzitenge; Baryte at Lunga-lunga; Coal at Maji ya Chumvi; Sandstones at Mariakani; Limestone at Shimoni and Waa; Coral at coastline and Oil/Gas at onshore and offshore (Kwale County Government, 2013).



Figure 3- 1: Map of Kwale County

3.2.1.3: Kitui County

Kitui County is located 170km to the South East of Nairobi City lying between latitudes 0° 10' and 3°0' south and longitudes 37°50' and 39°0' east, about 160km east of Nairobi City. It is the sixth largest county in the country, covering an area of 30,496.51 km² including 6,302.7 km² occupied by Tsavo East National park. It was included in the SEA because it has a high mining potential for a wide range of minerals such as; gypsum, iron ore, marble and coal. The county shares its borders with seven other counties: Machakos and Makueni counties to the west, Tana River County to the east and southeast, Taita Taveta County to the south, Embu to the north-west, and Tharaka-Nithi and Meru counties to the north (**Figure 3-2**). Kitui

County has eight (8) sub-counties namely; Kitui Central, Kitui West, Kitui East, Kitui South, Kitui Rural, Mwingi North, Mwingi Central and Mwingi West. It is further sub-divided into forty (40) wards, with the sub-counties being administrated by the sub-county administrators and the wards by the ward administrators (Kitui County Government, 2013).

Kitui County has a low lying topography with arid and semi-arid climate, and its rainfall distribution is normally erratic and unreliable. Its altitude ranges between 400m and 1800m above sea level, and the topography of the county can be divided into hilly rugged uplands and lowlands. The general landscape is flat with a plain that gently rolls down towards the east and northeast where altitudes are as low as 400 meters. Apart from the Yatta Plateau and the range of hills in the central part of the county, the topography is undulating, and gives way to plains toward the east. The highlands, namely; Migwani, Mumoni, Kitui Central, Mui, Mutitu Hills and Yatta plateau, receive relatively high rainfall compared with lowlands of Nguni, Kyuso and Tseikuru (Kitui County Government, 2013). The county's population was 1,012,709 according to the Population and Household Census report of 2009. The report showed that 531,427 were females while 481,282 were males and this was projected to grow to 1,065,330 by 2013. The population growth rate of the county at 2.1% is slightly lower than the national rate of 2.6% (Kitui County Government, 2013).

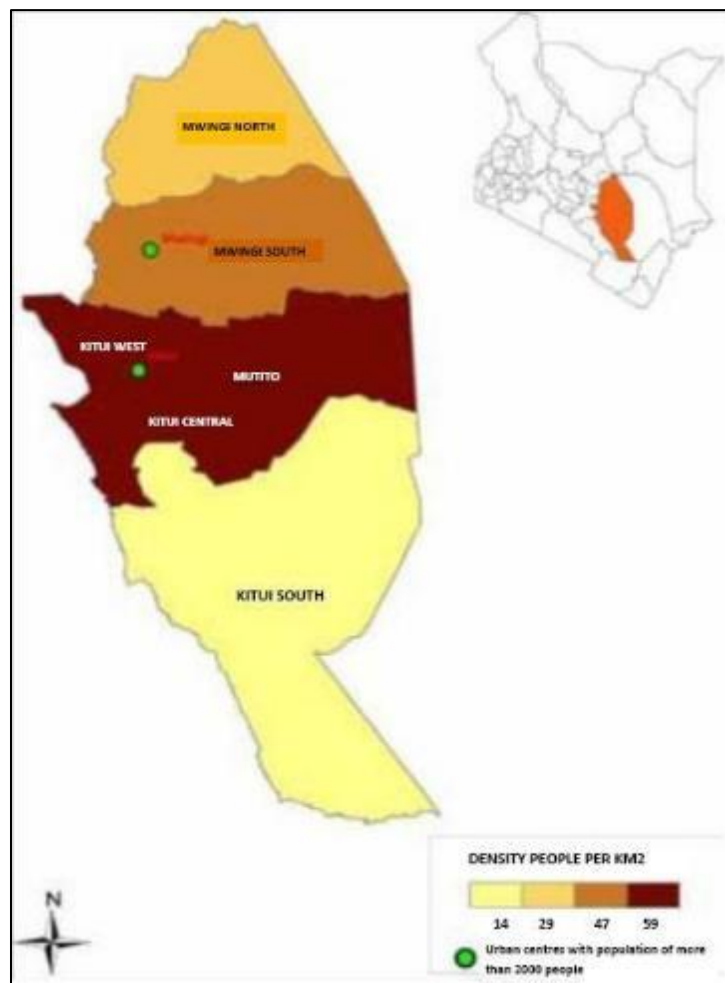


Figure 3- 2: Map of Kitui County

Kitui County has several minerals deposits such as; coal, limestone, granite, gypsum, vermiculite, sand and gemstones in most of its sub counties Exploration and excavation of some of the minerals has started while for some it's yet to start. Excavation of limestone has commenced at Mui and Kyuso, while gypsum is currently being mined at Mwingi South, and gemstone at Tharaka and Tseikuru. Sand harvesting and

mining of gemstones is done primarily by the local artisans (Kitui County Government, 2013). Mining of coal deposits at Mui Basin which runs from parts of Kitui East (blocks A and B) to Mwingi Central (blocks C and D) is among the national flagship projects geared towards realization of Kenya Vision 2030. Out of these blocks, concession has been done in block C and according to the Ministry of Environment, Energy and Mining Investments, block C has an estimated 400,000 million metric tonnes of coal that can be exploited for nearly 50 years. These deposits alone have an estimated value of KSh 3.4 trillion at current market rates, while the value of the reserves in Blocks A, B and D is yet to be determined, as exploration is still on-going. Exploration of limestone in Mutomo, Kyuso and Mutito is currently on-going with major cement companies including Athi River Mining (ARM) Limited, East Africa Portland Cement Company and the Dangote Group from Nigeria having expressed interest in exploiting the limestone reserves. The County has a vast array of unexplored industrial minerals including gypsum, iron, mica, silver, copper and gemstones (sapphire, garnets, amethyst and ruby).

3.2.2 Technical scope

The technical scope covered public administration experience, regulatory institutional frameworks, environmental and social characteristics, community engagement and participation, application of human rights principles, gender inclusion, rule of law, accountability and transparency, and information access under which the mining sector operates. **Figure 3- 3** outlines the activities flowchart used during the SEA process.

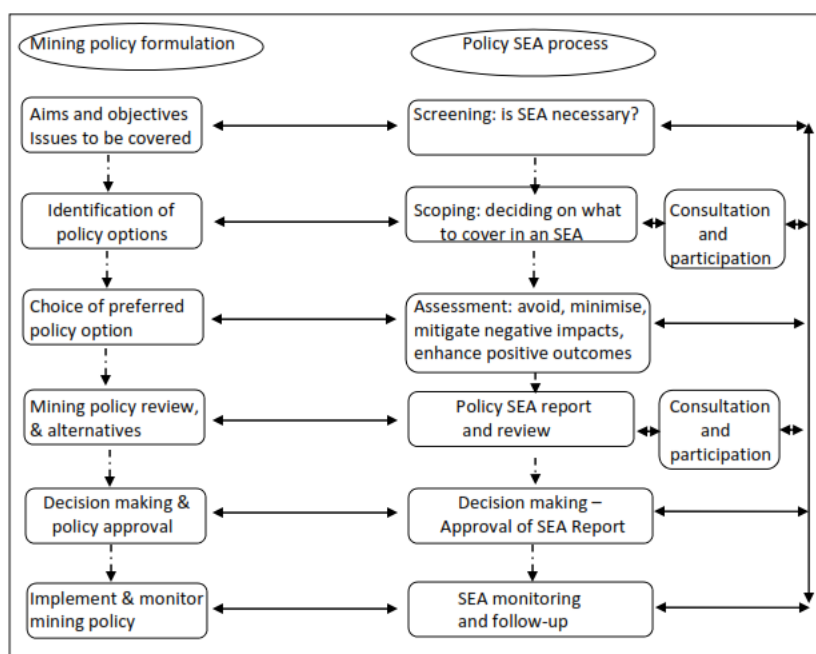


Figure 3- 3: General activity flowchart for the SEA process

The systematic roadmap used in the policy SEA involved the following:-

- Documentary analysis and preliminary scoping consultations with stakeholders
- Preparation of a Policy Brief
- Preparation of scoping report
- Submission of Policy Brief and Scoping Report to NEMA
- Field missions for baseline situation analysis
- Stakeholder consultations and public participation
- Policy impact analysis
- Impact mitigation planning
- Identification of gaps and alternatives options
- Preparation of a draft report
- Presentation of findings and stakeholder dialogue
- Compilation, validation and submission of a final report

3.3: PPP Frameworks

During the SEA process, a comprehensive PPP framework was developed in order to vigorously assess the effectiveness of the governance framework for the mining sector in the country, and specifically with regard to environmental protection and human rights. The framework consisted of a total of 93 environmental and human rights governance instruments in form of policies, legal frameworks, regulations, guidelines and standards as well as national strategies and action plans (**Box 3-1**). These comprised of 22 policies, 25 legal frameworks, 10 regulations, 7 guidelines and standards, 7 national strategies and action plans and 7 multilateral environmental agreements.

Box 3- 1: Frameworks for the SEA PPP analysis		
Framework	Environment	Human Rights
Policy	22	3
Legal framework	25	8
Regulations	10	-
Guidelines and Standards	7	-
Strategies and Action Plans	7	-
Multilateral environmental Agreements (MEAs)	7	-
Other international agreements	-	4
Total	78	15
Grand Total		93

The PPP analysis instruments that were used for the environment and human rights are herein outlined.

3.3.1: Environmental related frameworks

The frameworks used in the PPP analysis to assess the integration of environmental sustainability considerations in the governance of the mining sector outlined below.

3.3.1.1: Environmental Policy

A total of 21 policy frameworks were identified and considered relevant to the SEA, and are highlighted in **Box 3-2. Annex 3** provides details of the environmental policy obligations considered in the PPP analysis.

Box 3- 2: List of policies used for the PPP analysis
1. The Constitution of Kenya
2. Sessional Paper No. 10 of 2014 on the National Environment Policy
3. National Land Policy (2009)
4. National Land Use Policy 2016
5. National Water Policy (2012 Draft)
6. National Oceans & Fisheries Policy, 2008
7. Sessional Paper No. 1 Of 1999 - National Policy On Water Resources Management And Development
8. National Policy for the Sustainable Development of Arid and Semi-Arid Lands of Kenya (2012)
9. Draft National Policy on Wetlands Conservation and Management (2013)
10. Sessional Paper of 2014 on National Climate Change Framework Policy
11. National Wildlife Conservation and Management Policy, 2012
12. Draft National Forest Policy 2015
13. National Policy for Disaster Management, 2009
14. National Gender and Development Policy, 2000
15. National Environmental Sanitation and Hygiene Policy 2016-2030
16. Draft National Policy on Peace Building and Conflict Management (2006)
17. Draft Devolution Policy, 2015
18. National Policy on Occupational Safety and Health, 2012
19. National HIV and Aids Policy, 2009
20. National Children's Policy 2010
21. Policy Statement On Public Private Partnerships, 2011
22. Sessional Paper No. 10 of 2012 on Kenya Vision 2030

3.3.1.2: Environmental legislation

A total of 25 legal frameworks were identified and considered relevant for the SEA PPP analysis for the mining sector as highlighted in **Box 3-3. Annex 4** provides details of the environmental policy obligations considered in the PPP analysis.

Box 3- 3: List of environmental legal framework used for the SEA PPP analysis

1. Environmental Management and Coordination Act (EMCA) Cap 387
2. Land Laws (Amendment) Act, 2016 No. 28 of 2016
3. Land Act No. 6 of 2012
4. Community Land Act No. 27 of 2016
5. National Land Commission Act No. 5 of 2012
6. Environment and Land Court Act No. 19, Revised edition 2015 (2011)
7. Water Act, No. 43 of 2016
8. Forest Conservation & management Act No. 34, of 2016
9. Wildlife (Conservation and Management) Act Cap 376 of 1976, 2009
10. The Natural Resources (Benefit Sharing) Bill, 2014
11. Climate Change Act No. 11 of 2016
12. National Museums and Heritage Act 2011
13. Physical Planning Bill 2015
14. Public Health Act, Cap 242 (GoK, 1986)
15. Employment Act, No. 11 of 2007
16. Work Injuries Benefits Act, 2007
17. Children Act Cap 141, Revision 2012 (2010)
18. Occupational Safety and Health Act 2007
19. Radiation protection Act, CAP 243, (Revision 2012)
20. Public Access to Information No. 31 of Act 2016
21. County Government Act No. 17 of 2012 (Revision 2015)
22. County Governments Disaster Management Bill, 2014
23. Public Private Partnership Act No. 15 of 2013
24. HIV and AIDS Prevention and Control Act No. 14 of 2016
25. National Cohesion and Integration Act No. 12 of 2008 (Amendment 2012)

3.3.1.3: Environmental regulations

A total of 10 environmental regulations were identified and considered relevant to the SEA PPP analysis (**Box 3-4**). **Annex 5** provides details of the environmental regulation obligations considered the analysis.

Box 3- 4: List of environmental regulations used for the SEA PPP analysis

1. Environmental (impact assessment and audit) regulations, 2003 (Legal Notice 101)
2. Environmental (Water quality Regulations, 2006 (Legal Notice No. 121)
3. Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37
4. Environmental Management and Coordination (Noise and excessive vibration pollution) (Control) Regulations, 2009 – Legal Notice 61
5. Environmental Management and Co-ordination (Air quality) Regulations, 2014
6. Environmental Management and Co-ordination (Wetlands, river banks, lake shores and sea shore management) Regulations, 2009 – Legal Notice 19
7. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014
8. Draft Environmental Management and Co-ordination (E-Waste Management) Regulations, 2013
9. Radiation Protection (Standards) Regulations, 1986 (Legal Notice 54/1986)
10. Radiation Protection (Safety) Regulations, 2010

3.3.1.4: Guidelines and standards

Box 3-5 summarizes the 7 environmental guidelines and standards that were identified and considered to be relevant to the country's mining sector. **Annex 6** provides details of the environmental obligations for the guidelines and standards considered in the PPP analysis.

Box 3- 5: List of environmental guidelines and standards used for the SEA PPP analysis

1. National Guidelines for Strategic Environmental Assessment (SEA)
2. Environment impact assessment guidelines and administrative procedures
3. E-waste management guidelines
4. Environmental (Water quality Regulations, 2006 (Legal notice No. 121)
5. Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37
6. County Public Participation Guidelines 2016
7. Eviction and Resettlement Guidelines, 2009

3.3.1.5: National strategies and action plans

Six (6) national strategies and action plans for environmental sustainability were found to be relevant to the mining sector and their details are outlined in **Box 3-6**, and **Annex 7**.

Box 3- 6: List of national strategies and action plans used for the PPP analysis

1. Kenya Vision 2030
2. National Climate Change Response Strategy (NCCRS) 2010
3. National Climate Change Action Plan 2013-2017
4. National Environment Action Plan (NEAP) 2009-2013
5. National Biodiversity Strategy and Action Plan (NBSAP) 2000
6. National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012), (GoK, 2012b)
7. National Spatial Plan 2015-2045

3.3.1.6: Multilateral environmental agreements

In terms of multilateral environmental agreements (MEAs), 7 of them were found to related to the mining sectors and were used during the PPP analysis (**Box 3-7** and **annex 8**).

Box 3- 7: List of MEAs used for the PPP analysis

1. Convention on biological diversity (CBD)
2. Ramsar Convention
3. World heritage Convention
4. Convention on Migratory Species – Bonn Convention
5. United Nations Framework Convention on Climate Change, UNFCCC
6. United Nations Convention to Combat Desertification, UNCCD
7. East African Community (EAC) Protocol on Environment and Natural Resources, 1999, Amendment 2006

3.3.2: Human rights related frameworks

The frameworks used in the PPP analysis to assess the integration of human rights considerations in the governance of the mining sector are also herein outlined and included the following:-

3.3.2.1: Policy

The Constitution of Kenya was considered to a key relevant policy for the PPP analysis, and Chapter 4 on the Bill of Rights specifically which is the longest chapter, comprising articles covering civil, political, economic, social and cultural rights. The other frameworks included Sessional Paper No. 1 of 2015 on the

National Policy on Elimination of Child Labour and Sessional Paper No. 3 of 2014 on National Policy and Action Plan on Human Rights **Annex 9** outlines the details of human rights obligations for the Constitution of Kenya which were considered in the PPP analysis.

3.3.2.2: Legal frameworks

A total of 8 legal frameworks were found to be applicable to the mining sector and were used during the PPP analysis and their details are outlined in **Box 3-8** and **annex 10**.

Box 3- 8: List of human rights related legal framework used for the PPP analysis

1. Kenya National Commission on Human Rights Act, 2011
2. Access to Information Act, 2016
3. Commission on Administrative Justice Act No 23 of 2011
4. The Fair Administrative Action Act, 2015
5. Land Act 2016
6. Community Land Act 2016
7. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act), 2012
8. Labour Relations Act, No. 14 of 2007.

3.3.2.3: International agreements

Four international agreements were also considered to be applicable to governance of the mining sector and were used during the PPP analysis (**Box 3-9** and **annex 11**).

Box 3- 9: List of human rights related international agreements used for the PPP analysis

1. Universal Declaration of Human Rights
2. ILO Declaration on Fundamental Principles and Rights at Work
3. African Charter of Human Rights

3.4: PPP Analysis

PPP analysis is the strategic process of evaluating policies, plans and programmes in order to avoid conflict between the instruments and ensure complementarity and unity of purpose with regard to environmental sustainability. The PPP analysis mainly involved policy and strategic plan analysis but not programmes as in a plan SEA or programme SEA. The obligations for national strategic plans which were considered in the policy SEA included Kenya Vision 2030, the National Spatial Plan 2015-2045, the National Climate Change Response Strategy (NCCRS, 2010), the National Climate Change Action Plan 2013-2017 and the National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012). The PPP analysis involved the evaluation of existing framework for the overall management and governance in the mining sector against, various instruments for environmental sustainability and protection of human rights in the country which are in the form of policies, legal frameworks, regulations, guidelines and standards as well as MEAs and other international agreements which Kenya has ratified. The main aim of doing this was to assess the level of integration of environmental, social and human rights policy in the mining policy for sustainable governance of the mining sector.

The integration analysis for the policy SEA was based on the PPP framework outlined in **Section 3.3**. This involved a comprehensive review of relevant policies and legislation to identify all the environmental, social and human rights obligations and determine their level of integration in the mining policy and regulatory frameworks. For example, the Kenya Constitution has a total of 12 environmental obligations as shown below, which can be counter-checked against the mining policy to reveal the policy gaps as shown in **Box 3-10**.

Box 3- 10: Procedure used for the PPP analysis		
Name of policy	Relevant environmental obligations for the mining sector policy and governance	Integration of obligations in mining policy and legal framework
The Constitution of Kenya	Article 10 – Supporting participation of the people in the protection of marginalized lands and sustainable development.	✓
	Article 42 – Supporting public involvement in ensuring the rights to a clean and healthy environment.	✓
	Article 43 – Supporting public involvement in ensuring the need for every person to have access to clean and safe water in adequate quantities,	✓
	Article 60 – Supporting public participation in land management especially within the principles of equitability, efficiency, productivity and sustainable land management practices.	✓
	Article 66 – Regulating use of any land ,or any interest or right over any land, in the interest of public health or public planning	X
	Article 69 - Environment and natural resources	✓
	(1) (a) Ensuring sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits	
	(b) Working towards the achievement and maintaining a tree cover of at least 10% of the land area of Kenya by the year 2030	X
	(d) Encouraging public participation in the management, protection and conservation of the environment	✓
	(f) Supporting environmental impact assessment, environmental audit and monitoring of the environment	✓
	(g) Eliminating processes and activities that are likely to endanger the environment	X
	(h) Utilizing the environment and natural resources for the benefit of the people of Kenya	✓
Article 185: 22 - Protection of the environment and natural resources with a view to establishing a durable and sustainable system of development	X	

The underlying aim for the PPP analysis was to identify the following;- a) strengths in Kenya’s mining sector governance framework in relation to international best practices, b) weaknesses in Kenya’s mining sector governance framework in relation to international best practices, and, c) policy and regulatory gaps.

3.5: Strategic Evaluation of Environmental Impact Assessments (EIAs) for the Mining Sector

Kenya like most other countries require an environmental impact assessment (EIA) before giving and EIA licenses to a mining project. The EIA process provides a valuable opportunity for citizens to participate in decisions about mines but the problem is that project proponents often submit long, complex EIA reports and documents that are incomprehensible to the stakeholders especially the general public (Environmental Law Alliance Worldwide 2010). The protocol for the review of EIA reports by the relevant authority and agencies as well as the issuance of EIA licenses can be unfavourable for investors in the mining sector which can affect development. Finally, the quality of follow-up monitoring and audits can also compromise the national goals for environmental sustainability.

From this background, an evaluation of mining projects EIAs reports was undertaken for a 10-year period (2006-2016) using a sample of 50 reports at NEMA. The aim of the evaluation was to:-

- a. Determine the type of mining projects for which EIA licenses had been applied for including the location of mining and proponents,
- b. Assess the qualifications, relevance and competence of the EIA experts,

- c. Assess the quality of EIA implementation protocol and final reports in terms of adherence to relevant regulations and guidelines including comprehensive stakeholder consultation and involvement,
- d. Evaluate the capacity and quality of administrative review of mining project EIA reports by NEMA, and,
- e. Assess the quality of post mining project EIA report approval follow-up and compliance monitoring including post-EIA environmental audits.

The quality of the EIA reports was evaluated according to the guidelines in the quality guidebook for evaluating mining project EIAs by the Environmental Law Alliance Worldwide (Environmental Law Alliance Worldwide 2010).

3.5.1: Criteria for evaluation of mining project EIAs

The evaluation of mining project EIAs was undertaken with reference to the Environmental Management and Coordination (impact assessment and audit) regulations, 2003 (Legal Notice 101), Environment impact assessment guidelines and administrative procedures and the international guidebook for evaluating mining project EIAs (Environmental Law Alliance Worldwide, 2010). **Annex 12** outlines the criteria used in the evaluation of EIA reports.

3.6: Stakeholder Engagement and Consultations

The process of stakeholder engagement and consultation was preceded by comprehensive analysis and mapping in order to determine a key list of stakeholders to be considered in the SEA process. Engagement and consultations were undertaken in Nairobi Kwale and Kitui Counties. While Kwale and Kitui counties were study cases of mining sites in rural areas, Nairobi was selected as a case that represented all stakeholders in the mining sector at the national level. The essence of stakeholder engagement and consultations was to:-

- Provide the SEA team and stakeholders better awareness and insights on mining issues;
- Enable the SEA team and stakeholders have a better understanding of legal, policy, mining, environmental and human rights issues at the national and local levels;
- Act as an early warning of any existing or expected problems in the mining sector or affirmation that relevant issues are being addressed;
- Encourage better decision-making based on professional and local knowledge from those who have and those who will be impacted by the mining sector decisions;
- Enable the SEA team to identify early potential problems, challenges, pitfalls, gaps opportunities in the mining sector;
- Provide a forum for stakeholders to make any comments on mining policy, law and regulations, mining operations, environmental human rights and governance issues and suggestions for alternative options;
- Provide a mechanism for shared responsibility and problem solving for the mining sector;
- Improve communication between stakeholders in the mining sector;
- Provide a window for improved mining risk management; and
- Create opportunities for developing long-term and trusting relationships in the mining sector

3.6.1: Stakeholder mapping, analysis and identification

Stakeholder mapping, analysis and identification was undertaken to determine a key list of stakeholders across the entire spectrum in the mining industry, environment and human rights. The objectives of the stakeholder's analysis were to:-

- Identify groups, organizations and people having interests in the mining sector, environment and human rights;
- Understand stakeholders' stakes i.e., interests, levels of involvement and how they are affected by mining activities and projects;
- Assess stakeholders' stakes at different stages of the mining processes;
- Identify potential synergies and obstacles of the various stakeholders in the mining sector

Stakeholder mapping was undertaken using the principal clusters shown in **Table 3-1**. The cluster stakeholders were evaluated using a number of criteria including their: stake and rights in mining, duties, information type, and risk of non-involvement (**Table 3-1**).

Table 3- 1: Stakeholder clusters

Stakeholder Cluster	Stake in Mining	Rights they hold	Duties they bear	What do we need from them?	Risk if they are not engaged
Government Ministries	Strategic leadership, coordination including policy formulation and enactment of legal and regulatory frameworks	Constitutional rights, powers and duties	Protecting the environment and rights of people	Official policy direction	Legitimacy of the SEA is compromised
Statutory bodies	Specific functions	Specified by Acts of Parliament that create them	Specified by the Acts	Supporting the mining sector	Inadequate intuitional framework/support
County government	Investment and benefit sharing in mining sector	Constitutional rights, powers and duties	Specified in the Constitution	Plans and Strategies that favour mining sector	Failure to implement SEA recommendations at county level
Mineral prospectors	Mineral exploration and prospecting	Specified in the mineral prospecting licenses	Specified in the mineral prospecting licenses	Mineral exploration experience	SEA will lack mineral exploration experiences
Large scale mining companies	Profitable mineral extraction and processing	Specified in various licenses for mining activities	Specified in various licenses for mining activities	Mining experiences and earnings	SEA will lack mining experiences and earnings
Informal small scale miners	Profitable mineral extraction and processing	Human rights	To have decent life	Experiences and challenges	SEA will lack the experiences of artisanal miners
Dealers in minerals	Profitable business	Specified in the dealership licenses	Specified in the dealership licenses	Mineral values	SEA will lack values of minerals
Academic institutions	Mining knowledge and skills	Impart knowledge and skills	Produce competent professional	Knowledge and skills in mining	Lack of contemporary knowledge
Research organizations	Mining research and development	Generating innovations	Generate innovations	Research findings	Lack of innovation
Professional organizations	Maintaining professional standards	Maintaining professional standards	Maintaining professional standards	Professional standards	Lack of standards for practitioners
Civil society	Environmental protection and guarding against violation of human rights	Environmental and human rights advocacy	Environmental and human rights advocacy	Environmental, human rights and development issues in mining sector	Environmental degradation and violation of human rights

Stakeholder Cluster	Stake in Mining	Rights they hold	Duties they bear	What do we need from them?	Risk if they are not engaged
Local communities	Effect of mining on local communities	Fair and adequate compensation, benefits from mineral resources and information	Effective defense of community interests	How local communities are affected by mining	Local people's participation in the SEA would be lacking
Women	Impacts of mining on women	Human rights	Safeguard human rights	Their views on mining in their areas	Lack of women voice on mining
Youth	Impacts of mining on the youth	Human rights	Human rights	Their views on mining in their areas	Lack of voice of the youths on mining
Opinion leaders	Opinions of the people	To speak on behalf the people and the environment	To support others where they can	Opinions & views on mining sector	Lack of people's views in the SEA

The stakeholder mapping involved a careful visualization of stakeholder clusters against their level of influence as shown in **Figure 3-1**.

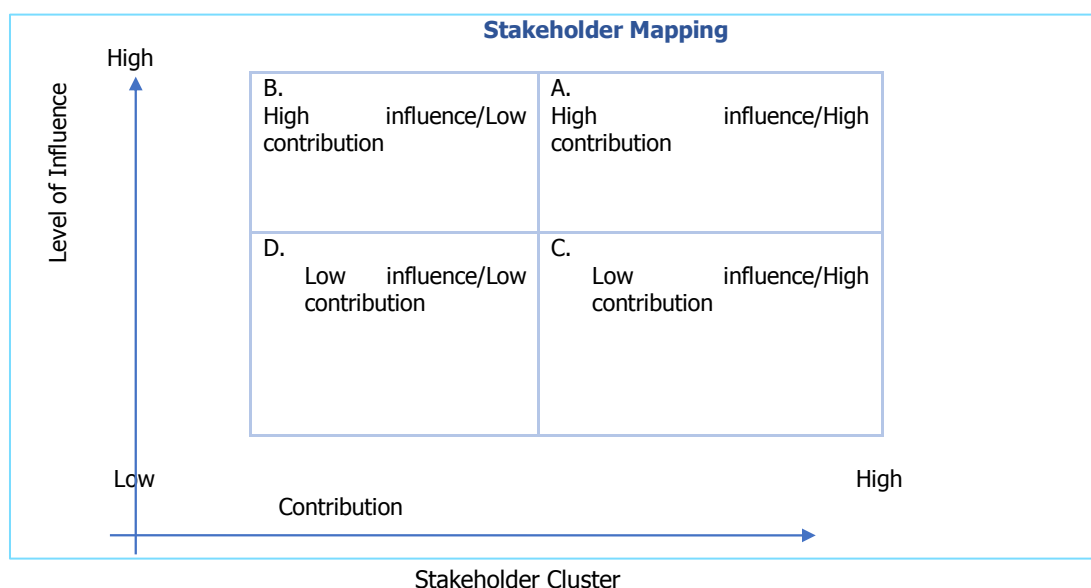


Figure 3- 4: Stakeholder mapping criteria

The following categories of stakeholders were identified using the mapping criteria in **Figure 3-1**:

- Group A (high influence, high contribution):** These stakeholders appear to have a high degree of influence in the mining sector and are of high importance to its success. Therefore, the SEA Team will create good working relationships with these stakeholders, to ensure an effective coalition of support for the SEA.

- **Group B (high influence, low contribution):** These are stakeholders with high influence, who can affect the outcomes of the SEA, but whose interests were not necessarily aligned with the overall goals of the SEA.
- **Group C (low influence, high contribution):** These stakeholders are of high importance to the success of the SEA, but have low influence. This implies that they require special initiatives if their interests are to be protected. Because of their substantial contributions, they can help shape the implementation of the SEA
- **Group D (low influence, low contribution):** The stakeholders in this group have low influence and low importance to the SEA objectives. Therefore they are of low priority and require limited engagement.

Table 3-2 shows the priority stakeholders selected using the criteria in **Figure 3-1**.

Table 3- 2: Prioritized stakeholders

Stakeholder groups	Priority stakeholders
Group A	Ministry of Mining, Ministry of Environment and Natural Resources, NEMA, Directorate of Occupational Safety and Health, Kenya National Commission on Human Rights, large scale miners, artisanal miners, , local communities, Geological Society of Kenya (GSK) and county governments or Council of Governors,
Group B	Ministry of Interior and Coordination of National Government, Ministry of Health, minerals prospectors, minerals dealers, Universities, civil society organizations, women and opinion leaders
Group C	Youth
Group D	Research organizations

3.6.2: SEA field missions and information gathering strategies

The overall approach for the stakeholder engagement was interactive, consultative, participatory, inclusive, and transparent. It was also adhered to international stakeholder engagement best practices. The five methods used in engaging stakeholders were as follows:-

- Desk review:** This focussed on a comprehensive review of mining, laws, policies and regulations, environment management and human rights in the context of the mining sector.
- Key informant interviews (KIs):** Key informant consultations targeted officials of national government, county governments, mining companies and civil society organizations in Kwale and Kitui counties and Nairobi. Consultations were held in the official's places of work and by virtue of their designations, their views represented the official positions of their organizations. Consultations were conducted in form of emails and telephones with stakeholders who could physically not be available. This involved face-to face interviews with individuals representing particular interests in the mining sector. These interviews were conducted using with an open but guided framework which allowed for focused, conversational and two-way communication. Structured questions were also used during the interviews. The questions were designed and phrased prior to the engagement based on the key goals for the SEA.
- Focus group discussions (FGDs):** The FGDs involved planned or purposeful discussions with each target of stakeholder category comprising of a small group of people (4 to 12 members) with wide knowledge and interests on mining, environment and human rights. The FGDs were designed to obtain relevant information about preferences and opinions in a relaxed, transparent, participatory and non-intimidating environment. The issues for discussion were carefully introduced to each of the FDG groups by the SEA team members and, in the ensuing discussion, group

members responded and discussed the target issues by providing their opinions, ideas, and comments. The key issues of focus in the FDG were as follows:-

- Stakeholder familiarity with the governance framework in the mining sector - policy, legislation, regulations, national strategies and action plans, standards and guidelines,
- Stakeholder views on whether the governance framework in the mining sector has effectively considered environmental and social issues throughout the mining life cycle,
- Stakeholder views on whether the governance framework in the mining sector has effectively considered HR issues throughout the mining life cycle,
- Stakeholder identification of gaps in the governance framework in the mining sector, and
- Stakeholder recommendations for the strengthening of the governance in the mining sector.

d) Public consultation meetings (barazas): The PCMs targeted communities where mining is already taking place and where minerals are known to exist but actual mining is yet to take place. The key issues of focus in the PMCs was similar to the FDGs. However, the PMCs were also used as a platform to discuss the level of public involvement in mining project EIAs including the issue of post-EIA monitoring and follow-ups. In Kwale County, such meetings were held in Nguluku (Titanium mining), Mrima Hill (Niobium mining), Mka'ngombe (gemstone mining, Denyenye, Tiwi-Maweni (coral stone mining) and Kuranze (gemstone mining). In Kitui County consultative meetings were held in Ikutha (iron Ore mining), Kaziku (limestone), Zombe (coal potential), Mui (coal), and Ngaaiye (limestone and marble).

e) Dialogue meetings and consultation workshops: These involved three key types of consultation meetings and workshops as follows:

i. Scoping dialogue meetings

Three consultation meetings were held were held with key informants in Kwale, Kitui and Nairobi with the following objectives:-

- To allow relevant stakeholders to contribute in the SEA scoping process as prescribed in the National Guidelines for Strategic Environmental Assessment in Kenya.
- To receive contributions on the key environmental issues which the mining sector governance framework should integrate.
- To receive contributions on the key human right issues which the mining sector governance framework should integrate.

ii. Scoping consultation meetings

Three consultation meetings were held with the following objectives:-

- Allow relevant stakeholders to contribute in the SEA scoping process as prescribed in the National Guidelines for Strategic Environmental Assessment in Kenya
- Receive contributions on the key environmental issues which the mining sector governance framework should integrate
- Receive contributions on the key human right issues which the mining sector governance framework should integrate

Three dialogue meetings were held and stakeholders in Kwale, Kitui and Nairobi met in Diana Reef Hotel, Heritage Hotel and Silver Springs Hotel respectively. A total of 161 stakeholders were consulted (66 in Kwale, 48 in Kitui and 47 in Nairobi).

iii. SEA consultation workshops

Two consultation workshops were held in Kwale and Kitui Counties with the aim of sharing the draft SEA report with the stakeholders in accordance with the National Guidelines for Strategic Environmental Assessment in Kenya. The Kwale workshop was held on March 23, 2017 at Diani Reef Beach Resort, while the Kitui workshop was held on March 28, 2017 at Parkside Villa Hotel, Kitui town

iv. Wider peer review

This was undertaken in accordance with EMCA Cap 387 and the National SEA Guidelines (2012) as follows:-

- A public notice inviting stakeholders to review and comment on the report was placed in the Kenya Gazette and daily newspapers.
- The draft SEA report was uploaded on the NEMA website for free access to all interested parties.
- Hard copies of the draft SEA report were circulated to relevant institutions for review.
- Hard copies of the draft SEA report were circulated to relevant county offices for public review.

v. SEA validation workshop

The national validation and adoption workshop was held in Nairobi after the wider peer review. This was done after the comments from the wider peer review were incorporated in the report.

3.6.2.1: SEA consultations in Kwale County

The Kwale field mission was held between 22nd and 30th January, 2017. The profile of stakeholders engaged and consulted in Kwale County included; government agencies, Kwale County government, large scale miners, small scale miners and civil society organizations (**Table 3-3**). During this time, the SEA team consulted a number of stakeholders who included national government agencies, Kwale County, mining companies, artisanal/small scale miners, civil society organizations and local communities. **Annex 3 & 4** provides a list of the consultation activities in Kwale County.

Table 3- 3: Summary of the SEA stakeholder engagement activities in Kwale County

Category	Stakeholder	Justification for selection	Location
National government institutions	Ministry of Mining	Mining policy formulation	Diani Reef Beach Resort
	Ministry of Interior and Coordination of National Government (County Commissioner), Kwale, Deputy County Commissioners for Matuga, Msambweni, Kinango and Lunga Lunga sub-counties	Security in Kwale County	Kwale town and Diani Reef Beach Resort
	County Geologist	Handles mining issues at the county on behalf of Ministry of Mining	Diani Reef Beach Resort
	NEMA	Handles environmental issues in Kwale County	Diani Reef Beach Resort
	Kenya wildlife Service (KWS)	Wildlife conservation and management in Shimba Hills Game Reserve and Kwale County	Shimba Hills Reserve Headquarters and Diani Reef Beach Resort
	Water Resource Management Authority	Water resources management –Coast Region	Mombasa and Diani Reef Beach Resort
	Kenya Forest Service (KFS)	Forest conservation and management in Kwale County	Kwale County KFS Office, Kwale town

Category	Stakeholder	Justification for selection	Location
	Ministry of Labour (Children Department)	Oversight of labour matters in Kwale County	Kwale town
County government	County Chief Executive Office,	Policy formulation at county level	Kwale town
	Physical Planning and Natural resources	Policy formulation and planning of natural resources at county level	Kwale town
	Community Development	Policy formulation and planning of natural resources at county level	Kwale town
	Public Health	Public health matters in the county	Kwale town and Diani Reef Beach Resort
Large scale mining companies	Base Titanium	Mining of Titanium	Msambweni and Diani Reef Beach Resort
	Kenya Calcium	Quarrying of coral stones to make calcium	Waa and Diani Reef Beach Resort
Small scale miners	Kuranze artisanal miners	Mining of gemstones	Kuranze and Diani Reef Beach Resort
	Denyenye quarry workers	Extraction of coral stones to produce blocks for building houses	Tiwi and Diani Reef Beach Resort
	Tiwi-Maweni quarry workers	Extraction of coral stones to produce blocks for building houses	Waa
	Mka'ngombe	Extraction limestone to produce building materials	Mka'ngombe
Civil society organizations	Kwale Natural Resources Network	Advocacy on sustainable use of natural resources in Kwale County	Ukunda and Diani Reef Beach Resort
	Plan International	Supporting development efforts in Kwale County	Kwale
	Haki Yetu	Human rights issues in Kwale County	Diani Reef Beach Resort
University	Kenyatta University	Training and research	Diani Reef Beach Resort
Opinion leader/Women representative	Nominated member in the National Parliament	County women representative (as opinion and women representative)	Diani Reef Beach Resort
Local communities (farmers, business people, religious people, youths, women village administrators and assistant chiefs and kaya elders)	Mrima Hills community	Community living in an area rich with Niobium	Mrima Hills and Diani Reef Beach Resort
	Nguluku community	Communities that have relocated as a result mining of Titanium	Nguluku and Diani Reef Beach Resort

3.6.2.2: SEA consultations in Kitui County

The typology of SEA stakeholders in Kitui County included representatives from the national and county governments as well as local communities in mineral resource areas (**Table 3-4**). The Kitui field mission

was held between 6th and 11th February, 2017, and the stakeholders consulted included the national government agencies, government of Kwale County, mining companies, artisanal miners, civil society organizations and local communities. **Annex 5 & 6** provide a list of the consultation activities in Kitui County.

Table 3- 4: Summary of the SEA stakeholder engagement activities in Kitui County

Category	Stakeholder Category	Justification for Selection	Location
National government institutions	Ministry of Mining	Mining policy formulation	Kitui town
	County Commissioner, Kitui County	Coordinates national government agenda and security in Kitui County	Kitui town
	Asst. County Commissioner (DCC) Mutomo Sub County	Coordinates national government agenda and security in Mutomo Sub-county	Mutomo town
	Deputy County Commissioner, Ikutha Sub County	Coordinates national government agenda and security in Ikutha sub county	Ikutha town and Kitui town
	Water Resources Management Authority (WRMA)	Water resources management in in Kitui County/Region	Kitui town
	NEMA	Regulates environment issues in the county	Kitui Town
County government institutions	County Secretary	Policy formulation and planning of natural resources at county level	Kitui Town
	Sub-County Administrator Ikutha Village	Management and delivery of services at the county level	Ikutha town
	Administrator Ngaiye, Sub- County	Coordinates county government services at the sub-county level	Ngaiye town and Kitui town
	Administrator Zombe, Sub-County	Coordinates county government services at the sub-county level	Zombe town and Kitui town
	Administrator Mathuki	Coordinates county government services at the sub-county level	Kitui town
	Chief Physical planner	Physical planning in Kitui County	Kitui town
Civil society organizations	Center for Human Rights and Civic Education (CHRCE) and other community based organizations	Human rights and civil education	Kitui town
Opinion leader	Member of County Assembly, Kyuso	Elected peoples, representative at county level	Kitui town
Local communities (farmers,	Ikutha Community	Community where there is iron ore and gemstones along Tiva River.	Ikutha Village where artisanal mining of iron ore

Category	Stakeholder Category	Justification for Selection	Location
business people, youths, women, religious leaders, village administrators and assistant chiefs			taking place and Kitui town site
	Kanziku Community	Community where limestone and marble deposits are found	Kaziku town and Kitui town
	Zombe Community	Community where coal deposits are found	Zombe town and Kitui town
	Mui Community	Community where coal, alumina clay, silica sand, gypsum and natural gas deposits are found	Mui Village and Kitui town
	Ngaiye Community	Community where limestone and marble deposits are found	Ngaiye town and Kitui town

3.6.2.3: SEA consultations in Nairobi

The stakeholder profile in the City of Nairobi consisted mainly of representatives from the public sector, private sector and civil society (**Table 3-5**).

Table 3- 5: Summary of the SEA stakeholder engagement activities in Nairobi

Category	Stakeholders consulted
National Agencies	Ministry of Mining, Ministry of Environment and Natural Resources, Ministry Labour and East African Affairs, Directorate of Occupational Safety and Health, National Environmental Management Authority, National Lands Commission, Kenya Forest Service, Kenya National Commission for Human Rights
County Government	Council of Governors
Large scale mining operators	Bamburi Cement, East African Portland Cement, Tata Chemicals, Magadi
Professional Organizations	Kenya Geologists Association, Law Society of Kenya
Private sector	Kenya Chamber of Mines, Kenya National Chamber of Commerce and Industry, Kenya Private Sector Alliance,
Civil Society	Kenya Human Rights Commission, Institute of Human Rights and Business-Kenya, Groots, Act Change and Transform, Kenya Association of Physicians and Medical Workers for Social Responsibility, International Federation of Women Lawyers, National Council for Persons with Disability
Trade Unions	Central Organization of Trade Unions (COTU), Kenya Quarry and Mine Workers
Artisanal Miners	Kenya Association for Artisanal Miners

3.6.3: Stakeholder engagement strategy and communication tools

Various stakeholder engagement strategies and communication tools were used. **Table 3-6** outlines the key engagement strategy and tools used during the consultations.

Table 3- 6: Key engagement strategy and tools used during the SEA consultations

Engagement tool/strategy	Target stakeholder
Face-to-face interviews	Key informants (government official, mining companies, auxiliary institutions, CSO, and trade unions)
Questionnaires	On request (two requested: Base Titanium and Ministry of Environment and Natural Resources)
Meetings- submissions and discussion	Civil society organization and mining publics
Dialogue workshop- Guided questions and FGD	Kwale and Kitui Counties
Email	Institutions and individuals
Telephone	Mining businesses and /Civil Society Organizations (CSOs)
Letters	All key informants
Networking	Civil Society organization

3.5: SEA Indicators and Targets for Policy Impact Analysis (PIA)

The SEA indicators for mining PIA were identified after the scoping consultations and fact-gathering field missions in Kwale, Kitui and Nairobi. The indicators and targets were then identified and clustered according to the SEA thematic issues as shown in **Box 3-11**. The indicators were used throughout the policy SEA.

Box 3- 11: SEA indicators and targets for PIA

SEA dimension	Indicators	Source	Targets
Environment			
Biophysical indicators	Clean and healthy environment	<ul style="list-style-type: none"> Constitution of Kenya National Environmental Sanitation and Hygiene Policy Occupational Safety and Health Act 2007 National Environment Action Plan (NEAP) 2009-2013 Kenya Vision 2030 	Number of contented stakeholders
	Noise and vibration	Environmental Management and Coordination (Noise and excessive vibration pollution) (Control) Regulations, 2009 – Legal Notice 61	Number of affected mining areas or stakeholders
	Air quality	Environmental Management and Co-ordination (Air quality) Regulations, 2014	Number of poor air quality mining areas
	Protection of environmentally sensitive areas such as forests, wetlands and wildlife reserves	<ul style="list-style-type: none"> Land Act No. 6 of 2012 Forest Act No. 7, of 2005 Wildlife (Conservation and Management) Act Cap 376 of 1976, 1989 & Bill, 2013 National Climate Change Response Strategy (NCCRS) 2010 National Environment Action Plan (NEAP) 2009-2013 National Biodiversity Strategy and Action Plan (NBSAP) 2000 National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012), (GoK, 2012b) Kenya Vision 2030 	Number of affected mining areas
	Pollution control	<ul style="list-style-type: none"> National Water Policy Environmental Management and Coordination Act (EMCA) Cap 387 Public Health Act, Cap 242 Environmental (Water quality Regulations, 2006 (Legal Notice No. 121) Environmental (Water quality Regulations, 2006 (Legal notice No. 121) 	Number of affected stakeholders

	Rehabilitation and restoration of all mining sites	<ul style="list-style-type: none"> • National Environment Policy • National Land Policy • National Water Policy • Environmental Management and Coordination Act (EMCA) Cap 387 • Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014 • National Environment Action Plan (NEAP) 2009-2013 	Number of rehabilitated mining sites according to the stakeholders
	Rehabilitation and restoration of degraded wetlands and forests	<ul style="list-style-type: none"> • National Environment Policy • National Land Policy • National Water Policy • Draft National Forest Policy • Environmental Management and Coordination Act (EMCA) Cap 387 • National Environment Action Plan (NEAP) 2009-2013 • Kenya Vision 2030 	Number of rehabilitated mining sites according to the stakeholders
	Effective EIAs	<ul style="list-style-type: none"> • National Environment Policy • National Land Policy • Land Act No. 6 of 2012 • Water Act, 2016 • National Museums and Heritage Act 2011 • County Government Act 2012 • Environmental (impact assessment and audit) regulations, 2003 (Legal Notice 101) 	Level of stakeholder satisfaction
	Follow-up environmental audits	National Environment Policy National Land Policy	Number of follow-up environmental audits
Social indicators	Public access to mining project information	Public Access to Information Act 2016	Level of stakeholder satisfaction
	Public participation	<ul style="list-style-type: none"> • Environmental (impact assessment and audit) regulations, 2003 (Legal Notice 101) • County Public Participation Guidelines 2016 	Level of stakeholder satisfaction
	Acceptable resettlement plans	Eviction and Resettlement Guidelines, 2009	Level of stakeholder satisfaction
	Sustainable solid waste management	<ul style="list-style-type: none"> • National Environmental Sanitation and Hygiene Policy • Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37 • Draft Environmental Management and Co-ordination (E-Waste Management) Regulations, 2013 	Level of stakeholder satisfaction
	Equitable sharing of natural resource benefits	Community Land Act, 2016 Natural Resources (Benefit Sharing) Bill, 2014	Level of stakeholder satisfaction
	HIV/AIDS control	<ul style="list-style-type: none"> • National Policy on Occupational Safety and Health • National HIV and Aids Policy • HIV and AIDS Prevention and Control Act No. 14 of 2006 	Level of stakeholder satisfaction
	Corporate and social responsibility and accountability	National Environment Policy	Level of stakeholder satisfaction
	Peace and security	National Policy for the Sustainable Development of Arid and Semi-Arid Lands of Kenya	Level of stakeholder satisfaction
Human rights			
Rights and fundamental freedoms	<ol style="list-style-type: none"> 1. Right to life (accidents) 2. Equality and freedom from discrimination 3. Human dignity 4. Freedom of conscience, religion, belief and opinion 5. Freedom of expression 	<ul style="list-style-type: none"> • Constitution of Kenya • Universal Declaration of Human Rights • African Charter of Human and People's Rights 	Level of stakeholder satisfaction

	6. Access to information 7. Freedom of association 8. Protection of right to property		
Environment rights	1. Right to a clean and healthy environment	<ul style="list-style-type: none"> • Constitution of Kenya • Community Land Act 2016 • Universal Declaration of Human Rights • African Charter of Human and People's Rights 	Level of stakeholder satisfaction
Economic and social rights	1. Right to standard of health 2. Right to proper housing, 3. Right to reasonable standards of sanitation 4. Right to clean and safe water 5. Right to social security 6. Right to education	<ul style="list-style-type: none"> • Constitution of Kenya • Universal Declaration of Human Rights • ILO Declaration on Fundamental Principles and Rights at Work • African Charter of Human and People's Rights 	Level of stakeholder satisfaction
Fair administrative rights	1. Right to fair expeditious, efficient, lawful, reasonable administrative action 2. Right to information access	<ul style="list-style-type: none"> • Constitution of Kenya • Access to Information Act, 2016 • Commission on Administrative Justice Act No 23 of 2011 • The Fair Administrative Action Act, 2015 • Universal Declaration of Human Rights • African Charter of Human and People's Rights 	Level of stakeholder satisfaction

The selected indicators were used to evaluate the suitability and effectiveness of the mining sector policy and regulatory framework.

3.6: Analysis of Alternative PPP Options

Gaps analysis was undertaken through the following approaches:-

- Review of key documents – policies, legal frameworks, regulations, guidelines and standards,
- Stakeholder engagement and fact gathering during field missions in Kwale, Kitui and Nairobi,
- Institutional capacity evaluation,
- Key informant stakeholders, and
- Benchmarking with best practices in the world

4. PPP ANALYSIS AND GOVERNANCE IMPACT IDENTIFICATION

4.1: Overview

The PPP analysis for the policy SEA involved an evaluation of the 18 governance frameworks in the mining sector as highlighted in **Table 2-2** in order to establish the level of integration for the 91 governance frameworks for environment and human rights as highlighted in **Box 3-1**. The level of Integration in the mining sector governance of a wide range of environmental and human rights obligations in a total of 91 frameworks in form of policy, legal frameworks, regulations, guidelines and standards, national strategies and action plans as well as international agreements was scrutinized during the SEA process. The underlying assumption is that lack of adequate integration in the mining sector governance prescriptions of the environmental and human right obligations is likely to cause problems with regard to environmental sustainability and protection of human rights. The findings of this analysis are herein outlined for the environment and human rights.

4.2: Integration Status for Environmental Obligations in the Mining Sector

The integration of obligations in 78 environmental frameworks in the 15 governance frameworks for the mining sector indicated that majority of the obligations in national policies were either fully, well or moderately integrated with only 4 out of 21 policies (19%) not integrated. The non-integrated policies included; the National Water Policy (2012 Draft), National Wildlife Conservation and Management Policy, 2012, National Policy for Disaster Management, 2009 and the National HIV and Aids Policy, 2009. The pattern was similar for the legal frameworks with only 4 out of 25 legal frameworks considered not integrated in the mining sector governance frameworks, namely; the HIV and AIDS Prevention and Control Act No. 14 of 2006, Radiation Protection Act CAP 243 (Revision 2012), National Cohesion and Integration Act 2011 (Amendment 2012) and the County Governments Disaster Management Bill, 2014. The key national strategy which was poorly integrated is the National Climate Change Response Strategy (NCCRS, 2010) including the National Climate Change Action Plan 2013-2017. This is compounded by lack of integration of the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification (UNCCD).

The PPP analysis also showed that most of the current environmental regulations in Kenya are well considered in the governance framework for the mining sector except for the Radiation Protection (Standards) Regulations, 1986 (Legal Notice 54/1986) and the Radiation Protection (Safety) Regulations, 2010. This might create a risk in radiation related mining activities such as the on-going Titanium mining in Central and South Dunes of the Magarini Sands in Kwale County with a population of more than 3000 people. The same problem is associated with the proposed Niobium mining in Mrima Hill in the same county. **Box 4-1** provides the findings of integration status for environmental obligations in the governance frameworks for the mining sector in Kenya. Further, **Annex 12** provides details on the integration status for specific environmental obligations in policy, legal frameworks, regulations, guidelines and standards, national strategies, action plans and MEAs. Overall, the governance framework for the mining sector governance has adequately integrated most environmental obligations. Only 13 out of 78 environmental sustainability instruments equivalent to 16.7% have not been integrated, namely; 6 environmental policies, 6 legal frameworks, 2 environmental regulations, 1 environmental guideline, 1 national strategy and 2 MEAs (**Table 4-1**).

4.2.1: Potential Impact of the Mining Sector on the Environment

The existing mining sector governance framework configuration shows both the well-integrated and poorly integrated environmental obligations which have both positive and negative implications on the state of environment as highlighted below.

4.2.1.1: Well Integrated Environmental Obligations

The PPP analysis showed that environmental obligations in 32 sustainability frameworks were well integrated in the mining sector (**Table 4-1**). This included 10 national policies, 10 legal frameworks, 3 environmental regulations, 4 guidelines, 2 national strategies and action plans and 3 MEAs. **Table 4-2**

shows the environmental sustainability obligations in the 27 well integrated frameworks in the mining sector and the potential governance implications.

Box 4- 1: Summary of integration status for environmental obligations in the governance frameworks for the mining sector in Kenya

	Fully or well integrated	Moderately integrated	Not integrated
Policy	<ol style="list-style-type: none"> 1. The Constitution of Kenya, 2010 2. National Land Policy, 2009 3. National Land Use Policy, 2016 4. Draft National Policy on Wetlands Conservation and Management, 2013 5. Sessional Paper of 2014 on National Climate Change Framework Policy 6. National Gender and Development Policy, 2000 7. Draft National Policy on Peace Building and Conflict Management, 2006 8. Draft Devolution Policy, 2015 9. National Policy on Occupational Safety and Health, 2012 10. Sessional Paper No. 10 of 2012 on Kenya Vision 2030 	<ol style="list-style-type: none"> 1. Sessional Paper No. 10 of 2014 on the National Environment Policy 2. Sessional Paper No. 1 of 1999 - National Policy on Water Resources Management And Development 3. National Policy for the Sustainable Development of Arid and Semi-Arid Lands of Kenya, 2012 4. Draft National Forest Policy, 2015 5. National Environmental Sanitation and Hygiene Policy 2016-2030 6. Policy Statement on Public Private Partnerships, 2011 7. National Children's Policy, 2010 8. National Oceans & Fisheries Policy, 2008 	<ol style="list-style-type: none"> 1. National Water Policy, 2012 Draft 2. National Wildlife Conservation and Management Policy, 2012 3. National Policy for Disaster Management, 2009 4. National HIV and Aids Policy, 2009
Legal frameworks	<ol style="list-style-type: none"> 1. Environmental Management and Coordination Act (EMCA) Cap 387 2. Community Land Act No. 27 of 2016 3. Water Act, 2016 4. Wildlife (Conservation and Management) Act Cap 376 of 1976, 1989 & Bill, 2013 5. National Museums and Heritage Act 2011 6. Public Health Act, Cap 242 7. Physical Planning Bill 2015 8. Employment Act, CAP 226, Revision 2012 (2007) 9. Occupational Safety and Health Act 2007 10. Public Private Partnership Act, 2016 	<ol style="list-style-type: none"> 1. Land Laws (Amendment) Act, 2016 No. 28 of 2016 2. Land Act No. 6 of 2016 3. National Land Commission Act No. 5 of 2012 4. Environment and Land Court Act No. 19, Revised edition 2015 (2011) 5. Forest Conservation & Management Act No. 34, of 2016 6. The Natural Resources (Benefit Sharing) Bill, 2014 7. Climate Change Act 2016 8. Public Access to Information Act 2016 9. County Government Act 2012 10. Work Injuries and Benefits Act, 2007 11. Children's Act, Revision 2012 (2010) 	<ol style="list-style-type: none"> 1. HIV and AIDS Prevention and Control Act No. 14 of 2006 2. National Cohesion and Integration Act 2011 (Amendment 2012) 3. Radiation Protection Act CAP 243 (Revision 2012) 4. County Governments Disaster Management Bill, 2014
Regulations	<ol style="list-style-type: none"> 1. Environmental (impact assessment and audit) regulations, 2003 (LN 101) 2. Environmental Management and Coordination (Noise and excessive vibration pollution) (Control) Regulations, 2009 – Legal Notice 61 	<ol style="list-style-type: none"> 1. Environmental (Water quality Regulations, 2006 (Legal Notice No. 121) 2. Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37 3. Environmental Management and Co-ordination (Air quality) Regulations, 2014 	<ol style="list-style-type: none"> 1. Radiation Protection (Standards) Regulations, 1986 [Legal Notice 54/1986] 2. Radiation Protection (Safety) Regulations, 2010

	Fully or well integrated	Moderately integrated	Not integrated
	3. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014	4. Environmental Management and Co-ordination (Wetlands, river banks, lake shores and sea shore management) Regulations, 2009 – Legal Notice 19 5. Draft Environmental Management and Co-ordination (E-Waste Management) Regulations, 2013	
Guidelines & Standards	1. Environment impact assessment guidelines and administrative procedures 2. Environmental (Water quality Regulations, 2006 (Legal notice No. 121) 3. Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37 4. Eviction and Resettlement Guidelines, 2009	1. National Guidelines for Strategic Environmental Assessment (SEA) 2. County Public Participation Guidelines 2016	1. E-waste management guidelines
National strategies & Action Plans	1. National Biodiversity Strategy and Action Plan (NBSAP) 2000 2. National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012)	1. National Environment Action Plan (NEAP) 2009-2013 2. National Climate Change Action Plan 2013-2017 3. Vision 2030 4. National Spatial Plan 2015-2045	1. National Climate Change Response Strategy (NCCRS) 2010
MEAs	1. Convention on biological diversity (CBD) 2. Ramsar Convention 3. Convention on Migratory Species – Bonn Convention	1. World heritage Convention 2. East African Community (EAC) Protocol on Environment and Natural Resources, 1999, Amendment 2006	1. United Nations Framework Convention on Climate Change, UNFCCC 2. United Nations Convention to Combat Desertification, UNCCD

Table 4- 1: Environmental PPP analysis summary table

	Mining sector governance framework	Environment sector	Cross-sectorial integration status		Governance	
			Environmental management frameworks	Fully integrated	Moderately integrated	Not integrated
Policy	1	22	10	8	4	22
Legal frameworks	2	25	10	11	4	25
Regulations	14	10	3	5	2	10
Guidelines and Standards	11	7	4	2	1	7
Strategies and Action Plans	-	7	2	4	1	7
International agreements	-	7	3	2	2	7
Total	15	78	32	32	14	78

Table 4- 2: Summary of well integrated environmental obligations in the mining sector

Framework	Specific obligations	Potential governance implications	Beneficiary
1. The Constitution of Kenya, 2010	<ul style="list-style-type: none"> Ensuring clean and healthy environment 	Clean and healthy environment	Society
2. National Land Policy (2009)	<ul style="list-style-type: none"> Community land management and dispute resolution Communities participation in resource conservation Forest protection Sustainable land utilization and management Environmental assessments and audits 	<ul style="list-style-type: none"> Community grassroots mediation of land disputes Involvement of community institutions in conservation e.g. WRUAs and CFAs 	Land
3. National Land Use Policy 2016	<ul style="list-style-type: none"> Promoting environmental conservation and preservation Controlling land wastage due to intensification of unsustainable mining Rehabilitation of mining fields after depletion of minerals Rehabilitation of mines and quarries; waste disposal sites and wastelands 	<ul style="list-style-type: none"> Proper rehabilitation of decommissioned quarries and mines Improved standards of environmental conservation 	Environment
4. Draft National Policy on Wetlands Conservation and Management (2013)	<ul style="list-style-type: none"> Conservation of wetlands Application of the polluter pays principle Equitable access to the resources for present and future generations 	Improved wetland conservation	Wetlands
5. Sessional Paper of 2014 on National Climate Change Framework Policy	<ul style="list-style-type: none"> Increasing forest cover Rainwater harvesting Relying less on bioenergy and more on clean energy sources 	Increased tree cover	Forests
6. National Gender and Development Policy, 2000	<ul style="list-style-type: none"> Considering the needs and aspirations of all Kenyan men, women, boys and girls across economic, social and cultural lines Women empowerment 	Improved gender considerations	Society
7. Draft National Policy on Peace Building and Conflict Management, 2006	<ul style="list-style-type: none"> Involvement of local community institutions in conflict resolution 	Mining conflict resolution	Society
8. Draft Devolution Policy, 2015	Devolution implementation framework	Successful devolution in the mining sector	Society
9. National Policy on Occupational Safety and Health, 2012	<ul style="list-style-type: none"> Affirmative action for addressing workplace gender biases in occupational safety and health Develop and implement workplace code of practice on HIV and AIDS at work Develop guidelines for provision of facilities for persons with disabilities and other special needs in workplaces Drug and substance abuse in workplaces Prevention of environmental pollution 	<ul style="list-style-type: none"> Improved gender considerations Reduced HIV/AIDS preference Improved working conditions for the physically challenged Reduce drug abuse Improved productivity 	Society

Framework	Specific obligations	Potential governance implications	Beneficiary
10. Sessional Paper No. 10 of 2012 on Kenya Vision 2030	<ul style="list-style-type: none"> Adoption of environmentally-friendly mining policy 	Improved mining environment	Environment
11. Environmental Management and Coordination Act (EMCA) Cap 387	Environmental impact assessment (EIA)	Environmental protection	Environment
12. Community Land Act No. 27 of 2016	<ul style="list-style-type: none"> Equitable sharing of environment and natural resource benefit by the whole community including future generations; Transparency and accountability in environment and natural resources management 	<ul style="list-style-type: none"> Improved resource benefit sharing Improved transparency and accountability in NRM 	Natural resources
13. Water Act, 2016	<ul style="list-style-type: none"> Public consultation in the issuance of water permits 	More equitable sharing of water resources	Water resources
14. Wildlife (Conservation and Management) Act Cap 376	Prevention of development in National Parks without approved management plans	Increased use of protected area management plans:	Wildlife
15. National Museums and Heritage Act 2011	Conduct EIAs in all national monuments and protected areas	Environmental protection	Environment
16. Physical Planning Bill 2015	Developing national and county physical development plans	Sustainable development	Environment
17. Public Health Act, Cap 242	Protection of public water supplies	Improved public health	Society
18. Employment Act, CAP 227, Rev 2012	Prohibition against forced labour, discrimination in employment, sexual harassment and rights and duties in employment	Good terms of employment	Society
19. Occupational Safety and Health Act 2007	Maintaining safe working environment in mining areas	Improved public health and safety	Society
20. Public Private Partnership Act, 2016	Protection and preservation of the environment	Environmental protection by private mining companies	Environment
21. Environmental (impact assessment and audit) regulations, 2003 (Legal Notice 101)	Conducting EIAs in for projects with a risk of causing adverse environmental impacts	Environmental protection	Environment
22. Environment impact assessment guidelines and administrative procedures	Conducting EIAs in for projects with a risk of causing adverse environmental impacts	Environmental protection	Environment
23. Environmental Management and Coordination (Noise and	Permissible noise levels	Improved public health	Society

Framework	Specific obligations	Potential governance implications	Beneficiary
excessive vibration pollution) (Control) Regulations, 2009 – Legal Notice 61			
24. Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37	Sustainable solid waste management	Public health and safety	Society
25. Draft Environmental Management and Coordination (Deposit Bonds) Regulations, 2014	Restoration of degraded environments	Restoration of decommissioned mines	Environment
26. Eviction and Resettlement Guidelines, 2009	Displacement, resettlement and compensation of mining host communities	Proper resettlement and compensation of affected communities	Society
27. National Biodiversity Strategy and Action Plan (NBSAP) 2000	Sustainable use of biological diversity and protection of important biodiversity areas and hotspots	Biodiversity conservation in mining areas	Biodiversity
28. National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya (2012), (GoK, 2012b)	Sustainable use and conservation of water catchment areas	Sustainable water discharge	Environment
29. Convention on biological diversity (CBD)	Biodiversity conservation	Protection of biodiversity and ecosystems	Biodiversity
30. RAMSAR Convention	Wetland conservation	Protection of wetlands	Wetlands
31. World heritage Convention	Preservation of heritage sites	Protection of natural and cultural heritage sites	Environment
32. Convention on Migratory Species – Bonn Convention	Sustaining the movement of wildlife in the environment	Unobstructed wildlife movement	Wildlife

Box 4-2 shows the environmental dimensions which are likely to benefit from the well-integrated environmental obligations. However, this is dependent on effective implementation of Mining and Mineral Policy 2016 and enforcement of the Mining Act 2016 as well as the supporting regulations.

Box 4- 2: Summary of the environmental components that are likely to benefit from the governance framework in the mining sector

Environmental dimension	Attributes	Rank
Environment	<ul style="list-style-type: none"> • Environmental protection through mining project EIAs • Environmentally-friendly mining • Preservation of heritage sites • Sustainable waste management • Rehabilitation and restoration of decommissioned mines 	1
Society	<ul style="list-style-type: none"> • Compensation and resettlement of mining host communities • Women empowerment • Maintaining safe working environment in mining areas • Noise pollution control 	2
Biodiversity	Protection of biodiversity and ecosystems	3
Wildlife	<ul style="list-style-type: none"> • Sustainable development in protected areas in accordance with approved management plans • Free movement of wildlife in mining areas 	3
Wetlands	Conservation of wetlands in mining areas	3
Natural resources	Equitable sharing of mineral resource benefit by the whole community including future generations	4
Land	<ul style="list-style-type: none"> • Involvement of community institutions (e.g. WRUAs and CFAs) in conservation within the mining areas • Community-based mediation of land disputes 	4
Forests	Afforestation in mining areas	4
Water resources	Equitable sharing of water resources	4

4.2.1.2: Integration Gaps for Environmental Obligations and Implications

The PPP analysis showed various environmental obligations were not integrated in the governance frameworks for the mining sector. Details of the un-integrated obligations, potential environmental implications and likely receptors of the negative impacts by the mining sector are outlined in **Table 4-3**.

Table 4- 3: Summary of environmental obligation integration gaps

Policy	Gap type	Mining sector environmental implications	Impact receptor
	Strategic environmental assessment	Unsustainable mining activities	Environment
	Climate change and disaster risks early warning and response	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Climate change disaster risk reduction	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Public participation in disaster management	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Climate change mitigation	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Institutionalizing payment for environmental services schemes in mining sector to support environmental conservation	Environmental degradation in mining areas	Environment

	Gap type	Mining sector environmental implications	Impact receptor
	Restoration and protection of ecosystems and biodiversity	Degradation of critical ecosystems and loss of species by mining activities	Critical ecosystems
	Incentives re-use, recycling of resources	Wastage of natural resources – e.g. water & energy	Natural resources
	Supporting the attainment of at least 10% of forest cover by the year 2030	Deforestation by mining sector	Forests
	Investment in commercial tree growing	Deforestation by mining sector	Forests
	Participatory management of indigenous forests	Deforestation by mining sector	Forests
	Valuation of forests	Deforestation by mining sector	Forests
	involvement of non-state actors and local communities in forest management	Deforestation by mining sector	Forests
	Increased per Capita water availability	Depletion of water resources	Water resources
	Storm water management and rainwater harvesting	Depletion of water resources	Water resources
	Water pollution control	Increased pollution of streams, rivers, lakes, wetlands and groundwater resources	Water resources
	Effluent water treatment and recycling	Increased pollution of streams, rivers, lakes, wetlands and groundwater resources	Water resources
	Protection of wetlands, flood plains	Increased pollution of streams, rivers, lakes, wetlands and groundwater resources	Water resources
	Water abstraction monitoring	Depletion of water resources	Water resources
	Rain water harvesting	Depletion of water resources	Water resources
	Conservation, protection and management of wildlife	Loss of critical ecosystems and loss of species by mining activities	Biodiversity
	Dispute resolution	Increased mining related conflicts	Society
	Adopting conflict-sensitive development approach	Increased mining related conflicts	Society
	Ensuring peace and security	Increased mining related conflicts	Society
	Forest resource conflict resolution and management	Increased mining related conflicts	Society
	Clean, disability-friendly and pleasant working environment in public places	Poor working conditions	Society
	Proper sanitary facilities	Poor working conditions	Society
	Conflict early warning and response	Increased mining related conflicts	Society
	Public participation in governance	Improper governance	Society
	Irresponsible behavior both for the workers and?	Increased spread of HIV/AIDS	Society
	Private sector participation in provision of public services	Inadequate CSR interventions – e.g. transport, water, sanitation, and housing	Society
Legal frameworks	Climate change disaster risk reduction	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Private sector involvement in low carbon development	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Low carbon technology	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Public participation in climate change mitigation	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Strategic environmental assessments for county spatial plans	Environmental degradation due to mining activities	Environment

	Gap type	Mining sector environmental implications	Impact receptor
	Disaster risk reduction	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Misuse of natural resources	Loss of natural resources – e.g. soil, water, landscapes	Natural resources
	Community participation in forest management through CFAs	Deforestation	Forests
	Prevention of forest fires	Loss of forests	Forests
	Controlling the introduction of alien species	Introduction of alien invasive species	Biodiversity
	Protection of ecologically sensitive areas	Degradation of critical ecosystems and loss of species by mining activities	Biodiversity
	Drug and substance abuse in mines	Public health problem, crime and family breakdowns	Society
	Radiation protection	Radiation exposure	Society
	Land dispute resolution	Increased mining related conflicts	Society
	Revenue sharing criteria	Inequitable benefit sharing	Society
	Protection of person making disclosure	Lack of public whistle blowers	Society
	Public participation in the county planning	Inadequate public involvement	Society
	Public information access	Inadequate public involvement	Society
	Discrimination in employment	Inequitable benefit sharing	Society
Regulations	Toxic emissions	Air pollution	Environment
	Waste management	Environmental pollution	Environment
	Reduction of mining emissions	Air pollution	Environment
	Mining e-waste recycling	Environmental pollution	Environment
	Transportation of mining e-waste	Environmental pollution	Environment
	Sustainable effluent discharge	Environmental pollution	Environment
	Resource conservation - raw materials, water energy	Wastage of natural resources – e.g. water & energy	Natural resources
	Recycling of resources	Wastage of natural resources	Natural resources
	Water quality monitoring	Deterioration of water quality	Water
	Wetland, riverbank, lake shore and sea shore protection	Wetland loss and degradation	Wetlands
	Radiation protection	Risk of radiation exposure	Society
Guidelines & standards	None	None	N/A
National strategies and action plans	Climate change	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
MEAs	Climate change	Climate change disasters e.g. floods, drought, landslides and disease epidemics	Environment
	Desertification	Increased desertification	Environment

Box 4- 3: Summary of the environmental components that are likely to suffer from integration gaps in the governance framework in the mining sector

Environmental dimension	Attribute	Rank
Environment	Climate change disasters (e.g. floods, drought, landslides and disease epidemics), desertification, air pollution, environmental pollution	1
Society	<ul style="list-style-type: none"> • Increased mining related conflicts • Land related disputes • Employment discrimination • Poor working conditions • Radiation exposure • Increased spread of HIV/AIDS • Inadequate CSR interventions • Inequitable sharing of mining revenue • Inadequate access to mining information 	2
Forests	Deforestation by mining activities	3
Water resources	<ul style="list-style-type: none"> • Depletion of water resources • Increased pollution of streams, rivers, lakes, wetlands and groundwater resources • Deterioration of water quality 	3
Natural Resources	<ul style="list-style-type: none"> • Overuse of natural resources (water & energy) • Loss of natural resources (e.g. soil, water, landscapes) 	4
Biodiversity	<ul style="list-style-type: none"> • Loss of critical ecosystems and loss of species by mining activities • Introduction of alien invasive species 	5
Critical ecosystems	Degradation of critical ecosystems and loss of species by mining activities	6
Wetlands	Wetland loss and degradation	6

4.3: Human Rights Obligations and Integration Status in Mining Sector

Integration of obligations in 15 human right frameworks indicated that majority of the obligations in the Constitution of Kenya especially Chapter 4 on the Bill of Rights were either fully, well or moderately integrated in the mining sector governance framework (**Box 4-4**). **Annex 14** provides details on the integration status for specific human rights obligations in policy, legal frameworks, regulations and international agreements.

4.3.1: Mining Sector Governance and Human Rights

The current state of the governance frameworks in the mining sector showed both the well-integrated and poorly integrated human rights obligations as outlined in **Table 4-4**. Only 6 out of 15 (40%) of the instruments for the protection of human rights are fully integrated in the governance framework for the mining sector.

Box 4- 4: Summary of integration status for human rights obligations in the governance frameworks for the mining sector in Kenya

	Fully or well integrated	Moderately integrated	Not integrated
Policy	Nil	<ol style="list-style-type: none"> 1. Constitution of Kenya 2. Sessional Paper No. 1 of 2015 on the National Policy on Elimination of Child Labour 3. 3. Sessional Paper No. 3 of 2014 on National Policy and Action Plan on Human Rights 	Nil
Legal frameworks	<ol style="list-style-type: none"> 1. Access to Information Act, 2016 2. Commission on Administrative Justice Act No 23 of 2011 3. Land Act 2016 4. Community Land Act 2016 5. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act), 2012 	<ol style="list-style-type: none"> 1. Kenya National Commission on Human Rights Act, 2011 2. The Fair Administrative Action Act, 2015 3. Labour Relations Act, 2007 	Nil
International agreements	<ol style="list-style-type: none"> 1. Universal Declaration of Human Rights 	<ol style="list-style-type: none"> 1. ILO Declaration on Fundamental Principles and Rights at Work 2. African Charter of Human and People's Rights 3. International Covenant on Economic, Social and Cultural Rights 	Nil

Table 4- 4: Human rights PPP analysis summary table

	Mining	Human rights	Cross-sectorial governance integration status		
	Mining sector governance framework	Number of human right frameworks	Fully integrated	Moderately integrated	Not integrated
Policy	1	3	-	3	-
Legal frameworks	2	8	5	3	Nil
Regulations	14	-	-	-	-
Guidelines and Standards	1	-	-	-	-
Strategies and Action Plans	-	-	-	-	-
Other international agreements	-	4	1	3	Nil
Total	18	15	6	9	Nil

4.3.1.1: Well Integrated Human Rights Obligations

The PPP analysis indicated that human rights obligations in a total of 6 sustainability frameworks were considered to be well integrated in the governance frameworks for the mining sector (**Table 4-5**). These

findings show that the current governance frameworks in the sector if properly implemented they can ensure protection of most human rights especially the following as enshrined in the Constitution:-

- Basic rights and fundamental freedoms
- Right to human dignity
- Right to life
- Right for equality and freedom from discrimination
- Right for freedom of conscience, religion, belief and opinion
- Right to freedom of expression
- Freedom of association
- Right to property ownership
- Land rights
- Economic and social rights
- Rights of Work
- Protection of right to property
- Right to a clean and healthy environment

Table 4- 5: Summary of well integrated human right obligations in the mining sector

Framework	Specific obligations	Potential governance implications	Beneficiary
1. Access to Information Act, 2016	Disclosure of mining information by public institutions	Improved protection of the right to information access	Society
2. Commission on Administrative Justice Act No 23 of 2011	Establishment of the Ombudsman	Good conditions for stakeholders to advance their mining complaints	Society
3. Land Act 2016	Security of land rights	Protection of right to property	Society
4. Community Land Act 2016 Community Land Act 2016	Recognition, protection and registration of community land rights	Improved community land rights Improved economic and social rights	Society
5. The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (IDP Act), 2012	Provides the principles and basis for a rights-based response to internal displacement	Human dignity	Society
6. Universal Declaration of Human Rights	Basic rights and fundamental freedoms to which all human beings are entitled	Protection of basic rights and fundamental freedoms to which all human beings are entitled	Society

Previous records in the KNCHR have shown that socio-economic and cultural violations in the country are the most reported incidences of human rights abuse. Civil and political rights violations have also been common in the past but were much lower than the socio-economic and cultural violations. Group rights violations increased sharply from 2008 to 2010 but dropped sharply thereafter. All these patterns were happening before the adoption of the Mining and Minerals Policy (2016) and the enactment of the Mining Act (2016) as well as the various mining regulations which have come with it. Accordingly, the full impacts of the new mining governance instruments will take a bit of time to be felt in the country.

4.3.1.2: Integration Gaps for Human Right Obligations and Implications

The findings of the PPP analysis also revealed that various human rights obligations were not fully integrated in the governance frameworks for the mining sector. **Table 4-6** shows the un-integrated obligations, the potential implications with regard to the protection of human rights in Kenya. Further, the analysis showed that the two areas in which the current governance framework in the mining sector is likely to result in violation of basic rights as enshrined in the Constitution of Kenya are consumer rights and rights to expected administrative action. Abuse of consumer rights in the sector would include lack of proper safety devices as well as the need to produce good quality and genuine mineral products. The current

framework has not adequately integrated the right to administrative action as enshrined in Article 47[1] of the Constitution, which recognises the entitlement of every citizen to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and, by implication, points to the obligations of a public officer while taking administrative action. This means that the sector might not completely ensure administrative justice in mining activities including being able to deal with vices like corruption and inefficiency.

Table 4- 6: Summary of human rights integration gaps

	Affected rights	Implications to society
1. Constitution of Kenya	Consumer rights - goods and services of reasonable quality	Provision of sub-standard goods and services
	Right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair	Poor administrative action
2. Sessional Paper No. 1 of 2015 on the National Policy on Elimination of Child Labour	Protection against child labour	Child labour in mining areas
3. Sessional Paper No. 3 of 2014 on National Policy and Action Plan on Human Rights	<ul style="list-style-type: none"> • Rights of Women • Children’s Rights • Rights of Persons with Disabilities (PWDs) • Rights of the Youth • Rights of Older Persons • rights of minorities and marginalized groups • Rights of the Internally Displaced Persons (IDPs) • Rights of Refugees 	Violation of human rights in mining areas
4. Kenya National Commission on Human Rights Act, 2011	Recognition of the KNCHR	Poor recognition of the role of the KNCHR in the mining sector
5. The Fair Administrative Action Act, 2015	Right to administrative action	Poor administrative action
	Right to information, access	
6. Labour Relations Act, 2007	Trade union rights	Rights of miners to join trade unions
7. ILO Declaration on Fundamental Principles and Rights at Work	Principles and rights in four categories, namely: <ul style="list-style-type: none"> • Freedom of association and the effective recognition of the right to collective bargaining, • Elimination of forced or compulsory labour, • Abolition of child labour and • Elimination of discrimination in respect of employment and occupation 	Violation of rights at work in mining areas
8. International Covenant on Economic, Social and Cultural Rights	Equal rights for men and women	Employment gender bias in mining areas
9. African Charter of Human and People’s Rights	Right to security and peace	<ul style="list-style-type: none"> • Insecurity • Poor public service • Poor health
	Right of equal access to public service	
	Right to proper physical and mental health	

The PPP analysis also indicated that the current configuration of governance framework in the mining sector has not fully embraced the spirit of the African Charter of Human and People’s Rights specifically with regard to ensuring the right to security and peace, the right of equal access to public service and the right to proper physical and mental health. This can lead to a number of challenges such as insecurity through illegal mining, increased corruption among government officials, and reduction in transparency and public accountability. The governance weakness could also escalate problems of health disorders in the mining sector including; loss of hearing, ototoxic radiation effects, musculoskeletal disorders and traumatic injury.

5. ENVIRONMENTAL IMPACT ASSESSMENT IN THE MINING SECTOR

One of the tasks in the policy SEA was to undertake an evaluation of the mining project EIAs in Kenya in accordance with the guidelines by the Environmental Law Alliance Worldwide as explained in **Section 3-5**. Environmental impact assessment (EIA) is a valued environmental management tool whose goal is to ensure that all new development projects are sustainable, and their possible impacts to the proposed projects identified early in the project cycle and are taken into account at the project design stage. According to the Environmental Management and Coordination Act (EMCA, Cap 387), all mining projects are listed in the Second Schedule of the Act and must be screened through pre-project EIAs and thereafter through regular environmental audits (EA) in order to ensure environmental sustainability. These environmental tests are usually conducted by the development investors in collaboration with external third party consultants and lead agencies as a strategy for ensuring environmental protection and public safety in the country. In recent years, the discovery of oil, coal and natural gas means that a lot of development projects will emerge to harness these resources. EIA is supposed to serve as an environmental tool for ensuring that economic development actions do not compromise the long-term sustainability of the environment for current and future generations.

5.1: Mining EIAs in Kenya

The evaluation of the 50 mining project EIA reports in the 2006-2016 period showed that 50% of the EIAs were associated with mining activities, 22% on both prospecting and mining, 18% on exploration and prospecting, 8% on mineral processing and 2% on both mining and processing. The list of mining project EIAs evaluated in the SEA is provided in **Annex 15. Table 5-1** shows the key types of minerals for which EIAs were undertaken. The findings showed that mining activities were dominated by gypsum, followed by gold, manganese, copper and iron ore. Gypsum deposits are common in areas such as Kitui and is commonly used in the manufacturing of gypsum boards, binders and plasters for house ceilings and interior partitioning. The geographic distribution of mining project EIAs is shown in Table 5-2. Most of the mining project EIAs were undertaken in Tana River County, followed by Kilifi, Kitui, Migori and Garissa. The evaluation showed that 38% of the mining project EIAs were undertaken in the coast region followed by the Rift Valley (20%), Eastern region (18%) and Nyanza (12.5%).

Table 5- 1: Types of minerals in the 2006-2016 mining project EIAs

Mineral	% of EIA reports in 2006-2016
Diatomite	2
Gypsum	32
Iron ore	8
Graphite	2
Gold	12
Manganese	12
Barite	2
Limestone	2
Precious & non-precious stones & minerals	2
Kyanite crystals	2
Copper	10
Rock material	2
Copper & non-precious minerals	2
Carbon dioxide	2
Pumice	2
Sodium Silicate	2
Magnetite	2
Silica sand	2
Total	100

Table 5- 2: Geographic distribution of mining project EIAs

County	% of EIA reports in 2006-2016
Baringo	2
Garissa	6.1
Kitui	10.2
Embu	2
Migori	10.2
Tana River	20.4
Kilifi	16.3
Samburu	4.1
Machakos	4.1
Makueni	2
Homa Bay	2
Tharaka Nithi	2
Kwale	2
Uasin Gishu	2
Transmara	2
Nakuru	2
Taita Taveta	2
Kajiado	4.1
West Pokot	4.1
Total	100

The local proponents accounted for 92% of the EIAs. The EIA processing duration from the time of report submission to the issuance of licenses generally ranged from a minimum of one month to a maximum of eleven months. The NEMA citizen service delivery charter proclaims that the processing of EIA licenses will usually take a maximum of 90 days.

5.2: Quality of EIA Experts

The analysis of the EIA reports revealed that only 39.1% of the studies were conducted by firms of experts with 60.9% undertaken by individual experts. The expectation was that the studies would be conducted more by firms rather than individual experts due to the complex nature of the mining EIAs. The average number of experts undertaking the assessment was 1-8 with 46.7% of the mining project EIAs being undertaken by a single expert and 4.4% by 6 experts. Only 26.1% of the mining project EIAs had an environmental expert as lead expert. **Table 5-3** shows the team composition for the mining project EIAs in 2006-2016.

Table 5- 3: Team composition for the mining project EIAs in 2006-2016

Type of expert	Percentage (%) involvement in 50 EIA reports
Environment	7.4
Geology	3.7
Engineering	3.7
Not indicated	63
Environment, Ecology, Engineering & Social Development	3.7
Geomatic engineering & surveying	3.7
Occupational Health and Safety	3.7
Environment, Hydrology, Ecology, Engineering and Sociology	3.7
Public Health & OSH	3.7
Environment, Geochemistry, Economics, Ecology, Sociology	3.7
Total	100.0

5.3: Quality of Mining EIA Reports

The quality of mining project EIAs in Kenya was evaluated according to the guidelines in the quality guidebook for evaluating mining project EIAs by the Environmental Law Alliance Worldwide (Environmental Law Alliance Worldwide 2010). **Table 5-4** shows the findings on the evaluation of mining project EIA reports. The findings showed that the 2006-2016 reports were only excellent with regard to prediction of potential physical impacts and baseline environmental assessment. They were satisfactory with regard to the consideration of key EIA stages, prediction of potential social impacts, consideration of potential across all mining stages, consideration of alternative options, impact mitigation, and environmental management and monitoring plan (EMMP). The findings showed that the quality of reports was quite poor in terms of comprehensive consideration of all the phases of mining projects, adequacy of environmental regulatory framework, Consideration of potential biological impacts, human rights considerations and EIA consultation meetings. The quality was very poor in terms of the overall quality of stakeholder engagement and consultations, mining related climate change considerations, consideration of transboundary impacts and cost benefit analysis (CBA).

5.4: NEMA Database of EIA Reports

The EIA database consists of both an electronic storage and hardcopy storage. The electronic storage is catalogued and maintained within the EIA section at NEMA headquarters. The active EIA reports and files are stored in the EIA section at NEMA headquarters which is very congested (**Plate 5-1**). The active database is catalogued (**Plate 5-2**). The archival hardcopies of the EIA reports are stored in a container within the NEMA compound due to inadequate office space (**Plate 5-3**). The file storage in the container is not catalogued (**Plate 5-4**). Some of the weaknesses, challenges and risks associated with the current database storage include; a) difficulties in location and retrieval of files in the hardcopy database, b) risk of document damage through flood or fire hazards, and c) unhealthy working conditions in the container based EIA database due to poor aeration.

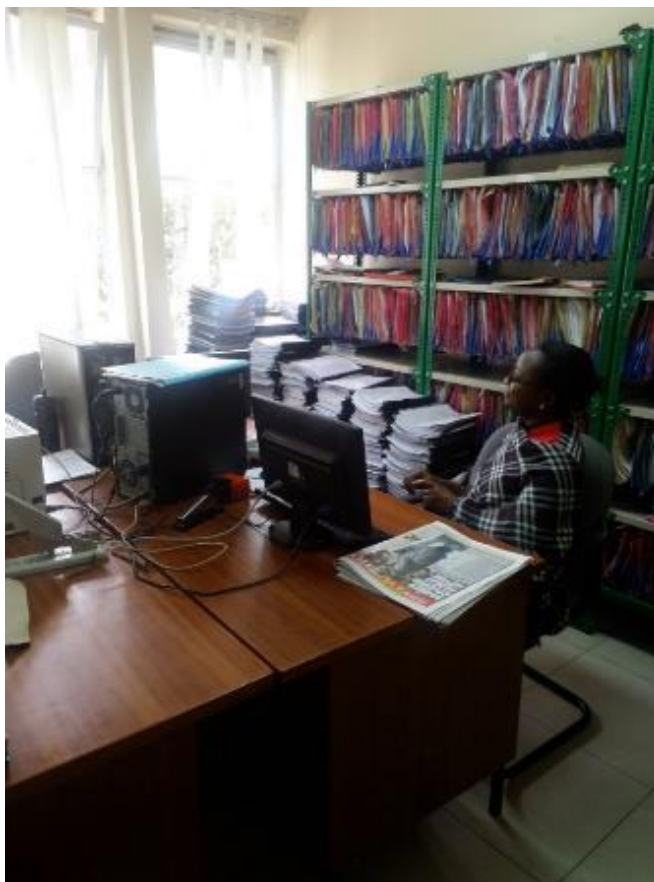


Plate 5- 1: Database of active EIA documents in the EIA section at NEMA headquarters

Table 5- 4: Summary of findings on the quality of mining project EIA reports

Quality evaluation criteria	Percentage (%) level of compliance in 50 EIA reports				Overall status
	Yes to all	Yes to most	Yes to a few	None to all	
1. Consideration of key EIA stages - Description of mining project, screening, scoping, baseline environmental assessment, comprehensive environmental regulatory framework, analysis of alternative options, stakeholder engagement, impact analysis, impact mitigation, decommissioning strategy, ESMP and environmental monitoring strategy	8	80	12	0	Satisfactory
2. Consideration of all the phases of mining project - Exploration and prospecting, construction of access roads, site preparation and clearing, mining installations, mining activities, disposal of overburden and waste rock, ore extraction, tailings disposal	2.1	29.2	37.5	31.2	Poor
3. Comprehensive environmental regulatory framework - Policies, laws (Acts of Parliament), regulations, standards, national strategies and action plans, MEAs & other agreements	2	20.4	73.5	4.1	Poor
4. Consideration of potential physical impacts - Land environment, landscapes, hydrology & water resources, water quality, air quality, noise & vibrations, climate change	85.4	0	14.6	0	Excellent
5. Consideration of potential biological impacts - Flora, fauna, endangered species, sensitive habitats & ecosystems, protected areas, biodiversity hotspots	2.1	25	68.8	4.2	Poor
6. Consideration of potential social impacts - Displacement and resettlement, livelihoods impacts, traffic interruption, solid wastes, public safety & health, employment, CSR, emergency response and contingency plans, conflict resolution	2.1	56.2	41.7	0	Satisfactory
7. Human rights considerations	16.7	0	79.2	4.2	Poor
8. Evidence of actual baseline environmental assessment - Characterization of proposed mined materials, soil, water, noise, air quality, flora, fauna, climate, population characteristics, land use, social services	76	0	20	4	Excellent
9. Stakeholder engagement and consultation - Stakeholder mapping, identification of stakeholders, directly affected stakeholders (DAS) & indirectly affected stakeholders (IAS), gender balance, youth & vulnerable groups	20	0	32	48	Very poor
10. Adequate EIA consultation meetings - Number of meetings, convenient meeting venues, listing of SCM participants, listing of SCM contacts, stakeholder communication strategy, evidence of full project information disclosure, listing of stakeholder concerns, clear details of project approval or disapproval by stakeholders, adequate of consideration of stakeholder inputs	2	24	40	34	Poor
11. Characterization of potential impacts for all mining stages - Preconstruction, construction, operation, decommissioning & rehabilitation	24.5	26.5	26.5	22.4	Satisfactory
12. Climate change considerations - Loss of CO ₂ uptake through vegetation clearance, CO ₂ emission by mining machines, CO ₂ emission through mineral processing, considerations on climate change-proof mining infrastructure, climate change mitigation & adaptation, considerations on climate change related natural disaster risk reduction in the EMP	2	0	0	98	Very poor
13. Consideration of transboundary impacts - Inter-village, inter-county, regional & international	8.2	0	2	89.8	Very poor
14. Analysis of alternative options - Preferred option, No-action zero option, other options	2	63.3	10.2	24.5	Satisfactory
15. Cost benefit analysis	4	0	0	96	Very poor
16. Impact mitigation - Positive impacts, negative impacts, recommendations for mitigation of negative impacts, rehabilitation cost and funding allocation at decommissioning phase	32.7	61.2	6.1	0	Satisfactory
17. Environmental management and monitoring plan (EMP) - Land environment, soil environment, water resources, air quality, noise & vibration, flora & fauna, public safety and health, decommissioning and rehabilitation, long-term monitoring protocol, responsible persons and agencies, timelines, guidelines	6	70	16	8	Satisfactory
18. Overall quality of EIA report - Comprehensive non-technical summary, illustrative maps, diagrams and photos, clear conclusion and recommendations, clear and easy to understand	24.4	59.2	18.4	2	Satisfactory



Plate 5- 2: The catalogued active database of EIA documents at NEMA headquarters in Nairobi



Plate 5- 3: The container storing archival EIA documents within the NEMA compound



Plate 5- 4: Uncatalogued database of archival EIA documents in a container

5.5: EIA Report Review and Compliance Follow-Ups

Table 5-5 shows the strengths and weaknesses associated with the administrative review of mining project related EIA reports in Kenya before the issuance or lack of issuance of EIA licenses. The evaluation established that none of the 50 EIA reports sampled in the SEA received any comments from the general public although all the mining related EIAs are usually available for scrutiny to members of the public in the counties where the proposed mining activities will take place. The reports are also posted on NEMA website for a period of 30 days in order to allow public involvement in the review.

Table 5- 5: Strengths and weaknesses in the administrative review of EIA reports

Administrative review of mining project EIA reports	
Strengths	<ol style="list-style-type: none"> 1. Clear ToR for report review 2. Use of a standard EIA report evaluation form 3. Adequate number of reviewers 4. Evidence of evaluation by team whose work is restricted to report review 5. Involvement of a senior reviewer (master’s degree holder) 6. Involvement of relevant lead agencies 7. Involvement of ministry of mining 8. Review by a county based institution
Weaknesses	<ol style="list-style-type: none"> 1. Lack of involvement of a geologist or mining expert 2. Lack of involvement of the Environment Institute of Kenya (EIK) 3. Lack of independent peer reviewer

	<ol style="list-style-type: none"> 4. Lack of involvement of at least one non-state environmental agency from project area 5. Lack of involvement of universities involved in mining, environment and human rights 6. Lack of interest by the general public to get involved
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Consultations with Senior Compliance and Enforcement Officer and Senior Legal Officer in NEMA indicated that:-

- a) Annual environmental audits are expected to be conducted by mining companies which are required to submit reports to NEMA
- b) Post-EIA compliance monitoring and inspections for mining projects is usually undertaken through targeted inspections, incognito walk-in inspections, and controlled audits. Such inspections are also undertaken following complaints from the public. The public can forward their complaints through the walk-in approach or simply by calling through a hotline or communicating through email, twitter and Facebook.
- c) Mining EMP non-compliance incidents are reported at the office of County Director of Environment (CDE) and are classified into categories A to D with A being the most critical and responded to within 24 hours by the headquarters or the county office. The other categories are determined by whether the issue is environmental or public concern which may not be in their mandate.
- d) The actions taken for mining EMP non-compliances usually include either verbal or instructions for improvement, strict improvement order requirements, mining closure orders or arrest and prosecution.
- e) EIA and audit governance is faced by a number of challenges especially:-
 - Inadequate and/or misinformation by the experts as a result of influence by the proponents but NEMA is yet to prosecute any individual expert or firm
 - Lack of response for relevant lead agencies on the administrative review of EIA reports
 - Political interest in some mining projects
 - Breach of license conditions
 - Inadequate and over-stretched Capacity and inadequate technical expertise for administrative review of EIA reports and subsequent compliance monitoring follow-ups
 - Poor compliance monitoring of environmental audits
 - Increased challenge of approval/non-approval of EIA licenses at the National Environment Tribunal (NET) which accounts for 60% of cases at the NET. There is usually a 50-by-50% chance of the NET overruling of NEMA decision. This erodes the governance confidence at NEMA. The key grounds of the NET related challenges include, inadequate public consultation, non-compliance to the law by the proponent or NEMA, malice/rivalry/competition to prevent another investor from putting up the same development

5.6: Post EIA Environmental Audits

The SEA review of mining established that only a mere 7% (3 out of 50) of the approved mining projects in the 2006-2016 period had undertaken third party follow-up environmental audits. The audit usually adds value to the EIA by establishing whether and ensuring that the predicted and actual negative impacts in a project are identified and properly addressed. The environmental audit can be considered as an Environmental and Social Impact Assessment (EIA) support tool because it facilitates EIA compliance monitoring by ensuring that the operational recommendations of the EIA (especially in the environmental and social management plan (ESMP)) are adhered to throughout the project lifecycle.

6. STAKEHOLDER ENGAGEMENT AND GOVERNANCE IMPACT ANALYSIS

6.1: Findings in Kwale County

A total of 58 governance issues were raised by stakeholders in Kwale County. Out of these, 32 were found to be well integrated, 9 moderately integrated and 17 not integrated in the mining governance framework (**Table 6-1**). Out of the 17 issues not integrated, 7 of them were exclusively on the environment whilst 5 were on mining and 2 on human rights. Only one issue touched on human rights and mining issues, while another one was on environment and human rights issues. Therefore the most un-integrated issues were on environment followed by mining. The minutes for the stakeholder consultations in Kwale County are provided in **Annexes 34-47 (Vol. 2)**. **Plate 6-1** shows some consultations in Kwale County.

Table 6- 1: Summary of stakeholder mining governance concerns in Kwale County

Well integrated	Moderately integrated	Not integrated
1. Pollution of water resources	1. Lack of coordination between NEMA and KFS on management of forests	1. Liaison committees are not effective (Mining)
2. Inadequate CSR provided by large scale mining companies	2. Shortage of water for downstream communities on River Mkurumudzi	2. Liaison committees are not trusted by the local people (Mining)
3. Unsatisfactory prospecting and mining agreements between mining companies and communities	3. Lack of a national level mechanism for sharing 20% of the royalties due to the county	3. Control of the mining sector by cartels (Mining)
4. Unemployment among the youth	4. Lack of a local level mechanism for sharing 10% of the royalties due to the communities	4. Existence of illegal artisanal mining operations (Mining)
5. Lack of local skilled manpower	5. EIA reports are too technical for local understanding	5. County level mining institutional structures are yet to be put in place (Mining)
6. Inappropriate means of communicating between NEMA and local people regarding mining EIAs	6. Lack of transparency in issuance of mineral prospecting and mining activities at the national and county levels	6. Lack of restoration/rehabilitation of sites e.g. artisanal mining sites (Environment)
7. Lack of personal protective gears (PPGs)	7. Inadequate NEMA capacity to monitor mining operations	7. Lack of communication between NEMA and communities after EIAs are undertaken (Environment)
8. Absence of institutions for artisanal miners	8. Inadequate capacity to enforce the environmental law, policy, strategic plan and guidelines	8. Lack of coordination between NEMA and WRMA on water resources management (Environment)
9. Lack of access to markets for product	9. Inadequate capacity for self-environmental monitoring	9. Effects of radiation (Environment)
10. Poor working conditions and Low wages		10. Lack of information on the effects of radiation on the environment and people (Environment)
11. Unfair loss of land by the local people		11. High disaster unpreparedness (Environment)
12. Landless people		12. Social diseases such as STD, HIV/Aids (Environment)
13. Compensation for loss communal land not clear		13. Lack of capacities of different agencies to enforce human rights in mining operations (Human rights)
14. Inspections of large scale mining companies are irregular		14. Lack of political good will to advocate for the protection of human rights at the local level (Human rights)
15. Inspection of artisanal miners is absent		15. Inadequate and unfair compensation of displaced

		communities (Mining & human rights)
16. Lack of information on mineral prospecting, quantities and values of minerals		16. Failure to resettle community members (Mining & human rights)
17. Lack of information on pollution		17. Weak capacity by DOSHS to inspect mining areas and operations (Environment and human rights)
18. Inappropriate relocation of communities		
19. Failure by mining investors to implement EMPs		
20. Inadequate information on types of minerals found in the county		
21. Lack of capacity to enforce environmental laws, policy, strategic plans and guidelines		
22. Non-compliance with OSH regulations and guidelines		
23. Lack of capacities by agencies to enforce gender considerations in mining operations		
24. Lack of capacities by agencies to enforce social protection in mining operations		
25. Risks and accidents to people and animals due to uncovered holes		
26. High poverty levels in the county		
27. Child labour is rampant		
28. Lack of information on quantities of minerals in specific sites		
29. Noncompliance with human rights obligations by some mining operations		
30. Discrimination of women in employment		
31. High poverty levels		
32. High unemployment and underemployment		

Plate 6- 1: Stakeholder consultations in Kwale County



a) James Mutimu making a presentation during the SEA consultation workshop at Diani Reef Beach Resort in Kwale County



b) Phillip Wandera making a presentation during the SEA consultation workshop at Diani Reef Beach Resort in Kwale County



c) Plenary session during the SEA consultation workshop at Diani Reef Beach Resort in Kwale County

6.2: Findings in Kitui County

A total of 60 issues were raised by stakeholders in Kitui County; 45 of them were found to be well integrated, 8 moderately integrated and 7 not integrated in the mining governance framework (**Table 6-2**). Out of the 7 issues not integrated, 3 of them were exclusively on mining and 2 on human rights. Only one issue touched on both human rights and mining, with the most un-integrated issues being on mining and environment. The minutes for the stakeholder consultations in Kitui are provided in **Annexes 48-57 (Vol. 2)**. **Plate 6-2** shows some consultations in Kitui County.

Table 6- 2: Summary of stakeholder mining governance concerns in Kitui County

Well integrated	Moderately integrated	Not integrated
1. Ineffective collaboration and poor coordination between national and county government on mining operations	1. Unequal sharing of royalties among the national government, county government and communities	1. Land valuation does not consider value of minerals found on the land (Mining)
2. Fear of surface water pollution	2. Unstructured mechanisms for administration of mining royalties	2. Lack of capacity to deal with cartels in the mining sector (Mining)
3. Fear of equitable water sharing	3. Failure to fairly share compensation packages among family members	3. Lack of political goodwill and support by county and national government in the resettlement process (Mining)
4. Failure to implement law on restoration of mining sites	4. Lack of clarity on how mining benefits will be shared with host communities	4. Lack of mine inspection mechanisms (Environment)
5. Social advocacy has not been common	5. Inadequate NEMA personnel at county level	5. Inadequate network of NEMA offices in the mining rich areas (Environment)

6. Community fear of the likely importation of mining employees from other areas.	6.Lack of transparency in the mining sector by national government	6.Inadequate resettlement of affected persons or communities (Human rights)
7. Inadequate public participation in mining EIAS	7.Lack of capacity by various government agencies to enforce the new mining law	7.Lack of community participation in formation of liaison committees (Mining and human rights)
8. Fragmented operations of artisanal miners	8.Community fear of possible location of the coal processing plant outside the Mui basin	
9. Lack of land surveying and adjudication		
10. Lack of mutually acceptable land sale agreements		
11. High cost of processing title-deeds		
12. Lack of awareness on value of land		
13. Time taken to process title-deeds is too long		
14. Lack of public disclosure on mineral resources after prospecting		
15. Lack of information and or deliberate failure to disclose information on mining		
16. Limited geological information/services		
17. Lack of capacity by various government bodies to enforce the law		
18. Lack of public participation in prospecting, licensing and mining.		
19. Lack of mutually acceptable compensation for property on the land		
20. Lack of guidelines on compensation for land		
21. Lack of implementation of environmental management plans(EMPS)		
22. Inadequate mapping of mineral resources		
23. Communication gap between NEMA and communities		
24. Lack of capacity to undertake environmental monitoring for mining operations to prevent adverse impacts on local communities		
25. Under-staffing in NEMA		
26. NEMA should reach out to local communities by establishing offices		
27. Concerns about willingness of mining companies to engage in adequate corporate social responsibility		
28. Inadequate advocacy campaigns and community capacity building		
29. Poor enforcement of child labour laws by relevant authorities		
30. Insufficient efforts by CSOs to advocate for rights of the child		
31. No assurance that human rights will not be violated		
32. Likelihood of gender discrimination and sexual harassment in the mining sector		

33. Inadequate mechanisms of protecting disadvantaged groups (such as women, persons with disabilities and the elderly) from negative impacts of mining		
34. Incomprehensive mining agreements between host communities and mining investors		
35. Exploitation of host communities by mining companies		
36. Lack of community education and awareness on the provisions of the new Mining Act, 2016		
37. Lack of mine inspection mechanisms		
38. Lack of clarity on how the new mining law will be implemented		
39. Poor adherence to guidelines for establishment of liaison committees		
40. Lack of suitable mining technologies to avoid displacement		
41. Lack of capacity to mitigate against environmental pollutants		
42. Inadequate compliance with EMCA Cap 387		
43. Gender inequality in property ownership		
44. Inadequate devolution of mining to the county level		
45. Fear that mine workers will not be fairly compensated		

Plate 6- 2: Stakeholder consultations in Kitui County



a) Patrick Maingi (UNDP) making a presentation during the SEA consultation workshop at Parkside Resort in Kitui County



b) Richard Boiywo (Ministry of Mining) making closing remarks workshop at Parkside Resort in Kitui County



c) SEA dialogue meeting in Mui Basin, Kitui County

6.3: Findings in Nairobi

Stakeholders in the Nairobi cluster raised 42 issues touching on the mining sector, and 20 of them were found to be well integrated, 9 moderately integrated and 13 not integrated in the mining governance frameworks (**Table 6.3**). Out of the 13 issues not integrated, majority of them (8) were on mining and the rest (5) were on environmental issues and none was on human rights. The minutes for the stakeholder consultations in Nairobi are provided in **Annexes 58-68 (Vol. 2)**. **Plate 6-3** shows some consultations in Nairobi.

Table 6- 3: Summary of stakeholder mining governance concerns in Nairobi

Well integrated	Moderately integrated	Not integrated
1. Un-developed functions of the national government authority in mining to the county level	1. Waste management is a devolved function but counties lack capacity to handle mining waste	1. Lack of classification of minerals into low and high categories to facilitate devolution of some minerals to counties (Mining)
2. Decommissioning of old mines has not been done	2. Mining activities occur in water scarce areas hence there is no sufficient water for mining and sanitation	2. Lack of county government participation and decision making in the mining sector (Mining)
3. Unfair exploitation of mineral resources with disregard to the interest of the local people	3. Poor monitoring of the implementation of EMPs	3. Inadequate mining information dissemination at the county level to guide investors (Mining)
4. Mining is done without partnerships with the community and this increases violation of human rights	4. Lack of information on ownership of the tailings	4. Most mining operations are controlled by outsiders (Mining)
5. The mining are set too low to attract investments but do not protect human rights	5. Lack of a local level mechanism for sharing 10% of the royalties due to the communities	5. Lack of resettlement guidelines (Mining)
6. Public participation in EIAs is not comprehensive enough	6. Government institutions listen more to mining investors than the local citizens	6. Inadequate and unfair compensation (Mining)
7. Unsafe mining operations for artisanal miners	7. Consideration of cultural factors in mining compensation and resettlement	7. Political elites control the mining sector (Mining)
8. Mine workers are poorly paid	8. NEMA has inadequate technical capacity to execute their mandate in the mining sector	8. Mining in Kenya is largely owned by cartels (Mining)
9. Child prostitution, school dropouts and child labour in mining settlements	9. Loss of lives has occurred in some of the open abandoned mines	9. Lack of coordination of lead government agencies in addressing pollution from mining at the local level (Environment)
10. Community not enlightened on land rights and resettlement rights		10. Lack of mine inspection mechanisms (Environment)
11. Lack of mechanisms and frameworks to carry out comprehensive mining sites inspections		11. There are no radiation inspectors in the counties (Environment)
12. Non informed consent by the communities forms a big challenge in the mining sector		12. No rehabilitation is done by the artisanal mines (Environment)
13. Communities living in mining areas need a certain threshold of information for decision making		13. Corporate social responsibility (CSR) is not entrenched in the mining law (Environment)
14. Poor waste management by the mining companies		
15. There is no mechanisms of reporting on the environmental status of mines		

16. Non-compliance in use of Personal Protective Equipment's		
17. Cultural setting is a hindrance to women participation in mining		
18. Community lacks awareness on land rights		
19. Mining requires a lot of water		
20. EIAs are not done on artisanal mining activities		

Plate 6- 3: Stakeholder consultations in Nairobi



6.4: Summary of Stakeholder Consultation Findings

A comparison of the stakeholder non-integrated governance issues indicated that Kwale County had the highest number (17 issues) followed by Nairobi (13 issues) and then Kitui County (7 issues). This can be attributed to the fact that more active mining was more common in Kwale County compared to Kitui County where mining is still at the early stages of development. Stakeholders in Kwale were also more familiar with various issues associated with the mining sector compared to those in Kitui. The Nairobi cluster on the other hand comprised of different stakeholders associated either directly or indirectly with the mining sector and were therefore also familiar with issues arising from mining in different parts of the country.

The findings showed that stakeholders in both Kwale County and the Nairobi cluster stakeholders had more genuine mining governance issues compared to those in Kitui County who were more speculative and appeared to have fears on possible effects that might arise from mining. Additionally, Stakeholders in Nairobi and Kwale have more experience and exposure on the mining sector. Thus, the Nairobi cluster stakeholders raised more mining governance issues followed by Kwale and Kitui Counties in that order. Similarly, most of the non-integrated environmental governance issues were raised in Kwale County followed by the Nairobi cluster with the least being in Kitui County. More human right governance issues were raised in Kwale County and this is attributed to the fact that mining is prevalent and widespread in the county compared to Kitui County. Consequently, the people in the county have more exposure and experience on mining issues compared to communities and stakeholders in Kitui, and are therefore in a better position to identify areas of human rights violations arising from the sector. The key governance gap issues identified by the stakeholders are summarized in **Box 6-1**.

Box 6-1: Summary of stakeholder governance gaps		
Mining governance	Environmental issues	Human rights
1. Land valuation does not consider value of minerals found on the land	1. Lack of proper mine inspection mechanisms	1. Corporate social responsibility (CSR) is not well engrained in the mining law
2. Lack of a mineral classification system to identify low and high class categories to facilitate the devolved governance of some minerals to counties	2. Disaster unpreparedness	2. Unfair compensation and resettlement of displaced communities
3. Mining Liaison Committees are not trusted by communities, are ineffective, and host communities are not involved in their formation	3. Risk of social diseases such as STD, HIV/AIDS	
4. The mining sector is controlled by different types of local and international cartels	4. Inadequate capacities for environmental agencies involved in mining sector governance	
5. Widespread illegal artisanal mining and non-decommissioning of artisanal mines		
6. Lack of a framework to enable the participation of county governments in mining sector decision making		
7. Lack of proper coordination for agencies involved in mining sector governance		

The following mining governance gap issues were identified in both the PPP analysis and stakeholder analysis which indicates the need to urgently address them:- a) risk of deforestation by mining activities, b) likely loss and degradation of critical ecosystems and loss of species by mining activities, c) likely contamination of streams, rivers, lakes, wetlands and groundwater resources, d) risk of mining related conflicts, e) risk of public safety and health problems, f) risk of radiation exposure, g) likely spread of HIV/AIDS, and, h) inadequate CSR interventions.

The governance gap issues raised by the stakeholders and not identified in the PPP analysis were:- a) widespread control of the mining sector by local and international cartels, b) inadequate capacity for mining governance agencies, c) lack of proper coordination for agencies involved in mining sector governance, d) lack of a national framework for compensation and resettlement of displaced communities, e) inadequate participation of county governments in the mining sector governance, f) ineffective mining liaison committees, g) illegal artisanal mining, h) non-decommissioning of mines, and i) lack of proper mine inspection mechanisms. The difference could be attributed to a number of reasons, namely; a) poor administration of governance frameworks in the sector including implementation of policy, poor enforcement of laws, regulations and guidelines,, and, b) almost all the governance instruments in the mining sector as evaluated in the PPP analysis are all new with the policy and legal framework having been formulated in 2016 while the mining regulations are in draft form except for the Mining (Local Equity) Regulations, 2012. This implies the impact of the restructured governance framework in the mining sector is yet to be realized and most of the stakeholder views were largely based on the previous frameworks including the Mining Act 1940 which enacted during the colonial times.

7. GOVERNANCE CAPACITY ANALYSIS

A wide range of institutions are involved in the interface between, mining activities, environment and human rights. An evaluation of the capacity status at the National Environment Management Authority (NEMA), the Directorate of Occupational Safety and Health Services (DOSHS) and the Kenya National Commission on Human Rights (KNCHR) was undertaken in order to gauge the institutional capacity status on one hand and the level of institutional cooperation and partnership on the other. The governance capacity assessment was undertaken for the National Environment Management Authority (NEMA) and the Directorate of Occupational Safety and Health Services (DOSHS). The NEMA governance capacity assessment mainly focused on the administration of mining project EIAs including the EMP compliance up to the mine decommissioning stage. The DOSHS capacity assessment was mainly focused on health and safety in mining areas. The findings on institutional capacity analysis in NEMA and DOSHS are presented below.

7.1: National Environment Management Authority (NEMA)

7.1.1: Systemic capacity

The capacity issues considered included; institutional public access, transparent and accountable issuance of permits and licenses, independent decision making, grievance resolution and timely service.

7.1.1.1: Public access

NEMA has categorized mining EIAs into medium (which include quarrying and artisanal mining activities), and high risk which includes all the more advanced forms of mining. The EIAs for these study reports are reviewed at the head office except for quarrying which are handled at the counties. As required by the law, NEMA has put in place diverse platforms to ensure there's public access to information on EIA studies done in the mining sector. These include the following; i) all EIA experts or firms are supposed to engage and consult adequately the public in the project environs and other relevant stakeholders as stipulated in EMCA, CAPA. 387, ii) all EIA reports are supposed to be uploaded into the NEMA web site so that they are readily available to any interested persons, iii) use of the media to reach out to the public and other stakeholders about the report mainly through radio, Kenya gazette and popular local dailies, iv) allocating a 30 days window for the public to review the report and submit their input to NEMA, v) sharing the report with government lead agencies which might be affected by a mining project for instance the Kenya Wildlife Service (KWS), Kenya Forest Service (KFS) and Water Resources Management Authority (WRMA), and, vi) availing the EIA reports at their county offices where its available to interested persons, and, vii) holding public hearings facilitated by NEMA within the project location.

7.1.1.2: Transparent and accountable issuance of permits and licenses

EIA review by NEMA and issuance of an EIA license is process based. Each EIA study report for medium and high risk mining projects is reviewed by a panel of 4 experts who make a decision on whether an EIA license should be issued or not. This is then followed by quality control through the following; i) EIA desk, ii) chief compliance officer, iii) deputy Director of compliance, iv) director, compliance and enforcement, and, v) director general (DG) for signature. There are also other factors taken in to account before a final decision is made on whether to issue an EIA license or not. Further, NEMA keeps a register of all EIA licenses and which are also available on-line in the website. All these processes are aimed at enhancing transparency and accountability in the EIA license issuance.

7.1.1.3: Independent decision making

As the lead environmental protection agency, NEMA administers the EIA process in all sectors including mining. However, it does this with input from other government lead agencies in sectors that might be affected negatively by a mining project as well as other non-government stakeholders. Although the final decision on issuance of a license lies with NEMA, the process is guided by input from NEMA and other stakeholders. The process also evaluates or examines the extent of statutory requirements which are critical in make the right decision. All this is important when making a decision on whether to issue or not issue an EIA license, and the conditions that must be associated with it.

7.1.1.4: Grievance resolution

Any issues arising from mining EIAs and issuance of an EIA license are resolved through two mechanisms; courts process and Zone of Possible Agreement (ZOPA) facilitated by NEMA. ZOPA entails NEMA bringing together the parties involved and mediate through dialogue. NEMA's decision on issuance of mining project EIA license is not final and any stakeholder can make an appeal to the National Environment Tribunal (NET). If any party is not satisfied by NET's decision, they can take the case to the Land and Environment Court and thereafter to the Court of Appeal. However, in some instances, the court process is rather slow which delays grievances resolution. This can be partly remedied by fast tracking the court process and ensuring that the EIA process and issuance of an EIA license is done comprehensively and in an all-inclusive manner to avoid circumstances that will create grievances.

7.1.1.5: Timely service

NEMA has put in place specific timelines for handling different aspects of the EIA process and issuance of an EIA license. Before a mining project EIA study begins, the proponent and consultant submit to NEMA the EIA study Terms of Reference (ToR), which are supposed to be approved in 7 days. This process evaluates the adequacy of the ToR and the expert's work-plan. After submission of the study report, NEMA gives a 30 days review window during which the public and all stakeholders are expected to submit their input. Within the same timeframe, NEMA facilitates and holds a public hearing of the study within the project environs. Thereafter, issuance of an EIA license for medium risk mining projects takes 30days while that of high risk projects takes 60days

However, these EIA process timelines are faced by a number of challenges namely; i) lack of feedback or input on the EIA study report from relevant government lead agencies, ii) political interests and interference for high profile mining projects, iii) inadequate and even misinformation by the EIA study experts occasioned by influence from the proponent, and, iv) insufficient EIA personnel capacity at NEMA head office where medium and high risk project EIAs are handled. These can be addressed by; i) de-politicizing mining project EIAs and decision making process, ii) instilling professionalism in EIA experts to avoid manipulation by proponents, and, iii) increasing the number of EIA reviewers and ensure they are skilled and competent enough to handle mining EIA study reports.

7.1.2: Institutional capacity

The institutional capacity issues considered included budgets, funding and expenditure, transport, information communication technology (ICT) and emergency response capacity.

7.1.2.1: Funding, budgets and expenditure

Unlike in the recent past, NEMA is currently getting its funding from the government. Approximately 10% or Ksh. 80million/year of the budget is allocated for administration process of EIAs which is inadequate to meet the needs of this. It therefore slows down timely handling of the EIA process and delays issuance of EIA license for mining projects and other sectors as well. This challenge needs to be addressed by allocating more funds to NEMA and as well as the EIA section to enable it handle the EIA process effectively and timely.

7.1.2.2: Transport

NEMA services have been devolved to all the 47 counties as stipulated in the country's constitution, and each has been allocated one vehicle. However, the EIA section at the head office has not been allocated any vehicles and instead shares the pooled vehicles with all the other departments and sections. This has been occasioned by inadequate funds to buy enough vehicles to meet all the transport needs of each department and section. This hampers timely inspection of mining project sites where EIA studies have been done which is a requirement for the EIA report review process, and delays the EIA report review and issuance of an EIA license. Inspection and monitoring of mining projects for compliance with the EMP and EIA license conditions is also hampered. Allocating adequate funds to NEMA will enable it to improve its transport capacity by buying enough vehicles to facilitate these important EIA and environmental management activities.

7.1.2.3: Information Communication Technology (ICT)

All the departments in the NEMA head office are linked through an ICT system but there is no linkage with the county offices. Thus, most of the operations and information sharing including EIA reports processing at the head office is done easily using the system. Key information about NEMA is also readily available in its website where the public can access and download it. All EIA reports even those for the mining sector are submitted on line and this has partly enhanced NEMA's capacity to handle and manage its mandate of processing EIA licenses for the mining sector. EIA licensing process is automated only at the head office and not at the counties which constraint service delivery. To enhance service delivery, the ICT capacity needs to be improved so that it can cope with the increased operations of the authority in response to increasing environmental management oversight in the country. The head office should also be linked to the county offices for faster operations, information communication and tracking for timely and effective service delivery.

7.1.2.4: Emergency response capacity

NEMA has put in place an emergency response unit to deal with environmental disasters-the Rapid Environment Response Unit (RERU) based at the head office. This unit comprises of inspectors who are trained to respond and handle environmental disasters even those associated with the mining sector. The underlying constraints faced by the units are mainly the following; i) the unit is only found in Nairobi, which means NEMA county offices have no ability or capacity to respond to any environmental disasters arising from mining projects and associated activities, ii) lack of inadequate tools and equipment to evaluate and manage environmental disasters, and, their mobility capacity is low and are therefore ill equipped to effectively respond to disasters in remote and far places within the country.

7.1.3: Personnel capacity

The capacity assessment mainly concentrated on the number of personnel, education, skills and competences as well as work incentives.

7.1.3.1: Number of personnel

As stated earlier, medium and high risk mining EIA study reports are reviewed at NEMA's head office. Currently, the EIA section has 20 reviewers with only 5 of having ability to effectively review mining EIAs. However, these are too few to handle all the EIA review work, and at the same time handle other EIA report review processes like field site visits of each project. Ultimately, this may delay the review process and timely issuance of an EIA license as stipulated in the service charter. Since NEMA is currently operating at a third of its staff requirement, there is a need to recruit more competent EIA reviews with diverse skills including handling mining EIAs so that the total number is 60.

There are 47 environmental inspectors i.e. 1 per county, and 30 at the head office. Although the officers have the required skills and competence to inspect environmental compliance in the mining sector, they are too few to cope with the diverse environmental management issues they are expected to handle in all sectors of the economy. There is also the challenge of transport availability to carry out timely and regular inspections for monitoring compliance with the EMP and EIA license conditions. These setbacks are likely to lead to rampant environmental damage and violation of human rights for communities living in the immediate environs of mining projects. Recruitment of more inspectors is recommended so that NEMA is able to effectively monitor and adhere to the EMP and EIA license conditions by mining projects. For the EIA section to be more effective, it should be made a sub-department within the compliance and enforcement department and be headed by a Deputy Director

7.1.3.2: Education, skills and competences

All the 20 reviewers in the EIA section are graduates with most of them having postgraduate degrees at Masters and PhD. Five (5) of the 20 reviewers have the required skills and competences to effectively handle mining EIAs. NEMA has also trained them using the EIA reviewers guidance manual which has further enhanced their review ability and decision making capability. However, in case of a very complex EIA study report, EMCA has empowered the Director General (DG) to form an interdisciplinary Technical Advisory Committee.

7.1.3.3: Incentives

Generally, NEMA has been experiencing a high staff turnover including those in the EIA section at the head office. As noted during the capacity assess, this could be partly attributed to the working environment provided by the authority including availability of staff incentives, and it's likely to undermine provision of services and overall delivery of its mandate. In particular, the current incentives for the staff include; i) short and long term training opportunities, ii) extraneous allowance, iii) medical cover, and, iii) reviewers allowance specifically for the EIA experts. Low retainance of EIA reviewers will erode the high quality skills and competences the authority will have nurtured and may compromise quality review of mining EIAs. It is therefore important to assess whether the working environment in NEMA could be responsible for the staff turnover with a view of mitigating the same effectively so as to retain suitable and high caliber staff. There is also a need to put in place a mechanism to caution EIA reviewers from blame arising from their decisions.

7.2: Directorate of Occupational Safety and Health Services (DOSHS)

7.2.1: Systemic capacity

7.2.1.1: Public access

Employers including those in the mining sector are supposed to document and report to DOSHS all OSH accidents, injuries and health incidences. However, there's currently no Information Technology Communication (ICT) linkage between DOSHS and mining work places, and as such documentation of incidences is done manually through paper work. Further, due to understaffing and inadequate computer facilities, most of this data and information is not readily synthesized and analyzed. Accordingly, public access to information and data on prevalence of accidents and health issues in the mining sector is not possible. DOSHS has also not created a mechanism to document incidences among artisanal miners, and therefore accidents and injuries in this informal mining sector are again not readily available to the public.

This situation is a setback in ensuring the public readily accesses OSH service related issues in the mining sector. Some of the measures that can be used to correct the situation includes; i) improving DOSHS ICT system and ensure its linked to all the county offices and mining work places for easy and fast recording and documentation of accidents and injuries, ii) increase DOSHS staff to enable the authority to discharge its mandate on time and effectively, including information gathering with the public. This should be augmented by posting data and information on mining accidents and injuries data on their website, and, iii) increasing the number of computers for timely, effective, and efficient sharing of information with the public. There's also an urgent need to create a system for reporting and documenting injuries and accidents among artisanal miners since the new mining law has recognized them to be important players in the mining sector.

7.2.1.2: Transparent and accountable issuance of permits and licenses

DOSHS normally issues a number of permits and licenses in all sectors, the mining sector included namely; i) work place regulation certificate, ii) industrial certificates for equipment and plants like; boilers, lifts, cranes and refrigerators and, iii) annual work place compliance certificate. The procedure, requirements and timeline for issuance of these permits and licenses is readily available in the DOSHS website. Each application is evaluated by an inter-disciplinary team of technical staff in consultation with the Director against the set requirements and standards. Mining work places or any other work place which meet these requirements and set standards are issued with a permit or license applied for. This system has been put in place to ensure the process is conducted with the highest possible level of transparency and accountability.

7.2.1.3: Independent decision making

DOSHS is the lead government agency in-charge of preventing and reducing prevalence of OSH issues in in the mining sector as well as other sectors especially in the formal sector like factories, industries and large scale farming enterprises. In this regard, issuance of operating licenses and permits for mining work

places and subsequent inspection for compliance purposes are made entirely by the authority independently as mandated by the law without any reference to other government lead agencies.

7.2.1.4: Grievance resolution

OSHA (2007) has provided guidelines on how to resolve OSH related grievances, and all employees in the mining sector are supposed to report issues such as accidents, injuries and serious health issues in their work places to any DOSHS office. However, aggrieved employees are free to report to any DOSHS office for redress. Redress for such cases begins by undertaking a detailed inspection of the workplace by DOSHS technical staff where the incidence occurred. Care is taken to avoid disclosing to the employer on the purpose of the inspection to avoid victimization of the employee(s).

However, there is no timeline set for resolving grievances, which means those aggrieved normally wait for too long before their cases are resolved. Another constraint is that DOSHS has very few technical staff to undertake inspection and investigations that are needed to help resolve employees' grievances coupled by the fact there are very few vehicles for timely inspection of workplaces where employees have forwarded their complaints to DOSHS. Given this situation and the increased mandate bestowed on DOSHS, resolution of OSH grievances in the mining sector will be greatly hampered. If a decision is made to compensate an aggrieved employee(s) by a mining company, DOSHS has no authority to compel such companies to honor their decision.

Some of the measures that can be used to ensure timely and effective grievance resolution are namely; i) setting a specific time frame for redress and resolution of reported cases, ii) enhancing DOSHS technical staffing level, and, iii) empowering DOSHS to have prosecutorial authority over mining companies that have refused to compensate affected employees.

7.2.1.5: Timely service

Like other government service delivery agency, DOSHS has put in place a citizen service charter framework which is readily available in the website. For instance, a certificate of registration of new or existing mining work places within a formal set up is done annually, and the process takes 30days while monitoring of such places for levels of pollutants and other contaminants takes 30 days as well. Investigation of OSH related complaints in mining areas and companies is supposed to be done within 30 days while work injury evaluation takes place within a time of 15 days. In case a mining worker is injured in the work place, processing of benefits and issuance of a demand note to the company is done in 15 days.

However, due to understaffing and lack of enough DOSHS offices in the country, provision of these services on a timely basis is hampered. Moreover, as the mining sector expands, the demand for the services will also increase and at the current staffing, the directorate will increasingly become ineffective in meeting its mandate.

7.2.2: Institutional capacity

7.2.2.1: Funding, budgets and expenditure

Currently, DOSHS gets its finances from two sources; the OSH fund through an annual contribution of Ksh 3,000 for each registered work place, and, the national government. About Ksh 60.7 million was collected through the OSH fund during the 2015-2016 financial years, with the government allocating Ksh. 150 million while in the 2016-2017 it was allocated Ksh110 million for operation costs although its annual average financial budget is about 480 million. The directorate is consistently underfunded, and this has greatly hampered its operations and capacity to discharge its oversight mandate in the mining sector.

For instance, in the 2016-2017 financial years, only Ksh 32.6 million was allocated for inspection purposes for all sectors including the mining from the operations funds allocated by the government, which was supplemented with Ksh 6 million from the OSH fund. The amount is inadequate to meet all the stipulated DOSHS inspectorate services in the mining sector. This will lead to many employees in mining companies and artisanal miners working in unsafe and unhealthy environments. There's also a likelihood of mining

companies and artisanal miners developing a non-compliance culture. This challenges should be addressed by allocating adequate funds to DOSHS so that it can effectively and adequately ensure mining companies and artisanal miners comply with all the OSHS management laws and regulations. Making the directorate semi-autonomous can also go a long way in making it more responsive and effective in management OSH matters in the mining sector and other sectors as well.

7.2.2.2: Transport

Only 11 vehicles are currently available for use by DOSHS in the entire country with the head office in Nairobi having one vehicle, and, the rest 10 have been allocated to the 29 DOSHS county offices including Naivasha sub-county. Transport services are required for; i) inspection of mining work places and follow up of annual audits, ii) investigation of mining related accidents and injuries, iii) mining work place hygiene surveys, and, iv) general DOSHS transports needs. However, due to transport inadequacy in the directorate, mining sector inspectorate services will be significantly hampered leading to the following; i) inadequate inspection of work places for compliance purposes, iii) development of a non-compliance culture among artisanal miners and mining companies, and, iv) inadequate and untimely response to employees and artisanal miners complaints arising from their work places. This situation will create poor working environments for mining workers, and also violate their human rights. Accordingly, improvement of transport capacity is required, and this can be achieved by allocating sufficient funds to the directorate.

7.2.2.3: Information Communication Technology (ICT)

The entire directorate has 30 functional computers, and most of them are almost obsolete in their usage and functional state. Consequently, it lacks a good and effective ICT information management system, and whatever is in place is too rudimentary and limited in its capacity and usage. There's no linkage in DOSHS head office sections or between the head office and county offices and mining companies. Thus, communication of vital OSH service information and data is done manually through paper work instead of a modern ICT system. In some cases, the data and information is stored in staff personal computers which raises concerns on its safety, and, generally its storage is poor since it's mostly in hard copies. This situation makes the directorate ineffective in its in house operations among the staff, and between it and mining companies; which is a constraint in provision of timely and effective inspectorate services to the mining sector.

7.2.2.4: Emergency response

DOSHS doesn't have an emergency response mechanism for any OSH disasters in work places associated with the mining sector or other sectors. These services are handled by the Disaster Response Unit (DRU) under the Kenya National Disaster Operation Centre (NDOC). This situation is occasioned by the fact that the directorate focusses more on prevention of work places OSHS issues. However, as the mining sector and other sectors expand, it's necessary to put in place an emergency response unit and mechanism to deal with OSHS disasters but tailored to deal with sector specific issues.

7.2.3: Personnel capacity

The total staff for entire the DOSHS is 119 out of an expected establishment of 375. Fifty eight (58) of them are technical offices out of an expected or targeted 123 officers, and the rest are 61 support staff. The technical staff comprises of; 8 Doctors, 3 Nurses, 2 Lab technicians, and, 45 OSH officers, who have the required ability to handle and manage diverse OSHS issues including monitoring radiation risks associated with the mining sector. However, since Kenya's mining sector is still under developed, they lack adequate exposure to OSHS issues specifically associated with mining, and this needs to be addressed through training and exposure within and outside the country.

These statistics also show that the directorate is highly understaffed, and it can't effectively execute its inspectorate functions in the entire country. In particular, there's an acute shortage of personnel with ability to oversee OSHS matters in the mining sector. Another notable short coming is that the directorate currently lacks non-ionizing radiation monitoring equipment which is a setback in enhancing capacity of the staff to handle radiation matters associated with some of the mining projects. Acquisition of this equipment is therefore important to ensure the required diverse capacities in DOSHS are sustained.

7.2.3.1: Education, skills and competences

The technical staffs in DOSHS have high education, which is dictated by the set education requires for each position. All the doctors have a Bachelor's Degree on medicine, and some of them have attained Masters Degrees in different areas of specialization while the nurse has a Bachelor's Degree in nursing. All the OSHS officers have a Bachelor's Degree in various disciplines e.g. Zoology, Biochemistry, Botany, Physics, Chemistry and Environmental sciences. Among the lab technicians, one with a diploma and one has a BSc. Degree.

Apart from these basic education levels, all the technical staff have been trained and exposed to different OSH aspects to equip them with important skills and competences to enable them handle and manage OSH problems in different types of work places including the mining sector. But due to the under developed nature of the country's sector, they lack adequate exposure, skills, knowledge and competence to effectively deal with mining related OSHS issues. This needs to be mitigated through training and exposure within and outside the country.

7.2.3.2: Incentives

There are a few staff incentives such as medical cover and training opportunities but the latter are hard to come by. Currently, training of technical staff is being done by the Kenya Petroleum Technical Assistance Program (KEPTA) in preparation for the expected OSH issues in the emerging petroleum industry in the country. Generally, the directorate lacks appropriate incentives and good working conditions that are necessary in staff retention and attraction of high caliber, skilled and competent staff. This situation is likely to hamper management of OSH issues in the mining sector and there's a need to address it appropriately.

8. ENVIRONMENTAL MANAGEMENT AND MONITORING PLAN

8.1: Introduction

The aim of the Environmental Management and Monitoring Plan (EMMP) is to detail the actions required to effectively implement the mitigation measures and alternative options for the environmental obligation gaps identified and recommended in the SEA as highlighted in **Section 4.3.1.2** and **Section 4.4.2.2**. These actions are necessary in order to:- a) alleviate or minimize the negative environmental and human right impacts in the mining sector which might originate from the un-integrated obligations in the sector governance framework as identified in the PPP analysis, b) alleviate or minimize the negative environmental and human right impacts in the mining sector which might originate from the un-integrated obligations in the sector governance framework as identified by the stakeholders, and, c) support the long term management and monitoring of the environmental and human rights in the mining sector. It is important to note that an EMMP is a living entity in that it is to be updated and amended as new information (e.g. environment and human rights data), new policies, legal frameworks, regulations, guidelines, national strategies and action plans including the ratification of additional international agreements.

8.2: Management and Monitoring Action

The SEA has prescribed applicable mitigation measures for each of the plan activities with a potential for negative environmental and human right impacts emanating from obligation integration gaps which were identified in the PPP analysis and stakeholder engagements. It has also recommended specific, effective, tangible, simple and straight-forward management actions for each of the mitigation measures and alternative options. These can be considered as the direct environmental management prescriptions which will deal with the problems identified in the governance framework for the mining sector. Nonetheless, it's important to ensure these actions are implemented to ensure the existing environmental and human right weaknesses are addressed effectively. Each action is given a reference number for easy implementation, and the recommended actions are measurable and are therefore easy to monitor and document. The monitoring frequency and indicators have been recommended for each management action. Regular monitoring using the recommended indicators will indicate the level of progress with regard to ensuring environmental sustainability and protection of human rights in the mining sector.

8.3: Environmental Management and Monitoring Standards and Guidelines

Specific management references and guidelines as well as governance monitoring indicators have been identified for each management action. These will be used during the environmental management and monitoring of the mining sector.

8.4: Roles and Responsibilities

It is the responsibility of the Ministry of Mining to implement the EMMP and to make sure that all the actions are carried out in partnership with a wide range of other stakeholders as outlined in the EMMP. The successful implementation of the EMMP is however dependent on clearly defined roles and responsibilities for each of the management actions given as clearly indicated in the EMMP.

8.5: EMMP Schedule

The schedule serves to give the list of environmental action to be undertaken. The EMMP schedule is given in **Table 8-1**.

Table 8-1: Environmental Management and Monitoring Plan for the Mining Sector in Kenya

REF No.	GOVERNANCE CHALLENGE	MANAGEMENT & MONITORING ACTION	RESPONSIBILITY	REFERENCE DOCUMENTS	GOVERNANCE MONITORING INDICATOR
1. MANAGEMENT OF MINERAL RESOURCES					
1.1	Valuation of land with minerals	Develop guidelines for valuation of minerals	MoM in collaboration with National Lands Commission	<ul style="list-style-type: none"> National Land Policy, 2009 National Land Use Policy, 2016 The Natural Resources (Benefit Sharing) Bill, 2014 	Land valuation guidelines
1.2	Classification of minerals into low and high categories	Re-classify mineral in schedule of the Mining Act 2016 into those to be administered by the national and county governments. Gazette the classifications and develop regulations	MoM	<ul style="list-style-type: none"> Mining and Minerals Policy, 2015 Mining Act 2016 	Categorization Schedule 1 of the Mining Act 2016
1.3	Lack of participation and governance framework for county governments in the mining sector	<ul style="list-style-type: none"> a) Specify the functions of county governments in managing minerals under their administration b) Develop regulations to create mining institutional structures at county level 	MoM	<ul style="list-style-type: none"> Mining and Minerals Policy, 2016 Mining Act 2016 County Public Participation Guidelines, 2016 	<ul style="list-style-type: none"> Guidelines on the functions of county governments in the mining sector Regulations and county level mining sector institutional structures
1.4	Lack of coordination among implementing agencies of the mining sector governance frameworks	County Environmental Committees (CECs) to incorporate a cross-sectorial integration sub-committee including mining sector	MoM in collaboration with NEMA	EMCA, CAP, 387	A cross-sectorial mining sub-committee integrated in the CECs
1.5	Lack of political good will in implementation of mining sector governance frameworks	Establish county leadership forum to develop a common approach for the mining governance	MoM	County Public Participation Guidelines, 2016	Number of political fora in counties

2. RESOURCE UTILIZATION IN MINING AREAS					
2.1	Unsustainable mining activities due to over-consumption of resources such as water and energy	Develop guidelines for water harvesting and conservation in mining areas	MoM in collaboration with WRMA	<ul style="list-style-type: none"> • National Water Policy (2012 Draft) • National Land Policy (2009) • Sessional Paper No. 1 Of 1999 - National Policy On Water Resources Management And Development • National Policy for the Sustainable Development of Arid and Semi-Arid Lands of Kenya (2012) • Sessional Paper of 2014 on National Climate Change Framework Policy • Water Act, No. 43 of 2016 	<ul style="list-style-type: none"> • Annual water consumption by mining companies • Annual number of stakeholder water deficit complaints due to water use by mining companies
		Develop guidelines for energy conservation in mining areas	MoM in collaboration with Ministry of Energy and Petroleum	<ul style="list-style-type: none"> • Draft National Energy and Petroleum Policy (2016) • Energy Act Cap 314 • Energy (Energy Management) Regulations, 2012 • Draft Kenya Green Economy Strategy and Implementation Plan (GESIP), 2015 	Annual energy consumption by mining companies
3. ENVIRONMENTAL POLLUTION AND DEGRADATION					
3.1	Environmental pollution including contamination of streams, rivers, lakes, wetlands and groundwater resources	Review the: <ul style="list-style-type: none"> a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017, and b) Mining (Community Development Agreement) Draft Regulations, 2017 	MoM	<ul style="list-style-type: none"> • Draft National Policy on Wetlands Conservation and Management (2013)) • Environmental Management and Coordination Act (EMCA) Cap 387 • Environmental (Wetlands, river banks, lake shores and sea shore management) 	Annual number of affected areas

		To make a requirement for an ecosystem and species conservation plan (ESCP)		Regulations, 2009 – Legal Notice 19	
3.2	Environmental pollution and degradation of mining areas	Review the following: a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017 b) Mining (Community Development Agreement) Draft Regulations, 2017 To make a requirement for a Waste Management Plan (WMP) and Environmental Rehabilitation Plan (ERP) in the mining areas	MoM in collaboration with NEMA	<ul style="list-style-type: none"> Environmental Management and Co-ordination (Waste management) Regulations, 2006 - Legislative supplement No. 37 Draft Environmental Management and Co-ordination (E-Waste Management) Regulations, 2013 	Level of stakeholder satisfaction
		Develop Environmental Rehabilitation and Restoration Regulations for Decommissioned Quarries and Mines in collaboration with NEMA	MoM in collaboration with NEMA	<ul style="list-style-type: none"> Report of the Taskforce on Management of Quarrying Activities in Kenya, March 2010 	Annual number of rehabilitated mines
3.3	Deterioration of water quality	Review the Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017 to make a requirement for a water quality monitoring strategy and annual reporting in partnership with local WRUAs	MoM in collaboration with WRMA	<ul style="list-style-type: none"> National Water Policy (2012 Draft) Water Act, No. 43 of 2016 Environmental (Water quality Regulations, 2006 (Legal Notice No. 121) 	Annual state of water quality in mining environments
3.4	Lack of mine inspection mechanisms	Strengthen mining inspection capacity of government lead agencies	MoM in collaboration with NEMA, DOSHS & Public Health	<ul style="list-style-type: none"> EMCA, CAP 387 OSHA (2007) Public Health Act Cap 242 	Annual number of mines inspected
3.5	Illegal artisanal mining and non-decommissioning of artisan mines	Develop additional regulations and guidelines for the governance of artisanal mining	MoM	<ul style="list-style-type: none"> Mining and Minerals Policy, 2016 Mining Act 2016 EMCA, Cap 387 	Regulations on artisanal mining

4. MINING DISASTERS					
4.1	Mining disasters such as explosions, fires, shaft collapse, and cave-ins, suffocation, mine flooding and so on	Review the Guidelines for Work Programmes and Exploration Reports, Draft Regulations 2017 to make a requirement for mining disaster prevention, surveillance and emergency response plan	MoM in collaboration with DOSHS and NEMA	<ul style="list-style-type: none"> • National Policy for Disaster Management, 2009 • County Governments Disaster Management Bill, 2014 	<ul style="list-style-type: none"> • Annual number of rehabilitated mines • Annual number of serious mining disasters
5. BIODIVERSITY AND ECOSYSTEMS					
5.1	Loss and degradation of critical ecosystems and loss of species by mining activities	Review the: <ol style="list-style-type: none"> a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017 b) Mining (Community Development Agreement) Draft Regulations, 2017 To make a requirement for an ecosystem and species conservation plan (ESCP)	MoM	<ul style="list-style-type: none"> • Draft National Policy on Wetlands Conservation and Management (2013)) • National Wildlife Conservation and Management Policy, 2012 • Draft National Forest Policy 2015 • Environmental Management and Coordination Act (EMCA) Cap 387 • Forest Act No. 7, of 2005 • Wildlife (Conservation and Management) Act Cap 376 of 1976, 2009 • National Biodiversity Strategy and Action Plan (NBSAP) 2000 • National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya 2012 • National Environment Policy, 2013 	<ul style="list-style-type: none"> • Annual number of lost critical ecosystems and species • Annual state of environment for critical ecosystems
5.2	Introduction of alien invasive species in mining areas	Develop Guidelines for Prevention of Introduction of Alien Invasive Species in Mining Areas	MoM in partnership with relevant agencies such	National Biodiversity Strategy and Action Plan (NBSAP) 2000	Annual number of mining sites affected by alien invasive species

			as CABI, KWS and NEMA		
5.3	Deforestation by mining sector	<p>Review the:</p> <p>a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017, and</p> <p>b) Mining (Community Development Agreement) Draft Regulations, 2017</p> <p>To make a requirement for environmental rehabilitation plan (ERP)</p>	MoM in partnership with KFS	<ul style="list-style-type: none"> • Draft National Forest Policy 2015 • Environmental Management and Coordination Act (EMCA) Cap 387 • Forest Act No. 7, of 2005 • National Biodiversity Strategy and Action Plan (NBSAP) 2000 • National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya 2012 • National Environment Policy, 2013 	Annual number of forests affected by mining activities
5.4	Wetland loss and degradation	<p>Review the:</p> <p>a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017</p> <p>b) Mining (Community Development Agreement) Draft Regulations, 2017</p> <p>To make a requirement for an ecosystem and species conservation plan (ESCP)</p>	MoM	<ul style="list-style-type: none"> • Draft National Policy on Wetlands Conservation and Management (2013)) • Environmental Management and Coordination Act (EMCA) Cap 387 • Environmental (Wetlands, river banks, lake shores and sea shore management) Regulations, 2009 – Legal Notice 19 • National Master Plan for the Conservation and Sustainable Management of Water Catchment Areas in Kenya • Ramsar Convention 	Annual number of wetlands affected by mining activities

				<ul style="list-style-type: none"> National Environment Policy, 2013 	
6. CLIMATE CHANGE					
6.1	Climate change disasters e.g. floods, drought, landslides and disease epidemics	<p>Review the:-</p> <p>a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations 2017, and</p> <p>b) Mining (Community Development Agreement) Draft Regulations, 2017</p> <p>To ensure adequate integration of climate change mitigation and adaptation in mining project EIA reports</p>	MoM	<ul style="list-style-type: none"> Sessional Paper of 2014 on National Climate Change Framework Policy Climate Change Act No. 11 of 2016 	Annual number of Climate change driven disasters in the mining sector
7. SOCIAL ENVIRONMENT					
7.1	Risk of mining related conflicts	<p>Review the:-</p> <p>a) Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017, and</p> <p>b) Mining (Community Development Agreement) Regulations, 2017</p> <p>To make a requirement for a Grievance Redress Mechanism (GRM)</p>	MoM	Draft National Policy on Peace Building and Conflict Management (2006)	Annual number of mining related conflicts
7.2	Public safety and health problems	Develop Occupational Safety and Health Regulations and guidelines for the mining sector	MoM in collaboration with DOSHS	<ul style="list-style-type: none"> National Policy on Occupational Safety and Health, 2012 National Environmental Sanitation and Hygiene Policy 2016-2030 Occupational Safety and Health Act 2007 Public Health Act, Cap 242 (GoK, 1986) 	Annual number of OSH cases in mining areas
7.3	Risk of radiation exposure	Develop Radiation Safety Regulations and guidelines for the mining sector	MoM in partnership with the Radiation protection Board (RPB)	<ul style="list-style-type: none"> National Policy on Occupational Safety and Health, 2012 Radiation protection Act, Cap 243, (Revision 2012) 	Annual number of radiation exposure cases in mining areas

				<ul style="list-style-type: none"> • Radiation Protection (Standards) Regulations, 1986 (Legal Notice 54/1986) • Radiation Protection (Safety) Regulations, 2010 	
7.4	Increased spread of HIV/AIDS	Develop guidelines for prevention of HIV/AIDS transmission in mining areas	MoM in partnership with the MoH and the National Aids Control Council	<ul style="list-style-type: none"> • National HIV and Aids Policy • HIV and AIDS Prevention and Control Act No. 14 of 2016 	Annual number of HIV/AIDS cases in mining areas
7.5	Inadequate CSR interventions – e.g. transport, water, sanitation, and housing	<p>Review the:-</p> <ol style="list-style-type: none"> Guidelines for Work Programmes and Exploration Reports, Draft Regulations, 2017, Mining (Community Development Agreement) Regulations, 2017, and Mining (Employment and Training) Regulations, 2017 <p>To make a requirement for a CSR policy, implementation plan and annual reports</p>	MoM		Annual number of mining related CSR interventions
7.8	Ineffective liaison committees	Develop guidelines on the formation and operationalization of the Liaison committees and incorporate host communities in the Liaison committees	MoM	<ul style="list-style-type: none"> • Mining and Minerals Policy, 2016 • Mining Act 2016 	Guidelines on formation and operations of liaison committees
7.9	Control of the mining sector by local and international cartels	Empower locals to effectively participate in the mining sector	MoM	<ul style="list-style-type: none"> • Mining and Minerals Policy, 2016 • Mining Act 2016 • Policy Statement on Public Private Partnerships, 2011 • Public Private Partnership Act, 2016 	Number of local investors in the mining sector

7.10	Unfair compensation and resettlement of displaced communities	Establish and gazette compensation and resettlement regulations at the local level as provided under Article 153(8) of the Mining Act 2016	MoM in collaboration with Ministry of Lands and Physical Planning	<ul style="list-style-type: none"> • Eviction and Resettlement Guidelines, 2009 	Gazetted compensation and resettlement regulations
7.11	Lack of capacities among implementing agencies of the mining sector governance frameworks	Strengthen the capacities of implementing agencies	MoM in collaboration with the mining governance frameworks implementing agencies	<ul style="list-style-type: none"> • EMCA, CAP 387 • OSHA (2007) • WIBA (2000) • Public Health Act Cap 242 • National Cohesion and Integration Act 2011 (Amendment 2012) • County Governments Disaster Management Bill, 2014 • Water Act 2016 	Enhanced capacity of implementing agencies
8. HUMAN RIGHTS					
8.1	Inadequate consideration of consumer rights - goods and services of reasonable quality	Review the Mining (Reporting of Mineral Related Activities) Regulations, 2017 to make a requirement compliance with relevant Kenya Bureau of Standards quality thresholds	MoM in partnership with KeBS	Standards Act, Cap 496, 1974	Annual number of rights violation complaints
8.2	Inadequate consideration of the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the Bill of Rights in the Constitution of Kenya	MoM	Constitution of Kenya, 2010	Annual number of rights violation complaints
8.3	Inadequate consideration of the right to administrative action	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the Bill of Rights in the Constitution of Kenya	MoM	Constitution of Kenya, 2010	Annual number of rights violation complaints
8.4	Inadequate consideration of the right to information and access	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the Bill of Rights in the Constitution of Kenya	MoM	Constitution of Kenya, 2010	Annual number of rights violation complaints

8.5	Inadequate consideration of the right to security and peace	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the African Charter of Human and People's Rights	MoM	African Charter of Human and People's Rights	Annual number of rights violation complaints
8.6	Inadequate consideration of the right of equal access to public service	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the African Charter of Human and People's Rights	MoM	African Charter of Human and People's Rights	Annual number of rights violation complaints
8.7	Inadequate consideration of the right to proper physical and mental health	Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the African Charter of Human and People's Rights	MoM	African Charter of Human and People's Rights	Annual number of rights violation complaints

9. CONCLUSION AND RECOMMENDATIONS

9.1: Conclusion

9.1.1: PPP Analysis

The governance framework for the mining sector is well configured in terms of environmental sustainability. The integration of obligations in 76 environmental frameworks in the 12 governance frameworks for the mining sector indicated that majority of the obligations in national policies were either fully, well or moderately integrated with only 4 out of 20 policies (4%) not integrated. The non-integrated policies include; the National Water Policy (2012 Draft), National Wildlife Conservation and Management Policy, 2012, National Policy for Disaster Management, 2009 and the National HIV and Aids Policy, 2009. The pattern was similar for the legal frameworks with only 4 out of 23 legal frameworks being considered as not integrated in the governance frameworks, namely; the HIV and AIDS Prevention and Control Act No. 14 of 2006, Radiation Protection Act Cap 243 (Revision 2012), the National Cohesion and Integration Act, 2011 (Amendment 2012) and the County Governments Disaster Management Bill, 2014. The key national strategy which was found to be poorly integrated is the National Climate Change Response Strategy (NCCRS, 2010) which is compounded by lack of integration of the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification (UNCCD). Only 11 environmental sustainability instruments (15.3%) have not been integrated, namely; 6 environmental policies, 6 legal frameworks, 2 environmental regulations, 1 national strategy and 2 MEAs.

The PPP analysis showed that the governance framework in the mining sector if implemented properly can lead to the following positive impacts:-

- a) Undertaking of mining project EIAs
- b) Preservation of heritage sites in mining areas
- c) Compensation and resettlement of mining host communities
- d) Women empowerment
- e) Maintaining safe working environment in mining areas
- f) Noise and vibration control
- g) Sustainable development in protected areas in accordance with approved management plans
- h) Free movement of wildlife in mining areas
- i) Involvement of community institutions (e.g. WRUAs and CFAs) in conservation within the mining areas

PPP analysis also revealed that the potential negative impacts which are likely to emerge from the current configuration of the governance framework in the mining sector are:-

- a) Unsustainable mining activities due to overconsumption of resources such as water and energy
- b) Environmental pollution and degradation of mining areas
- c) Mining disasters such as explosions, fires, shaft collapse and cave-ins, suffocation, mine flooding and so on
- d) Climate change disasters e.g. floods, drought, landslides and disease epidemics
- e) Deforestation by mining sector
- f) Loss and degradation of critical ecosystems and loss of species by mining activities
- g) Wetland loss and degradation
- h) Introduction of alien invasive species in mining areas
- i) Contamination of streams, rivers, lakes, wetlands and groundwater resources
- j) Deterioration of water quality
- k) Risk of mining related conflicts
- l) Public safety and health problems
- m) Risk of radiation exposure
- n) Increased spread of HIV/AIDS
- o) Inadequate CSR interventions

Additionally, the PPP analysis indicated that integration of obligations in 12 human right frameworks and t majority of the obligations in the Constitution of Kenya especially Chapter 4 on the Bill of Rights were either fully, well or moderately integrated in the mining sector governance framework. Key areas of the Constitution which are not fully integrated in the current governance framework for the sector are consumer rights and rights to the expected administrative action. Abuse of consumer rights in the mining sector might include; lack of proper safety devices as well as the need to produce good quality and genuine mineral products. The current framework has also not adequately integrated the right to administrative action as enshrined in Article 47[1] of the country's which recognises the entitlement of every citizen to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair; and, by implication, points to the obligations of a public officer while taking administrative action. This means that the mining sector might not completely ensure administrative justice in mining activities including being able to deal with vices like corruption and inefficiency.

9.1.2: Stakeholder Views

Synthesis of findings from the stakeholder consultations showed that the emerging issues in the mining sector were both similar and dissimilar to the findings of the PPP analysis. The mining governance gap issues identified in the PPP and stakeholder analyses included; a) risk of deforestation by mining activities, b) likely loss and degradation of critical ecosystems and loss of species by mining activities, c) likely contamination of streams, rivers, lakes, wetlands and groundwater resources, d) risk of mining related conflicts, e) risk of public safety and health problems, f) risk of radiation exposure, g) likely spread of HIV/AIDS, and, h) inadequate CSR interventions.

The governance gap issues raised by the stakeholders and not identified in the PPP analysis were;- a) widespread control of the mining sector by local and international cartels, b) inadequate capacity for mining governance agencies, c) lack of proper coordination for agencies involved in mining sector governance, d) lack of a national framework for compensation and resettlement of displaced communities, d) inadequate participation of county governments in the mining sector governance, e) ineffective mining liaison committees, f) illegal artisanal mining, g) non-decommissioning of mines, and h) lack of proper mine inspection mechanisms. The difference could be attributed to a number of reasons, namely; a) poor administration of governance frameworks in the mining sector including implementation of policy, poor enforcement of laws, regulations and guidelines, and, b) almost all the governance instruments in the mining sector as evaluated in the PPP analysis are all new with the policy and legal framework having been formulated in 2016 while the mining regulations are in draft form except for the Mining (Local Equity) Regulations, 2012. This means the impact of the restructured governance framework in the mining sector is yet to be felt and most of the stakeholder views were largely based on the previous frameworks including the Mining Act 1940 which was enacted during the colonial times.

9.1.3: Mining Project EIAs

Evaluation of the mining project EIAs showed that only a very small number were undertaken by a well constituted team of experts with the involvement of mining engineers and geologists who are more conversant with the sector. The overall quality of EIA reports was found to be quite poor in terms of comprehensive consideration of all the phases of mining projects, adequacy of environmental regulatory framework, prediction of potential biological impacts, human right issues and quality of stakeholder consultation meetings. Their quality was also very poor in terms of the overall quality of stakeholder engagement and consultations, mining related climate change considerations and cost benefit analysis.

Assessment of the institutional Capacity for handling the mining project EIAs reflected the following weaknesses and challenges:-

- a) Inadequate, congested and uncomfortable working space,
- b) Overworked and unmotivated EIA report reviewers,
- c) Lack of involvement of a geologist or mining expert in the review of EIA reports, and
- d) Lack of interest by the general public to get involved in the review of EIA as a constitutional right

Additionally, evaluation of the post EIA stage for mining activities reflected the following weaknesses and challenges:-

- a) Lack of a pro-active Capacity for post EIA monitoring including EMP compliance monitoring except through reactive action after public complaints,
- b) Weak Capacity for EIA compliance monitoring through regular environmental audits as required by law

9.1.4: Institutional capacity

The review of the mining governance framework, the human rights governance framework, and the environmental governments framework demonstrate a fairly complex governance context – although not well integrated to ensure that mining activities are sufficiently supported environmental and human rights frameworks, in order to ensure or enhance sustainability. One disconnect arises from stakeholder consultations, where the mining communities do not demonstrate much knowledge or understanding of the current legal, institutional and policy architecture.

9.2: Recommendations

9.2.1: Recommendations from the PPP analysis

a) Mining sector governance framework

The following recommendations are made in order to strengthen the mining sector governance framework and in turn effectively deal with potential negative environmental and human right impacts:-

- i. Review of draft mining regulations (16 areas)
- ii. Developing additional mining regulations (3 No.)
- iii. Developing mining guidelines (4 No.)

9.2.1.1: Review of Draft Mining Regulations

A review of some of the draft regulations should be undertaken in order to strengthen the governance framework by integrating the missing environment and human right obligations as shown below.

Environment and human rights - HR obligation integration gap	Recommended governance intervention
1. Environmental pollution and degradation in mining areas	Review: a) Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 b) Draft Mining (Community Development Agreements) Regulations c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for a Waste Management Plan (WMP) and Environmental Rehabilitation Plan (ERP)
2. Contamination of streams, rivers, lakes, wetlands and ground water resources	Review: a) Draft Regulation on Guidelines for Work Programmes and Exploration Reports, and b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
3. Deterioration of water quality	Review the Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 to introduce a requirement for a water quality monitoring strategy and annual reporting in partnership with the local WRUAs
4. Mining disasters such as explosions, fires, shaft collapse, and cave-ins, suffocation, among others.	Review the Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 to introduce a requirement for Mining Disaster Prevention, Surveillance and Emergency Response Plan

Environment and human rights - HR obligation integration gap	Recommended governance intervention
5. Loss and degradation of critical ecosystems and loss of species by mining activities	Review: a) Draft Mining Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
6. Deforestation by mining sector	Review: a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for Environmental Rehabilitation and Restoration Plan (ERP)
7. Wetland loss and degradation	Review the: a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for an Ecosystem and Species Conservation Plan (ESCP)
8. Climate change disasters e.g. floods, drought, landslides and disease epidemics	Review the:- a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017 To ensure adequate integration of climate change mitigation and adaptation in mining project EIA reports for NEMA approval at EIA ToR and in the review of mining project EIA reports
9. Risk of mining related conflicts	Review the:- a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017 c) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for a Grievance Redress Mechanism (GRM)
10. Inadequate CSR interventions – e.g. transport, water, sanitation, and housing	Review the:- a) Draft Guidelines for Work Programmes and Exploration Reports, 2017 and b) Draft Regulations on Community Development Agreements, 2017, and c) Mining (Employment and Training) Regulations, 2017. d) Mining (Licensing and Permitting) Regulations 2016 To introduce a requirement for a CSR policy, implementation plan and annual reports
11. Inadequate consideration of consumer rights	Review the: a) Draft Regulations on the Reporting of Mineral Related Activities b) Draft Regulations on Community Development Agreements c) Mining (Licensing and Permitting) Regulations 2016 To adequately consider a) the Bill of Rights in the Constitution of Kenya, and b) the African Charter of Human and People's Rights
12. Inadequate consideration of the right to administrative action	
13. Inadequate consideration of the right to information, access	

Environment and human rights - HR obligation integration gap	Recommended governance intervention
14. Inadequate consideration of the right to security and peace	
15. Inadequate consideration of the right of equal access to public service	
16. Inadequate consideration of the right to proper physical and mental health	

9.2.1.2: Developing Additional Mining Regulations

The following additional mining regulations should be developed in order to strengthen the governance framework by integrating the missing environment and human right obligations.

E-HR Obligation Integration Gap	Recommended Governance Intervention
1. Environmental pollution and degradation in mining areas	Environmental Rehabilitation and Restoration Regulations for Decommissioned Quarries and Mines - in collaboration with NEMA
2. Public safety and health problems	Occupational Safety and Health Regulations and Guidelines
3. Risk of radiation exposure	Mining Radiation Safety Regulations and Guidelines – in collaboration with the radiation protection Board (RPB)

9.2.1.3: Developing Additional Mining Guidelines

The following additional mining guidelines should be developed in order to strengthen the governance framework by integrating the missing environment and human right obligations.

E-HR Obligation Integration Gap	Recommended Governance Intervention
1. Unsustainable mining and over-consumption of resources	Guidelines for Water Harvesting and Conservation in Mining Areas
	Guidelines for Energy conservation in Mining areas
2. Introduction of alien invasive species in mining areas	Guidelines for Prevention of Alien Invasive Species in Mining Areas
3. Increased spread of HIV/AIDS	Guidelines for prevention of HIV/AIDS transmission in mining areas – in collaboration with NACC

9.2.2: Stakeholder recommendations

Most of the stakeholder recommendations were in agreement with those from the PPP analysis. However, the following unique recommendations were advanced by the stakeholders on various mining issues in the country.

a) Management of mineral resources

- Develop guidelines for valuation of with minerals.
- Re-classify mineral in schedule of the Mining Act 2016 into those to be administered by the national and county governments and gazette the classifications.
- The implementation of the mining act should be done in partnership with County governments
- Specify the functions of county governments in managing minerals under their administration.
- The national government should base the main administrative institutions for mining at the County le even if mining is a national government function.
- Develop regulations to create mining institutional structures at county level.

- Support the County Environmental Committees (CECs) to incorporate a cross-sectorial integration sub-committee including mining sector.
- Establish county leadership forum to develop a common approach for governance in mining sector.
- Community liaison Committees for mining should be enhanced and supported with budgetary allocations from the National Treasury.
- Establish an inter-agency coordination mechanism at national level to deal with environmental, social, economic and human rights issues in the mining sector

b) Environmental pollution and degradation

- Strengthen the capacity of government lead agencies to undertake more effective mining inspections.
- Develop additional regulations and guidelines for the governance of artisanal mining.

c) Social Environment

- Develop Occupational Safety and Health Regulations and guidelines for the mining sector.
- Develop guidelines on the formation and operationalization of the Liaison Committees and incorporate host communities in those committees.
- Empower local communities to effectively participate in the mining sector.
- Establish and gazette compensation and resettlement regulations at the local level as provided under Article 153(8) of the Mining Act 2016.
- Strengthen the capacities of mining governance implementing agencies.

d) Human Rights

- Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the Bill of Rights in the Constitution of Kenya
- Review the Mining (Community Development Agreement) Regulations, 2017 to adequately consider the African Charter of Human and People's Rights

9.2.3: Recommendations on institutional capacity

Given the important oversight role played by these institutions in the mining sector especially in regards to protection of the environment and human rights, its important to enhance their governance capacity and make them more effective in their mandates. This needs to be done by; i) allocating adequate financial resources and essential facilities like vehicles and ICT, ii) training and exposure of DOSHS technical staff on OSH issues associated with the mining sector, iii) employing adequate skilled staff and create suitable incentives for retainance purposes, and, iv) strengthening NEMA's emergency response unit.

Since the contribution of the mining sector to the national economy is expected to increase, and with it the risk of negative environmental and social impacts, it is important to establish a permanent (possibly anchored in law) mining sector performance review board that comprises institutions established by the Mining Act, National Treasury, Mining responsible for economic planning, NEMA, and the Council of Governors. This will provide a forum to review sustainability trends in the mining sector: revenues, taxation, compliance with EMPs, benefits arising from various legal provisions and regulations: eg. Local procurement, training, employment, Community development agreements; and the taking of remedial action.

The following recommendations are made to enhance the participating of county governments and enhancing the coordination for agencies involved in mining sector governance:

- Provide a clear role for county governments in the negotiation of community development agreements to ensure there is no duplication with county plans for development, and to enhance contribution of the county in the socio-economic and environmental development of the community. The agreements are intended to avoid the Dutch disease for over-reliance on mining revenues, which is part of the economic planning responsibility of a county government.
- The participation of counties can further be enhanced by providing a role, through regulations, for county governments to play a role in monitoring compliance with mining sector EMPs for both artisanal

and large scale mining activities, especially because these impact other county functions, such as water resources management, water quality, agriculture, and human rights.

- c) Increase the oversight role of independent constitutional commissions, on human rights and administrative justice (Ombudsman) in order highlight the dissonance between mining sector agencies (across mining, environmental and human rights governance frameworks).

9.2.4: Recommendations on implementation of mining EIAs

The following are recommended with regard to the implementation of mining project EIAs

EIA component	Recommendation
Approval of ToRs for mining project EIAs	<p>NEMA should tighten the rules considered in the approval of ToRs for mining project EIAs to ensure the following:-</p> <ul style="list-style-type: none"> a) The inclusion of a mining engineer or geologist in the EIA team, b) Comprehensive consideration of all the phases of mining projects, c) Adequacy of the environmental regulatory framework for the EIAs, d) Adequate consideration of potential biological impacts, e) Adequate consideration of human right issues, Adequate consideration for mining related climate change f) Convincing stakeholder engagement plans especially with regard to the number and locations for consultation meetings, g) Adequate strategies for cost benefit analysis
Review of EIA reports	<p>NEMA should consider the following</p> <ul style="list-style-type: none"> a) Improving the working conditions in the EIA section at NEMA headquarters, b) Finding ways of involving the EIK to strengthen the quality of independent peer review of EIA reports, c) Involvement of at least one non-state environmental agency from project area, and d) Direct involvement of a few members of the public in the review of EIA reports through the local administration especially the Local Chiefs

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