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Mining and Minerals Policy

THE POPULAR VERSION



REPUBLIC OF KENYA

Ministry of Mining







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This publication is a popular version of Kenya's new Mining and Minerals Policy (2016). The publication briefly highlights the background and situation analysis informing the policy. It outlines the Policy's main goals, principles and strategies and its institutional and implementation frameworks.



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Introduction

Iron Ore



Kenya is rich in mineral resources with known deposits of soda ash, fluorspar, titanium, gold, coal, manganese, iron ore, gypsum, diatomite, chromite, limestone, and silica sand. Indications are that the country is potentially rich in rare earth minerals, and increased exploration is expected to lead to new mineral discoveries. The government has therefore formulated this Mining and Minerals Policy (2016) to enable the country obtain maximum benefits from its future mineral deposits.

The Policy comprehensively addresses the gaps that have existed in the mining sec-

Increased exploration is also expected to lead to new mineral discoveries in the country

tor and provides a basis for reviewing the sector's almost obsolete legal framework and ad hoc regulations. It further aligns the country's mining sector with the aspirations of Kenya Vision 2030, the provisions of the Constitution of Kenya (2010) and the African Union Mining Vision (2009) which aims at positioning mining as a key driver of Africa's socio-economic development.

The economic development strategies pursued by the government of Kenya over the past decades since independence did not prioritize the development of the country's mining and mineral resources sector. The

sector has for a long time operated within a legal framework enacted way back in 1940 during the colonial period. As a result, the country's mining and minerals resources sector failed to attract adequate investments and its contribution to Kenya's economy has been minimal, currently standing at about one percent.

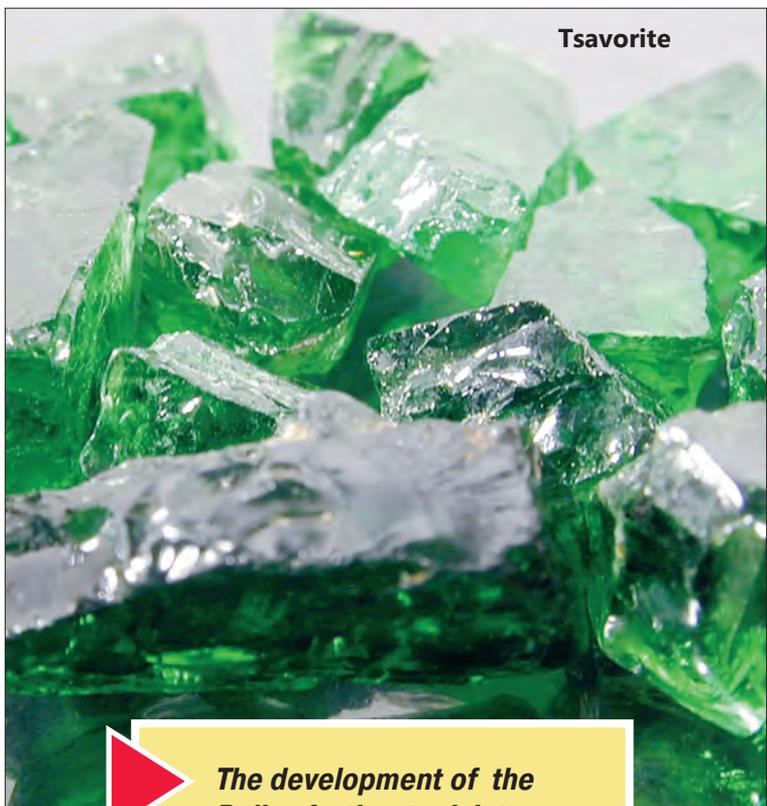
Because of its great potential to contribute to achieving high economic growth rates envisioned under Kenya Vision 2030, the mining and mineral resources sector has been included as a priority sector under the economic pillar of Kenya Vision 2030 and its Second Medium Term Plan (2013-2017). Its contribution to GDP is expected to increase to three percent by 2017 and 10 percent by 2030, making mining a key driver of economic growth and transformation.

Developing the Policy

The development of this Policy was done in a consultative manner as required by the Constitution, involving all stakeholders right from the grass roots level. It also benefitted from inputs of key players, including the Kenya Chamber of Mines, mining companies, academic and research institutions, government ministries and departments, parliament, development partners, civil society, mining communities and the general public.

Further, its development took into account international best practices relating to the mining industry in areas such as technology, investments, financing mechanisms and developing mineral markets. Due regard was also accorded to regional and local issues affecting the mining and mineral resources sector.

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



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The development of the Policy further took into account global trends and international best practices relating to the mining industry in areas such as technology, investments, financing mechanisms and developing mineral markets with due regard also being accorded to regional and local issues affecting the mining and mineral resources sector.

minerals resources sector. At the same time, it ensures that benefits from the growth of the sector accrue to all stakeholders, including investors, local artisanal and small scale miners, national and county governments, local communities and the people of Kenya. This Policy therefore informs and underpins the Mining Act (2016).

Situation Analysis

The process of preparation and formulation of the Mining and Minerals Policy (2016) involved an analysis of the prevailing situation in the country's mining industry as well as assessment and review of the factors influencing the sector's performance. This phase of the preparatory process provided an in-depth understanding of the challenges facing Kenya's mining and mineral resources sector and forms the basis for formulating the Policy's strategies. The situation analysis undertaken highlighted several key issues and challenges:

2.1 Outdated Legal Framework and Regulations

The legal provisions and regulations for the mining sector were mainly based on 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 industry needs and international best practices. The Mining Act (1940) for instance, did not cover under its jurisdiction several minerals that are mined and quarried on commercial basis. Its guidelines on procedures and timelines for licensing and supervision were unclear, leading to cases of speculators selling or hoarding mineral rights.

The situation analysis further indicated that the industry was separately regulated by the Diamond Industry Protection Act Cap 310 and the Trading in Unwrought Precious Metals Act Cap 309. Thus necessitating development of a unified and holistic legislation to facilitate the growth and development of the industry.

2.2 Access to Land for Exploration and Mining

Mining and Mineral operations are done on, in, or under the land surface; and offshore in the country's Exclusive Economic Zone. In some areas, disputes relating to access to land have hampered effective exploration and mineral development and deterred investment in the mining sector.

2.3 Inadequate Geological Data and Information

Most of Kenya's mineral resources remain unexplored and under exploited largely because of the lack of geological data and limited mineral exploration.

2.4 Mineral Marketing and Value Addition

Inadequate expertise, under development of the mineral processing industry, lack of appropriate technology and high energy costs contribute to the low level of value addition to Kenya's minerals. Because the sector is yet to formulate strategies for marketing, promotion and value addition to minerals, most of them are exported in raw form meaning that the country is not fully benefiting from its mineral wealth. This situation is compounded by limited initiatives in the areas of branding, promotion and marketing of Kenya locally, regionally and internationally as a preferred mining destination.

2.5 Inadequate Funding

Mineral exploration has historically been funded by development partners and private investors, with government playing a limited role in exploration activities. Consequently, the sector needs to promote the acquisition of comprehensive geological data, develop modern infrastructure, and attract and retain high level technical expertise. These interventions would enable the country to lever-



age on recent discoveries of economically viable mineral deposits and increase investor interest in the sector.

2.6 Environmental Degradation

Mining operations need to be undertaken in a sustainable manner so as to prevent harmful effects on the environment. Although the Environment Management and Coordination Act (1999) provides for initial environmental assessment and environmental audits, the challenge is to harmonize and align the regulatory policies and practices in the country's mining sector with existing environmental legislation.

2.7 Gender Issues and Child Labour

Women and children are increasingly getting involved in the extractive industry especially in artisanal and small scale mining (ASM). In particular, women are disadvantaged in access to, and control over resources, productive assets, participation in decision making processes, access to information technology and limited knowledge of enterprise development in relation to mining activities. They are also often overlooked by initiatives and development programs directed at transforming the sector.

Women and children working in artisanal and small scale mining use rudimentary

mining processing methods, which expose them to risk of injury and contact with hazardous materials. The analysis further indicated that child labour is prevalent in ASM, hence the need to enforce the appropriate laws to curb this inhumane and unlawful practice.

2.8 Inadequate Institutional and Human Capacity

Mineral exploration and mining is a highly technical field which requires specialized skills and well-structured and equipped institutions. Currently data acquisition and regulation of the industry are administered by one department (Mines and Geology) of the Ministry of Mining. This arrangement undermines efficiency and effectiveness given different challenges arising from the two respective mandates. Further, the existing institutional set-up lacks relevant supporting institutions, thus inhibiting effective enforcement, compliance and service delivery.

The country has not adequately invested in building human capacity for the mining sector by establishing institutions for training in mining and related fields, resulting in capacity gaps within the sector. In addition, the sector suffers from brain drain in that the few trained mining professionals have been compelled to leave the country and work abroad due to poor remuneration and other incentives.

2.9 Artisanal and Small Scale Mining

Artisanal and Small Scale Mining (ASM) activities take place in many areas of the country, mainly in panning for gold, gemstone mining, winning of sand, gravel, clay and quarrying. Although ASM is an income generating activity benefiting low income and vulnerable groups, it is tainted by its association with smuggling, tax evasion, health and safety risks, socio-cultural dislocations, and a variety of illicit activities

Despite such negative associations, mainstreaming ASM has immense potential to contribute to the development of the country's mining industry by generating employment and income; widening the tax base; adoption of safer, healthier and more environmentally compliant standards; and creation of synergies with the formal large scale mining sector.

2.10 Local Participation

Large scale mining operations in Kenya are mostly controlled by foreign firms and individuals mainly due to the industry's inherent complexities. Local participation has further been limited by inadequate financial and technical capacity and expertise, as well as lack of guidelines on local content and value chain participation. The absence of policy measures to promote preferential sourcing of goods and services by mining companies from localities of operations and local firms have led to low technology transfer and entrepreneurship.

2.11 Fiscal Regime

The fiscal regime (taxes and incentives) governing a country's mining sector is a key factor determining mining companies' investment in exploration and exploitation projects. Mining is a global industry and investors in the sector expect the fiscal regime to be internationally competitive in order to provide a basis for commercial viability. From the perspective of the host country, the revenues that it hopes to obtain through the fiscal regime must be maximized for the benefit of the country. The fiscal regime should thus balance the interest of the host country with those of the mining companies.

The sector has been operating outside a well-structured, clear and enabling fiscal regime hence the need for the country to put in place a transparent, accountable, predictable and globally competitive fiscal regime.



Mineral excavation

Policy Goal, Guiding Principles, Objectives And Strategies

Policy Goal

The overall goal of the Mining and Mineral Resources Policy is to set out frameworks, principles, and strategies to provide for exploration and exploitation of mineral resources for the country's socio-economic development.

Guiding Principles

The guiding principles of the Mining and Mineral Policy are:

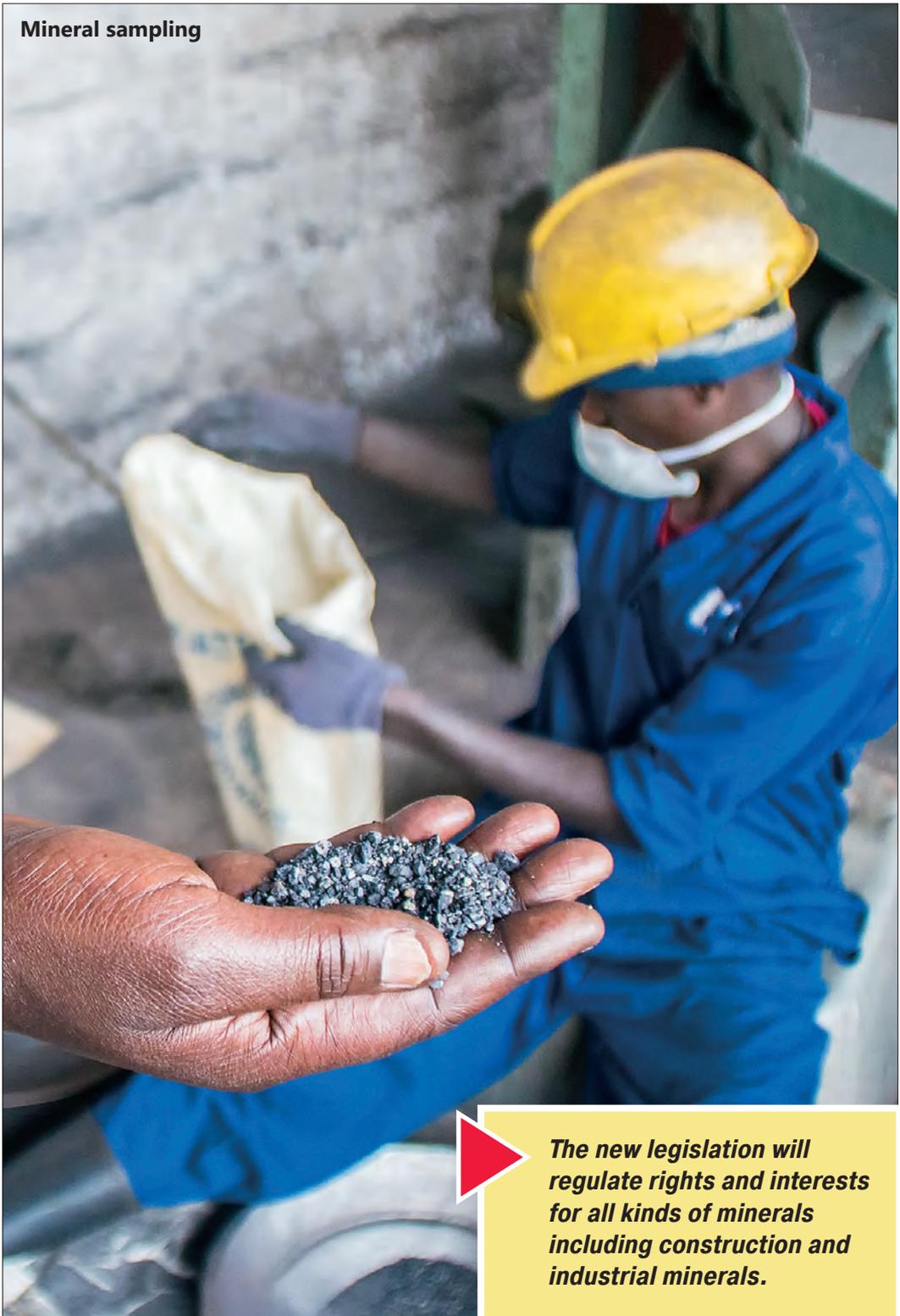
- Ensuring inter-generational equity and sustainable utilization of mineral resources so that the country's mineral wealth benefits current and future generations of Kenyans
- Integrating sound environmental protection, safety and health concerns in mineral resources development, to make sure that there is equitable access to mineral resources and benefit sharing at the national, county and community levels
- Ensuring transparency, accountability and public participation in line with the requirements of the constitution
- To promote international and regional cooperation in the management of mineral resources
- To respect socio-cultural values and ensure access to justice, gender equity and inclusiveness
- To promote value addition and development of horizontal and vertical linkages to the local economy (horizontal linkages are linkages between companies on the same level of the value chain while vertical linkages are relationships between companies along the value chain).

Objectives

The Policy's key objectives are to :

- Provide long term policy direction and legal framework which conform to current industry needs, trends and international best practices
- Provide a strategy for clear, simple, predictable, transparent and accountable licensing procedures in the mining and mineral resources sector including access to land
- Provide a framework for a well structured and globally competitive fiscal regime
- Enhance acquisition, processing and dissemination of geological and mineral data and information to investors and other key stakeholders including the public
- Provide a strategy for marketing, promotion and value addition of minerals
- Provide a framework for mobilizing resources and capacity building for the sector
- Provide a framework for harmonizing legislations relating to mining, health and occupational safety and the environment
- Provide a framework for gender mainstreaming and eradication of child labour in the mining industry
- Provide a framework for mainstreaming activities of artisanal and small scale miners
- Provide a framework to promote and facilitate local participation and investment in mining ventures.
- Provide a framework for equitable sharing of mineral benefits between the national government, county governments and the communities inhabiting areas where mining takes place

Mineral sampling



The new legislation will regulate rights and interests for all kinds of minerals including construction and industrial minerals.

Policy Strategies

3.1 Regulating the Mining Sector

Strategy 1: *Put in place a simple, stable, predictable, transparent, efficient, and unified regulatory framework for the mining sector*

This strategy involves putting in place a new mining legislation to replace the outdated and ineffective Mining Act, Cap 306 of 1940. The new legislation will regulate rights and interests for all kinds of minerals including construction and industrial minerals.

3.2 Concession Management and Mineral Rights Allocation

Strategy 2: *Develop a transparent licensing system which will enable the efficient management of concessions and allocations of mineral rights*

The strategy will be effected through use of an online Transactional Mining Cadastre Portal that will be based on the new mining legislation and enabling regulations. An online mining Cadastre Portal enables online applications for mineral rights thus ensuring efficient, effective and transparent concession and mineral rights issuance.

3.3 Geological Data and Information

Strategy 3: *Enhance collection and access to geological data*

In order to implement this strategy, the government will conduct a countrywide air-borne geo-physical survey and also acquire space borne data. These will be followed up by ground surveys to identify potential mineralized zones. The information collected will be hosted in a Geo-Data Bank and availed to different stakeholders depending on need and user rights arrangements.

3.4 Access to Land for Mining Activities

Strategy 4: *Develop legislative mechanisms for accessing land for mineral development*

The constitution allows for government (or public), community and private types of land ownership. Mineral right holders are required to obtain consent from owner or lawful occupier of land in which their operations are to be undertaken. Due to the high priority given to the mining and extractive industry as a whole, the government intends to deploy liaison officers to facilitate such negotiations and address other community related needs for purposes of achieving and maintaining harmony in the industry.

Access to land for mining purposes may entail compensation, relocation and resettlement of the affected people. In this regard, the government shall ensure prompt, just and adequate compensation. Where relocation and resettlement is unavoidable, they will be done with due respect to basic human rights as enshrined in the constitution and international standards and best practices. These issues require multi-sectoral interventions and there shall be concerted efforts to involve relevant institutions and stakeholders.

3.5 Health, Safety and Environmental Regulation in Mining

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*

The environmental, health and safety standards which govern the conduct of economic activities in the country are available under various legal and regulatory regimes. In addition, the government will develop specific environmental and health and safety

legislative and regulatory frameworks and standards for the mining sector that are aligned with international standards and best practices. The new mining legislation will establish a clear legal framework, procedures and obligations pertaining to rehabilitation at mine closure by mineral right holders. Further, the legislation will require them to set aside an environmental deposit bond to meet rehabilitation and mine closure obligations.

3.6 Fiscal Regime

Strategy 6: *Develop and implement a stable, transparent, predictable and competitive fiscal regime*

A new fiscal regime will be developed that will balance the need of government to maximize revenue from mining and attracting long term investment in the mining sector. The harmonized fiscal regime will not only enable investors to predict and plan for all fiscal obligations but also enhance the ability of mining authorities to administer the regime efficiently and effectively. Key elements of the new fiscal regime will include:

- Royalties, rents, fees and levies at rates set out in the regulations
- Corporate income tax as set out in the relevant tax legislation
- Capital gains tax on transfer of or assignment of mineral rights as provided for in relevant legislation
- Government dividends from participation in large scale mining operations and development of strategic minerals; and equivalent treatment of mining businesses regarding import duties and sales tax/VAT as provided for in relevant legislation

3.7 Mineral Promotion and Value Addition

Strategy 7: *Develop mechanisms for promotion of investments in mining and value addition*

The government will establish an institutional framework to facilitate marketing of

investment opportunities in mining and minerals and promoting value addition of minerals through use of appropriate technology. Further, it will endeavor to explore markets for finished mineral products thus encouraging growth of the industry.

3.8 Maximizing Benefits from Mining

Strategy 8: *Pursue a responsive regulatory framework that ensures benefits accruing from the mining sector are maximized for greater socio-economic development*

To maximize the benefits from growth of the mining sector and ensure that it fosters socio-economic development and contributes to sustainable economic development, the government will develop legislation that will provide guidelines requiring mining companies to meet obligations on:

- Employment, training and skills transfer of Kenyans
- Use of local goods and services

3.9 Mineral Benefit Sharing

Strategy 9: *Design mechanisms for sharing benefits accruing from exploitation of minerals between National Government, the County governments and Communities where mining activities are being undertaken*

The government will develop and implement a framework which will ensure that revenues from mining are shared equitably among National Government, County Governments and local communities.

3.10 Local Equity Participation

Strategy 10: *Develop and implement mechanisms to enhance Participation of Government (National and County), affected communities and other stakeholders in mining activities*

The government will develop a framework to guide its participation and that of the public through among other things:

Artisanal Miners sieving gold crystals



- The establishment of the National Mining Corporation
- Listing in local stock exchanges

3.11 Artisanal and Small Scale Mining

Strategy 11: *Develop a framework for mainstreaming and formalizing artisanal and small scale mining operations in order to support livelihoods and entrepreneurship*

The government will remove barriers that hold back the development of artisanal and small scale mining particularly lack of access to finance, recognized mineral rights, inadequate technical capacities and incentives to operate legally. This will be done through the following measures:

- Assisting artisanal and small scale miners to obtain fair market prices through control of illicit dealings in minerals through appropriate licensing and provision of market information and training
- Facilitating access to credit through various means such as cooperative savings, pooled equipment leasing arrangements, government supported concessional lending schemes and assistance in obtaining finance and business training skills.
- Setting up a minerals licensing system under the new mining legislation that will offer specific mineral titles suited to

small scale mining expressly reserved for Kenyans using simplified application procedures

- Facilitating access to land for artisanal and small scale miners
- Providing advice and support on forming representative associations and assisting them in tax compliance

3.12 Gender, Youth and Inclusiveness in Mining

Strategy 12: *Develop and implement frameworks, structures and mechanisms that ensure equitable participation, ownership and decision-making value chains by women, youth and disadvantaged groups*

The government will implement a community liaison framework that ensures that women, youth, persons living with disabilities, marginalized groups and communities are involved in decision making and programmes in mining. Through the implementation of its regulatory frameworks and programmes, it will ensure that they have equitable access to ownership, technology, capital, local content and value addition opportunities, employment, training, knowledge and decision making value chains.

3.13 Local Content

Strategy 13: *Develop and enforce measures that will ensure a competitive local workforce, facilitate knowledge and skill transfer and promote the use of local goods and services*

The government will ensure that as far as possible, local content is used in the mining sector. In this regard, the Director of Mines will be obligated to establish a specialist pool of Kenyans with expertise or knowledge across the entire mining industry value chain. As well, the Ministry of Mining will be required to develop a register of local suppliers and services which can be accessed by license holders.

Before mineral rights are issued to any applicant, the government will ensure that they:

- Demonstrate their plans to employ and train Kenyans to work in their operations;
- Provide justification to employ expatriates;
- Procure and use local goods and services: this will entail the submission of a procurement plan showing that materials and services will be sourced locally; and
- Demonstrate evidence of a research and development plan through collaboration with universities or other institutions of higher learning.



A mobile drilling rig

Institutional Framework

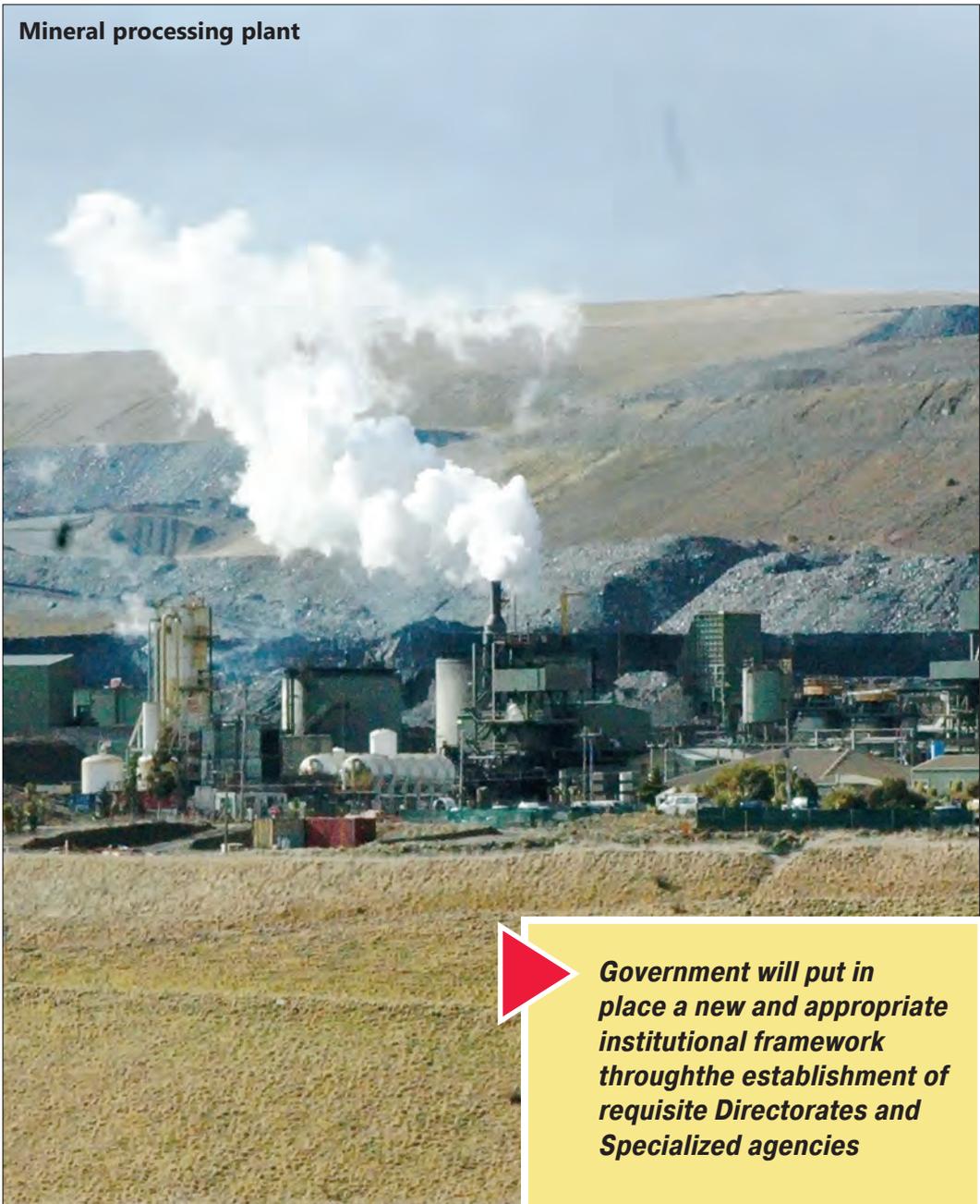
4. Institutional Framework

In order to achieve the goal, objectives and strategies outlined in this Policy and actualize the potential of the mining industry, the Government will put in place a new and appropriate institutional framework through the establishment of requisite Directorates and Specialized agencies:

- Directorate of Mines will be in charge of administration and management of policies and laws affecting the sector; provision of technical services; automation of licensing for exploration and mining concessions; compilation and management of mining data; arbitration of mining disputes; and health, safety and environmental issues.
- Directorate of Geological Surveys will undertake, using state of the art technology, a systematic geological mapping of the whole country to assess and provide information on the mineral wealth of the country; produce and publish geological reports and maps to assist in planning and investment in mining; undertake laboratory analysis of rocks, mineral ores, and precious and semi-precious metals; and undertake research related to geological and tectonic activities including monitoring of geological and mining hazards.
- Directorate of Mineral Promotion and Value Addition will be in charge of marketing opportunities in investments in minerals and promotion of value addition of minerals as well as providing technical assistance and extension services on mineral processing and value addition to small scale and artisanal miners.
- Directorate of Resource Surveys and Remote Sensing will be mandated to collect, store, analyze, update and disseminate geo-spatial information on natural resources, including land use and land cover mapping.
- Internationally accredited Mineral Certification Laboratory and Geo-Data Bank. This agency will be responsible for carrying out several functions such as analyzing and certification of minerals; identification of precious and semi-precious minerals; undertaking research on techniques for analysis of minerals; and provision of testing services (Assay and Lapidary Services).
- Mineral Audit Agency will determine the rightful royalties and taxes payable to Government from minerals produced; prevent the smuggling of minerals and evasion of royalties; monitor and audit minerals produced and exported; audit capital investments and operating costs of mining companies; and advise on competitiveness of Kenya's mining environment and fiscal regime in relation to the rest of the world.
- National Mining Corporation will be established to serve as the investment arm of the national government in the mining industry. It will be responsible for investing the proposed 10 percent free carry interest in large scale mining operations or purchase of shares on the Nairobi Securities Exchange on behalf of the government. It will carry out its business related to mining alone or in conjunction with any other person, firms or bodies.
- National Mining Institute will be established to build capacity and address the skills gap which has over the years slowed down the growth of the mining sector. The Institute will offer technical training in extractive industry related disciplines and ensure the availability of adequate numbers of skilled personnel such as mining engineers, geologists, geophysicists and metallurgists. The Institute will also be tasked with undertaking innovative research on the extractive industry.

- Mineral Rights Board the Board will advise and give recommendations in writing to the Cabinet Secretary Mining on various issues including: granting, rejection, renewal, revocation and transfer of Mineral Rights Agreements; areas suitable for small scale and artisanal mining; areas where mining operations may be excluded and restricted; declaration of certain minerals as strategic minerals; cessation, suspension or curtailment of production in respect of mining licenses; fees , charges and royalties payable for a mineral right or mineral; and other pertinent matters referred to it.

Mineral processing plant



Government will put in place a new and appropriate institutional framework through the establishment of requisite Directorates and Specialized agencies

Framework for Policy Implementation

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The Ministry of Mining has the main responsibility for the oversight of the implementation of the Mining Policy (2016). In carrying out this responsibility the Ministry will collaborate with other government ministries, departments and agencies, the National Assembly, the private sector and other key stakeholders.

Financing of the Policy

Implementation of the Policy will require substantial resources, which will be raised through the following sources:

- Annual budgetary allocations by the government
- Funds mobilized through Public and Private Partnership (PPP) arrangements
- Loans and grants from Development Partners, especially for activities which require substantial financial resources such as airborne geo-physical surveys

Monitoring and Evaluation

The Policy will be continuously monitored and progress reports evaluating its implementation produced on a regular basis. Such a process will facilitate achievement of the intended policy goals and objectives. The mining sector is dynamic and is affected by new developments emerging locally, regionally, or internationally. The Policy will thus be reviewed every five years to ensure that it remains relevant and conforms to the prevailing best practices in the industry.

Policy Implementation Timelines

The following main activities will be implemented within the indicated timeframes under the Policy Implementation Plan:

- Strengthening Regulation of the Mining Sector (2016)
- Putting in place transparent licensing procedures for Concessions and Mineral Rights Allocation (2016-2017)
- Establishment of an enabling institutional framework for mining sector (2013-2018)
- Development of geo- data and information banks (2013-2020)
- Putting in place an enabling and competitive Fiscal Regime for the mining sector (2014-2017)
- Development and dissemination of Health, Safety and Environmental Regulations for the mining sector (2013-2018)
- Implementing the strategy for promotion and value addition for minerals (2013-Onwards)
- Establishing an enabling framework for Artisanal and Small Scale Mining (2013-2018)
- Establishment of a framework for equitable sharing of mining benefits (2013-2017)
- Development and establishment of a framework for local equity participation in mining investments (2013-Onwards)
- Putting in place a resource mobilization framework for the mining sector (2013-Onwards)



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