



REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT AND MINERAL RESOURCES

THE NATIONAL MINERALS AND MINING POLICY

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Acronyms

ASM – Artisanal and Small- Scale Miners

KCM – Kenya Chamber of Mines

KEMCO – Kenya Mining Corporation

KeMMA – Kenya Minerals and Mining Authority

KGS – Kenya Geological Survey

KRA - Kenya Revenue Authority

MAB – Minerals Advisory Board

MEMR – Ministry of Environment and Mineral Resources

MDRT- Mining Disputes Resolution Tribunal

MGD – Mines and Geological Department

NEMA – National Environment Management Authority

NOCK – National Oil Corporation

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FOREWARD

The Government recognizes the importance of the mineral sector in national development in line with Vision 2030. The development of this Minerals and Mining Policy aims at creating an overarching framework for managing Kenya's mineral resources. The ultimate aim is to facilitate the establishment of a vibrant mining sector which can attract substantial investments for research, exploration and exploitation of mineral resources.

Investment in the mineral sector is risky and capital intensive. The policy, therefore, recommends a number of interventions aimed at securing investments. It provides for the creation of mechanisms such as stabilization funds to cushion investments from negative effects of cyclic mineral prices and other unforeseen constraints. In addition, the policy addresses the issues of environmental conservation, small-scale mining, intergenerational equity, best practices, gender issues, discovery and innovation benefits, transparency and accountability as well as equitable benefit sharing.

This Policy proposes the creation of four main institutions, namely: The Kenya Geological Survey (KGS), the Kenya Minerals and Mining Authority (KeMMA), the Kenya Mining Corporation (KEMCO) and the Mining Disputes Resolution Tribunal (MDRT).

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Minister for Environment and Mineral Resources**

1.0 Introduction

The development of this National Minerals and Mining Policy was prompted by the need for an overarching policy and institutional framework for effective management of the minerals and mining sector.

The policy advocates for optimal utilization of mineral resources and sound environmental management in order to ensure sustainable development of the sector.

Since investment in the minerals and mining sector is relatively risky and capital intensive, the policy advocates for the provision of a variety of fiscal incentives.

The policy also recommends the creation of mitigation mechanisms such as stabilization funds to cushion investments from negative effects of cyclic mineral prices and other externalities.

The policy advocates for equitable benefit sharing and addresses the issue of intergenerational equity by prescribing various measures aimed at bequeathing future generations with direct and indirect benefits from mineral wealth.

In order to effectively regulate activities in the minerals and mining sector, the policy proposes the enactment of a simple, clear and transparent legislative framework.

The policy proposes the creation of four main institutions, namely: The Kenya Geological Survey (KGS) to be responsible for geological mapping and mineral exploration, the Kenya Minerals and Mining Authority (KeMMA) to regulate the minerals and mining sector, the Kenya Mining Corporation (KEMCO) which will be the Government arm for investment in the mining sector and the Mining Disputes Resolution Tribunal (MDRT) to deal with disputes in the sector.

The ultimate aim of the Government is to facilitate the establishment of a vibrant minerals and mining sector that can attract substantial investments in research, human resources capital development, exploration and exploitation of mineral resources.

1.1 Overall Goal of the Policy

The overall goal of the National Minerals and Mining Policy is to sustain mineral resources development so as to maximize on accruing benefits while maintaining Kenya as an attractive investment destination.

1.2 Scope of the Policy

The Policy provides an overarching framework for the development and management of mineral resources as defined in the Kenya Constitution of 2010. This policy is aligned to other sectoral policies particularly the Energy Policy, Environment Policy, Water Policy and Land Policy.

1.3 Policy Context

Mineral resources are national resources. However, the mineral industry is an international business putting in action complex world-scale channels of funding and mineral transportation, hence the need for this policy to be put into an international and regional context.

Globally, there has been an upsurge in demand for mineral raw materials for industrial and economic development. As a result, exploration and

mineral development projects have been on the rise to meet this demand. Consequently, conflicts and competition between landowners, exploration and mining companies has intensified. In this context, Kenya is relatively underexplored compared to other countries in Africa, and, therefore, presents great potential for exploration. Recent advances in exploration technology, in particular remote sensing and airborne geophysical surveying, are an opportunity to strengthen the country's exploration capacity.

Most countries of the region have recognized the potential of the mineral sector as a key driver of economic and social development, and have taken appropriate action to tap this potential. Kenya Vision 2030 has set out long-term economic development goals for the country. In line with this, the minerals and mining sector is recognized as one of the drivers of economic development.

Section 62 of the Constitution of Kenya, 2010 defines all minerals as part of public land and vests them in the National Government. This is in line with Section 95(d) of the National Land Policy of 2007. The Constitution also provides for the sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and the equitable sharing of the accruing benefits.

1.4 Kenya's Mineral Potential

Among the minerals that are found in Kenya in significant quantities are soda ash (trona) in Lake Magadi area, fluorspar at Kimwarer in Kerio Valley as well as titanium in Kwale, Malindi and Lamu areas. There is also significant potential for gold in Kakamega, Vihiga, Migori, Transmara, Bondo, Siaya, Pokot and Turkana as well as minor indications of the mineral in Nandi area.

Coal occurs in Mwingi and Mutitu areas while iron ore occurs in parts of Taita, Meru, Kitui, Kilifi and Samia Hills.

Manganese ore occurs in Ganze, Kilifi and Mrima Hill areas in the Coastal region.

Other mineral occurrences include diatomite at Kariandusi near Gilgil, vermiculite on Kinyiki Hill in Makueni, copper in Eastern and North Rift regions, gypsum in El Wak, Garissa, Tana River, Kajiado and Turkana areas, natural carbon dioxide at Kereita in Kimbu and Eldoret area, and a variety of gemstones in Taita, Kwale, Kitui, Mwingi, Kajiado, Isiolo, Pokot, Turkana and Marsabit areas.

In summary, mineralization in Kenya falls into the following major geological settings:

- (i) Gold, base metals, and banded iron formations occur in the Archaean Greenstone Belts in the south-western part of Kenya.
- (ii) Gold, base metals (including iron ore, copper ore and manganese ore deposits), industrial minerals (including limestones, kyanite, vermiculite and wollastonite) and coloured gemstones occurrences in the Neoproterozoic Mozambiquian system in various parts of Kenya;
- (iii) Carbonatites with phosphorus, niobium and rare earth elements mineralization as well as soda ash, diatomite, bentonite, carbon dioxide and fluorspar deposits associated with the Tertiary Rift system;
- (iv) Heavy mineral sands are associated with Cenozoic detrital sediments at the Coast;
- (v) Gypsum deposits associated with recent sediments in various parts of the country;
- (vi) Coal deposits in Pleistocene basins (Mui) and Karoo sedimentary series (Coast);
- (vii) Manganese, lead/zinc, Uranium, rare earths elements (REEs) and barite deposits associated with Karoo sediments at the Coast.

1.5 Mineral Production in Kenya

Mining activities have taken place in Kenya for many years up to the present time but most of the medium to large scale mining of gold and base metals took place during pre-independence days. The largest gold mine in the country was located at Rosterman near Kakamega town in Western region, where it was operated from the 1930s till it closed down in 1952. A medium scale copper mine was also operated at Macalder in Migori area of Nyanza region from 1956 until it closed down in the late 1960s. Lead ore mines were operated in the Kinagoni and Vitengeni areas of Coast region till the 1970s.

In latter years, however, mining in Kenya has been dominated by the production of a variety of industrial minerals, among which are Soda ash, fluorspar, diatomite and limestone. Gold and gemstone production became the main activity of small-scale miners who have operated continuously in different parts of the country. The following table shows Kenya's mineral production for the period 2005 to 2009.

<i>Mineral</i>	<i>Unit</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>
Soda Ash	MT	360,161	374,210	286,578	502,846	404,904
Fluorspar	MT	97,608	132,030	85,115	130,100	5,500
Crushed Refined Soda	MT	640,291	662,939	842,043	865,788	948,076
Salt (Magadi)	MT	26,595	35,024	11,596	24,345	24,125
Carbon Dioxide	MT	8,723	9,359	11,028	22,030	15,711
Diatomite	MT	1221	1595	1841	1775	1696
Gold	KGS	616	432	3,023	340	1,055
Gemstones	KGS	5,420	5,044	8,927	20,933	39,408

1.6 Challenges

This Policy recognizes a number of challenges in the minerals and mining sector among which are:

- (i) Environmental degradation,
- (ii) Inadequate research and development,
- (iii) Mineral processing for value addition,
- (iv) Provision of adequate security in some mining areas,
- (v) Adequate Institutional and human capacity
- (vi) Up-to-date baseline geological information and data,
- (vii) Mainstreaming the artisanal mining
- (viii) Mineral promotion and marketing,
- (ix) Equitable benefit sharing among national Government, Counties, Investors and the Local communities
- (x) Ensuring of intergenerational equity,
- (xi) Creation of an enabling environment, for minerals resources development
- (xii) Ensuring of transparency and accountability,
- (xiii) Mainstreaming gender issues
- (xiv) mitigation against volatile and fluctuating mineral prices and other externalities

2. Principles, objectives and strategies

2.1. General principles

The guiding principles of the National Minerals and Mining Policy are in accordance with section 62 of the Constitution of Kenya: “all minerals shall vest in and be held by the National Government in trust for the people of Kenya”.

The following principles are the foundation of this Policy’s objectives:

- (i) Facilitation and promotion of the development of a vibrant minerals and mining sector;
- (ii) Enhancement of institutional and human capacity in the mineral sector;
- (iii) Ensuring of equitable access, transparency, and public participation in the developments of policies and project plans;
- (iv) In accordance with section 69 (1)(a) of the Constitution of Kenya, “ensuring of sustainable exploitation, utilization, management and conservation of the environment and natural resources, and equitable sharing of accruing benefits”;
- (v) Integration of sound environmental, cultural, social and health protection practices and values in mineral resources development and management;
- (vi) Promotion of value addition to raw minerals before export to maximise returns for the people of Kenya;
- (vii) Promotion of local and foreign private sector participation, and empower local investment capacity in mineral resources development;

- (viii) Promotion of international cooperation in the management of mineral resources shared by two or more states; and
- (ix) Mainstreaming of gender issues in the mineral resources development and management;
- (x) Development of mechanisms for intergenerational equity ; and
- (xi) Promotion of best practices in the minerals and mining sector.

2.2. Objectives and Strategies

Objective 1. To put in place a simple, stable, predictable, efficient and unified regulatory framework.

A clear, easily understood, transparent and predictable legislative and fiscal framework is crucial for the development of the minerals and mining sector.

Strategies:

- (i) Define in the Mining Act the classes of transactions requiring ratification by Parliament in order to ensure the compliance of the regulatory framework with section 71 of the Constitution of Kenya;
- (ii) Establish specific licenses for Artisanal and Small-scale Mining (ASM) which are reserved for Kenya citizens;
- (iii) Facilitate access to land and establish dispute-resolution mechanisms between land rights and mineral rights holders;
- (iv) Put in place dispute resolution mechanisms between parties to mineral agreements (including government) through the establishment of a Mining Dispute Tribunal, and provisions for settlement through Courts or International Arbitration;
- (v) Put in place a stable, predictable, competitive and fair fiscal regime.;

- (vi) Put in place and enforce clear regulations and procedures for export of mineral samples., and
- (vii) Enhance local capacity for mineral analysis.

Objective 2. To stimulate investment in the minerals and mining sector

Mineral exploration and mining are largely capital intensive risky investments. The Government shall, therefore, stimulate the sector through various interventions.

Strategies:

- (i) Promote private sector participation;
- (ii) Promote Public Private Partnerships;
- (iii) Provide attractive fiscal incentives;
- (iv) Create conducive micro- and macro-economic environments;
- (v) Strengthen and streamline mineral-management institutions;
- (vi) Enhance provision of government services to the sector
- (vii) Improve the security situation in exploration and mining areas; and Promote harmonization of regional policies to ensure competitiveness.

Objective 3. To ensure that mineral wealth contributes to national economic and social development in accordance with Vision 2030 and medium-term plans.

Since the ownership of all minerals is vested in the State on behalf of the people, a significant portion of accruing mineral wealth will be used to support national socioeconomic development, while addressing the needs of the communities at the source:.

Strategies:

- (i) Promote sustainable development and management of mineral resources;
- (ii) Ensure equitable benefit sharing, wealth distribution and long-term economic development through:
 - Putting in place mining revenue sharing mechanisms
 - Promoting local economic development;
 - Promoting local sourcing of resources; and
 - Setting-up mechanisms for Corporate Social Responsibility (CSR) commitments

Objective 4. To mainstream artisanal and small-scale mining (ASM).

Artisanal and small-scale miners (ASM) contribute significantly to the creation of mineral wealth, however, there is need to mainstream their operations in order to address the challenges they face

Strategies:

- (i) Develop appropriate training programs for ASM;
- (ii) Facilitate access to appropriate technology, funds and partnerships for ASM;
- (iii) Encourage and facilitate orderly ASM by putting in place appropriate guidelines, Setting aside mining reserves for ASM activities;
- (iv) Encourage and facilitate the formation of cooperatives and ASM associations; and

Objective 5. To mitigate the adverse social and environmental impacts of mineral development

Mining operations involve land disturbances, which may lead to environmental degradation.

Strategies:

- (i) Ensure a socially acceptable balance between the positive and negative impacts of mining on the physical and human environment;
- (ii) Ensure compliance of mineral sector activities with relevant environment, health and safety legislation;
- (iii) Promote best mining practices Ensure that mine closure plans and post-mining phases form integral parts of the planning stage; and
- (iv) Develop in liaison with relevant institutions specific regulations for mining operations in environmentally sensitive areas such as forest reserves, nature reserves and national parks.

Objective 6. To develop and strengthen local capacity for mineral resources development

The success of local initiatives in the development of mineral resources will depend on their financial, technological and technical capacity.

Strategies:

- (i) Putting in place measures for geo-data acquisition and dissemination, by setting up a web-based mineral database and a mining cadastre system; Strengthening and enhancing appropriate capacities for relevant institutions Promoting linkages with relevant institutions Promoting research and development, in the minerals and mining sector.

Objective 7. To promote mineral processing for value addition

Mineral processing increases value creates jobs and has the potential to enhance skills.

Strategies:

- (i) Create an enabling environment for investment in mineral processing for value addition; and
- (ii) Review mineral import and export procedures to promote value addition.

Objective 8. Promotion of intergenerational equity

Mineral resources are generally non-renewable and thus there is need to bequeath a portion of the accruing wealth to future generations.

Strategies:

- (i) Ensure optimal development of mineral resources;
- (ii) Allocating a percentage of proceeds accruing from mineral wealth for long-term development; and
- (iii) Establishing a minerals trust fund for use by future generations.

3. Institutional and Fiscal Framework

3.1. Institutional Framework

The Government is committed to ensuring that the Minerals and Mining Sector is properly managed by strengthening institutional frameworks, ensuring the availability of relevant professional and technical staff and allocating sufficient resources to mineral resources development and management.

The Ministry responsible for mineral resources and mining will be in charge of the overall management of mineral resources. The Minister responsible for minerals resources and mining will constitute a Minerals Advisory

Board (MAB) to oversee the development, management and utilization of mineral resources in Kenya.

3.1.1. Institutional reforms in the minerals and mining sector

The Minerals and mining sector has for many years been administered by the Mines and Geological Department. The Policy, however, proposes restructuring of the Department to create four main institutions as mentioned below.

The Government will create the following key institutions namely: the Kenya Geological Survey (KGS), the Kenya Minerals and Mining Authority (KeMMA), the Kenya Mining Corporation (KEMCO) and the Mining Disputes Resolution Tribunal (MDRT) to improve efficiency and effectiveness in mineral resources management and policy implementation.

3.1.1.1 Kenya Geological Survey (KGS)

Functions of the Kenya Geological Survey of shall include:

- (i) policy implementation;
- (ii) carrying out geological surveys, research and development;
- (iii) collecting, collating, processing, analyzing, archiving, and disseminating geosciences data;
- (iv) developing and retaining professionals capable of generating and utilizing the available geosciences data;
- (v) training and capacity building; and
- (vi) providing technical advice to the rest of the Government and the public.

3.1.1.2 Kenya Minerals and Mining Authority (KeMMA)

Functions of the Kenya Minerals and Mining Authority shall include:

- (i) policy implementation
- (ii) regulation of the minerals and mining sector
- (iii) developing and maintaining a mining cadastre system
- (iv) developing and retaining professionals and technical staff capable of administering, supervising, monitoring, training, providing extension services and promoting sectoral activities.
- (v) carrying out awareness campaigns, providing technical advice to the rest of the Government and the public on mineral development
- (vi) promotion and marketing of minerals

3.1.1.3 Mining Disputes Resolution Tribunal (MDRT)

An independent Mining Disputes Resolution Tribunal shall be established to address disputes among stakeholders.

3.1.1.4 Kenya Mining Corporation (KEMCO)

The Government will through an act of parliament establish the Kenya Mining Corporation (KEMCO), which will be the investment arm of the government for the mining sector.

3.2 Fiscal Framework for the Mineral and Mining Sector

The government shall formulate and implement a minerals and mining sector fiscal regime which is conducive to investment in exploration and mine development. The fiscal regime will recognize the investor's need to

recover exploration and development outlays while ensuring a fair share of accruing benefits to the State. The framework will also seek to strike a balance between generating short-term revenue and attracting longer-term investment in the sector.

The government will also ensure transparent and accountable fiscal practices for the collection and utilization of taxes and royalties.

The government recognises that mining is a risky venture and that there is need for special fiscal incentives and arrangements, which must be internationally competitive in order to achieve the goal of sustaining investment in mining sector.

4. Conclusion

It is envisaged that the Minerals and Mining Policy will form a strong foundation that is necessary for anchoring a sound institutional and legal framework, which will transform the mineral sector in the country and create a conducive investment environment.

The proposed institutional reforms which include the creation of a Mineral Advisory Board, a Kenya Geological Survey, a Kenya Minerals and Mining Authority, a Mining Disputes Resolution Tribunal and a Kenya Mining Corporation are expected to facilitate rapid growth of the Minerals and Mining sector.

It is, therefore, expected that the Policy will enable the Minerals and Mining sector to contribute significantly to socio-economic development and realization of the goals of Vision 2030 and beyond.

Appendix: Implementation Plan

This policy includes an implementation plan for short term (0-2 yrs) and medium-term (3-5 yrs) actions recognized as urgent and critical.

Action	Responsibility	Timeframe
Legal framework Mining and Minerals Act Fiscal regime	MEMR, AG MEMR, Min. Of Finance	short -term
Institutional Framework Mineral Advisory Board Mining Disputes Resolution Tribunal Kenya Geological Survey KeMMA Kenya Mining Corporation	MEMR, AG	Short -term medium term medium term medium term
To streamline and improve artisanal and small-scale mining (ASM): Put in place appropriate training programs for ASM Facilitate access to appropriate technology, funds and partnerships for ASM Facilitate orderly ASM by enforcing existing regulations Promote and facilitate the formation of cooperatives and ASM associations Market and promote minerals produced by ASM, and in particular gemstones	MGD, KCM	short -term
To develop and strengthen local capacity for mineral development:		

<p>Set up a web-based mineral database and a modern mining cadastre system</p> <p>Enhance technical, financial and human resources to the institution in charge of geological surveying</p> <p>Carry-out country-wide airborne geophysical surveys</p> <p>Empower the institution in charge of geological survey to perform country-wide exploration programs</p> <p>Promote inter-ministerial cooperation to ensure data-sharing (water, NOCK, energy, MEMR etc)</p>	<p>MEMR, MGD</p>	<p>short –term medium -term</p> <p>short -term</p> <p>short -term</p>
<p>To promote value addition to mineral products and to increase mineral trade:</p> <p>Put in place a conducive environment for investment in mineral processing and trade, including appropriate fiscal incentives</p> <p>Facilitate access to cheaper energy and other infrastructural services</p> <p>Streamline mineral import and export procedures</p>	<p>MEMR, MGD, MoFinance</p> <p>MEMR, MoEnergy, MoPlanning, MoIndustrialization, MoWorks, MoWater</p> <p>MGD, KRA, MEMR</p>	<p>short -term</p> <p>medium term</p> <p>short -term</p>