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THE EAST AFRICAN COMMUNITY  
**BILLS SUPPLEMENT**

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**THE EAST AFRICAN COMMUNITY**

**THE EAST AFRICAN COMMUNITY MINING BILL, 2017**

**MEMORANDUM**

This object of this Bill is to provide a legal framework for the regulation of mining operations in the Community. The Bill seeks to implement the East African Community Vision 2050 and specifically, to operationalize Article 114(2)(c)(iv) of the Treaty for the Establishment of the East African Community, which specifically calls for the harmonization of mining regulations to ensure environmentally friendly and sound mining practices.

Additionally, the Bill seeks to give effect to the short term tentative framework plan to implement the Africa Mining Vision which also calls for the adoption of common mining regimes at the sub- regional level.

The Bill also provides a transparent and accountable mechanism for the reporting of mining and mineral related activities in the Community.

Ultimately, the Bill further seeks to reduce the differences in the operating environment for the mining industry among the Partner States, and in particular, the “race to the bottom”, which would be avoided by the removal of competitive behaviour through the provision of incentives that are less beneficial to the Partner States.

HON. CHRIS OPOKA-OKUMU,  
*Member East African Legislative Assembly.*

THE EAST AFRICAN COMMUNITY MINING BILL, 2017

ARRANGEMENT OF CLAUSES

PART I—PRELIMINARY PROVISIONS

*Clause*

1. Short title and commencement
2. Interpretation
3. Objectives
4. Application

PART II—MINERALS AS RESOURCES OF PARTNER STATES

5. Ownership of minerals
6. Trusteeship of mineral resources
7. Ownership of minerals after extraction

PART III—LICENSING AND PERMITTING

8. Legislation regulating minerals in the Partner States

PART IV—ACCESS TO INFORMATION AND TRANSPARENCY

9. Access to information

PART V—MINERAL RESOURCES DEVELOPMENT

10. Rights of impacted communities

PART VI—STABILISATION OF THE INVESTMENT TERMS

11. Stabilisation provisions

PART VII—EMPLOYMENT AND TRAINING

12. Transfer of skills and capacity building

PART VIII—USE OF GOODS AND SERVICES

13. Procurement of goods and services

PART IX—ARTISANAL AND SMALL SCALE MINING

14. Artisanal and small scale mining

PART X—ENVIRONMENTAL PROTECTION AND MANAGEMENT

15. Protection of the environment

*East African Community Mining Bill, 2017*

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*Clause*

PART XI—MINE CLOSURE AND REHABILITATION

16. Mine closure and rehabilitation

PART XII—MISCELLANEOUS PROVISIONS

17. Regulations

THE EAST AFRICAN COMMUNITY MINING BILL, 2017.

A Bill for An Act

ENTITLED

**THE EAST AFRICAN COMMUNITY MINING  
ACT, 2017.**

**An Act to provide for a harmonized legal framework for the regulation of mining in the East African Community in accordance with the Africa Mining Vision and for other related matters.**

ENACTED by the East African Community and assented to by the Heads of State.

PART I—PRELIMINARY PROVISIONS

1. This Act may be cited as the East African Community Mining Act, 2017 and shall come into force on such date as the Council may, by notice published in the Gazette appoint. Short title and commencement
2. In this Act, unless the context otherwise requires— Interpretation

“artisanal and small-scale mining operations” means mining operations over an area of land in accordance with criteria prescribed by legislation in the Partner States, which may include, but not limited to the level of mineral production, land area, level of capital investment, depth or nature of mining operations, plant, equipment and machinery to be used, or local participation;

“Assembly” means East Africa Legislative Assembly established by Article 9 of the Treaty;

“beneficial owner” means any natural person who directly or indirectly owns, exercises control over, or has a substantial economic interest in an entity that holds a mineral right, or receives a substantial economic benefit from such entity or a company or person that holds a mineral right, or any operations associated with a mineral right;

“Community” means the East African Community established by Article 2 of the Treaty;

“competent authority” means an organ, agency, body, department or institution established by a Partner State with a mandate, power or authority to implement or carry out specific duties or responsibilities with regard to mineral activities or mining operations;

“community development agreement” means an agreement or undertaking however described, that a holder of a mineral right for the extraction of a mineral shall enter into with a community that is likely to be impacted by its operations in a manner defined by a legislation of a Partner State;

“environmental and social impact assessment” means a systematic study of the environmental and social character of the project area, to establishing a baseline of existing environmental and social conditions; and the process of assessing, monitoring and managing the intended and unintended environmental and social effects or impacts of planned interventions;

“government take” means a royalty, tax or various rents and interests including a free carried interest that the government is entitled to receive from the holder of a mineral right;

“holder” means a person, corporate body, group, association, cooperative or enterprise however described, that has been granted a mineral right;

“impacted community” means a community affected by the activities or operations of a holder of a mineral right, and any related mining activity, operation or project;

“legislation” means a Constitution, an Act of Parliament, a subsidiary legislation or regulation or any other enactment or statute made under authority conferred by an Act of Parliament;

“mineral agreement” means a mining agreement, mineral development agreement, investment agreement or any other agreement or contract that may be entered into between a holder of a mineral right and a Partner State for the exploitation of a mineral;

“mineral” means any substance, including metals, whether solid, liquid or gaseous, that occurs naturally in or on the earth, including in or under water, which was formed by or subject to geological processes, or any substance that may be designated or prescribed as a mineral by legislation of a Partner State;

“mineral right” means a licence, permit, lease or authorisation granted by a Partner State to any individual, person, corporate body or any other entity or group for the purpose of reconnaissance, prospecting, or mining of a mineral;

“mineral operations” means reconnaissance, prospecting, mining, or related activities for the search and extraction of minerals;

“mining life cycle” means the various stages involved in mining activities from exploration, feasibility, construction and development to operations and mine closure;

“mining and mineral related activities” means any activity or operation involving the reconnaissance, prospecting, and mining of minerals or dealings in minerals;

“Partner States” means the Republic of Burundi, the Republic of Kenya, the Republic of Rwanda, the Republic of South Sudan, the United Republic of Tanzania, the Republic of Uganda, and any other country granted membership to the Community under Article 3 of the Treaty;



“prospect” means to search for a mineral, and may include reconnaissance activities or operations to determine the extent of economic value of a mineral deposit;

“reconnaissance” means the search for minerals by geophysical, geochemical and photo geological surveys, or other remote sensing techniques and surface geology in connection with it, including collection of necessary environmental data;

“stabilisation” means a specific legal commitment by a government which seeks to secure a mining or investment agreement or contract against any future government action or change in law, either legisla-tive or regulatory;

“Treaty” means Treaty for the establishment of the East African Community.

3. The objectives of this Act are to—

Objectives

- (a) provide a harmonized legal framework in the mining sector of the Partner States in accordance with the African Mining Vision;
- (b) ensure the transparent and accountable mechanisms for the reporting of mining and mineral related activities or operations;
- (c) provide protection for impacted communities and the environment in mining areas;
- (d) provide a mining environment that is responsive to macroeconomic, sustainable development, and which balances appropriate incentives to attract investors against mechanisms to protect

the revenue base and resources of the Partner States, in accordance with the African Mining Vision;

- (e) align the mining governance in the Community with international best practices;
- (f) promote common standards and rules to regulate mining within the Community;
- (g) ensure that harmonisation takes into account the different stages of development in relation to mineral resource development in each Partner State and how to address the specific needs of each Partner State within the context of the African Mining Vision; and
- (h) avoid competition among the Partner States by the removal of measures that are not beneficial to the Partner States.

Application

4. This Act applies to all mineral activities and mining operations, or any other related activity in a Partner State.

#### PART II—MINERALS AS RESOURCES OF PARTNER STATES

Ownership  
of minerals

5. Every mineral in its natural state in, under, or upon the land, rivers, streams, or other watercourses, exclusive economic zone, and an area covered by the territorial seas or continental shelf is the property of the respective Partner State.

Trusteeship  
of mineral  
resources

6. (1) All minerals falling within the jurisdiction of a Partner State, vest in the Partner State, and are held and managed in trust for the benefit of its citizens;

(2) Every Partner State shall promote the sustainable development of mineral resources for the benefit of its citizens, including, but not limited to, the development of an appropriate, transparent and accountable legal and administrative framework.

7. (1) A holder of mineral rights shall acquire ownership or title to the minerals following their extraction and subject to the provisions governing the legislation of mineral resource development in a Partner State. Ownership of minerals after extraction

(2) Nothing in this Act shall prevent any Partner State from participating in reconnaissance activities, prospecting or mining, or in any other mineral or mining related activity.

### PART III—LICENSING AND PERMITTING

8. (1) The Partner States shall develop legislation governing mineral resources within their jurisdictions and in particular, the development of a licensing and permitting system for minerals which promotes the realization of accountability and transparency of all stakeholders within the mining sector. Legislation regulating minerals in the Partner States

(2) The legislation of each Partner State shall include, but is not limited to—

- (a) the creation of a competent authority to regulate mineral and mining activities;
- (b) the type, duration, area or size of operation, and the form of mineral rights to be granted to an applicant;
- (c) the rights and obligations of holders of mineral rights;

- (d) legal title to minerals upon severance or production;
- (e) the operating obligations which shall be required to maintain the validity of a mineral right such as—
  - (i) the expenditure and work programme for reconnaissance and prospecting operations; and
  - (ii) the programme of mining operations;
- (f) eligibility and procedural requirements for the grant, acquisition, renewal, transfer, assignment, suspension, revocation, termination and surrender of mineral rights;
- (g) the requisite financial, technical and other requirements of the transferee or assignee, where transfer or assignment of rights is permitted, including the conditions of transfer;
- (h) the submission of a financial plan, feasibility study and an economic model by any applicant for the right to produce a mineral;
- (i) the oversight, monitoring and reporting requirements in respect of health and safety issues, including the duties of right holders in this regard, the rights and duties of mine workers, and the regulation of accidents and injuries;
- (j) the oversight, monitoring and reporting requirements for protection of the environment, including the assessment and management of environmental and social impacts;

- (k) offences and penalties;
- (l) clear requirements on mine closure, rehabilitation and related financing obligations for the holder, as well as the role of local authorities and impacted communities where mining operations are carried out;
- (m) development of a computerized mining cadastre for the management of mineral rights or titles;
- (n) a clear and transparent tax regime that is predictable, progressive and guarantees a fair return for both the investor and the government;
- (p) the payment of royalties on any mineral produced and the manner in which the royalties shall be determined or calculated, including the payment of royalties on all other minerals that may be produced, saved and sold, or otherwise disposed of as a by or co-product of the mineral for which a mineral right was granted to the holder;
- (o) rules on gender; and
- (q) the resolution of disputes, including the right of an applicant for, or a holder of, a mineral right to seek redress against the Partner State or a competent authority, in the event that an application for a mineral right is rejected or a mineral right is suspended, terminated or not renewed.

(2) Mineral rights shall be granted on a first-come, first-served basis to the applicant that satisfies the basic eligibility criteria as outlined in the legislation of a Partner State.

(3) Notwithstanding the principle of first-come first-served in subsection (2), where—

(a) geological data is available;

(b) a mineral deposit of known or probable economic significance exists; or

(c) there is evidence that an area has high mineral prospectivity,

the award of a mineral right shall be by transparent and competitive public tender, in accordance with the legislation of the Partner State.

(4) The Partner States shall abolish the use of mineral, investment or mining agreements for the exploitation of any mineral resource.

(5) Notwithstanding subsection (4), a Partner State may use mineral, investment or mining agreements where legislation expressly designates a specific threshold for their use, provided that the provisions of any such agreement are in full compliance with, and subject to, the generally applicable laws of the Partner State.

(6) The initial capital investment for the threshold for the use of mineral, investment or mining agreement shall not be less than United States 750 million dollars.

(7) The terms and conditions of a mineral, investment or mining agreement shall be prepared in standard format and shall be set out in legislation.

(8) A term or condition contained in any mineral, investment or mining agreement shall be consistent with generally applicable laws of a Partner State.

(9) Mineral, mining or investment agreements that have been granted by any Partner State, or are in force prior to the adoption of any legislation to implement this Act, shall remain valid and binding.

(10) A Partner State shall not directly or indirectly nationalize or expropriate investments in mining within its territory, except—

- (a) in accordance with the Constitution or any other legislation of the Partner State;
- (b) in accordance with due process of law; and
- (c) on payment of fair and adequate compensation, within a reasonable period of time.

(11) The fair market value of the expropriated investment immediately before the expropriation took place shall be the basis for assessing fair and adequate compensation.

(12) The fair and adequate compensation shall not reflect any change in value occurring because the intended expropriation had become known earlier.

(13) Where appropriate, an equitable balance between the public interest and interest of those affected shall be the basis of fair and adequate compensation, having regard for all relevant circumstances and shall take into account the—

- (a) current and past use of the property;
- (b) history of its acquisition;
- (c) fair market value of the investment;

- (d) purpose of the expropriation;
- (e) extent of previous profit made by the foreign investor through the investment; and
- (f) duration of the investment.

PART IV—ACCESS TO INFORMATION AND TRANSPARENCY

Access to  
information

9. (1) The Partner States shall adopt legislation that shall ensure access to information on mining and mineral related activities including public consultation and approval by the legislature if required by the Constitution or any other laws of a Partner State.

(2) The Partner States shall adopt or enact legislation to provide for accountable and transparent reporting mechanisms in respect of mining and mineral related activities, in a timely and accessible manner, including, but not limited to—

- (a) the public disclosure of all mineral or mining agreements entered into between a Partner State and a holder of a mineral right;
- (b) any payments, however described, made by a holder of a mineral right to the government of a Partner State or any of its agencies, departments or institutions;
- (c) any payments to impacted communities or local governments;
- (d) production volumes and corresponding mineral concentrations, estimated value at market rates, under each mineral right;



- (e) any annual reports on compliance by the holders of mineral rights in terms of their obligations under the applicable law or agreements;
- (f) the identities of beneficial ownership of holders of mineral rights; and
- (g) the audited financial statements of the holder of a mineral right.

(3) Legislation adopted by a Partner State pursuant to this Part shall specify—

- (a) the manner and period within which the respective payments or reports shall be reported; and
- (b) the form and manner in which the respective payments or reports are to be organised, drafted and submitted by a holder of a mineral right or any individual or person who shall be required to do so.

(4) Legislation and regulations adopted by the Partner States shall penalise any fraudulent, misleading, or deliberately misrepresented actions by holders of mineral rights to the public, a competent authority or to any government or agency of a Partner State, whether prior to obtaining a right or during the period of mineral related activities and operations.

(5) Nothing contained in this Part shall be construed as to absolve any competent authority, government, agency or institution in a Partner State from providing information to any person under any legislation relating to access to or freedom of information in a Partner State.

PART V—MINERAL RESOURCE DEVELOPMENT

Rights of  
impacted  
communities

**10.** (1) The Partner States shall adopt legislation to ensure that applicants for, and holders of, mineral rights shall—

- (a) obtain free, prior, and informed consent of the impacted communities;
- (b) ensure consultation and negotiation in respect of decisions affecting impacted communities throughout the mining life cycle;
- (c) respect the rights of the impacted communities; and
- (d) enter into community development agreements, however described, with impacted communities when a mineral right is granted for the extraction of a mineral.

(2) Any legislation that a Partner State shall adopt with regard to community development agreements shall include but not limited to expenditure commitments and how the agreement shall be governed, monitored and implemented.

(3) Notwithstanding the generality of sub regulation 1(a), free prior and informed consent shall—

- (a) include the right of impacted communities to participate in setting the terms and conditions that address the economic, social, cultural and environmental impacts of all phases of mining;
- (b) be free from manipulation and coercion, and shall allow adequate time for decision-making processes about the potential benefits and impacts;

- (c) facilitate the sharing of objective, accurate and easily understandable information and the relevant parties shall strive for full, prior disclosure of any relevant information in advance of any decisions to be taken as part of the consultation;
- (d) give the impacted communities the opportunity to approve or reject any mineral activity or mining operation prior to its commencement;
- (e) entail a collective right held by all members of an impacted community and the process of consultation and participation is inclusive of all members of the impacted communities.

(4) Where land is required for mineral resource development, the landowner or any lawful occupier shall be paid adequate and prompt compensation by the company in a manner as shall be set out in the laws governing land matters in the Partner State.

(5) The compensation to which an owner or lawful occupier may be entitled, shall include compensation for—

- (a) deprivation of the use or a particular use of the natural surface of the land or part of the land;
- (b) loss of, or damage to, immovable property;
- (c) in the case of land under cultivation, loss of earnings or sustenance suffered by the owner or lawful occupier, having due regard to the nature of their interest in the land;
- (d) loss of expected income, depending on the nature of crops on the land and their life expectancy.

(6) The Partner States shall ensure that inhabitants or communities, who have to be resettled as a result of being displaced by a proposed mining operation, are resettled by the holder on suitable alternate land, with due regard to their human rights, economic well-being, customs, traditions, social and cultural values.

(7) Without limiting the generality of subsection (6), any resettlement shall be in compliance with the legislation of the Partner State and such international instruments as the Partner State may be a Party to.

(8) The cost of resettlement including any payment to any landowner or lawful occupier shall be borne by the holder of the mineral right, or paid directly to the landowner or lawful occupier.

(9) The Partner States may enter into agreements for the exploration and extraction of any transboundary mineral resource or deposits.

#### PART VI—STABILISATION OF THE INVESTMENT TERMS

Stabilisation provisions

**11.** (1) The Partner States shall not provide stabilisation provisions under any mineral right or in a mineral agreement to any applicant or holder.

(2) In the circumstances where it is necessary for a Partner State to provide stabilisation to a holder—

(a) the stabilisation shall be limited to holders of a mineral agreement;

(b) the terms shall be limited to fiscal issues only; and

(c) the duration of any such stabilisation shall not exceed five years.

(3) The Partner States shall, upon the coming into force of this Act renegotiate any mineral right, investment, mineral or mining agreement or contract that provides for the stability of fiscal issues.

(4) To enhance the equitable sharing of the benefits derived from mineral resources, the Partner States shall ensure that any stabilisation agreement, with respect to the fiscal regime, shall include provisions that allow for an increased government take when the price of the mineral rises and when the holder attains various rates of return or profitability.

(5) The Partner States shall ensure that holders of mining rights are not subjected to arbitrary and discriminatory treatment.

(6) The following measures shall not be considered arbitrary or discriminatory—

- (a) measures to improve the standards for mining operations and mine related activities; and
- (b) measures consistent with best practice in the sector or international standards applicable to the sector.

#### PART VII—EMPLOYMENT AND TRAINING

**12.** (1) To ensure skills transfer to, and the capacity building of, their citizens, the Partner States, shall enact legislation to ensure the following—

Transfer of  
skills and  
capacity  
building

- (a) the holder of a mineral right shall submit a detailed programme for the recruitment and training of citizens to a competent authority, in a manner as shall be prescribed in the legislation;

(b) the submission and approval of the programme under paragraph (a) shall be a condition for the grant of a mineral right.

(2) Without prejudice to the generality of sub section (1), any legislation enacted pursuant to this Part shall include, but not limited to the—

- (a) development of local capacities in the mining industry value chain, through education, skills and technology transfer, research and development;
- (b) submission of succession, employment and training plans by holders of mineral rights, including targets for employment of local nationals at increasing levels of skill and management responsibility that the holder shall seek to meet or exceed;
- (c) recruitment of expatriates, if required for any specific job or position, and their replacement with citizens of the Partner States;
- (d) considerations of gender;
- (e) development of on-going review and implementation processes or committees to assist with the effective long-term implementation of the programme; and
- (f) supervision, implementation, monitoring and annual reporting system of holders of mineral rights by a competent authority to ensure compliance, including publication of these reports annually in the local community.

PART VII—USE OF GOODS AND SERVICES

13. (1) The Partner States shall adopt legislation that ensure the procurement of local goods and services by holders of minerals rights.

Procurement of goods and services

(2) The legislation adopted under subsection (1) shall ensure the following—

- (a) that the holder of a mineral right shall submit a detailed programme for the use of goods and services to a competent authority, in a manner as shall be prescribed in the legislation;
- (b) that the holder of a mineral right is entitled to goods and services of a sufficient quality and quantity, and that meet the appropriate health and security standards.

(2) The submission and approval of the programme under subsection (1) shall be a condition for the grant of a mineral right.

(3) Without prejudice to the generality of sub section (1), any legislation that is adopted pursuant to this Part shall include but not limited to the—

- (a) development of local capacity in the mining industry value chain;
- (b) requirement for submission of a plan for the use of goods and services by holders of mineral rights;
- (c) considerations of gender; and

- (d) requisite supervision, implementation, monitoring and annual reporting system of holders of mineral rights by a competent authority to ensure compliance, including publication of these reports annually in the local community.

PART IX—ARTISANAL AND SMALL SCALE MINING

Artisanal  
and small  
scale  
mining

**14.** (1) The Partner States shall adopt appropriate legislation to provide for artisanal and small-scale mining, which promotes the realization of safe, efficient and environmentally sustainable working conditions for the miners.

(2) Without limiting the scope of sub section (1), the Partner States shall—

- (a) demarcate specific areas for artisanal and small-scale mining;
- (b) encourage the formation of cooperatives, groups or associations for artisanal and small-scale mining;
- (c) provide technical and financial assistance to artisanal and small-scale miners;
- (d) develop and support a framework for the marketing of minerals produced by small scale miners;
- (e) address the challenges of gender representation in artisanal and small-scale mining;
- (f) ensure that all persons, in particular women, undertaking any mineral activity or mining operation, are respected and protected, and the use of child labour in artisanal and small scale operations is prohibited;