



## EXPLANATORY MEMORANDUM

EXPLANATORY MEMORANDUM TO THE  
Mining (Employment and Training Regulations, 2016, No.....

### PART I

Name of the Statutory Instrument: Mining (Employment and Training) Regulations, 2016.

Name of the Parent Act: Mining Act, 2016.

Name of the Ministry: Ministry of Mining

Enacted Pursuant to: section 223 (1) and 46

Ministry of Mining

*Gazetted on*

*Tabled on*

**PART II**

### 1.0 Purpose of the Statutory Instrument

The main purpose of these Regulations is to give effect to section 46(1), (3) of the Mining Act, 2016 which requires the Cabinet Secretary to make Regulations to provide accountable and transparent mechanisms of employment, training of Kenyans and replacement of expatriates with Kenyans in large scale mining and mineral related operations. Section 46(1) of the Mining Act requires the Cabinet Secretary to prescribe the manner in which the holders of mineral rights are required to submit their programmes for employment and training to ensure skills transfer to and capacity building of the Kenyan citizens in the mining industry. Section 46(3) of the Act requires the Cabinet Secretary to make regulations to provide for the recruitment, training of Kenyans and the replacement of expatriates with Kenya counterparts.

## **2. Legislative Context**

Article 62(1) (f) of the Constitution classifies all minerals and mineral oils as defined by law under Public land. Article 62(3) implies that minerals among others shall vest in and be held by the National Government in trust for the people of Kenya.

Article 260 of the Constitution defines Minerals under Natural Resources. Article 69(1)(a),(h) of the Constitution requires that exploitation and utilization of environment and natural resources benefit the Kenyan people.

These Regulations are intended to operationalize the Mining Act, 2016 and to ensure that Kenyans benefit in terms of training, skills transfer, capacity and employment in the Mining sector.

## **3. Policy Background**

The Mining and Mineral Policy is enshrined in Sessional Paper No. 07 of 2016 (unpublished). As provided in the Policy the Government recognizes the Mining sector has a potential of contributing significantly to the Country's economic development.

The Policy led to the repeal of a series of mining related polices that did not take into account issues of mandatory employment and training of Kenyans in the mining and mineral related projects and have been translated into the Mining Act, 2016 which required in section 46(1),(3) for the employment, training of Kenyans for skills transfer and replacement of expatriates in the mining and mineral activities to ensure economic benefits to Kenyans and accountable and transparent mechanisms in the Mining sector.

### ***3.1 What is being done and why***

The repealed Legislations relating to Minerals and Mining did not comprehensively detail requirements for employment and training of Kenyans in the Mining sector. The Mining Act 2016 provides in detail the requirements for training, skills transfer, capacity building and employment of Kenyans in the Mining sector. The employment and training is to conform and comply with the Constitutional provisions and to ensure that Kenyans benefit from the exploitation and utilization of environment and natural resources.

### 3.2 Consolidation

The Regulations seek to revoke the Regulations that touch on or was incidental to employment and training under The Mining Act (Cap. 306), Trading in Unwrought Precious Metals Act (Cap 309) and the Diamond Industry Protection Act (Cap 310) (now repealed ), and the provisions of which have now been consolidated into the these Regulations .

### 4.0 Consultation outcome

The Ministry of Mining conducted wide consultation and public participation on the regulations. The Cabinet Secretary published a notice on the 17<sup>th</sup> of July 2016 requesting all the stakeholders to provide their views and inputs on the regulations.

Letters were sent directly to various stakeholders; Industry Players, Civil Society Organizations, County Governments, Community based organizations and other government agencies to provide input and feedback on the regulations. The Ministry conducted stakeholder sensitization forums in different regions as shown below:

	<b>DATES</b>	<b>VENUE</b>	<b>STAKEHOLDERS'</b>
1.	22 <sup>nd</sup> and 23 <sup>rd</sup> March 2016	Naivasha	Ministry Staff & other MDAs and constitutional bodies such as NLC, CRA, AG, KRA, DOSH, Ministry of Industry and Trade
2.	11 <sup>th</sup> and 13 <sup>th</sup> April 2016	Naivasha	The Ministry staff and other Inter-government agencies DOSH, KRA, AG, NLC, CRA, NEMA
3.	10 <sup>th</sup> and 11 <sup>th</sup> August 2016	Nairobi	The Ministry staff and other Inter-government agencies DOSH, NEMA, NLC, KRA, AG, CRA, KRA
4.	16 <sup>th</sup> and 17 <sup>th</sup> August 2016	Voi	Holders of mineral rights and dealers' rights from the Coastal Region and the community based organizations
5.	29 <sup>th</sup> and 30 <sup>th</sup> August 2016	Nairobi	Kenya Chamber of Mines
6.	31 <sup>st</sup> August and 1 <sup>st</sup> September 2016	Nairobi	(a)Civil Society Organizations (b)Think Thanks (c)Academia
7.	20 <sup>th</sup> and 23 <sup>rd</sup> September 2016	Kisumu	Industry players from Western, Nyanza, Rift Valley Regions and Community Based Organizations.
8.	26 <sup>th</sup> and 27 <sup>th</sup> October 2016	Mombasa	County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Coastal, North Eastern and Eastern Regions
9.	2 <sup>nd</sup> and 3 <sup>rd</sup> November 2016	Nanyuki	Industry players from the Rift Valley, Central, Eastern and North Eastern regions

10.	9 <sup>th</sup> and 10 <sup>th</sup> November 2016	Kisumu	County Executives; Chief Officers and Chairpersons of county assemblies on Natural Resources from the Western, Nyanza and Rift Valley Regions
11.	25 <sup>th</sup> November 2016	Nairobi	Kenya Chamber of Mines/Industry
12.	27 <sup>th</sup> February, 2017	Nairobi	Kenya Chamber of Mines/Industry

There were comments from the Public with regard to requirement for employment and training plans for the existing operators. This concern was considered and addressed by Regulation 6(3) which requires that the holder of any mineral right in respect of a large scale operation granted under Cap 306, shall be required, not later than eighteen (18) months following enactment of the Act to update its plan with regard to employment and training in order to comply with these regulations.

Further concern by the stakeholders was on regulation 7(1) that only Kenyans be considered for junior and middle level positions was addressed with addition of regulation 7(3) providing that upon justification by holder of a mineral right that no Kenyan has the requisite qualifications, skills, or experience to occupy a particular junior or middle level position, an expatriate may be recruited.

## **5. Guidance**

The Ministry upon publishing the Regulations and in the course of preparation of the regulations has provided guidance and other forms of the publicity to the users, operators and the clients by way of : letters, positing the draft regulations onto its website and stakeholder sensitization.

## **6. Impact**

### ***6.1 The impact on Fundamental Rights and Freedoms***

This regulation does not impact negatively on fundamental rights and freedoms of the users.

## ***6.2 The impact on the Private Sector***

The negative impact will arise from increase wage bill due to employment of appropriately skilled workforce.

The positive impact is that the private sector will readily source people with the right skills who will increase productivity and thus higher returns.

The need for right skills will necessitate training institutions expanding their curriculum to include extractive to cater for the increased demand and therefore new employment opportunities for service providers.

## ***6.3 The impact on the public sector***

Enforcement of the regulation will lead to reduction of unemployment and particularly among the youth hence improved economic performance.

## ***6.4 An impact assessment***

An impact assessment is not attached to this memorandum since no impact assessment has not been prepared for this statutory instrument

## **7. Monitoring and review**

The Ministry intends to monitor the impacts and effects of the regulation once they come into force and shall periodically review the regulations and may make amendments as appropriate.

## **8. Contact**

The Cabinet Secretary, Ministry of Mining Tel: 0202723101 or email: [cs@mining.go.ke](mailto:cs@mining.go.ke) can answer any queries regarding the statutory instrument.