

**SPECIAL ISSUE**

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**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2023**

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## THE MINING (AMENDMENT) BILL, 2023

### A Bill for

#### AN ACT of Parliament to amend the Mining Act

ENACTED by the Parliament of Kenya as follows—

1. This Act may be cited as the Mining (Amendment) Act, 2023. Short title.
  
2. The Mining Act, in this Act referred to as the “principal Act”, is amended in the long title by inserting the words “to establish the Mining Regulatory Authority; to establish the Mining Rights Tribunal” immediately after the words “apply to minerals”. Amendment of the long title of No. 12 of 2016.
  
3. Section 2 of the principal Act is amended in subsection (2) by inserting the words in consultation with the Authority,’ immediately after the word ‘Secretary’. Amendment of section 2 of No. 12 of 2016.
  
4. Section 4 of the principal Act is amended by—
  - (a) inserting the following new definitions in proper alphabetical sequence—
 

“Authority” means the Mining Regulatory Authority established under section 30; and

“Tribunal” means the Mining Rights Tribunal established under section 31N.
  - (b) in the definition of “community” by inserting the following new paragraph immediately after paragraph (b)—
  - (c) the people living in a sub-county in which a mineral resource is situated and are affected by the exploitation of such resources.
  - (c) deleting the definition of “artisanal mining” and substituting therefor the following new definition—
 

“artisanal mining” means mining operations—

    - (a) that are carried out by a person, groups or cooperatives using mostly basic equipment and methods, without necessarily any formal training;
    - (b) whose capital investment is not more than one million Kenya shillings; and

(c) where the vertical depth of exploration or excavation is up to thirty meters deep.

(d) deleting the definition "Mineral Rights Board".

5. The principal Act is amended by deleting section 5 and substituting therefor the following new section—

Amendment of section 5 of No. 12 of 2016.

Guiding Principles.

5. The values and principles enshrined in the Constitution and in particular Article 10, 66 (2), 201 (c) and (d) and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution shall apply in the administration of this Act.

6. Section 7 of the principal Act is amended in subsection (2) by deleting the words "Mineral Rights Board" and substituting therefor the word "Authority".

Amendment of section 7 of No. 12 of 2016.

7. Section 9 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 9 of No. 12 of 2016.

8. Section 12 of the principal Act is amended by—

Amendment of section 12 of No. 12 of 2016.

(a) deleting subsection (1); and

(b) deleting subsection (2).

9. Section 13 of the principal Act is amended—

Amendment of section 13 of No. 12 of 2016.

(a) by deleting the marginal note and substituting therefor the following new marginal note—

"Declaration of areas reserved for small scale operations";

(b) in subsection (1) by deleting the words "Mineral Rights Board," and substituting therefor the words "Authority"; and

(c) in subsection (2) by inserting the words "on the recommendation of the Authority" immediately after the words "Cabinet Secretary."

10. Section 14 of the principal Act is amended—

Amendment of  
section 14 of No.  
12 of 2016.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

“Declaration of areas reserved for tendering”;

- (b) in subsection (1) by deleting the words “in a manner as may be prescribed in Regulations” and substituting therefor the words “on recommendation of the Authority, by notice in the *Gazette*”; and

- (c) in subsection (2) by inserting the words “on recommendation of the Authority” immediately after the words “Cabinet Secretary”.

11. Section 15 of the principal Act is amended—

Amendment of  
section 15 of No.  
12 of 2016.

- (a) by deleting the marginal note and substituting therefor the following new marginal note—

“Restriction or exclusion of areas from operations”;

and

- (b) in subsection (1) by deleting the words “Mineral Rights Board” and substituting therefor the words “Authority”.

12. Section 16 of the principal Act is amended—

Amendment of  
section 16 of No.  
12 of 2016.

- (a) in subsection (1) by inserting the words “,on recommendation of the Authority,” immediately after the word “Secretary”; and

- (b) in subsection (3) by deleting the words “Mineral Rights Board” and substituting therefor the word “Authority”.

13. Section 20 of the principal Act is amended—

Amendment of  
section 20 of No.  
12 of 2016.

- (a) in subsection (1) by—
- (i) deleting paragraph (c);
  - (ii) deleting paragraph (d);
  - (iii) deleting paragraph (e);

- (iv) deleting paragraph (f);
  - (v) deleting paragraph (g);
  - (vi) deleting paragraph (j); and
  - (vii) deleting paragraph (l).
- (b) by deleting subsection (2);
  - (c) by deleting subsection (3); and
  - (d) in subsection (4) by deleting the expression “subsection (2) and (3)” and substituting therefor the expression “subsection (1)”.

**14.** Section 21 of the principal Act is amended—

Amendment of section 21 of No. 12 of 2016.

- (a) by deleting paragraph (h); and
- (b) by deleting paragraph (k).

**15.** Section 29 of the principal Act is amended by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

Amendment of section 29 of No. 12 of 2016.

**16.** The principal Act is amended by deleting section 30 and substituting therefor the following new section—

Repeal and replacement of section 30 of No. 12 of 2016.

Establishment of the Authority.

**30.** (1) There is established the Mining Regulatory Authority.

(2) The Authority shall be a body corporate with perpetual succession, a common seal and shall in its corporate name be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
- (c) borrowing and lending money; and
- (d) doing or performing all other things or acts for the furtherance of the provisions of the Act which may be lawfully done or performed by a body corporate.

(3) Except as otherwise provided in this Act, the Authority shall be independent in the performance of its functions, exercise of its powers and shall not be subject to the direction or control of any person or authority.

17. The principal Act is amended by deleting section 31 and substituting therefor the following new sections—

Repeal and replacement of section 31 of No. 12 of 2016.

Functions of the Authority.

31. The Authority shall—

- (a) regulate—
  - (i) exploration, extraction, production, processing, refining, transportation, storage exportation, importation, and sale of minerals; and
  - (ii) production, conversion, distribution, supply, marketing and use of mineral resources;
- (b) provide such information and statistics in relation to mineral exploration and mining operations in Kenya to the Cabinet Secretary as may be required from time to time;
- (c) collect, maintain and manage data on minerals and mining activities in Kenya;
- (d) receive, review and grant an application for a non-exclusive exploration;
- (e) promote capacity building in both mining operations and mineral processing;
- (f) inspect and test any machinery or equipment that has been used, is used, or shall be used in mining operations to ensure and enhance safety;

- (g) assess field development plans and make recommendations to the Cabinet Secretary for approval, amendment or rejection of the plans;
- (h) in coordination with relevant statutory authorities, assess tail-end production and cessation of mining operations and oversee decommissioning by a contractor;
- (i) undertake verification of production to allow for estimation and assessment of royalties and profits due to the National Government; and provide information and data to relevant authorities for collection of taxes and fees;
- (j) work with the relevant statutory authorities to formulate, enforce and review environmental, health, safety and quality standards for the mining sector;
- (k) ensure that contractors uphold the relevant laws, regulation, and terms of mining agreements;
- (l) take such action as is necessary to enforce the requirements in a mining agreement or any regulations and to protect the environment, the health and safety of workers and the public;
- (m) prescribe the form and way any application for any authority, consent or approval under the law relating to mineral activities shall be made;
- (n) enforce local content requirements;
- (o) issue operational permits and non-exclusive exploration permits in accordance with the law relating to



mining and mineral related activities;

- (p) maintain accurate data and provide such information on data and statistics to the Cabinet Secretary as the Cabinet Secretary may from time to time require; and
- (q) perform such other functions may be assigned by the Cabinet Secretary, this Act or any other written law.

Powers of the Authority.

31A. (1) The Authority shall have all powers necessary for the performance of its functions under this Act and in particular, the Authority shall have the power to—

- (a) issue, renew, modify, suspend or revoke licences and permits for all undertakings and activities in the mining sector;
- (b) set, review and approve contracts, tariffs and charges for common user mining logistics facilities and mining products;
- (c) prescribe the form and manner in which any application for any authority, licence, consent or approval under this Act shall be made and the fees payable in respect of such application;
- (d) make and enforce directions to ensure compliance with this Act and with the conditions of licenses issued under this Act;
- (e) issue orders in writing requiring acts or things to be performed or done, prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled;

- (f) formulate, set, enforce and review environmental, health, safety and quality standards for the energy sector in coordination with other statutory authorities;
- (g) investigate and determine complaints or disputes between parties over any matter relating to licences and licence conditions under this Act;
- (h) enter, inspect and search any premises which any undertaking relating to mining operations, where an offence is being committed or is suspected to have been committed;
- (i) inspect, take soil samples or specimens of rocks, concentrate, tailings or minerals from any licence or permit area for the purpose of examination or assay;
- (j) break up the surface of the land for the purpose of ascertaining the rocks or minerals within or under it; and dig up any land and fix any post, stone, mark or object to be used in the survey of such land;
- (k) examine books, accounts, vouchers, logs, journals, documents or records of any kind required to be kept under this Act, the terms and conditions of any mineral right, permit, licence or mineral agreement and taking copies of such books, accounts, vouchers, documents or records;
- (l) impose such sanctions and fines not exceeding one hundred thousand shillings per violation per day for a maximum of thirty days;

- (m) impose such sanctions and civil fines not exceeding five hundred thousand shillings per violation per day to secure compliance with orders issued under the law relating to mining; and
- (n) take or remove, for analysis, testing or for use in evidence in connection with the commission of an offence under the law relating to mining, samples of minerals or other substances from any area where any mining operations are being carried on.

(2) In exercising the powers under subsections (1) a duly authorized officer of the Authority shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(3) A person whose land or property is damaged as a result of the exercise of the powers under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

Board of the  
Authority.

**31B.** (1) The management of the Authority shall vest in the Board of Directors of the Authority consisting of—

- (a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;
- (b) the Principal Secretary responsible for matters relating to mining;
- (c) the Principal Secretary responsible for matters relating to environment;
- (d) the Principal Secretary responsible for the National Treasury;

- (e) the Chairperson of the National Land Commission;
- (f) the Attorney-General or a representative appointed in writing;
- (g) one person who has relevant qualifications or experience in mining, geology, geophysics or engineering, nominated by the Council of Governors;
- (h) two persons, not being public officers, with professional qualifications and experience in the mining industry, one representing the civil society; and
- (i) the Director-General, who shall be an *ex-officio* member.

(2) The Cabinet Secretary shall appoint, by notice in the *Gazette*, the persons under subsection (1) (g) and (h).

(3) A person shall be qualified for appointment as a chairperson or member of the Board if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university, in geology, geophysics, mining, engineering, economics, business administration or law;
- (c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(4) A person shall not be qualified for appointment as a chairperson or member of the Board, if that person—

- (a) is an undischarged bankrupt;

- (b) suffers from physical or mental infirmity which renders him or her incapable of discharging the function of the Board; and
- (c) has been convicted of an offence whose term of imprisonment exceeds six months.

(5) The chairperson and members of the Board appointed under subsection (1) (g) and (h) shall hold office for a period of three years and may be eligible for re-appointment for one further term.

(6) Appointments under this section shall reflect gender balance as well as regional and ethnic diversity of the people of Kenya.

Vacancy.

31C. The office of the chairperson or a member of the Board shall become vacant if the holder —

- (a) dies;
- (b) resigns from office by notice in writing addressed to the appointing authority;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Board without good cause; or
- (f) is removed from office for any of the following grounds—
  - (i) violation of the Constitution or any other written law;
  - (ii) gross misconduct;
  - (iii) inability to perform functions of the office arising

out of physical or mental infirmity;

(iv) incompetence or neglect of duty; or

(v) bankruptcy.

Remuneration and allowances.

**31D.** The chairperson and members of the Board and the staff of the Authority shall be paid such remuneration or allowances as the Authority may, on the advice of the Salaries and Remuneration Commission, determine.

Procedure of the Board.

**31E.** (1) The business and affairs of the Board shall be conducted in accordance with the Third Schedule.

(2) Except as provided in the Third Schedule, the Board may regulate its own procedure.

Committees of the Board.

**31F.** (1) The Board may, for the effective discharge of its functions, establish committees.

(2) The Board may co-opt into the membership of a committee established under subsection (1), a person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Authority.

(3) A person co-opted into a committee under subsection (2) may attend the meetings of the committee and participate in its deliberations, but shall not vote at such meeting.

Director-General.

**31G.** (1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Director-General for the Authority.

(2) A person shall be qualified for appointment as the Director-General to the Board if the person—

(a) is a citizen of Kenya;

- (b) holds a Master's degree from a university recognized in Kenya;
- (c) has had at least ten years proven experience at management level;
- (d) has experience in mining, geology and related fields; and
- (e) meets the requirements of Chapter Six of the Constitution.

(3) The Director-General shall serve on such terms and conditions as the Board may determine.

(4) The Director-General shall hold office for a term of five years but may be eligible for re-appointment.

(5) The Director-General shall, in the performance of the functions and duties of office, be responsible to the Board.

(6) The Director-General shall—

- (a) be the Chief Executive Officer of the Authority;
- (b) be the accounting officer of the Authority; and
- (c) be responsible for—
  - (i) carrying into effect the decisions of the Board;
  - (ii) supervision of the staff of the Authority; and
  - (iii) performing such other duties as may be assigned by the Board.

(7) The Director-General may be removed from office by the Board in accordance with the terms and condition of service, for—

- (a) inability to perform functions of the office arising out of physical or mental infirmity;

- (b) gross misconduct;
- (c) incompetence or negligence of duty;
- (d) violation of the Constitution and any other written law; or
- (e) any other grounds specified in the terms and conditions of service of secretary.

(8) Where the question of the removal of the Director-General under subsection (7) arises, the Board shall—

- (a) inform the Director-General in writing of the reasons for the intended removal; and
- (b) give the Director-General the opportunity to be heard in accordance with the principles of fair administrative action prescribed under Article 47 of the Constitution.

*Corporation Secretary.*

**31H.** (1) The Board shall, through an open, transparent and competitive recruitment process, appoint a suitably qualified person to be the Corporation Secretary to the Board.

(2) The Corporation Secretary shall be responsible for arranging the business of the Board, keeping records of proceedings of the board and shall perform such other duties as the Board may direct.

(3) In performance of his or her duties, the Corporation Secretary shall be responsible to the Director-General.

(4) The Board may in the absence of the Corporation Secretary appoint any member of the Board or staff to temporarily perform the functions of the secretary under subsection (2).

*Seal of the Authority.*

**31I.** (1) The seal of the Authority shall be such device as may be determined by the



Board and shall be kept in such a manner that the Board may determine.

(2) The affixing of the seal shall be authenticated by the chairperson or any other person authorized in that behalf by resolution of the Board.

(3) Any document purporting to be under the seal of the Authority or issued on behalf of the Board shall be admissible in evidence in the absence of any proof to the contrary and shall be deemed to be so executed or issued, as the case may be, without further proof.

Protection from personal liability.

**31J.** Nothing done by a member of the Authority or by any person working under the instructions of the Board shall, if done in good faith for the purpose of executing the powers, functions or duties of the Authority under the Constitution or this Act, render such member or officer personally liable for any action, claim or demand.

Funds of the Authority, annual estimates and books of account.

**31K.** (1) The funds of the Authority shall consist of—

- (a) levies not exceeding one half of a percent on the sales of electricity and petroleum products;
- (b) licence fees;
- (c) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;
- (d) such monies as may be provided by Parliament for the purposes of the Authority;
- (e) any revenues generated from any proprietary interest held by the Authority whether movable or immovable;

- (f) interest from bank deposits; and
- (g) all monies from any other source provided for or donated or lent to the Authority.

(2) Any monies collected by the Authority including levies, fines and penalties in exercise of its functions shall be paid into the Consolidated Fund.

(3) The financial year of the Authority shall be the period of twelve months ending on the thirtieth day of June in each year.

(4) The annual estimates, books of accounts, audits and reports shall be prepared in accordance with the provisions of the Public Audit Act, 2015 and any other relevant laws.

Decisions of the Authority.

31L. (1) The Authority shall within sixty days from the date of receipt of a request by an applicant, make its decision on any matter before it.

(2) A decision of the Authority shall be in writing and any order given and reasons thereof shall be served upon all parties to the proceedings and may be published in the *Gazette* as prescribed by regulations.

(3) The Authority shall, within seven days of making a decision, communicate such decision to the parties involved.

(4) All orders of the Authority shall become effective on the date of entry thereof, and shall be complied with within the time prescribed therein.

(5) Where the Authority does not make a decision as provided in subsection (1) the appellant may appeal to the Tribunal within seven days of the expiry of the prescribed period.

Appeal against a decision of the Authority.

31M. (1) A person aggrieved by a decision of the Authority may appeal to the

Tribunal within thirty days of receipt of the decision.

(2) Notwithstanding subsection (1), the Tribunal may entertain an appeal after the expiry of the thirty-day period if it is satisfied that there was sufficient cause for not filing it within that period.

Mining Rights  
Tribunal.

31N. (1) There is established the Mining Rights Tribunal which shall comprise of the following members—

- (a) a chairperson, nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya;
- (b) an advocate of the High Court of Kenya nominated by the Law Society of Kenya; and
- (c) three persons with demonstrated competence in mining matters, including land, energy, mining, water and maritime affairs.

(2) All appointments to the Tribunal shall be by name and by *Gazette* Notice issued by the Chief Justice.

(3) The members of the Tribunal shall be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.

(4) A member of the Tribunal shall hold office for a term of three years and shall be eligible for re-appointment for one further term.

(5) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of appointment;
- (b) if the member accepts any office the holding of which, if he or she

were not a member of the Tribunal, would make him ineligible for appointment to the office of a member of the Tribunal:

- (c) if the member is removed from membership of the Tribunal by the Chief Justice for failure to discharge the functions of his or her office or for gross misconduct; or
- (d) if the member resigns from the office of member of the Tribunal.

(6) The members of the Tribunal shall, at their first meeting, elect from amongst themselves a vice-chairperson to the Tribunal.

(7) The chairperson and vice-chairperson shall be of opposite gender.

(8) In the absence of the chairperson, the vice-chairperson shall serve as the acting chairperson for the duration of the absence of the chairperson and the acting chairperson shall perform such functions and exercise such powers as if that person were the chairperson.

(9) The quorum for hearing or determining any cause or matter before the Tribunal under this Act shall be three members.

(10) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(11) There shall be paid to the chairperson and the members of the Tribunal such remuneration and allowances as the Chief Justice, on the recommendation of the Salaries and Remuneration Commission, shall determine.

(12) The Chief Justice may make rules—

- (a) prescribing the manner in which an appeal shall be made to the Tribunal and the fees to be paid in respect of all appeals;
- (b) prescribing the procedure to be adopted by the Tribunal in hearing an appeal and the records to be kept by the Tribunal;
- (c) prescribing the manner in which the Tribunal shall be convened and places where and the time at which the sittings shall be held; and
- (d) generally for the better carrying out of the provisions of this Act relating to the Tribunal and appeals made to it.

Jurisdiction.

**310.** (1) Any person who is aggrieved by—

- (a) the grant, refusal, revocation, suspension or variation of a licence or permit under this Act;
- (b) the imposition of any condition, limitation or restriction on the person's licence or permit under this Act;
- (c) the amount of money required to be paid as under this Act; or
- (d) any decision of the Authority relating to mining rights, may within twenty-eight days after the occurrence of the decision, made under subsection (1) which the person is dissatisfied, appeal to the Tribunal in such manner as may be prescribed by the Tribunal.

(2) Unless otherwise expressly provided in this Act, where this Act

empowers the Director-General, the Authority or committees of the Authority to make a decision, the decision may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Authority in the proceedings in connection with which the appeal is brought;
- (c) make such other order, including orders to enhance the principles of sustainable development and an order for costs, as it may deem just;
- (d) if satisfied upon application by any party, issue orders maintaining the status quo of any matter or activity which is the subject of the appeal until the appeal is determined;
- (e) if satisfied upon application by any party, review any orders made under paragraph (a).

*Proceedings of the  
Tribunal.*

**31P.** (1) The Tribunal shall not be bound by the rules of evidence as set out in Evidence Act (Cap. 80).

(2) The Tribunal shall, upon an appeal made to it in writing by any party or a referral made to it by the Authority on any matter relating to this Act, inquire into the matter and make an award, give directions, make orders or make decisions thereon, and every award, direction, order or decision made shall be notified by the Tribunal to the parties concerned, the Authority or any

relevant committee thereof, as the case may be.

(3) The Tribunal shall sit at such times and in such places as it may appoint.

(4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(5) Except as expressly provided in this Act or any regulations made thereunder, the Tribunal shall regulate its proceedings as it deems fit.

(6) Any person who is a party to the proceedings before the Tribunal may appear in person or be represented by an advocate.

Awards of the Tribunal.

31Q. (1) The Tribunal may—

- (a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act as it deems necessary or expedient;
- (b) take evidence on oath and may for that purpose administer oaths or affirmations; or
- (c) on its own motion summon and hear any person as witness.

(2) Any person who—

- (a) fails to attend the Tribunal after having been required to do so under subsection (1)(a);
- (b) refuses to take oath or affirmation before the Tribunal or being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

- (c) knowingly gives false evidence or information which he or she knows to be misleading before the Tribunal; or
- (d) at any sitting of the Tribunal—
  - (i) willfully insults any member or officer of the Tribunal;
  - (ii) willfully interrupts the proceedings or commits any contempt of the Tribunal;
  - (iii) fails or neglects to order, direction or notice confirmed by the Tribunal, commits an offence under this Act.

Appeals to the High Court

**31R.** (1) A person aggrieved by a decision or order of the Tribunal may, within fourteen days of such decision or order, appeal against such decision or order to the High Court.

(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced, until the appeal has been determined.

(3) Notwithstanding the provisions of subsection (2), where the Director-General is satisfied that immediate action must be taken to avert serious injuries, the Director-General shall have the power to take such reasonable action to stop, alleviate or reduce such injury, including the powers to close down any undertaking, until the appeal is finalized or the time for appeal has expired.

(4) The decision of the High Court on any appeal under this section shall be final.

Power to appoint assessors.

**31S.** The chairperson of the Tribunal may appoint persons with special skills or knowledge on mining matters which are the subject matter of any proceedings or inquiry



before the Tribunal to act as assessors in an advisory capacity in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Protection from personal liability.

**31T.** (1) The chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of; and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal.

(2) It shall be an offence for any person to engage in acts or make omissions amounting to contempt of the Tribunal and the Tribunal may punish such person for contempt in accordance with the provisions of this Act.

Secretary and staff of the Tribunal.

**31U.** The Chief Justice shall appoint the secretary to the Tribunal and such other staff of the Tribunal as may be necessary for the performance of its functions.

**18.** Section 32 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “Cabinet Secretary, on recommendation of the Mineral Rights Board” and substituting therefor the word “Authority”; and
- (b) in subsection (4) by deleting the words “Mineral Rights Board” and substituting therefor the word “Authority”.

Amendment of section 32 of No. 12 of 2016.

**19.** Section 33 of the principal Act is amended—

Amendment of section 33 of

- (a) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority";
- (b) in subsection (2) by deleting the words "shall, on recommendation of the Mineral Rights Board";
- (c) by deleting subsection (3); and
- (d) in subsection (7) by deleting the words "High Court within thirty days" and substituting therefor the word "Tribunal".

No. 12 of 2016.

**20. Section 34 of the principal Act is amended—**

Amendment of  
section 34 of  
No. 12 of 2016.

- (a) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority";
- (b) in subsection (4) by inserting the words "potentially impacted by the grant of a license" immediately after the word "community"; and
- (c) in subsection (5) by deleting the words "through the mineral Rights Board".

**21. Section 36 of the principal Act is amended—**

Amendment of  
section 36 of No.  
12 of 2016.

- (a) in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority";
- (b) in subsection (2)—
- (i) by deleting the words "Mineral Rights Board shall, prior to recommending to the Cabinet Secretary the grant of" and substituting therefor the words "Authority shall prior to granting a"; and
- (ii) in paragraph (h) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority"; and
- (c) in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

22. Section 37 of the principal Act is amended by—

Amendment of section 37 of No. 12 of 2016.

- (a) deleting the words “prospecting and mining right” wherever they appear and substituting therefor the words “mining licence, mining permit or artisanal permit”; and
- (b) by inserting the following new subsection immediately after subsection (3)—

(4) For avoidance of doubt, an applicant for a mining right shall only require consent prior to commencing mining operations.

23. Section 38 of the principal Act is amended by—

Amendment of section 38 of No. 12 of 2016.

- (a) deleting the words “prospecting and mining right” wherever they appear and substituting therefor the words “mining licence, mining permit or artisanal permit”; and
- (b) by inserting the following new subsection immediately after subsection (3)—

(3A) For avoidance of doubt, an applicant for a mining right shall only require consent prior to commencing mining operations.

24. Section 40 of the principal Act is amended in subsection (1) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 40 of No. 12 of 2016.

25. Section 41 of the principal Act is amended in subsection (1) by deleting the words “Cabinet secretary” and substituting therefor the word “Authority”.

Amendment of section 41 of No. 12 of 2016.

26. Section 42 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 42 of No. 12 of 2016.

27. Section 43 of the principal Act is amended in subsection (2) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 43 of No. 12 of 2016.

28. Section 45 of the principal Act is amended by deleting the words “Principal Secretary” and substituting therefor the word “Authority”.

Amendment of section 45 of No. 12 of 2016.

29. Section 46 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 46 of No. 12 of 2016.

30. Section 49 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 49 of No. 12 of 2016.

31. Section 51 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 51 of No. 12 of 2016.

32. Section 52 of the principal Act is amended by deleting the words "Mineral Rights Board" and substituting therefor the word "Authority".

Amendment of section 52 of No. 12 of 2016.

33. Section 53 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 53 of No. 12 of 2016.

34. Section 54 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 54 of No. 12 of 2016.

35. Section 55 of the principal Act is amended in subsection (1) by inserting the words "in consultation with the Authority" immediately after the word "Secretary".

Amendment of section 55 of No. 12 of 2016.

36. Section 57 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 57 of No. 12 of 2016.

37. Section 58 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 58 of No. 12 of 2016.

38. Section 61 of the principal Act is amended—

Amendment of section 61 of No. 12 of 2016.

(a) in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority";

(b) by deleting subsection (2) and substituting therefor the following new subsection—

(2) An applicant for a reconnaissance licence shall provide the Authority with information on the area in respect in which the reconnaissance licence is sought and any other information required by the Authority as may be prescribed by Regulations.

(c) in subsection (3)—

- (i) by deleting the words 'Cabinet Secretary, on recommendation of the Mineral Rights Board' and substituting therefor the word "Authority"; and
- (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
  - (b) adequate technical competence and geological expertise to carry on the reconnaissance operations;

39. Section 62 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 62 of No. 12 of 2016.

40. Section 63 of the principal Act is amended by deleting the words "is not" and substituting therefor the words "shall be".

Amendment of section 63 of No. 12 of 2016.

41. Section 66 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 66 of No. 12 of 2016.

42. Section 67 of the principal Act is amended—

Amendment of section 67 of No. 12 of 2016.

(a) in subsection (1)—

- (i) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority";
- (ii) by deleting paragraph (a);
- (iii) by deleting paragraph (b);
- (iv) by deleting paragraph (c);
- (v) by deleting paragraph (i);
- (vi) by deleting paragraph (j); and
- (vii) by deleting paragraph (k);

(b) by deleting subsection (2); and

(c) in subsection (3) by deleting the words "area-based annual charge" and substituting therefor the words "annual fee".

43. The principal Act is amended by deleting section 68.

Repeal of section 68 of No. 12 of 2016.

44. Section 69 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 69 of No. 12 of 2016.

45. The principal Act is amended by deleting section 70.

Repeal of section 70 of No. 12 of 2016.

46. Section 71 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" wherever it appears and substituting therefor the word "Authority".

Amendment of section 71 of No. 12 of 2016.

47. Section 72 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 72 of No. 12 of 2016.

48. Section 76 of the principal Act is amended in subsection (1), in paragraph (b) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 76 of No. 12 of 2016.

49. Section 77 of the principal Act is amended—

Amendment of section 77 of No. 12 of 2016.

(a) in subsection (1)—

(i) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority";

(ii) in paragraph (g) by deleting the words by the Cabinet Secretary or an authorized officer and

(b) by deleting subsection (2).

50. Section 79 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 79 of No. 12 of 2016.

51. Section 80 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 80 of No. 12 of 2016.

52. Section 81 of the principal Act is amended—

Amendment of section 81 of No. 12 of 2016.

(a) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority"; and

(b) in subsection (4) by deleting the words "Cabinet Secretary on the recommendation of the Mineral

Rights Board” and substituting therefor the word “Authority”.

53. Section 82 of the principal Act is amended—

Amendment of section 82 of No. 12 of 2016.

- (a) in subsection (1)(c) by deleting the words “environmental audit reports” and substituting therefor the words “environmental management and rehabilitation plan”;
- (b) in subsection (2) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”; and
- (c) in subsection (3) by deleting the words “Cabinet Secretary on the recommendation of the Mineral Rights Board” and substituting therefor the word “Authority”.

54. Section 84 of the principal Act is amended—

Amendment of section 84 of No. 12 of 2016.

- (a) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”; and
- (b) in subsection (1)—
  - (i) in paragraph (a) by deleting the words “number of blocks, but a minimum of one hundred and twenty-five blocks” and substituting therefor the words “area, but a minimum of twenty six point two five square kilometres”; and
  - (ii) by deleting paragraph (b) and substituting therefor the following new paragraph—
    - (b) subject to paragraph (a) discrete areas whose cumulative area is more than half the initial licence area.

55. Section 86 of the principal Act is amended—

Amendment of section 86 of No. 12 of 2016.

- (a) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”; and
- (b) in subsection (3) by deleting the words “Cabinet Secretary on the recommendation of the Mineral Rights Board” and substituting therefor the word “Authority”.

56. Section 87 of the principal Act is amended—

- (a) in subsection (2) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”; and
- (b) in subsection (3) by deleting the words “Cabinet Secretary on the recommendation of the Mineral Rights Board” and substituting therefor the word “Authority”.

Amendment of section 87 of No. 12 of 2016.

57. Section 89 of the principal Act is amended—

- (a) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”; and
- (b) in paragraph (g) by deleting the words “by the Cabinet Secretary or authorized officer”.

Amendment of section 89 of No. 12 of 2016.

58. Section 90 of the principal Act is amended in subsection (2) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 90 of No. 12 of 2016.

59. Section 91 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 91 of No. 12 of 2016.

60. Section 94 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “every county” and substituting therefor the words “counties with mineral resources”; and
- (b) in subsection (2) by deleting paragraph (f).

Amendment of section 94 of No. 12 of 2016.

61. Section 98 of the principal Act is amended in subsection (2) by deleting the words “good mining practices, health and safety rules and pay due regard to the protection of the environment” and substituting therefor the words “good mining practices, international best standards, environment and health and safety laws”.

Amendment of section 98 of No. 12 of 2016.

62. Section 101 of the principal Act is amended by deleting the words “Cabinet Secretary” and substituting therefor with the word “Authority”.

Amendment of section 101 of No. 12 of 2016.

63. Section 102 of the principal Act is amended by deleting the words “Cabinet Secretary” and substituting therefor with the word “Authority”.

Amendment of section 102 of No. 12 of 2016.



64. Section 103 of the principal Act is amended by deleting the words "Cabinet Secretary on the recommendation of the Mineral Rights Board" and substituting therefor with the word "Authority".

Amendment of section 103 of No. 12 of 2016.

65. Section 104 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 104 of No. 12 of 2016.

66. Section 105 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor with the word "Authority".

Amendment of section 105 of No. 12 of 2016.

67. Section 106 of the principal Act is amended

Amendment of section 106 of No. 12 of 2016.

(a) by inserting the following new paragraph immediately after paragraph (i)—

(ia) terms relating to the payment of royalties, taxes, fees and other fiscal impositions.

(b) in paragraph (j) by deleting the words "Cabinet Secretary" and substituting therefor with the word "Authority".

68. Section 109 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 109 of No. 12 of 2016.

69. Section 111 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 111 of No. 12 of 2016.

70. Section 112 of the principal Act is amended—

Amendment of section 112 of No. 12 of 2016.

(a) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority"; and

(b) in subsection (5) by deleting the words "Cabinet Secretary, on recommendation of the Mineral Rights Board" and substituting therefor the word "Authority".

71. Section 113 of the principal Act is amended—

Amendment of section 113 of No. 12 of 2016.

(a) by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority";

(b) in subsection (4) by deleting the words "he or she" and substituting therefor with the word "it"; and

(c) by deleting subsection (5).

72. Section 114 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 114 of No. 12 of 2016.

73. Section 115 of the principal Act is amended in paragraph (d) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 115 of No. 12 of 2016.

74. Section 117 of the principal Act is amended—

Amendment of section 117 of No. 12 of 2016.

(a) in subsection (1) by deleting the words "five hundred million United States dollars" and substituting therefor the words "one hundred million United States dollars"; and

(b) in subsection (2)(i) by deleting the words "an international".

75. Section 118 of the principal Act is amended by deleting the words Mineral Rights Board and substituting therefor the word "Authority".

Amendment of section 118 of No. 12 of 2016.

76. The principal Act is amended by inserting the following new section immediately after section 122—

Insertion of new section 122A in No. 12 of 2016.

Co-existence between large scale and small-scale mining.

**122A.** (1) A holder of a mining license to a large scale operation may sub-contract a segment of a block to a small scale operator or an artisanal mining operator upon notification to and approval from the Authority.

(2) The Cabinet Secretary shall prescribe regulations for purposes of ensuring practical coexistence between the large scale miners, small scale miners and the artisanal miners.

77. Section 125 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 125 of No. 12 of 2016.

78. Section 129 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 129 of No. 12 of 2016.

79. Section 130 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 130 of No. 12 of 2016.

80. Section 132 of the principal Act is amended in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".
81. Section 134 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".
82. Section 136 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".
83. Section 137 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".
84. Section 140 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".
85. Section 141 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".
86. Section 143 of the principal Act is amended by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".
87. Section 144 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".
88. Section 145 of the principal Act is amended—
- (a) in subsection (1) by deleting the words "Cabinet Secretary, on recommendation of the Mineral Rights Board" and substituting therefor the word "Authority"; and
  - (b) in subsection (2) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".
89. Section 147 of the principal Act is amended—
- (a) in subsection (1)—
    - (i) by deleting the words "Cabinet Secretary, on recommendation of the Mineral Rights Board" and substituting therefor the word "Authority";

Amendment of section 132 of No. 12 of 2016.

Amendment of section 134 of No. 12 of 2016.

Amendment of section 136 of No. 12 of 2016.

Amendment of section 137 of No. 12 of 2016.

Amendment of section 140 of No. 12 of 2016.

Amendment of section 141 of No. 12 of 2016.

Amendment of section 143 of No. 12 of 2016.

Amendment of section 144 of No. 12 of 2016.

Amendment of section 145 of No. 12 of 2016.

Amendment of section 147 of No. 12 of 2016.

(ii) on paragraph (b) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”;

(b) in subsection (2) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”; and

(c) in subsection (3) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

**90.** Section 149 of the principal Act is amended by—

*Amendment of section 149 of No. 12 of 2016.*

(a) deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”;

(b) deleting subsection (3);

(c) deleting subsection (4); and

(d) deleting subsection (5).

**91.** Section 150 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

*Amendment of section 150 of No. 12 of 2016.*

**92.** Section 153 of the principal Act is amended—

*Amendment of section 153 of No. 12 of 2016.*

(a) in subsection (2) by deleting the words “relevant Ministry” and substituting therefor the word “Authority”;

(b) in subsection (6) by deleting the words “Cabinet Secretary in accordance with section 129 of this Act” and substituting therefor the words “Authority for a determination”; and

(c) in subsection (8) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

**93.** Section 154 of the principal Act is amended in paragraph (a) by deleting the words “Cabinet Secretary” and substituting therefor with the word the Mining Tribunal.

*Amendment of section 154 of No. 12 of 2016.*

**94.** The principal Act is amended by deleting section 155.

*Repeal of section 155 of No. 12 of 2016.*

95. The principal Act is amended by deleting section 156. Repeal of section 156 of No. 12 of 2016.
96. The principal Act is amended by deleting section 157. Repeal of section 157 of No. 12 of 2016.
97. Section 158 of the principal Act is amended in subsection (1), in paragraph (a) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority". Amendment of section 158 of No. 12 of 2016.
98. Section 160 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority". Amendment of section 160 of No. 12 of 2016.
99. Section 161 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority". Amendment of section 161 of No. 12 of 2016.
100. Section 163 of the principal Act is amended in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority". Amendment of section 163 of No. 12 of 2016.
101. Section 164 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority". Amendment of section 164 of No. 12 of 2016.
102. Section 166 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority". Amendment of section 166 of No. 12 of 2016.
103. Section 167 of the principal Act is amended in subsection (2) by deleting the words Cabinet Secretary and substituting therefor the word "Authority". Amendment of section 167 of No. 12 of 2016.
104. Section 168 of the principal Act is amended in subsection (5) by deleting the words "Cabinet Secretary" and substituting therefore with the word "Authority". Amendment of section 168 of No. 12 of 2016.
105. Section 169 of the principal Act is amended in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefore with the word "Authority". Amendment of section 169 of No. 12 of 2016.
106. The principal Act is amended by deleting section 170. Repeal of section 170 of No. 12 of 2016.
107. Section 171 of the principal Act is amended—
- (a) in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority"; and Amendment of section 171 of No. 12 of 2016.

(b) in subsection (2) by deleting the words "Director of Mines" and substituting therefor the word "Authority".

108. Section 173 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 173 of No. 12 of 2016.

109. Section 175 of the principal Act is amended in subsection (2) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 175 of No. 12 of 2016.

110. Section 180 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 180 of No. 12 of 2016.

111. Section 181 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 181 of No. 12 of 2016.

112. Section 183 of the principal Act is amended—

Amendment of section 183 of No. 12 of 2016.

(a) in subsection (2) by inserting the words "on recommendation of the Authority" immediately after the words "Cabinet Secretary"; and

(b) in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

113. Section 185 of the principal Act is amended in subsection (3) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 185 of No. 12 of 2016.

114. Section 186 of the principal Act is amended in subsection (1) by deleting the words "State Department responsible for collecting royalties" and substituting therefor the word "Authority".

Amendment of section 186 of No. 12 of 2016.

115. Section 187 of the principal Act is amended by deleting the words "Cabinet Secretary" wherever they appear and substituting therefor the word "Authority".

Amendment of section 187 of No. 12 of 2016.

116. Section 188 of the principal Act is amended in subsection (1) by deleting the words "Cabinet Secretary" and substituting therefor the word "Authority".

Amendment of section 188 of No. 12 of 2016.

117. Section 192 of the principal Act is amended—

Amendment of section 192 of No. 12 of 2016.

(a) in subsection (1) by deleting the expression "164" and substituting therefor the expression "191"; and

- (b) in subsection (2) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

118. Section 196 of the principal Act is amended—

Amendment of section 196 of No. 12 of 2016.

- (a) in subsection (1) by inserting the words “on the recommendation of the Authority” immediately after the words “Cabinet Secretary”; and

- (b) in subsection (3) by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

119. Section 197 of the principal Act is amended by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 197 of No. 12 of 2016.

120. Section 200 of the principal Act is amended by inserting the word “the Authority” immediately after the words “Cabinet Secretary”.

Amendment of section 200 of No. 12 of 2016.

121. Section 205 of the principal Act is amended in subsection (1) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 205 of No. 12 of 2016.

122. Section 217 of the principal Act is amended in subsection (2) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”.

Amendment of section 217 of No. 12 of 2016.

123. Section 219 of the principal Act is amended by deleting the words “Cabinet Secretary” and substituting therefor the word “Authority”.

Amendment of section 219 of No. 12 of 2016.

124. Section 222 of the principal Act is amended—

Amendment of section 222 of No. 12 of 2016.

- (a) by deleting the words “Cabinet Secretary” wherever they appear and substituting therefor the word “Authority”; and

- (b) in subsection (3) by deleting the words “and the Director of Geology”.

125. The principal Act is amended by inserting the following new section immediately after section 225—

Insertion of a new section 226 in No. 12 of 2016.

Savings and transition.

226. (1) The chairperson and members of the Mineral Rights Board, shall, at the

commencement of this Act, be deemed as the chairperson and members of the Authority, respectively, for the unexpired period of their term.

(2) Any person who immediately before the commencement of this Act was an officer of the Mineral Rights Board, shall be deemed to be an officer of the Mineral Rights Authority.

(3) Any orders or notices made or issued by the Cabinet Secretary, Director of Mines or the Director of Geological Survey shall be deemed to have been made or issued under this Act.

125. The principal Act is amended by inserting the following new schedule immediately after Second Schedule—

Insertion of a  
new Schedule in  
No. 12 of 2016.



**THIRD SCHEDULE [s.31E]****CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet as often as may be necessary for the dispatch of its business but there shall be at least four meetings of the Board in any financial year. Meetings of the Board.
- (2) A meeting of the Board shall be held on such date and at such time as the Board shall decide.
2. The chairperson shall, on the written application of one-third of the members, convene a special meeting of the Board. Special meetings.
3. Unless the majority of the total membership of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board. Notice of meetings.
4. The quorum for the conduct of business at a meeting of the Board shall be two-thirds of all the members of the Board. Quorum.
5. The chairperson shall preside at every meeting of the Board at which he or she is present and in the absence of the chairperson at a meeting, the vice chairperson, shall preside and in the absence of both the chairperson and the vice-chairperson, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson. Chairperson to preside.
6. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by concurrence of a majority of all the members. Voting procedure.
7. Subject to paragraph 5, no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof. Validity of proceedings.
8. Unless otherwise provided by or under any law, all instruments made by and decisions of the Board shall be signified under the hand of the Chairperson and the Secretary. Instruments.
9. The Board shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose. Minutes.

10. Except as provided by this Schedule, the Board may regulate its own procedure.

Powers of the Board to regulate own procedure.

11. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person or that person's spouse is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or committee otherwise directs, take part in any consideration or discussion of, or vote on any question touching such matter.

Disclosure of interest.

(2) A disclosure of interest made under paragraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A person who contravenes subsection (1) commits an offence and upon conviction shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

(4) A member or employee of the Board shall not transact any business or trade with the Board

## **MEMORANDUM OF OBJECTS AND REASONS**

### **Statement of the objects and reasons for the Bill**

The principal object of this Bill is to amend the Mining Act No. 12 of 2016 in order to provide for separate implementation of the three key functions in the Act: policy formulation, administrative and dispute resolution functions.

The Act as currently is, converges: policy formulation and implementation, day-to-day administration of the Act including obligations owed to the mineral rights holders and dispute resolution at one point. This presents implementation challenges and regulatory uncertainty in the mining sector. Additionally, the Act limits the role of the Mineral Rights Board to only advisory.

The Bill therefore proposes to first, elevate the role of the Cabinet Secretary to provision of policy direction in the sector and prescribing various regulations that are required in the proper implementation of the Act. Secondly, it proposes to establish the Mining Regulatory Authority whose sole mandate is to administer the Act by providing the day-to-day regulatory role in the mining sector by ensuring the mineral rights holders comply with the provisions of the Act and lastly, it proposes to establish the Mining Rights Tribunal whose mandate shall be to resolve disputes relating to mineral rights.

### **Statement on the delegation of legislative power and limitation of fundamental rights and freedoms**

The Bill does not limit any fundamental rights or freedom.

### **Statement on whether the Bill concerns county government**

The Bill does concern County Governments in terms of Article 109(3) of the Constitution and it does affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

### **Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution**

The enactment of this Bill shall occasion additional expenditure of public funds.

Dated the 22nd August, 2023.

**DAVID GIKARIA,**  
*Chairperson, Environment, Forestry  
and Mining Committee.*

*Long title of No. 12 of 2016 which it is proposed to amend—*

AN ACT of Parliament to give effect to Articles 60, 62 (1)(f), 66 (2), 69 and 71 of the Constitution in so far as they apply to minerals; provide for prospecting, mining, processing, refining, treatment, transport and any dealings in minerals and for related purposes.

*Section 2 of No. 12 of 2016 which it is proposed to amend—*

### **Scope of the Act**

(1) This Act shall apply to the minerals specified in the First Schedule.

(2) The Cabinet Secretary may from time to time, by notice in the *Gazette*, amend the First Schedule to this Act.

*Section 4 of No. 12 of 2016 which it is proposed to amend—*

### **Interpretation**

In this Act, unless the context otherwise requires— “application” includes—

- (a) an application for the grant, renewal, transfer, assignment or surrender of a mineral right; or
- (b) an application for the grant or renewal of a mineral dealer’s licence or a diamond dealer’s licence;

“arm’s-length value” means the purchase price under an immediate sale transaction in an open market where the purchase price for the sale—

- (a) is not influenced by any special relationship or other arrangement between the parties to the transaction, other than the immediate sale itself; and
- (b) is not affected by any non-commercial or other considerations; and
- (c) specifically excludes any barter, swap, exchange, or transfer price arrangements or any restricted transaction that is associated with special financial, commercial or other considerations;

“artisanal mining” means traditional and customary mining operations using traditional or customary ways and means;

“artisanal mining permit” means a permit issued under section 95;

“banker” includes a manager, cashier or any other officer acting in that capacity of a company engaged in the business of banking within

Kenya and in compliance with the provisions of the Banking Act (Cap. 488);

“block or cadastral unit” means a pseudo-quadrilateral formed by two meridians of longitude and two parallels of latitude of the Cadastral Graticule spaced fifteen seconds apart;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for mining;

“community” means—

- (a) a group of people living around an exploration and mining operations area; or
- (b) a group of people who may be displaced from land intended for exploration and mining operations;

“Community Development Agreement” means an agreement entered into between a large-scale mining licence holder and a community;

“construction minerals” includes stones, gravel, sands, soils, clay, volcanic ash, volcanic cinder and any other minerals used for the construction of buildings, roads, dams, aerodromes and landscaping or similar works, and such other minerals as the Cabinet Secretary may from time to time declare to be construction minerals, by notice published in the Gazette;

“company” has the meaning assigned to it under the Companies Act;

“Corporation” means the National Mining Corporation established in section 22;

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act (No. 2 of 2012);

“day” means a calendar day;

“diamond” includes a rough and uncut diamond;

“Director of Geological Survey” means the Director of Geological Survey appointed under section 18;

“Director of Mines” mean the Director of Mines appointed under section 18;

“environment” has the meaning assigned to it under the Environmental Management and Coordination Act, 1999 (No. 8 of 1999);

“environmental impact assessment licence” means an environmental impact assessment licence granted under the Environmental Management and Coordination Act, 1999;

“excavation” means a trench, pit, shaft, dredging, brine pumping or other work which is related to operations under a mineral right;

“financial difficulty” in respect of a company or other body corporate, means that the company or body corporate—

- (a) is in liquidation;
- (b) is the subject of a subsisting court order for its winding up or dissolution; or
- (c) has made a composition or arrangement with its creditors which remains in effect;

“first-come, first-served” means the policy of considering and approving applications based on the order of receiving the applications;

“geologist” means a person who is registered as geologist in accordance with the Geologists' Registration Act, 1993 (No. 10 of 1993);

“geology” means the scientific and research aspects of the solid earth and its processes;

“geological report” means a report made by a geologist;

“gross value” means the arm's-length value of minerals or mineral products at the point of sale within Kenya, without any discounts, commissions or deductions;

“groundwater” has the meaning assigned to it under the Water Act (No.8 of 2002);

“holder” in respect of a mineral right, a licence or permit under this Act, means—

- (a) a person to whom a mineral right is granted; or
- (b) the person to whom a mineral right is transferred or assigned;

“inspector of mines” means a public officer who has been appointed in accordance with section 196;

“land” has the meaning assigned to it in Article 260 of the Constitution;

“large scale operation” means a prospecting or mining operation that is a large scale operation in accordance with this Act;

“licence area” means the area or areas of land covered by a prospecting licence, a retention licence or a mining licence under this Act;

“liquidator” has the meaning assigned to it under the Companies Act (No. 17 of 2015);

“maritime zones” has the meaning assigned to it under the Maritime Zones Act (Cap. 371);

“member” means a member of the Board appointed under section 25;

“mine” —

- (a) when used as a noun, includes an excavation or system of excavations made for the purpose of, or in connection with, the extraction of minerals or mineral products, and includes an opencast pit, quarry and any area where a mineral is won by dredging brine pumping, evaporation or other means; and
- (b) when used as a verb, means the carrying out of a mining operation and includes tailing;

“mines support” means—

- (a) contract mining services which include top soil and waste removal, drilling and blasting, excavating and haulage of ore to plant on turnkey basis;
- (b) assay laboratory services;
- (c) drilling and blasting services;
- (d) mineral exploration services for a holder of a mineral right;
- (e) contract mining services for small scale and artisanal mining, which include mining and processing of ore reclamation revegetation and management of mining operations;
- (f) any other services specifically and exclusively related to mining, which the Cabinet Secretary considers necessary for the effective and sustainable development of the mining industry;

“mineral dealer” means any entity or person licenced to carry out mineral dealings;

“mineral dealings” means—

- (a) buying minerals;
- (b) selling minerals;
- (c) bartering minerals;

- (d) depositing or receiving minerals as a pledge or security; or
- (e) cutting, polishing, processing, refining and treating minerals;

“mineral dealer's permit” means a permit issued in accordance with section 164;

“mineral deposit” means a mass of naturally occurring minerals of economic value;

“mine waste and tailings” means the residue of mining operations that includes gravel, sand, slime, or other substances that are discarded in the course of mining operations;

“mineral” means a geological substance whether in solid, liquid or gaseous form occurring naturally in or on the earth, in or under water, in mine waste or tailing and includes the minerals specified in the First Schedule but does not include petroleum, hydrocarbon gases or groundwater;

“mineral agreement” means mineral agreement entered into in accordance with section 117;

“mineral product” for the purposes of royalty a product of mining operations, the product of extraction in mining operations of a metal or a precious mineral from a mineral and the product of beneficiation in mining operations of a mineral, but excluding waste and tailings;

“mineral right” means —

- (a) a prospecting licence;
- (b) a retention licence;
- (c) a mining licence;
- (d) a prospecting permit;
- (e) a mining permit; or
- (f) an artisanal permit;

“Mineral Rights Board” means the Board established under section 30;

“mining area” means an area or areas of land that are covered by a mining licence;

“mining bond” means an obligatory payment or cash deposit that may be required of a mineral right holder as guarantee for the due implementation of an approved mining programme;



“mining permit” means a permit granted in accordance with this Act, which authorises the holder to carry out small scale mining operations;

“mining licence” means a licence relating to large scale operations which authorises the holder to carry out mining operations;

“mining operations” means an operation carried out in connection with a mine—

- (a) to win a mineral from where it occurs;
- (b) to extract metal or precious mineral from a mineral so won, or to beneficiate a mineral so won; or
- (c) to dispose of a mine waste or tailings resulting from winning, extraction or benefaction;

“National Land Commission” means the National Land Commission established under Article 67 of the Constitution;

“permit area” means the area covered by a prospecting permit or a mining permit;

“petroleum” has the meaning assigned to it under the Petroleum (Exploration and Production) Act (Cap. 308);

“precious minerals” means the minerals specified in Part B of the First Schedule;

“precious stones” means the minerals specified in Part C of the First Schedule;

“Principal Secretary” means the Principal Secretary in the State Department for the time being responsible for mining;

“programme for mining operations” in respect of a mining licence means—

- (a) a programme of an intended mining operation prepared by the holder of the licence and approved by the Director of Mines on the grant or renewal of the licence; or
- (b) where the programme is amended pursuant to this Act, means the programme as so amended;

“programme for prospecting operations” means a programme of intended prospecting operations prepared by the applicant for a prospecting licence and approved by the Cabinet Secretary on the grant or renewal of the licence, and where the programme is amended pursuant to this Act means the programme as so amended;

“prospecting area” means the area or areas of land covered by a prospecting permit or licence;

“prospecting licence” means licence relating to large scale operations which authorises the holder to carry out prospecting operations;

“prospecting operations” means operations carried out offshore and on land to search for and define the extent of a mineral deposit and to determine its economic value;

“prospecting permit” means a permit relating to small scale operations which authorises its holder to carry out prospecting operations;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“Public Service Commission” means the Public Service Commission established under Article 233(1) of the Constitution;

“radioactive mineral” means a mineral that contains by weight at least one twentieth of one per cent (0.05 %) of uranium or thorium or any combination thereof, including, but not limited to, monazite sand and other ores containing thorium, carnotite and pitchblende;

“reconnaissance” means the operations and works to carry out the nonintrusive search for mineral resources by geophysical surveys, geochemical surveys, photo geological surveys or other remote sensing techniques and surface geology in connection therewith, but excludes drilling and excavations;

“reconnaissance area” means an area that is subject to a reconnaissance licence;

“reconnaissance licence” means a licence granted under section 61 of this Act;

“register” means the register of mineral rights established under this Act;

“retention area” means the area or areas of land covered by a retention licence;

“retention licence” means a retention licence granted under this Act;

“small scale operation” means a prospecting or mining operation as described by the Second Schedule to this Act;

“strategic minerals” means minerals declared to be strategic minerals under this Act;

“transfer” includes to assign or trade;

“unwrought precious metal” means precious metal in any form whatsoever, which is not manufactured or made up into an article of industry or of the arts, and includes amalgam, slimes, slags, precious metal concentrates, pots, battery chips, sweepings from reduction works and scrapings and byproduct of unrefined precious metal and precious metal which has been smelted into the form of bullion but does not include ore in situ; and

“water resource” has the meaning assigned to it under the Water Act, 2002 (No. 8 of 2002).

*Section 5 of No. 12 of 2016 which it is proposed to amend—*

### **Guiding Principles**

The Cabinet Secretary, the Principal Secretary and any person administering this Act shall be guided by the values and principles enshrined in the Constitution and in particular Articles 10, 66 (2), 201 (c) and (d) and 232 of the Constitution and the principles of leadership and integrity set out under Chapter Six of the Constitution.

*Section 7 of No. 12 of 2016 which it is proposed to amend—*

### **Saving for custom**

(1) Nothing in this Act shall prevent any person from taking, subject to such conditions as may be prescribed from time to time by the Cabinet Secretary, soil, clay iron, salt or soda from any land, except land within the area of a mineral right, from which it has been the custom of the member of the community to which that person belongs to take the same.

(2) The Cabinet Secretary may, by notice in the Gazette, and with the advice of the Mineral Rights Board, prescribe materials of customary usage.

*Section 9 of No. 12 of 2016 which it is proposed to amend—*

### **Discovery of minerals**

(1) A person who discovers any minerals, for which there is no apparent holder of a mineral right or on any area of land which is not held by that person under a mineral right that confers rights on the holder to conduct prospecting or mining operations for minerals, shall report the discovery to the Cabinet Secretary.

(2) The Cabinet Secretary shall, immediately upon receipt of a report under subsection (1) issue to the person an acknowledgement in writing of the receipt of the report.

(3) Subject to sub-section (1), a person who reports the discovery of

any mineral shall be granted the first right of refusal to apply for a mineral right over the area of discovery.

*Section 12 of No. 12 of 2016 which it is proposed to amend—*

### **General powers of the Cabinet Secretary**

(1) The Cabinet Secretary shall be responsible for the general administration of this Act.

(2) In the administration of this Act, the Cabinet Secretary shall respect and uphold the principles and values enshrined in Article 201 (c) and (d); and Article 69(1) (a) and (h) of the Constitution.

(3) Unless otherwise provided for in this Act, the Cabinet Secretary shall make Regulations to prescribe the procedure for—

- (a) consideration of the applications made under this Act; and
- (b) negotiation, grant, revocation, suspension or renewal of mineral rights.

*Section 13 of No. 12 of 2016 which it is proposed to amend—*

### **Cabinet Secretary may declare areas reserved for small-scale operations**

(1) The Cabinet Secretary shall upon recommendation of the Mineral Rights Board, by notice in the Gazette, designate any area of land to be an area reserved exclusively for small scale mining operations.

(2) The Cabinet Secretary may designate an area to be an area reserved exclusively for small scale and artisanal mining operations, if—

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; or
- (b) written consent has been given by an authority, agency, the Cabinet Secretary or other person required to do so under this Act.

(3) This section does not affect the right of an owner or a lawful occupier of the area covered by the mining permit to undertake non-mining operations or activities in any area to which it applies.

*Section 14 of No. 12 of 2016 which it is proposed to amend—*

### **Cabinet Secretary may declare areas reserved for tendering**

(1) The Cabinet Secretary shall, in a manner as may be prescribed in Regulations, designate any area of land to be an area reserved for applications by tender for large scale operations.

(2) The Cabinet Secretary may designate any area of land to be an area reserved for applications by tender for large scale operations, if—

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; and
- (b) written consent has been given by an authority, agency, the Cabinet Secretary or any other person required to do so under this Act.

*Section 15 of No. 12 of 2016 which it is proposed to amend—*

#### **Cabinet Secretary may restrict or exclude areas from operations**

The Cabinet Secretary shall upon recommendation of the Mineral Rights Board, by notice in the Gazette, exclude such areas as may be specified in the notice to be areas excluded from the operations under a mineral right or in which such operations are restricted, if—

- (a) designating the area would not be incompatible with the continued enjoyment of an existing mineral right; or
- (b) written consent has been given by an authority, agency, the Cabinet Secretary or any other person required to do so under any written law.

*Section 16 of No. 12 of 2016 which it is proposed to amend—*

#### **Strategic Minerals**

(1) The Cabinet Secretary shall advise and seek the approval of the Cabinet to declare certain minerals or mineral deposits to be strategic minerals or strategic mineral deposits.

(2) All radioactive minerals are strategic minerals.

(3) The Cabinet Secretary may, with the advice of the Mineral Rights Board, prescribe the manner for dealing with the discovery, exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

*Section 20 of No. 12 of 2016 which it is proposed to amend—*

#### **Functions of the Director of Mines**

(1) The Director of Mines shall, through the Principal Secretary, be responsible to the Cabinet Secretary for—

- (a) the day to day operation of the Directorate of Mines;
- (b) promoting the effective and efficient management and the development of mineral resources, and the mining sector;

- (c) exercising regulatory administration and supervision over all prospecting, mining, processing, refining and treatment operations, transport and any dealings in minerals, including import and export of minerals;
- (d) ensuring compliance with conditions relating to mineral rights;
- (e) ensuring compliance with the requirements of this Act;
- (f) making any lawful orders as are necessary for the performance of the functions and duties under this Act;
- (g) reviewing, assessing and approving prospecting and mining programmes;
- (h) preparing the necessary reports required under this Act;
- (i) facilitating access to information by the public, subject to any confidentiality restrictions;
- (j) carrying out investigations and inspections necessary to ensure compliance with the provisions of this Act;
- (k) providing advice and support to holders of mineral rights on proper and safe mining methods;
- (l) exercising regulatory administration and supervision over the use of commercial explosives in accordance with the Explosives Act (Cap. 115);
- (m) providing advice during the negotiation of mineral agreements;
- (n) promoting co-operation among state agencies, county governments, the private sector, research bodies, non-governmental organizations and other organizations which are engaged in programmes related to mining and activities to enhance the administration and operation of this Act;
- (o) advising on the development of policy to ensure compliance with international conventions and national policies relating to the sustainable development of the mineral resources and ensure that mining operations take into account local and community values; and
- (p) performing such other functions as may be assigned by the Cabinet Secretary, this Act or any other written law.

(2) The Director of Mines or a duly authorized officer may, at all reasonable times, enter upon any land, licence area, permit area or mine, or any premises for the purpose of—

- (a) inspecting such area, premises or workings and examining prospecting or mining operations or the processing, refining and treatment of minerals being carried out thereat;
- (b) ascertaining whether the provisions of this Act are being complied with;
- (c) taking soil samples or specimen of rocks, ore, concentrates, tailings or minerals situated upon such area, premises or workings for the purpose of examination or assay;
- (d) examining books, accounts, vouchers, logs, journals, documents or records of any kind required to be kept under this Act, the terms and conditions of any mineral right, permit, licence or mineral agreement and taking copies of such books, accounts, vouchers, documents or records; or
- (e) obtaining such other information as deemed necessary.

(1) The Director of Mines or a duly authorised officer may, with respect to the health and safety of persons employed by a holder of a mineral right—

- (a) issue directions in writing; or
- (b) impose restrictions, including temporarily suspending any prospecting or mining operation on the holder or any person so employed.

(2) In exercising the powers under subsections (2) and (3), the Director or a duly authorised officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(3) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Mines under subsection (1) is entitled to fair, prompt and full compensation for such damage in accordance with this Act.

*Section 21 of No. 12 of 2016 which it is proposed to amend—*

#### **Functions of the Director of Geology**

(1) The Director of Geological Survey shall, through the Principal Secretary, be responsible to the Cabinet Secretary for—

- (a) the day-to-day operation of the Directorate of Geological Survey;
- (b) providing geoscience expertise and data to the government on all matters related to geology and the development of minerals;

- (c) undertaking geological, geophysical, geochemical, seismological and hydro-geological surveys, investigations and mapping aimed at defining the character and distribution of rocks and superficial deposits and determining the mineral potential of Kenya;
  - (d) conducting geo-environmental studies;
  - (e) monitoring of seismic activities and mapping of areas of potential geohazards;
  - (f) conducting geological analysis and valuations;
  - (g) developing a national repository of geo-science information through the compilation, publication and dissemination of information and data concerning the geology and mineral resources of Kenya and facilitate access to this information by the general public;
  - (h) promoting private sector interest and investment in mineral exploration by providing geological information and services to prospective investors;
  - (i) maintaining a laboratory, library and record facilities as may be necessary for the discharge of the functions;
  - (j) providing geoscience expertise in evaluations of prospecting and mining applications;
  - (k) providing support to the Director of Mines in relation to exercising regulatory administration and supervision over all prospecting and mining operations;
  - (l) undertaking audits of mineral right holders' geological sampling and assaying processes; and
  - (m) performing any other function as may be assigned by the Cabinet Secretary, this Act or any other written law.
- (2) In the performance of his duties, the Director of Geological Survey or a duly authorised officer may—
- (a) enter any licence or permit area;
  - (b) upon informing the lawful owner or legal occupant, enter into or upon any land for the purpose of carrying out surveys;
  - (c) take soil samples or specimens of rocks, concentrate, tailings or minerals from any licence or permit area for the purpose of examination or assay;
  - (d) break up the surface of the land for the purpose of ascertaining the rocks or minerals within or under it; and



- (e) dig up any land and fix any post, stone, mark or object to be sued in the survey of such land.

(3) In exercising the powers under subsection (2), the Director or a duly authorized officer shall ensure that as little damage or inconvenience as possible is caused to the legitimate owner or lawful occupier of the land in respect of which the powers are exercised.

(4) A person whose land or property is damaged as a result of the exercise of the powers of the Director of Geology under subsection (1) shall be entitled to fair, prompt and full compensation for such damage in accordance with this Act.

*Section 29 of No. 12 of 2016 which it is proposed to amend—*

#### **Access to geoscience information**

The Cabinet Secretary shall ensure that—

- (a) a database of geoscience and information is kept and maintained; and
- (b) is made available to the public on request.

*Section 30 of No. 12 of 2016 which it is proposed to amend—*

#### **Mineral Rights Board**

- (1) There is established a Mineral Rights Board.
- (2) The Mineral Rights Board shall comprise of—
  - (a) a chairperson with demonstrable knowledge and experience of the minerals and mining sector, who shall be appointed by the President;
  - (b) the Principal Secretary responsible for matters relating to mining;
  - (c) the Principal Secretary responsible for the National Treasury;
  - (d) one person who has relevant qualifications or experience in mining, geology, geophysics or engineering, nominated by the Council of County Governors;
  - (e) the Chairperson of the National Land Commission;
  - (f) the Director of Mines who shall be the secretary to the Mineral Rights Board;
  - (g) the Director of Geological Surveys; and

(h) two persons with professional qualifications and experience in the mining industry.

(3) The Cabinet Secretary shall appoint the persons under subsection (2) (d) and (h) who shall serve a period of three years.

(4) A person shall be qualified for appointment as a chairperson or member of the Mineral Rights Board if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a recognized university, in geology, geophysics, mining, engineering, economics, business administration or law;
- (c) has experience in the mining sector of not less than ten years in the case of the chairperson and five years in the case of any other member; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(5) A person shall not be qualified for appointment as a Chairperson or member of the Mineral Rights Board, if that person—

- (a) is an undischarged bankrupt;
- (b) suffers from physical or mental infirmity which renders him or her incapable of discharging the function of the Mineral Rights Board; and
- (c) has been convicted of an offence whose term of imprisonment exceeds six months.

(6) The Chairperson and members of the Mineral Rights Board appointed under subsection (2) (a) and (h) shall hold office for a period of three years and may be eligible for re-appointment for one further term.

*Section 31 of No. 12 of 2016 which it is proposed to amend—*

#### **Functions of the Mineral Rights Board**

(1) The functions of the Mineral Rights Board shall be to advise and give recommendations, in writing, to the Cabinet Secretary on—

- (a) the grant, rejection, retention, renewal, suspension, revocation, variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements;
- (b) the areas suitable for small scale and artisanal mining;
- (c) the areas where mining operations may be excluded and restricted;
- (d) the declaration of certain minerals as strategic minerals;

- (e) cessation, suspension, or curtailment of production in respect of mining licences;
- (f) fees, charges and royalties payable for a mineral right or mineral; and
- (g) any matters which under this Act, are required to be referred to the Mineral Rights Board.

(2) The Mineral Rights Board may for the purpose of facilitating the performance of its functions establish such number of committees to advise the Mineral Rights Board on matters relating to mining and minerals.

*Section 32 of No. 12 of 2016 which it is proposed to amend—*

#### **Categories of mineral right**

(1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may grant, deny or revoke a mineral rights.

(2) A mineral right may be granted in respect of a large scale operation or small scale operation.

(3) The following licences and permits may be granted for a mineral right under this Act to authorise a mineral right holder to engage in—

(a) large scale operations which shall include—

- (i) reconnaissance licence;
- (ii) a prospecting licence;
- (iii) a retention licence;
- (iv) a mining licence; or

(b) small scale operations, which shall include—

- (i) a prospecting permit; or
- (ii) a mining permit.

(4) The Cabinet Secretary may on the recommendation of the Mineral Rights Board, by notice in the Gazette, designate any other mineral right which may be granted under this Act.

*Section 33 of No. 12 of 2016 which it is proposed to amend—*

#### **Feedback on status of applications for large scale operations**

(1) A person shall make an application for a mineral right in the prescribed manner to the Cabinet Secretary.

(2) The Cabinet Secretary shall, on the recommendation of the Mineral Rights Board, approve or reject an application—

- (a) within ninety days in the case of an application for prospecting licence or reconnaissance licence; or
- (b) within one hundred and twenty days in the case of an application for a mining licence.

(3) Subject to sub-section (2), the Cabinet Secretary shall notify the Mineral Rights Board of the decision to approve or reject an application before notifying the applicant.

(4) Subject to subsection (2), the Cabinet Secretary shall notify the applicant in writing whether the application has been accepted or rejected.

(5) Where the application is approved, the applicant shall by notice in writing accept or reject the offer for grant of the mineral right within twenty-one days from the date of receipt of notification of the approval.

(6) Where the applicant does not notify the Cabinet Secretary of the acceptance of the offer, the approval of the application shall lapse after twenty-one days.

(7) An applicant who is aggrieved by the decision of the Cabinet Secretary may appeal to the High Court within thirty days.

*Section 34 of No. 12 of 2016 which it is proposed to amend—*

#### **Mineral right applications**

(1) The Cabinet Secretary shall, on receipt of the application, give notice in writing of the pending application for the grant of a mineral right to—

- (a) the land owner or lawful occupier of the land where the mineral is located;
- (b) the community; and
- (c) the relevant county Government.

(2) The Cabinet Secretary shall, on receipt of the application, publish notice of the pending application in a newspaper of wide circulation at the applicant's expense.

(3) A notice given under sub-section (1) shall—

- (a) state the proposed boundaries of the land in relation to which an application for a mineral right is made; and
- (b) be published, for twenty one days in the Gazette and in the offices of the County Government within which county the land is situated.

(4) Subject to sub-section (3), a person or community may object to the grant of a licence—

- (a) within twenty one days in the case of an application for a prospecting licence; and
- (b) within forty two days in the case of an applications for a mining licence.

(5) The Cabinet Secretary shall hear and determine any objection to an application under subsection (4) through the Minerals Rights Board.

*Section 36 of No. 12 of 2016 which it is proposed to amend—*

**Mineral rights in excluded and restricted areas**

(1) The Cabinet Secretary shall not grant a mineral right which authorises prospecting or mining operations on—

- (a) any land specified by the Cabinet Secretary, by notice in the Gazette, to be land upon which such operations are excluded or restricted; or
- (b) an area of which is subject to an existing permit or licence.

(2) The Mineral Rights Board shall, prior to recommending to the Cabinet Secretary the grant of a mineral right, require the applicant to seek—

- (a) approval of the National Land Commission, in relation to public land;
- (b) the approval of the relevant State agency where that mineral right is on public land under Article 62 (1)(b) of the Constitution;
- (c) the approval of the appropriate Cabinet Secretary or other authority, where the area in respect of which a mineral right is sought is dedicated or set apart as a place of burial, religious significance, as a public building, or for any other public purpose;
- (d) the Governor of the respective county exercising control where the land is situated within a town, municipality or trading centre;
- (e) the Cabinet Secretary responsible for matters relating to wildlife conservation and management, where the land is situated within a marine park, a national park or a local sanctuary under the Wildlife (Conservation and Management) Act (No. 47 of 2013);
- (f) the Cabinet Secretary responsible for matters relating to the environment, where the land is situated within a protected area, a protected natural environment, or a protected coastal zone under

the Environmental Management and Coordination Act (No. 8 of 1999);

- (g) the Director of the Kenya Forest Service, where the land is situated within a forest area or; operations on, under or over an area, that has been declared a forest area under the Forests Act (No. 7 of 2005);
- (h) any other person who in the opinion of the Cabinet Secretary would otherwise be affected by the grant of a mineral right, who may include the owner of private land or the community in occupation of the land.

(3) The Cabinet Secretary shall determine any questions as to whether operations on any land are excluded under this section.

*Section 37 of No. 12 of 2016 which it is proposed to amend—*

### **37. Mineral rights on private land**

(1) A prospecting and mining rights shall not be granted under this Act with respect to private land without the express consent of the registered owner, and such consent shall not be unreasonably withheld.

(2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the owner of private land has entered into—

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

(3) Where consent is granted prior to any change in land ownership, such consent shall continue to be valid for as long as the prospecting and mining rights subsists.

*Section 38 of No. 12 of 2016 which it is proposed to amend—*

### **38. Mineral rights on community land**

(1) A prospecting and mining rights shall not be granted under this Act or any other written law over community land without the consent of—

- (a) the authority obligated by the law relating to administration and management of community land to administer community land; or

(b) the National Land Commission in relation to community land that is unregistered.

(2) For the purpose of subsection (1), consent shall be deemed to be given for the purposes of this Act where the registered owners of community land have entered into—

(a) a legally binding arrangement with the applicant for the prospecting and mining rights or with the Government, which allows the conduct of prospecting or mining operations; or

(b) an agreement with the applicant for the prospecting and mining rights concerning the payment of adequate compensation.

(3) Subject to the law relating to community land, where consent is granted prior to any change in land ownership, such consent shall be valid for as long as the prospecting and mining rights subsists.

(4) The Cabinet Secretary may, by notice in the Gazette, make regulations for the grant of prospecting and mining rights over community land.

*Section 40 of No. 12 of 2016 which it is proposed to amend—*

#### **Compulsory acquisition of land for prospecting and mining**

(1) The Cabinet Secretary may take steps under the law relating to the compulsory acquisition of land or rights or interests in land, to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government, where the consent required under sections 36, 37 or 38 is—

(a) unreasonably withheld; or

(b) the Cabinet Secretary considers that withholding of consent is contrary to the national interest.

(2) Subject to sub-section (1), the land or area shall cease to be land excluded from prospecting or mining.

*Section 41 of No. 12 of 2016 which it is proposed to amend—*

#### **Tendering for mineral rights**

(1) The Cabinet Secretary shall invite parties to tender in respect of large-scale operations over an area or areas of land designated under section 14.

(2) The Cabinet Secretary shall in consultation with the National Treasury and subject to the law relating to public procurement, make Regulations to provide for tendering guidelines.

*Section 43 of No. 12 of 2016 which it is proposed to amend—*

**Directions concerning good mining practice**

(1) A holder of a mineral right shall not—

- (a) engage in wasteful mining or treatment practices; or
- (b) conduct his operations otherwise than in accordance with this Act, best industry practice and any other guidelines as shall be prescribed from time to time by the Cabinet Secretary.

(2) The Cabinet Secretary or an officer authorised by the Cabinet Secretary, may issue directions to the holder of a mineral right requiring the holder to undertake measures necessary to—

- (a) prevent wasteful mining practices; or
- (b) ensure that prospecting or mining operations are carried out in accordance with mining best practice, the Act or guidelines under this Act.

(3) The holder of a mineral right shall comply with any direction given under this Act.

(4) A person who does not comply with the provisions of this section commits an offence.

*Section 45 of No. 12 of 2016 which it is proposed to amend—*

**Registered address**

A holder of a mineral right and any agent appointed by the holder of a mineral right shall register with the Principal Secretary an address in Kenya to which all communications and notices made under this Act to the mineral right holder or agent may be sent.

*Section 46 of No. 12 of 2016 which it is proposed to amend—*

**Employment and training of Kenyans**

(1) To ensure skills transfer to and capacity building for the citizens, the holder of a mineral right shall submit to the Cabinet Secretary a detailed programme for the recruitment and training of citizens of Kenya in a manner as may be prescribed by the Cabinet Secretary.

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

(3) The Cabinet Secretary shall make regulations to provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens.



(4) The Cabinet Secretary shall issue policy guidelines making further provision to give effect to this section.

*Section 48 of No. 12 of 2016 which it is proposed to amend—*

**Government participation in mining licence**

(1) Where a mineral right is for a large scale mining operation, the State shall acquire ten percent free carried interest in the share capital of the right in respect of which financial contribution shall not be paid by the State.

(2) The provisions of sub-section (1) shall apply to large scale mining operations and to mining operations relating to strategic minerals.

(3) Subsection (1) shall not preclude the State from any other or further participation in mining and operations which shall be agreed with the holder at arm's length.

(4) The Cabinet Secretary shall make regulations to provide for state participation in mining or prospecting operations between the Government and the holder of a mineral right.

*Section 49 of No. 12 of 2016 which it is proposed to amend—*

**Local equity participation**

(1) The Cabinet Secretary shall prescribe the limits of capital expenditure for the purpose of this section.

(2) A holder of a mining licence whose planned capital expenditure exceeds the prescribed amount shall list at least twenty percent of its equity on a local stock exchange within three years after commencement of production.

(3) The holder of a mining licence may apply in writing to the Cabinet Secretary to execute an equitable alternative mechanism that will allow the company to meet the requirement set in subsection (1), including an extension of time.

(4) The Cabinet Secretary, may after consultation with the National Treasury extend the period set out in subsection (2), for reasons that the market conditions do not allow for a successful completion of the offering in the local stock exchange.

*Section 51 of No. 12 of 2016 which it is proposed to amend—*

**Assignments, transfers, mortgage and trade of mineral rights**

(1) The holder of a mineral right shall not assign, transfer, mortgage or trade such right or part thereof without the consent of the Cabinet Secretary on recommendation of the Mineral Rights Board.

(2) The Cabinet Secretary shall not unreasonably withhold consent to assign, transfer, mortgage or trade a mineral right and shall inform an applicant of the decision within thirty days of receipt of an application to assign, transfer, mortgage or trade a mineral right.

(3) The Cabinet Secretary shall not consent to a proposed assignment, transfer, mortgage or trade of a mineral right to a person or a body corporate which is not eligible for the grant of a mineral right under this Act.

(4) Prior to assignment, transfer, mortgage or trade of a mineral right, and within thirty days from the date of receiving consent, the holder of such right shall notify the Kenya Revenue Authority of the transfer of an interest in a mineral right.

(5) The Cabinet Secretary shall not register the interest of the transferee until the transferor produces evidence of compliance with the relevant tax provisions.

(6) Subject to this Act, the holder of a mineral right shall notify the Cabinet Secretary of any significant proposed change in the ownership or control of the mining company with any single interest exceeding twenty-five percent interest in the licence.

(7) A proposed change shall not take effect until it has been approved by the Cabinet Secretary.

(8) The Cabinet Secretary shall not refuse to grant approval, except for valid reasons.

(9) The transferee as well as the transferor of a mineral right shall be liable for the payment of all rent and compensation which may have accrued, and the observance of all obligations imposed by the licence up to the date of the transfer in respect of the licence or part thereof so transferred, but the transferor shall not be liable for the payment of any future rents and compensation or the compliance with any obligations so imposed as aforesaid in regard to the licence or part thereof so transferred after the date of the transfer.

*Section 52 of No. 12 of 2016 which it is proposed to amend—*

#### **Preparation of reports**

The Mineral Rights Board shall prepare and submit a report on each application for a mineral right to the Cabinet Secretary.

*Section 53 of No. 12 of 2016 which it is proposed to amend—*

### **Annual financial reports**

(1) The holder of a mineral right shall, within three months following the end of each financial year, furnish the Cabinet Secretary and the Kenya Revenue Authority with a copy of audited annual financial statements, in accordance with International Accounting Standards.

(2) The Cabinet Secretary shall prescribe the form and contents of the annual financial statements.

*Section 54 of No. 12 of 2016 which it is proposed to amend—*

### **Power to require additional information**

(1) The holder of a mineral right, or an applicant for the grant or renewal of a mineral right, shall provide such additional information to the Cabinet Secretary as may be reasonably required for consideration of the application.

(2) The Cabinet Secretary shall request for information by written notice to the holder of the mineral right.

(3) Where the Cabinet Secretary requires additional information to be provided under subsection (1), an application for the grant or renewal of a mineral right shall be deemed to be incomplete until the mineral right holder furnishes the additional information to the Cabinet Secretary.

*Section 55 of No. 12 of 2016 which it is proposed to amend—*

### **55. Report by the Cabinet Secretary**

(1) The Cabinet Secretary shall submit an annual report, to Cabinet, of all mineral rights granted or rejected under this Act or any other written law.

(2) The report submitted under subsection (1) shall indicate the justification for granting or rejecting a mineral right under this Act or any other written law.

*Section 57 of No. 12 of 2016 which it is proposed to amend—*

### **Treatment of applications**

(1) The Cabinet Secretary shall extend the term of a mineral right that has expired by effluxion of time—

(a) where the mineral right is for a prospecting licence and the holder is awaiting a decision on an application made in accordance with this Act for—

(i) the renewal of the licence; or

(ii) a retention licence or a mining licence that applies to the whole, or a part, of the area covered by the prospecting licence.

- (b) where the mineral right is for a retention licence and the holder is awaiting a decision on an application made in accordance with this Act for—
  - (i) the renewal of the licence; or
  - (ii) a mining licence; or
- (c) where the mineral right is for a mining licence or a mining permit and the holder is awaiting a decision on an application for renewal of the mineral right made in accordance with this Act.

(2) An extension of the term of a mineral right in accordance with subsection (1) shall end immediately if an application for any of the mineral rights mentioned in this section is surrendered or is refused.

*Section 58 of No. 12 of 2016 which it is proposed to amend—*

#### **Conditions for grant of mineral rights for large scale operations**

The Cabinet Secretary shall only grant or renew a mineral right for a large scale operation where the applicant has complied with the provisions of this Act.

*Section 61 of No. 12 of 2016 which it is proposed to amend—*

#### **Application for a reconnaissance licence**

(1) An application for reconnaissance licence shall be submitted to the Cabinet Secretary in the prescribed form with the prescribed fee.

(2) An applicant for a reconnaissance licence shall provide the following information to the Cabinet Secretary—

- (a) the area in respect in which the reconnaissance licence is sought;
- (b) the proposed programme for the reconnaissance operations to be carried out;
- (c) details of the technical expertise and financial resources to be used in the conduct of the reconnaissance operations;
- (d) a plan outlining the proposals for procurement of local goods and services by the applicant; and
- (e) any other information required by the Cabinet Secretary as may be prescribed by Regulations.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board shall grant a reconnaissance licence, if—

- (a) the size area of land on which the reconnaissance licence is sought is reasonable and in line with the programme of operations proposed by the applicant;

- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of reconnaissance operations;
- (c) the local product plan by the applicant with respect to the procurement of locally available goods and services is acceptable; and
- (d) the local employment plan by the applicant with respect to employment and training of Kenyan citizens is acceptable.

*Section 62 of No. 12 of 2016 which it is proposed to amend—*

**Maximum area of reconnaissance licence**

(1) The maximum area covered by a reconnaissance licence shall be a block or any number of blocks not exceeding five thousand contiguous blocks each having a side in common with at least one block the subject of the application.

(2) Notwithstanding the number of blocks that may be granted under sub-section (1), nothing in this Act shall prevent the government from conducting any reconnaissance over the total land offshore area of Kenya or such lesser area as the Cabinet Secretary may approve.

(3) A person or company may hold only one reconnaissance licence or such number of licences as the Cabinet Secretary shall prescribe in Regulations.

*Section 63 of No. 12 of 2016 which it is proposed to amend—*

**63. Term of a reconnaissance licence**

The term of a reconnaissance licence shall not exceed two years and is not renewable.

*Section 66 of No. 12 of 2016 which it is proposed to amend—*

**Minerals obtained under reconnaissance licence**

Any mineral acquired in the course of reconnaissance operations under reconnaissance licence shall be the property of the National Government and shall not be disposed of or removed from Kenya without the written consent of the Cabinet Secretary.

*Section 67 of No. 12 of 2016 which it is proposed to amend—*

**Obligations under reconnaissance licence**

- (1) The holder of a valid reconnaissance licence shall—
  - (a) commence reconnaissance within three months of grant of the licence;

- (b) carry out reconnaissance in accordance with the approved programme of reconnaissance operations;
- (c) expend on reconnaissance in accordance with the programme of reconnaissance, not less than such amount as may be specified in the reconnaissance licence;
- (d) not engage in drilling, excavation or other subsurface exploration techniques;
- (e) inform and consult on an ongoing basis with the national and county government authorities and communities about the reconnaissance operations that require physical entry onto the land within their jurisdiction;
- (f) not enter land that is excluded from the reconnaissance licence;
- (g) compensate users of land for damage to land and property resulting from reconnaissance operations in the licence area;
- (h) not remove any mineral from reconnaissance area except for the purpose of having such mineral analysed, valued or tested;
- (i) ensure that the amount of work and amount of expenditure as specified in the approved programme or reconnaissance operations is actually expended in the course of undertaking reconnaissance operations within the mandated deadlines stipulated in the plan and reported in the reports that may be required by the relevant Regulations;
- (j) notify the Cabinet Secretary without any unreasonable delay of the discovery of any mineral deposit of potential commercial use;
- (k) notify the Cabinet Secretary of any archaeological discovery;
- (l) comply with the conditions of the licence and any directions issued by the Cabinet Secretary or authorised officer in accordance with the Act;
- (m) submit to the Cabinet Secretary geological and financial reports and such other information relating to reconnaissance operations as may be prescribed;
- (n) carry out reconnaissance in accordance with the international good practice standards and any guidelines as may be prescribed;
- (o) remove within sixty days of the expiration of the reconnaissance licence, any camps, temporary buildings or machinery erected or installed by the holder and repair or otherwise make good any damage to the surface of the ground occasioned by such removal to the satisfaction of the Cabinet Secretary or a duly appointed officer.

(2) Where the expenditure specified in the approved programme of reconnaissance operations in sub-section (1) (c) is not expended during the term of the reconnaissance licence, any shortfall shall be paid to the Ministry of Mining in a manner as prescribed by the Cabinet Secretary.

(3) A reconnaissance licence is subject to an area-based annual charge as may be prescribed

(4) A reconnaissance licence is not transferable.

*Section 68 of No. 12 of 2016 which it is proposed to amend—*

### **68. Form of reconnaissance licence**

(1) A reconnaissance licence issued in accordance with this Act shall include—

- (a) an approved programme of reconnaissance including an expenditure commitment;
- (b) an approved plan for the procurement of local goods and services;
- (c) an approved plan to employ and train citizens of Kenya; and
- (d) any other conditions applying to the licence.

*Section 69 of No. 12 of 2016 which it is proposed to amend—*

### **Record-keeping and reporting requirements**

(1) The holder of reconnaissance licence shall keep complete and accurate records of the reconnaissance operations at the registered office of the holder in the prescribed manner.

(2) The records of a reconnaissance operations shall include—

- (a) details of all minerals discovered;
- (b) the results of geological, geochemical, geophysical or airborne surveys obtained and compiled by the holder;
- (c) financial statements and books of accounts as the Cabinet Secretary may by notice require; and
- (d) any other reports or information as may be prescribed or otherwise determined by the Cabinet Secretary.

(3) The holder of a reconnaissance licence shall submit six-monthly and annual reports on reconnaissance operations in the form prescribed in guidelines.

*Section 70 of No. 12 of 2016 which it is proposed to amend—*

**Amendment of programme for reconnaissance**

The holder of a reconnaissance licence may make an application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for reconnaissance.

*Section 71 of No. 12 of 2016 which it is proposed to amend—*

**Right to surrender reconnaissance licence**

(1) The holder of a reconnaissance licence may, upon application in the prescribed form and manner and upon meeting prescribed conditions, surrender the licence.

(2) Upon surrender, the holder of a reconnaissance licence shall submit all records, reports, results, data and interpretation arising from the reconnaissance operations to the Cabinet Secretary which shall become the property of the State, and the holder shall not trade or otherwise divulge information to any third party without the express permission of the Cabinet Secretary.

*Section 72 of No. 12 of 2016 which it is proposed to amend—*

**Application for prospecting licence**

(1) A person may apply for a prospecting licence to the Cabinet Secretary in the prescribed form and accompanied by the prescribed fee.

(2) An applicant for a prospecting licence shall provide the following information to the Cabinet Secretary—

- (a) the mineral or minerals in respect of which the licence is sought;
- (b) the area in respect of which the licence is sought;
- (c) particulars of the proposed programme for prospecting operations to be carried out under the licence;
- (d) details of the experience and financial resources available to the applicant to be able to conduct the prospecting operations;
- (e) a plan giving particulars of the proposals by the applicant with respect to the employment and training of Kenyan citizens; and
- (f) a plan giving particulars of the proposals by the applicant with respect to the procurement of local goods and services.

(3) The Cabinet Secretary shall not grant a prospecting licence unless he is satisfied that—

- (a) the size area of land over which the prospecting licence is sought is reasonable having regard to the proposed programme of prospecting operations by the applicant;



- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry on the proposed programme of prospecting operations;
- (c) the applicant has submitted an environmental rehabilitation and restoration plan;
- (d) the local product plan by the applicant with respect to the procurement of locally available goods and services are acceptable, and
- (e) the employment plan by the applicant with respect to employment and training of Kenyan citizens are acceptable.

(4) The Cabinet Secretary shall prescribe the items required to be submitted by the applicant where an application for the prospecting licence is approved under this Act.

*Section 76 of No. 12 of 2016 which it is proposed to amend—*

#### **Minerals obtained under prospecting licence**

(1) Any mineral acquired in the course of prospecting operations under a prospecting licence—

- (a) is the property of the National Government; and
- (b) shall not be disposed of or removed from Kenya without the written consent of the Cabinet Secretary.

(2) Subsection (1) (b) shall not apply to the prescribed quantity required for sampling, assaying, analysis or other similar examination.

*Section 77 of No. 12 of 2016 which it is proposed to amend—*

#### **Obligations under prospecting licence**

- (1) The holder of a prospecting licence shall—
  - (a) commence prospecting operations within three months of the grant of the prospecting licence or a period specified in the approved programme for prospecting operation;
  - (b) undertake prospecting operations in accordance with the approved programme of prospecting operations;
  - (c) ensure that the amount of work and expenditure specified in the approved programme of prospecting operations is actually expended in the course of undertaking prospecting operations within the deadlines stipulated;
  - (d) comply with the terms and conditions of the environmental rehabilitation and restoration plan;

- (e) without any unreasonable delay, notify the Cabinet Secretary of the discovery of any mineral deposit of potential commercial value including mineral deposits for which the holder of the licence was not authorised to prospect;
- (f) notify the Cabinet Secretary of any archaeological discovery;
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
- (h) submit to the Cabinet Secretary geological and financial reports and such other information relating to prospecting operations as may be prescribed either quarterly or at such other intervals as may be determined by the Cabinet Secretary; and
- (i) carry out prospecting activities in accordance with the international best practice standards and guidelines as may be prescribed.

(2) Where the expenditure specified in the approved programme for prospecting operations in sub-section (1) (c) is not expended during the term of a prospecting licence, it shall be paid to the ministry in a manner as may be prescribed by Regulations made under this Act.

*Section 79 of No. 12 of 2016 which it is proposed to amend—*

#### **Record-keeping and reporting requirements**

(1) The holder of a prospecting licence shall keep complete and accurate records of the prospecting operations at the registered office of the holder in the manner prescribed.

(2) For the purpose of sub-section (1), records of the prospecting operations include—

- (a) details of all minerals discovered;
- (b) the results of geochemical or geophysical analysis obtained and compiled by the holder;
- (c) financial statements and books of accounts as the Cabinet Secretary may by notice require; and
- (d) any other reports or information as may be prescribed or otherwise determined by the Cabinet Secretary.

*Section 80 of No. 12 of 2016 which it is proposed to amend—*

### **Amendment of programme for prospecting operations**

The holder of a prospecting licence may make a written application in the prescribed form to the Cabinet Secretary for approval to amend the approved programme for prospecting operations.

*Section 81 of No. 12 of 2016 which it is proposed to amend—*

### **Renewal of prospecting licence**

(1) The holder of a prospecting licence may apply to the Cabinet Secretary for the renewal of the prospecting licence in respect of an area of land that forms part of the prospecting area.

(2) An application under this section shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(3) An application for the renewal of a prospecting licence shall be made three months before the expiry of the term of the current prospecting licence.

(4) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, shall respond to an application for the renewal of a prospecting licence within sixty days of receipt of the application.

(5) Where an application has been made and the Cabinet Secretary fails to respond before the expiry of the prospecting licence, the applicant may continue the prospecting operations until the application is determined.

*Section 82 of No. 12 of 2016 which it is proposed to amend—*

### **Application for renewal of prospecting licence**

(1) An application for the renewal of a prospecting licence shall be accompanied by—

- (a) a report on the progress of the prospecting operations;
- (b) a statement of the costs incurred in the course of undertaking prospecting operations;
- (c) particulars of the programme for prospecting operations that the applicant proposes to carry out during the renewal period, including an estimate of expenditure;
- (d) a plan showing the area of land in respect of which renewal is sought; and
- (e) proof of submission and approval of environmental audit reports relating to the initial application and the application for renewal, to the National Environmental Management Authority.

(2) Where an applicant does not provide a plan in accordance with subsection (1) (d), the Cabinet Secretary shall determine the area in respect of which renewal shall be granted.

(3) The Cabinet Secretary shall only renew a prospecting licence, where the applicant demonstrates compliance with this Act.

*Section 84 of No. 12 of 2016 which it is proposed to amend—*

#### **Relinquishment, consolidation etc.**

(1) Unless the Cabinet Secretary agrees that a smaller area may be relinquished, the size of the area specified in a prospecting licence shall be reduced upon renewal—

- (a) by not less than one half the number of blocks, but a minimum of one hundred and twenty five blocks shall subject to the licence; or
- (b) where the blocks form not more than three discrete areas, each consisting of a single block or a number of contiguous blocks each having a side in common with at least one other block in that area.

(2) Where a person or company holds two or more contiguous prospecting licences of the same term and in respect of the same mineral or minerals, the Cabinet Secretary may, for the purposes of relinquishment of part or any of the areas thereof, declare the areas covered by such licence to be one area subject to a single prospecting licence and provide written notification to the holder of the prospecting licence.

(3) A person shall not be paid compensation in respect of the relinquishment of land provided for under this Act or where the land formed part of the prospecting area under a prospecting licence.

*Section 86 of No. 12 of 2016 which it is proposed to amend—*

#### **Application for retention licence**

(1) The holder of a prospecting licence may apply for a retention licence by making an application to the Cabinet Secretary in the prescribed form and accompanied by the prescribed fee.

(2) An applicant for a retention licence shall provide information to the Cabinet Secretary in the prescribed form in accordance with subsection (1)—

- (a) the mineral or mineral deposit in respect of which the licence is sought;
- (b) a full study and assessment by an independent expert on—
  - (i) the prospects for recovery;

- (ii) the commercial significance of the mineral deposit;
  - (iii) the relevant adverse market conditions, economic factors, technical constraints or any other factors that may make it impossible to develop the mineral deposit immediately;
  - (c) the area in respect of which the licence is sought;
  - (d) particulars of any proposed prospecting operations to be carried out under the licence;
  - (e) details of the experience and financial resources available to the applicant for the development of the mineral when the relevant adverse market conditions, economic factors, technical constraints or other factors which make it impossible to develop the mineral cease to exist;
  - (f) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens; and
  - (g) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services.
- (3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, shall only grant a retention licence, if—
- (a) the application is reasonable having regard to the study and assessment referred to in sub-section (2)(b);
  - (b) the applicant has adequate financial resources, technical competence and mining industry experience to develop the mineral deposit once the relevant adverse market conditions, economic factors, technical constraints or other factors that make it impossible to develop the mineral deposit cease to exist;
  - (c) the applicant has obtained an environmental and social impact assessment licence and an environmental management plan which relates to the operations to be carried out under the retention licence where required under the Environment Management and Coordination Act;
  - (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable; and
  - (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable.
- (4) The Cabinet Secretary may require the applicant to provide any additional information which may be reasonably required regarding the applicant's proposal for the retention and development of the mineral deposits covered by the application.

(5) Where an applicant does not respond to a request for additional information in accordance with subsection (4), the Cabinet Secretary shall reject the application.

*Section 87 of No. 12 of 2016 which it is proposed to amend—*

#### **Term of retention licence**

(1) The term of a retention licence shall be specified in the licence, and shall not exceed two years.

(2) The holder of a retention licence may, at any time but not later than three months before expiration of the initial term of the licence, apply to the Cabinet Secretary for a renewal of the retention licence in the prescribed manner.

(3) The Cabinet Secretary, on the recommendation of the Mineral Rights Board shall grant a renewal of the term of the licence for a further period not exceeding two years.

*Section 89 of No. 12 of 2016 which it is proposed to amend—*

#### **Obligations under retention licence**

The holder of a retention licence shall—

- (a) demarcate the licence area in such manner as may be prescribed;
- (b) back fill or otherwise make safe in the prescribed manner or as otherwise directed by the Cabinet Secretary any excavations made during the course of prospecting operations;
- (c) permanently preserve, or otherwise make safe in the prescribed manner or as otherwise directed by the Cabinet Secretary, any boreholes made during the course of prospecting operations;
- (d) comply with the terms and conditions of the environmental restoration, rehabilitation and heritage plan;
- (e) remove any equipment, plant or building erected for prospecting operations in the area specified in the licence;
- (f) carry out such studies and assessments of the prospects of the commercial exploitation of the mineral deposits concerned as may reasonably be required by the Cabinet Secretary; and
- (g) comply with the conditions of the licence or any existing and applicable minerals agreement, and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act.

*Section 90 of No. 12 of 2016 which it is proposed to amend—*

**Record-keeping and reporting requirements**

(1) The holder of a retention licence shall keep at the registered office, complete and accurate records of prospecting operations relating to the licence in the manner prescribed.

(2) The records to be kept by the holder of a retention licence for the purposes of subsection (1) shall include—

- (a) details of all minerals discovered;
- (b) results of geochemical or geophysical analysis obtained and compiled by the licence holder;
- (c) results of studies, surveys, tests and other work undertaken in the area covered by the Retention Licence, including any interpretation and assessment of those tests and surveys;
- (d) financial statements and such other books of account as the Cabinet Secretary may prescribe; and
- (e) such other reports and information as may be prescribed or otherwise determined by the Cabinet Secretary.

*Section 91 of No. 12 of 2016 which it is proposed to amend—*

**Compulsion to apply for mining licence by retention licence holder**

(1) The Cabinet Secretary may issue written notice to the holder of the retention licence requiring the holder to apply for a mining licence in respect of the minerals specified in the notice before the end of the period specified in the licence.

(2) The Cabinet Secretary shall issue a notice under sub-section (1) if he is satisfied, based on an independent report, that it has become technically possible and commercially viable for a mineral deposit that is the subject of a retention licence to be mined during the term of the licence.

(3) Where the holder of a retention licence fails to comply with a notice served in accordance with subsection (1), the Cabinet Secretary shall give such holder thirty days' notice to show cause as to why the retention licence should not be revoked.

(4) Where no response is received within the period specified in subsection (3), the Cabinet Secretary shall revoke the retention licence.

(5) The holder of a retention licence shall not be entitled to compensation, if a retention licence is revoked under this section.

*Section 94 of No. 12 of 2016 which it is proposed to amend—*

#### **Artisanal Mining Committee**

(1) There shall be established in every county an Artisanal Mining Committee.

(2) An Artisanal Mining Committee shall comprise of—

- (a) a representative of the Governor who shall be the chairperson of the committee;
- (b) the representative of the Director of Mines who shall be the secretary;
- (c) three persons not being public officers and elected by the association of artisanal miners in the county;
- (d) a representative of the inspectorate division of the Ministry;
- (e) a representative of the National Environment Management Authority; and
- (f) a representative of the county land board.

(3) The Committee shall advise the representative of the Director of Mines in the granting renewal or revocation of artisanal mining permits.

(4) The members of the Committee shall hold office for a period and on such terms and conditions as may be determined in the instrument of appointment.

*Section 98 of No. 12 of 2016 which it is proposed to amend—*

#### **Operations of Artisanal Miners**

(1) A holder of an artisanal permit may mine and produce minerals in an effective and efficient method.

(2) The holder of an artisanal permit shall observe good mining practices, health and safety rules and pay due regard to the protection of the environment.

(3) The Cabinet Secretary shall prescribe Regulations for the protection, health and safety of artisanal mining operations.

*Section 101 of No. 12 of 2016 which it is proposed to amend—*

#### **Application for mining licence**

(1) A person or company may apply for a mining licence in the prescribed form and accompanied by the prescribed fee.

(2) An application for a mining licence under subsection (1) shall be in the prescribed form and addressed to the Cabinet Secretary and shall provide the following information—

- (a) the mineral or minerals in respect of which the licence is sought;



- (b) the area in respect of which the licence is sought;
- (c) a proposed programme of mining operations that outlines the mine forecasts and operation plans, including the options for minerals beneficiation in the prescribed form;
- (d) a feasibility study;
- (e) a statement regarding the mineral or minerals in the area of land over which the licence is sought, including details of all known minerals as well as probable mineral reserves;
- (f) a statement of the financial and technical resources available to the applicant to carry out the proposed mining operations and to comply with the conditions of the licence;
- (g) a plan giving particulars of the applicant's proposals with respect to the employment and training of Kenyan citizens;
- (h) a plan giving particulars of the applicant's proposals with respect to the procurement of local goods and services;
- (i) proof of submission and approval of an environmental and social impact assessment report and environmental management plan for the term of the mining licence to the National Environment Management Authority; and
- (j) a plan giving particulars of the applicant's proposals with respect to social responsible investments for the local community.

*Section 102 of No. 12 of 2016 which it is proposed to amend—*

#### **Restrictions in respect of mining licences**

The Cabinet Secretary shall not grant a mining licence in respect of land which is the subject of a prospecting licence, reconnaissance licence, a retention licence or a mining licence unless—

- (a) the applicant is the holder of that licence; or
- (b) the applicant, with the consent of the licence holder, is applying for a licence that would permit the applicant to work a mine dump or mine waste and tailings on the land but not to undertake any other mining operation on the land.

*Section 103 of No. 12 of 2016 which it is proposed to amend—*

#### **Consideration of applications**

The Cabinet Secretary, on recommendation of the Mineral Rights Board, may grant a mining licence if satisfied that—

- (a) the area of land over which the mining licence is sought is reasonable having regard to the applicant's proposed programme of mining operations, but in any case not more than three hundred contiguous blocks;
- (b) the applicant has adequate financial resources, technical competence and mining industry experience to carry out the proposed programme of mining operations;
- (c) the applicant has obtained an approved environmental impact assessment licence, a social heritage assessment and environmental management plan in respect of the applicant's proposed mining operations;
- (d) the applicant's proposal with respect to the procurement of local goods and services is acceptable;
- (e) the applicant's proposal with respect to employment and training of Kenyan citizens is acceptable;
- (f) the project is feasible based on the feasibility study; and
- (g) the applicant's proposal with respect to engaging in community investments is socially responsible.

*Section 104 of No. 12 of 2016 which it is proposed to amend—*

#### **Application by holder of prospecting licence**

The Cabinet Secretary shall grant a mining licence to an applicant where—

- (a) the applicant is the holder of a prospecting licence and has given notice to the Cabinet Secretary of the discovery of minerals in or on terrestrial or marine areas which are the subject of the prospecting licence; and
- (b) the applicant has satisfied the requirements prescribed by this Act for the grant of a mining licence.

*Section 105 of No. 12 of 2016 which it is proposed to amend—*

#### **Notice of refusal**

The Cabinet Secretary shall not reject an application for a mining licence unless—

- (a) he has given the applicant a notice of the intention to reject the application stating the grounds for rejecting the application;
- (b) he has specified in the notice a period within which the applicant may make appropriate proposals to remedy the grounds stated in the notice of intention to reject the application; and

- (c) the applicant has failed, within the specified period, to make appropriate proposals.

*Section 106 of No. 12 of 2016 which it is proposed to amend—*

**Form of mining licence**

A mining licence shall contain the following information in addition to any other information provided for under this Act—

- (a) the mineral in respect of which the licence is issued;
- (b) name and address of the holder;
- (c) date of grant and expiry of the licence;
- (d) the area in respect of which the licence issued;
- (e) the approved programme for mining operations;
- (f) the approved plan for the procurement of local goods and services;
- (g) conditions subject to which the licence is issued;
- (h) the approved plan to employ and train citizens of Kenya;
- (i) details of the approved environmental impact assessment report, social heritage impact assessment and environmental management plan; and
- (j) such other information as the Cabinet Secretary may consider necessary.

*Section 109 of No. 12 of 2016 which it is proposed to amend—*

**Obligations under mining licence**

The holder of a mining licence shall—

- (a) commence mining operations within six months of the grant of the licence, or as may be specified in the approved program for mining operations or in any relevant minerals agreement;
- (b) conduct mining operations in compliance with the approved programme for mining operations;
- (c) comply with the terms and conditions of the approved environmental impact assessment licence, social heritage assessment and environmental management plan relating to the operations to be carried out under the mining licence;
- (d) demarcate and keep demarcated the mining area in the prescribed manner;

- (e) comply with the conditions of the licence, any applicable mineral agreement and any directions issued by the Cabinet Secretary or an authorized officer in accordance with this Act;
- (f) submit to the Cabinet Secretary up to date quarterly returns of mine development and mineral production;
- (g) stack or dump any mineral or waste products in the manner provided for in the licence or as otherwise prescribed, having regard to good mining industry practice;
- (h) carry out prospecting and mining activities in accordance with international best practice and the prescribed guidelines; and
- (i) sign a community development agreement with the community where mining operations are to be carried out in such a manner as shall be prescribed in Regulations.

*Section 111 of No. 12 of 2016 which it is proposed to amend—*

#### **Amendment of programme of mining operations**

(1) Subject to the terms and conditions of the licence, the holder of a mining licence shall notify the Cabinet Secretary of any proposed Amendment of the approved programme for mining operations.

(2) Unless the Cabinet Secretary rejects the proposed amendment, the amendment shall take effect three months after the date of notification under subsection (1).

(3) A proposed amendment which is likely to substantially alter the approved programme of mining operations shall not take effect unless expressly approved by the Cabinet Secretary.

*Section 112 of No. 12 of 2016 which it is proposed to amend—*

#### **Newly discovered minerals**

(1) The holder of a mining licence shall notify the Cabinet Secretary of the discovery of any mineral to which the licence does not relate within thirty days of the discovery.

(2) The notification under sub-section (1) shall include the particulars of the site and such other circumstances of the discovery as may be prescribed or otherwise required by the Cabinet Secretary.

(3) Subject to subsections (1), the holder of the mining licence may apply to the Cabinet Secretary to include a newly discovered mineral or minerals under the mining licence.

(4) An application to include a newly discovered mineral or minerals made under subsection (3) shall be in the prescribed form and shall include

a proposed programme for mining operations relating to such mineral or minerals.

(5) The Cabinet Secretary, on recommendation of the Mineral Rights Board may approve an application made in accordance with subsections (3), subject to such additional conditions as the Cabinet Secretary may prescribe.

*Section 113 of No. 12 of 2016 which it is proposed to amend—*

**Cessation, suspension, or curtailment of production in respect of mining licences**

(1) The holder of a mining licence shall give the Cabinet Secretary a notice of any intention to cease or suspend mining operations, or curtail production carried on pursuant to the mining licence.

(2) For the purposes of subsection (1), the holder shall give notice of at least—

- (a) six months, for cessation of mining operation;
- (b) three months, for suspension of mining operation; or
- (c) one month, for curtailment in production.

(3) A notice given under section shall include a statement that sets out the technical and economic basis for the proposed cessation, suspension or curtailment of production.

(4) Upon receipt of a notice given in accordance with this section, the Cabinet Secretary shall investigate the circumstances leading to the proposed cessation, suspension or curtailment of production and if he or she is satisfied, the cessation, suspension or curtailment of production should be granted.

(5) The Cabinet Secretary may approve the cessation, or suspension of mining operations or curtailment of production proposed by the licence holder subject to the holder complying with such conditions as the Cabinet Secretary may determine.

(6) The Cabinet Secretary shall prescribe the period within which a suspension allowed under this section may be acceptable.

(7) Where the holder is unable to give the required notice as provided under subsection (1) and the holder suspends or curtails production from a mine, the holder shall, within three days of the suspension or curtailment, notify the Cabinet Secretary.

(8) The Cabinet Secretary shall make Regulations to provide for the conditions to manage the mines and the licence area where a cessation notification has been approved.

*Section 114 of No. 12 of 2016 which it is proposed to amend—*

**Renewal of mining licence**

(1) The holder of a mining licence may apply to the Cabinet Secretary for the renewal of the licence.

(2) An application under subsection (1) shall be made in the prescribed form and be accompanied by the prescribed fee in respect of all or part of the licence area.

(3) An application for the renewal of a mining licence shall be made at least one year before the expiry of the licence.

*Section 115 of No. 12 of 2016 which it is proposed to amend—*

**Application for renewal of mining licence**

An application for the renewal of a mining licence shall contain the information or be accompanied by the following documents—

- (a) a proposed programme of mining operations to be carried out during the term of renewal;
- (b) a plan of the area in respect of which renewal of the mining licence is sought including all or any of the contiguous blocks in the mining licence area;
- (c) an approved environmental impact assessment licence, social heritage assessment, environmental management plan in respect of the applicant's proposals, where required under the Environmental Management and Coordination Act and Community Development Agreement; and
- (d) such additional information as the Cabinet Secretary may prescribe

*Section 117 of No. 12 of 2016 which it is proposed to amend—*

**Mineral agreement.**

(1) The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement with the holder of a mining licence where the proposed investment exceeds five hundred million United States dollars.

(2) A mineral agreement shall include terms and conditions relating to—

- (a) the minimum prospecting or mining operations to be carried out and the time table determined for purposes of such operations;

- (b) the minimum expenditure in respect of the prospecting or mining operations;
- (c) the manner in which prospecting or mining operations shall be carried out;
- (d) the environmental obligations and liabilities, subject to the requirement of the Environment Management and Co-ordination Act;
- (e) the procedure for settlement of disputes;
- (f) the processing, whether wholly or partly in Kenya, of any mineral or group of minerals found, obtained or mined by the holder of a mineral right in the course of mining operations;
- (g) the basis on which the market value of any mineral or group of minerals in question may from time to time be determined;
- (h) insurance arrangements;
- (i) resolution of disputes through an international arbitration or a sole expert; and
- (j) community development plans;
- (k) the payments of royalties, taxes, cess and other fiscal impositions; and
- (l) financial arrangements.

(3) Nothing contained in a mineral agreement shall be construed as to absolve any party to such agreement from a requirement prescribed by law.

(4) A mineral agreement shall be prepared in accordance with a standard format as may be prescribed in Regulations.

(5) All mineral agreements shall be submitted to the National Assembly and the Senate for ratification.

*Section 118 of No. 12 of 2016 which it is proposed to amend—*

**Power to negotiate mineral agreements**

The Cabinet Secretary may, on behalf of the State, on the advice of the Mineral Rights Board, negotiate with an applicant for or holder of a prospecting licence, a retention licence or a mining licence in respect of large scale mining or exploitation of minerals in the marine and terrestrial areas in accordance with the provisions of this Act and any other written law.

*Section 125 of No. 12 of 2016 which it is proposed to amend—*

**Application for a reconnaissance permit**

(1) A person may apply for a reconnaissance permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

(2) An application for a reconnaissance permit shall contain the following—

- (a) the full name, nationality and address of the applicant;
- (b) the mineral or minerals in respect of which the permit is sought; and
- (c) the area in respect of which the permit is sought.

*Section 129 of No. 12 of 2016 which it is proposed to amend—*

**Application for prospecting permit**

(1) A person may apply for a prospecting permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

(2) An application for a prospecting permit shall contain the following information—

- (a) the full name, nationality and address of the applicant or, in the case of a body corporate, the place of incorporation and the registered address;
- (b) the mineral or minerals in respect of which the permit is sought;
- (c) the area in respect of which the permit is sought;
- (d) the particulars of the proposed prospecting operations to be carried out under the permit; and
- (e) details of the experience and financial resources available to the applicant to conduct the prospecting operations.

*Section 130 of No. 12 of 2016 which it is proposed to amend—*

**Notice to applicants**

(1) Where the Cabinet Secretary intends to reject an application, he or she may issue a notice of intention to reject an application to the applicant.

(2) A notice under sub-section(1) shall state—

- (a) the grounds for the intended rejection of the application; and
- (b) a period within which the applicant may make an appropriate proposal to correct or remedy the ground for the intended refusal.



(3) Where an applicant does not respond to the notice within the period stated in the notification, the Cabinet Secretary shall reject the application.

*Section 132 of No. 12 of 2016 which it is proposed to amend—*

#### **Rights conferred by prospecting permit**

(1) The holder of a prospecting permit shall enjoy the right to prospect for the mineral or minerals and permit. in the area specified in the permit.

(2) The holder of a prospecting permit may, in exercise of the right conferred under subsection (1)—

- (a) demarcate areas that fall within the permit area;
- (b) enter into land that falls within the area specified in the permit and take all reasonable measures to undertake prospecting operations on or under the surface of the land; and
- (c) erect equipment, plant and buildings for the prospecting operations.

(3) Save for any prescribed quantities required for sampling and assaying purposes, a prospecting permit granted under this Act shall not be construed to confer upon the holder the right to dispose of minerals obtained in the course of prospecting without the consent of the Cabinet Secretary.

*Section 134 of No. 12 of 2016 which it is proposed to amend—*

#### **Renewal of prospecting permit**

The holder of a prospecting permit may apply for the renewal of the permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

*Section 136 of No. 12 of 2016 which it is proposed to amend—*

#### **Application for mining permit**

(1) A person may apply for a mining permit to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

(2) An applicant for a mining permit shall provide the following information to the Cabinet Secretary—

- (a) the full name, nationality and address of the applicant, or, in the case of a body corporate, its place of incorporation, names and nationalities of the directors and its registered address;

- (b) the mineral in respect of which the permit is sought;
- (c) details of the area in respect of which the permit is sought;
- (d) particulars of the proposed mining operations to be carried out under the permit; and
- (e) details of the mining experience and financial resources available to the applicant to conduct the mining operations.

*Section 137 of No. 12 of 2016 which it is proposed to amend—*

#### **Approval of application for mining permit**

(1) The Cabinet Secretary, on recommendation of the Mineral Rights Board, shall not reject an application for a mining permit, unless he or she has given the applicant a notice of intention to reject the application.

(2) A notice under sub-section (1) shall state the grounds for rejecting the application and a period within which the applicant may make an appropriate proposal to correct or remedy the grounds set out in the notice.

(3) Where the grounds for the intended refusal are not capable of being remedied, the applicant may show cause, within the specified period, to the satisfaction of the Cabinet Secretary, why the application should not be refused.

*Section 140 of No. 12 of 2016 which it is proposed to amend—*

#### **Obligations under mining permit**

The holder of a mining permit shall—

- (a) conduct mining operations in compliance with a plan approved by the Cabinet Secretary;
- (b) demarcate and keep demarcated the mining area in the prescribed manner;
- (c) take all measures necessary to protect and restore the environment within the mining area;
- (d) submit to the Cabinet Secretary up to date quarterly returns on mine development and mineral production;
- (e) comply with any prescribed record keeping obligations;
- (f) stack or dump any minerals or building materials or waste products in the manner provided for in the permit or as otherwise approved by the Cabinet Secretary;
- (g) not use such equipment as may be prescribed in Regulations or chemicals such as cyanide and mercury; and
- (h) pay royalties, fees, mining taxes and charges.

*Section 141 of No. 12 of 2016 which it is proposed to amend—*

**Renewal of mining permit**

The holder of a mining permit may apply for the renewal of the permit by application to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

*Section 143 of No. 12 of 2016 which it is proposed to amend—*

**Application for approval of surrender**

The holder of a mineral right may by notice in writing to the Cabinet Secretary apply to surrender the mineral right.

*Section 144 of No. 12 of 2016 which it is proposed to amend—*

**Approval required for the surrender of mineral right**

(1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may allow the holder of a mineral right to surrender that mineral right in respect of the whole or any part of the area specified in the mineral right.

(2) The holder of a mineral right shall apply to surrender the mineral right to the Cabinet Secretary.

(3) An application under sub-section (2) shall be in the prescribed form and the applicant shall give—

- (a) at least three months' notice of intention to surrender the whole or part of the area specified in the mineral right; or
- (b) in the case of a prospecting permit at least one months' notice of intention to surrender the whole or part of the area specified in the permit.

(4) An application made under subsection (2) shall include—

- (a) a plan of the area to be surrendered in a form which is acceptable to the Cabinet Secretary if the surrender relates to part of the area specified in the right;
- (b) proof of implementation of any environmental management plans; and
- (c) pall records and reports with respect to the prospecting or mining operations carried out in the area to be surrendered.

*Section 145 of No. 12 of 2016 which it is proposed to amend—*

**Notification of approval of surrender**

(1) A proposed surrender of an area covered under a mineral right shall have no effect unless and until the Cabinet Secretary, on the

recommendation of the Mineral Rights Board, gives the holder thereof written notice that the application for surrender has been approved.

(2) An approval for the surrender of a mineral right may be granted subject to such conditions as the Cabinet Secretary, on the recommendation of the Mineral Rights Board, may deem appropriate.

*Section 147 of No. 12 of 2016 which it is proposed to amend—*

#### **Grounds for suspension and revocation**

(1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may suspend or revoke a mineral right if the holder—

- (a) fails to make a payment required under this Act on the due date;
- (b) fails to comply with any condition specified in the right or an obligation placed on the holder by this Act, or fails to take the action required by the Cabinet Secretary to be taken in accordance with subsection (3);
- (c) commits an offence under this Act;
- (d) makes or is found to have made a false statement in the application for the grant or renewal of the mineral right; or
- (e) is adjudged bankrupt or in the case of a company it is declare insolvent.

(3) The Cabinet Secretary may suspend or revoke a prospecting or mining permit if the holder does not commence prospecting or mining operations under the permit in accordance with the approved work programme or programme of mining operations.

(4) Before suspending or revoking a mineral right in accordance with subsection (2), the Cabinet Secretary shall give the holder a written notice requiring him—

- (a) to comply with the condition or obligation within a reasonable period of time; or
- (b) to show cause, within that period, as to why the mineral right should not be suspended or revoked.

*Section 149 of No. 12 of 2016 which it is proposed to amend—*

#### **Assets on termination**

(1) The holder of a mineral right who applies to surrender the right shall furnish the Cabinet Secretary with a statement of the immovable and movable assets and any other information in the prescribed form—

- (a) a statement of assets which identifies the assets the holder intends to remove from the area and those the holder intends to leave; and
- (b) a notification of any potentially hazardous substances, excavations and buildings in the area.

(2) Where a mineral right is not renewed at the end of its term or is cancelled by the Cabinet Secretary, the former holder of the mineral right shall provide a statement to the Cabinet Secretary in the prescribed form containing the information prescribed in subsection (1) within such reasonable period as the Cabinet Secretary may direct.

(3) All immovable assets of the holder under the mining licence shall vest in the Republic from the effective date of the surrender or termination of the licence.

(4) All movable assets of the holder in the mining area which are fully depreciated for tax purposes shall vest in the County Government without charge on the effective date of such termination and any property not then fully depreciated for tax purposes, the County Government or the Republic shall have the right of first refusal for the sale of such assets from the effective date of termination at the depreciated cost.

(5) Subject to subsection (4), the Cabinet Secretary may permit the assets to be removed solely and exclusively for the purpose of use by the holder in another mining operation in the country.

(6) The Cabinet Secretary shall prescribe Regulations on the use of the assets.

*Section 150 of No. 12 of 2016 which it is proposed to amend—*

#### **Delivery of records and documents on termination**

Where a mineral right is not renewed or is surrendered by the holder or cancelled by the Cabinet Secretary, the holder shall deliver to the Cabinet Secretary within a period of two months—

- (a) all the records which, prior to termination, the holder was obliged to maintain under this Act; and
- (b) all plans or maps of the area covered by the mineral right prepared by or for the holder.

*Section 153 of No. 12 of 2016 which it is proposed to amend—*

#### **Principles of compensation**

- (1) Where the exercise of the rights conferred by a mineral right—
  - (a) disturbs or deprives the owner or any lawful occupier or user of the land or part of the land;
  - (b) causes loss of or damage to buildings and other immovable property;
  - (c) causes damage to the Water table or deprives the owner of water supply;

- (d) in the case of land under cultivation or grazing of domesticated animals, causes any loss of earnings or sustenance suffered by the owner or lawful occupier of the land;
- (e) a demand or claim for compensation may be made to the holder of the mineral right to pay prompt, adequate and fair compensation to the lawful owner, occupier or user of the land in accordance with the provisions of this Act.

(2) A mineral right holder shall deposit a compensation guarantee bond with the relevant Ministry.

(3) The Cabinet Secretary may make Regulations relating to compensation guarantee bonds.

(4) A person shall not demand or claim compensation whether under this Act or otherwise—

- (a) in consideration for permitting entry to the land connected with the enjoyment of rights conferred under a mineral right;
- (b) in respect of the value of any mineral in, on or under the land that is the subject of a mineral right; or
- (c) for any loss or damage for which compensation cannot be assessed according to legal principles.

(5) Where a demand or claim for compensation is disputed, the parties to the dispute shall seek to resolve the dispute amicably by agreement reached through negotiations in good faith.

(6) Where a dispute cannot be resolved through negotiations within a reasonable period of time, either party to the dispute may refer the matter to the Cabinet Secretary for a determination in accordance with section 129 of this Act.

(7) A holder of a mineral right shall not commence mining of minerals unless the lawful occupier, owner or user of land is compensated.

(8) The Cabinet Secretary in consultation with the community and the National Land Commission shall in such manner as may be prescribed, ensure that the inhabitants or communities who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic wellbeing, social and cultural values and the resettlement is carried out in accordance with the relevant physical planning law.

(9) The cost of resettlement under sub-section (8) shall be borne by the holder of the mineral right.

*Section 154 of No. 12 of 2016 which it is proposed to amend—*

**General provisions on dispute resolution**

Any dispute arising as a result of a mineral right issued under this Act, may be determined in any of the following manners—

- (a) by the Cabinet Secretary in the manner prescribed in this Act;
- (b) through a mediation or arbitration process as may be agreed upon by the disputing parties or as may be stated in an agreement; or
- (c) through a court of competent jurisdiction.

*Section 155 of No. 12 of 2016 which it is proposed to amend—*

**Determination of disputes by Cabinet Secretary**

Subject to the provisions of this Act, the Cabinet Secretary may inquire into and determine the following matters—

- (a) a dispute of the boundaries of an area held under a prospecting or mining right;
- (b) any wrongful act committed or omitted in the course of prospecting and mining operations, by any persons against any other person;
- (c) a claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes;
- (d) a claim to have any priority of water taken, diverted, used or delivered for mining purposes, as against any other person claiming the same; or
- (e) assessment and payment of compensation where provided for under this Act.

*Section 156 of No. 12 of 2016 which it is proposed to amend—*

**Procedure for determination of disputes by the Cabinet Secretary**

(1) A dispute referred to in section 155 may be referred to and determined by the Cabinet Secretary in accordance with the following procedures—

- (a) the party referring the dispute to the Cabinet Secretary shall lodge a memorandum with the Cabinet Secretary together with a statement of claim in the prescribed form;
- (b) on receipt of the memorandum, the Cabinet Secretary shall notify the party against whom the complaint has been made of the

referral of the dispute and shall advise the other party of the nature of the complaint and invite that party to lodge a memorandum in response to the complaint;

- (c) upon receiving the written response from the party against whom a complaint has been lodged for determination, the Cabinet Secretary shall notify the parties of the time and place at which the matter will be heard and determined;
- (d) the parties shall be invited to state their respective cases before the Cabinet Secretary and shall be entitled to adduce evidence on oath or affirmation in support of their cases; and
- (e) after hearing the statements and receiving the evidence the Cabinet Secretary shall make a written determination of the dispute.

(2) Any person who is a party to a dispute referred to the Cabinet Secretary for determination under this section may appear in person or be represented by an advocate.

(3) In making a determination of a dispute, the Cabinet Secretary shall, having regard to the subject matter of the dispute, apply relevant rules and principles concerning the matter in dispute.

(4) Subject to section 155, the Cabinet Secretary may make such orders as he may consider necessary to give effect to a determination, including ordering the payment of compensation by one party to the dispute to the other.

(5) An order made by the Cabinet Secretary under this section shall be enforceable by a Court as if the same were an order of that Court.

(6) The Cabinet secretary shall keep a record of all matters heard and determined by him, and shall keep a written record of the evidence given before him.

(7) Any person who is interested in any dispute, decision or order shall be entitled to obtain a copy of such record and notes upon payment of the prescribed fee.

(8) The Cabinet Secretary may send a copy, certified under his hand and seal, of any decree or order made by him to any civil court within the local limits of whose jurisdiction the subject-matter of the decree is situated, and such civil court shall enforce the decree of the Cabinet Secretary in the same manner in which it would enforce its own decree or order.

(9) The Cabinet Secretary shall by notice in the Gazette prescribe rules of procedure to be applied in respect to determination of disputes under this Act.



*Section 157 of No. 12 of 2016 which it is proposed to amend—*

**Appeals**

Any person aggrieved by any decree, order or decision made or given under the powers vested in the Cabinet Secretary may appeal within thirty days to the High Court.

*Section 158 of No. 12 of 2016 which it is proposed to amend—*

**158. Disposal of minerals**

(1) A person shall not dispose of minerals, whether for sampling, assay, analysis or otherwise except—

- (a) with the written consent of the Cabinet Secretary;
- (b) where the person is the holder of a mineral right, in accordance with the conditions of the mineral right;
- (c) where the person is the holder of a mineral dealer's licence or a diamond dealer's licence in accordance with the conditions of the licence; or
- (d) in any other case, as otherwise permitted by or under this Act.

(2) No title to minerals shall pass in any case where a person disposes of minerals otherwise than in accordance with subsection (1).

*Section 160 of No. 12 of 2016 which it is proposed to amend—*

**Application for mineral dealer's licence**

(1) An application for a mineral dealer's licence shall be made to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, either sufficient knowledge, experience, or working capital to ensure that the applicant can carry on the business that would be permitted under the licence.

*Section 161 of No. 12 of 2016 which it is proposed to amend—*

**Term of mineral dealer's licence**

(1) A mineral dealer's licence shall expire on the thirty-first day of December of the year in which it is issued.

(2) A mineral dealer may apply for renewal of a mineral dealer's licence to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

*Section 163 of No. 12 of 2016 which it is proposed to amend—*

**Record-keeping obligations of holder of mineral dealer's licence**

(1) The holder of a mineral dealer's licence shall keep a register of the mineral dealings in the prescribed form.

(2) The holder of a mineral dealer's licence shall record in the register the following information in respect of each transaction—

- (a) the nature and weight of the minerals purchased or sold;
- (b) the price paid or received for the minerals;
- (c) the date of the purchase or sale; and
- (d) the name and address of the vendor or the purchaser or consignee.

(3) The holder of a mineral dealer's licence shall submit to the Cabinet Secretary a true copy of the register in duplicate for the preceding three months, together with a statutory declaration of the correctness thereof, in the months of January, April, July and October of every year.

*Section 164 of No. 12 of 2016 which it is proposed to amend—*

**Mineral dealers permit**

(1) A mineral dealer's permit shall be issued, to citizens of Kenya or in the case of a body corporate, where sixty percent of the shareholding is held by citizens of Kenya.

(2) A mineral dealer's permit shall be issued by the Cabinet Secretary upon application and payment of the requisite fees.

(3) A mineral dealer's permit shall expire on the thirty-first day of December of the year in which it is issued.

(4) The holder of a mineral dealer's permit shall not export minerals but shall have the right to buy and sell locally.

*Section 166 of No. 12 of 2016 which it is proposed to amend—*

**Application for diamond dealer's licence**

(1) A person shall make an application for a diamond dealer's licence to the Cabinet Secretary in the prescribed form and shall be accompanied by the prescribed fee.

(2) An application made under subsection (1) shall be accompanied by evidence sufficient to show that the applicant is in possession of, or commands, sufficient working capital to ensure that he can carry on the business that would be permitted under the diamond dealer's licence.

(3) The Cabinet Secretary shall, before issuing a licence under this section, require the applicant to provide security, by way of bond or cash deposit in the prescribed form as the Cabinet Secretary shall require, for the due payment of any prescribed fees or royalties which may become payable by such dealer in the course of his business under this Act.

*Section 167 of No. 12 of 2016 which it is proposed to amend—*

**Term of diamond dealer's licence**

(1) A diamond dealer's licence shall expire on the thirty-first day of December of the year in which it is granted.

(2) A diamond dealer may apply for renewal of a diamond dealer's licence to the Cabinet Secretary in the prescribed form and upon payment of the prescribed fee.

*Section 168 of No. 12 of 2016 which it is proposed to amend—*

**Obligations under diamond dealer's licence**

(1) The holder of a diamond dealer's licence shall not—

(a) deal in diamonds except in accordance with the conditions set out in the licence;

(b) engage in mineral dealings concerning diamonds, as either principal or agent, except with either the holder of a mineral right who is authorized to mine diamonds, or the holder of a diamond dealer's licence;

(c) store diamonds except at the place or in the premises specified in the licence; or

(d) deal in diamonds as either principal or agent, except at the place or in the premises specified in the licence.

(2) The holder of a diamond dealer's licence shall comply with any other condition specified in the licence.

(3) The holder of a diamond dealer's licence shall keep a register of dealings in diamonds in the prescribed form.

(4) The holder of a diamond dealer's licence shall record in the register the following information in respect of transactions for diamonds—

(a) the nature and weight of the diamonds;

(b) the price of the diamonds;

(c) the date of the transaction;

(d) in the case of a purchase of diamonds, details of the vendor's authority to sell the minerals; and

(e) the name and address of the vendor, purchaser or consignee.

(5) The holder of a diamond dealer's licence shall submit to the Cabinet Secretary in the months of January, April, July and October of every year, a true copy of the register in duplicate for the preceding three

months, together with a statutory declaration of the correctness thereof, and shall also produce and exhibit the register to a police officer of or above the rank of Inspector whenever required in writing by the officer.

*Section 169 of No. 12 of 2016 which it is proposed to amend—*

#### **Appointment of agent by holder of diamond dealer's licence**

(1) The holder of a diamond dealer's licence may appoint an agent for the purpose of engaging in diamond dealings on behalf of the licence holder.

(2) The appointment of an agent under subsection (1) shall not operate to exempt the holder of a diamond dealer's licence from compliance with the relevant provisions of this Act and the conditions of the licence.

(3) Where the holder of a diamond dealer's licence appoints an agent he or she shall furnish the Cabinet Secretary with the following information in the prescribed form—

- (a) the name and registered address of the agent;
- (b) the date of the appointment of the agent; and
- (c) the duration of the instrument of appointment between the licence holder and the agent and details of the terms and conditions of the agency agreement.

(4) An agent appointed, by the holder of a diamond dealer's licence may exercise the rights of the holder of the licence subject to, any limitations on the powers of the agent contained in the agreement or instrument of appointment between the licence holder and the agent.

*Section 170 of No. 12 of 2016 which it is proposed to amend—*

#### **Mines support**

(1) person or company shall provide any mine support services subject to being issued with a licence by the Cabinet Secretary, upon recommendation of the Mineral Rights Board.

(2) The Cabinet Secretary shall prescribe Regulations to give effect to this section.

*Section 171 of No. 12 of 2016 which it is proposed to amend—*

#### **Import of minerals**

Where a person imports minerals, the person shall make a declaration at the point of entry in the prescribed form.

*Section 173 of No. 12 of 2016 which it is proposed to amend—*

### **Suspension and revocation**

(1) The Cabinet Secretary may suspend or revoke a licence or permit granted under this Part if the holder—

- (a) fails to make a prescribed payment by the due date;
- (b) fails to comply with a condition specified in the licence or an obligation imposed on the holder by this Act and fails to take action to remedy a breach within a reasonable time;
- (c) makes a false statement or gives false information to the Cabinet Secretary or to a public officer exercising functions under this Act that was, which information is material to the grant of the licence or permit;
- (d) dies;
- (e) becomes of unsound mind;
- (f) is adjudged bankrupt;
- (g) is subject to financial difficulty or otherwise ineligible to hold the licence or permit; or
- (h) commits any offence under this Act.

(2) Before suspending or revoking a licence or permit under subsection (1) the Cabinet Secretary shall give the holder of the licence or permit written notice requiring the holder—

- (a) to comply with the condition or obligation within a reasonable period of time; or
- (b) where this is not possible, to show cause within that period, why the licence should not be suspended or revoked.

*Section 175 of No. 12 of 2016 which it is proposed to amend—*

### **Delivery of records and documents on revocation**

Upon revocation of a licence, the holder shall deliver to the Cabinet Secretary within the prescribed period all the records which, prior to revocation or expiration, he was obliged to maintain under this Act.

*Section 180 of No. 12 of 2016 which it is proposed to amend—*

### **Requirement of site restoration and mine-closure plans**

(1) The Cabinet Secretary shall not grant a prospecting licence, a retention licence or a mining licence to an applicant, unless the applicant has submitted a site mitigation and rehabilitation or mine-closure plans for approval.

(2) The Cabinet Secretary may prescribe Regulations for site rehabilitation and mine-closure obligations.

*Section 181 of No. 12 of 2016 which it is proposed to amend—*

#### **Environmental protection bonds**

(1) An applicant for a prospecting licence, a retention licence or a mining licence shall provide a bond or some other form of financial security in this section called an environmental protection bond sufficient to cover the costs associated with the implementation of the environmental and rehabilitation obligations of the holder under this Act.

(2) An environmental protection bond required under subsection (1) shall be in a form and for an amount as may be determined by the Cabinet Secretary having regard to the particular characteristics of the project.

(3) In determining the form and amount of the bond referred to in subsection (2), the Cabinet Secretary shall take into account the amount that the applicant is required to provide by way of bond or some other form of financial security under the provisions of relevant Environmental Management and Coordination Act.

(4) The Cabinet Secretary may release in part an environmental protection bond upon the satisfactory completion of rehabilitation measures undertaken within the duration of a licence and shall release the bond in full following the successful completion of all environmental and rehabilitation obligations mentioned in subsection (1).

*Section 183 of No. 12 of 2016 which it is proposed to amend—*

#### **Royalties**

(1) The holder of a mineral right shall pay royalty to the State in respect of the various mineral classes won by virtue of the mineral right.

(2) The Cabinet Secretary shall prescribe the rates payable under subsection (1).

(3) The Cabinet Secretary may require the holder of a mineral right to make returns relating to any royalties paid in such manner and within a period as may be prescribed.

(4) Any mineral samples including core samples, removed for the purposes of testing, shall not be subject to royalty unless they exceed maximum value stipulated in regulations.

(5) The royalties payable under sub-section (1) shall be distributed as follows—

- (a) seventy percent to the National Government;

(b) twenty percent to the County Government; and

(c) ten percent to the community where the mining operations occur.

*Section 185 of No. 12 of 2016 which it is proposed to amend—*

**Record to be kept by a mineral rights holder**

(1) A mineral right holder who wins, extracts, produces, or disposes of minerals or mineral products shall maintain up to date records.

(2) The records required to be kept under sub-section (1) shall include—

(a) the quantity; and

(b) the commercially relevant characteristics of the minerals or mineral products.

(3) The Cabinet Secretary may designate a qualified person to inspect and examine any samples, books, records and accounts to ascertain the quantity, quality, grade or value of minerals or mineral products for the purpose of ascertaining or verifying the amount of any royalty payable.

*Section 186 of No. 12 of 2016 which it is proposed to amend—*

**186. Payment of fees, charges and royalties**

(1) All fees, charges and royalties payable by the holder to the State under this Act shall be paid by the holder into the designated account of the State department responsible for collecting royalties.

(2) A payment shall be accompanied by a statement from the holder stating—

(a) details of the mineral or mineral product;

(b) the relevant point of sale; and

(c) the date and the amount of royalty paid.

(3) A copy of the statement shall be delivered to the Mining Cadastre Office.

(4) A mineral right holder shall report the royalty liability for each month by the fifth business day of the month.

(5) Upon receipt of a royalty payment the State department responsible for collecting royalties shall issue a receipt.

*Section 187 of No. 12 of 2016 which it is proposed to amend—*

**Default in paying royalties**

(1) Where there is a default in payment of the prescribed royalties by a mineral right holder, the Mining Cadastre Office shall issue a thirty day

notice to the mineral right holder requiring repayment of the outstanding royalties.

(2) In the event that the mineral right holder does not pay the royalties payable within the period specified in the notice—

- (a) the Mining Cadastre Office shall record the outstanding royalties in the cadastral register; and
- (b) the Cabinet Secretary shall suspend the respective licence or permit.

(3) In the event that the mineral right holder does not pay the royalties payable within sixty days, the Cabinet secretary shall revoke the licence or permit as the case may be.

(4) Where the holder of mineral right fails to pay the prescribed royalty with the prescribed period, the Cabinet Secretary may prohibit the disposal of any mineral or mineral product from the mining area concerned, or from any other mining area held by that mineral right holder.

*Section 188 of No. 12 of 2016 which it is proposed to amend—*

#### **Reduction or suspension of royalties**

(1) A mineral right holder may apply to the Cabinet Secretary for a reduction or temporary suspension of a royalty rate.

(2) The Cabinet Secretary shall make Regulations to provide for the conditions and criteria for determining applications for reduction or suspension of payment of royalties.

*Section 192 of No. 12 of 2016 which it is proposed to amend—*

#### **Requirement to enter information in register**

(1) The register established under section 164 shall contain details of each application, grant, assignment, transfer, notice, surrender, suspension and cancellation of a mineral right.

(2) The Cabinet Secretary may prescribe such other records and instruments that shall entered into the register.

(3) The computerized mining cadastre and registry system shall include an online transactional facility to enable applications for granting and renewal of mineral rights to be submitted online.

(4) The cadastre shall be a public document and may be inspected by an interested person upon the payment of a prescribed fee.

(5) The National Land Commission shall keep a copy of the cadastre.



*Section 196 of No. 12 of 2016 which it is proposed to amend—*

**Appointment of inspectors of mines**

(1) The Cabinet Secretary may, by notice in the Gazette, designate duly qualified public officers, to be inspectors of mines for such jurisdictional units as may be specified in the notice.

(2) A mines inspector shall monitor compliance and take enforcement action and perform such other functions as may be required under this Act or specified in the notice of appointment.

(3) The Cabinet Secretary shall issue a mines inspector with a document of identification.

*Section 197 of No. 12 of 2016 which it is proposed to amend—*

**General powers of search and inspection**

(1) The Cabinet Secretary or a mines inspector authorised by the Cabinet Secretary may without prejudice to all other written laws, at all reasonable times—

- (a) enter, inspect and examine land on which prospecting or mining operations are being conducted or land which is the subject of a mineral right;
- (b) enter into an area, structure, vehicle, vessel, aircraft or building that, in the opinion of the Cabinet Secretary or the mining inspector has been or is being used for or in connection with prospecting or mining operations;
- (c) carry out periodic inspections of premises within the jurisdictional limits which have been or are being used for or in connection with prospecting or mining operations;
- (d) enter, inspect and examine any premises where mineral dealings are being conducted;
- (e) require the production of, inspect, examine, and take copies of licences, permits, registers, records of any kind and other documents relating to this Act and the carrying out of operations authorised by a mineral right, or other licence or permit granted under this Act;
- (f) take samples of any article and substances to which this Act relates and submit such samples for testing and analysis in such a manner as may be prescribed;
- (g) seize for a maximum period of seven days any article, vessel, motor vehicle, plant, equipment, substance or any other thing

which the inspector reasonably believes has been used in the commission of an offence under this Act or regulations made thereunder;

- (h) upon giving the holder three months' written notice, install any equipment on any land, premises, vessel or motor vehicle for the purposes of monitoring compliance with the provisions of this Act, or regulations made thereunder;
- (i) enter into any premises to ascertain best mining and mineral processing practices including safety and health concerns;
- (j) enter into any premises to examine and enquire into the condition and ventilation of any mine or any building used in or connected with prospecting, mining or mineral processing operations and all matters relating to safety, welfare and the health of persons employed in any such mine or building, including the inspection of the accident and incidents register;
- (k) require such changes, as may be necessary in regard to the safety of the operation and protection of employees, to be implemented within a specified time, failing which the licence holder will be considered in breach;
- (l) order the temporary cessation of operations where he considers that the mining or processing activities are so hazardous as to constitute a serious and imminent danger to life;
- (m) enter into any premises used in or connected with prospecting, mining or mineral processing operations to examine the circumstances surrounding any accidents or incidents affecting the health of employees including the subsequent actions taken by licence holder; and
- (n) with an arrest warrant and the assistance of a police officer, arrest any person whom he reasonably believes has committed an offence under this Act.

(2) In exercising the powers under subsection (1), the inspector of mines shall carry the identification issued under this Act.

*Section 200 of No. 12 of 2016 which it is proposed to amend—*

#### **Court orders to cease operations**

The Cabinet Secretary or a public officer may apply to the Environment and Land Court for orders compelling a person to immediately stop activities and operations for, or connected with, the search for, prospecting, or mining of a mineral or mineral deposit in Kenya

where he reasonably believes that such operations are being carried out in contravention of the provisions of this Act.

*Section 205 of No. 12 of 2016 which it is proposed to amend—*

**Offences relating to monitoring and inspection**

(1) A person who—

- (a) hinders or obstructs the Cabinet Secretary or an authorised public officer in the exercise of their duties under this Act or Regulations made thereunder;
- (b) fails to comply with a lawful order or requirement made by the Cabinet Secretary or an authorised public officer in accordance with this Act or Regulations made thereunder;
- (c) denies the Cabinet Secretary or an authorised public officer entry upon any land, premises, vehicle or aircraft that they are empowered to enter under this Act or Regulations made there under;
- (d) impersonates the Cabinet Secretary or an authorised public officer; or
- (e) denies the Cabinet Secretary or an authorised public officer access to records or documents kept pursuant to this Act or Regulations made thereunder commits an offence.

(2) A person who commits an offence under this section is liable on conviction to—

- (a) imprisonment for a term not exceeding three years;
- (b) a fine of not less than one million shillings; or
- (c) both an imprisonment term and a fine.

*Section 217 of No. 12 of 2016 which it is proposed to amend—*

**Insurance cover**

(1) The holder of a mineral right or an agent appointed by a holder who is undertaking prospecting or mining operations shall, with respect to those operations, maintain insurance cover in respect of the attached risks especially for health and safety of employees.

(2) The holder or person mentioned in subsection (1) shall, where required by the Cabinet Secretary, furnish the Cabinet Secretary with certified copies of certificates of insurance that set out the insurance policy and any other documents that are required to demonstrate that the policy is valid, effective, and appropriate and covers the prescribed risks.

*Section 219 of No. 12 of 2016 which it is proposed to amend—*

**Immunity of officials**

Neither the Cabinet Secretary nor any public officer, shall be liable to be sued in a civil court in respect of the exercise or performance, or in good faith of a function under and for the purposes of this Act.

*Section 222 of No. 12 of 2016 which it is proposed to amend—*

**Radioactive minerals**

(1) Where a radioactive mineral is discovered in the course of exercising a right under this Act or under another enactment, the holder of the mineral right or another person shall immediately notify the Cabinet Secretary of the discovery.

(2) Where a radioactive mineral is discovered on land other than land which is subject to a mining right, the owner of the land shall immediately notify the Cabinet Secretary of that discovery.

(3) The holder of a mineral right shall within the first week of each month furnish the Cabinet Secretary and the Director of Geology with a true report in writing of the prospecting and mining operations conducted by the holder in the immediately preceding month with respect to radioactive minerals.