



Report on the Kenya Country Mining Vision (KCMV) Retreat held at Sentrim Elementaita Naivasha

5th – 9th June, 2017

Compiled by UNDP and Ministry of Mining

Table of Contents

1. BACKGROUND.....	4
1.1. Objective of Country Mining Vision	4
1.2. Implementation of the Country Mining Vision	5
1.3. Expected Outputs of Country Mining Vision.....	5
2. DELIBERATIONS AT THE WORKSHOP	6
2.1. Definition of what AMV and CMV is	6
2.2. Progress Status.....	7
2.3. Presentation of the Concept Paper on CMV.....	7
2.3.1. Feedback from members	7
2.4. Stakeholder Engagement Strategy	8
2.5. Rationale for engaging the different stakeholders and their interests	8
2.5.1. Discussions	10
2.6. GAP ANALYSIS REPORT	11
2.6.1. Legislative and Policy Framework.....	11
2.6.2. Fiscal Regime.....	12
2.6.3. Revenue Management and Benefit Sharing	12
2.6.4. Mineral Sector Governance	13
2.6.5. Human and Institutional Capacity.....	13
2.6.6. Geological and Mining Information Systems.....	14
2.6.7. Artisanal and Small Scale Mining	14
2.6.8. Linkages, Investments and Diversification.....	15
2.6.9. Land Access	15
2.6.10. Communication and Knowledge Management	16
2.7. COMMUNICATION AND ADVOCACY STRATEGY	16
2.7.1. Reckonable Challenges	16
2.7.2. Interventions.....	16
2.8. SOCIAL & ENVIRONMENTAL CONCERNS	18
3. TWO MOST ACUTE GAPS FROM EACH PILLAR.....	21
3.1. Legislative framework	21
3.2. Human and institutional capacity.....	21
3.3. Geological and mineral information system.....	21

3.4.	Fiscal regimes	21
3.5.	Revenue management	21
3.6.	Artisanal and small scale mining.....	21
3.7.	Linkages, investments and diversification	22
3.8.	Infrastructure development	22
3.9.	Land access.....	22
3.10.	Communication and knowledge management.....	22
3.11.	Monitoring, supervision and enforcement.....	22
3.12.	Environmental and social issues.....	23
4.	KCMV Workplan.....	24
5.	AOB	26
6.	CLOSING	26

Kenya Country Mining Vision (KCMV) Retreat held at Sentrim Elementaita Hotel from 5th – 9th June, 2017.

1. BACKGROUND

The Africa Mining Vision (AMV) was drafted by the United Nations Economic Commission for Africa in 2008 and adopted by African Heads of State and Government in February 2009 as a key continental framework to promote mineral-based development and structural transformation on the continent. The Vision advocates for the Transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development.

The vision was because of several initiatives made at sub-regional, continental and global levels to formulate policy and regulatory frameworks to maximize the development outcomes of mineral resources exploitation in Africa. Lessons learnt from experiences in Nordic countries, suggest that it is important to have a shared strategic vision, deliberate and proactive government-led collective action, timely interventions and coordination of public, private and community interests at all levels for a resource-based development and industrialization strategy in Africa to be brought to fruition.

In addition, there is a need to identify, at national levels, anchor projects that would underpin the strategy the African Mining Vision; and hence the domestication of the African Mining Vision through the preparation of the Country Mining Vision (CMV). The CMV will take into consideration the Kenyan extractive industry aspects at large in line with the requirement of the African Mining Vision.

1.1. Objective of Country Mining Vision

The purpose of a CMV is to ensure industrialization and development through the utilization of the country's mineral resources to catalyze diversified industrial development. This is in line with the Kenya Vision 2030 which aims at harnessing the mineral resources for industrial development.

Mineral based industrial development is only possible if the country's mineral resources potential is known/quantified. Currently, there is inadequate information on Kenya's mineral resources endowment as a large chunk of the country remains largely unexplored.

1.2. Implementation of the Country Mining Vision

As per the African Mining Vision; Kenya is expected to implement the Vision in three stages, namely; short-term, medium-term and long-term under the support and guidance of the United Nations Development Program (UNDP).

The roadmap to implementation of AVM requires concerted efforts of domesticating it at Country level and ensuring that its key tenets are incorporated in relevant national visions, policies, laws, regulations, standards and procedures.

Kenya has started the process of preparing the CMV with the Ministry of Mining leading the process. The Multi Sectoral Technical Working Group (MS-TWG) has been constituted to spearhead and coordinate the exercise.

1.3. Expected Outputs of Country Mining Vision

Broadly, the CMV will guide Kenya in achieving the following:

1. A detailed inventory of the mineral resources endowment for the country. This will be achieved through the implementation of a planned nationwide airborne geophysical survey;
2. A well-regulated, sustainably managed and developed resource-based industry. This will be accomplished through the development of policies and other regulatory mechanisms to govern the resource sector;
3. A diversified industrial development catalyzed by a thriving resource based industry. Proceeds from a thriving resource-based industry will be channeled towards the development of other sectors of the economy such as transport, construction, education, agriculture and health;
4. A well-informed stakeholder population on issues relating to resource-based industry. This will be effected through various stakeholder fora that will be used to disseminate information about the sector to get their buy-in to avoid conflicts that may arise during resource exploration and exploitation;
5. A pool of well trained and technologically enabled population on matters relating to resource exploration and exploitation. Educational and other training institutions will be set up to cater for the development of human resource in the field of mineral resources exploration and development. This will reduce dependence of the country on foreign expertise in resource-based industry;
6. Enhanced returns arising from resource beneficiation and mineral value addition; and

7. Enhanced research and development in resource exploration and exploitation. This will be achieved by setting up relevant educational and training institutions to foster research and development in the extractive industry.

Specifically, the CMV will guide the nation towards achieving the following set of activities;

- a) Conduct a nationwide airborne geophysical survey;
- b) develop policy and regulatory frameworks for the extractive sector;
- c) Diversify industrial development by incorporating high value metals and lower value industrial minerals at both commercial and small scale levels into growth strategy;
- d) Conduct stakeholder sensitization on extractive industry;
- e) Establish educational institutions dedicated to the development of human resource for the extractive;
- f) Establish resource beneficiation and value addition centers;
- g) Establish resource-based research and development centers;
- h) Integrate the informal artisanal and small scale mining sector into the economy;
- i) Transform the nature of mining sector to one that contributes to a more diverse and industrialized economy.

2. DELIBERATIONS AT THE WORKSHOP

2.1. Definition of what AMV and CMV is

Africa Mining Vision seeks to create a Transparent, Equitable and Optimal Exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development. The vision is anchored on **8 pillars** namely:

1. Mining revenues and mineral rents management;
2. Geological and mining information systems;
3. Building human and institutional capacities;
4. Artisanal and small scale Mining (ASM);
5. Mineral sector governance;
6. Environment and Social Issues;
7. Research and development and
8. Linkages and diversification.

The Country Mining Vision is **AMV** at country level. Typically, it is the domestication of AMV. Kenya is in the process of developing their CMV.

2.2. Progress Status

There is registered progress noted and some of the activities carried out include; Stakeholder mapping; raising awareness for the AMV to different stakeholders and a Technical Working Team is in place to lead the development and implementation process.

The Technical Working Team has spearheaded production of some of the strategic papers which include: the Kenya Country Mining Vision concept paper; the Stakeholder Engagement Plan and Strategy; the Communication and Advocacy Strategy which will be key in the implementation of the CMV. A Gap Analysis was conducted by UNDP and revised to update the new development in the Mining Sector. The updated Gap Analysis report was presented and discussed at length at the workshop.

The workshop would also facilitate development of the KCMV work plan which would stipulate a roadmap to the launching, implementation, monitoring and evaluation of the implementation of the CMV.

2.3. Presentation of the Concept Paper on CMV

The presentation was done by Lawrence Marube who highlighted that the CMV would mainly focus on four major pillars which are: Geological and Mining Information Systems; Capacity building to enhance human and institutional strengthening; Linkages and diversification and Mineral sector governance; Policies, laws and legal framework.

2.3.1. Feedback from members

During discussions, the following feedback was highlighted:

1. Members agreed that the concept paper should be developed to serve as an information pack to inform fully the development of the CMV. It should be linked to the Sustainable Development Goals (SDGs), Vision 2030 and the Medium Plan iii to ensure they speak to the global priorities and the National blue prints.
2. The impact of negative externalities (environmental and social degradation) and challenges should be addressed through a proposed prescribed way of how that would be done.
3. It should be clear whether the concept is operationalizing the CMV or the concept is to guide in the development of the CMV.
4. Should identify the **BIG development change** that is anticipated and align it to reality.
5. Jobs creation with realization of the vision should be pointed out also.

2.4. Stakeholder Engagement Strategy

In her presentation Lucy Githaiga highlighted the importance of having Stakeholder engagement. She said that the development of any vision requires that the owners of the vision must all be involved in the development process for purposes of ensuring broad-based ownership. The Country Mining Vision is about Kenya’s development. While it is not possible to involve all Kenyans, it is important that to the best extent possible, the representation of the different sectors of Kenya’s society are involved with the hope that those that represent the different sections of society have a legitimate voice and that they can mobilize support from those that they represent.

2.5. Rationale for engaging the different stakeholders and their interests

No.	Stakeholder	Stakeholder interest and rationale for engagement
1	National Government Represented by the Cabinet Secretaries and the Principle Secretaries	The Executive arm of Government led has a responsibility in planning and design of development initiatives. The responsibility for the development of the CMV is domiciled at the Ministry of Mining. However the CMV process is a developmental process as it involves the input, contribution and participation of other ministries in the process. There are different inter-linkages that require a collaborative and coherent approach since the process is developmental. The Ministries are interested in ensuring that whatever plans they have individually and collectively contribute to development.
2	Parliament and Senate	Parliament and Senate is a collective of peoples’ representatives. They are responsible for making laws, policies, representing the people and carrying out oversight of other arms of Government. For ownership, the peoples’ representatives must therefore be involved. They will also be instrumental in holding the Executive arm of Government to account on the implementation of plans and development projects. Parliament approves budgets and the developmental issues that would be included in the CMV will still end up in the budgets that need approval by Parliament. Senate on the other hand

		promotes the interests of the Counties and the mineral wealth accruing from different counties is of special interest to the Senate.
3	The Independent Commissions	The Commissions represent an independent voice that holds Government to account. They also bring to bear perspectives of social justice, human rights and gender equality. The CMV process would benefit a lot from their participation to ensure that the CMV embraces equity principles
4	Council of Governors and the County Assemblies Forum	The Governors and Members of County Assembly represent citizens at the county level and have an interest in the management of natural resources in their counties. The development of the CMV requires their inputs
5	The Media Group	The role of the media is to inform, educate and entertain. The CMV process is one that requires widespread ownership by all stakeholders. Media can play a critical role in informing and educating the masses about the CMV process and the outcome
6	Civil Society Groups	CSOs represent community interests and play an oversight role of holding the Government to account. They advocate for human rights and social justice. They also mobilize communities towards certain causes. They are interested in ensuring that communities participate and that the interests of communities are included in all policy dialogues. The CSOs can play a critical role in the CMV process by mobilizing communities to participate and own the process
7	Professional Groups, Think Tanks and the Academia	Professional groups, think tanks and the Academia have different interests. For the professional groups, they are interested in ensuring that their profession standards are maintained and that professionals stick to their codes of conduct. They also make contributions to policy dialogues in their areas of expertise. The Academia and the think tanks on the other hand are interested in research and knowledge generation in different subject areas. The

		universities and institutes that are providing extractives studies have a special interest in all information and developments in the extractives sector. Their inputs would be useful in providing detailed analysis of issues in the CMV process
8	Communities in mining areas and community representatives in general	Communities have a constitutional right to participate. They are interested in sharing the benefits of natural resource wealth. They are interested in ensuring that their voice is heard in policy dialogues. For CMV ownership, communities must participate
9	Development Partners	Development partners are interested in partnerships with Governments but they also have a deeper interest... that of being able to spur trade and investment opportunities for their citizens and home companies. They also provide resources to developmental processes and CMV would benefit from their participation and contribution since it requires some considerable resources

2.5.1. Discussions

1. It was acknowledged that stakeholder engagement is key because public participation is anchored in the Constitution making it important to engage all stakeholders.
2. It was agreed that Gender should be mainstreamed in the stakeholder engagement.
3. Critical government ministries and state departments should be fully involved and how far they have been engaged should be evaluated.
4. There should be a proposed a rationale be put in place on how each group /stakeholder will be engaged.
5. County governments should be involved in stakeholder engagement especially mineral rich ones Counties.
6. There should be clear definition of communities / stakeholders to establish thresholds for their engagement.
7. There should be enquiries on what the Government plans are on stakeholder engagement and align to these to avoid duplication.
8. The stakeholder engagement strategy and the communication strategy should work side by side.

9. Stakeholder engagement can be made in two steps, which are the general awareness to the public and strategic awareness to specific targeted stakeholders.
10. A Civil Society Organization stakeholder meeting in Nairobi to be held to build a consensus on how the community can be engaged.

2.6. GAP ANALYSIS REPORT

A team headed by Joshua Laichena reviewed available documents and reports to identify gaps which need to be addressed to align the KCMV with the AMV. This review was targeted at updating the Gap Analysis report that was developed by UNDP. Below are summarized presentations made on the Gap Analysis Report.

2.6.1. Legislative and Policy Framework.

Comments and Additions

- i. It was agreed that other relevant legislations should be included in the review. These include Community Land Act, Water Act, Environmental Management and Coordination Act, and Occupational Safety and Health Act (OSHA).
- ii. It was noted that there is vagueness in the definition of what community is. The Mining Act 2016 defines community as;
 1. A group of people living around an exploration and mining operations area; or
 2. A group of people who may be displaced from land intended for exploration and mining operations.
- iii. In trying to redefine what a community is, territoriality of rights (Danger vulnerability, revenue beneficiary or job accessibility) within the communities under which mining is carried out, should be considered. It is important for regulations to have a definition of community in relation to the mandate at hand.
- iv. What other laws say about a community should be considered.
- v. There is need for the East Africa Legislative Assembly and the East African Secretariat to work with all EAC countries in the region to ensure that the Mining legislations of various countries are harmonized to address the emerging challenges and loopholes that currently exist.

2.6.2. Fiscal Regime

Comments and Additions

- i.* It was agreed that there is need for credible and reliable information on the quality and quantity of mineral resources available to enable the government **collect the correct** royalties which are based on the true worth of our mineral reserves. The meeting was informed that government is in the process of conducting Airborne Geophysical survey and setting up a new geo data bank.
- ii.* There is need to review the Investment Incentives regime in the mineral sector. Incentives to investors should be critically reviewed before awarding and this should be done liaising with relevant bodies such as KRA.
- iii.* Members inquired if there were incentives for local investor and ASM to encourage them to invest locally in the sector, this was confirmed and reported as provided for in the new Mining Regulations.
- iv.* Establishing the debt – equity ratio of investors is important to avoid giving incentives wrongly which leads to incurring huge losses in revenue. For instance, in London companies with debt exceeding their profits are not allowed to be listed at the stock exchange.

Day 2: 07/06/2017

2.6.3. Revenue Management and Benefit Sharing

Comments and additions.

- i.* Kenya Revenue Authority and Commission on Revenue Allocation should be enjoined or work together to ensure sustainable revenue collection, good use of the revenue and implement the relevant policies.
- ii.* Establishing a strong linkage with the treasury to guide on revenue expenditure is also crucial for sustainable development of the sector.
- iii.* Proposal: 70% of the revenue collected should be directed to the consolidated fund and used for development purposes, not the recurrent expenditure.
- iv.* A policy is in the process to guide on the use of the 20% and 10% to counties and community respectively.
- v.* Communities should be allowed to enjoy benefit sharing fairly and the thinking beyond revenue sharing should be enhanced.
- vi.* Tanzania has one of the best mineral audit agencies and Kenya should emulate this. Kenya is in the process of capacity building to optimize her mineral audit agency.
- vii.* The government may have a sovereign wealth fund to control revenue from the extractives.

- viii. As a country, the sectors of the economy which are pressing in terms of requiring development should be identified and revenues collected may be directed towards them

2.6.4. Mineral Sector Governance

Comments and additions.

- i. More emphasis has been put on the community alone. Other institutions affected by mineral sector should also be considered a lot to ensure an all-round governed regime.
- ii. Principles of ethics in mineral governance ought to be strengthened.
- iii. Principles of governance are well articulated in Article 10 (2) of the constitution and need to be emulated in the mineral sector.
- iv. Mineral governance is a broad spectrum and we may have many arms of governance being involved. However, we may dwell on the governance arms which affect the extractive sector much.
- v. Constitution of Kenya Article 62 (1) f that; all minerals and mineral oils are public land. This therefore calls for a robust community liaison to solve any misunderstandings which may arise in the occasion.
- vi. Community liaison committees should not only include the elite but all people even who aren't elite to clear any doubts which may pop up.
- vii. Free prior and informed consent (FPIC) should be maintained in mineral governance.
- viii. NEMA, DOSH and Ministry of Mining should document and comply with their inter-coordination agreements; proper information management systems for future use.

2.6.5. Human and Institutional Capacity

Comments and additions.

- i. The presentation was leaning more on academic point of view. It should also focus on gaps in professionalism.
- ii. Apart from the mining engineering course offered by Taita Taveta University and JKUAT, there should be equal consideration on other courses imparting mining skills to students, i.e. TVET, Mineral Law and Economics et cetera
- iii. Industry should create more opportunities for the many graduating students and this shall in turn encourage taking up courses in mining.
- iv. Government should be in the lead in recruiting students graduating in mining courses and other related fields. So far the government through the Ministry of Mining has built a Gem Centre in Voi and is planning to set up a granite center in Vihiga.

- v. A dynamic model on how to empower the skilled in mining, is paramount to enable them view things from an enterprise / entrepreneurial point of view i.e. being innovative.

2.6.6. Geological and Mining Information Systems.

Comments and additions.

- i. Having a credible and reliable geological data is the most prime contributor to achieving the AMV goal.
- ii. Access to the data is of equal importance to realization of the AMV goal since having data which isn't accessible is of no use.
- iii. The government through the mining ministry has made tremendous steps towards achieving well managed and up to date geological and mining information system. An airborne geophysical survey nationally has been proposed and is in the process of being conducted. This will enable collection of up to date data on mineral potential of the country.
- iv. Creation of a mineral geo data bank is in the process too. Digitization of geo-data records has already been done and 80% of equipment procured. It is expected that by the next financial year the geo data bank will be ready and the airborne data included. Guidelines are being formulated to guide on how the geo data will be accessed by the public and investors.
- v. Also, the ministry is in the process of modernizing and accrediting the ministry's mineral laboratory. This will enable its assay certificates acceptable globally together with giving credence of geological reports emanating from its mineral analysis.

2.6.7. Artisanal and Small Scale Mining

Comments and additions

- i. Clear guidelines should be crafted on how to formalize artisanal miners.
- ii. Artisanal strategy on how to regulate the artisanal miners is being formulated.
- iii. Gender issues in ASM should be fully addressed.
- iv. How ASM can be helped through the geological information should be put in place.
- v. Despite the Mining Act recognizing the ASM it doesn't fully address all their issues, therefore there is need to interrogate further.
- vi. ASM especially those in gold mining should be considered, because with good governance this will spur remarkable economic growth.
- vii. There should be a clear distinction between the role the National government plays to ASM and what role County government plays to ASM, because of their very nature of being too local then they are closer to the County Governments, and this may result in assumption of roles.

Day 3: 08/06/2017

2.6.8. Linkages, Investments and Diversification.

Comments and emerging issues

- i. Strengthening the local content is important. The coming local content policy will make this more effective.
- ii. We should focus not only on infrastructure but also on how to sustain it. We can have two types of infrastructure: *Hard infrastructure*; Real infrastructure on the ground and *Soft infrastructure*; institutions that manage the hard infrastructure, economic, health, and cultural and social standards of a country.
- iii. We should diversify our extractive sector to other sectors for real sustainable development.
- iv. Infrastructure is being developed of late and this is a major boost for the extractive sector.
- v. Linkages go beyond financing and hence there are other many support services / linkages that must considered too.
- vi. Mining / extractive industry isn't comprehensively captured in vision 2030, this should be an opportunity to develop a robust KCMV diversified and linked to all other economic sectors.

2.6.9. Land Access

Comments and Additions

- i. Institute of Human Rights and Business (IHRB) can be consulted for more guidelines on land access concerning the mining sector.
- ii. Gender issues in land access should be put in consideration i.e. issues of women in land ownership and compensation.
- iii. Land compensation process should be well outlined to avoid unfair grabbing and disputes. The process should also be fast to avoid delays. Courts have been left to be arbitrator of land issues and it has not reaped good results.
- iv. Different types of land compensation may take place; cash or land allocation in another locality or both i.e. hybrid.

2.6.10. Communication and Knowledge Management

Comments and Additions

- i. Reliable, relevant and vivid information on the extractive sector should be readily available and a clear channel of accessing it well outlined.
- ii. Information available in the government websites is insufficient therefore should be beefed up and updated to capture current trends in mining.
- iii. Once an Environmental Impact Assessment (EIA) report has been done, the public around should be noted fully and the report be circulated for full awareness.

2.7. COMMUNICATION AND ADVOCACY STRATEGY

Presenter: Ms. Joy Doreen Biira

2.7.1. Reckonable Challenges

1. Almost complete lack of awareness of mining legislation and regulations.
2. Stakeholder conflicts (e.g. Investor-government, Investor-community, Civil society-government, etc.)
3. Lack of adequate participation and coordination of communication functions.
4. Half-baked media reporting largely driven by lack of information and training.
5. Integrating IEC functions in mainstream planning process

2.7.2. Interventions

1. Work with communications teams to carry out community sensitization drives targeted at communities and members of the public in general. This is to be done by going to the grassroots along with the members of the press to cover the extractive sites and begin to tell the stories of success.
2. Set-up community based forums and bring on board the mining companies in those areas, government and civil society groups and highlight empowerment programs that are aligned to mining activities. This in-turn creates cohesion within those communities because they are consulted and educated on how their livelihoods can improve.
3. Build on the conversation on Environmental responsibility on the mining companies and the best models to be endorsed and adopted as the mining best practice. Publish the stories of responsible mining to encourage environmentally consciousness.

4. Appeal to the mining organizations to publish what they pay to the communities/ government / counties to engrain a culture of accountability and will give communities a sense of ownership.
5. Periodically elect mining brand ambassadors per extractive grouping these include; Artisanal miners; Small Scale Miners; Large Scale Miners; Exploration Companies; Gemstones & Precious minerals and Mining Services (finance, Training & consultancy, logistics, equipment, security among others.) These ambassadors will be the representatives of those organized mining groups accessible to miners and CSO's to keep track of emerging issues and support the Ministries in ensuring that the constituents are well informed and are actively involved in emerging issues under the Extractive Sector therefore harmonizing end to end engagements.
6. Translation, publishing and printing of the popular version of the Mining regulations for dissemination to local communities.
7. Establishment of centralized information centers that are the points of reference and can be accessed easily and conveniently to ensure accurate information outflow.
8. Advocate and protect Women in the extractive industry in collaboration with UN Women and other organizations to encourage the efforts women in the mining sector to enrich their livelihoods as the traditional homemakers.
9. On-board the local administration in the formation of dispute resolution committee's that listen and impartially dispose of matters at the grassroots.
10. Conduct social media drives to create awareness the mining value chain.
11. Carry out internal promulgation exercises and trainings to evaluate and harmonize hence ensure the constant accuracy of information. During such exercises, trainings on use of social media and other channels would also be conducted.
12. Development of content/ communication material e.g. documentaries, photo books, among others.
13. Facilitation of Flagship Exhibitions / Trade Fares and benchmarking forums (national, regional and international) aimed at promoting the activities of the Mining Vision and as a platform to showcase various products and services within the mining value chain.

Monitoring and evaluation can be tasked to an M&E expert to track the progress of the interventions through;

1. Media Monitoring and Analysis.
2. Conducting a consumer and internal staff survey to measure impact of the various undertakings of the ministry.
3. Developing a productivity report based on the deliverables.

But some of the off-cuff Performance Indicators that can be tracked internally are: Increased general awareness on regulation and policy; high Mining message recall on various Mining vision initiatives; reduced incidences of conflict between communities, investors and government and increased investment and investment queries.

Plenary Comments and Additions

- i. Judiciary needs to be included in the targeted groups (Advocacy Campaign targets).
- ii. Partnering with Ken Invest in putting up an online information system regarding the extractive industry.
- iii. Stakeholder engagement strategy should be implemented side by side with the communication and advocacy strategy to ensure targeted groups are all reached.
- iv. A division is being created within the ministry called “community liaison” to engage the communities i.e. to be the link between communities and the government.
- v. Globally, mining has been successful where communities and civil societies are kept abreast on information.
- vi. Media firms seeking information from the Government, should do early in advance to avoid delays due to protocols which may be present in accessing information concerning the extractive sector. There should also exist a mutual understanding and a healthy correlation between the two parties.
- vii. Government should categorize which information should be released to public and which shouldn't.

Day 4: 09/06/2017

2.8. SOCIAL & ENVIRONMENTAL CONCERNS

Overview/context

The Constitution of Kenya guarantees right to a clean and healthy environment as provided for under Article 42. Similarly, we have existence of several legislations which seek to address the social and environmental challenges. This includes the Mining Act 2016 and Environmental Management and Coordination Act Cap 387.

Mining activities are generally environmentally degrading, long term with permanent impacts on human and ecosystems; this has been evident in past mining projects like salt mines.

The current mining activities tend to have more inclination on polluter pays principle rather than the precautionary principle since the mining activities tend to have remediation plans being undertaken after the closure and decommissioning of the mining activities.

Mining operations rarely embrace environmental sustainability and the environmental restoration measures are often seen as an additional burden to mining companies.

Several environmental related disasters are caused by mining operations such as acid rains, acid mine drainage, destruction of ecologically sensitive areas. Similarly, several public health related

concerns have emanated from mining activities for instance the lead poisoning at Owino Uhuru and use of mercury in Migori County.

Mining activities especially in relation to coal have also lead to increase in emissions of greenhouse gases and thus contributing to the greater impact of climate change. There is evidence of impacts of coal and other mining operations in other countries that have embraced these minerals and Kenya seems poised to tap on opportunities presented by these minerals.

Gaps

1. Environmental Impact Assessment process tends to focus on the environment and not social issues.
2. Lack of technical capacity of officers to clearly address and review the issues.
3. Lack of enough human resource capacity.
4. Potential conflict of interest because the EIA is financed and contracted by the proponent.
5. Assessment of the impact is done within a localized area leaving out the larger area/ ecologies that could potentially be impacted.
6. Geographical & Ecological scope of the ecosystems to be affected is often overlooked and this has an adverse impact.
7. Lack of adequate mitigation measures by both the investor and state agencies
8. Implementation and enforcement challenges around EMCA.
9. Lack of preparedness/contingency plans to respond to disasters brought by mining operations and pollution by mineral products e.g Thange river, Uhuru Owino area.
10. Lack of goodwill for enforcement of environmental safeguards as provided under EMCA.
11. Overemphasis of economic development not rationalized to environmental and social considerations.
12. Inadequate public participation in the EIA process.
13. Lack of strong environment and social safeguards that clearly provide stipulations on minerals to mine and those not to mine.

Recommendations

1. Overarching emphasis on precautionary principle application.
2. Diversification and investing revenues accrued from mining to other sectors especially environment and natural resources development.
3. Independence, objectivity and participatory aspects of EISA
4. Ensure effective monitoring of mining activities and their operations to ensure compliance with the law.
5. Enhance environmental compensation and restitution.
6. Focus on cost benefit analysis to inform the EIA.
7. Ensure ongoing free prior informed consent (FPIC), participation and awareness in the process.
8. Need for review compensation rates/ measures to be consummate with the impacts associated with each of the mining activity.

Social issues

Gaps

1. Lack of resettlement legislation.
2. Lack of a national compensation framework.
3. Lack of a benefit sharing and restitution framework.
4. Lack of forward social and environmental impact simulation of the mining operations to model future situations on the environment and its ability to supply basic needs such as water.
5. Inadequate human rights protection mechanism, noting the specific vulnerabilities of women.
6. Information asymmetry on environmental issues
7. Elite capture (Liaison committees), CDA.
8. Inadequate information and awareness on mining activities

Recommendations.

1. Need to address public health concern.
2. Need to review compensation
3. Need to build evidence on nexus of public health and environmental concern.
4. Develop and implement a comprehensive contingency plan.
5. Enhance access to information, education and awareness of mining activities in the society/Community.
6. Integrate and mainstream gender perceptive (Consultation, participation decision making, benefits) with emphasis on women.

(the above section is to be added to the main Gap Analysis document)

Comments

- i. Free Prior and Informed Consent (FPIC) should be embraced all the times. The owner of the mineral found land, community and county government should be well informed to avoid any issues which may arise.
- ii. Companies may be compelled to change mining methods or processing technology if it affects the environment negatively.
- iii. NEMA should understand and execute her mandate fully, which is Coordinating the various environmental management activities being undertaken by the lead agencies.
- iv. Increasing officers on ground to attend to environmental and social issues.

3. TWO MOST ACUTE GAPS FROM EACH PILLAR

3.1. Legislative framework

1. Lack of harmonization of different legislation on Mining in the region leading to smuggling of mineral across the region and thus affecting the entire sector
2. A general lack of appropriate policy frameworks and strategies to drive the industrialization, value addition and beneficiation agenda

3.2. Human and institutional capacity

1. Shortage of trained workforce relevant to the extractive industry
2. Weak administration/ management of the extractive industry
3. Absence of research and development of the extractive industries

3.3. Geological and mineral information system

1. Lack of Proper inventory and credible geo data - Minerals known to exist to date are in scattered reports. As the sector grows new Minerals will be discovered. No linkages to other players in the extractive industry.
2. Inadequate funding for the ministry to be able to collect the required geophysical data and establish a unit dedicated to data management.

3.4. Fiscal regimes

1. Lack of coordination and consultation by relevant institutions resulting in partially effective fiscal regimes, with revenue not properly monitored and secured. Applying of various tax instruments in uncoordinated manner by different agencies results in revenue losses.
2. Transfer pricing. Extractive industries fiscal regimes are vulnerable to challenges of global businesses resulting in revenue losses through company understating the taxable income through transfer pricing. Thin capitalization, offshore management fees and under invoicing of sales, decommissioning of costs and use of derivatives in natural resources are other instruments.

3.5. Revenue management

1. Lack of capacity for mineral fiscal modeling and designs means that institutions are not adequately able to plan for, monitor and secure revenue compared to mining companies, which have sophisticated tax planning mechanisms
2. The right information required to enforce the fiscal regime does not flow to agencies.

3.6. Artisanal and small scale mining

1. Lack of financial and technical capacity of the miners
2. Inaccessibility of good markets for the ASMs

3.7. Linkages, investments and diversification

1. Lack of financial, technical capacity to invest in the sector. This is characterized by limited access to finance for expansion and to take on additional contracts, limited understanding of international standards for industry participation, lack of specific information on the sectors and lack of technical capacity to undertake extractive activities.
2. Lack of local content Promotion in the sector
3. Lack of incentives on mineral development value chain

3.8. Infrastructure development

1. Huge infrastructure gap between areas producing oil/minerals and other parts of the country
2. Lack of mechanism for establishing shared infrastructure use in the extractive industry

3.9. Land access

1. Lack of guidelines for effective, just and prompt compensation of communities and affected persons where mining and mineral development take place.
2. Absence of guidelines for land acquisition from private and community land owners where mining and mineral resources development is carried out.

3.10. Communication and knowledge management

1. Lack of a communication and stakeholder engagement strategy and associated plans.
2. Inadequate knowledge and information management regimes/system

3.11. Monitoring, supervision and enforcement

1. Poor implementation of laws and strategies for compliance and monitoring
2. Poor institutional capacity in funding, human, equipment and technology for monitoring, supervision and enforcement.
3. Lack of coordination of other government agencies in monitoring, supervision and enforcement in the sector.

3.12. Environmental and social issues

Environment

1. Inadequate personnel to Implementation and enforcement challenges in respect to environmental legislation and regulation
2. Inadequate public participation of the EIA process

Social

1. Inadequate human rights protection mechanism leading to violation of women rights, children and labour rights.
2. Inadequate information and awareness on the mining activities

4. KCMV Workplan

KCMV WORKPLAN By Multi Sectoral Technical Working Group								2017					2018						
Activity	Sub activity	Output	Resp. party	Source of Funds	Statuses	Timelines	Notes	J	A	S	O	N	D	J	F	M	A	M	J
Thematic Area #1: Linkages, Investments and Diversification																			
Activity #1: Situational Analysis	1. Hire Consultancy Services 2. Do the Analysis on L, I & D	Situational analysis paper	MoM-DMPVA	DP/GoK/AMDC (in kind)		July-Oct 2017													
Activity #2: Policy Dialogue	Hold a Conference/Forum	Action Plan	MoM	DP/GoK		Nov-Dec 2017	The Forum discussions will be guided by the Situational Analysis Paper												
Thematic Area #2: Land Access																			
Activity #3: Situational Analysis	1. Constitute a committee 2. Hold a situational analysis workshop	Policy Position Paper	NLC	GoK/Diakonia Sweden		July-Dec 2017													
Activity #4: Development of guidelines for Land Acquisition and Access	The technical Committee shall also develop guidelines	Well stipulated Guidelines	MoM/NLC	GoK/Diakonia Sweden		Jan - April 2018													
Thematic Area #3: Mineral Sector Governance																			
Activity #5: A Study on Mineral Sector Governance (Environmental and Social Issues)	1. Hire Consultancy Services 2. Do a study on M. S Governance	Report paper	MoM/UNDP-Regional Centre	UNDP		July - Oct 2017	The Study shall majorly focus on Environmental and Social Issues (Coordination of various govt agencies; MoM, NEMA, OSHA, and others)												

Activity #6: Consultative workshop/forum	Hold a Forum with relevant stakeholders	Action Plan	MoM/U NDP-Regional Centre	UNDP		July - Oct 2017	The Forum discussions will be guided by the Study Report												
Activity #7: Community Engagement Framework	Establish a Community Engagement Framework	Community Liaison Division	MoM/U NDP	UNDP	In progress														
Thematic Area #4: Artisanal Mining																			
Activity #8: Development of Artisanal Mining Sector Strategy	Consultancy services to develop the strategy	The Strategy	MoM	DP/GoK/AMDC (in kind)	in progress	July-Dec 2017													
Thematic Area #5: Communication and Knowledge Management System																			
Activity #9: Knowledge Management System	Develop a K.M. System	K. M. System	MoM	DP/GoK/AMDC (in kind)		By Dec 2017													
Activity #10: Communication Strategy	Develop a C. Strategy	C. Strategy	MoM	DP/GoK/AMDC (in kind)		By Dec 2017	Activity #10: Communication Strategy												

5. AOB

1. Human and institution capacity issues are crosscutting in the thematic areas, and thus should be considered in the work-plan alongside these areas.
2. Ben Opa to constitute a committee to deliberate further on land issues. (from the work plan)
3. Moses Gachanja was tasked to give periodical updates on the progress of the KCMV to the members.
4. Paul Msoma proposed to have a meeting with the heads of the AMV thematic areas once back in Addis Ababa and see if they can come to Nairobi to discuss on our so far progress. MoM / UNDP to write an official letter to him on the same.

6. CLOSING

The meeting was wrapped up by the Director Geological Survey, Ministry of Mining, Mr. Shadrack Kimomo. In his closing remarks, on behalf of the Ministry of Mining he expressed gratitude to the various participants for their presence and noble contributions, and urged them to continue in the same spirit.

The retreat came to an end with a word of prayer.

Organizations represented:

- 1) Ministry of Mining
- 2) Ministry of Environment and Natural Resources
- 3) Ministry of Lands and Physical Planning
- 4) Ministry of Labor; DOSH
- 5) KRA
- 6) NEMA
- 7) Council of Governors
- 8) Civil Society Organisation; *Diakonia Sweden and Action Aid*
- 9) Women in Extractives; AWEIK
- 10) Kenya Chambers of Mines
- 11) Taita Taveta University
- 12) KIPPRA
- 13) KenInvest
- 14) Nation Media
- 15) UNECA/AMDC
- 16) UNDP

