

PROPOSED FRAMEWORK FOR SHARING OF MINERAL ROYALTIES REVENUE AMONG THE NATIONAL GOVERNMENT, COUNTY GOVERNMENTS AND COMMUNITIES

1. Section 183 of the Mining Act, 2016 provides that any 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. Such royalties shall be distributed as follows:
 - 70% to the National Government;
 - 20% to the County Government; and
 - 10% to the community (Definition for Community shall be as provided in the Mining Act 2016)
2. Whereas the Public Finance Management Act (PFMA), 2012 provides for budgeting for expenditures and flow of funds for revenue raised nationally to the National and County Governments, there's no provision for sharing mineral royalties.
3. This framework therefore provides modalities of budgeting and flow of mineral royalties to the National Government, County Governments and Communities.

I. Collection of Mineral Royalties

4. In order to facilitate transfer of Mineral Royalties to the National Government, County Governments and Communities in accordance with the provisions of the Mining Act, 2016, the following steps are proposed: -
 - i. The Ministry responsible for Mining shall open a Mineral Royalties Collection Account for receiving all mineral royalties.
 - ii. Seventy percent (70%) of all Mineral Royalties collected shall be transferred to the Consolidated Fund.
 - iii. The National Treasury shall further open a County Mineral Royalties Account into which, thirty percent (30%) of all Mineral Royalties collected shall be deposited for ease of sharing with the respective beneficiaries as provided for under Section 183 of the Mining Act, 2016.
 - iv. The ministry responsible for mining shall remit to the National Treasury the royalties received by the ministry by the end of every month.
 - v. The Ministry responsible for mining shall prepare and submit to the National Treasury, by the 15th day after every quarter, a schedule indicating amounts

due to County Governments and communities from which the royalties were collected and minerals against which the payments were made.

- vi. The National Treasury shall transfer the 30% from the County Mineral Royalty Account, within 14 days upon receipt of the schedule, to the respective County Revenue Fund (CRF) of the benefiting County based on the schedule prepared by the Ministry responsible for Mining.
- vii. The 30% shall be transferred based on a legal instrument that shall be approved by Parliament.
- viii. The National Treasury and Ministry responsible for Mining and Petroleum shall ensure that all royalties collected since the enactment of the Mining Act, 2016 are disbursed to the Counties and Communities as provided by the Act.

II. Framework for Sharing the 20% Mineral Royalties Due to County Governments

5. The National Treasury shall, by the 20th day after the end of every quarter, share with the Controller of Budget the schedule submitted by the Ministry responsible for mining in line with paragraph 4(v) above; indicating amounts due to County Governments and communities from which the royalties were collected and Minerals against which the payments were made. This shall form the basis for transfer of funds from Mineral Royalties Collection Account to the respective County Revenue Funds.
6. Each recipient County Government shall include in its estimates of revenue the 30% mineral royalties share as approved by Parliament. The 20% mineral royalties share shall be retained by the County Government while the 10% mineral royalties share shall be transferred to the respective communities.
7. Requisition of funds from the CRF to the respective communities shall be as provided for in the PFMA, 2012.

III. Framework for Sharing the 10% of Mineral Royalties Due to Communities

8. Each recipient County Governments shall include in their estimates of expenditure, mineral royalty's transfers to communities for approval by the County Assembly. The estimates shall include a schedule of allocation to the communities to benefit from the mineral royalties' revenue.
9. The 10% entitled to the Communities shall be transferred through the respective County Governments for purposes of financing projects/interventions as identified by communities.

10. Each County Government shall open a Special Purpose Account (SPA) for depositing the 10% mineral royalties share to communities.
11. Each Community shall, through the respective Community Development Agreement Committee open an account for receiving the 10% mineral royalties share for the respective community.
12. The County Treasury shall transfer the 10% due to the Communities to the various accounts of the Communities in line with the Schedule approved by the County Assembly.
13. Funds due to communities shall not lapse to County Revenue Fund but shall be re-budgeted in the subsequent financial year.
14. The authority to withdraw funds from the Community Accounts shall be vested in the Chief Officer in charge of mining in the County Government.

IV. Institutional Arrangement

15. The institutional arrangement for identification and approval of community interventions/projects to be financed from the 10% share of mineral royalties due to Communities, shall be aligned with the existing Community Development Agreement Committees (CDACs) as spelt out in the Mining (Community Development Agreement) Regulations, 2017. Where there is no CDAC in existence, communities shall be required to form one. In addition, for purposes of implementation of interventions/projects, CDACs shall have the following additional members;
 - a) the County Executive Committee Member (CECM) responsible for mining or his/her representative; and,
 - b) the County Executive Committee Member (CECM) responsible for Finance or his/her representative.
16. The Committee members shall elect the Chairperson and Secretary from among the members.
17. The members shall serve for a period of three years and the term may be renewed once.
18. The Cabinet Secretary responsible for Mining shall appoint members to the Committee.
19. The Committee shall: -

- a) provide a platform for the community to debate whether the use of revenues provided by the County to fund programmes conform to the development priorities of the community;
 - b) facilitate continuous engagement and serve as the link between the community and the County; and
 - c) settle all disputes that may arise.
20. Whenever it becomes necessary to resolve a dispute or complaint, the Committee shall meet at such times and place as the Chairperson may decide.
21. The quorum for a meeting shall be two-thirds majority of the members.
22. The Committee shall determine its own procedures. The administration and operation budget shall not be more than 3% of their allocation.

V. Accountability

23. County governments shall offer technical support to Communities in establishing the CDAC Committees, structures for identification, implementation, reporting and accountability for the projects/interventions.
24. Every quarter, the Chief Officer in charge of mining shall prepare and submit a financial and accountability report to the relevant Committee of the County Assembly, for oversight with a copy to the Commission on Revenue Allocation, and National Treasury.
25. Subsequent disbursements to the Community shall be subject to approval of the report by the relevant oversight Committee of the County Assembly.

VI. Dispute Resolution

26. The CDAC shall establish a dispute resolution mechanism whose main role shall be to receive and provide guidance on complaints by members of the community of the county government on identification of projects or utilization and accountability of budgeted funds.
27. If the dispute has not been resolved at the CDAC level it shall be escalated to the County Executive Committee.
28. If the dispute has not been resolved by the County Executive Committee, it shall be escalated to the Cabinet Secretary of the Ministry responsible for mining.