



TERMS OF REFERENCE TO UNDERTAKE A STUDY ON REVENUE SHARING MECHANISMS AND ROYALTY MANAGEMENT IN KENYA.

About Kenya Human Rights Commission (KHRC)

The KHRC is a premier and flagship Non-Governmental Organisation (NGO) in Africa with a mandate of enhancing human rights-centered governance at all levels; a vision of a society of free people and a mission to root human dignity, freedoms, and social justice in Kenya and beyond. In its operations, KHRC works with more than thirty Human Rights Networks (HURINETs) and other grassroots community organisations based in more than thirty counties in Kenya; partners with more than thirty national level state and non-state actors including various coalitions; and more than fifty sub-regional, regional and international human rights organisations and networks. As a domestic transnational organisation, KHRC has sustained impactful interventions on human rights and governance at the County and National levels as the core of its legitimacy and escalated to regional and international levels.

To address the systemic violations and governance deficits, KHRC applies a human rights-based approach (HRBA) that is double-prolonged; targeting both the affected people and the violators involved. In its work, KHRC applies a combination of strategies including research, policy engagement, conscious awakening and/or creation, community organising, coalition/movement building, advocacy and public interest litigation to realise its objective.

Background to the study

According to Article 62 (3) of the Constitution, all mineral resources constitute public land and are held by the state in trust for the people of Kenya. Further Article 69 (1) requires sustainable management of natural resources. The state is therefore under obligation to ensure natural resources are managed in a manner that ensures among others: sustainable exploitation, utilization, management and conservation of the same, and equitable sharing of the accruing benefits. Public participation, transparency and access to information is a requirement in the management of natural resources for the benefit of the people of Kenya. In order for the state to fulfill its obligations, there is a need to ensure that people have access to

information concerning extractives including pricings, sales, negotiations, contracts and parties involved in the extraction and sale of natural resources.

The Mining Act of 2016 provides a framework for the people of Kenya, as owners of the minerals, to effectively participate and benefit. It provides for 3 complimentary benefit sharing mechanisms; Community Development Agreement (CDA) where 1% of the company's income goes to community projects); royalties (70% to national government, 20% to counties and 10% to communities where the mining operations occur); Local Content (employment of, transfer of skills, technology and provision of procurement opportunities to the local community).Whereas the rates and structure of mineral royalties vary widely internationally, royalties are often collected for payment to the state and owners of the mineral resource (the people) in return for acquisition of its non-renewable minerals from the land. As a benefit sharing and compensation instrument, the royalty is payment in return for the permission given to the mining company to access the minerals. Moreover, it also gives the mineral right holders the right to develop the resource for their own benefit. In Kenya, mineral royalty has been a subject of important interest especially by communities hosting active large-scale and small-scale mining operations. With the enactment of the County Government Additional Allocations Act 2022, counties reportedly can access their share. However, most communities are yet to receive their share pending the guidance of the recently appointed Minerals Royalty Committee which was expected to provide guidelines for the disbursement of the revenues to the communities. The Draft Framework for Sharing of Mineral Royalties Revenue among the National Government, County Governments and Communities is an important milestone towards providing a mechanism for administering to communities and respective counties the royalties paid by the mineral rights holders to the national government. However, there exists gaps in the management, reporting and tracking of these revenues by the national and county governments, as well as at the community level. It is against this background that the KHRC seeks to undertake research on revenue sharing mechanisms and royalties management to inform policy advocacy for transparent and progressive management of extractive sector revenues.

Study objective

This study is intended to analyse the extractives sector revenue management with a focus on the legal, regulatory and institutional frameworks; and models with the view to assess their adequacy, effectiveness and accountability in Kenya. The study shall focus on assessing the extent to which the existing frameworks provide a mechanism for effective administration of royalties to the national government; and accessibility to the county government, and to local communities with a focus on Kwale County. The findings of this research will inform efforts to advance progressive, transparent and accountable mobilisation and use of extractive sector revenues in Kenya. This shall be through strengthening existing mechanisms for royalty collection, as well as administration to local communities and counties the royalties paid by the mineral rights holders to the national government. Further, the analysis will be used by diverse audiences including the KHRC, Oxfam, other Civil Society Organizations (CSOs), policymakers, development partners, communities, learning institutions, and media to engage for more transparent and

accountable domestic resource mobilisation from extractive industries in line with the African Mining Vision.

Scope of the study and duties of the Consultant(s)

The consultant(s) will be expected to accomplish the following tasks:

1. Critically assess Kenya's extractives revenue management legal, policy and institutional frameworks/models, establish if there is any incoherence and or duplication with the Public Finance Management Act and advise on their adequacy and effectiveness as fiscal instruments for actualising economic and social benefits for the national government, respective county government and local communities.
2. Evaluate the structures established for purposes of extractives revenue management and distribution (CDA and Royalties) and suggest how to harmonize for greater effectiveness in administration of these funds.
3. Benchmark Kenya's royalty framework and models and draw comparisons with selected international and regional good practice and test their ability to effectively compensate mineral owners, give back to communities, mitigate conflicts and stand the test of responsible business.
4. Assess the mechanisms for management, reporting and tracking the extractive revenues collection and distribution by the national and county governments, as well as at the community level in view of strengthened transparency, accountability and oversight by communities and interested stakeholders.
5. Provide a clear set of recommendations on measures that can be applied for more progressive, inclusive, accountable, transparent and participatory management extractives sector revenues in Kenya.

Deliverables

The deliverables of this study will include:

- a. An inception report detailing the understanding of the terms of reference, literature review, proposed study methodology as well as a detailed work plan and timeline for the assignment.
- b. A comprehensive report outlining the findings of the study and a set of policy recommendations for the government and other stakeholders to consider towards enhancing transparency and accountability in the management of extractives revenue in Kenya.
- c. A feedback workshop with KHRC and other stakeholders to present preliminary findings in draft form before finalization of the report
- d. A policy brief to support and inform KHRC and partners' advocacy work.
- e. A PowerPoint presentation and present the final study report to relevant stakeholders during an internal review, validation and report launch meetings.
- f. A repository of raw data collected during the research process (Research data bank) including figures on the royalties collected, disbursement etc.

Timeline

The study will be undertaken within 40 days between the months of February-March 2024 as will be agreed during the inception meeting between KHRC and the consultant(s).

Competencies required for the consultancy

- a. At least a master's degree in Law, Natural Resource Management, Social Science, Development Studies, Economics or any other relevant field.
- b. Demonstrable experience of not less than 5 years in extractives, tax justice, natural resource or revenue management.
- c. Applicant(s) must have a strong understanding of research methodologies and be able to communicate complex concepts clearly and concisely.
- d. Demonstrated understanding of constitutional, regulatory and policy environment on extractives sector, sustainable development, revenue management, citizens participation, and influencing in the Kenyan context.
- e. Demonstrated professionalism, integrity, ability to work independently with minimum supervision, adherence to set timelines, and availability during the research period.

How to apply

Bids should include up-to-date CVs of the consultant and assistants (including at least 3 recent professional organisations that have contracted the individual/company), a sample report (preferably similar assignments), a cover letter explaining interest and suitability for this assignment, a proposal-outlining methodology and work plan and financial proposal detailing daily costs per activity (Max.10 pages). Interested consultant(s) are requested to submit their bid documents by **Friday, February 9, 2024**, to consultancy@khrc.or.ke quoting the title of the assignment.