



REGULATORY IMPACT STATEMENT

THE DRAFT PETROLEUM (UPSTREAM PETROLEUM ACCESS TO LAND) REGULATIONS

APRIL 2025

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1. INTRODUCTION

The Petroleum Act, Cap 308 ('the Act'), provides a framework for contracting, exploration, development and production of petroleum and further to give effect to relevant articles of the Constitution of Kenya, 2010, in so far as they apply to upstream petroleum operations. To operationalize the Act, and provide for use of land for upstream onshore petroleum operations, the Cabinet Secretary in charge of Petroleum proposes to make *Petroleum (Upstream Petroleum Access to Land) Regulations, (Proposed Regulations)*.

The Regulations are made pursuant to Section 126 (1) and 127 of the Act which empowers the Cabinet Secretary to make regulations for the better carrying into effect of the provisions of the Act.

Regulatory Impact Statement

Section 6 of the Statutory Instruments Act (Cap. 2A), (SIA) provides that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument.

Pursuant to the provisions of Sections 6 and 7 of SIA the Energy and Petroleum Regulatory Authority (Authority) being the regulation making authority prepared this Regulatory Impact Statement for the proposed regulations.

2. STATEMENT OF OBJECTIVES

2.1 General Objective

The overall regulatory objective of the proposed Regulation is to provide modalities for accessing land for onshore upstream petroleum operations only.

2.2 Specific Objectives

The specific objectives are to:

- i. Promote onshore upstream petroleum projects while looking to protect the rights and freedoms of project affected persons, project proponents and owners or occupiers of land;
- ii. Prescribe the format for preparation, submission, review, approval and implementation of land access, acquisition and resettlement frameworks;
- iii. Provide for the establishment of a committee for land access, acquisition and resettlement in onshore upstream petroleum operations;
- iv. Establish procedures for land restoration and reversion upon completion of onshore upstream petroleum operations.

3. STATEMENT ON THE EFFECTS OF THE PROPOSED REGULATIONS

Whereas there exist several statutes on administration and management of land pursuant to Chapter Five of the Constitution of Kenya, to wit the Land Act, Cap 280, the National Land Commission Act, Cap 281, the Community Land Act, Cap 287, and the Land Registration Act, Cap 300, the Upstream Sector needs a regulatory framework specifically tailored to provide a structured procedure for accessing land by all Contractors for upstream operations guided by the best petroleum industry practice.

The procedures proposed in the Regulations, are limited to how the Contractor should approach any landowner/communities while accessing land for onshore petroleum operations while keeping the Cabinet Secretary and the Authority informed and the Regulations do not violate any provision in the Land Laws.

The Regulations will enable the Government to mitigate land access costs which are recoverable under the Production Sharing Contract. Further these Regulations will ensure that the Cabinet Secretary and the Authority are fully aware of Contractor's activities relating to land access on the ground. The Regulations will also help protect land owners, occupiers, project affected persons, communities from unfair practices by Contractors.

4. ASSESSMENT OF OTHER PRACTICABLE MEANS OF ACHIEVING THE OBJECTIVES OF THE PROPOSED REGULATIONS

4.1 Option A: Maintaining Status Quo

Status quo would mean relying on the provisions of the various Land Laws which are generally meant to provide for governance and management of land in Kenya in line with constitutional principles.

Accordingly, the *status quo* is **NOT A DESIRABLE OPTION**, as it fails to:

- Operationalize sections 108 and 109 of the Act;
- Recognize the unique nature of upstream petroleum operations where a Land Access, Acquisition and Resettlement Framework is required to reach the Final Investment Decision; and
- Provide for standard procedures on land access for onshore petroleum operations.

4.2 Option B: Use of Frameworks Such as Guidelines

While a quicker and an easy option, it lacks the legal force needed for enforcement.

4.3 Option C: Develop Petroleum (Upstream Petroleum Access to Land) Regulations, under the Act

This option was chosen for its ability to provide a binding and enforceable regulatory framework.

5. ASSESSMENT OF THE COSTS AND BENEFITS OF THE PROPOSED REGULATIONS

The proposed Regulations are expected to have economic, social and environmental impacts as illustrated below:

a) Economic Impact

The improved regulatory clarity through the Proposed Regulations will streamline land access, reduction of potential disputes, and further improve the sector's operational efficiency. Some of the identified economic impacts include:

Impact/ Benefit	Remarks
<ul style="list-style-type: none"> • Attracting investment 	<ul style="list-style-type: none"> • A well-defined and stable regulatory framework can attract foreign and domestic investment in the oil and gas sector.
<ul style="list-style-type: none"> • Predictability 	<ul style="list-style-type: none"> • Predictable and transparent regulatory framework enhances investor confidence and project bankability
<ul style="list-style-type: none"> • Increased efficiency and ease of doing business 	<ul style="list-style-type: none"> • Efficient land acquisition processes reduce transaction time and uncertainty
<ul style="list-style-type: none"> • Enabling equitable compensation 	<ul style="list-style-type: none"> • Equitable land compensation ensures that the owners or occupiers do not suffer any financial loss.
<ul style="list-style-type: none"> • Socio-economic growth 	<ul style="list-style-type: none"> • Access to land for Upstream Petroleum activities can spur socio-economic growth, including increased business opportunities, employment, and infrastructure development.

b) Social Impact

The proposed Regulations are expected to have a transformative social impact by introducing a rights-based approach that emphasizes fairness, inclusion, transparency, and accountability in interactions between upstream petroleum operators, land owners or occupiers. The following social impacts are expected:

Impact/ Benefit	Remarks
Safeguarding land rights	<ul style="list-style-type: none"> • Safeguards community land rights by ensuring legal recognition of land ownership and tenure systems

Ensures dignified relocation	<ul style="list-style-type: none"> Structured resettlement plans minimize social dislocation and uphold dignity of displaced persons
Livelihood restoration	<ul style="list-style-type: none"> Ensures livelihood restoration and continuity of community income and sustenance
Transparency and accountability in land access dealings	<ul style="list-style-type: none"> Participatory processes foster trust, improve stakeholder relations, reduce conflict, and ensure project legitimacy and acceptance Transparent grievance mechanisms reduce potential for project sabotage, litigation, or reputational damage

c) Environmental Impact

Impact/ Benefit	Remarks
Controlled Land Use	<ul style="list-style-type: none"> The secured land will be purpose specific for upstream petroleum operations only
Ensures post-operation land rehabilitation	<ul style="list-style-type: none"> Enforced restoration and decommissioning obligations following the cessation or completion of upstream petroleum operations ensures that land is rehabilitated for future use

6. ANY OTHER MATTERS SPECIFIED BY THE GUIDELINES

According to regulation 3 of the proposed regulations, all matters prescribed for in the regulations apply to upstream petroleum access land in Kenya.

7. DRAFT COPY OF THE PROPOSED STATUTORY RULE

The *proposed regulations* are annexed herein.