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NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION- 2015

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

REPORT ON THE CONSIDERATION OF THE SENATE AMENDMENTS TO THE MINING
BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2014)

CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

OCTOBER, 2015

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1.0 PREFACE

On behalf of the Departmental Committee on Environment and Natural Resources and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Mining Bill (National Assembly Bill No. 9 of 2014).

The amendments were passed by the Senate on Tuesday 29th September, 2015 and passed to the National Assembly for consideration. The Assembly subsequently committed the amendments to the Committee pursuant to the provisions of Standing Order 41 and it is on the basis of this that the Committee makes this Report.

1.1 Committee Mandate

The Departmental Committee on Environment and Natural Resources is established under the National Assembly Standing Orders No. 216(1). The functions and mandate of the Committee are also contained under the National Assembly Standing Orders, No. 216(5) as:-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) Study the program and policy objectives of the Ministries and departments and the effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, access and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with its stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) Vet and report on all appointments where the constitution or any law requires the National Assembly to approve, except those under Standing Order 204; and

- g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Committee Membership

The Committee comprises of the following membership:-

1. Hon. Amina Abdalla, M.P. - **Chairperson**
2. Hon. Alexander. K. Kosgey, M.P. - **Vice Chairperson**
3. Hon. Alice Ng'ang'a, M.P.
4. Hon. Samuel Ndiritu, M.P.
5. Hon. Aisha Jumwa Karisa, M.P.
6. Hon. Ejidius Njogu Barua, M.P.
7. Hon. Jude Njomo, M.P.
8. Hon. Moitalel Ole Kenta, M.P.
9. Hon. Kathuri Murungi, M.P.
10. Hon. Sunjeev Birdi, M.P.
11. Hon. Jackson K. Rop, M.P.
12. Hon. Abdi Noor Ali, M.P.
13. Hon. Joyce Emanikor, M.P.
14. Hon. Abdulaziz Farah, M.P.
15. Hon. Ronald Tonui, M.P.
16. Hon. (Dr.) Reginalda Wanyonyi, M.P.
17. Hon. Gideon Mwiti, M.P.
18. Hon. Hassan Dukicha, M.P.
19. Hon. Chachu Ganya, M.P.
20. Hon. Opiyo Wandayi, M.P.
21. Hon. Charles Geni. Mongare, M.P.
22. Hon. (Dr.) Wilber K. Ottichilo, M.P.

- 23.Hon. Khatib Mwashetani, M.P.
- 24.Hon. George Ogalo, M.P.
- 25.Hon. (Major) Muluvi Mutua, M.P.
- 26.Hon. Mohamed, Diriye M.P.
- 27.Hon. Peter Kinyua, MP.
- 28.Hon. Shukra Hussein Gure, M.P

1.3 Consideration of the Senate Amendments to the Mining Bill (National Assembly Bill No. 9 of 2014)

The Committee considered the senate amendments in a Sitting held on Tuesday 6th October, 2015. The Committee's decision to accept and or reject the amendments was based on the Constitution requirements and borrowed best practices in other jurisdictions with similar experiences.

1.4 Committee Recommendations

The Committee having considered the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) the Committee recommends that the National Assembly:-

1. **Approves** the Senate amendments to **Clauses 4(b), 5, , 9, , 20, 21, 30 , 38, 41, 46, 50, , 53(a), 51, 67, 77, 106, 117 and 120.**
2. **Rejects** the Senate amendments to **Clause 4(a) & (c), 7, 16,, 33, 34, 37, 40, 49, 51, 53(b) and 149.**

1.5 Adoption of the Report

We the members of the Departmental Committee on Environment and Natural Resources have pursuant to Standing Order 199 adopted this Report on its consideration of the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity as per the attached adoption list (Annex 1).

1.6 Acknowledgement


Mr. Speaker Sir,

The Committee wishes to register its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for the support accorded to the Committee and the staff, in the execution of its mandate.

Let me take this opportunity to thank all Members for their patience, endurance and dedication to committee business, despite their other commitments and tight schedules, which enabled the Committee to complete this Report.

On behalf of the Departmental Committee on Environment and Natural Resources, and pursuant to Standing Orders No.199 of the National Assembly, I now have the honour to present the Report thereto for adoption pursuant to the provisions of standing orders of the National Assembly.

Thank You,

SIGNED 

MEMBER OF THE COMMITTEE
(HON. FRANCIS GANYA CHACHU, MP)

DATE..... 21/10/15

2.0 INTRODUCTION

The Mining Bill, 2014 was passed by the National Assembly on October 29, 2014 and subsequently forwarded to the Senate for consideration pursuant to provisions of Article 110(4) of the Constitution and Standing Order 142. It was reverted to the National Assembly by the Senate for concurrence on Tuesday, 29th September 2015 through a message from the Speaker. The Speaker directed the Committee to table its Report on the amendments for consideration by the House.

3.0 SENATE AMENDMENTS TO THE MINING BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2014)

CLAUSE 4

THAT Clause 4 of the Bill be amended –

- (a) by deleting the definition of the word “community” and substituting therefor the following new definition –
“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;
- (b) by inserting the following new definition immediately after the definition of the word “corporation” –
“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;
- (c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition –
“Strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the Gazette;

CLAUSE 5

THAT Clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

CLAUSE 7

THAT Clause 7 of the Bill be amended in sub-clause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

CLAUSE 9

THAT Clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) 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.

CLAUSE 16

THAT Clause 16 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

CLAUSE 20

THAT clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5) 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.

CLAUSE 21

THAT Clause 21 of the Bill be amended by inserting the following new subsections immediately after subsection (2) –

(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.

CLAUSE 30

THAT Clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(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 shall be nominated by the Council of County Governors from amongst the 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 who shall be appointed by the Cabinet Secretary.

CLAUSE 33

THAT Clause 33 of the Bill be amended by deleting sub-clauses (7) and (8).

CLAUSE 34

THAT Clause 34 of the Bill be amended in sub-clause (4) by deleting paragraph (a).

CLAUSE 37

THAT Clause 37 of the Bill be amended in sub-clause (1) by deleting the words “A prospecting and” appearing at the beginning of the sub-clause.

CLAUSE 38

THAT Clause 38 be amended in sub-clause (1) by deleting the word “un-alienated” appearing at the end of paragraph (b) and substituting therefor the word “unregistered”.

CLAUSE 40

THAT Clause 40 the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(1) The Cabinet Secretary may submit a request under section 107 of the Land Act for 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.

CLAUSE 41

THAT Clause 41 be amended in sub-clause (2) by deleting the words “which recognize the uniqueness of procurement and tendering process of minerals” appearing at the end of the sub-clause.

CLAUSE 46

THAT Clause 46 of the Bill be amended in sub-clause (3) by deleting the words “number of expatriates per capital investment” appearing immediately after the words “shall serve”.

CLAUSE 47

THAT Clause 47 of the Bill be amended in sub-clause (1) by inserting the words “members of the community and” immediately after the words “in employment to”.

CLAUSE 49

THAT Clause 49 of the Bill be amended in sub-clause (2) by deleting the word “four” appearing immediately after the words “exchange within” and substituting therefor the word “three”.

CLAUSE 50

THAT Clause 50 of the Bill be amended in paragraph (b) by inserting the words “members of the community and” immediately after the words “offered by”.

CLAUSE 51

THAT Clause 51 of the Bill be amended –

(a) by deleting sub-clause (2) and substituting therefor with the following new sub-clause –

(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.

(b) By inserting the following new subsection immediately after subsection (8)–

(8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

CLAUSE 53

THAT Clause 53 of the Bill be amended –

(a) in sub-clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and

(b) inserting the following new sub-clause immediately after sub-clause (1) –

(1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).

CLAUSE 67

THAT Clause 67 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

(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;

CLAUSE 77

THAT Clause 77 of the Bill be amended in sub-clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub-clause and substituting therefor the words “Regulations made under this Act”.

CLAUSE 106

THAT Clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) –

(j) such other information as the Cabinet Secretary may consider necessary.

CLAUSE 117

THAT Clause 117 of the Bill be amended in sub-clause (5) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

CLAUSE 120

THAT Clause 120 of the Bill be amended in sub-clause (2) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

CLAUSE 149

THAT Clause 149 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clauses –

(3) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

4.0 CONSIDERATION OF THE PROPOSED SENATE AMENDMENTS TO THE MINING BILL (NATIONAL ASSEMBLY BILL NO. 9 OF 2014)

The Committee considered the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) and resolved as follows:-

CLAUSE 4

THAT Clause 4 of the Bill be amended –

(a) by deleting the definition of the word “community” and substituting therefor the following new definition –

“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;

The Committee rejected the proposed definition to the word community.

Justification: The amendment excludes the people who have been displaced.

(b) by inserting the following new definition immediately after the definition of the word “corporation” –

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

The Committee agreed to the proposed amendment.

(c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition – *“strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the Gazette;*

The Committee rejected the proposed definition to the “strategic minerals”.

Justification: The strategic mineral is already defined in clause 16.

CLAUSE 5

THAT Clause 5 of the Bill be amended by inserting the words *“and the principles of leadership and integrity set out under Chapter Six of the Constitution”* immediately after the words *“of the Constitution”*.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to include the principles under Chapter six as part of the guiding principles.

CLAUSE 7

THAT Clause 7 of the Bill be amended in sub-clause (2) by inserting the words *“in consultation with the Mineral Rights Board”* immediately after the words *“in the Gazette”*.

The Committee rejected the proposed amendment.

Justification: The amendment suggests that they ought to be a process of negotiations and agreements between the Cabinet Secretary and the Mineral Rights Board. This is problematic as it does not place authority for decision making in one or the other body and does not state as to what happens when consultations fail to reach agreement. The Mineral Rights Board is understood to be an advisory body to the Cabinet Secretary and should remain the same.

CLAUSE 9

THAT Clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the issuance of an acknowledgement in writing of the receipt of the report made under subsection (1).

CLAUSE 16

THAT Clause 16 of the Bill be amended in sub-clause (3) by inserting the words “*in consultation with the Mineral Rights Board*” immediately after the words “*Cabinet Secretary shall*”.

The Committee rejected the proposed amendment.

Justification: The amendment suggests that there ought to be a process of negotiations and agreements between the Cabinet Secretary and the Mineral Rights Board. This is problematic as it does not place authority for decision making in one or the other body and does not state as to what happens when consultations fail to reach agreement. The Mineral Rights Board is understood to be an advisory body to the Cabinet Secretary and should remain the same.

CLAUSE 20

THAT Clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Mines.

CLAUSE 21

THAT Clause 21 of the Bill be amended by inserting the following new subsections immediately after subsection (2) –

(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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Geological Survey. Also for the Director in exercise of his powers to ensure minimal damage or inconvenience is occasioned on the owner or lawful occupier of the land in respect of which the powers are exercised.

CLAUSE 30

THAT Clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(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 shall be nominated by the Council of County Governors from amongst the 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 who shall be appointed by the Cabinet Secretary.

The Committee agreed with the proposed amendment.

Justification: There is need to have a representative from Council of Governors because mining happens in every county.

The Director of mines being the officer with day-to-day management of mining will be the most competent custodian of documents-minutes, grants concessions and notices.

CLAUSE 33

THAT Clause 33 of the Bill be amended by deleting sub-clauses (7) and (8).

The Committee rejected the proposed amendment.

Justification: The Senate proposal deletes the provision for application for review of the decision of by the Cabinet Secretary to reject an application for a mineral right and subsequent provision for the communication of the on the decision in relation to the review. Therefore one can only apply to the High Court if dissatisfied with decision of the Cabinet. However there is need for an internal mechanism for review of decisions by the Cabinet Secretary, this will assist in quick resolution of disputes as the Court process sometimes can be lengthy and expensive.

CLAUSE 34

THAT Clause 34 of the Bill be amended in sub-clause (4) by deleting paragraph (a).

The Committee rejected the proposed amendment.

Justification: The amendment makes the subclause silent on the provision on the objection with regards to an application for a prospecting licence and reconnaissance licence. This is essential for the protection of Community rights.

CLAUSE 37

THAT Clause 37 of the Bill be amended in sub-clause (1) by deleting the words “*A prospecting and*” appearing at the beginning of the sub-clause.

The Committee rejected the proposed amendment.

Justification: there is need for a grant of prospecting rights over private land to be subject to the consent of the owner of the land.

CLAUSE 38

THAT Clause 38 be amended in sub-clause (1) by deleting the word “*un-alienated*” appearing at the end of paragraph (b) and substituting therefor the word “*unregistered*”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides more clarity on the consent to be given by the National Land Commission.

CLAUSE 40

THAT Clause 40 the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

(4) The Cabinet Secretary may submit a request under section 107 of the Land Act for 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—

(c) unreasonably withheld; or

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

The Committee rejected the proposed amendment.

Justification: Referring to a specific section of a particular law poses the challenges when other laws are enacted relating to compulsory acquisition. For example, the community land Bill may have provisions regarding acquisition of community land and since the proposed amendment only refers to the land Act, this may be problematic.

CLAUSE 41

THAT Clause 41 be amended in sub-clause (2) by deleting the words *“which recognize the uniqueness of procurement and tendering process of minerals”* appearing at the end of the sub-clause.

The Committee agreed with the proposed amendment.

Justification: The amendments deletes the provision for the CS to take into consideration uniqueness of procurement and tendering process of minerals while coming up with regulations on tendering guidelines for mineral rights.

CLAUSE 46

THAT Clause 46 of the Bill be amended in sub-clause (3) by deleting the words *“number of expatriates per capital investment”* appearing immediately after the words *“shall serve”*.

The Committee agreed with the proposed amendment.

Justification: The amendment deletes the making of regulations that cover the number of expatriates per capital investment by the Cabinet Secretary.

CLAUSE 47

THAT Clause 47 of the Bill be amended in sub-clause (1) by inserting the words *“members of the community and”* immediately after the words *“in employment to”*.

The Committee agreed the proposed amendment.

Justification: The amendment clearly provide for an additional preference of members of the local community in employment.

CLAUSE 49

THAT Clause 49 of the Bill be amended in sub-clause (2) by deleting the word *“four”* appearing immediately after the words *“exchange within”* and substituting therefor the word *“three”*.

The Committee rejected the proposed amendment.

Justification: The amendments reduces the time within which a holder of the mining licence whose planned capital expenditure exceeds the prescribed amount lists its equity on the stock exchange from **four years to three**. This is unfriendly to investors.

CLAUSE 50

THAT Clause 50 of the Bill be amended in paragraph (b) by inserting the words “*members of the community and*” immediately after the words “*offered by*”.

The Committee agreed with the proposed amendment.

Justification: The amendment adds members of the community as additional preference by a holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and treatment operations, transport or any other dealings in minerals give

CLAUSE 51

THAT Clause 51 of the Bill be amended –

(c) by deleting sub-clause (2) and substituting therefor with the following new sub-clause –

(5) 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.

(d) By inserting the following new subsection immediately after subsection (8)–

(8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

The Committee rejected the proposed amendment.

Justification: The timeframe is too short for the regulator to carry out any meaningful due diligence on a prospective assignee or transferee especially for large scale projects. Additionally, the introduction of a new sub-cause to provide the criteria for such transfer, mortgage or assignment is already provided in the Bill.

CLAUSE 53

THAT Clause 53 of the Bill be amended –

- (a) in sub-clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and*
- (b) inserting the following new sub-clause immediately after sub-clause (1) –*
 - (1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).*

The Committee agreed with the proposed amendment (a) and rejected (b).

Justification: The amendment seeks to interfere with the private sector.

CLAUSE 67

THAT Clause 67 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

- (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;*

The Committee agreed with the proposed amendment.

Justification: The amendment includes consultation with the national and County Governments’ authorities about the reconnaissance operations that require physical entry onto the land within their jurisdiction and excludes consultation with traditional authorities.

CLAUSE 77

THAT Clause 77 of the Bill be amended in sub-clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub-clause and substituting therefor the words “Regulations made under this Act”.

The Committee agreed with the proposed amendment.

Justification: The amendments provides for the payments into the ministry expenditure specified in the approved programme for prospecting operations which is not expended during the term of prospecting licence, in a manner as may be prescribed by regulations made under the Act and not by the Cabinet Secretary.

CLAUSE 106

THAT Clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) –

(j) such other information as the Cabinet Secretary may consider necessary.

The Committee agreed with the proposed amendment.

Justification: The amendment makes for provision for mining licence to contain any other information the CS may require. It gives the CS discretion to request for other information.

CLAUSE 117

THAT Clause 117 of the Bill be amended in sub-clause (5) by deleting the word *“Parliament”* appearing immediately after the words *“submitted to”* and substituting therefor the words *“the National Assembly and the Senate”*.

The Committee agreed with the proposed amendment.

Justification: The amendment requires mineral agreements to be submitted for ratification to both the National Assembly and the Senate.

CLAUSE 120

THAT Clause 120 of the Bill be amended in sub-clause (2) by deleting the word *“Parliament”* appearing immediately after the words *“submitted to”* and substituting therefor the words *“the National Assembly and the Senate”*.

The Committee agreed with the proposed amendment.

Justification: The amendment requires that agreement relating to large scale mining operations on terrestrial and marine areas shall be to be submitted for ratification to both the National Assembly and the Senate.

CLAUSE 149

THAT Clause 149 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clauses –

(6) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

The Committee rejected the proposed amendment.

Justification: This proposal is unconstitutional as Article 62(1) (f) and (3) classifies minerals as public land which vests on the national government. The National Government decided to create a national mining corporation to also participate in mining and mineral activities as it is in other countries such as Namibia, DRC, South Africa among others. It is important the corporation is equipped properly with assets to enable it carry out its function.

5.0 COMMITTEE RECOMMENDATION

Having considered the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) the Committee recommends that the National Assembly:-

- 1. Approves** the Senate amendments to **Clauses 4(b), 5, , 9, , 20, 21, 30 , 38, 41, 46, 50, , 53(a), 51, 67, 77, 106, 117 and 120.**
- 2. Rejects** the Senate amendments to **Clause 4(a) & (c), 7, 16,33, 34, 37,40 , 49, 51, 53(b) and 149.**



DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

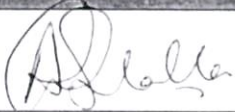
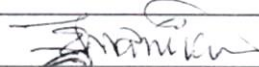
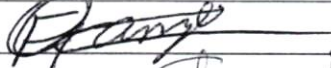
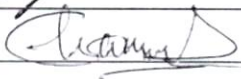

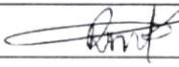




ATTENDANCE SCHEDULE


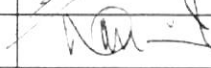

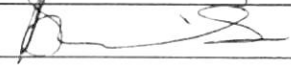
AGENDA: CONSIDERATION & ADOPTION OF THE REPORT ON THE PROPOSED
SENATE AMENDMENTS TO THE MINING BILL, 2014

DATE: 08/10/2015

TIME: 10.00 AM

VENUE: NEW MEMBERS LOUNGE

	NAME	SIGNATURE
1	Hon. Abdalla, Amina, MP-CHAIRPERSON	
2	Hon. Alexander Kosgey, MP Vice Chairperson	
3	Hon. Dukicha, Hassan Abdi, MP	
4	Hon. Emanikor, Joyce Akai, MP	
5	Hon. Ganya, Francis Chachu, MP	
6	Hon. Geni, Charles Mongare, MP	
7	Hon. Gure, Shukra Hussein, MP	
8	Hon. Ole Kenta, Richard Moitalel, MP	
9	Hon. Mohamed, Diriye Abdullahi, MP	
10	Hon. Murungi, Kathuri, MP	
11	Hon. Ogalo, George Oner, MP	
12	Hon. Sunjeev Kour Birdi, MP	
13	Hon. Tonui, Ronald Kiprotich, MP	
14	Hon. Dr. Wanyonyi, Reginalda N, MP	
15	Hon. Farah, Abdulaziz Ali, MP	
16	Hon. Barua, Ejidius Njogu, MP	
17	Hon. Irea, Gideon Mwitii, MP	
18	Hon. Muluvi, Marcus Mutua, MP	
19	Hon. Mwashetani, Khatib, MP	
20	Hon. Ndiritu, Samuel Mathenge, MP	

21	Hon. Ottichilo, Wilber Khasilwa, MP	
22	Hon. Rop, Jackson Kipkorir, MP	
23	Hon. Abdinoor, Mohammed Ali, MP	
24	Hon. Ng'ang'a, Alice Wambui, MP	
25	Hon. Peter Kinyua, MP	
26	Hon. Wandayi, James Opiyo, MP	
27	Hon. Katana, Aisha Jumwa, MP	
28	Hon. Jude Njomo, MP	

NICHOLAS EMEJEN

FOR -CLERK OF THE NATIONAL ASSEMBLY

MINUTES OF THE 70TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 8TH OCTOBER, 2015 AT 10.00AM IN THE NEW MEMBERS LOUNGE, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. Hon. Abdalla Amina, M.P. – **Chairperson**
2. Hon. Geni Charles Mong'are, M.P.
3. Hon. Kathuri Murungi, M.P.
4. Hon. Ndiritu Samuel Mathenge, M.P.
5. Hon. Barua Ejidius Njogu, M.P.
6. Hon. Mwashetani Khatib, M.P.
7. Hon. Tonui Ronald Kiprotich, M.P.
8. Hon. Ole Kenta Richard Moitalel, M.P.
9. Hon. Farah Abdulaziz Ali, M.P.
10. Hon. Emanikor Joyce, M.P.
11. Hon. Ganya Francis Chachu, M.P.
12. Hon. Katana Aisha Jumwa, M.P.
13. Hon. Abdinoor Mohammed Ali, M.P.
14. Hon. Rop Jackson Kipkorir, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Ogalo George Oner, M.P.
3. Hon. Peter Kinyua, M.P.
4. Hon. Jude Njomo, M.P.
5. Hon. Dukicha Hassan Abdi, M.P.
6. Hon. Sunjeev Kaur Birdi, M.P.
7. Hon. Ng'ang'a Alice Wambui, M.P.
8. Hon. Dr. Wanyonyi Reginalda N. M.P.
9. Hon. Wandayi James Opiyo, M.P.
10. Hon. Ottichilo Wilber Khasilwa, M.P.
11. Hon. Irea Gideon Mwiti, M.P.
12. Hon. Mohamed Diriye Abdullahi, M.P.
13. Hon. Muluvi Marcus Mutua, M.P.
14. Hon. Gure Shukra Hussein, M.P.
- 15.

IN-ATTENDANCE – THE NATIONAL ASSEMBLY

1. Mr. Joshua Ondari - Clerk Assistant III
2. Ms. Lynette Otieno - Legal Counsel II

MIN.NO. DC/ENR/299/2015 - PRELIMINARIES

The Chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN.NO. DC/ENR/300/2015 - ADOPTION OF THE REPORT ON THE PROPOSED SENATE AMENDMENTS TO THE MINING BILL, 2014

The Committee considered the report on the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) and unanimously adopted it after having proposed by Hon. Charles Mong'are Geni, MP and seconded by Hon. Francis Ganya Chachu, MP.

MIN.NO. DC/ENR/301/2015 ADJOURNMENT

There being no other business the meeting was adjourned at Twelve O'clock.

SIGNED... 
(Member)

DATE... 21/10/15

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES HELD ON TUESDAY 6TH OCTOBER, 2015 AT 10.00AM C.P.A ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

1. Hon. Abdalla Amina, M.P. – **Chairperson**
2. Hon. Geni Charles Mong'are, M.P.
3. Hon. Kathuri Murungi, M.P.
4. Hon. Muluvi Marcus Mutua, M.P.
5. Hon. Barua Ejidius Njogu, M.P.
6. Hon. Mwashetani Khatib, M.P.
7. Hon. Ogalo George Oner, M.P.
8. Hon. Tonui Ronald Kiprotich, M.P.
9. Hon. Ole Kenta Richard Moitalel, M.P.
10. Hon. Farah Abdulaziz Ali, M.P.
11. Hon. Gure Shukra Hussein, M.P.
12. Hon. Ganya Francis Chachu, M.P.
13. Hon. Katana Aisha Jumwa, M.P.
14. Hon. Peter Kinyua, M.P.
15. Hon. Abdinoor Mohammed Ali, M.P.

APOLOGIES

1. Hon. Alexander Kosgey, M.P. – **Vice Chairperson**
2. Hon. Ndiritu Samuel Mathenge, M.P.
3. Hon. Jude Njomo, M.P.
4. Hon. Dukicha Hassan Abdi, M.P.
5. Hon. Sunjeev Kaur Birdi, M.P.
6. Hon. Ng'ang'a Alice Wambui, M.P.
7. Hon. Dr. Wanyonyi Reginalda N. M.P.
8. Hon. Wandayi James Opiyo, M.P.
9. Hon. Ottichilo Wilber Khasilwa, M.P.
10. Hon. Emanikor Joyce, M.P.
11. Hon. Irea Gideon Mwiti, M.P.
12. Hon. Mohamed Diriye Abdullahi, M.P.
13. Hon. Rop Jackson Kipkorir, M.P.

IN-ATTENDANCE – THE NATIONAL ASSEMBLY

1. Mr. Joshua Ondari - Clerk Assistant III
2. Ms. Lynette Otieno - Legal Counsel II

MIN.NO. DC/ENR/296/2015 - PRELIMINARIES

The Chair called the meeting to order at 10.25 am followed by a word of prayer.

MIN.NO. DC/ENR/297/2015 - CONSIDERATION OF THE PROPOSED SENATE AMENDMENTS TO THE MINING BILL, 2014

The Committee considered the Senate amendments to the Mining Bill (National Assembly Bill No. 9 of 2014) and resolved as follows:-

CLAUSE 4

THAT clause 4 of the Bill be amended –

(a) by deleting the definition of the word “community” and substituting therefor the following new definition –

“community” means a people living in a ward or wards within which minerals are situated and who are affected by the exploration of the minerals or mining operations with respect to the minerals;

The Committee rejected the proposed definition to the word community.

Justification: The amendment excludes the people who have been displaced.

(b) by inserting the following new definition immediately after the definition of the word “corporation” –

“Council of County Governors” means the Council of County Governors established under section 19 of the Intergovernmental Relations Act;

The Committee agreed to the proposed amendment.

(c) by deleting the definition of the word “strategic minerals” and substituting therefor the following new definition – “strategic minerals” means minerals declared as such by the Cabinet Secretary with the approval of the Cabinet and by notice in the Gazette;

The Committee rejected the proposed definition to the “strategic minerals”.

Justification: The strategic mineral is already defined in clause 16.

CLAUSE 5

THAT clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to include the principles under Chapter six as part of the guiding principles.

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the CS to consult with the Mineral Rights Board when prescribing materials of customary usage.

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the issuance an acknowledgement in writing of the receipt of the report made under subsection (1).

CLAUSE 16

THAT clause 16 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the CS to consult with the Mineral Rights Board when prescribing the manner for dealing with the discovery, exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

CLAUSE 20

THAT clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Mines.

CLAUSE 21

THAT clause 21 of the Bill be amended by inserting the following new subsections immediately after subsection (2) –

(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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Geological Survey. Also for the Director in exercise of his powers to ensure minimal damage or inconvenience is occasioned on the owner or lawful occupier of the land in respect of which the powers are exercised.

CLAUSE 30

THAT clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(2) The Mineral Rights Board shall comprise of –

CLAUSE 5

THAT clause 5 of the Bill be amended by inserting the words “and the principles of leadership and integrity set out under Chapter Six of the Constitution” immediately after the words “of the Constitution”.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to include the principles under Chapter six as part of the guiding principles.

CLAUSE 7

THAT clause 7 of the Bill be amended in sub-clause (2) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “in the Gazette”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the CS to consult with the Mineral Rights Board when prescribing materials of customary usage.

CLAUSE 9

THAT clause 9 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1) –

(1A) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the issuance an acknowledgement in writing of the receipt of the report made under subsection (1).

CLAUSE 16

THAT clause 16 of the Bill be amended in sub-clause (3) by inserting the words “in consultation with the Mineral Rights Board” immediately after the words “Cabinet Secretary shall”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides for the CS to consult with the Mineral Rights Board when prescribing the manner for dealing with the discovery, exploration, mining, processing and export of strategic minerals and strategic mineral deposits.

CLAUSE 20

THAT clause 20 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (4) –

(5) 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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Mines.

CLAUSE 21

THAT clause 21 of the Bill be amended by inserting the following new subsections immediately after subsection (2) –

(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.

The Committee agreed with the proposed amendment.

Justification: The amendment seeks to provide for compensation for damage as a result of the exercise of the powers of Director of Geological Survey. Also for the Director in exercise of his powers to ensure minimal damage or inconvenience is occasioned on the owner or lawful occupier of the land in respect of which the powers are exercised.

CLAUSE 30

THAT clause 30 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause (2) –

(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 who shall be the secretary to the Mineral Rights Board;
- (d) one person who shall be nominated by the Council of County Governors from amongst the Governors;
- (e) the Chairperson of the National Land Commission;
- (f) the Director of Mines
- (g) the Director of Geological Surveys; and
- (h) two persons with professional qualifications and experience in the mining industry who shall be appointed by the Cabinet Secretary.

The Committee agreed with the proposed amendments to clause 30 (2)(a),(d),(e),(f),(g),(h)but rejected amendments in the proposed clause 30(2)(b) and (c).

Justification:

The Principal Secretary responsible for Mining is the accounting officer in the Ministry and therefore the PS should be the Secretary to the Board and not the Director of Mines.

CLAUSE 33

THAT clause 33 of the Bill be amended by deleting sub-clauses (7) and (8).

The Committee rejected the proposed amendment.

Justification: The Senate proposal deletes the provision for application for review of the decision of by the Cabinet Secretary to reject an application for a mineral right and subsequent provision for the communication of the on the decision in relation to the review. Therefore one can only apply to the High Court if dissatisfied with decision of the Cabinet. However there is need for an internal mechanism for review of decision by the Cabinet Secretary, this will assist in quick resolution of disputes as the Court sometimes can be lengthy and expensive.

CLAUSE 34

THAT clause 34 of the Bill be amended in sub-clause (4) by deleting paragraph (a).

The Committee rejected the proposed amendment.

Justification: The amendment makes the subclause silent on the provision on the objection with regards to an application for a prospecting licence and reconnaissance licence. This is essential for the protection of Community rights.

CLAUSE 37

THAT clause 37 of the Bill be amended in sub-clause (1) by deleting the words “A prospecting and” appearing at the beginning of the sub-clause.

The Committee rejected the proposed amendment.

Justification: there is need for a grant of prospecting rights over private land to be subject to the consent of the owner of the land.

CLAUSE 38

THAT clause 38 be amended in sub-clause (1) by deleting the word “un-alienated” appearing at the end of paragraph (b) and substituting therefor the word “unregistered”.

The Committee agreed with the proposed amendment.

Justification: The amendment provides more clarity on the consent to be given by the National Land Commission.

CLAUSE 40

THAT clause 40 the Bill be amended by deleting sub-clause (1) and substituting therefor the following new sub-clause –

- (1) The Cabinet Secretary may submit a request under section 107 of the Land Act for 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.

The Committee agreed with the proposed amendment.

Justification: The amendments provides for the specific section and law that governs compulsory acquisition of land.

CLAUSE 41

THAT clause 41 be amended in sub-clause (2) by deleting the words “which recognize the uniqueness of procurement and tendering process of minerals” appearing at the end of the sub-clause.

The Committee agreed with the proposed amendment.

Justification: The amendments deletes the provision for the CS to take into consideration uniqueness of procurement and tendering process of minerals while coming up with regulations on tendering guidelines for mineral rights.

CLAUSE 46

THAT clause 46 of the Bill be amended in sub-clause (3) by deleting the words “number of expatriates per capital investment” appearing immediately after the words “shall serve”.

The Committee agreed with the proposed amendment.

Justification: The amendment deletes the making of regulations that cover the number of expatriates per capital investment by the Cabinet Secretary.

CLAUSE 47

THAT clause 47 of the Bill be amended in sub-clause (1) by inserting the words “members of the community and” immediately after the words “in employment to”.

The Committee rejected the proposed amendment and proposed the following amendments to the clause.

THAT clause 47 of the Bill be amended in sub-clause (1) by inserting the words “with first priority going to the local community” immediately after the words “citizens of Kenya”.

Justification: The amendment proposed by Senate does not clearly provide for an additional preference of members of the local community in employment.

CLAUSE 49

THAT clause 49 of the Bill be amended in sub-clause (2) by deleting the word “four” appearing immediately after the words “exchange within” and substituting therefor the word “three”.

The Committee rejected the proposed amendment.

Justification: The amendments reduces the time within which a holder of the mining licence whose planned capital expenditure exceeds the prescribed amount lists its equity on the stock exchange from **four years** to **three**. This is unfriendly to investors.

CLAUSE 50

THAT clause 50 of the Bill be amended in paragraph (b) by inserting the words “members of the community and” immediately after the words “offered by”.

The Committee agreed with the proposed amendment.

Justification: The amendment adds members of the community as additional preference by a holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and treatment operations, transport or any other dealings in minerals give

CLAUSE 51

THAT clause 51 of the Bill be amended –

- (a) by deleting sub-clause (2) and substituting therefor with the following new sub-clause –
 - (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.
- (b) By inserting the following new subsection immediately after subsection (8)–
 - (8A) The Cabinet Secretary shall, in consultation with the Mineral Rights Board, prescribe a criteria for the conditions required to be met by an applicant for an assignment, mortgage or trade in a mineral right.

The Committee agreed with the proposed amendment.

Justification: The amendments provides for the prescription of criteria by the CS in consultation with the Mineral Rights Board on conditions for the assignment, transfer, mortgage or trade of mineral rights.

CLAUSE 53

THAT clause 53 of the Bill be amended –

- (a) in sub-clause (1) by inserting the words “and the Kenya Revenue Authority” immediately after the words “the Cabinet Secretary”; and
- (b) inserting the following new sub-clause immediately after sub-clause (1) –
 - (1A) The Cabinet Secretary shall submit to the National Assembly and the Senate, an analysis of the audited annual financial statement submitted under subsection (1).

The Committee agreed with the proposed amendment (a) and rejected (b).

Justification: The amendment seeks to interfere with the private sector.

CLAUSE 67

THAT clause 67 of the Bill be amended in sub-clause (1) by deleting paragraph (e) and substituting therefor the following new paragraph –

- (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;

The Committee agreed with the proposed amendment.

Justification: The amendment includes consultation with the national and County Governments’ authorities about the reconnaissance operations that require physical entry onto the land within their jurisdiction and excludes consultation with traditional authorities.

CLAUSE 77

THAT clause 77 of the Bill be amended in sub-clause (2) by deleting the words “by the Cabinet Secretary” appearing at the end of the sub-clause and substituting therefor the words “Regulations made under this Act”.

The Committee agreed with the proposed amendment.

Justification: The amendments provides for the payments into the ministry expenditure specified in the approved programme for prospecting operations which is not expended

during the term of prospecting licence, in a manner as may be prescribed by regulations made under the Act and not by the Cabinet Secretary.

CLAUSE 106

THAT clause 106 of the Bill be amended by inserting the following new paragraph immediately after paragraph (i) –

(j) such other information as the Cabinet Secretary may consider necessary.

The Committee agreed with the proposed amendment.

Justification: The amendment makes for provision for mining licence to contain any other information the CS may require. It gives the CS discretion to request for other information.

CLAUSE 117

THAT clause 117 of the Bill be amended in sub-clause (5) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

The Committee agreed with the proposed amendment.

Justification: The amendment requires mineral agreements to be submitted for ratification to both the National Assembly and the Senate.

CLAUSE 120

THAT clause 120 of the Bill be amended in sub-clause (2) by deleting the word “Parliament” appearing immediately after the words “submitted to” and substituting therefor the words “the National Assembly and the Senate”.

The Committee agreed with the proposed amendment.

Justification: The amendment requires that agreement relating to large scale mining operations on terrestrial and marine areas shall be to be submitted for ratification to both the National Assembly and the Senate.

CLAUSE 149

THAT clause 149 of the Bill be amended by deleting sub-clause (3) and substituting therefor the following new sub-clauses –

(3) All immovable assets of the holder under the mining licence shall vest in the County Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the County Government.

(3A) Where the County Government is unable to pay for the assets under subsection (3), the assets shall vest in the National Government from the effective date of the surrender or termination of the licence upon payment of the book value of the assets by the National Government.

The Committee rejected the proposed amendment.

Justification: This proposal is unconstitutional as Article 62(1) (f) and (3) classifies minerals as public land which vests on the national government.

MIN.NO. DC/ENR/298/2015 ADJOURNMENT

There being no other business the meeting was adjourned at Twelve O'clock.

SIGNED..........
(Member)

DATE.....21/10/15.....