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TWELFTH PARLIAMENT

THIRD SESSION

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND  
NATURAL RESOURCES

REPORT ON THE 14<sup>TH</sup> ANNUAL GENERAL MEETING OF THE  
INTERGOVERNMENTAL FORUM ON MINING, MINERALS, METALS AND  
SUSTAINABLE DEVELOPMENT

SWITZERLAND, GENEVA  
(16<sup>TH</sup> TO 18<sup>TH</sup> OCTOBER 2018)

KENYA DELEGATION REPORT

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## LIST OF ABBREVIATIONS

|        |  |
|--------|--|
| AGM    | Annual General Meeting   |
| ASM    | Artisanal and small-scale mining   |
| CSD    | UN Commission on Sustainable Development   |
| EIA    | Environmental Impact Assessment  |
| ESIA   | Environmental and Social Impact Assessment   |
| GDP    | Gross Domestic Product   |
| ICMM   | International Council on Mining and Metals   |
| IGF    | Intergovernmental Forum on Mining, Minerals, Metals and Sustainable<br>Development |
| IISD   | International Institute for Sustainable Development                                |
| LSM    | Large-scale mining   |
| MPF    | Mining Policy Framework  |
| OECD   | Organisation for Economic Co-operation and Development                             |
| PNG    | Papua New Guinea   |
| SDGs   | Sustainable Development Goals  |
| SEA    | Strategic environmental assessment   |
| UNCED  | UN Conference on Environment and Development, or 'Earth Summit'                    |
| UNCTAD | UN Conference on Trade and Development   |
| UNDP   | UN Development Programme   |
| UNECA  | UN Economic Commission for Africa  |
| UNICEF | UN Children's Fund   |
| WSSD   | World Summit on Sustainable Development  |

## 1.0 PREFACE

### 1.1 Introduction

**Mr. Speaker sir,**

The Standing Committee on Land, Environment and Natural Resources is established pursuant to Standing Order No. 212(3).

As set out in the Second Schedule, the Committee's assigned subject matter is to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

#### *Committee Membership*

- |                                    |                    |
|------------------------------------|--------------------|
| 1. Sen. Mwangi Paul Githiomi, M.P. | - Chairperson      |
| 2. Sen. Prengei Victor, M.P.       | - Vice Chairperson |
| 3. Sen. George Khaniri, MGH, M.P.  | - Member           |
| 4. Sen. Godana Hargura, M.P.       | - Member           |
| 5. Sen. Mwaruma Johnes, M.P.       | - Member           |
| 6. Sen. Slyvia Kasanga, M.P.       | - Member           |
| 7. Sen. Ndwiga Peter Njeru, M.P.   | - Member           |
| 8. Sen. Halake Abshiro, M.P.       | - Member           |
| 9. Sen. Boy Issa Juma, M.P.        | - Member           |

I am pleased to present and table the Committee's report on the 14<sup>th</sup> Annual General Meeting (AGM) of The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches. This report contains the events attended by the Committee representation in Geneva, Switzerland during the period.

The Committee was represented by the Chairperson Sen. Mwangi Paul Githiomi, MP. The secretary to the delegation was Mr. Victor Bett the Committee Clerk.

## **1.2 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development Delegation**

The 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) was scheduled to take place in Geneva, Switzerland, from 16-18 October 2018, on the theme of “Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches.” The forum was organized by the IGF Secretariat and hosted by the UN Conference on Trade and Development (UNCTAD) at the Palais des Nations, Geneva.

## **1.3 Composition of the Delegation**

The 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) was scheduled to take place in Geneva, Switzerland, from 16-18 October 2018, on the theme of “Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches.” The forum was organized by the IGF Secretariat and hosted by the UN Conference on Trade and Development (UNCTAD) at the Palais des Nations, Geneva.

The Senate Standing Committee on Land, Environment and Natural Resources was represented by;

1. Sen. Mwangi Paul Githiomi, MP. – Chairperson/Senate Leader of Delegation
2. Mr. Victor Bett - Committee Clerk/Secretary to the delegation

The Departmental Committee of Environment and Natural Resources of the National Assembly was also in attendance represented by three members of the Committee namely:

1. The Hon. Benjamin Dalu Tayari, MP.– National Assembly Leader of Delegation
2. The Hon. Charles Ong’ondo Were, M.P.
3. Mr. Salem Lorot- Delegation Secretary

## 1.4 Committee Observations

The delegation made the following observations:

1. Parliament enacted the Mining Act (No. 12 of 2016) which is a fairly robust legislation and current in order to address most of the challenges prevalent in the mining sector.
2. Some of the participants during the forum either had mineral legislations which were not up to date or were in the process of reviewing them in order to align them to the dynamic challenges in the current world.
3. The IGF guidance documents for governments on managing artisanal and small-scale mining (released in 2017), local content policies (released in 2018), and base erosion and profit sharing (BEPS) (currently being developed) are important tools in the mining sector.
4. The guidance documents on “Managing Mining for Sustainable Development: A Sourcebook” and “Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights into the Governance of the Mining Sector” are important, newly-launched publications in the mining sector.
5. Community engagement in the mining cycle is important so as to build capacity within communities and in order to create synergy and community participation in all mining activities.
6. Although mine closure is provided for in Kenya’s Mining Act, the subject needs strict regulations, reinforcement by incorporating concepts from guidance documents on mine closure and enforcement of mine closure provisions.
7. Historic geological data provides a good tool during mining through identification of minerals.
8. Tax incentives for mining companies have been used in other jurisdictions for companies that adopt forest-smart approaches to their mining.
9. Innovation has been used in other jurisdictions during mining and this has had both positive effect and loss of employment.

10. The IGF revealed that training on transfer pricing risk assessment for mining was forthcoming in Kenya.
11. The next 15<sup>th</sup> AGM will be held from 7<sup>th</sup> to 11<sup>th</sup> October 2019.

### **1.5 Committee Recommendations**

The delegation makes the following recommendations:

1. The Ministry of Mining should finalise regulations that are supposed to be made under the Mining Act (No. 12 of 2016) in order to fully operationalize Kenya's mining legislation.
2. The Departmental Committee on Environment and Natural Resources and the Ministry of Mining should examine sections 92 to 100 of the Mining Act providing for artisanal and small scale miners vis-a-vis the IGF guidance documents for governments on managing artisanal and small-scale mining (released in 2017) and determine whether there is valuable guidance on artisanal miners. This also includes local content policies guidance document by IGF (released in 2018).
3. The Ministry of Mining and the Ministry of Environment and Forestry and Kenya needs to incorporate forest-smart and climate-smart mining practices and align herself to international best practices and conventions.
4. The Cabinet Secretary in the Ministry of Mining should expedite and finalise regulations required to be made for site rehabilitation and mine-closure under section 180 of the Mining Act.

## ACKNOWLEDGEMENT

**Mr. Speaker Sir,**

The Committee wishes to record its appreciation to the Office of the Speaker and the Clerk of the Senate for facilitation. The Committee is grateful to the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF), The United Nations Conference on Trade Development (UNCTAD), The International Institute for Sustainable Development, the United Nations Development Program and other stakeholders for making the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) a success.

The Committee would like to recognize the overwhelming support it received from the Swiss Embassy in Kenya, who were able to facilitate the Committee with travel visas to Switzerland given the short notice.

We also wish to recognize the commitment and dedication of the Committee Secretariat that made the work of the Committee and the production of this report possible.

**Mr. Speaker Sir,**

It is now my pleasant duty to table the report of the Senate Standing Committee on Land, Environment and Natural resources in relation to the Committee's participation in the forum that took place in Geneva, Switzerland, from 15<sup>th</sup> – 19<sup>th</sup> October, 2018, on the theme of "Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches."

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

SEN. MWANGI PAUL GITHIOMI, M.P - CHAIRPERSON

SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND  
NATURAL RESOURCES



## **2.0 THE 14<sup>TH</sup> ANNUAL GENERAL MEETING (AGM)**

### **2.1 Background**

The 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) took place in Geneva, Switzerland, from 15-19 October 2018, on the theme of “Modern Mining Law and Policy: Accountable, Equitable and Innovative Approaches.”

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Approximately 400 participants from more than 80 countries registered for the 14th AGM, organized by the IGF Secretariat and hosted by the UN Conference on Trade and Development (UNCTAD) at the Palais des Nations, Geneva.

### **History of IGF**

The IGF serves as a global venue for dialogue among 68 member country governments, as well as mining companies and industry associations. The IGF was created following the 2002 World Summit on Sustainable Development (WSSD). The Governments of Canada and South Africa were instrumental in the establishment of the IGF, which was announced in February 2005 as a voluntary initiative for national governments interested in promoting good governance in the management of mineral resources.

The IGF is focused on improving resource governance and decision making by governments engaging in the sector, and its work is largely framed by its flagship policy guidance and assessment tool, the Mining Policy Framework (MPF). The MPF identifies best practices in six pillars of mining policy and law: the legal and policy environment; financial benefit optimization; socioeconomic benefit optimization; environmental management; mine closure and post-mining transitions; and artisanal and small-scale mining (ASM). The Framework was presented at the nineteenth session of the CSD in 2011.

In 2012, the UN Conference on Sustainable Development (UNCSD, or Rio+20) convened to assess global sustainable development policy and adopted an outcome titled,

“The Future We Want.” Besides calling on the international community to negotiate a set of SDGs, the Rio+20 Outcome urged governments and businesses to promote the continuous improvement of accountability and transparency, as well as the effectiveness of relevant existing mechanisms to prevent the illicit financial flows from mining activities.

In October 2015, the International Institute for Sustainable Development (IISD) replaced the Government of Canada’s Department of Foreign Affairs, Trade and Development as the Forum’s Secretariat.

Previous AGMs of the IGF have discussed topics relating to the MPF, including: fiscal and legislative frameworks as they relate to investment decisions, revenue sharing, mine closure and abandoned mines; social benefits and engagement, including community engagement, local revenue management, operational security and human rights, education and the role of women in the mining sector; and post-mining transition and environmental management.

### **3.0 CONFERENCE PARTICIPATION**

The First day was dedicated as an intergovernmental workshop for government delegates only. It was led by the IGF Secretariat. New Members to IGF including South Sudan and Guyana were introduced. It was reported that IGF held a regional meeting on mining Indaba on development of local content policy. Of particular relevance was the EAC Regional Mining Law of April 2018 that was drafted by IGF consistent with Mining Policy Framework (MPF). The law was due for validation. The MPF has six thematic areas including legal and policy environment, financial and benefit optimization, socio-economic optimization and artisanal mining.

It was reported that the MPF Assessment Methodology was first introduced in 2014 and refined in 2018. Some of the changes that were introduced to the methodology were: (1) process of member states request for MPF Assessments (2) Designation and role of the IGF Member Focal Points (3) composition of independent assessment team (3) expanded

list of documents (5) greater details regarding preparations, structure and timelines (6) details on validation (7) in-country trainings and capacity-building programs. It was also noted that there was integration of critical areas such as climate change, gender equality and investment law into the MPF Assessment Methodology.

It was also reported that IGF had provided guidance documents for governments such as on managing artisanal and small-scale mining (released in 2017), local content policies (released in 2018), and base erosion and profit sharing (BEPS) which was currently being developed.

The participants were taken through BEPS in mining program which was started in 2017 in collaboration with IGF and OECD. The components of the program are debt finance, mineral valuation and tax incentives. It was revealed that training on transfer pricing risk assessment for mining was forthcoming in Kenya.

Participants were also taken through local content policy guidance by A. Cosbey. It was revealed that under local procurement, value addition is not well defined and that there was need for policy coherence. Under local employment, questions were raised as to whether it meant curing historical injustices and whether the issue addresses local people or citizens generally. One participant from Guinea cited the example of foreign multinationals and observed that even though nationals were employed, the question was whose interests they were serving. Another participant from Mali observed that there was a challenge in defining local content. A participant from Peru observed that there was shared infrastructure projects collaboration between the government and the private sector. A participant from Burkina Faso observed that foreign companies should be allowed 10% of work whereas local suppliers should be trained. A participant from Bolivia indicated that Bolivia was in the process of developing regulatory regime that involves both the government and the private sector whereas another participant from Ecuador indicated that 80% of employment opportunities in the mining sector was reserved to Ecuadorians.

The participants were also taken through Environmental and Social Impact Studies (ESIA) which precedes issuance of a mining licence and exploitation. A participant from Niger indicated that ESIA are done but the challenge was on their capacity to review the studies.

### **Session 1: Opening Plenary**

IGF Chair Alexander Medina (Dominican Republic) opened the 14th Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) and invited the delegates to share their experiences during the forum. The meeting was a convergence of governments, mining companies and civil society organisations.

Isabelle Durant, UN Conference on Trade and Development (UNCTAD) expressed her gratitude to the participating delegates. She underscored the importance of mining in modern life, citing the example of lithium battery which is used in phones. She called for coherent governance structures in the mining sector and encouraged IGF initiative in upstream and downstream initiatives, convening expert groups. She called for action and not an academic approach when dealing with mining issues due to its socio-economic ramifications in the society.

Scott Vaughan, President, International Institute for Sustainable Development (IISD), underscored the importance of the conference theme. He emphasized the link between international trade with market access. He pointed out that the IISD had been funding the IGF for the past three years.

Greg Radford, Director, IGF Secretariat, expressed his gratitude to all stakeholders who had supported the IGF. He pointed out that it was the 14<sup>th</sup> meeting of IGF and that UNCTAD had been supporting it. He noted that there were 68 country members of IGF and that 470 people from 80 countries registered for the meeting. Out of these, over half were government delegates and that there was an increase in the number of delegates per

country. He also reported that 40% of the government delegates in the meeting were women.

## **Session 2: Modern Mining Law and Policy - Global Trends**

Moderator Kojo Busia, UN Economic Commission for Africa (UNECA), highlighted the notable modern changes in the mining sector. These were the fourth industrial revolution and low-carbon economy, increased Foreign Direct Investments due to greenfield projects to meet demand for low carbon economy, the concept of “resource nationalism” and the rapid changes occasioned by technology. He proposed the need for a social contract with communities before and during mining, the need to integrate mining into the greater country’s economy, and the need to diversify reliance on mining.

Hilary Morgan, Director, Natural Resources Canada, informed the delegates that under Canada’s Constitution, the Federal government provides policy whereas the provinces are collaborators and implementers. She indicated that Canada was in the process of modernizing its mining laws and was currently considering the Impact Assessment Bill (C-69). They had received thousands of submissions from the public and the Bill was pending in the Senate. She highlighted two initiatives in Canada that promote sustainable mining, that is Responsible Business Conduct and the Impact Canada Initiative.

Tom Butler, CEO, International Council on Mining and Metals (ICMM), made a presentation on social contract. He indicated that companies are expected to play a role in the developed world and that ICMM started with ten principles in 2010 but the principles have since expanded. He pointed out that South Africa was reviewing its mine closure legislations and that there was pressure to align with the SDGs. He noted that indigenous communities continue to be marginalised for lack of recognition by their respective governments. He highlighted some of the notable changes in mining such as climate change and its adverse effects, mining being carried out in World Heritage sites and the difficulties of legislating on dialogues with communities.

Mutuso Dhiliwayo, Executive Director, Zimbabwe Environmental Law Association, made a presentation on civil society perspective on mining law and policy. His presentation was based on three major points: transparency in access to information, shared benefits or equity, and accountability or remedies. On transparency, he indicated that there was need to move from representative democracy to participatory democracy where there was timely, credible and accessible information to all stakeholders. On shared benefits, he emphasized the need for safe, healthy, gender and ethnically inclusive, environmentally friendly and socially responsible mining operations. He called for the recognition of artisanal and small-scale miners. On accountability, Mutuso proposed that compensation should be based on international best practices or standards. An African participant urged the IGF to empower countries to have laws and policies that empower local communities rather than foreign investors.

### **Session 3: Revision of Mining Codes and Laws: Case Studies**

Moderator Clémence Naré, IGF Secretariat, indicated that 73% of IGF members had undertaken regulatory framework reforms in mining in the past year. She invited three countries to share their experiences of legislative reforms.

Dione Macedo, Ministry of Mines and Energy, Brazil, indicated that Brazil produces 70 different minerals from approximately 8,400 mines. The reasons for the revision of the mining code in Brazil were cited as increased foreign investment, restoration of credibility and regulatory stability.

Sakamornsnguan Kridtaya, Ministry of Industry, Thailand, cited Thailand's Minerals Act enacted in 2017. The notable changes brought by the Act were: merging of scattered laws, provision for mineral management policy and commission, provision on mining zones, provisions on criteria for permission and control of mining operations, provision on revenue collection and land use compensation. Kridtaya highlighted a few challenges such as imbalanced negotiation power, investment hindrances, and excessively strict regulations and unreasonable penalties. She called for the implementation of the new

measures and informed the participants that they were engaged in developing subordinate laws to the Minerals Act.

Sylvain Some, Ministry of Energy, Mines and Quarries, Burkina Faso, provided an overview of Burkina Faso's mining code reforms. He informed the participants about his country's Mining Policy Declaration and their first-generation mining code. He indicated that in Burkina Faso, a mining licence can be revoked if there's evidence of child labour and there's respect for human rights and gender. In 2010, the mining code in Burkina Faso was amended in order to address social issues arising from citizens feeling disenfranchised.

### **Session 5: Imagining the Future of Mining: Mapping and Considering Gender Impacts, Gaps and Policy Responses to Support Progress on the SDGs**

Moderator Uyanga Gankhuyag, UN Development Programme (UNDP), emphasized the interrelationship between human rights and mining practices.

Christopher Sheldon, World Bank, presented the World Bank Group gender strategy for 2016-2023 and their successful capacity building projects in Democratic Republic of Congo and Ghana. He cited some of the challenges encountered such as pay discrimination, sexual discrimination and unsafe working environment. He pointed out the use of automated mining in Australia and the effects of automation on jobs for drillers, drivers and so on.

Rebecca Iwerks, Natural Resource Governance Institute, pointed out that the Institute had conducted a research where they found that women either seek employment in the service sector or quit employment when agriculture replaces mining. She also observed that women suffer more during and after the extraction phase of mining.

Teresa Macayo Marin, Ministry of Mining, Peru, highlighted the value of women in small scale mining and their contribution to the value chain. She noted that there were

pay gaps when women sold gold and that women would work in the mine fields with their children.

The participants were then placed in various groups where they had interactive sessions on various questions related to the gender gaps in the mining sector. Most importantly, participants shared their policy responses to the challenges that they raised.

### **Session 7: Climate-Smart Mining**

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Sheldon, World Bank, was the moderator of this session. Daniele La Porta, World Bank, presented the Bank's 2017 report that mapped the potential mineral demand of low-carbon technologies, outlining the challenges in the mining sector such as reducing its carbon and materials footprint; creating market opportunities for renewable energy and integrating landscape management into planning and infrastructure.

Joseph Mankelow, British Geological Survey, proposed to the participants on the importance of historic geological data which could enable the society to understand which minerals it was endowed with and to be equipped on how well to extract them.

Evelyn Daphne Blackie, Deputy Minister of Mines and Mineral Resources, Sierra Leone, reiterated the need to involve all stakeholders in climate-smart mining practices so that they are smoothly carried out at decision level to implementation.

### **Session 8: Forest-Smart Mining**

This session was moderated by Estelle Levin-Nally, Founding Director, Levin Sources.

Pippa Howard, Fauna & Flora International, presented research identifying 1,500 large-scale mining (LSM) operations in forests and another 1,800 forthcoming projects in development, which together would affect one-third of the world's forests. She observed that unlike LSM which is regulated, artisanal small scale mining is not. She called for



cooperation between government and business entities in order to alleviate any adverse effects in mining.

Macayo Marín indicated that Peru had established a protected forest category of nearly 400,000 hectares where mining activities are forbidden. Similarly, the government provides tax incentives for mining companies which adopt forest-smart approaches.

### **Session 10: Mine Closure Best Practices: Tools for Companies and Governments**

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Participants were informed about Canada's Green Mining Innovation and the National Orphaned/Abandoned Mines Initiative. These constituted some of the efforts of Canada to deal with mine closure.

Andrew Gunua, Mineral Resource Authority, Papua New Guinea (PNG), indicated that although the current regulations did not have adequate provisions on mine closure, there was a pilot programme of the Mine Closure Checklist for Governments, a tool that was developed by the Asia-Pacific Economic Cooperation Mining Task Force under a programme coordinated by Natural Resources Canada. Participants were informed that the mine closure and rehabilitation guidelines were ongoing.

Nicky Black, ICMM, informed participants of the efforts by governments to have strict regulations for mine closure but noted that there were gaps on how stakeholders are supposed to work together in addressing this matter.

From the discussions by participants, there was need for countries to have mine closure provisions in their laws and to successfully implement the requirements. In Kenya, section 180 of the Mining Act provides for the requirement of site restoration and mine closure plans.

### **Session 11: Leveraging Innovation for a Sustainable Mining Sector**

The session was moderated by Crawford. Marcela Angulo González, Chilean Economic Development Agency, indicated that Chile had its own 2035 technology roadmap which had innovation ecosystem that links various players in the mining sector. These innovations are used in identifying valuable minerals.

Scott Yarrow, Glencore International AG, gave two examples where innovation has been used in Canada: one, the use of battery electric vehicles in mining operations; and two, the use of wind turbines in the Raglan mine in the Arctic.

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Vanessa Ushie, African Development Bank (AfDB), presented innovations developed by the African National Resources Center. She indicated that 200,000 mine workers were to lose their jobs in the Southern African Development Community region and that there was need to ameliorate the loss of jobs due to innovation through policy directions.

### **Session 13: Promoting Diversification through Local Content Strategies**

The session was moderated by Black, ICMM. The Speakers in this session were Johannes Danz, BGR; Busia, UNECA; Macedo; and Ospina, O Trade. It was observed that local suppliers in various countries need to concentrate on products that are in constant demand throughout the life of the mine; need to have comprehensive national supply and development programmes; need for suppliers to expand their services to other sectors and the need to have local content policies that also promote access to education and education for local communities.

### **Session 15: Environmental and Social Impact Assessments (ESIA)**

The session was moderated by Nikièma, IGF Secretariat. She informed the participants that there was a draft ESIA guidance document which provides a framework for mining responsibly and sustainably. Nikiema highlighted five gaps in ESIA identified through a review of case studies including: lack of clarity on the role of ESIA in contracting processes; timing of permit withdrawal based on ESIA; poor sequencing of ESIA

processes; shortcomings in the procedure of preparing ESIA, such as automatic acceptance of reports; and lack of appropriate mechanisms for monitoring and evaluation.

Rafael Benke, Proactiva, encouraged mine operators to consider ESIA as a tool to promote their businesses rather than as a hindrance to their businesses.

### **Session 16: Engaging Communities in the Mine Life Cycle**

Moderator Wendy Tyrrell, Development Partners Institute, moderated the session.

Joyce Nyamukunda, Zimbabwe Environmental Law Association, made a presentation on granite mining in Zimbabwe. She indicated that she started working with Zimbabwe Environmental Law Association. She highlighted types of community engagements as community capacity building, linking community with power holders, litigation, having engagement with parliament and participation in national and international events. She informed participants of the Zimbabwe's Indaba and the Minerals Act of 1961 which was currently being reviewed. She recommended various mechanisms of facilitating effective community engagement, including: institutional and law reforms that promote sustainable and responsible mining investments, monitoring and compliance by mining companies, transparency and accountability across the mining value chain and community participation across the mining value chain.

Monica Ospina, Director O Trade Aurania, made a presentation on their lost cities project and the human and social value. In their social portfolio, they build trust with communities in areas that they conduct mining, promote the participation of locals through training and employment and engaging them for collaboration. She also indicated that they run a program of "early prospectors" consisting of young, local communities and they are equipped with knowledge on mining.

André Xavier, Canadian International Resources and Development Institute, called for participatory monitoring by mining companies in order to address any social conflicts that may arise due to environmental degradation as a result of mining.

Agapito Alexander Rodríguez Escobar, Honduran Institute of Geology and Mines, informed the participants of the gains made in Honduras in relation to small scale miners.

### **Session 18: New UN Tools Supporting Sustainable Mining Policies**

Pamela Coke-Hamilton, UNCTAD, moderated the session.

Gankhuyag, UNDP, presented two publications that she indicated would help governments address challenges in mining: “Managing Mining for Sustainable Development: A Sourcebook” and “Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights into the Governance of the Mining Sector.” Gankhuyag described UNDP’s work on extractive industries for sustainable development through its Development Minerals Programme in African, Caribbean and Pacific states, and its programme work on environmental governance of the mining sector.

Ida Hyllested, UN Children’s Fund (UNICEF), presented UNICEF’s Child Rights and Mining Toolkit and results from a study examining how children are affected by the mining industry.

She indicated that children are more vulnerable to the impacts of mining than adults and highlighted UNICEF’s current approach for businesses and governments to move beyond child labour.

Harikrishnan Tulsidas, UN Economic Commission for Europe (UNECE), presented on the UN Resource Management System. He indicated that the system is still being developed and will address multiple facets of sustainable development within the global workspace. He urged the participants to reconsider the terminologies used in the mining sector which communicate the activity as negative, for instance the term “extractive” or “exploitation”.

### **Session 20: Closing Plenary**

IGF Chair Medina thanked the participants and presenters for their robust engagement on the topics of the meeting. Coke-Hamilton, UNCTAD, also expressed her gratitude to the participants and to IGF and pledged UNCTAD's continued support for the governments of mining countries through the IGF and its AGM. Nathalie Bernasconi-Osterwalder, IISD, also expressed her appreciation to the participants and UNCTAD for hosting the AGM. Nathalie encouraged governments to have clear laws and codes, and fair contracts. It was indicated that the forthcoming 15th AGM will be from 7-11 October 2019.

## **5.0 OBSERVATIONS**

The delegation made the following observations:

1. Parliament enacted the Mining Act (No. 12 of 2016) which is a fairly robust legislation and current in order to address most of the challenges prevalent in the mining sector.
2. Some of the participants during the forum either had mineral legislations which were not up to date or were in the process of reviewing them in order to align them to the dynamic challenges in the current world.
3. The IGF guidance documents for governments on managing artisanal and small-scale mining (released in 2017), local content policies (released in 2018), and base erosion and profit sharing (BEPS) (currently being developed) are important tools in the mining sector.
4. The guidance documents on “Managing Mining for Sustainable Development: A Sourcebook” and “Extracting Good Practices: A Guide for Governments and Partners to Integrate Environment and Human Rights into the Governance of the Mining Sector” are important, newly-launched publications in the mining sector.

5. Community engagement in the mining cycle is important so as to build capacity within communities and in order to create synergy and community participation in all mining activities.
  6. Although mine closure is provided for in Kenya's Mining Act, the subject needs strict regulations, reinforcement by incorporating concepts from guidance documents on mine closure and enforcement of mine closure provisions.
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  9. Innovation has been used in other jurisdictions during mining and this has had both positive effect and loss of employment.
  10. The IGF revealed that training on transfer pricing risk assessment for mining was forthcoming in Kenya.
  11. The next 15<sup>th</sup> AGM will be held from 7<sup>th</sup> to 11<sup>th</sup> October 2019.

## 6.0 RECOMMENDATIONS

The delegation makes the following recommendations:

1. The Ministry of Petroleum and Mining should finalise regulations that are supposed to be made under the Mining Act (No. 12 of 2016) in order to fully operationalize Kenya's mining legislation.
2. The Committee and the Ministry of Petroleum and Mining should examine sections 92 to 100 of the Mining Act providing for artisanal and small scale miners vis-a-vis the IGF guidance documents for governments on managing artisanal and small-scale mining (released in 2017) and determine whether there is valuable guidance on artisanal miners. This also includes local content policies guidance document by IGF (released in 2018).
3. The Ministry of Petroleum and Mining and the Ministry of Environment and Forestry and Kenya needs to incorporate forest-smart and climate-smart mining practices and align herself to international best practices and conventions.
4. The Cabinet Secretary in the Ministry of Petroleum and Mining should expedite and finalise regulations required to be made for site rehabilitation and mine-closure under section 180 of the Mining Act.

**MINUTES OF THE 27<sup>TH</sup> MEETING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 23<sup>RD</sup> OCTOBER, 2019 IN COMMITTEE ROOM 10, MAIN PARLIAMENT BUILDING AT 9.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, M.P.
2. Sen. Prengei Victor, M.P.
3. Sen. Godana Hargura, M.P.
4. Sen. Ndwiga Peter Njeru, EGH, M.P.
5. Sen. George Khaniri, MGH, M.P.
6. Sen. Boy Issa Juma, M.P.
7. Sen. Halake Abshiro, M.P.

**PRESENT**

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Mwaruma Johnes, M.P. - Member
2. Sen. Sylvia Kasanga, M.P. - Member

**IN ATTENDANCE**

**SENATE SECRETARIAT**

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Caroline Cheruiyot - Legal Counsel
3. Mr. Abdalla Mbore - Sergeant at arms
4. Mr. Eugene Luteshi - Audio Recording

**MINUTE SEN/SCLN/157/2019: PRELIMINARIES**

The meeting was called to order at 11.30am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLN/158/2019: ADOPTION OF AGENDA**

The agenda was therefore proposed by Sen. Halake Abshiro, M.P. and seconded by Sen. Godana Hargura, M.P as follows.

1. Preliminaries;
  - *Prayer*
  - *Chairpersons remarks*
2. Adoption of the agenda;
3. **Adoption of Committee Reports;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.



**MINUTE SEN/SCLNDR/159/2019:                      CONFIRMATION OF MINUTES**

The Minutes of the 24<sup>th</sup> sitting held on 25<sup>th</sup> September, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Godana Hargura, M.P. respectively.

The Minutes of the 20<sup>th</sup> sitting held on 12<sup>th</sup> August, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Halake Abshiro, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 11<sup>th</sup> sitting held on 4<sup>th</sup> April, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and seconded by Sen. Boy Issa Juma, M.P. respectively.

The Minutes of the 5<sup>th</sup> sitting held on 20<sup>th</sup> February, 2019 were confirmed as a true record of the proceedings having been proposed and seconded by Sen. Prengei Victor, M.P. and seconded by Sen. Halake Abshiro, M.P. respectively.

**MINUTE SEN/SCLNDR/160/2019:                      MATTERS ARISING**

There were no matters arising.

**MINUTE SEN/SCLNDR/161/2019: ADOPTION OF COMMITTEE REPORTS**

The following reports were adopted by the Committee:

- (a) Report on the Petition regarding Adverse environmental and social effects arising from the construction of Phase 2A of the Standard Gauge Railway (Nairobi – Naivasha Section);

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (b) Report on the Petition regarding Budgetary support to Wildlife Conservancies for sustainable conservation and community development;

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (c) Report on the Petition regarding Alleged unlawful deprivation of a parcel of land situated in Kaputiei North, Kajiado County;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (d) Report on the Petition regarding Ownership of Mgeno Land Reserve;

The report was adopted after having been proposed and seconded by Sen. Godana Hargura, M.P. and Sen. Prengei Victor, M.P. respectively.

- (e) Report on the Petition regarding Non-payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili Road;

The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Halake Abshiro, M.P. respectively.

- (f) Report on the Petition regarding the Alleged grabbing of the part of the land allocated for settlement of the Petitioners at Kiang'ombe Squatters Settlement Scheme in Thika sub-County, Kiambu County

The report was adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, M.P. and Sen. Halake Abshiro, M.P. respectively.

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- (g) Report on the Petition regarding the effects of iron ore mining at Kishushe in Taita Taveta County.

The report was adopted after having been proposed and seconded by Sen. Prengei Victor, M.P. and Sen. Ndwiga Peter Njeru, M.P. respectively.

- (h) Report regarding the Committee's participation in the 8<sup>th</sup> World Water Conference held in Brasília, Brazil from 18<sup>th</sup> – 23<sup>rd</sup> March, 2018;

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Boy Issa Juma, M.P. respectively.

- (i) Report regarding the Committee's participation in the 14<sup>th</sup> Annual General Meeting (AGM) of the Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) on Modern Mining Law and Policy 16<sup>th</sup> – 18<sup>th</sup> October, 2018.

The report was adopted after having been proposed and seconded by Sen. George Khaniri, M.P. and Sen. Prengei Victor, M.P. respectively.

- (j) Report regarding the Committee's participation in the 18<sup>th</sup> meeting of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Conference of the Parties (CoP 18) that was held in Geneva, Switzerland from 17<sup>th</sup> – 28<sup>th</sup> August, 2019.

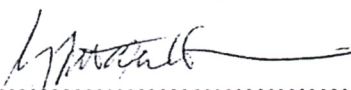
The report was adopted after having been proposed and seconded by Sen. Boy Issa Juma, M.P. and Sen. Prengei Victor, M.P. respectively.

**MINUTE SEN/SCLNR/162/2019: ANY OTHER BUSINESS;**

There were no other matters discussed during the meeting.

MINUTE SEN/SCLNR/163/2019: DATE OF NEXT MEETING;

The meeting was adjourned at 10.29 am and the next meeting was to follow thereafter.

SIGNATURE.......... DATE 23-10-2019

(CHAIRPERSON: SEN. MWANGI PAUL GITHIOMI, MP.)