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A REPORT OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM EXPLOITATION OF NATURAL RESOURCES IN THE COUNTIES

Clerk's Chambers,
The Senate,
P.O. Box 41842-00100,
Nairobi.

April 2014

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PREFACE

Mr. Speaker Sir,

The Ad hoc Committee on Legislation on royalties accruing from the exploitation of Natural Resources from the Counties was established by a Senate Resolution on 26 June, 2013. The Committee was established to initiate legislation to require investors to pay a percentage of their turnover as royalties to the counties where they operate and to determine the criteria to be used in payment of percentage of royalties by investors in the counties where the exploitation of natural resources occurs; how the revenue the revenue accrued will be utilized by the country and counties; and any other relevant issue that may arise in regard to other existing Legislation.

Committee Membership

The Committee comprised of the following Members:

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Paul Wamatangi - Vice-Chairperson
3. Sen. Peter Mositet
4. Sen. Danson Mwakulegwa
5. Sen. Boy Juma Boy
6. Sen. (Prof.) Anyang'-Nyong'o
7. Sen. (Prof.) John Lonyangapuo
8. Sen. Catherine Mukiite
9. Sen. Liza Chelule
10. Sen. Stephen Sang
11. Sen. David Musila
12. Sen. Chris Obure
13. Sen. (Dr.) Wilfred Machage
14. Sen. Kipchumba Murkomen
15. Sen. Henry ole Ndiema
16. Sen. Amos Wako
17. Sen. Omar Hassan.

Terms of Reference

The Terms of Reference of the Ad hoc Committee on legislation on royalties accruing from exploitation of natural resources in the counties is spelt out in a Senate resolution of 26th June, 2013, as follows:-

THAT, aware that various counties in Kenya are endowed with natural resources such as oil deposits, wildlife, minerals among others; appreciating that their capability to exploit and utilize the resources varies according to economic and technical potential; cognizant of the fact that under the devolved system of government, the county's role in the creation of national revenue is critical; concerned that there may be no direct and proportional share on the basis of the revenue that a county is able to generate since equitable sharing of revenue raised will be done by the national government; affirming the need for direct benefit from the proceeds of the said natural resources to the local communities, especially in marginalized counties; aware that imposition of tax by national or county government can only be by way of legislation; and that only the national government can impose tax; the Senate resolves to establish a Select Committee to initiate legislation to require investors to pay a percentage of their turnover as royalties to the counties where they operate and to determine:-

(a) The criteria to be used in payment of percentage of royalties by investors in the counties where the exploitation of natural resources occurs;
(b) How the revenue the revenue accrued will be utilized by the country and counties;
(c) And any other relevant issue that may arise in regard to other existing Legislation; and that the Committee shall comprise the following Senators:-

1. Sen. Peter Mositet
2. Sen. Paul KimaniWamatangi
3. Sen. DansonMwakulegwa
4. Sen. Boy Juma Boy

5. Sen. (Prof.) Anyang'-Nyong'o

6. Sen. (Prof.) John Lonyangapuo
7. Sen. Catherine Nobwola
8. Sen. Liza Chelule
9. Sen. (Dr.) Agnes Zani
10. Sen. Stephen Sang
11. Sen. David Musila
12. Sen. Chris Obure
13. Sen. (Dr.) Wilfred Machage
14. Sen. KipchumbaMurkomen
15. Sen. Henry ole Ndiema
16. Sen. Amos Wako and,
17. Sen. Omar Hassan.

Committee proceedings

The Committee held its First Sitting on 9 July 2013, during which Sen. (Dr.) Agnes Zani and Sen. Paul Wamatangi were elected the Chairperson and the Vice-Chairperson respectively. The Committee immediately afterwards embarked on its core business. In the exercise of its mandate, the committee held several deliberative sittings. The Committee in these sittings reviewed documents and literature on the subject and analyzed a report from the consultants engaged by the Committee. The Minutes of the Committee sittings are annexed to the report. All documents tabled and provided to the Committee can also be found in the Parliament Library. The List of individuals and organizations that appeared before the Committee can be found in the appendix.

To effectively fulfill its mandate the Committee held deliberative sessions, reviewed documents and undertook fact-finding tours to various counties to seek views of Kenyans to comprehensively address the resolution of the Senate. The Records of the information collected in tours and the documents and notes received by the Committee form the basis of the Committee observations and recommendations.

Acknowledgement

I would wish to express gratitude to the Members of this Committee for their commitment and tireless effort in ensuring that the Committee effectively discharged its mandate. The Members took time off their busy schedules to attend to the activities of the Committee.

This Committee acknowledges the contributions made by the Governors, Members of the County Assemblies and the community, during the county visits.

The Committee also wishes to thank our development partner State University of New York (SUNY) Kenya for its support in the engagement of experts whose skills and opinions have been of great help in improving the proposed legislation.

This Committee further acknowledges the Offices of the Speaker and the Clerk of the Senate for the support extended to it during the entire duration of the Committee.

Finally, we sincerely express our gratitude to the House for having entrusted us with this important mandate of coming up with a draft Bill on Royalties accrued from exploitation of natural resources in the counties.

Mr. Speaker Sir,

It is therefore my pleasant duty and privilege, on behalf of the Senate Ad Hoc Committee on Legislation on Royalties accruing from exploitation of natural resources in the counties, to table this report in accordance with the provision of the Senate Standing Order 203 (6).

SIGNED.....DATE.....1/4/14.....

SENATOR (DR.) AGNES ZANI

CHAIRPERSON

ABBREVIATIONS

MCAs	Members of County Assembly
CSR	Corporate Social Responsibility
GDC	Geothermal Development Company
SUNY	State University of New York
EAPCC	East African Portland Cement Company
TCM	Tata Chemicals Magadi
KWS	Kenya Wildlife Service
KFS	Kenya Forest Service
KENRA	Kenya National Resources Alliance

WORK PROGRAMME

DATES	ACTIVITY
29th June, 2013	Induction Retreat
10th September, 2013	Machakos County visit
11th September, 2013	Kajiado County visit
12th September, 2013	Narok County visit
12th to 13th September, 2013	Kiambu County visit
4th October, 2013	Nakuru County visit
5th to 6th October, 2013	Taita Taveta County visit
26th October, 2013	Kwale County visit
27th October, 2013	Turkana County visit
22nd October, 2013	Elgeyo Marakwet County visit
29th November, 2013	Stakeholders workshop visit

EXECUTIVE SUMMARY

The Ad hoc Committee on legislation on royalties accruing from natural resources in the Counties was established pursuant to a resolution of the Senate on 26th June, 2013. The Committee held its induction workshop on 29th June 2013 from which the committee was able to draw its work plan.

The Committee, between August and October, 2013, visited nine counties selected on the basis of geographical representation and diversity of natural resources found in the country. The objective of the visits was to meet members of the county governments; the County Assembly members; communities; and Investors living in those counties, with a view to collecting their views in line with the Terms of Reference of the Committee.

During those visits, the Committee observed that most communities living in counties with natural resources were not benefiting from the exploitation of those resources. The members of community were living in abject poverty despite the counties being endowed with natural resources. There were no uniform proposals cutting across the counties and they varied from one county to another. There was no statutory approach to natural resource benefit sharing regime in Kenya.

The Committee, in accordance with the principle of public participation in legislation as enshrined in the constitution, held a stakeholders workshop on the first draft bill on 29th November, 2013, at the Safari Park Hotel in Nairobi. The general consensus was that the Bill did not adequately address the issue of royalties on natural resources and it was therefore recommended that the Bill be amended hence the second draft Bill.

The Committee engaged three consultants with the support of development partner, State University of New York (SUNY) Kenya who prepared a policy paper which clarifies the fiscal framework to inform the proposed legislation.

CHAPTER ONE: INTRODUCTION

Kenya is rich in natural resources, including a vast array of wildlife, forest, fisheries, minerals and recently discovered gas and petroleum. Under the Convention on Biological Diversity, Kenya is categorized as a mega-diverse country because of its species' richness, endemism and ecosystem diversity.

For quite some time, these resources have been explored by the private sector, local and international. The communities living in the counties within which these natural resources are found have not however benefited from the exploitation of the said resources. It is therefore unfortunate that these communities live in abject poverty despite the existence of natural resources in those counties.

The exploitation, development and management of Natural Resources have remained an arcane matter of esoteric interest despite the fact that the vast majority of Kenyans should depend on these resources for their livelihoods. Although Kenya has fragmented legislative provisions on some types of natural resources, it does not have a unified fiscal regime on natural resources. For many years various leaders of the local and national level, have expressed concern over the need to ensure that the procedure used for exploitation of natural resources are equitably used.

The Constitutional provision that Natural Resources should benefit all Kenyans gives new impetus to generate policies and legislative framework that will recognize the sacrosanct roles of the community in the management of the natural resources and make them the primary beneficiaries in any benefit sharing model.

It is in view of the foregoing that Sen. (Dr.) Agnes Zani moved a Motion before the Senate that led to the resolution establishing the Ad Hoc Committee on Legislation on Royalties accrued from the exploitation of Natural Resources in the Counties.

CHAPTER TWO: APPROACH OF THE COMMITTEE

The committee in the process of gathering information was guided by the terms of reference as encapsulated in the Senate resolution. The Committee invited the stakeholders, consultants and other interested parties to give the necessary information in order to holistically address the issues of resource revenue sharing. The Committee also undertook fact-finding visits to various counties and met county government officials and communities. The sole objective of the committee was to gather information to initiate evidence-informed legislation that would require investors to pay a percentage of their turnover as royalties to the counties where they operate.

2.1 INDUCTION RETREAT

The Ad Hoc Committee on Legislation on Royalties held its first working retreat on 29th June, 2013 at the Boma Hotel in Nairobi with 30 participants in attendance.

The retreat was important as it equipped the members with the knowledge and information which was necessary to enable them clearly understand the Terms of Reference of the Committee. Moreover, the members were also able to come up with a definite programme of activities given the limited term of the Committee. Members were also able to engage the stakeholders from an informed point of view.

The Members were taken through deliberative sessions during which the following presentations were made:-

- The process of initiating legislation – by Ms. Josephine Kusinyi, a Legal Counsel;
- Mapping of exploited and exploitable natural resources in Kenya – by Mr. Kefa Omoti, a Research Officer ;

- Methods of computation of royalties accruing from natural resources in other jurisdictions – by Dr. Daniel Ichangi;
- Existing mechanisms in the counties for utilization of royalties accruing from natural resources- by Mr. Mwambi Mwikamba, Kenya Natural Resources Alliance; and
- Existing government policy on natural resources – by Dr. Richard Lesiyampe, Principal Secretary, Ministry of Environment, Water and Natural Resources

2.2 COUNTY VISITS

The Committee, pursuant to Article 118 of the Constitution and Senate Standing Order 202, visited the following counties between August and November, 2013.

(i) Machakos County

(ii) Kajiado County

(iii) Narok County

(iv) Kiambu County

(v) Nakuru County

(vi) Taita Taveta County

(vii) Kwale County

(viii) Turkana County

(ix) Elgeyo Marakwet County

The selection of the above counties was aimed to be representative and give as much variation in terms of geographical location and diversity of natural resources found in the country.

The objectives of the visits were to engage with:-

a) the county governments;

b) the County Assembly members;

c) communities; and

d) Investors living in those counties with a view to collecting their views in line with the Terms of Reference of the Committee.

The following were the views collected during the county visits:-

2.2.1 MACHAKOS COUNTY

In Machakos County the Committee met with the County Governor and Members of the County Executive, MCAs, community and undertook a visit to a sand harvesting site in Kathiani.

Natural resources in Machakos County

Natural resources found in Machakos County are Coal (at Yattta Plateau), sand, limestone, gibstone, ballast from quarries, posolana, iron ore, zinc, copper, diamond, gold, magnesium, cobalt, uranium, titanium and forests.

a) Meeting with the Governor, Machakos County

Proposed percentage of Royalty

The Machakos county government proposed that 40% of royalties accruing from exploitation of natural resources in Machakos County should remain in the counties and in turn shared in such a manner that the county government retains 30% and the community 10%.

Management and use of Royalty

The Machakos County Government gave the following proposals on the management and use of Royalties collected.

(i) A Special kitty to be set up and all revenue collected from exploitation of the natural resources be channeled to that kitty. Subsequently, Counties would be required to vote on what the money can be used for.

(ii) The County Assemblies to set the criteria for collecting and allocation of the revenue collected.

(iii) County Governments to issue subsidiary licenses to investors which sets up a criteria on the employment opportunities to be given to the community.

(iv) County Governments to put in place an Environment Management plan to ensure sustainable exploitation of natural resources.

b) Meeting with the Members of Machakos County Assembly

Proposed percentage of Royalty

The MCAs proposed that 50% of Royalties accruing from exploitation of natural resources in Machakos should remain in the county.

Management and use of Royalty

The MCAs proposed the following on the use of Royalty collected:-

(i) Building of gabions

(ii) Environmental conservation

c) Meeting with the community in Kathiani

Management and use of Royalty

The Community proposed that the Royalties collected from exploitation of natural resources in the County be used to improve the livelihoods of the

people who despite owning such huge natural resources were still living in abject poverty.

2.2.2 KAJIADO COUNTY

The visit to Kajiado County was mainly aimed at collecting the views of the investors exploiting natural resources in Kajiado. The Committee met the Management of East African Portland Cement Company, Tata Chemicals Magadi and visit to Ngong Veterinary Quarry.

Natural resources found in Kajiado County

The natural resources found in Kajiado county are trona, kyanite, calcite, diatomite, quartzite, salt, sodium fluoride and quartz.

a) Meeting with the Management of East African Portland Cement

The main business of EAPCC is cement manufacturing. The minerals required for cement manufacture are Limestone, canker, iron ore (mined from Homabay and Taita Taveta), clay boxide(from from Tanzania and kericho), posolana (mined at Ngurunga-Kajiado), and gybsome (purchased from vendors in Kajiado).

Proposed Percentage of Royalty

It was established that EAPCC was paying about 15%per tonne of limestone mined to Kajiado County Government. However, they were of the opinion that 15% was on the higher side and that instead 10% per tonne mined would suffice. The Company noted that the percentage should be based on the cost of mining the materials and not on profit.

b) Visit to Ngong Veterinary Quarry

The veterinary quarry mines ballast which is the natural resource used in constructing the Nairobi Southern Bypass project. The ballast project stands on a 40 acre of land in Kajiado County.

Proposed percentage of Royalty

It was established that the contract entered into was an Engineering Procurement Construction (EPC) Contract and as such the EPC Conditions applied in the construction of the Bypass. In this case, the contractor is responsible for all the phases and bears all the risks. The contractor sources and takes care of the mining and negotiates on all the contracts by himself.

The Ngong Veterinary Quarry was duty and tax free as per the agreement between the investor and the Government. It is also free of levies and royalties.

c) Meeting with Management of Tata Chemicals Magadi

Tata Chemicals Magadi (TCM) is a soda ash manufacturer at Lake Magadi in Kenya's Rift Valley. Formerly known as Magadi Soda Company, TCM, has been a part of Tata Chemicals International since 2005 and is now one of Kenya's leading exporters.

Proposed percentage of Royalty

It was established that TCM pays Kshs.18 Million to the National Government and Kshs. 33 Million to the County Government annually in form of royalties. The management of TCM suggested that Royalties should be pegged on raw materials instead of value addition. This was based on their observation that the process of value addition involved using factor inputs purchased from elsewhere.

2.2.3 NAROK COUNTY

The Committee, during the visit to Narok County, met with the members of the County Government, members of the County Assembly and the community in Mara.

Natural resources in Narok County

Natural resources found in Narok County include the Masai Mara game reserve, Geothermal at Suswa, rivers, forests, culture, and gold at Logoria.

a) **Meeting with the Governor and Executive Members of Narok County**

Management and use of Royalties

It was noted that there has never been a structured way of managing Royalties that go to the counties.

The following proposals were given for the management and use of royalties collected:-

(i) Improvement of the road network between Narok Town –Maasai Mara and from Kilgoris to Maasai Mara.
(ii) Environmental conservation
(iii) Creation of employment for the youth living around Mara

b) **Meeting with the community and Members of the County Assembly held at Mara Sarova**

Proposed percentage of Royalties

It was established that out of the 100% royalties paid, .17% was going to the community while 83% was going to the County Government. The Community was not satisfied with this ratio and proposed that 50% of the Royalties collected should go to the community.

Management and use of Royalties

The Mara Community gave the following proposals on the use of Royalties collected from exploitation of natural resources in Narok County:-

(i) Establishment of basic amenities like schools and health facilities,
(ii) Construction of roads in the area,
(iii) School bursaries to the community,

(iv) Compensation to the community for loss occasioned to them,

(v) Environmental management,

(vi) Provision of veterinary Services for their animals,

(vii) Establishment of meat and skin processing companies,

(viii) Dams to be built for irrigation.

The Committee observed that there was need for the Senate to establish a task force to look into the long standing issue of the Mara conflict. This would of necessity provide a long term solution to the Mara conflict.

2.2.4. KIAMBU COUNTY

The Committee not only met the County Assembly Members and Members of Kiambu County Government, but also visited Fourteen Falls, and Ngethu Water Treatment Plant and Kereita Forest

Natural resources found in Kiambu County

Natural resources found in Kiambu County are water, natural carbon dioxide, forests, stones and murram.

a) Meeting with the Executive Members of the Kiambu Government

The meeting with the Executive Members of Kiambu Government revealed that the county government enjoyed a cordial working relationship with the Kenya Forest Service.

Proposed percentage of Royalties

It was proposed that 60% of the Royalties collected from exploitation of natural resources in Kiambu be retained in the County with the County Government getting 40% and the community 20%.

b) Meeting with the County Assembly Members.

It was noted that the water processed in Kiambu was consumed by the population in Nairobi.

The Kenya Forests Service (KFS) had leased out land to Carbacid Company Limited and was unfairly benefiting from the lease to the disadvantage of the community living around the forest.

It was established that excavation of murram used for making roads resulted in open craters which posed a great danger to the community.

The man made lakes also led to prevalence of hippos in the area causing increased human wildlife conflict.

Proposed percentage of Royalties

It was proposed that 30% of the Royalties collected from exploitation of natural resources in Kiambu be retained in the county with the County Government getting 10% and the community 20%.

Management and use of Royalties

The county proposed that the royalties collected be used for:-

(i) Reforestation and environmental conservation
(ii) Infrastructure development
(iii)Education

c) Visit to Fourteen Falls

During the visit to Fourteen Falls, it was established that the County Government was collecting revenue from people using the recreational centre but the community did not benefit from such royalty collected.

The Committee condemned the filthy state of the Falls which was heavily polluted with sewer discharge from Nairobi.

d) Visit to Ngethu Water Treatment Plant

Members of the Committee undertook a tour of the Ngethu Water Treatment Plant and were given an insight into the water treatment process.

It was established during this visit that the water treatment company was paying 0.55 of a cent per cubic litre of water to the National Government.

The community proposed that one shilling per cubic metre be paid to the County Government.

e) Visit to Kereita Forest

The Committee visited the Forest but was not able to visit Carbacid Company Limited.

The Committee met the Officer in Charge of the Forest and established that the Kenya Forest Service had leased land directly to Carbacid Company at Kshs. 500,000/= per year.

There were no royalties going to the Community although the Carbacid Company had undertaken some Corporate Social Responsibility activities to the benefit of the people living around the forest.

2.2.5 NAKURU COUNTY

The visit to Nakuru County mainly targeted the views of the community and the investors. The Committee met MCAs, the Community surrounding Lake Nakuru National Park, the Management of Geothermal Development Company (GDC) and visited a site of the GDC.

Natural resources found in Nakuru County

Natural resources found in Nakuru County include forests, water, geothermal energy resources, wildlife, minerals, land, Lake Nakuru National Park, Menengai Crater, Hell's Gate Park, Lake Naivasha, Lake Elementaita, Hyrax Hill Anthropological Site and Longonot Crater.

a) Meeting with the Community and Members of the County Assembly

Proposed percentage of Royalties

The community proposed 50% of the Royalties collected from exploitation of natural resources in the County to remain in the county with the County Government getting 10% and the community 40%.

Management and use of Royalties

The Community gave the following proposals on the use of Royalties collected from exploitation of natural resources in Nakuru County:-

(i) Establishment of basic amenities like schools and health facilities
(ii) Creation of employment for the youth
(iii)Environmental conservation and management

b) Meeting with the Management of GDC

The Committee met the management of GDC at Merica Hotel in Nakuru where GDC made a presentation to the Committee about the Company.

The Company proposed that 50% of royalties paid to go to the county with the county government and the community getting an equal share.

c) GDC Site visit

The Management team led the Committee on a visit to one of its drilling sites where one complete well had been drilled at a cost about Kshs. 2.5billion.

The Company was looking for an investor and was in the process of drilling three other wells.

The following issues arose during the site visit but the company was not able to adequately address them.

(i) Environmental degradation after excavation

(ii) Rationale behind drilling in areas where investors cannot establish amenities to the benefit of the community living in those areas

(iii)Purchase and sale of land located next to the drilled wells

2.2.6 TAITA TAVETA COUNTY

The committee in Taita Taveta met with MCA'S, members of the community and visited a mining site in Kasighau.

Natural resources in Taita Taveta County

Natural resources found in Taita Taveta County include iron ore, gems, gypsum, platinum, forests, underground water, springs and national parks.

Meeting with the MCAS in Mwatate

During the meeting with the MCAs in Mwatate, the Committee established that the community was not benefiting from the natural resources in that County. There was also increased human wildlife conflict and there was no adequate compensations given to the members of the community affected by such conflict.

According to the MCA's, the larger Part of Taita Taveta County is a national park which belongs to the KWS. The community does not benefit from the park.

Meeting with the community at Kasighau

Proposed percentage of Royalty

The Community proposed that 50% of royalties collected from exploitation of natural resources be retained in the counties with the county government getting 20% and the Community 30%.

Management and use of Royalties

The following proposals were given for the management and use of royalties collected from natural resources in Taita Taveta County:-

(i) Compensation to the Community for loss occasioned by human-wildlife conflict
(ii) Capacity building for the community on value addition
(iii) Social amenities
(iv) Creation of employment opportunities

a) **Site visit in Kasighau**

The Committee visited a mining site in Kasighau and met with small scale miners in the area. The conditions under which they were mining were poor. The small scale miners did not even have the basic necessary equipment required for the mining.

It was established that there was no support advanced to the miners by the government. The small scale miners were exploited by the big scale investors. The licenses were also too costly for the small scale miners to afford.

The miners were living in poverty despite having those minerals.

2.2.7 KWALE COUNTY

In Kwale county, the committee met with community members, the management of Cortec Mining Kenya Limited and the management of Base Mining Company Limited.

Natural resources found in Kwale County

Natural resources found in Kwale County include minerals such as illuminate, titanium, manganese ore among others, wildlife, water, forests, Tsavo National Park, Shimba Hills National Reserve, Mwaluganje Elephant Sanctuary, Sheldrick Falls, Maji Moto Springs and Mrima Hills.

a) **Meeting with the Community in Mrima**

Proposed percentage of royalties

It was proposed that 60% of the royalties collected from exploitation of natural resources in the Counties to remain in the counties with 10% going to county government and 50% going to the community.

Management and use of royalties

The following proposals were made by the community for the use of royalties:-

(i) Social environmental assessment for damage to community caused by radioactivity.

(ii) Creation of employment for youth.

(iii) Health facilities.

(iv) Education.

(v) Environmental conservation.

(vi) Water for domestic use.

b) Meeting with the Management Cortec Mining Limited

The Committee met with the Management of Cortec Mining Limited who gave a brief overview of the Committee's activities. However, the company was adamant on giving a proposal on the percentage of royalties to be paid.

c) Meeting with the management of Base Mining Company Ltd

Proposed percentage of Royalties

They proposed that royalties be paid at three and a half per cent. The Management was not willing to give any further information on the above subject.

2.2.8 TURKANA COUNTY VISIT

The Committee met the MCAs and community in Lokichar and later visited Ngamia-1 site.

Natural resources found in Turkana County

Some of the natural resources found in Turkana County are Oil, gemstones, gold, saltlicks, wildlife, lakes, dams and wind energy.

a) Meeting with the MCAs of Turkana County and the community in Lokichar

Proposed percentage of royalties

The MCAs and community proposed that 30% of Royalties be retained at the county level with the community getting 10% and the county government 20%.

Management and use of royalties

The following proposals were made on the use of royalties in the County:-

(i) Education.

(ii) Security.

(iii)Environmental conservation.

b) Visit to Ngamia-1

The Committee was led in a tour of the site by middle level managers.

It was established during the visit that the investor was still in the process of excavation and had not started exploiting the resource.

2.2.9. ELGEYO MARAKWET COUNTY

During the visit to Elgeyo Marakwet County, the Committee met the MCAs and community in Kimwarer and toured the Fluorspar Company.

a) Meeting with the MCAs and community in Kimwarer

The Committee met the community at Kimwarer and the issue of non-compensation for members relocated from the mining site arose.

They also raised concerns over security officers hired by the Flourspar Company who were harassing the Community members. The Flourspar Company on the other hand, perceived the issue of hiring of security officers as a CSR to the community.

Proposed percentage of royalties

50% of Royalties to be paid with the community getting 15% and the county government 35%

Management and use of royalties

The MCAs and the community proposed that the royalties collected be used for:-

(i) Roads

(ii) Water

(iii)Sports facilities

(iv)Health facilities

(v) Environmental conservation

(vi)Maintenance of sacred places

b) Meeting with the Management of Flour spar Company.

During the Committee meeting with the Management of Flour spar Company it emerged that the Company paid 3% Royalties. However, they were of the opinion that the 3% is unsustainable as the market was not doing well internationally and as such they proposed a reduction of the royalties paid to 1%.

2.3 STAKEHOLDERS WORKSHOP ON THE FIRST DRAFT BILL ON ROYALTIES

The Committee, with the support of our development partner SUNY Kenya, held a Stakeholders workshop on the first draft Bill on Royalties pursuant to the provisions of Article 118 of the Constitution of Kenya and Senate Standing Order 202(1).

The Forum was held on 29th November, 2013 at Safari Park Hotel in Nairobi. The members of the public were invited to the forum by way of advertisement on the Daily Nation Newspaper.

The Consultations were done in an open forum where the participants made oral presentations on the draft Bill. The Committee also received written submissions from other stakeholders who were not able to attend the Forum.

The general view of the participants at the Forum was that the Bill did not adequately address the issue of natural resources and was in fact similar to the mining Act. They were of the opinion that it did not impose royalties on natural resource exploitation activities and was just an administrative piece of legislation.

The stakeholders proposed various amendments to improve the first draft Bill on Royalties as follows:-

a. The structure of the bill, from a sequencing perspective, should start with the establishment of institutions critical to the effective implementation of the law. These institutions should reflect the governance framework.
b. Functional allocation amongst the various administrative structures should include the underpinning principles of a good governance framework – transparency, accountability, representation, rule of law and equitability;

c. The Bill should be imbued with **a fiscal content** – which must indicate what revenues are classed as royalties under the law, who pays, how payments are to be assessed, the payments collection system, duties of the collector, how collected revenues are remitted to the centre, the revenue re-distribution mechanism, reporting and accounting standards, and all matters associated to this process.

d. A number of key definitions need to be provided and settled under this proposed law, in addition to those already suggested under the first draft Bill.

e. The Bill should provide both a vertical and a horizontal royalty sharing formula.

f. At the horizontal level, the Bill should attempt to clarify priority expenditure heads linked to Vision 2030.

g. The Bill should provide for uses of shared benefits as generic clusters of possible engagement areas for communities.

h. The Bill should also set out standards of accountability in the use and application of distributed benefits. To this end, data collection and analysis responsibilities need to be created, and an annual reporting mechanism be established to support progressive knowledge management on benefits impact among Kenya's communities.

i. Systems for structured monitoring and evaluation should be built into the proposed Bill.

j. Penalties for non-compliance with the law should be created.

k. The Bill should secure harmony with the Constitution, other existing laws (unless such need to be amended for good reason by this law), and various proposed legislations currently under development. In this particular respect, it would be important for the Senate Ad hoc Committee on Royalties legislation to broach necessary dialogue with the promoters of the various related bills, including the *Mining Bill, 2013, The Natural Forestry (Conservation*

and Management) Bill, 2013, Energy Bill 2013, Water Bill, 2012 and the *Wildlife Conservation and Management Bill, 2013.*

l. The Bill should bring to an end the practice of discretions being vested in Cabinet Secretaries to waive royalties – and should aim to trigger necessary amendments to existing legislation, while setting the agenda for the other draft Bills proposing provisions on benefit sharing in this respect as indicated in (k) above.

2.4 CONTRIBUTION BY THE EXPERTS

Pursuant to Senate Standing Order 207, this Committee engaged three Consultants with the support of our development partner SUNY Kenya. Their terms of reference was to assist the Committee to clarify the fiscal framework to inform the proposed legislation, particularly with the clarification of questions of scope and content for legislation, taking into account current practice in Kenya.

Proposal on benefit sharing formula

The recommendation of the Consultants on the benefit sharing formula for royalties from natural resource was as follows:

a. Out of 100% total royalty –
    i. 70% be earmarked for distribution between National and County Governments;
    ii. 30% to go directly into a Special Fund – to be divided 70% into a Futures Fund and 30% to a Natural Resource Fund.
b. Out of 70 % divisible Royalty Revenues –
    i. 70% goes to the National Government; and
    ii. 30% goes to source County
c. Out of the 70% that goes into the National Government –
    i. 70 % can be earmarked for economic stabilization, budget support, etc;
    ii. 30% can be redirected to fiscal equalization.
d. Out of the 30% that goes to source county –
    i. 30% can be earmarked for community;
    ii. 70% is directed to the general development of the Source County.

The above proposals for Sharing royalty benefits were based on the following rationale :-

I. A desire to maintain the minimum constitutional criterion of ensuring a minimum of 15% revenues reach each county – which, according to the proposed formula, actually receive a total of 21% of all royalty revenues generated by natural resource exploitation in Kenya, while the rest of the country benefits from 49% of all royalties – applied in economic stabilization and fiscal equalization measures;

II. A desire to invest for the future generations – on whose behalf this formula would invest no less than 21% of all royalties;

III. A desire to ensure environmental conservation and management – for which the formula dedicates 9% of all royalties;

IV. A desire to balance development against growth – bound up in the 49% allocated to general budget support, which ought to be invested.

V. A desire to balance derivation against balanced development – for which counties receive 21% of all royalties, regardless of their proximity to the natural resource exploitation. This is divided as follows: 6.3% is proposed for distribution to host communities, and 14.7% to be distributed to the host county government to support balanced county development.

The experts were of the opinion that once the revenue has been distributed to the counties, the parameters below should be considered for division of the revenue in view of the development needs in Kenya

a. Equality of development across all counties – so that Kenya can achieve both growth and development (a classic manifestation in countries suffering the natural resource "curse" phenomenon);
b. Population (education, social and health investments);
c. Land, ecological and environmental management and conservation;
d. Budget support – general responsibilities of the national government;
e. Financial efficiency;
f. Financial responsibility
g. Any other priority expenditure linked to both growth and development.

Proposals on Management of the royalty revenues

Sovereign Wealth Fund

The experts proposed that the royalty revenues could be administered through a Sovereign Wealth Fund. The rationale for this proposal is that, extracting and selling natural resources is the same thing as running down business capital. Therefore, unless receipts from natural resource sales are fully reinvested in financial, physical and/ or human capital, it will soon run down as the stocks are finite and depletable.

However, they raised concerns regarding the use of the Sovereign Wealth Fund in Kenya. This is because the country is still beset with huge development challenges of accountability, transparency, poor governance resulting from weak institutions which can drive the danger of expropriation and/ or corruption. In addition, there is likelihood that general inefficiencies existing within the wider body politic will get transferred into the Fund's management framework. This is likely to result to weak internal risk management structures at both the operation and financial levels.

Nonetheless, Sovereign Wealth Funds have been used effectively in Norway, the United Arab Emirates, China, India and several other countries. In Africa, a few countries have established and are operating SWFs, although these constitute a paltry 3% in value and net-asset base of the global value in SWFs.

Three tier governance framework

It was proposed that a three-tier governance framework be adopted for the management of natural resource revenues in Kenya namely:-

a. National Natural Resource Council
b. County Natural Resource Committee
c. Community Natural Resource Committee

These structures would sit respectively at the national, county and community levels with the spirit of public participation built into them. This approach mirror's Kenya's overall governance framework, and promotes the constitutional aspiration of self-actualization within each administrative unit of public life.

Proposal on use of Royalties

The use of Royalties at the different levels of government would be different because developmental priorities at those levels vary.

At the national level, the use would normally extend to the broad parameters identified under Articles 201-203 of the Constitution, and would include –

i. Economic stabilization programmes/expenditure
ii. Sustainability of natural resources
iii. Equalisation (fiscal)

At the county and community levels, these would include -

- Capacity building in budgetary financing, entrepreneurship
- Civic education
- Consider the objects of devolution as per Article 174 of the Constitution.
- Direct distribution to pre-defined stakeholders (institutionalised – grants/bursaries)
- Creation of fiscal management tools such as trust funds
- Local content development programmes

At County and community levels, the amount allocated is to be used for Restoration activities; projects aimed at improving standards of living for youth, women, underprivileged and disabled persons. Such projects should be identified on the basis of consultation between county officials and community representatives and the civil society.

For sustainability objectives, a portion of the amount apportioned to the county should be allocated to a perpetual fund to be used only in case of an emergency of considerable magnitudes identified through criteria to be set by the senate but in consultation with communities.

The Consultants also proposed a system for the collection and distribution or division of collected royalties.

CHAPTER THREE COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

3.1. OBSERVATIONS

The committee made the following observations:

1. There are no established criteria for sharing of natural resource benefits between the two levels of government. A comprehensive royalty levies regime for natural resource exploitation does not also exist in the country. Many of the immediate local communities where exploitation of natural resources occur have remained poor amidst profits being made by the investors in the natural resources sector.

2. Suggestions by communities on payment of royalties by investors were not uniform and varied from one county to another and from one resource to another. These variations also existed on the specific natural resources in the area.

3. The royalties and benefits from exploitation of natural resources exploitation are mostly not utilized for community projects and programmes. The benefits do not consider intra-generational equity hence the current and future generation's needs and aspirations are compromised.

4. There is no government-administered natural resources benefits fund which is utilized by the government for the benefit of the communities or to rehabilitate abandoned natural resources explored sites. The investors do not pay any levy to cover the rehabilitation costs of the exploited areas. License holders have no clear requirements to rehabilitate any site to its original status or submit reviewed exploitation closure plans. Environmental protection and rehabilitation is wanting in many of the exploited areas.

5. The investors have no clear social obligation to the local communities. They are also not required by law to put forward any social obligations to the communities where exploitation of natural resources takes place. Even though some investors offer Corporate Social Responsibility, most times it is however, not a direct benefit of natural resource exploitation in the country.

6. There is no statutory underpinning to ensure that benefits accruing from natural resource extraction are equitably shared between the levels of government and the immediate local community through transparent and determinable mechanism.

7. There are no clear prevailing approaches to natural resource benefit sharing regime in Kenya. Legislation on royalties on Natural Resources will only be able to address benefits to the communities if there is systemized and synchronized amalgamation of the existing natural resources sectoral legislations.

3.2 RECOMMENDATIONS

From the above observations, the Committee makes the following recommendations:

1. Royalty collection system on natural resources should either be charged on a quantum or ad valorem basis. Quantum (ex-mine value) royalties are levied on a production basis (i.e. a flat rate royalty percentage is charged per unit of mineral recovered) and these rates may change through an amendment to the regulations while Ad valorem (value-based) royalties are levied at a percentage based on the value of the mineral for example 7.5% at crushed and screened, 5% at concentrate and 2.5% metal. Specific rates should apply to low value minerals. In addition to royalties, the government should also receive licence fees depending on the type of licence and the extent of the lease area.

2. Through the proposed legislative framework the sharing of benefits accruing from the exploitation of natural resources should be based on a determinable and accountable system for royalty collections, administration, distribution and monitoring.

3. The Government should establish a fund for royalties for catchment areas to allocate money for important projects in the areas and localities where the natural resources occur. This fund should be administered by an independent body. As a general principle royalty revenues should be allocated to projects that will continue to generate long term benefits for the community; especially capital projects rather than operating or recurrent expenditures. This will capture the principle of intergenerational equity and ensure the long term value of the extraction and conversion of natural resources for the benefit of the current and future generations

4. The legislative frameworks in the natural resource sector should be centralized and inconsistencies in these laws should be harmonized. The

proposed legislation should take into account the existence of other various sectoral statutory laws already in place.

5. The National Government should collect the Corporate Tax and Valued Added Tax at prescribed rates for goods and services purchased by the companies. It should also collect income tax from all employees of all the investors. The Kenya Revenue Authority should collect and account for royalties from investors in natural resources on behalf of the county governments and local communities. The National government should also collect annual fees on leases, Payroll Tax and Stamp Duty on the sale of the licences. The county governments should charge rates on granted leases as rates specifically on the structures and buildings.

6. The question of management of natural resources is better left with specific sector ministries. The Ministry should have the free hand of prescribing the policy framework, including taking leadership in the prescription of the governing fiscal regime for the specialized natural resource each ministry oversees.

7. A general policy guide on exploitation and benefit sharing in the country's natural resources basket should be put in place since it may be impossible to remove the overlaps in the various existing sectoral legislations dealing with specific benefit sharing models.

APPENDICES

The Draft Natural Resources (Benefit Sharing) Bill, 2014 (2nd draft Bill).

Policy Paper.

The Draft Natural Resources (County Royalties Bill), 2013 (1st draft Bill).

Minutes.

Attendance list.

THE DRAFT NATURAL RESOURCES (BENEFIT SHARING) BILL

THE NATURAL RESOURCES (BENEFIT SHARING) BILL 2014

A BILL for

An Act of Parliament to establish and enforce a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities, to establish the Natural Resources Benefits Sharing Authority and for connected purposes

ENACTED by the Parliament of Kenya as follows—

PART I—PRELIMINARY

Citation.

1. This Act may be cited as the Natural Resources (Benefit Sharing) Act 2014.

Definitions.

2. In this Act, unless the context otherwise requires—

"affected county" means a county in the Republic of Kenya in which a natural resource is exploited;

"affected organization" means an organization involved in the exploitation of a natural resource to which this Act applies;

"benefit" mean any gains or proceeds or profits from exploitation of natural resources;

"benefit sharing" means sharing the benefits arising from the utilization of natural resources in a fair and equitable way, a commitment to channel some returns- whether monetary or non monetary- back to the range of affected communities where the natural resource resides;

"County Benefit Sharing Agreement" means an agreement about how to share revenues accruing from natural resources between an affected organization and a county;

"exploiter" means an organization

involved in the exploration, appropriation or in any way extraction or use of a natural resource from the first point of contact for commercial purposes

"exploitation" means the extraction or use of a natural resource for commercial benefit

"Fund" means the Natural Resources Royalties and Fees Fund established under section 4;

"local community" means a people living in a ward or wards within which a natural resource as to be affected by its exploitation;

"royalties" means all payments whether royalties, fees, or payments made by whatever name, made by an affected organization for the exploitation or exploration of a natural resource in Kenya;

"sovereign wealth fund" means sums of money set aside from royalties collected under any written law preserved for the use of future generations.

Application of the Act.

3. (1) This Act shall apply in respect to the exploitation of the following natural resources—

4.

a) petroleum;
b) natural gas;
c) minerals;
d) forest resources;
e) water resources;
f) wildlife;
g) fishery resources.

(2) The Authority may, where appropriate, by a Gazette notice, extend the application of this Act to other natural resources not covered under this section.

PART II—NATURAL RESOURCES ROYALTIES AND FEES FUND

Natural Resources Royalties Fund

4. (1) There shall be established a Fund, to be known as the Natural Resources Royalties Fund which shall vest in, and be operated and managed by, the Benefits Sharing Authority

(2) There shall be paid into the Fund—

(a) all royalties collected as a result of exploitation of natural resources in the country;

(b) all fees and other charges levied on affected organizations for the exploitation of natural resources;

(c) all contributions and other payments required by this Act to be paid into the Fund.

(3) Where any written law provides for the payment of royalties or fees from exploitation of a natural resource in a particular sector, such royalties and fees shall be paid into the Fund established under this Act.

(4) The Authority shall make regulations prescribing for the administration of the Fund.

PART III COLLECTION OF ROYALTIES AND FEES

Imposition of Royalties and Fees

5. (1) The Authority shall have the power to determine, and review the amount of royalties and fees to be paid by affected organizations each year in respect to a particular sector where a written law does not prescribe the royalties or fees.

(2) In making the determination referred to in subsection (1), the Authority shall take into account, amongst others—

(a) the overall capital investment of the affected organization;

(b) the prevailing international market value of the commodity from which royalty is payable;

(c) the commercial viability of the natural resource being exploited;

(d) obligations of the affected organization under any existing County Benefit Sharing Agreement with the local community.

(3) Where a written law prescribes the details of royalty or fees payments or benefit sharing in a particular natural resource sector, the provisions of that written law shall apply in respect to that sector.

Provided that the Authority shall have the mandate to monitor compliance with the written law, any benefit sharing agreement and such sums shall also form part of the Fund

Kenya Revenue Authority to collect royalties

6. (1) The Kenya Revenue Authority shall collect royalties imposed by the Authority from affected organizations and any other royalties payments from natural resource exploitation undertaken under any other written law.

(2) The provisions of this section shall supersede the provisions

of any law in respect to collection of royalties and fees charged for the exploitation of natural resources in Kenya.

(3) The Kenya Revenue Authority shall declare and account to the Authority the total sum collected from affected organizations and in respect of each natural resource as provided for under this Act or as may be prescribed.

(4) The money collected under this section shall be paid into the Natural Resources Royalties Fund.

Revenue Sharing Ratio.

7. (1)The sharing of collected revenue shall be as follows—

(a) twenty per cent of the collected sums shall be set aside and paid into a sovereign wealth fund;

(b) the sovereign wealth fund shall be distributed between a futures fund and a natural resources fund in the percentages of sixty per cent to the futures fund and forty per cent to the natural resources fund;

(c) eighty per cent of the collected revenue shall be shared between the national government and the county governments in the ratio of sixty per cent to the national government and forty per cent to the county governments;

(d) of the forty per cent earmarked to the

counties, forty per cent shall be assigned to local community projects and sixty per cent shall be utilised in the entire county.

(2) Where a natural resource bestride two or more counties, the Authority shall determine the ratio of sharing the retained revenue amongst the affected counties.

(3) In determining the revenue sharing ratio of retained revenue amongst counties sharing a resource as prescribed in sub section (2) the Authority shall take into account the following—

(a) the contribution of each affected county to the resource;

(b) county inconveniences in the exploitation of the natural resource;

(c) any existing benefit sharing agreement with an affected organization

(4) The Authority shall review the revenue sharing ration after every five years and make recommendations to Parliament.

PART IV— ADMINISTRATION

Establishment of the Benefit Sharing Authority

8. (1) There is established the Benefit Sharing Authority which shall be a State Office.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall in its corporate name be capable of—

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;

(c) borrowing or lending money; and

(d) doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate

(3) The Authority shall have all powers necessary for the performance of its functions under this Act.

(4)The Authority may enter into association with such other bodies or organizations within or outside Kenya as the

Authority may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established.

(5) The Authority shall, in the performance of its functions under this Act have regard to—

(a) all existing law regulating the natural resources sector in Kenya;

(b) all existing arrangements for benefit sharing between local communities and an affected organization under any law in Kenya;

(c) Kenya's obligations under any international treaty or agreement relating to the exploitation of natural resources.

Functions of the Authority

9. (1) The functions of the Authority shall be to—

(a) coordinate the development of benefit sharing agreements between local communities and affected organizations;

(b) review and where appropriate determine the royalty payable by an affected organization engaged in natural resource exploitation;

(c) determine counties within which there is commercial exploitation of natural resources that require a benefit sharing agreement;

(d) oversee the administration of funds set aside for community projects under any benefit sharing agreement;

(e) monitor the implementation of any benefit sharing agreement between a local community and an affected organization;

(f) conduct research on natural resource development and benefits sharing in Kenya;

(g) make recommendations to the national government on the better exploitation of natural resources in Kenya;

(h) hear appeals from conflicts arising from the development of county benefit sharing legislation;

(i) advise the national government on policy and legislation of benefit sharing in resource exploitation.

(2) In the performance of its functions, the Authority may ask for any information it needs from any person or organization.

Principles of Benefit Sharing

10. In the performance of its functions, the Authority shall be guided by the following principles;

(a) transparency and inclusivity;

(b) revenue maximization and adequacy;

(c) efficiency and equity;

(d) accountability and participation of the people;

(e) rule of law and respect for human rights of the people.

Board of Directors

11. (1) The Authority shall have a Board of Directors comprising of the following;

(a) a chairperson appointed by the President with the approval of the Senate;

(b) the Principal Secretary for the time being responsible for environment or his or her alternate;

(c) the Principal Secretary for the time being responsible for finance or his or her alternate;

(d) the Principal Secretary for the time being responsible for Mining or his or her alternate;

(e) four persons representing communities nominated by the Council of Governors representing the regional diversity of the people of Kenya and minorities;

(f) four persons representing communities nominated by the Forum of County Assembly Speakers representing the regional diversity of the people of Kenya and minorities;

(g) one person nominated by the Kenya Association of Manufacturers

(h) the Director-General appointed by the Board,

who shall be an *ex officio* member of the Board and the secretary to the Board.

(2) To qualify for appointment to the Board under paragraphs (e) and (f) a person must have at least a university education and at least ten years experience in at least one of the following fields; law, environmental management, economics, public finance, mining, community development or any other related field.

(3) The members appointed under paragraph (e) and (f) of this Section must be approved by the Senate before assuming office;

(4) The appointment of members appointed under paragraph (e) and (f) shall take into account and give effect to the gender principle under the Constitution;

(5) The members of the Board appointed under paragraph (e) and (f) shall serve for a term of three years and shall be eligible to be reappointed for one further term of three years;

(6) Members of the Board other than the Director General shall serve on a part time basis.

Powers of the Board.

12. The Board shall have all the powers necessary for the performance of the functions of the Authority under this Act and in particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) manage, control and administer the assets of the Authority in such manner and for such purposes as best promote the purposes for which the Authority is established;

(b) receive any gifts, grants, donations or endowments made to the Authority or any other monies in respect of the Authority and make disbursements therefrom in accordance with the provisions of this Act;

(c) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;

(d) open a banking account or banking accounts for the funds of the Authority; and

Power to delegate.

13. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

Provided that the Board shall not delegate all of its powers to an individual or a committee.

Remuneration and Allowances.

14. The remuneration, allowances, expenses and other emoluments of members and staff of the Authority shall be

determined by the Salaries and Remuneration Commission.

Director General.

15. The Director-General shall be the chief executive of the Authority and shall, subject to the directions of the Board, be responsible for the day to day management of the Authority.

Seal of the Authority.

16. (1) The common seal of the Authority shall be kept in such custody as the Board may direct.

(2) The common seal of the Authority, when affixed to a document and duly authenticated, shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

Staff of the Authority

17. The Board may appoint such staff as may be necessary for the discharge of its functions under this Act or any other written law.

Immunity of members and staff.

18. Subject to section 16, no matter or thing done by a member of the Board or by any officer, employee or agent of the Authority shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Authority under

this Act, render the member, officer, employee or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Limitation of liability.

19. The provisions of section 18 shall not relieve the Authority of liability to pay compensation or damages to any person for any injury to him, his property or any of his interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, whether wholly or partially, of any works.

Funds of the Authority

20. The funds of the Authority shall consist of—

(a) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act;

(b) such sums as may be payable to the Authority pursuant to this Act or any other written law, or pursuant to any gift or trust;

(c) such monies as may be provided by Parliament for the purposes of the Authority;

(d) all monies from any other source provided

for or donated or lent to the Authority

Accounts.

21. (1) The Authority shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Authority.

(2) Within a period of three months after the end of each financial year, the Authority shall submit to the Auditor-General, the accounts of the Authority together with—

(a) a statement of the income and expenditure of the Authority during that year; and

(b) a statement of the assets and liabilities of the Authority on the last day of that year.

(3) All accounts kept under this Act shall be audited by the Auditor-General at least once in every financial year.

(4) The Authority may establish, control, manage, maintain and contribute to pension and provident funds for the benefit of employees of the Authority and may grant pensions and gratuities from any such fund to the said officers upon their resignation, retirement or separation from the service of the Authority or, as the case may be, to the dependants of any such officer upon such officer's death.

Annual Report.

(1) Within three months after the end of each financial year, the Authority shall submit a report to the President and to Senate.(2) The annual report shall contain, in respect to the year it relates—

(a)the financial statements of the Authority;

(b) list of institutions contributing to benefit sharing under this Act, the proportion of benefit and the local community that benefitted;

(c)the total sums contributed towards Benefit Sharing and its distribution;

(d) the progress made in the implementation of its functions under section 9 of this Act;

(e)any other information the Authority may consider relevant.

(3) The Authority shall publish the annual report in the Gazette and in at least one newspaper with national circulation.

County Benefit Sharing Agreement.

22. (1) Every affected organization shall enter into a County Benefit Sharing Agreement with a County Benefit Sharing Committee.

(2) The County Benefit Sharing Agreement shall include non monetary benefits that shall accrue to the county and the contribution of the affected organization in realizing the same.

County Benefit Sharing Committee.

23. (1) There shall be established in each county that has a natural resource to which this Act applies, a County Benefit Sharing Committee.

(2) The County Benefit Sharing Committee shall comprise of the following—

(a) the County Executive Committee Member responsible for Finance;

(b) the Chairperson of the County Assembly Committee responsible for natural resources;

(c) five persons elected by the local community where the resource bestride representing the diversity of the local community.

(3) The County Benefit Sharing Committee shall perform the following functions—

(a) negotiate with an affected organization or organizations a County Benefit Sharing

Agreement;

(b) monitor the implementation of projects undertaken in the county under the Benefit Sharing Agreement;

(c) determine the amount of money to be allocated to each local community from sums devolved under this Act;

(d) convene public forums to facilitate discussions on proposed county benefit sharing agreements before they are signed;

(e) convene public forums to initiate discussions on community projects to be supported from county earnings under this Act;

(f) advice the County Government on projects to be supported using sums received under this Act.

(4) Members of the Committee shall be paid such allowances as shall be determined by the Salaries and Remuneration Commission.

(5) Members of the Committee shall elect a chairperson from amongst the members elected under section 25 (2) (c).

(6) The Authority shall make regulations for the operations of the County Committee.

(7) Where a resource bestrides two or more counties, the affected counties shall form a joint committee to oversee the negotiation of a joint County Benefit Sharing Agreement with an affected organization.

Local Community Benefit Sharing Forum.

24. (1)There shall be established in each affected community local benefit sharing forum comprising of five people directly elected by the community in a public gathering of the local community.

(2) The County Government shall facilitate meetings and elections of the Local Community Benefit Sharing Forum.

(3) The Local Community Benefit Sharing Forum shall be responsible for—

(a) negotiating with the County Benefit Sharing Committee, a local community benefit sharing agreement;

(b) identify local community projects to be supported by money allocated to the Community by the County Benefit Sharing Committee under this Act;

(c) oversee the implementation of projects undertaken at the local community using money devolved under this Act.

(3) Members of the Committee shall be paid such allowances as shall be determined by the Salaries and Remuneration Commission.

(4) Elected public or state officers shall not be eligible for election as officials of the local community benefit sharing forum.

(5) Members of the local community benefit sharing forum shall serve for a term of five years.

Approval of the County Benefit Sharing Agreement.

25. (1) Each County Benefit Sharing Agreement shall be approved by the County Assembly;

(2) Each County and Local Community Benefit Sharing Agreement shall be deposited with the Authority and the Senate

PART IV GENERAL PROVISIONS

Uses of retained funds.

26. (1) Monies distributed to counties under this Act shall be utilized for projects that—

(a) are prioritized by the County Benefit Sharing Committee;

(b) are prioritized by the local community benefit sharing forums;

(c) involve provision of socio economic needs to the people of the County or local community; and

(d) are of public interest and community based in order to ensure that the prospective benefits are available to a widespread cross-section of the inhabitants of a particular area.

(2) The County Benefit Sharing Committee shall prioritize projects to be supported by funds received under this Act;

Offences.

27. (1) An affected organization which—

(a) fails to furnish particulars or information required to be furnished by the Authority under this Act;

(b) makes a statement which the organization knows to be false or which the organization has no reason to believe to be true; or

(c) recklessly makes a false statement under this Act, commits an offence.

(2) Where an affected organization commits an offence under this Act, every principal officer of that organization shall also be deemed to have committed the offence.

(3) An affected organization found guilty of an offence under this Section shall be liable to a fine of not less than five million shillings.

(4)An affected organization that continues to be in breach of the Act may be liable to cancellation of its license.

(5) A person liable for an offence under this Act shall be liable to three years imprisonment or a fine of not less than two million shillings or to both such fine and imprisonment.

Transitional provisions.

28. (1) The Authority shall within one year of being constituted review all existing laws and agreements prescribing the ratio of natural resource sharing, taking into account the

provisions of this Act and international best practice in revenue sharing.

(2) The Authority shall report to the National Assembly and the Senate and the national executive on the outcome of the review within 3 months of conclusion of the review.

(3) The Review Report shall amongst others, set out proposals on legislative and policy amendments required to fully implement this Act.

Power to make Regulations.

29. (1) The Authority may make regulations for the better carrying out of the provisions of this Act.

(2) In particular and without prejudice to the generality of the power conferred by sub-section (1), the Authority may make regulations-

(a) prescribing the procedure for nomination of representatives from the Council of Governors and the Forum of County Assembly Speakers;

(b) review the revenue sharing formula under this Act and advise the Government;

(c) prescribing the fees in respect of anything to be done under this Act;

(d) prescribing the administration of the Fund;

(e) prescribing payment of royalties under this Act;

(f) prescribing the revenue sharing formula between counties sharing a natural resource;

(g) prescribing anything which is required to be prescribed or is necessary to give effect to this Act.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal purpose of this Bill is to provide a legislative framework for the establishment and enforcement of a system of benefit sharing in resource exploitation between resource exploiters, the national government, county governments and local communities and to establish the Natural Resources Benefits Sharing Authority.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions affecting the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the.....2013

Senator (Dr) Agnes Zani.

Chairperson,

Select Committee on Legislation on Royalties Accruing from Natural Resources in the Counties.

SUNY-KENYA

fiscal framework for the collection, administration and sharing of royalties from natural resources - Kenya

A Fiscal Policy Paper

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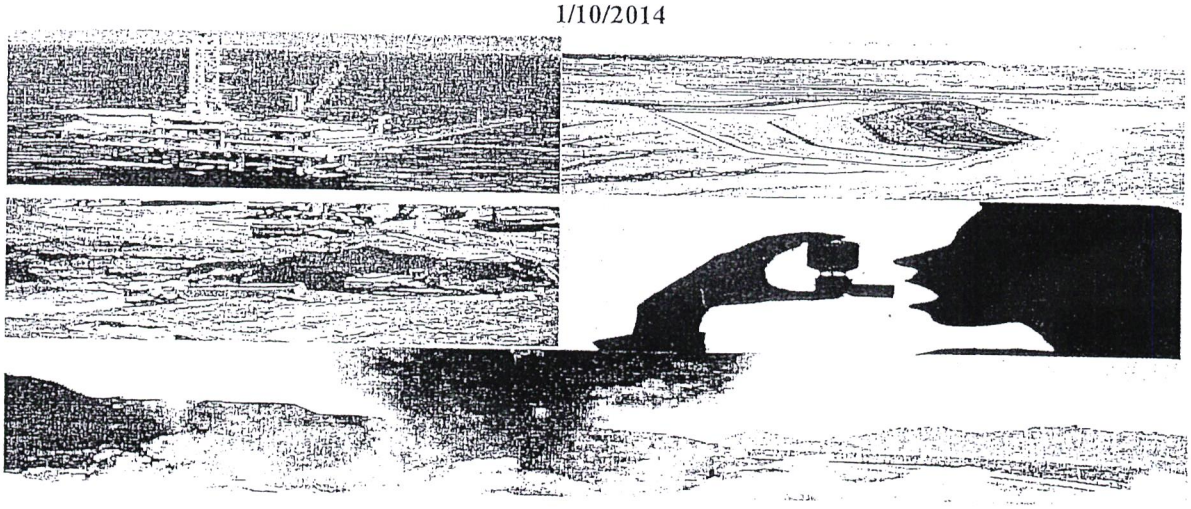

A Legislative Guide to the development of a Bill on Royalties arising from natural resource use in Kenya.

About this Report

This report is designed to articulate the elements that should define Kenya's fiscal framework for natural resources, with particular emphasis on how to capture resource rents through the instrumentality of royalties, how these should be identified and collected, how they should be divided between the National, the County and Community levels of Kenya's society, and how the governance framework to support this process should be designed.

It has been prepared both for SUNY-Kenya and the Senate Committee, pursuant to a motion by Senator Dr. A. Zani and passed by the Senate for the introduction of legislation to define:

a) Criteria to be used in payment of royalties by investors in counties where exploitation of natural resources occur
b) How the revenue accrued will be utilized by the country and counties
c) Any other relevant issue that may arise in regard to other existing legislation e.g. Institutional framework for collection and a sharing formula.

To the last term of reference we would add a system for the collection and distribution or division of collected royalties.

The consultants were retained by SUNY-Kenya to assist the Senate Committee and SUNY-Kenya to clarify the fiscal framework to inform the proposed legislation, particularly with the clarification of questions of scope and content for legislation, taking into account current practice in Kenya.

The Report's conclusions therefore aim to aid the efforts to complete the development of the current draft bill with the view to advancing the agenda on accruing benefits from natural resources to all Kenyans.

In light of the foregoing, part 1 of this Report presents a short review of the key issues underpinning the challenging area of benefit sharing where natural resources are concerned. Part 2 delimits the scope of natural resources with respect to the intended applications of the proposed Bill on natural resource Royalties.

Parts 3 through 5 outlines and discusses the justifications for a distinct fiscal regime for natural resources, what the fiscal policy pillars for such a regime would be, the principles that underpin a functional and progressive fiscal regime for natural resources, as well as the policy mechanisms for extracting royalties from natural resource revenues.

Part 6 considers the generic criteria for benefit sharing, and proposes a benefit sharing model for royalties for Kenya, together with an outline of some of the possible applications for such royalties, once shared across the economy. Part 7 evaluates the core pillars for an effective governance framework to deliver on the aspirations of the proposed bill, and part 8 concludes with a series of recommended amendments to the draft *Natural Resources (County Royalties) Bill, 2013*.

Executive Summary

Kenya does not have a unified fiscal regime on natural resources, although it does have fragmented legislative provisions on some, not all, types of natural resources. These are mainly observed among the extractives sector – mining and petroleum. These legislative provisions are spread across different statutes, with the result that the administrative framework for natural resource fiscal regimes in Kenya yields a fragmented policy, institutional and legislative practice. The absence of a formally declared comprehensive policy framework governing natural resourcesimplies lack of clarity over formal government policy stance on the key questions underpinning the determination of a fiscal regime for natural resource exploitation in Kenya. This reality portends policy instability, and drives cross-negating government action in this arena – effectively yielding an unstable investment and development engagement space.

A critical starting point in the clarification of fiscal issues in natural resource exploitation is the need to define and delimit the scope and meaning of natural resources as practiced in Kenya. This study shows that beyond the extractives, water, forests, wildlife and energy sources (particularly the renewables) are constitutionally included in the notion of 'natural resources'. Delimiting the scope of natural resources for legislative purposes serves the useful purpose of determining the scope of the proposed legislation, and should provide clarity on whether the proposed law by the Senate should address the narrow question of royalties from natural resource exploitation, or whether it should go the full hog of attempting a regulation of the entire natural resource sector.

This study concludes that a broad-ranging legislation in keeping with the latter possibility would perhaps fall outside of the terms of reference of the Senate Committee under the current process, without prejudice to the possible advisability of a collaborative venture between the two Houses on a more comprehensive piece of legislation on just such a subject. Its merits, utility and economy would need careful consideration, however, taking into account the existing structure of public administration in Kenya, which gives primary mandate to sector ministries, under the governance of specific functionaries who are by law and policy clothed with specific administrative latitudes with respect to regulating matters under their respective mandates.

A similarly crucial question to resolve in defining a fiscal regime for natural resources is one of definition – what is meant by the term 'royalties'? Are there charges of equivalent effect that currently fall under that broad classification? This study clarifies these issues, demonstrating that the term can and should be clothed with an expansive meaning such that it would bring under it a broader range of revenue streams not directly termed royalty, but having equivalent effect for all practical purposes and intent.

This study in parts III, IV and VI devotes significant space and detail to a consideration of the justifications and rationale for a distinct fiscal regime for the natural resource sector, as well as to the enunciation of the core principles and policy pillars that should guide the design of a legislated fiscal regime for Kenya's natural resource industries, albeit with particular focus on royalties. These discussions demonstrate that a good fiscal regime must clearly identify the activities to be regulated, and must clarify the revenue streams to be included in Government's economic take under these parameters, the structures and contexts for local participation and knowledge transfer, as well as the social economic impact on local communities.

The fiscal regime should then clearly articulate the collection and administration systems to be implemented in support of the legislative objectives. In short, a good fiscal regime must identify the mischief that needs to be cured, as well as establish the cure to the mischief. A good law on natural resource royalties must take all the foregoing into account.

An effective fiscal policy on natural resources should be anchored around five key principles – revenue maximization and adequacy, allocative efficiency, revenue stability, equity and transparency. The policy content of these principles is found in part V of this study. From a legislative perspective, however, these principles should be translated into the law as part of the objectives of the law, as well as within the benefit sharing principles and standards built into the law. A good law would demonstrate, at the very least, a careful and balanced application of each of the foregoing five principles.

This study further shows that beyond the rationales and the guiding principles, a good law must find an effective way of laying out the statutory mechanisms for extracting all revenues qualifying as royalties – once the question of definition is settled. A key suggestion in this study is that the basis for determining and extracting royalties needs to go beyond the notion of 'ad valorem' calculations to include additional bases for royalty extraction.

The Constitution of Kenya is firm that natural resources in Kenya should and must benefit all Kenyans, including host communities to exploitative activities. This requirement needs legislating, hence the instant process. This means that the foregoing issues would come to nought if the next logical requirement is not met – which is, the sharing of benefits. This study dedicates a standalone section to a consideration of the questions surrounding benefit sharing (Part VI), and recommends a set of principles and criteria to guide the design of benefit sharing schemes. It also recommends five core principles to guide a benefit sharing mechanism for Kenya's royalty revenues on natural resource exploitation – fiscal equalization, efficiency, derivation and locational neutrality, as well as centralized redistribution. In effect, this is a system that requires an experienced common administrator for all natural resource royalties, regardless of economic sector – and a clear administrative structure for the proposed law is suggested in this study.

It also means that the collection ethic built into this study's recommendations is centralized in administrative structure, but in a manner that secures a ring-fencing of such revenue streams, and the centralized redistribution of collected revenues. The redistribution must be against a specified formula, and the study recommends a formula that rides upon a clear rationale. Beyond collection and redistribution, however, benefits shared must be applied to economically sustainable pursuits at all levels of public consciousness in Kenya, and a number of possible objectives are consequently suggested.

Lastly, this report from the start right through the proposed formula on the sharing of royalty revenues embeds the notion of trans-generational equity, so that current and future generations are equally benefited and beneficiated through natural resource revenue management in Kenya. These aspects are just as crucial as the current hard push to see an immediate transfer of benefits to host communities of natural resource extractive and exploitative activities.

On the bases of all the foregoing, a bill on royalties would need to demonstrate clearly how each of the foregoing issues canvassed in this paper/study have been addressed. The zero draft of the proposed bill on county royalties shows that none of the foregoing issues were effectively addressed. Revisions to that draft bill would need to address the issues outlined above arising from this study in order to ensure balanced legislation – as proposed under part VIII of this study, and in the attached bill guidance, given a name similar to the zero draft bill on royalties.

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PART I – OVERVIEW OF KEY ISSUES

Introduction

1. **The Constitutional Rationale on Natural Resource Fiscal Regimes:** Kenya's Constitution at Art.71 gives constitutional recognition to the importance of managing natural resources in a way that would bring real benefit to all the people of Kenya. But Kenyan fiscal systems and practices have not in the past supported a systemic and coherent approach to how natural resource revenues should be applied to the corporate good of the country. There is no longer any doubt that Kenya has enormous potential in many frontiers of natural resources – oil and gas, mining, forests and genetic resources, water and associated resources, sunlight and renewable energy sources, including geostrategic location with reference to transit and transportation infrastructure. This reality makes it absolutely critical for Kenya to now establish systems that support coherence, synergy and progressivity in the management of natural resources, the management of revenue streams flowing therefrom, and how those revenues should directly benefit Kenyans. This is best achieved through the articulation of a coherent and synergistic fiscal regime on different aspects of natural resource revenue management and administration.

2. **Report's Utility**: This Report is a legislative guide, identifying and clarifying crucial concepts, principles, standards and considerations that ought to be taken into account when developing legislation on benefit sharing in revenues from natural resources. It adopts both a general view of natural resources, and a very particularised discourse on royalty revenues. In view of its being a legislative guide on the fiscal content of the draft bill on royalties, this Report provides the main considerations necessary to determine the proposed bill's system for –

    a. The administrative structures necessary to support the bill's objective of collecting all revenues classed as royalties imposed on natural resource exploitation in Kenya;
    b. Determining the criteria to be applied in determining how royalties should be shared as natural resource benefits to benefit all Kenyans;
    c. Defining the mechanisms for the distribution of natural resource royalties between national, county and community levels; and
    d. The principles that will underpin the benefits sharing system in natural resource management.

3. **Meaning of 'Fiscal Regime'**: 'Fiscal Regime' means a system of taxation. Within the context of extractive industries, this would relate to the system that defines the various revenue streams from the taxation of the exploitation of natural resources. Such a system would look beyond royalties and would include –
    a. Corporate income tax
    b. Value added tax
    c. Customs duties
    d. Resource rents
    e. Capital gains/profits
    f. Environmental tax/surcharges
    g. EPZs
    h. License fees
    i. Property taxes
    j. Levies by counties/municipalities.

4. Royalties are a form of turnover tax, and while it is generally not treated as part of the overall fiscal regime constituting Government's regular economic take, is nonetheless a business cost to investors. Royalty computations nevertheless usually exclude considerations on other tax liabilities, and it is for this reason that a system of royalties should be designed to promote business investment while at the same time recognizing the ownership rights of Kenya and her peoples of the natural resources within their boundaries.

5. Current Fiscal Regime for Natural Resources: Kenya does not have a unified fiscal regime on natural resource exploitation. The practice is fragmented, and with particular reference to the system of royalties, is disjointed with the result that it is difficult to know at any one time what Government's economic take with respect to royalties really is.
    a. **Petroleum and natural gas**, including certain aspects of sunlight and under-ground energy sources, are managed by the Ministry of Energy and Petroleum.
        i. The fiscal framework in petroleum is controlled in part by Schedule 9 of the Income Tax Act, which sets the tax terms for taxation of petroleum companies and their subcontractors in upstream activities.
        ii. The PEPA 1986 is the law that governs the tendering of blocks, and the negotiation and signing of petroleum exploration development production and transportation agreements, through the signing of Production Sharing Contracts (PSCs).
        iii. Kenyan PSCs typically include some taxation clauses – including options for state participation, profit sharing schemes with progressive scales for increments of profit oil, eligible deductions for cost recovery, and how windfall profits are taxed. Profit oil splits are calculated after income tax (a pay on behalf scheme) – meaning contractors receive their share net of taxes. It is important to note that PSCs deal with the tax regime applicable to contractors: they exempt contractors from other taxes on income and dividends, as well as import duties, and include definition of recoverable costs that differ from the definitions of eligible deductions in the 9th Schedule ITA, creating potential for inconsistencies.
        iv. PSCs also embed varying fiscal terms from contract to contract – although the main fiscal terms are generally similar. Hence, the scale of profit oil split (cost oil is similar in most contracts) and state participating interest percentage would tend to vary depending on the vintage of the contract, location of the contract area (onshore v offshore) and the level of competition leading to award of exploration blocks.
        v. Gas terms are not well addressed under existing PSCs, leaving a crucial area in uncertainty over both the governing fiscal framework as well as possible revenue streams open to benefit sharing as contemplated in the Constitution. While today two exploratory wells have indicated gas, commerciality has not been declared. The two wells are one onshore and one deep offshore. However, in all PSCs relating to gas, the cost recovery ceiling is identical for oil and gas, with petroleum costs related to gas being recoverable only from cost gas, not oil revenues. Profit gas remaining after deduction of cost gas is split using the same scale applied to oil – employing calorific equivalence conversations. This was the case until 2013, when model PSCs deleted this equivalence, without replacing it with a specific profit gas sharing procedure.
        vi. It is our view that gas terms should address fiscal issues on the entire gas supply chain, i.e. –
            1. Upstream (exploration and production)

2. Midstream (transportation)
3. Downstream (processing, separation and sale).
4. They should also cover –
    a. gas pipelines
    b. gas processing plants – including LNG plants and
    c. arm's length sale natural gas projects for domestic and export markets.

vii. Within the context of the Senate's mandate on the draft bill, however, the broader issues on the fiscal regime on gas terms only becomes relevant to the extent it defines the catchment area for revenue extractions that then get applied to benefit sharing with Kenya's communities.

b. **Mining**– the fiscal regime for mining in Kenya is not consolidated, and in many instances governed by special agreements. Mining as an activity is politically and economically managed by the Ministry of Mining and Geology

i. The main sector legislation is the Mining Act Cap 306, enacted in 1940, and has not been subjected to major structural reform since then. There are on-going efforts to overhaul the legal framework governing the mining sector, with a bill currently at very advanced stages of formulation.

ii. For fiscal issues, the Income Tax Act makes provision for deductions from income accruing from mining operations.

iii. The VAT Act 2013 also provides certain fiscal terms, including exemptions from export charges and duties in certain circumstances, including remission of VAT on certain investments (e.g. grant of EPZ status to such mining operations as fluorspar.

iv. Mining agreements entered into between the Government and mining companies do vary fiscal terms in some cases – e.g. through seeking Ministry of Finance exemptions or variations under the ITA and VAT acts. The instruments in contract used to vary fiscal terms include –
    1. *Special mining licenses*
    2. *Special mining leases*
    3. *Investment agreements*
    4. *Prospecting licences or*
    5. *Benefit sharing agreements.*

v. These special tools negotiate among others royalty rates, and the new feature of concession fees and signature bonus – all under conditions that would support the deduction that these terms are negotiated with unfettered discretion.

vi. In effect, there are three main sets of fiscal terms – the general regime established under the ITA, the specified minerals regime and regimes under special agreements.
    1. The general regime consists of royalty, CIT with mining-specific deduction rules, withholding taxes and indirect taxes.
        a. Royalty rates vary by mineral on a base of gross sales value FOB –
            i. 10% for diamonds
            ii. 5% other precious metals
            iii. 3% all other minerals (other than building materials)
            iv. Rates recently gazetted by the Minister for Mining
        b. Corporate Income Tax applies at a general rate of 30%, with qualifying deductions under Schedule 2, ITA. There are no special

rules on withholding taxes, and separate mines constitute separate operations for income tax purposes, unless they are contiguous

c. There are no specific provisions for expenditure on decommissioning of facilities, reclamation or mine restoration and environmental remediation under current fiscal regimes.

vii. Mining agreements have in certain instances created the possibility for various tax reliefs.

1. For example, some agreements grant royalty and income tax reductions (e.g. the Kwale mineral sands project).
2. Also, certain minerals can be declared to be specified minerals, qualifying for immediate expensing of capital costs – effectively delaying the flow of project benefits through delaying profitability, hence delaying Government's full economic take.
3. Other projects have received royalty alterations, VAT remissions during exploration and development, and withholding tax concessions.
4. Others have suspended the Kenyan the general tax system through granting EPZ status to projects (e.g. the fluorspar operations) – exempts the project from VAT on supplies, excise, and zero-rating taxation for the first 10 years of the project, and then applying 25% CIT rate for another 10 years. During the first 10-year period, dividend and withholding taxes are also exempted

6. **Proposed Fiscal Regimes in Natural Resource Sectors**: There are a series of developments in water, wildlife, forestry, mining and energy natural resource sectors since the passage of the Constitution in 2010.

a. *The Natural Resources Forestry (Conservation and Management) Bill 2013 (vers.2)* recognizes in Part IV the role of communities in forestry conservation and management by providing for the establishment of community forests associations, community participation in forest management and in the management of public lands. In part V, the bill provides for establishment of forest conservation committees at both county and community levels. On benefit sharing, the bill at section 69 provides the following formula:

i. *30% of all land rental and stumpage fees:* distributed to county governments to be divided as follows –

ii. *50% of the 30%:* allocated to those county governments that are stakeholders to forest management plans in order to meet the costs associated with their responsibilities for forest resource management;

iii. *50% of the 30%:* to be shared equally between all county governments and should be used for the conservation and development of forest resources within the county.

b. *The Wildlife Conservation and Management Bill 2013* similarly recognizes the public participation principle enshrined in the Constitution and establishes county wildlife conservation committees in Part IV of the bill, and under part XI, establishes community wildlife associations and wildlife managers. In part V it establishes wildlife compensation schemes at both the national and county government level.

i. As regards benefit sharing in natural resource revenues, the bill under part IV sets up a Wildlife Regulatory Council to among other things regulate all aspects of benefits haring in the sector.

ii. Section 57 of the bill recognizes the right of every person to practice wildlife conservation and management as a form of gainful land use.

iii. Section 58 provides that every person has the right to reasonable access to wildlife resources and shall be entitled to enjoy the benefits accruing therefrom without undue hindrance.

iv. Section 61 places an obligation on land owners near wildlife protected areas to facilitate the ease of movement of wildlife from one area to another depending on their migratory nature, and that benefits accruing as a result of such migration are to be shared among all relevant parties on a case by case basis, whether county, conservancy or individual land owner. Such parties may enter into benefit sharing agreements which need to be registered with the Council within 21 days of conclusion for purposes of approval.

v. Section 63 gives the Council power to formulate guidelines, rules and regulations on incentives and benefit sharing and how these are to be distributed.

vi. These processes are to be subjected to public participation at all stages within the framework of the laws on devolution and land management.

c. *The Water Bill 2012* provides for the applications of water user charges received by county governments to include extension of water coverage services, environmental conservation, conservation of water catchment areas, and infrastructural remediation.

d. *The Mining Bill 2013* provides for the sharing of mining benefits between the national, county and communities at the rate of 75%, 20% and 5% respectively.

e. *The Energy Bill 2012* provides for benefit sharing under various natural resource sectors in the energy field as follows –

i. the payment of royalties on geothermal resource exploitation under section 137 at the rate of 5% to host communities, 15% to host county government and 80% to the national government.

ii. All royalty payments are payable to the national treasury prior to sharing. The bill further proposes a role for the Commission on Revenue Allocation in the determination of apportionment rates with respect to county shares.

iii. Curiously, and possibly inconsistent with the overall spirit of the Constitution on benefits from natural resources, the bill proposes to give the Cabinet Secretary discretion to waive, suspend or reduce the royalty for any licensee in the interest of encouraging investment in and utilization of geothermal resources.

iv. In section 161, this bill provides that petroleum resources shall be shared, and under section 162 proposes the establishment of a petroleum sovereign fund. Section 174 imposes a royalty on petroleum, and in section 225, proposes principles for the sharing of coal resources at a rate of80% to national government, 15% to county government and 5% to communities.

v. In section 161, the bill proposes the sharing of benefits in fossil fuels (petroleum and coal) at the rate of 80% to the national government, 15% to county governments and 5% to communities. Where resources are shared by more than one county, all counties concerned should share equitably in the 5% allocation.

7. **How to Benefit Kenyans through Natural Resources:** Accruing benefits from natural resource extraction to all Kenyans is expected to be achieved through a system of extracting a portion of the revenues generated by natural resource exploitation in Kenya, and channelling such revenues to programmes aimed at benefiting Kenyans.

8. In light of the issues outlined above with respect to prevailing approaches to natural resource fiscal regime in Kenya, it becomes abundantly clear that unless the fiscal regime is clarified, it will not be

possible to maximize the revenue collection and consolidation objective built into the proposed Bill on Royalties; neither will it be possible to maximize impact anticipated through expected benefits sharing.

9. More fundamentally, the proposed benefits sharing formula in the various bills reviewed above indicate possible variations in the proposed regime, a situation that would perpetuate existing systems of an unpredictable investment space, and ineffective systems for the maximization of revenue streams from natural resources, negatively impacting the potential bound up in natural resource benefits.

10. Similarly, the discretions given to Cabinet Secretaries in the various draft bills should be excluded to ensure that private rent-seeking opportunities are removed, and that transparency, accountability and the highest levels of compliance with the law on benefit sharing is achieved among all investors and exploiters of Kenya's natural resources.

11. Scope of the Proposed County Royalties Bill: It was noted that the long title of the draft *Natural Resources (County Royalties) Bill 2013* states that it is a bill for*an act of Parliament to make provision for the sustainable exploitation of natural resources and the equitable apportionment of royalties and other accruing benefits to counties and for purposes connected therewith*.

12. The notion bound up in the phrase 'sustainable exploitation of natural resources' is an onerous proposition, that would of necessity require –
    a. Collapsing all sector legislation touching on the development and exploitation of natural resources and amalgamating all regulatory issues under one piece of legislation to be implemented by one Cabinet Secretary as is the practice in the implementation of legislation in Kenya;
    b. The merging of all natural resource-related policies into one comprehensive policy document;
    c. The navigation of volatile politics in the search for political buy-in; and
    d. A complete strategic re-thinking on how Kenya will manage her natural resources.

13. The political cost, and strategic wisdom in such an approach would be difficult to defend. Practice from around the world would suggest such an approach would be insupportable and unwarranted. It is possible to achieve efficiency in natural resource exploitation without bundling all regulatory affairs under one legislation.

14. Our interpretation of the intended spirit of the proposed legislation on royalties is the benefaction desired for communities. This is what we believe the second part of the long title of the draft bill speaks to: 'equitable apportionment' of royalties and other accruing benefits. We therefore recommend that the Bill title be amended to exclude reference to natural resource management.

15. We further recommend that the question of management of natural resources be left to sit with specific sector ministries – which should have the free hand of prescribing the policy framework, including taking leadership in the prescription of the governing fiscal regime for the specialized natural resource each ministry oversees.

16. Once a royalty and other accruing benefit is imposed, however, matters relating to royalty administration cross into the territory of this bill: and this is what this document attempts to articulate. In other words, we are recommending that through this bill, the system for royalty collections, administration, distribution and application should be centralized, and any inconsistent practice under any other law in Kenya, including proposed legislation, should be harmonized with this proposition.

17. This way, the political minefield of resistance when it comes to policy definition and implementation would be avoided – including potential conflicts of jurisdiction with the National Assembly.

18. Lastly on the title of the draft bill, lawmakers should give careful thought to the appropriateness of the word 'County' in the bill's title, and to the benefits and costs of retaining the bill's subject as just royalties at a cross-cutting level – as conceptualized in paragraph 14.

PART II - DELIMITING THE BOUNDARIES OF NATURAL RESOURCES IN KENYA

19. The Constitutional Approach: The Constitution of Kenya in **Article 62** identifies natural resources to include –
    a. All minerals and mineral oils;
    b. Government forests, Government game reserves,
    c. Water catchment areas,
    d. National parks, Government animal sanctuaries, specially protected areas,
    e. Rivers, lakes and other water bodies,
    f. Territorial sea, exclusive economic zone and the sea bed, the continental shelf.

20. In **Article 69**, the Constitution identifies genetic resources and biodiversity as additional elements of Kenya's natural resources.

21. Under **Article 260**, natural resources is defined to mean the physical and non-human factors and components, whether renewable or not, including –
    a. Sunlight;
    b. Surface and groundwater;
    c. Forests, biodiversity and genetic resources;
    d. Rocks, minerals, fossil fuels and other sources of energy.

22. **The Harmonised Commodity Coding and Classification System**: this is uniform system for the classification of commodities for purposes of administering customs duties around the world. The system assigns a tariff heading to each commodity, provides a unique description to the commodity, provides a basis for the tariff – termed 'unit of quantity' and can be by weight in kg/gm or by value (ad valorem) or by percentage (of gross sales) or other specialised unit such as kwh for energy commodities. Lastly, it assigns a customs rate to each classified commodity. Hence the title – a coding and classification system. The Customs Management Act applies this system, and each of Kenya's natural resources would find description, coding and classification within that system. We are in the process of identifying how the system classifies the commodities of interest to this project.

23. How Minerals are Defined in Kenya: The Mining Bill 2013 defines 'minerals' as a substance formed by, or subject to, a geological process whether in solid, liquid or gaseous form occurring naturally in or on the earth or in or under water and includes the minerals listed in the First Schedule but does not include petroleum or underground water. The first schedule classifies minerals into –

    a. Construction and industrial minerals group
    b. Precious stones group
    c. Precious metal group
    d. Semi-precious stones group
    e. Base and rare metals group
    f. Fuel mineral group (nuclear and non-nuclear)
    g. Industry by industry (single natural resources)

24. Recommended Scope for Royalties Fiscal Framework: The spirit of this proposed legislation on royalties would tend to support the construction that benefits from natural resources, and extractive industries in particular, must be felt at the local community level. Secondly, it is also deducible that development pressures, particularly poverty alleviation and promotion of access to social and health services at the community level are equally important aims of this bill. Consequently, it would appear a practical reality to control the reach of this proposed legislation to sectors that readily admit of royalty applications as a taxation stream. In the first instance, the non-contestable territory for this would be (a) and (b) below. However, it is known that some form of benefit creating schemes exist in the wildlife management sector (with good practices coming out of Masai Mara), so this could be factored into this bill. The Wildlife Conservation and Management Bill 2013 at sections 28 and 63 empowers the Cabinet Secretary to issue guidelines inter alia on benefit sharing, including in cases of bio-prospecting. This bill also creates a number of schemes (the Wildlife Endowment Scheme; Wildlife Compensation scheme) as well as community level structures to determine all aspects of applications of such benefit schemes (including County Wildlife Conservation and County Wildlife Compensation Committees).

25. Specific Natural Resources: the following natural resources would appear to be largely consistent with the arguments at paragraph 21 above:
    a. Mining
    b. Oil and gas
    c. Wildlife
    d. Fisheries
    e. Forests
    f. Water

26. Special challenges with Water: Water as a natural resource and as a resource linked to the right to life gives rise to distinct and unique challenges – including the following:
    a. *Definition of 'community'* – a substantial proportion of water resources in Kenya transcend county boundaries, raising the question of delimiting the meaning of 'community' for purposes of any benefit sharing scheme for water resources. There is a school of thought that in this particular regard, a nationalistic outlook would serve Kenya well.
    b. *Point of Abstraction vs. River Source* – which communities should water royalties, if any, serve: the ones by the abstraction point (also arguably the most logical place to levy the royalty) or the ones living around the water source? Riparian rights, and therefore riparian

benefits, can easily become politically volatile. Shared resources may need shared approaches, complete with shared institutional frameworks for the management of benefits systems across counties sharing common water resources. A strong governance framework would be mandatory – to promote trust, reporting structures, accountability in collections in their applications.

c. *Water in constitutionalism* – should royalties be imposed at all? How to guard against making the commodity costlier and burden shift to consumer?
d. *What to do with struggling water service companies/providers?* Most barely break even most times.
e. *Applications of water royalties* – linked to the community question. Under the Water Bill 2012, water service charges are to be applied to investments aimed at sustaining water catchment areas, promoting access, as well as to institution building, including right at the grass roots. Perhaps these are useful pointers to the applications of royalties in the water sector.

Crucial Definitions

'Benefit' - Gains or proceeds or profits from exploitation of natural resources;

'Community' - A group of individuals or families who share a common heritage, interest or stake in identifiable land, land-based resources or benefits that may be derived from the land-based resources; Living in a common location or shared geographical location; Organized around common values and social cohesion; Living within social units larger than a household;

i. Both the Mining Bill 2013 and the Wildlife Conservation and Management Bill 2013 provide a definition to the word 'Community'.
ii. The Land Bill 2012 also provides a definition to the term 'community'.
iii. It is important to ensure harmony in the law over this definition.

'Local communities'- Communities so near to a natural resource as to be affected by its exploitation or the people living within so close a proximity to natural resources as to be affected by their exploitation, and may include business entities which invest in the exploitation of natural resources, organized social units that have a common interest in identifiable natural resources, and which are the ultimate owners and protectors of natural resources where the resources are derived.

The Energy Bill 2013 defines 'local communities' simply as a person or group of persons directly affected by a project. This approach has the flexibility of reducing the debilitating effect of cross-county resources and attendant administrative questions on who communities should be.

'Divisible revenue' - Total royalty revenue less 70% that goes to the Consolidated Fund or the royalty revenue available for sharing which shall be 30% of total royalty;

'Total Royalty'- total royalty revenue from a defined/specific natural resource.

PART III – BASIS FOR A DISTINCT FISCAL REGIME ON NATURAL RESOURCES

27. Impact of Natural Resource Discoveries: The discovery of natural resources can significantly alter the trajectory of a country's economic growth and development, particularly in developing and emerging economies. Revenues accruing from natural resource exploitation can support accelerated development and poverty reduction programmes if well invested. How that revenue is captured, however, and how it is distributed and spent, requires properly designed political economy and effective governance frameworks that address reporting, collection, accountability, investment and related elements of natural resource revenues in a country.
28. Unique Character of Natural Resources: Natural resources, particularly in the extractive sectors, are finite, and once extraction starts, the stock is continually declining.
    a. From the perspective of sustainable asset management, it becomes essential for a society to ensure that the declining stock of finite resources are offset by investments in produced capital so that a society's total wealth and future welfare is preserved and perpetuated.
    b. In addition, most countries regard sub-soil assets as the state's inalienable property – hence companies are required to pay a fee (frequently termed 'royalty') for the right to exploit deposits owned by the public.
    c. Furthermore, extractive industries generate high benefits or rents, and some of this rent is appropriated by the state. This can introduce revenue volatility, economic development and governance.
    d. Extractive industries are fronted almost always by strong multinational corporations, which are holders of both capital and technical expertise. Profit maximizing strategies could drive negative engagement with natural resource host

DEFINING PROPERTIES OF EXTRACTIVE INDUSTRIES

Sustainable Asset Management

From the perspective of sustainable asset management, the declining stock of finite resources should be offset by investments in produced capital so that a society's total wealth and future welfare may be preserved.

Inalienability of sub-soil Assets

Most countries regard sub-soil assets as the state's inalienable property. Companies should therefore pay a fee (royalty) for the right to exploit deposits owned by the public.

High Natural Resource Rents

Extractive industries often generate high benefits or rents, some of these rents are appropriated by the state, which poses challenges in terms of revenue volatility, economic development and governance.

Powerful Multinationals

International firms usually play an important role in the extractive sector, since they are key holders of capital and technical expertise. Further, they are often liable to tax in their own countries, exposing them to the risk of double taxation.

High Sunk Costs

Extractive activities require high initial investments ("sunk costs") in exploration and development and have long production periods. Their profitability tends to be uncertain at the beginning, and it can be quite difficult to determine the actual rent to be taxed later on.

governments, especially where the fear of double taxation is strongly perceived.

e. Lastly, extractive activities require high initial investments (the 'sunk costs') in exploration and development activities. Some extractive industries feature long production periods, where earnings are negative, making extractive initiatives unprofitable during the initial stages of extraction. This specific complication introduces challenges on the part of host governments in determining the actual royalties to be taxed later when the venture turns profitable.

29. Challenges in Managing Resource Revenues: The preceding paragraph indicated that natural resource revenues can be characterized by aspects of unpredictability, volatility, size relative to the economy, finite nature – issues that could in fact impede development. A common feature associated with extractive industries is the 'resource curse' – manifested in over-reliance on a single source of revenue, over-leveraging the economy, mismanagement of capital inflows and weak accountability standards/practices.

30. It has been observed that because extractive industries are characterized by a unique combination of properties, governments should treat them differently from the rest of the economy. However, not all countries have opted for special taxation regimes for the extractive industries. Subjecting extractive industries to the overall tax system can be simpler for governments. This is a particularly appealing point in cases where public administrations are weak and where there is a strong need to try to limit the scope and incentives for sector-specific rent seeking and lobbying activities.

31. There are thus a number of reasons why extractive activities within the natural resource context may be taxed differently than, and in addition to, other productive economic activities. From an economic point of view, the common underlying reason is that the extraction of minerals may generate resource rents, where the value of the mineral extracted is higher than the sum of all the costs to produce it, including a profit that reflects the cost of the risk that the investment has borne. On this basis it is argued that a government, should apply some special form of taxation in order to capture some of this rent.

32. Government's total economic take from natural resource exploitation comprises royalties, taxes and any government commercial participation in natural resource investments. Government taxes on commercial undertakings are generally standardized and have uniform application. Government's commercial participation in investments is structured under negotiated terms, and would vary from investment to investment. Royalty impositions, however, differ natural product by product.

a. For instance, under Legal Notice No.187 of 16 August 2013, the Cabinet Secretary for Mining and Geology Hon. Najib Balala promulgated the Mining (Prescription of Royalties on Minerals) Regulations 2013, under which royalties applying to different categories of mined natural resources are specified based on gross sales value:

Diamonds	12
Rare Earths and Radioactive Materials	10
Niobium	10
Titanium Ores and Zircon	10
Gold, Silver, Platinum and Other Platinoids	5

Metallic, Iron, Manganese, Chromium, Nickel & Bauxite Ores	8
Fluorspar, Diatomite, Natural CO2 gas and all other minerals	5
Industrial Minerals including gypsum, limestone and silica sands	1
Construction Materials	2

In addition, mineral dealers are required to pay a royalty on the gross sales value of exported mined natural resources as follows –

- 2% on exported gold
- 5% on industrial minerals
- 5% on raw gemstones
- 1% on value-added gemstones

b. Under Legal Notice No.186 of 16 August 2013, the Minister for Mining published charges applicable to exploratory core drilling, measured by metre drilled.
c. The Petroleum (Exploration and Production) Act Cap 308 of 1986 does not provide for the imposition of royalties on petroleum exploitation, but imposes surface fees and these are not part of the tax obligations on investors. In addition, indirect forms of benefit sharing mechanisms are provided under Cap 308 – employment and training of locals, as well as encouragement of preference to Kenyan goods and services.
d. Geothermal development contracts provide for a form of surface fee in the garb of land lease or rental charges payable annually.
e. Natural resource investors in the mining sector also pay special mining license fees, and emerging practice in coal concessions would suggest the payment of fees styled concession fees and signature bonuses.

The revenue streams in (b-e) above are not generally payable directly into the Natural Treasury, and are not necessarily classed 'royalty' under current practice, but we would interpret them as being charges of equivalent effect, which should be classed as 'royalties' under the proposed bill on royalties, with the view to their being collected by the agency designated under the bill, and remitted together with all other royalties to the national kitty designated under the bill.

33. In view of the very fragmented approach to royalties and charges of equivalent effect in Kenya, and the divergence in their systems of applications, compounded by lacking institutional frameworks to ensure the fragmented system actually delivers on the defined benefit sharing schemes, Kenyans, and particularly communities directly affected by natural resource exploitative activities continue to be marginalized in natural resource benefits applications as anticipated and required by the Constitution. All the revenue streams qualifying as royalties within the conceptualisation of this legislative guide should be given centralised treatment subject to the centralized redistributive standards in the bill.

34. The Five Pillars of an Effective Natural Resource Fiscal Regime: Any effective fiscal regime would attempt to address at least five key issues – (a) the regulation of activities; (b) definition of Government's economic take; (c) creating structures for local participation and facilitating knowledge transfer; (d) anticipating the social and economic impacts of extractive industries and the sharing of benefits therefrom on local communities; and (e) establishing an efficient, transparent and respected system of administration. These core principles and objectives

are better elaborated in the next section (fiscal policy pillars), within the context of the main canons of an effective fiscal regime for the extractives in Kenya.

PART IV – NATURAL RESOURCE FISCAL REGIME POLICY PILLARS

35. As indicated at paragraph 29, there are four main pillars to any fiscal regime, supported by five canons. These are discussed in salient detail below.

Policy Pillar 1: Regulation of Activities

36. An effective fiscal regime policy framework must define what activities are subject to regulation for purposes of taxation. These can include rate of production, safety, environmental management, value addition, among others. A bill on royalties that ha cross-sectoral application will need to state who will be taxed, what will be taxed, the tax base (is it ex-mine, mine value, sales value, or mixture of value and volume, bonus, annual fee, etc) to be applied, among other things.

37. An effective fiscal regime would also establish a clear system for the collection of royalties that have been imposed.

38. Another regulated activity would be the question of assessment –
    a. The fiscal framework should spell the tax imposed
    b. how the tax is assessed,
    c. penalties for non-compliance,
    d. spells out the rate of royalties even if to say for example "as gazetted by the Cabinet Secretary for mining from time to time",
    e. gives Cabinet Secretaries the criteria to follow for reviewing and publishing new royalty rates
    f. Tax base (turnover/gross value/hybrid)
39. Establishment of a natural resource fund – including 'Sovereign Wealth Fund' or a 'Futures Fund'- is a regulated activity, and which
    a. prescribes how it should be handled/administered to
    b. address the needs of the present generations as well as
    c. the needs of future generations, while
    d. facilitating a single system for the management of revenues accruing from ALL Natural Resources in Kenya, and at the same time
    e. promotes fiscal/monetary stability, and
    f. guards against the Dutch Disease or economic distortions, and
    g. prescribes rules for its applications to budget support/general development expenditure, in addition to
    h. Any other matter falling under this category.

Policy Pillar 2: Government Economic Take

40. This has been defined as the total amount of revenue that a host government receives from minerals/natural resources extraction – taxes, royalties and government commercial participation (in mining sector – 10% free government carry through National Mining Corporation).

41. From a resource policy perspective, the Government's economic take would fiscally incorporate what is traditionally termed Government Tax (including CIT, VAT, Customs, Excise, etc) plus what would be termed royalty revenues within the context of this bill. This would particularly include what is termed 'free carry' and 'signature bonuses' which have recently come into vogue in Kenya.

42. This policy/law should apply the following canons of an effective fiscal regime (discussed in detail at paragraph 52) –

    a. Revenue maximization/adequacy

    b. Economic allocative efficiency

    c. Revenue stability

    d. Equity

    e. Transparency

    f. Administrative efficiency

43. In determining and applying Government's overall economic take, good practice advises the importance of entrenching the principle of gradualism – to enable business absorb the shock of royalty benchmarks imposed under law. There is a trade-off between the CIT collectable and the royalty value extractable from an economic player.

44. This policy pillar should entrench the principle of progressivity – such that windfall earnings are variably taxed to promote equity.

45. Objective: not to interfere with currently fixed royalty regimes under various laws (Mining Act, PSCs, etc) because there is currently no empirical basis to dispute the fairness or adequacy or otherwise of these levels to warrant variations of the current taxation basis. Nevertheless, the spirit of the proposed bill on royalties would favour the need to link existing systems to the progressivity principle in paragraph 39.

Policy Pillar 3: Local Participation and Knowledge Transfer

46. A good fiscal policy should view local communities as necessary and productive partners in any natural resource exploitation programmes. A fiscal framework that supports local participation, and structured systems for knowledge transfers would therefore be recommended. These partnerships for local participation could occur at the following broad levels -

    a. In participation structures – the committees (see part vii)

    b. In budgeting

    c. In programme design

47. Capacity Building & Knowledge transfer mechanisms around Natural Resources could take any of the following forms –

    a. Employment of local communities in the relevant extractive industry ventures

b. Educational bursaries (technical fields, public and environmental health, etc educational training related to the development and management of natural resources)

c. Civic education – empowering local communities to identify development priorities at the local level, and how they can apply NRs revenues to expand the scope for higher quality and volumes of public services

d. Awareness creation – to promote the dynamics around social license. A shift from CSR to CE (community engagement).

Policy Pillar 4: Social and Economic Impact on Local Communities

48. While the impact of natural resource exploitation may not in all instances support legislative measures, ensuring their complete and strategic understanding would support the composite system for the management of fiscal issues in natural resource exploitation. At a very minimum, however, and in addition to the Article 43 ideals (below), environmental impact issues must be factored into any considerations under this banner, hence environmental remediation, land reclamation costs, and long-term pollution aspects of natural resource exploitation become clear entry points to this fiscal policy pillar.

49. Under Art.43, the Constitution considers the following to be some of the high priority social and economic interests to be promoted and supported through all development actions and efforts in Kenya. We would say that in analysing the impact of natural resource extraction and exploitation in Kenya, the social and economic issues should be understood within the context of the following constitutional aspirations –

a. Highest health standards – health facilities, services, reproductive services

b. Accessible, affordable and adequate housing

c. Reasonable standards of sanitation (the imprecise standards under this Article are always problematic: hence ought to be disciplined by functionality – and linked to the Millennium Development Goals, and what we really need for our people)

d. Freedom from hunger and access to adequate food of acceptable quality – hence broad reference to community livelihoods, and the environmental standards

e. Clean and safe water in adequate quantities

f. Social security – for the weak and vulnerable in the community

g. Access to education – a powerful contributor to the acceptance of local communities as productive and indispensable partners in the course of natural resource exploitation

50. Article 19(1) of the Constitution provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for all social, economic and cultural policies. Article 10(2) enunciates key national values and principles of governance to include participation of the people, protection of the marginalized, equity and social justice, good governance, transparency, accountability and sustainable development. Article 174 states that some of the fundamental objectives for devolution in Kenya include recognising the right of communities to manage their

own affairs, protection of the rights and interests of minorities and the marginalised, equitable sharing of national and local resources, and promoting social and economic development with particular focus on the provisioning of proximate and easily accessible services throughout Kenya.

51. The foregoing should be the broad contextual frameworks for both the fiscal regime and the draft bill on royalties.

Policy Pillar 5: Collection and Administration System

52. Any fiscal regime that increases the cost of compliance is bad for business, and bad for economic management, as it creates and supports motivations for negative rent-seeking activities, fiscal loss for Government, and disaffection at community levels.
53. In view of the principles canvassed at paragraph 51 below, there is a strong basis for the recommendation that to the extent possible, Kenya Revenue Authority should be granted the statutory mandate to collect royalty revenue streams under the proposed bill. KRA is currently effectively collecting on behalf of various ministries and public agencies. KRA has systems for the effective assessment of what is due under each specific regime, supported by effective mechanisms for the administration of disputes relating to payments and assessments. KRA does this for a small fee – usually between 1% - 2%.

54. Beyond collection systems, a clear system for the management of collected revenues, how they are used and related obligations on accountability and transparency would be an indispensable component of an effective fiscal regime. This paper in part (vii) provides a considered proposal on the type of governance framework that would be necessary to support the proper administration of the proposed Bill.

PART V – PRINCIPLES FOR A FUNCTIONAL FISCAL REGIME FOR NATURAL RESOURCE EXPLOITATION

55. Any natural resource fiscal regime should be guided by a number of rationales, which we prefer to term principles. These include: revenue maximization and adequacy, economic allocative efficiency, revenue stability, equity, transparency, and administrative efficiency.
56. These principles are canvassed seriatim below.
    a. Revenue Maximization and Adequacy: Taxes should be just enough to generate revenue required for provision of essential public services - thus
        i. Taxes should be high enough to have an economic impact in the community, but low enough to avoid distortion of the community life; In effect, revenue maximization and adequacy addresses the questions of what the magnitude of total tax effect on the industry should be, and how high it should be before it incentivizes the industry.
        ii. The decision on what threshold to set the taxation levels should be balanced with the objective of attracting international exploration and development capital, taking into account the international perception of the country's prospectivity, infrastructure and other benefits.
            a. In this regard, there is merit in the notion that royalties and other taxes be retained at current levels in the short run so as to collect

reliable data for economic modelling to determine an optimal level of taxation of each sector.

b. Furthermore, the proposed bill should not impose a levy or tax termed 'royalty', but should focus on providing the administrative framework for the management of levied royalties.

c. In this spirit, therefore, we recommend that the proposed bill on royalties should recognize the right of sector ministries to retain the policy setting mandate they currently enjoy, including the determination of applicable rates and surrounding matters. The line ministries should be required under this proposed bill to ensure – in the interest of transparency and in support of the quest for accountability – that all royalty rates imposed are properly gazetted. It is the gazetted rates of royalties that the administrative mandate in the proposed bill will rely on for effectiveness.

b. Economic Allocative efficiency: An efficient tax system promotes allocation of resources to their most productive use. In this regard, any proposed tax regime should have tax neutrality in that rates should be set at a level which will not affect the behaviour of investors. Thus while there are many factors affecting the choice of allocation of investment, the levels of royalties payable should not be disproportionate to affect this.

i. Neutrality can be achieved through setting national ceilings so that the rates applicable for identical minerals remain the same across the counties.

ii. In practical terms, a non-neutral or distorting system gives rise to either overexploitation or not extracting enough.

c. Revenue stability: The tax regime for natural resources should be clear and transparent to ensure revenue stability and predictability. This is important for both the government and investors who need to commit large upfront capital.

i. Tax regimes should prescribe not only levels but also timings, processes and procedures for review.

ii. Similarly, the assessment and determination of royalties should be simple enough to be understood and complied with by the taxpayer.

iii. All royalties should be known and expected both in their magnitude and timing.

iv. Rules should be clear and simple to understand so that businesses can anticipate the royalty consequences of a transaction, including knowing when, where, and how the royalty is to be determined and reported.

d. Equity: The principle of equal treatment under the law applies to taxation. Tax law must be applied without exception to all those in the same circumstances. It has two meanings, one essentially procedural and the other substantive.

i. The procedural aspect means that the law must be applied completely and impartially, regardless of the status of the person involved. This means that no one may receive either preferential or discriminatory treatment in the application of the law or may be denied procedural rights to challenge application of the law to him or her.

ii. The substantive aspect requires that royalties should equally burden all individuals or entities in similar economic circumstances. The constitution is very loud on this... "the burden of taxation shall be shared fairly." The means that persons in equal circumstances should be treated equally. The principle -

- requires that both the purpose of the unequal treatment and the means to affect it have a rational basis;
- emphasizes that where exemptions occur, these should be for a specific purpose and for a limited period.
- to the greatest extent possible, persons extracting similar resources should be subjected to the same royalty regime.

e. Transparency: to minimize perceptions of sovereign risk which can undermine the country's attractiveness as a mining investment destination, government must adopt the principle of no surprises. In this regard, the fiscal regime should provide for consultations with industry and all changes in the taxation regime should be implemented under the principle of gradualism to give industry time to progressively adjust to their impact.

f. Administrative efficiency: The compliance burden on both the government and industry should be as low as possible. In this regard, tax legislation must be supported by clear definitions and enforceable regulations that reduce compliance costs and potential for dispute. Royalty collection efforts should not cost an inordinately high percentage of revenues.

i. This means that tax yield must be material enough to justify the cost of collection.
ii. Similarly, royalties should be designed to allow for low cost of compliance and enforcement in a manner that facilitates voluntary compliance to the maximum extent possible.
iii. Further, legislation should provide for coordination and system sharing between relevant ministries and departments involved in natural resource taxation policy and administration.

57. In the case of managing royalties, therefore, these principles boil down to the efficiency of the governance framework that shall be built into the draft bill on royalties. This ethic would feature the following key traits –
    a. Transparency
    b. Accountability
    c. Representation
    d. Rule of law and
    e. Equitable distribution of resources.

Policy Mechanisms for Extracting Royalties from Natural Resource Exploitation

58. In principle, royalties on natural resources should be levied as close as possible to the point of extraction so as not to target value addition activities. Otto et al (2006) identified three

mechanisms of royalties applied in extractive industries: (1) Production or Unit-based royalties, (2) Value-based royalties, and (3) Profits-based or income-based royalties - and combinations of the three. There are two additional types of policy tools – (4) resource rent-based royalties and (5) production sharing contract-based royalties. To these categories one could also add mining license fees, and signature bonuses or free carries sometimes written into extractive industry contracts.

Unit based royalties	Assessed either on volume or on weight and measured at a specified point (e.g., at the mine mouth say Sh.200 per ton of mineral or Sh.1000 per cubic meter of crude, or Sh.50 per person entering a game park)
Ad valorem royalty (Value-based)	The value of the product assessed can be specified in many different ways and at different stages of the production process In its simplest form this type consists of a uniform percentage of the value of the extracted regime. As mentioned earlier, the value should be based at the point of extraction. In the case of mineral extraction this should be the mine gate. A single rate is applied to the value base regardless of how it is defined and irrespective of the nature of the product. Because of their low administrative load, these kinds of royalties are common in mining taxation. Value-based royalties are the most commonly used form of royalty tax
Profit based royalty	A percentage rate is applied to a measure of accounting profit realized by the project. The accounting profit base is computed at the project level and may not be consistent with contribution that the project makes as to the consolidated profit of the holding entity on which corporate tax is based. This type of royalty has high compliance costs both for the government and for the industry.
Hybrid royalty	This type incorporates a minimum unit rate and an ad valorem component. It ensures a measure of revenue stability
Resource rent based royalty	This consists of an application of a percentage rate on the economic rent produced by a project. Although the general concept is relatively simple, its practical implementation is complex, often misunderstood and can lead to compliance costs and disputes.
Production sharing contract	Here, the extraction company generally bears all the costs of mining operation both capital and recurrent. It then deducts these costs from the gross value of the mineral produced to arrive at the net profit mineral. This is then shared between the government and the company according to a predetermined proportion stipulated in the production sharing contract.

59. The main types of profits-based taxes and production-based taxes are shown below.

Corporate income tax	Royalty, specific and advalorem
Profit tax on dividends	Sales and excise tax
Royalty based on profit	Export duty
Withholding tax on dividends	Import duty
Resource rent tax	VAT
	Registration fees and stamp duty
	Land rates
	Withholding tax on loan interest rates and services
	Property tax

60. Governments like to include at least some production-based tax components in their mining tax regime. These provide early (and possibly more stable) tax payments which help to finance public sector recurrent expenditure. Production-based taxes can also be more easily earmarked for political purposes. Their downside is that they are regressive. They can raise companies' financial risks and

require tax payments to be made in years when a mining project could be suffering losses. They can also entice investors to cut back production first at largest sites that have higher per unit costs.

61. Profits-based taxes can be more difficult to collect and require that countries possess a higher level of administrative capacity. Unfortunately, such capacity is often not present in countries that have sought to attract foreign direct investment for the very reason that they have lacked alternative options to stimulate the economy and generate revenue and foreign exchange. Most types of production-based taxes are easy and cost efficient to administer. This applies not only to some varieties of royalties, but also for example to payroll taxes where the burden of administration is passed on to companies.

62. It was seen in paragraph 32 that in the Kenyan mining sector, preference is given to the value-based royalty model – gross sales value (ad valorem) – because it is easier to administer, and is generally seen as less onerous to investors as it is delinked from commodity pricing (which the unit-based royalty depends on) and profit-based royalty (which requires highly developed tax administration capacities). Furthermore, virtually all royalty rates observed in Kenya are fixed, and not indexed on commodity pricing.

63. It would also be informative to note that ad-valorem royalty operates as a production cost – hence the general push to keep royalties at a low level as a means to attract private and foreign direct investment into the generally capital intensive natural resource sectors in Africa. Historically, the natural resource sector in Africa was heavily public sector dominated. In considering royalty schemes for Kenya's natural resources sectors therefore, it is useful to view the dynamics from a pan-African context. Nonetheless, a 2012 policy research limited to only gold in Africa by the African Development Bank provides invaluable empirical evidence that there is limited positive correlation between increasing royalties and profit margins of mining companies. Caveat: the median royalty on gold in Africa, based on ad-valorem, hovers around 3% in the study, which concludes that marginal increases in gold royalties would not negatively investment decisions in gold mining. This is significant since royalties are crucial sources of revenue for cash-strapped developing economies.

PART VI – GENERIC CRITERIA FOR BENEFIT SHARING

64. Holders of rights of exploitation of natural resources are usually commercial enterprises who must pay for those rights. The government being the custodian of natural resources receives revenue in the form of taxes, royalties, licenses and other levies. Governments use the revenue earned from natural resources to purchase social capital and provide national services such as education, health and security.

65. Hitherto, communities living near natural resources in Kenya have had little or no direct benefit from revenue collected from natural resources except in a few cases relating to communities near national parks.

66. There is need for communities near natural resources to get a larger share of the benefits of exploitation of those resources because any exploitation of the resources affects and disrupts the community more than it affects other communities living far away from the resources. The

extractions of natural resources especially sub-surface resources have a number of unique characteristics e.g.

- Because natural resource extraction operations are often conducted in environments where government institutions may be absent, weak or lacking in capacity, there may be gaps in essential public services.
- The social and environmental footprints of mining operations often have negative effects on local communities that require compensation or mitigation programs.
- The remote location of many operations heightens expectations for employment and economic development in host communities.
- The enclave nature of the mining industry can limit the trickle down of benefit unless specific social investment programs are undertaken.

67. In this context, mining companies and governments must often take action to share benefits at the local level and sometimes to establish an instrument dedicated for that purpose. Various models of benefit sharing have been used in various countries:

Madagascar Royalty	42% to communes of extraction, 21% to the region, 7 % to the central govt
Peru Royalty	20% to the district of exploitation 20% to the province, 40% to the other districts and provinces in the region, 20% to the region including 5% to universities
Indonesia receipts from natural resources including mining	80 to the region split as 64% to regencies and 16% to provincial government
Tanzania	No sharing
Colorado	50% Local impact fund of which 70% is used for local government projects and 30% direct distribution

68. In most of the countries, there is a discernible general pattern of sharing of revenue from minerals and natural resources:

i. Revenue is shared by three streams: the Central government, the County /State authority and the community.

ii. The central government gets a higher portion of the revenue than the local community where the resource occurs. In many countries the benefits to the community range between 20-50% of the amount allocated to the regional government.

iii. Benefit sharing excludes state taxes such as income tax, VAT customs duties, excise etc.

iv. Benefit sharing formula is governed by a statute.

v. Benefit sharing schemes are subject to audits to ensure accountability.

Principles to Govern Benefits Sharing

69. Principle of Fiscal Equalization: Fiscal equalization is the process through which a central government makes funds available to lower level governments with the objective of reducing the degree of inequality in the revenues that such governments can raise using their own revenue instruments.' Its principal objective is to allow sub-central governments to provide their citizens with similar sets of public services at a similar tax burden even if incomes differ across areas. This principle is consistent with constitutional standards at Articles 201 and 203.

70. Efficiency Principle: this implies that efficiency must be applied in the allocation of resources and that each level of government must maximize its internal revenue earnings at minimum costs. Again, this is consistent with constitutional principles at Articles 6, 186 and 187(2)(a).

71. Principle of Derivation: the component units of a system should be able to control some of its own resources as they desire. In this regard, communities should be allocated funds to address unique programs geared at uplifting the livelihoods of youth and women in areas endowed with natural resources. This principle would be moderated, however, by the legitimate development objective of ensuring that all citizens, who are equally entitled to benefit from the natural resources irrespective of where they reside, are guaranteed the minimum provision of certain basic public services and goods. Similarly, the principle of diversity would moderate the principle of derivation – requiring that Government at the national level must retain the ability to accommodate a large variety of diversities, the basis on which any fiscal regime must be able to provide scope for variety and differences to supply public goods across the country. In effect, to minimize the chance of incenting natural resource nationality setting in Kenya, with the potential of tearing the State apart, the derivation principle (which can quickly be taken over by illogicality, inconsistency and inequity) should be moderated by –

    a. Continuity
    b. Minimum responsibility
    c. Population and
    d. Balanced national development.

72. Principle of Locational Neutrality: any distribution of revenue from royalties and taxes should be aimed at minimizing economic distortions that may occur due to differential intraregional differences. This principle is supported by the principle of equivalence: based on the geographical incidence of different public goods, allocative efficiency requires the equalization of

locational advantages arising from territorial differences, including jurisdictional differences at the county government level with a combination of taxes and public goods and services. A useful principle to attain the foregoing objectives is the principle of centralized stabilization – which requires the use of fiscal instruments to achieve macroeconomic objectives of growth, stabilization and full employment by residents of different geopolitical units.

73. Principle of Compensation: This is the principle on which derivation is used as a criterion for sharing fiscal revenues. Extractive industries result in losses to the host communities and the country at large in four main ways:

    a. Natural resource loss – extracted resources are depleted
    b. Loss on vegetative capacity of land – extractive activities destroy the earth's surface;
    c. Externalities of extractive activities – including environmental degradation and or pollution, increased cost of living, unemployment and loss of livelihood due to environmental degradation; as well as
    d. Negative social costs – breakdown in social values, increments to rates and types of crimes.

74. Principle of Centralized Redistribution: the redistribution function of fiscal policy through taxation and expenditure programs should be centralized at the national level. Thus the distribution of revenues from royalties should be done either by the National Treasury.

75. Evidence from around the world would suggest that the foregoing principles may not necessarily be mutually consistent in a way that would allow for their simultaneous application. The more practical reality is to engage in a measure of trade-offs between the principles, guided by local and national experience, socio-cultural factors and development challenges.

The Proposed Benefit Sharing Formula

76. Any system of sharing of benefits of exploitation of natural resources in Kenya must be guided by the following principles:
    - *Openness and accountability*, including public participation in decision making;
    - *Trans-generational Equity* - The burdens and benefits of the use of resources must be shared equitably between present and future generations;
    - *Evidence-based revenue allocations* – adjustments to the initial formula should be based on analysed data touching on how shared revenues have been applied by each level/authority in the benefit sharing supply chain, the impact of shared benefits, and statistically-backed evidence on how, where and why future benefits should be concentrated in terms of allocations and expenditure.
    - *Equality of access to development opportunities*
    - *National minimum standards for national integration*
    - *Absorptive capacity*
    - *Independent revenue and tax effort and fiscal efficiency*

77. The Constitution at Art.203(1) sets out the minimum criteria that revenue sharing generally should take into account in Kenya:

- the national interest;
- any provision that must be made in respect of the public debt and other national obligations;
- the needs of the national government, determined by objective criteria;
- the need to ensure that county governments are able to perform the functions allocated to them;
- the fiscal capacity and efficiency of county governments;
- developmental and other needs of counties;
- economic disparities within and among counties and the need to remedy them;
- the need for affirmative action in respect of disadvantaged areas and groups;
- the need for economic optimization of each county and to provide incentives for each county to optimize its capacity to raise revenue;
- the desirability of stable and predictable allocations of revenue; and
- the need for flexibility in responding to emergencies and
- Other temporary needs, based on similar objective criteria.

78. The broad principles governing public finance, enunciated under Art.201apply with equal force to any system governing the sharing of benefits as contemplated in this paper and in the proposed bill. These include –
    a. Transparency and accountability
    b. Public participation
    c. Promotion of an equitable society
    d. Equitability in the burdens and benefits of resource use;
    e. Trans-generational equity;
    f. Clarity in financial management systems and responsibilities; and
    g. Prudence in the use of public moneys.

79. The Constitution further states at Art.203(2) that for every financial year, the equitable share of the revenue raised nationally that is allocated to county governments shall be not less than 15% of all revenue collected by the national government. The broad principle on revenue sharing under the Constitution could possibly support a broad split of 75% national government, 20% county government and 5% community.

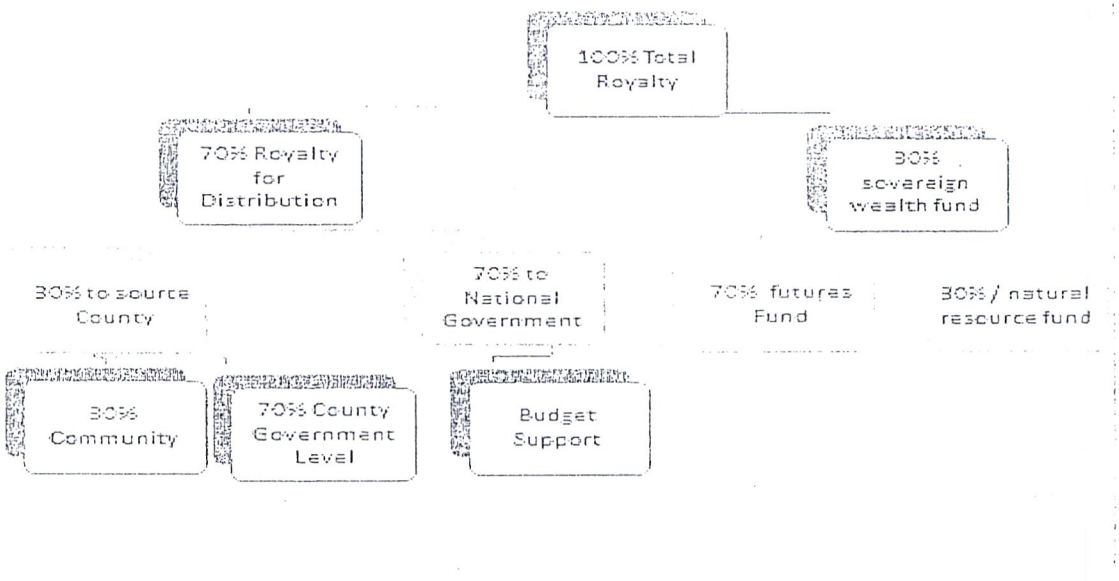
80. Several formulae on benefit sharing are proposed under various draft laws today –

Mining Bill 2013	75%	20%	5%
Energy Bill 2013	80%	15%	5%
Forestry Bill 2013	50%	30%	20%
Wildlife Bill 2013	-	-	-
Water Bill 2012	-	-	-

81. **Proposed Vertical Revenue Allocation Formula**: In view of the foregoing, and taking into account increased community effort in the management of natural resources and the impact of exploitation of the resources to community life, and further taking into account the responsibility of the community to participate in environmental restoration and preservation activities, and in interest of securing trans-generational equity, it is recommended that the benefit sharing formula for royalties from natural resource use be as follows:

    a. Out of 100% total royalty –
        i. 70% be earmarked for distribution between National and County Governments;
        ii. 30% to go directly into a Special Fund – to be divided 70% into a Futures Fund and 30% to a Natural Resource Fund.
    b. Out of 70 % divisible Royalty Revenues –
        i. 70% goes to the National Government; and
        ii. 30% goes to source County
    c. Out of the 70% that goes into the National Government –
        i. 70 % can be earmarked for economic stabilization, budget support, etc;
        ii. 30% can be redirected to fiscal equalization.
    d. Out of the 30% that goes to source county –
        i. 30% can be earmarked for source community;
        ii. 70% is directed to the general development of the Source County.

This formula can be represented graphically as follows -



82. **Rationale for this Proposed Formula**: Sharing royalty benefits according to this formula is based on the following –

a. A desire to maintain the minimum constitutional criterion of ensuring a minimum of 15% revenues reach each county – which, according to the proposed formula, actually receive a total of 21% of all royalty revenues generated by natural resource exploitation in Kenya, while the rest of the country is benefited by 49% of all royalties – applied in economic stabilization and fiscal equalization measures;
b. A desire to invest for the future generations – on whose behalf this formula would invest no less than 21% of all royalties;
c. A desire to ensure environmental conservation and management – for which the formula dedicates 9% of all royalties;
d. A desire to balance development against growth – bound up in the 49% allocated to general budget support, which ought to be invested according to the broad indications in paragraph 83;
e. A desire to balance derivation against balanced development – for which counties receive 21% of all royalties, regardless of their proximity to the natural resource exploitation. This is divided as follows: 6.3% is proposed for distribution to host communities, and 14.7% to be distributed to the host county government to support balanced county development.

83. Horizontal Revenue Allocation: Beyond the vertical distribution, strategic and careful thought needs to be given to how natural resource revenues will be applied horizontally once distributed according to the proposed vertical formula. The parameters for such considerations could include the following – in view of the development needs in Kenya –

a. Equality of development across all counties – so that Kenya can achieve both growth and development (a classic manifestation in countries suffering the natural resource "curse" phenomenon);
b. Population (education, social and health investments);
c. Land, ecological and environmental management and conservation;
d. Budget support – general responsibilities of the national government;
e. Financial efficiency;
f. Financial responsibility
g. Any other priority expenditure linked to both growth and development.

84. The Non-Correspondence Problem in Kenya: The governance framework established under the Constitution allocates powers and responsibilities to both the national and county government levels. Not each unit of governance in Kenya has identical capacity to raise revenues congruent with its expenditure requirements, giving rise to the challenge of resolving the imbalance between assigned functions and corresponding tax powers, and revenue generating capability. These are the issues that the horizontal and vertical revenue sharing considerations are designed to address. It is especially crucial to sustain the cause for devolution by minimizing the dependence of counties on national government funding, which ordinarily brings with it a tendency towards re-centralization and national government presence in counties.

85. A Note on Sovereign Wealth Funds: The futures fund share of royalty revenues in paragraph 82 could be administrated through a Sovereign Wealth Fund. This is because extracting and selling natural resources is the same thing as running down business capital – unless receipts from natural resource sales are fully reinvested in financial, physical and or human capital, it will soon run down as the stocks are finite and depletable. SWFs can transform today's natural resource revenues into other forms of renewable and sustainable capital. SWFs are funds established by Governments with the main aim of preserving a country's current resources for the benefit of both the current and future generations.
    a. They have been used to stabilize government fiscal and foreign exchange revenues by smoothing out fluctuations in prices of export commodities. This achieves revenue stabilization in order to ensure better control of government expenditure planning. This way, the volatility of resource-driven revenues is smoothened.
    b. SWFs have also been used to promote diversification of economies e.g. the UAE has employed its SWF to diversify away from oil into tourism, aerospace and finance, besides pursuing horizontal and vertical sector diversification.
    c. SWFs are also invaluable tools for responding effectively to changes in a country's demographic pressures while smoothing consumption levels of future generations when resources will be exhausted.
    d. Through the ability of SWFs to generate new forms of capital, they tend to reduce resource dependence through horizontal and vertical sector integration.
    e. SWFs can also shore up an economy's capacity to produce more efficiently – e.g., UAE is a good example of a country effectively applying its SWF to access capacity transfers and efficiency factors through partnerships with internationally acclaimed business entities.

86. Dangers of SWFs: Given the progressive discovery of high value natural resources in substantial quantities, there is every reason to expect that in the coming decade, Kenya is going to transform into a natural resource-based economy. With huge cash-flows in resource revenues, the prospect of a SWF growing rapidly in size and value portends a number of challenges –

    a. The danger that it can place too much power in government, rolling back gains already made towards entrenching democratic governance;
    b. It can tempt the Government to roll back on market competitiveness through the pursuit of sub-optimal market policies;
    c. It can threaten national security if used by investors for political reasons – as opposed to economic purposes.

87. Country-Specific Risk Factors re SWFs: Kenya as a country is beset still with the huge development challenges of accountability, transparency, poor governance resulting from weak institutions (which can drive the danger of expropriation and or corruption), in addition to the likelihood that general inefficiencies existing within the wider body politic will get transferred into the Fund's management framework – with the likely result that the SWF could suffer from weak internal risk management structures at both the operation and financial levels.

88. The foregoing concerns notwithstanding, evidence from around the world indicate that SWFs have been used to stunning effect in Norway, the United Arab Emirates, China, India and several other countries. In Africa, a few countries have established and are operating SWFs, although these constitute a paltry 3% in value and net-asset base of the global value in SWFs.

89. **In the text-box adjacent**, a number of recommendations are made on how a SWF could be employed to diversify, modernise, strengthen and transform this economy for the benefit of both current and future generations. It would be essential particularly to ensure that the concerns raised in paragraph 76 are given serious consideration in Kenya.

HOW KENYA SHOULD USE ITS SWF

Promote intra-African investments

Enhance productivity through investing in Kenya's growth sectors

Invest in infrastructure and hospitality sectors

Invest in agri-business, water and power generation and transmission

Strengthening the private sector in development partnerships

Looking beyond macroeconomic stabilization to investment return maximization

90. Key Assumption on Formula: Any formula on how to share royalty revenues in Kenya today would be based on abstract assumptions as to need, applications prioritization, as well as likely impact of a resource base pegged to any threshold that could be picked. It is consequently recommended that the proposed formula be adopted as the basis for the management and applications of natural resource royalties across Kenya from now. However, this formula should be subjected to review every three to five years in tandem with the Government's Medium Term Expenditure Framework to economic planning. The review should be based on experienced reality, observed impact, and the capacity of communities to determine how to utilize their resource revenues.

91. Data Collection: The formula reviews at the suggested intervals would not be meaningful unless deliberate structures are put in place for the collection and analysis of relevant data that can be used to model both the quantum on how to better distribute royalty wealth (in terms of optimal percentages to be allocated, and particularly at the community level). This duty should be made a statutory duty.

92. Registrar of Natural Resources: The draft Royalties Bill proposes the institution of Registrar of Natural Resources. We recommend that the obligation on data collection be reposed in this institution in the draft Bill, and its functions fully elaborated. It is our further recommendation that the Registrar's function in this regard should entrench the EITI principles at a generic level such that they find application across all regulated sectors/activities under the proposed Bill, together with the appropriate Equator Principles on community consultations – and how during each review period, those principles have found application in all activities around natural resource exploitation in Kenya.

93. **Recommendations for the draft Bill**: It is therefore recommended that –

    a. **Formula**: The above formula on royalty revenue sharing be adopted by the Senate Committee, and be written into the draft County Royalties Bill 2013;

b. **Data**: section 3(b) of the draft Bill be amended to identify the minimum types of data necessary to support empirical reviews of the revenue sharing formula every 5 years. This responsibility should be allocated under the law to a named entity.
c. **Registrar**: The Registrar's functions be elaborated in deeper detail to account for all elements of concern to benefit sharing identified in this report.

Applications of Resource Rents, Taxes, Royalties, Surcharges, etc

94. National level applications would tend to differ from county level, and sub-county level applications because developmental priorities at those levels vary.

95. At the national level, applications would normally extend to the broad parameters identified under Art.201-203 of the Constitution, and would include –
    i. Economic stabilization programmes/expenditure
    ii. Sustainability of natural resources
    iii. Equalisation (fiscal)

96. At the county and community levels, these would include -
    i. Capacity building in budgetary financing, entrepreneurship
    ii. Civic education
    iii. Borrow from Art.174 (devolution)
    iv. Direct distribution to pre-defined stakeholders (institutionalised – grants/bursaries)
    v. Creation of fiscal management tools such as trust funds
    vi. Local content development programmes

97. The amount allocated is to be used for: Restoration activities, projects aimed at improving standards of living for youth, women, underprivileged and disabled persons. Such projects should be identified on the basis of consultation between county officials and community representatives and the civil society.

98. For sustainability objectives, a portion of the amount

HOW TO GROW A SOVEREIGN WEALTH FUND

Deposit into the SWF all surplus monays generated by Kenya's excractive industry income

Deposit into the SWF taxes on all and gas.

Invest in petroleum exploration, production and ownership of oil and gas fields.

Invest in blue chip companies within and outside Kenya.

Pursue portfolio diversification – horizontally and vertically.

DO NOT apply natural resource earnings to populist ideologies like welfare spending to lower income taxes.

apportioned to the county could be allocated to a perpetual fund to be used only in case of an emergency of considerable magnitudes identified through criteria to be set by the senate but in consultation with communities.

PART VII – GOVERNANCE FRAMEWORK FOR PROPOSED FISCAL REGIME

99. Governance can be understood as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the mechanisms, the processes, and institutions through which citizens and groups articulate their interest, their legal rights, meet their obligations and mediate their differences.[1]

100. To effectively serve the development objectives of the proposed Bill on Royalties, the governance framework will need to address transparency and accountability needs. These elements require that

a. natural resource revenues are declared when earned,
b. revenues are declared when received by Government,
c. shared benefits are accounted for, and
d. investments in new capital for the future are transparent, accounted for and sufficiently researched.

101. An effective governance framework would also promote the Equator Principles, at appropriate levels, and particularly with respect to effective community engagement by investors.

102. Finally, an effective governance framework must rest on an adaptive system of administration, supported by continuous monitoring, evaluation and evidence-led adjustments that ensures the system remains fit-for-purpose, achieves all the canons of effective fiscal regimes, and mainstreams the underpinning principles of progressive benefit sharing.

Guiding principles

103. With the preceding overarching elements of a good governance framework for royalty administration in Kenya, the following principles are recommended as guides to governance in benefit sharing:

a. Transparency
b. Accountability
c. Representation
d. Rule of law
e. Equitable distribution of resources

Key Governance Structures

104. Flowing from the canons of a good fiscal regime discussed earlier, it is recommended that a three-tier governance framework be adopted for the management of natural resource revenues in

[1] (United Nations Development Programme 1997, p. iv).

Kenya. These structures would sit respectively at the national, county and community levels. This approach mirror's Kenya's overall governance framework, and promotes the constitutional aspiration of self-actualization within each administrative unit of public life.

105. The principle of public participation should be built into the participation structures within the three-tier governance structure as proposed below:

a. National Natural Resource Council
b. County Natural Resource Committee
c. Community Natural Resource Committee.

106. The proposed Bill on Royalties should clearly enunciate the appointments procedure and the qualifications criteria to be applied in constituting the membership of each natural resource institution recommended in the preceding paragraph.

107. Drawing from earlier discussions in this study, the governance framework would furthermore require a collector, assessor and administrator of royalties, supported by a special fund into which all royalty collections shall be paid, and out of which the royalty distributions shall be made in accordance with the proposed formula. The collector/administrator will require some minimal compensation for its administrative role, and the principles to guide this latter issue need to be declared under law.

108. Also as alluded earlier, data collection is a crucial function in royalty administration and the data collection function should be well articulated in the institutional and governance framework of the bill.

109. In effect, on the basis of this paper, there is sufficient ground for a comprehensive re-drafting of the proposed bill on royalties, establishing and defining a clear system for the definition of royalty, how it should be assessed, when it should be payable and by whom, how it should be collected, administered and accounted for, how it should be distributed and among whom it will be shared, as well as how it should be applied at level of distribution.

PART VIII – PROPOSED ADJUSTMENTS TO THE DRAFT COUNTY ROYALTIES BILL 2013

110. The proposed bill on royalties does not impose royalties on natural resource exploitation activities. It is an administrative piece of legislation.

111. On the basis of many issues canvassed in this legislative guidance with respect to the collection, sharing and applications of natural resource royalty revenues, however, it is our informed view that the current draft Natural Resources (County Royalty) Bill 2013 needs to be improved in many respects, including particularly the following –

a. The structure of the bill, from a sequencing perspective, should start with the establishment of institutions critical to the effective implementation of the law. These institutions should reflect the governance framework outlined in the preceding chapter.

b. Functional allocation amongst the various administrative structures should embed the underpinning principles of a good governance framework – transparency, accountability, representation, rule of law and equitability;
c. The bill should be imbued with a fiscal content – which must indicate what revenues are classed as royalties under the law, who pays, how payments are to be assessed, the payments collection system, duties of the collector, how collected revenues are remitted to the centre, the revenue re-distribution mechanism, reporting and accounting standards, and all matters associated to this process. The key parameters for such fiscal continent should be adapted from this legislative guide on royalties.
d. A number of key definitions need to be provided and settled under this proposed law, in addition to those already suggested under the framework draft bill by the Senate Committee on Royalties legislation.
e. The bill should provide both a vertical and a horizontal royalty sharing formula – as recommended in this legislative guide.
f. At the horizontal level, the bill should attempt the enunciation of priority expenditure heads linked to Vision 2030 – again as recommended in this legislative guide.
g. The bill should provide for uses of shared benefits as generic clusters of possible engagement areas for communities.
h. The bill should also embed standards of accountability in the use and application of distributed benefits. To this end, data collection and analysis responsibilities need to be created, and an annual reporting mechanism be established to support progressive knowledge management on benefits impact among Kenya's communities.
i. Systems for structured monitoring and evaluation should be built into the proposed bill.
j. Penalties for non-compliance with the law should be created.
k. The bill should secure harmony with the Constitution, existing laws (unless such need to be amended for good reason by this law), and with various legislation currently under development. In this particular respect, it would be important for the Senate Committee on Royalties legislation to broach necessary dialogue with the promoters of the various related bills, including the *Mining Bill 2013, The Natural Forestry (Conservation and Management) Bill 2013, Energy Bill 2013, Water Bill 2012* and the *Wildlife Conservation and Management Bill 2013*.
l. The bill should bring to an end the practice of discretions being vested in Cabinet Secretaries to waive royalties – and should aim to trigger necessary amendments to existing legislation, while setting the agenda for the other draft bills proposing provisions on benefit sharing in this respect as indicated in (k) above.

112. **In view of the fundamental character of the amendments necessary to improve the current draft bill on county royalties, it is recommended that the Senate Committee originates a FRESH bill, not based on the earlier drafts, but one that rides on issues of principle, objective and functionality – all parameters canvassed in this report. Attempting to amend and improve existing draft bills will not avoid the weaknesses defining the faulty drafts. It is the view of the consultants that the current draft bill is incurable as a draft, hence the recommendation for the development of a completely new bill riding on the key principles enunciated in this document. This will achieve speed and economy, as well as precision in delivering on the corporate wishes and vision of the Senate.**

113. **To inform that process, we have developed a template of a bill that the Senate Committee could, if it sees fit, adopt as a working template for this purpose. The**

recommendations are not cast in stone, and the template could be re-worked as necessary to make it fit for purpose.

THE NATURAL RESOURCES (ROYALTIES) BILL, 2013

A Bill for

AN ACT of Parliament to make provision for the efficient, transparent, accountable and sustainable collection, administration and sharing of natural resource royalties and other accruing benefits to counties and for purposes connected therewith.

BE IT ENACTED by the Parliament of Kenya, as follows—

PART 1	**Short Title**	1	This Act may be cited asthe Natural Resources (Royalties) Act, 2013.
	Interpretation	2	Define key terms including – • Benefit • Community • Local community • Royalty • Divisible royalty • Natural resources • Mineral
	Objects	3	Elaborate the objects and aims of proposed legislation – draw from Senate Committee ToRs and the objectives identified in Consultants' fiscal policy paper. Under a separate section in this part, include a set of the core guiding principles drawn from the canons of a good fiscal regime elaborated in the said fiscal policy paper.
	Institutions	xx	Establish all the institutions necessary for the effective implementation of the proposed law – and the fiscal policy paper recommends a three-tier institutional structure at the national, county and community level. These provisions will take up several sections in the proposed bill.
PART II	**Special Natural Resource Fund**	Xx	Establish this fund as recommended in the fiscal policy paper. This fund will receive all royalty revenues collected by the royalty collector under the proposed bill. Elaborate the fund's administrative structure, and the fiscal policy paper strongly advises administration at the national level. Nominate the fund's administrator and set out in elaborate detail the fund's functions. Elaborate carefully the applications of the fund – and it is recommended this be linked to the revenue sharing formula recommended in the fiscal policy paper.
	Registrar of	Xx	Establish this office and function. Clarify the appointing

	Natural Resources		authority and dictate the appointment procedure. Clearly set out the functions of the administrator – drawing from the fiscal policy paper. It is further recommended that the registrar should be given responsibility for implementing the EITI principles in Kenya. Key issues addressed by the EITI programme to be extracted including – • Declaration of natural resource payments by corporates • Declaration of natural resource receipts by Government • Accountability over the uses and applications of the natural resource revenues
PART III	Charge and Collection of Royalties	Xx	Define royalty. Identify sources of royalty. Include all charges of equivalent effect – see recommendations in the fiscal policy paper for guidance. Include here the relevant guiding principles established in the fiscal policy paper – from efficiency to revenue maximization.
	Collection of Royalty		Establish the institutional framework for the collection of royalties. The fiscal policy paper recommends that this function be given to the Kenya Revenue Authority owing to its presence in every county, as well as its entrenched systems and practices that would make this particular function readily implementable for them. Establish a mechanism for collection, assessments and disputes management. Also clarify the question of timing of royalty payments. Elaborate here as necessary the concomitant principles of transparency, accountability and progressivity as discussed in the fiscal policy paper.
PART IV	Sharing Formula	Xx	Prescribe the royalty revenue sharing formula. Enunciate the criteria and principles and rationales for the formula – it is recommended that these be drawn from the fiscal policy paper. Elaborate the sharing mechanism and accountability standards. Establish duty to keep records – and identify the records to be obligated under statute.
	Applications of Royalty	xx	Carefully detail the possible range of application options for the shared/distributed royalty. The fiscal policy paper makes a number of possible applications/uses.
	Offences and Penalties	xx	Establish offences and penalties to support the efficient implementation of this proposed law.
PART V	Transitional and Provisions	Xx	Amendments proposed for various existing legislation.

Savings	Include any questions touching on cross-cutting principles – so that this proposed law becomes the controlling law on all questions royalty, regardless of economic sector.
Schedules	

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The Water Bill 2012

The Wildlife Conservation and Management Bill 2013

THE NATURAL RESOURCES (COUNTY ROYALTIES) BILL, 2013

A Bill for

AN ACT of Parliament to make provision for the sustainable exploitation of natural resources and the equitable apportionment of royalties and other accruing benefits to counties and for purposes connected therewith.

ENACTED by the Parliament of Kenya, as follows—

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Natural Resources (County Royalties) Act, 2013.

Interpretation

2. In this Act, unless the contrary or its alternative be stated expressly-

"accruing benefits" means a portion of financial and other benefaction to which communities in mining areas are entitled to and shall receive from the proceeds and mining and related activities;

"benefit" means gains, proceeds or profits from the exploitation of natural resources;

"benefit sharing" means the distribution of a portion of proceeds of and gains derived from mining and related activities to communities affected by mining operations and those in whose locality mining takes place;

"community" means a group of individuals or families who-

(i) share a common heritage, interest or stake in

identifiable land, land based resources or benefits that may be derived from the land based resources;

(ii) live in a common location or shared geographical location;

(iii) are organized around common values and social cohesion; and

(iv) live within social units larger than a household.

"local communities" means communities living so near to a natural resource as to be affected by its exploitation or the people living within so close a proximity to natural resources as to be affected by their exploitation, and may include business entities which invest in the exploitation of natural resources, organized social units that have a common interest in identifiable natural resources and which are the ultimate owners and protectors of natural resources where the resources are derived;

"mineral" means a substance formed by, or subject to, a geological process whether in solid, liquid or gaseous form occurring naturally in or on the earth or in or under water and includes the minerals listed in Second Schedule but does not include petroleum or groundwater;

"natural resources" means the physical non-human factors and components, whether renewable or non-renewable, including—

(*a*) sunlight;

(*b*) surface and groundwater;

(*c*) forests, biodiversity and genetic resources; and

(*d*) rocks, minerals, fossil fuels and other sources of energy;

"royalties" means non-tax revenue in the form of compensation for the use of natural resources, expressed as a percentage of receipts from using the natural resources or as a payment for each unit produced.;

Objects of the Act

3. The objects of this Act is to, among other things –

(a) catalogue natural resources and the attendant rights as well as entitlements that shall be enjoyed by the people of Kenya;

(b) provide authoritative and reliable data, statistics and inventory of the regime of the natural resource base in Kenya to ensure its appropriate development and management;

(c) harness, develop, enhance and manage access to the entitlements and rights accruing from the sustainable use, exploitation, development and processing of natural resources and the attendant attributes of good governance and justice;

(d) provide for the proper and prudent administration, development and management of the country's natural resource base and related matters;

(e) specify the regulated activities with respect to natural resource royalty imposition, collection and administration;

(f) delineate the non-tax revenues from natural resources that are classed as royalties for purposes of this Act;

(g) provide a framework for the centralized management and application of natural

resource royalties in Kenya; and

(h) establish criteria for natural resource benefit sharing in Kenya.

PART II – INSTITUTIONAL FRAMEWORK

Establishment of the National Natural Resources Commission

4. (1) There is hereby established a National Natural Resources Commission consisting of:
   a) the Cabinet Secretary responsible for finance;
   b) the Cabinet Secretary responsible for natural resources;
   c) the Cabinet Secretary responsible for devolution;
   d) two representatives of the Council of Governors;
   e) two representatives of the National Land Commission;
   f) two representatives of a relevant Private Sector organization appointed by the President; and
   g) one representative of the Institute of Chartered Arbitrators.

(2) The Chairperson of the Commission shall be appointed by the President.

Functions of the National Natural Resources Commission

5. (1) The functions of the National Natural Resources Commission shall be;
   a) general supervision of the exploitation of natural resources;
   b) approval of budgets of the County Natural Resources Committees; and
   c) the harmonization and coordination of the functions of all sub-sector policies and legislation for the proper and sustainable development and management of Kenya's

natural resources.

(2) In carrying out its functions under this Act, the Commission shall not impinge upon, or in any way whatsoever impede the effective operation of the mandates and responsibilities of the subject sub-sector agencies as by law established.

(3) The Commission shall formulate and duly publish its own rules of procedure as well as regulations incidental or ancillary thereto.

Establishment of the County Natural Resources Committees

6. There is established the County Natural Resources committee in every county in Kenya where natural resource exploitation and management activities occur, that shall consist of:
   a) the Senator;
   b) the Governor;
   c) two representatives of the private sector; and
   d) two representatives of Cabinet Secretary responsible for natural resources.

Functions of the County Natural Resources Committees

7. The functions of the County Natural Resources c Committees shall be to;

   a) provide general supervision of exploitation of natural resources of the county;
   b) approve budgets of Community Natural Resources committees;
   c) arbitrate disputes between host communities and investors;
   d) make returns to the National Natural Resources Commission on utilization of shared benefits at the County level; and
   e) design and implement fiscal equalization measures at the county level in collaboration with the County Government.

Establishment of the Community Natural Resources Committees

8. (1) There is hereby established the Community Natural Resources Committees in every county where natural resource exploitation and management activities occur.

(2) The community committees shall consist of;

a) the area member of Parliament;
b) representative of the private sector;
c) ward representative; and
d) representative from the Ministry responsible for Natural resources.

(3) Without prejudice to the generality of the foregoing, where the exploitation of natural resources affects a community outside the boundary of one county, the Governor of the neighbouring community shall appoint a representative to the host community committee.

Functions of the Community Natural Resources Committees

9. The functions of Community Natural Resources committees shall be to;

a) budget for utilization of shared benefits;
b) supervise utilization of shared benefits;
c) keep records for utilization of shared benefits;
d) approve expenditure on prioritized projects;
e) ensure responsible exploitation of Natural resources in accordance with written law; and
f) design programs that promote conservation and environmental remediation.

PART III – OWNERSHIP OF NATURAL RESOURCES

Ownership of natural resources in Kenya

10. (1) All natural resources are the property of, and shall be used, utilized and exploited by, and for the benefit of the people of Kenya.

(2) Every citizen of Kenya shall have unfettered access to, and make appropriate derivation from, the natural resource base of Kenya;

Provided that such access and process of derivation shall not be to the detriment of, or in contradistinction to, the interest of others, particularly in respect of the provisions of the laws governing property rights

(3) All rights and entitlements, within the meaning of the provisions of Article 69 (1) of the Constitution shall be equitably apportioned to the local communities, county and national governments without any discrimination whatsoever

(4) The Cabinet Secretary shall, in liaison with the Council, and upon due advice by the National Land Commission as well as sector-specific lead experts, in a participatory manner, establish formulae and criteria to be relied upon in effecting the requirements of the foregoing provisions.

PART IV - EQUITABLE APPORTIONMENT, SHARING AND DISTRIBUTION OF RIGHTS AND ENTITLEMENTS

Payment of royalties

11. (1) The holder of a mineral right shall pay *ad valorem* royalty on various mineral classes won by virtue of the mineral right at rates which shall be determined by the Cabinet Secretary through regulations published in the Gazette.

(2) The regulations made under subsection (1) may be renewed and amended every two years.

(3) The holder of a mineral right shall pay royalty on a mineral on receipt of the payment or other consideration for the mineral.

(4) A royalty payment shall be accompanied by the prescribed form on which shall be entered –

a) the name of the holder;
b) particulars for the mineral sold or disposed of; and
c) such amount of the payment and such other terms as may be necessary.

(5) The Cabinet Secretary may make regulations on variations depending on the mineral.

Valuation base for royalties

12. (1) For the purpose of determining the royalty payable under this Act, the gross sales value of minerals shall be their gross sales value at their point of sale.

(2) In this section –

"gross sales value" means the value receivable at the point of sale in an arms-length transaction without discounts, commissions or deductions for the mineral on disposal;

"point of sale" means –

(a) the mine gate for domestic sales when first extracted from the mine site;
(b) the plant gate for minerals sold after beneficiation for the first saleable mineral product; and
(c) the point of export for minerals that are exported;

"arms-length transaction" means a sale transaction in the open market where, the purchase price for the sale –

(i) is not influenced by any special relationship or other arrangement between the parties to the transaction; and

(ii) is not affected by any non-commercial considerations; and, specifically excludes any barter, swap, exchange, or transfer price arrangements or restricted transaction that is associated with special financial, commercial or other considerations.

(3) Where it appears to the Cabinet Secretary that minerals have been disposed of other than in an arms-length transaction, the gross sales value of the minerals shall be such amount as is determined by the Cabinet Secretary in accordance with this section.

(4) The Cabinet Secretary may make regulations to prescribe a different royalty valuation method for construction minerals.

Royalties and charges of equivalent effect

13. For purposes of this Act royalty fees refer to;

1) all charges, fees and licenses resource rents, and other impositions, royalties, surcharges prescribed under the Mining Act cap..... and any other legislation.

2) all fees and charges in respect of use of National parks.

3) all fees and charges in respect of exploitation of forests.

4) non tax charges, royalties, impositions, listed in the second schedule imposed under legislations listed in the third column of that schedule.

Self assessment of royalties

14. (1) At the end of each month, a holder of any rights granted under the mining Act or any other Act shall submit to the Commissioner General a self-assessment of royalties due to the Government supported by proof of payment.

(2) The Commissioner may require that all monthly returns be submitted to him in electronic form

(3) Holders of contracts in respect of petroleum and gas extraction shall, at the end of each three month period or any period determined in the contract, submit a return accompanied by proof of payment of the government share.

(4) The Commissioner General may, on verification of the self-assessment against the information available to him require the rights holder to furnish additional payment and that payment shall be on demand become revenue due.

(5) All payments shall be deposited in an account nominated by the commissioner general in consultation with the exchequer.

Assessment of royalties

15. (1) The Commissioner General shall prescribe guidelines and deploy such officers as may be necessary for smooth assessment, collection and accounting of revenue from royalties.

(2) Every authorised officer appointed under this section shall enforce, and ensure due compliance with, the provisions of this Act and the regulations, and shall make all due inquiries in relation thereto.

(3) Every authorised officer appointed under this section shall, on demand, produce such documents establishing his identity as may be approved by the Commissioner General

(4) Every authorised officer shall, in carrying out the provisions of this Act, regard and deal with all documents and information relating to tax and all confidential instructions in respect of the administration of this Act which may come into his possession or to his knowledge in the course of his duties as secret.

(5) Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

Timing of payments

16. (1) Within three months after the end of each month a statement certified by the Company's auditors shall be submitted to the Commissioner General showing the gross sales, revenue and profits. The statement shall be accompanied by a self-assessed payment of the royalties due.

(2) All royalties shall be remitted monthly not later than on the 20th day of the month following the month when they fell due.

(3) Collection of royalty revenue shall be enforced by an agency appointed by the Cabinet Secretary and the revenue shall be remitted at the same time as other tax revenues.

(4) Royalties in respect of petroleum oils shall be remitted to the Commissioner General in accordance with production sharing contracts negotiated and concluded in accordance with the petroleum Act Cap 308.

(5) If it is proved to the satisfaction of the Commissioner General that the company has paid royalty for any accounting period in excess of the amount which is properly chargeable the Commissioner may set off the amount overpaid against any royalty due for the following accounting period. Similarly If the Commissioner that determines that the company has paid royalty for any accounting period less amount than the amount which of the amount which is properly chargeable, the Commissioner shall demand immediate payments any royalty due.

(6) A royalty or other charge payable under this Act and which remains unpaid shall be deemed to be a civil debt due to the national government recoverable summarily.

Modality for sharing divisible revenue

17. (1) Not more than four months prior to the end of each financial year, the Cabinet Secretary shall publish the ceilings of the share of revenue to be allocated to each county from the divisible revenue.

(2) The respective county committees shall, guided by the ceilings set expenditure priorities which will be subject to approval by the National budget office.

(3) Host Community committees shall set their expenditure estimates and submit their budgets to the county committees for approval.

(4) Subject to the approved budget ceilings, the host community may draw for expenditure, funds from the host community fund/account.

(5) There shall be no disbursements from the host community fund/account without prior approval of the County Natural Resources Committee.

5) (6) At the end of each financial year, host community committees shall submit audited

reports of income expenditure to the county committees.

6) (7) Expenditure reports of the county committees shall be subject to audit by the controller and auditor general.

Prohibition on disposal of minerals while royalties outstanding

18. (1) The holder of a mineral right shall not sell or otherwise charge or dispose of minerals won by virtue of that right until –

a) all fees, royalties, taxes and other charges levied under this Act have been paid in respect of the minerals; or
b) arrangements approved by the Cabinet Secretary to secure those payments have been made.

(2) Where minerals are sold or otherwise charged or disposed of contrary to subsection (1) no title to nor property in the minerals shall pass to the other party to the transaction.

(3) All fees, royalties, taxes and other charges payable under this law shall be paid into the Consolidated Fund.

Sharing of royalties

19. (1) Royalties and other accruing benefits shall be apportioned only as provided in this section.

(2) The sharing of royalties between Central Government, country government and the community shall be as follows—

(a) National Government - 75%;
(b) County Government - 20%
(c) Community - 5 %

(3) Where more than one county or community is

involved in sharing of royalties, the royalties shall be shared proportionately.

(4) Every community benefitting from royalties must annually submit a proposed programme with budget and to be used thereat as appropriate.

(5) Community programmes approved under subsection (4) shall be subjected to financial audit on the utilization of the resources expended. The community will submit a report on the usage and disbursement of royalties to the Secretary who may seek clarification as appropriate. The programmes will be limited to public utilities on education, health water and roads.

PART V – ADMINISTRATION, DEVELOPMENT AND MANAGEMENT OF NATURAL RESOURCES

Registrar of Natural Resources

20. (1) There is established a Registrar of natural resources

(2) The Registrar shall appoint officers as may be necessary for the performance of duties under this Act.

(3) The functions of the Registrar Shall be;

a) We recommend that the obligation on data collection be reposed in this institution in the draft Bill, and its functions fully elaborated. It is our further recommendation that the Registrar's function in this regard should entrench the EITI principles at a generic level such that they find application across all regulated sectors/activities under the proposed Bill, together with the appropriate Equator Principles on community consultations –

and how during each review period, those principles have found application in all activities around natural resource exploitation in Kenya.

b) Registrar to also implement the Extractive Industry Transparency Initiative in the administration and applications of royalty revenues from natural resources –
   (i) Publish all income earned by natural resource companies in Kenya
   (ii) Publish all royalties collected by the Kenya Revenue Authority and received into the National Royalties Fund
   (iii) Publish all royalty revenues shared among all recipient beneficiaries,
   (iv) Publish how each level of government and the communities apply their received royalty income
   (v) Publish information on how royalty revenue streams within the Natural Resource Sovereign Wealth Fund
   (vi) Other related transparency and accountability publications consistent with the objectives of this Act.

Functions of the Registrar

21. (1)The Office of the Registrar of Natural Resources shall be managed by the Registrar appointed in accordance with the provisions of the First Schedule to this Act

(2) The Registrar and other officers appointed shall exercise such powers and perform such duties as may be conferred upon them under the provisions of the State Corporations Act.

(3) The Cabinet Secretary for the time being assigned the duties incidental to natural resources shall, in consultation with relevant organs, and upon the advice of lead

agencies, formulate rules and regulations, and within thirty days cause the same to be published in the gazette, regulations that shall spell out the specific functions and responsibilities of the Registrar.

(4) The Registrar may, in the ordinary course of duty, make such decisions as may relate to, and are in the furtherance of, the proper, fair and just development and management of Kenya's natural resource base

Review of the decisions of the Registrar

22. A decision of the Council may be enforced by the Court as if it had been given or made by the Court.

Contempt of Natural Resources Council

23. (1) A person who willfully and without lawful excuse disobeys an order or direction of the Council in the course of the hearing of a proceeding, commits an offence.

PART VI – CONFLICT RESOLUTION AND MEDIATION IN THE NATURAL RESOURCE BASE

Determination of disputes and resolution of conflicts

24. (1) The Natural Resources Regulatory Council is hereby established.

(2) The Council shall in its membership consist of the following:

(i) The Chairman, who shall be a nominee of the National Land Commission

(ii) A representative of the Kenya Private Sector Alliance

(iii) A person who has served as Judge in the Environment and Land Court, or its jurisdictional equivalent, who

shall be the secretary to the council

(iv) A representative of the Association of Professional Societies in East Africa

(v) A representative of the Institute of Chartered Arbitrators

Other functions of the Council

25. (1) The functions of the Council shall include the harmonization and coordination of the functions of all sub-sector policies and legislation for the proper and sustainable development and management of Kenya's natural resources

Provided that in carrying out its functions the Council shall not impinge upon, or in any way whatsoever impede the effective operation of the mandates and responsibilities of the subject sub-sector agencies as by law established

(2) the Council shall formulate and duly publish its own rules of procedure as well as regulations incidental or ancillary thereto

Resolution of disputes

26. All disputes and conflicts arising out of natural resources rights and entitlements shall, in the first instance, be resolved through the application of the duly established rules of procedure as well as regulations established by the Council.

Resolution of subsequent disputes

27. In subsequent instances, any disputes in the manner captured in the foregoing provisions may be resolved through further reference to the Court, either by way of an appeal, or by way of first instance applications

Provided that every effort shall be made to

seek to reach consensus in the process of resolution of natural resources conflicts.

Reference of disputes to the Council

28. A reference to the Council in the first instance and, in all other cases to the Court, shall be submitted by application in the prescribed manner.

PART VII – THE NATURAL RESOURCES GENERAL FUND

The Natural Resources General Fund

29. There is established the Natural Resources General Fund.

Monies of the Fund

30. The Fund shall consist of such monies as may be obtained or raised within the framework of the provisions that govern financial operations in Kenya.

Council to manage Fund

31. The Fund shall be managed and operated by the Natural Resources Regulatory Council.

PART VIII – THE NATURAL RESOURCES FUTURES FUND

The Natural Resources Futures Fund

32. There is established the Natural Resources Futures Fund.

Monies of the Fund

33. The Fund shall consist of such monies as may be obtained or raised within the framework of the provisions that govern financial operations in Kenya.

Financial appropriations

34. The Fund shall consist of monies voted by the National Assembly and approved by the Senate in the normal course of financial

appropriations as per the regulatory framework governing financial and fiscal policy and management in Kenya

Board of Trustees to manage Fund

35. The Fund shall be managed and operated by a Board of Trustees duly nominated by the Natural Resources Regulatory Council and vetted and approved within the framework of recruitment and appointment public officials in Kenya.

PART IX – NATURAL RESOURCES AUDIT

Audit of natural resources base

36. There shall be an audit of the natural resources base of the Kenyan territory.

Audit to be conducted regularly

37. The audit shall be conducted regularly pursuant to the Regulations and Guidelines under which Natural Resources Auditors shall be registered to operate.

Keeping of records

38. (1) All committees established in this Act shall keep records of income and expenditure.

(2) Audited records of (1) above shall be available for inspection and scrutiny by members of the host committee.

(3) Host community committees shall submit annual reports of income and expenditure to the county committee.

(4) county committees shall submit annual returns to the cabinet secretary

Superintention of

39. The Natural Resource Base in Kenya shall be

natural resources base

superintended over by Natural Resources Auditors.

Registration of natural resources auditors

40. A person shall not practice as a Natural Resources Auditor unless they have been trained, educated and qualified and duly registered under the Regulations and Guidelines of the Natural Resources Society of Kenya.

Legislation for NRSK

41. The provisions of the NRSK shall be governed by appropriate legislation duly enacted to anchor the framework of the Society, under the Societies Act.

Regulations and Guidelines

42. The powers, roles, responsibilities of the Natural Resources Auditors shall be spelt out in the Regulations and Guidelines on which the NRSK is anchored.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal purpose of this Bill is to provide a legislative framework for the management of natural resources that would ensure that counties benefit from the accruing benefits and royalties from natural resources found in those counties.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

This Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill concerns county governments in terms of Article 110(1)(a) of the Constitution in that it contains provisions affecting the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution.

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the.....2013

SEN. AGNES ZANI.
Chairperson,
Select Committee on County Royalties on Natural Resources.

MINUTES OF THE 1ST SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUED FROM NATURAL RESOURCES IN THE COUNTIES HELD ON TUESDAY 9TH JULY 2013 IN THE BOARDROOM, 3RD FLOOR K.I.C.C. BUILDINGS AT 9.35 AM.

PRESENT

1. Sen. Peter Mositet
2. Sen. Wamatangi
3. Sen. Danson Mwazo
4. Sen. Catherine Mukiite
5. Sen. (Dr.) Agnes Zani
6. Sen. Stephen Sang'
7. Sen. Chris Obure
8. Sen. (Dr.) Wilfred Machage
9. Sen. Henry Ole Ndiema
10. Sen. Hassan Omar Hassan

ABSENT WITH APOLOGY

1. Sen. Boy Juma Boy

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. (Prof.) John Lonyangapuo
3. Sen. Liza Chelule
4. Sen. Catherine Mukiite
5. Sen. David Musila
6. Sen. Amos Wako
7. Sen. Kipchumba Murkomen

IN ATTENDANCE

1. Sen. Mohammed Kuti

SENATE

1. Mr. J. Nyegenye	-The Clerk
2. Ms. Mary Chesire	-Deputy Director, Committee Services
3. Ms. Joyce Aluoch	-Clerk Assistant II
4. Mr. Ibrahim Leruk	- Clerk Assistant III

MIN. NO. 01/2013 PRELIMINARIES

The sitting commenced at 9.35am with a word of prayer by the Clerk.

MIN. NO. 02/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after it was proposed by Sen. Hassan and seconded by Sen. Zani.

MIN. NO. 03/2013 ELECTION OF CHAIRPERSON

The Clerk briefed the members on the conduct of the elections.

Nomination

The Clerk received Sen. Zani's name as the sole nominee for the position of the Chairperson of the Committee after she was proposed by Sen. Mositet and seconded by Sen. Wamatangi.

Declaration of duly elected Chairperson

There being no other nominee for the position of the Chairperson, Sen. (Dr.) Agnes Zani was elected unopposed and declared the duly elected Chairperson of the Committee. The Clerk congratulated the Chairperson for her election and invited her to give an acceptance speech.

The Chairperson's acceptance speech

Sen. Zani expressed gratitude to the members for supporting her motion and the amendments thereto. She informed the members that the Committee would hold regular meetings so as to dispense with the legislation as soon as is possible. She further added that, she had already begun preliminary work on the legislation. She concluded by appreciating the members' dedication and was hopeful that the Committee would be successful.

MIN. NO. 04/2013 ELECTION OF VICE-CHAIRPERSON

Nomination

The Clerk received Sen. Wamatangi's name as the sole nominee for the position of the Vice-Chairperson of the Committee after he was proposed by Sen. Sang' and seconded by Sen. Hassan.

Declaration of duly elected Vice-Chairperson

There being no other nominee for the Vice- Chairperson's position, Sen. Wamatangi was elected unopposed and declared the duly elected Vice-chairperson of the committee. The Clerk extended his congratulations to him and invited him to give his acceptance speech.

Vice-Chairperson's acceptance speech

Sen. Wamatangi appreciated the members' support of his election as the Vice Chairperson of the Committee. He expressed confidence that the members of the Committee would work together to discharge the agenda of the Committee.

MIN. NO. 05/2013 ANY OTHER BUSINESS

1. Sen. Kuti congratulated the Chairperson and the Vice-Chairperson for their election.
2. The Clerk introduced Ms. Joyce Aluoch as the Clerk assistant attached to the Committee.
3. The Clerk notified the members that the Motion whose resolution established the Committee did not set out the term of the Committee and that the matter would receive the attention of the Rules and Business Committee.

MIN. NO. 06/2013 DATE OF NEXT MEETING

The next meeting would be summoned by the Chairperson and notice would be circulated by the Committee Secretariat.

MIN. NO. 07/2013 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the sitting was adjourned at 9.50am.

SIGNED.....

(CHAIRPERSON)

DATE.....16/7/13.....

MINUTES OF THE 2ND SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUED FROM NATURAL RESOURCES IN THE COUNTIES HELD ON TUESDAY 16TH JULY 2013 IN THE BOARDROOM, 2ND FLOOR K.I.C.C. BUILDINGS AT 9.30 AM.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Wamatangi - Vice-Chairperson
3. Sen. Catherine Mukiite
4. Sen. (Prof.) John Lonyangapuo

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. Peter Mositet
3. Sen. Liza Chelule
4. Sen. Danson Mwazo
5. Sen. David Musila
6. Sen. Amos Wako
7. Sen. Kipchumba Murkomen
8. Sen. Stephen Sang'
9. Sen. Chris Obure
10. Sen. (Dr.) Wilfred Machage
11. Sen. Henry Ole Ndiema
12. Sen. Hassan Omar Hassan
13. Sen. Boy Juma Boy

IN ATTENDANCE

1. Sen. Ali Bule

SENATE

2. Ms. Joyce Aluoch - Clerk Assistant II
3. Mr. Ibrahim Leruk - Clerk Assistant III

MIN. NO. 08/2013 PRELIMINARIES

The sitting commenced at 9.30am with a word of prayer by the Clerk.

MIN. NO. 09/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after it was proposed by Sen. Mukiite and seconded by Sen. Wamatangi.

MIN. NO. 10/2013 CONFIRMATION OF MINUTES

The minutes were confirmed as a true record of the proceedings of the previous sitting held on 11th July 2013 save for Sen. Mukiite's name which was inadvertently included in the list of absent members.

MIN. NO. 11/2013 CONSIDERATION OF INDUCTION PROGRAMME/PROGRAMME OF ACTIVITIES

The members were advised that due to the limitation of the term of the Committee, the proposal to have an induction workshop could be shelved and instead, the Committee could consider its draft programme of activities.

However, the members maintained that the first workshop, which would be more than an induction workshop, would be imperative to equip them with the necessary information on natural resources in the country before embarking on the programme of activities. The suggested topics to be covered in the workshop would include:-

(i) How a bill is generated generally

(ii) Existing government policy on Mining and Natural resources(Ministry)

(iii) Mapping of exploited and exploitable natural resources in the country (Consultants from TARDA, KVDA)

(iv) Matters arising in regard to other existing legislation(Kenya Law Reform Commission)

The members were satisfied with their terms of reference as spelt out in the draft programme of activities prepared by the Clerk.

The Committee **resolved to hold its workshop from 28th-30th July 2013 at Enishapai Resort in Naivasha and engage Resource**

persons whose terms of reference would be clearly spelt out and a rapporteur to capture and compile presentations.

Action; Clerk

MIN. NO. 12/2013 ANY OTHER BUSINESS

1. The Chairperson informed the members that she had engaged a Legal Counsel and a Research Officers to begin preliminary work on the Bill.
2. The members agreed to have a core team within the Committee membership which will push through its agenda.
3. The members were advised to liaise with the Senators of the counties that they would be visiting to assist in mobilization of the communities therein.

MIN. NO. 13/2013 DATE OF NEXT MEETING

The next meeting would be summoned by the Chairperson and notice would be circulated by the Committee Clerk.

MIN. NO. 14/2013 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the sitting was adjourned at 10.20am.

SIGNED.....

(CHAIRPERSON)

DATE.....22/7/13.....

MINUTES OF THE 3RD SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON THURSDAY 22ND JULY 2013 IN THE BIG BOARDROOM, 4TH FLOOR K.I.C.C. BUILDINGS AT 10.25 AM.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Paul Wamatangi - Vice-Chairperson
3. Sen. Peter Mositet
4. Sen. Liza Chelule
5. Sen. Danson Mwazo
6. Sen. Chris Obure
7. Sen. (Dr.) Wilfred Machage

ABSENT WITH APOLOGY

1. Sen. Catherine Mukiite
2. Sen. Amos Wako
3. Sen. David Musila
4. Sen. Henry Ole Ndiema

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. Kipchumba Murkomen
3. Sen. Stephen Sang'
4. Sen. Hassan Omar Hassan
5. Sen. Boy Juma Boy
6. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

1. Ms. Joyce Aluoch -Clerk Assistant II
2. Mr. Austin Inyundele - Junior Legislative Fellow
3. Dr. Samuel Kiboi - University of Nairobi

MIN. NO. 15/2013 PRELIMINARIES

The sitting was called to order at 10.25am followed by a word of prayer.

MIN. NO. 16/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after it was proposed by Sen. Machage and seconded by Sen. Chelule.

MIN. NO. 17/2013 PRESENTATION ON DRAFT BILL

Members were briefed on the first working retreat for the Committee held at the Boma Hotel in Nairobi on 29th June 2013.

Similarly, the Chairperson explained to the members the need to engage Dr. Ichangi, to work hand in hand with the Legal Counsel in the furtherance of the Committee's mandate. He would be expected to give a perspective on natural resources while the Legal Counsel, Mr. Abisai would give the Legal perspective in the process of the drafting of the Bill .

Presentation by Mr. Abisai

Mr. Abisai explained that the draft Bill was not ready as he required the input of Dr. Ichangi. He however, took the members through the Association of Professional Societies in East Africa (APSEA) draft Bill and highlighted the following key areas for consideration:-

a. Definition of natural resources to be as wide as possible.

b. Possibility of requesting APSEA to finalize the draft Bill and present it to the Committee for scrutiny vis-à-vis the Constitution to bring the Bill within the mandate of the Senate.

c. Establishment of the basis of payment of two and a half percent of the gross value of the mineral as assessed by the Commissioner.

d. The fund to which the two and a half percent is deposited after collection.

e. Emphasis to be laid on the gross value as assessed by the Commissioner and not what is shared among the National Government, County Government and Community.

f. Law to compel utilization of profits accrued to compensate for interference with the environment.

g. The need for a paper on royalties in other countries prepared by an expert.

The Committee **resolved that Mr. Abisai would liaise closely with Dr. Ichangi on the above.**

Action; Mr. Abisai

MIN. NO. 18/2013 **PRESENTATION BY MR. KIBOI,- SENIOR LECTURER**

Mr. Kiboi gave a presentation on the topic "Methods of Royalties on natural resources used in other countries." He covered the following areas in his presentation:-

(a) Definition of royalties

(b) Optimal level of taxation on mining

(c) General approaches to assessing royalties

(d) Example of Botswana

(e) Types of royalties

The Committee **resolved to have Mr. Kiboi make a further research into how communities benefit from natural resources.**

Action; Mr. Kiboi

MIN. NO. 18/2013 ANY OTHER BUSINESS

1. The members were informed that Magadi Soda Co. Ltd. had contacted the Vice-Chairperson through Sen. Mositet and expressed interest to have a meeting with the Committee.

2. The Committee resolved to form a sub-Committee consisting of the Chairperson and the Vice-Chairperson to recommend the Counties to be visited. Magadi Soda Company would be considered as a priority.

3. It was suggested that the Committee requests for memorandum submitted to the Chamber of Mines, Community based Organizations etc for every county and subsequently prepare a holistic report.

4. The need to work expeditiously with all activities running simultaneously was expressed.

5. The Committee resolved to engage the Ministry of Mining as Key stakeholders.

6. The Committee resolved to meet with experts but with more focus on communities and civil society groups.

MIN. NO. 19/2013 DATE OF NEXT MEETING

The next meeting would be summoned by the Chairperson and notice would be circulated by the Committee Clerk.

MIN. NO. 20/2013 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the sitting was adjourned at 11.45am.

SIGNED.....
(CHAIRPERSON)

DATE.....21/9/13.....

MINUTES OF THE 4TH SITTING OF THE ADHOC COMMITTEE ON ROYALTIES 21ST SEPTEMBER, 2013 HELD AT THE SENTRIM LODGE AT 4.00PM

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen Paul Wamatangi - Vice-Chairperson
3. Sen. Peter Mositet
4. Sen. Boy Juma Boy
5. Sen. Catherine Mukiite
6. Sen. Henry Ole Ndiema

APOLOGY

1. Sen. Amos Wako
2. Sen. David Musila
3. Sen. Chris Obure
4. Sen. Hassan Omar Hassan
5. Sen. Liza Chelule

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. Kipchumba Murkomen
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Danson Mwazo
5. Sen. Stephen Sang'
6. Sen. Wilfred Machage

IN ATTENDANCE

1. Ms. Emmy Chepkwony – Clerk Assistant
2. Ms. Joyce Aluoch – Clerk Assistant
3. Mr. Polycarp Matara – Junior Legislative Fellow

MIN. NO. 21/2013 PRELIMINARY

The proceedings commenced at 4.30pm. The Chairperson offered a word of prayer.

MIN. NO. 22/2013 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented.

MIN. NO. 23/2013 **REVIEW OF THE NAROK COUNTY VISIT PROGRAMME**

The Committee reviewed its programme on the County visit to Narok and noted the need to hold a consultative meeting with the community leaving near the Maasai Mara Game reserve. It was agreed that the area County Assembly Member facilitates the Committee on the matter.

MIN. NO. 24/2013 **TIMELINES FOR THE BILL**

The Committee observed that it was working under a tight schedule as the Bill was expected by the House in the next one and half months.

It was therefore resolved as follows:-

1. **The report of the Committee to be circulated to members and the drafters of the Bill.**
2. **The secretariat to liaise with Mr. Abisai to have the draft Bill before the Committee in the next two (2) weeks.**

Action; Clerk

MIN. NO. 25/2013 **COMMITTEE FOREIGN VISITS**

The Committee proposed to tour two foreign countries with the objectives of benchmarking the legislations done by other jurisdictions on Royalties accruing from natural resources.

The following Countries were proposed:

- **Western Australia:** the Committee observed that Western Australia has long mining traditions and various legislations on distribution of royalties accruing from natural resources to the states and communities.
- **Ghana:** the Committee observed that The Draft Mining Bill, 2013 has borrowed a lot from Ghana's legislative framework on Royalties and noted that the visit would offer a lot of insight to the Committee in fulfilling its mandate.

MIN. NO. 26/2013 **ANY OTHER BUSINESS**

I. The Committee observed that it had received a lot of public support especially during its visit to Machakos County and expressed disappointment that the communities which have

suffered abject poverty for so long have their natural resources building beautiful houses that have earned rent for the residents of Nairobi County.

MIN. NO. 27/2013 **ADJOURNMENT & DATE OF NEXT MEETING**

There being no other business the meeting was adjourned at 5.05pm. The next meeting would be held on 22nd September at 9.00am.

SIGNED:.....

DATE:.....22/9/13.....

MINUTES OF THE 5TH SITTING OF THE ADHOC COMMITTEE ON ROYALTIES HELD ON 22ND SEPTEMBER, 2013 AT SENTRIM LODGE

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen Paul Wamatangi - Vice-Chairperson
3. Sen. Peter Mositet
4. Sen. Boy Juma Boy
5. Sen. Catherine Mukiite
6. Sen. Henry Ole Ndiema

APOLOGY

1. Sen. Amos Wako
2. Sen. David Musila
3. Sen. Chris Obure
4. Sen. Hassan Omar Hassan
5. Sen. Liza Chelule

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. Kipchumba Murkomen
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Danson Mwazo
5. Sen. Stephen Sang'
6. Sen. Wilfred Machage

IN ATTENDANCE

1. Ms. Emmy Chepkwony – Clerk Assistant
2. Ms. Joyce Aluoch – Clerk Assistant
3. Mr. Polycarp Matara – Junior Legislative Fellow

MIN. NO. 28/2013: PRELIMINARY

The proceedings commenced at 9.00am. The Chairperson offered a word of prayer.

MIN. NO. 29/2013: ADOPTION OF THE AGENDA

The agenda was adopted as was presented.

MIN. NO. 30/2013: PLANNING FOR THE OUTSTANDING COUNTY VISITS

The Committee planning its remaining county visits as follows:

Phase 1: Kiambu- Nakuru- Kakamega Counties

Phase 2: Turkana- Kwale and Taita Taveta Counties

MIN. NO. 31/2013: TIMELINES FOR THE BILL

The Committee observed that it was working under a tight schedule as the Bill is expected by the House in the next one and half months.

It was therefore resolved as follows:-

1. The report of the Committee to be circulated to members and the drafters of the Bill.
2. The secretariat to liaise with Mr. Abisai to have the draft Bill before the Committee in the next two (2) weeks.

MIN. NO. 32/2013: COMMITTEE WORKSHOP

The Committee resolved to hold a retreat with key stakeholders to facilitate pre-publication scrutiny and comments on the bill.

The following were identified as key stakeholders

a) The Senate Standing Committee on Agriculture, Land and Natural Resources
b) The National Assembly Committee on Environment, Water and Natural Resources – it was recommended that the Chairperson of the Committee reach out to the Chair of the National Assembly Committee on the matter.
c) The Commission for the implementation of the Constitution
d) The Transitional Authority
e) The Ministry of Mining
f) The Ministry of Energy and Petroleum
g) The Ministry of Environment, Water and Natural Resources
h) The Ministry of Land Housing and Urban Development
i) The County Government leadership
j) The Mining Community- Public
k) The Investors

N/B It was recommended that the retreat be staggered into three days to include meetings with Investors, public from the mining areas and the National and County Governments.

MIN. NO. 33/2013: ANY OTHER BUSINESS

I. Media Coverage was observed to be key during the County visits as it not only help to create public discourse on the matter it will enable the citizens to appreciate the work of the Senate. The Media will also provide public support and public confidence on the legislation.

MIN. NO.34/2013: ADJOURNMENT

There being no other business and the time being thirty minutes past nine O'clock the meeting adjourned.

SIGNED: .....

(CHAIRPERSON)

DATE: .....6/10/13.....

MINUTES OF THE 6TH SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON SUNDAY 6TH OCTOBER AT SAROVA LION HILL LODGE AT 8.00 PM

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Paul Wamatangi - Vice-Chairperson
3. Sen. Liza Chelule
4. Sen. Boy Juma Boy
5. Sen. (Dr.) Wilfred Machage

ABSENT WITH APOLOGY

1. Sen. Catherine Mukiite
2. Sen. Amos Wako
3. Sen. David Musila
4. Sen. Henry Ole Ndiema
5. Sen. Peter Mositet
6. Sen. Chris Obure
7. Sen. Stephen Sang'
8. Sen. Hassan Omar Hassan

ABSENT

1. Sen. (Prof.)Anyang' Nyong'o
2. Sen. Kipchumba Murkomen
3. Sen. (Prof.) John Lonyangapuo
4. Sen. Danson Mwazo

IN ATTENDANCE

1. Ms. Joyce Aluoch -Clerk Assistant II
2. Ms. Emmy Chepkwony -Senior Clerk Assistant

MIN. NO. 35/2013: PRELIMINARIES

The sitting was called to order at 8.10pm followed by a word of prayer.

MIN. NO. 36/2013: ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after it was proposed by Sen. Boy Juma and seconded by Sen. Machage.

MIN. NO. 37/2013: COUNTY VISITS

The Committee noted that the County Visits were going on well and the response was good.

It was resolved that the next County visits would be to Turkana, Kwale and Taita Taveta Counties from 25th to 28th October, 2013.

The Clerk was advised to liaise with the Speaker on the visit to Turkana County.

Action; Clerk

MIN. NO. 38/2013: FOREIGN TRIP

The Clerk informed the members that in practise, Ad hoc Committees do not undertake foreign benchmarking visits. However, the members insisted on the need for the Committee to visit a foreign country before the final Drafting of the Bill, so as to enable the Committee incorporate lessons learnt from the foreign visit.

Subsequently, it was resolved that the Chairperson visits the Australian Embassy to discuss the Committee's proposed visit to Australia and report to the Committee in the next meeting.

Action; Chairperson

MIN. NO. 39/2013:

The next meeting would be summoned by the Chairperson and notice would be circulated by the Committee Clerk.

MIN. NO. 40/2013: ADJOURNMENT & DATE OF NEXT MEETING

There being no other business for consideration, the sitting was adjourned at 8.45pm.

The next meeting would be held on Tuesday 15th October, 2013 at 10.00am.

SIGNED.....

(CHAIRPERSON)

DATE.....17/10/13.....

MINUTES OF THE 7TH SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON THURSDAY 17TH OCTOBER, 2013 IN THE SPEAKER'S BOARDROOM, 2ND FLOOR K.I.C.C. BUILDINGS AT 10.25 AM.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Liza Chelule
3. Sen. Catherine Mukiite
4. Sen. Chris Obure
5. Sen. (Dr.) Wilfred Machage
6. Sen. (Prof.)Anyang' Nyong'o

APOLOGY

1. Sen. Wamatangi - Vice-Chairperson
2. Sen. David Musila

ABSENT

1. Sen. Peter Mositet
2. Sen. Danson Mwazo
3. Sen. Amos Wako
4. Sen. Kipchumba Murkomen
5. Sen. Stephen Sang'
6. Sen. Hassan Omar Hassan
7. Sen. Boy Juma Boy
8. Sen. (Prof.) John Lonyangapuo
9. Sen. Henry Ole Ndiema

IN ATTENDANCE

1. Ms. Joyce Aluoch -Committee Clerk

MIN. NO. 41/2013 PRELIMINARIES

The sitting was called to order at 10.15am followed by a word of prayer.

MIN. NO. 42/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after it was proposed by Sen. Machage and seconded by Sen. Chelule.

MIN. NO. 43/2013 CONFIRMATION OF MINUTES

Minutes of the 3rd sitting

The Minutes of the third sitting were proposed by Senator Zani and seconded by Senator Machage.

Minutes of the 4th Sitting

The Minutes of the fourth sitting were proposed by Senator Chelule and seconded by Sen. Obure, with the amendment that Sen. Machage was absent with apology.

Minutes of the 5th sitting

The minutes of the 5th sitting were proposed by Sen. Mukiite and seconded by Sen. Obure, with the amendment that Sen. Machage was absent with apology.

Minutes of the 6th Sitting

The minutes of the 6th sitting were proposed by Sen. Machage and seconded by Sen. Zani.

MIN. NO. 44/2013 MATTERS ARISING

Minutes of the 3rd sitting

Under ex min. 17/2013

The members were informed that although it had taken long to engage Dr. Ichangi, SUNY Kenya had now concluded the formalities of the engagement and further included two other experts on Taxation matters, Mr. Katanga and Dr. Rono.

Minutes of the 4th sitting

Under ex min. 24/2013

It was resolved that reports of the Boma Retreat and County visits be circulated to the members for their information.

Minutes of the 5th sitting

Under Ex min 30/2013

The members were informed that the next visits would be to Turkana, Taita Taveta and Kwale counties from 25th to 28th October, 2013.

Under Ex min 32/2013

The members noted that the list of Stakeholders was not final and agreed to have it scrutinized and more Stakeholders e.g. Commission on Implementation of the Constitution, CRA, and Chamber of Commerce included.

Under Ex min 33/2013

The members stressed the importance of media in covering the activities of the Committee. The Chairperson was tasked to follow up with the Liason Committee on how to handle the media to ensure Committee activities are covered.

The Chairperson proposed that the Committee could develop flyers with information on County Visits and the issues raised therein.

MIN. NO. 45/2013 ANY OTHER BUSINESS

1. The members resolved that the Chairperson visits the Australian Embassy to follow up on the issue of invitation to the Committee to visit Australia and report to the Committee in the next sitting.
2. The Committee Clerk was tasked to follow up on memorandum to be submitted from the Counties already visited.

3. The members noted that it would be difficult to implement the Legislation on Royalties if it contradicts the Wildlife Bill, Forestry Bill and other related laws. They advised the Legal Counsel to get copies of those Acts to ascertain the areas of deviation.

4. Sen. Nyong'o informed the sitting that he would be out of the country for two months and recorded his apology for subsequent Committee sittings.

5. The Committee Clerk was also requested to liaise with Sen. Mositet regarding his availability for next week's meeting with Director- General KENHA over the Ngong Veterinary Quarry.

MIN. NO. 46/2013 ADJOURNMENT & DATE OF NEXT MEETING

The next meeting would be held on Tuesday 22nd October, 2013. There being no other business for consideration, the sitting was adjourned at 11.30am.

SIGNED.....

(CHAIRPERSON)

DATE.....23/10/13.....

MINUTES OF THE 8TH SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON TUESDAY 22ND OCTOBER, 2013 IN THE SPEAKER'S BOARDROOM, 2ND FLOOR K.I.C.C. BUILDINGS AT 9.45 AM.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Wamatangi - Vice-Chairperson
3. Sen. Liza Chelule
4. Sen. Chris Obure

APOLOGY

1. Sen. David Musila
2. Sen. Catherine Mukiite
3. Sen. (Prof.)Anyang' Nyong'o

ABSENT

1. Sen. Peter Mositet
2. Sen. (Dr.) Wilfred Machage
3. Sen. Danson Mwazo
4. Sen. Amos Wako
5. Sen. Kipchumba Murkomen
6. Sen. Stephen Sang'
7. Sen. Hassan Omar Hassan
8. Sen. Boy Juma Boy
9. Sen. (Prof.) John Lonyangapuo
10. Sen. Henry Ole Ndiema

IN ATTENDANCE

1. Ms. Joyce Aluoch -Committee Clerk

MIN. NO. 47/2013 PRELIMINARIES

The sitting was called to order at 10.15am followed by a word of prayer.

MIN. NO. 48/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after it was proposed by Sen. Wamatangi and seconded by Sen. Chelule.

MIN. NO. 49/2013 CONFIRMATION OF MINUTES

The Minutes of the seventh sitting were proposed by Sen. Chelule and seconded by Sen Zani.

MIN. NO. 50/2013 MATTERS ARISING

Under ex min. 44/2013

Meeting with Consultants

The members were informed that the Consultants meet every Thursdays at 5.30pm in Taita Room at the Hotel Intercontinental. It was noted that the team was very enthusiastic and had done a good job within a short period of time. They were expected to start grouping natural resources in the country and Dr. Ichangi was to come up with rationale for the grouping.

The Chairperson thanked the Vice-Chairperson for stepping up in her absence and meeting the consultants on Thursday 17th October, 2013.

The Chairperson further informed the members that the Consultants would meet on Thursday 24th October, 2013 and extended an invitation to the members to attend the meeting to discuss the Consultants reports as enhanced. The Clerk would confirm the venue of the meeting and communicate the same to the Members.

Committee Reports

The Chairperson commended the Secretariat for effective communication to members and in particular sending copies of reports to members for their information.

Stakeholder's meeting

The Clerk was tasked to liaise with Mr. Mwikambi and Dr. Ichangi for a more comprehensive list of Stakeholders and relevant players.

The Committee proposed a three day Stakeholder's workshop in mid-November, 2013.

Under ex min. 44/2013

Foreign visits

The members were informed that Ms. Emmy Chepkwony was making contact with the Australian Embassy with an objective of securing an invitation to the Committee. Ghana was identified as an alternative country to Australia.

Memoranda from Counties

The Clerk was tasked to follow up on the memoranda from the Counties already visited as the Committee was running out of time.

Relevant Bills

The Members reiterated the need to get copies of the relevant Bills including the APSEA Bill to enable them identify areas of conflict and decide how to deal with them.

Under ex min. 45/2013

The Clerk informed the members that the meeting with the Director-General KENHA had not been confirmed since Senator Mositet had been out of the Country. He was expected back later that evening.

MIN. NO. 51/2013 ANY OTHER BUSINESS

The Chairperson referred to the pull out on that day's Standard Newspaper and noted that the issue of Royalties had started receiving public attention and interest. Consequently, there was need to move with speed and deliever the Bill before anyone else would hijack and claim ownership of the idea.

The Members were further informed that the Chairperson had been on a talk show on radio and Television station NTV. However, the show on NTV was done early hence it is possible that it was not viewed by the wide public. The Chairperson undertook to request for a replay of the same.

The Chairperson informed the Members that she was working on a supplement which would cover video and pictures of the County Visits with a view of preparing people psychologically to avoid resistance.

MIN. NO. 52/2013 ADJOURNMENT & DATE OF NEXT MEETING

The next meeting would be held on Thursday 24th October, 2013. There being no other business for consideration, the sitting was adjourned at 10.45am.

SIGNED.....
(CHAIRPERSON)

DATE.....26/10/13.....

MINUTES OF THE 9TH SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON SATURDAY 26TH OCTOBER, 2013 AT 8.00PM AT MOMBASA CONTINENTAL RESORT

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Wamatangi - Vice-Chairperson
3. Sen. Amos Wako
4. Sen. Liza Chelule
5. Sen. Chris Obure
6. Sen. Catherine Mukiite
7. Sen. (Dr.) Wilfred Machage
8. Sen. Peter Mositet
9. Sen. Hassan Omar Hassan
10. Sen. Boy Juma Boy
11. Sen. Henry Ole Ndiema

APOLOGY

1. Sen. David Musila
2. Sen. (Prof.)Anyang' Nyong'o

ABSENT

1. Sen. Danson Mwazo
2. Sen. Kipchumba Murkomen
3. Sen. Stephen Sang'
4. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

1. Ms. Joyce Aluoch -Committee Clerk

MIN. NO. 53/2013 PRELIMINARIES

The sitting was called to order at 10.15am followed by a word of prayer.

MIN. NO. 54/2013 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after it was proposed by Sen. Zani and seconded by Sen. Mukiite.

MIN. NO.55/2013 REVIEW OF THE COUNTY VISIT TO TAITA TAVETA

The Chairperson explained to the Members that the visit to Turkana County was postponed to a later date to allow for consultations at the Transitional Authority Workshop in Mombasa.

The Members felt that the trip was successful. They however sympathized with the Community who were living in abject poverty despite being endowed with precious stones.

The Clerk was tasked to follow up and ensure that the Committee receives the

MIN. NO. 56/2013 RULES & BUSINESS CONSERN ON HOUSE REPORTS

The Members were informed that the Rules and Business Committee was concerned about the objectives of most House Reports. The Committee felt that the objectives should be specific so that one can ascertain success or failure to assist make recommendations. It had been resolved that all Clerks be taken through a report writing training and the same would be held on Monday 28th October, 2013.

MIN. NO. 56/2013 PROGRESS OF CONSULTANTS

The Chairperson noted that the Consultants were progressing well with their work. She mentioned that Sen. Wamatangi, Sen.Mukiite and Sen. Ndiema had attended the previous meetings with the Consultants at the Hotel intercontinental.

She encouraged the Members to attend subsequent sittings and noted that their participation was key to ensure that all members were reading from the same page.

The Chairperson tasked the Clerk to consider the possibility of engaging Mr. Mwambi Mwikamba to come on board and give an insight on communities.

The Clerk was also asked to liase with Dr. Rono to forward his presentation by e-mail and the same to be forwarded to the members and Mr. Abisai, inviting them to the meeting with the Consultants on Thursday 31st October, 2013.

MIN. NO. 51/2013 ANY OTHER BUSINESS

1. The Chairperson informed the members that the meeting with the Consultants on Thursday 31st October, 2013 would be the final meeting before the draft Bill is ready. It was expected to be ready by 7th

November, 2013. Thereafter, the Stakeholders workshop was proposed to be held thereafter on or before 21st November, 2013.

2. Sen. Mukiite and Sen. Ndiema requested for hard copies of communication.

MIN. NO. 52/2013 **ADJOURNMENT & DATE OF NEXT MEETING**

The next meeting would be on notice. There being no other business for consideration, the sitting was adjourned at 8.45pm.

SIGNED.....
(CHAIRPERSON)

DATE.....6/12/14.....

MINUTES OF THE 10TH SITTING OF THE ADHOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUED FROM NATURAL RESOURCES IN THE COUNTIES HELD ON 6TH MARCH, 2014 AT 10.30AM IN THE BIG BOARDROOM, 4TH FLOOR,KICC BUILDING.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Paul Kimani Wamatangi - Vice Chairperson
3. Sen. Liza Chelule
4. Sen. Amos Wako
5. Sen. Hassan Omar Hassan
6. Sen. Stephen Sang'

ABSENT

1. Sen. Peter Mositet
2. Sen. Danson Mwazo
3. Sen. Boy Juma Boy
4. Sen. (Prof) Anyang' Nyong'o
5. Sen. Catherine Mukiite
6. Sen. Liza Chelule
7. Sen. Chris Obure
8. Sen. David Musila
9. Sen. Kipchumba Murkomen

APOLOGY

1. Sen. Dr. Wilfred Machage
2. Sen. Henry Ole Ndiema

MIN. NO. 1/2014 - PRELIMINARIES

The sitting was called to order at 10:30 am followed by a word of prayer.

MIN. NO. 2/2014 - ADOPTION OF THE AGENDA

Members adopted the agenda as presented after it was proposed by Sen. Wako and seconded by Sen. Sang.

MIN NO. 3/2014 - **DELIBERATIONS ON THE DRAFT BILL**

The members deliberated on the first draft Bill and made the following resolutions:-

(a) The Natural Resources (County Royalties) Bill 2013, was heavily crafted from the Mining bill 2012 and therefore it did not address the issue of how communities would benefit and focused instead on the structures and institutions that would be created along the enactment of the Bill into an Act.

(b) The main idea was affirming the need for direct benefit from the proceeds of the said natural resources to the local communities.

(c) Members agreed that the Benefit sharing draft should include a criteria of appointing members to the different governance frame

(d) Provision be made for the constitution of a Board should have technical expertise in the different natural resource sectors and members of the community be included in the Board.

(e) Another Consultative Forum be held to engage the Stakeholders before the Bill is presented to the Senate.

(f) The minimum guide on retention of benefits to the community be increased and should be a minimum of 15% as provided by the constitution.

(g) Where there is an existing parent Act, there should be synergy with the current draft bill, Benefit sharing Bill.

(h) In cases where there is a need for amendments to the existing Acts, then necessary amendments will be done.

MIN. NO. 4/ 2014 **ANY OTHER BUSINESS**

The Committee resolved to form a sub committee comprising of the following members:-

1. Sen. (Dr.)Zani
2. Sen. Wamatangi
3. Sen. Wako

The subcommittee's main agenda would be to harmonize both drafts and include the issues raised by the stakeholders during the stakeholder's forum held at Safari park hotel.

MIN. NO. 5/2014 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the sitting was adjourned at 12.00pm.

SIGNED.....

(CHAIRPERSON)

DATE.....23/3/14.....

MINUTES OF THE 11TH SITTING OF THE AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES HELD ON THURSDAY 12TH MARCH 2014 IN THE BIG BOARDROOM, 4TH FLOOR K.I.C.C. BUILDINGS AT 10.00 AM.

PRESENT

1. Sen. (Dr.) Agnes Zani - Chairperson
2. Sen. Amos Wako
3. Sen. (Prof.)Anyang' Nyong'o
4. Sen. Catherine Mukiite
5. Sen. Henry Ole Ndiema
6. Sen. Danson Mwazo
7. Sen. Chris Obure
8. Sen. (Dr.) Wilfred Machage
9. Sen. Stephen Sang'
10. Sen. Boy Juma Boy

ABSENT WITH APOLOGY

1. Sen. Wamatangi - Vice-Chairperson
2. Sen. David Musila

ABSENT

1. Sen. Peter Mositet
2. Sen. Liza Chelule
3. Sen. Kipchumba Murkomen
4. Sen. Hassan Omar Hassan
5. Sen. (Prof.) John Lonyangapuo

IN ATTENDANCE

1. Ms. Joyce Aluoch -Clerk Assistant II
2. Mr. Willis Otieno - Drafter

MIN. NO. 5/2014 PRELIMINARIES

The sitting was called to order at 10.05am followed by a word of prayer.

MIN. NO. 6/2014 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting after it was proposed by Sen. Nyong'o and seconded by Sen. Mukiite.

MIN. NO. 7/2014 VALIDATION OF DRAFT BILL

Members were briefed that during the previous sitting, a sub-committee was formed comprising of the Chairperson, Vice-Chairperson and Sen. Wako. The

mandate of the sub-committee was to harmonize the two draft Bills taking into consideration the contributions made by the stakeholders during the Forum held in November, 2013 at the Safari Park Hotel.

The Chairperson reported that the sub-committee had completed its work and subsequently presented the harmonized draft Bill to the Committee.

The members were taken through the harmonized draft Bill clause by clause and the following clarifications were made:-

(a) There were certain streams of revenues which were not termed as royalties hence to be all inclusive; the Act refers to benefit sharing which is not necessarily fiscal.

(b) It would not be possible to amend the overlap in various existing legislations dealing with per centages of Royalties payable, therefore it was agreed that collection of revenue be streamlined.

(c) It would also be impossible for communities to be consistent in prioritizing the use of revenue collected therefore it was agreed that the different levels of administration of the fund be established.

(d) In sectors where there are no royalties prescribed, the Benefit Sharing Authority at the national level is given the power to prescribe the amount of royalties.

The members made the following proposals for the amendment of the harmonized Bill:-

(i) The provision on definitions be expanded to include among others *"Sovereign Wealth Fund", "monies",*

(j) The words " *and natural resources*" be included immediately after the word "*environment*" in section 11 (1) (b)

(k) The words "*or representative*" to be included immediately after the word "principal Secretary" in Section 11(1) (b) (c) and (d)

(ii) Mr. Otieno was tasked to identify one (1) representative body from the natural resources sector to be included in the composition of the Board of Directors under section 11 (1).

(iii) The words "*and minorities*" be included immediately after the word "*diversity*" in Section 11 (1) (e)

(iv) The entire provisions of Section 11 (5) be deleted as it contradicts the provisions of Section 11 (1) (a)

(v) A provision for election of Chairman from the community and his eligibility to vote be included under section 25 (2).

(vi) The word *"devolved"* under Section 26 be deleted and replaced with the word *"distribute"*.

(vii) The words *"are of public interest"* be included immediately before the words *"community based"* in Section 28 (1) (d).

(viii) In sectors where there are no royalties prescribed, the Benefit Sharing Authority at the national level is given the power to prescribe the amount of royalties.

(ix) The word *"Parliament"* in Section 30 (2) be deleted and replaced with the words "Senate and National Assembly".

(x) Editorial amendments like correction in numbering be done e.g.

- after Section 11 (3) then (4) and (5) should follow
- after Section 26 (2) then (3), (4), (5) and (6) should follow

The members resolved that the final draft Bill to be presented to the Senate would be the harmonized Bill with the above stated amendments.

MIN. NO. 8/2014 ANY OTHER BUSINESS

1. The Committee resolved to hold a four day retreat from 21st to 24th March, 2014 at Medina Palm Resort to consider the Committee's report.
2. The Chairperson reminded the members that the sitting would be the committee's final sitting and appreciated all of them for their hard work and commitment in ensuring that the Committee fulfilled its mandate.

MIN. NO. 9/2014 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the sitting was adjourned at 11.45am.

SIGNED.....

(CHAIRPERSON)

DATE.....23/3/14.....

AD HOC COMMITTEE ON LEGISLATION ON ROYALTIES ACCRUING FROM NATURAL RESOURCES IN THE COUNTIES

STAKEHOLDER'S WORKSHOP

29TH NOVEMBER, 2013 AT SAFARI PARK HOTEL

ATTENDANCE SCHEDULE

NO	NAME	INSTITUTION	E-MAIL ADDRESS	SIGNATURE
1	MIKE ODERA	TATA CHEMICALS MAGADI	modra@tatachemicals.com	
2	HARISH PATEL	MOMBASA CEMENT	harisLesL@hotmail.com	
3	Assumpta Mukolwe	East African Copper Ltd EVP Kenya Elsenberg Mines	Sliico@assumptamukolwe.com	
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